

**(2023) 03 NCLT CK 0004**

**National Company Law Tribunal, Mumbai Bench Court IV**

**Case No:** IA 1657(MB)/2022 & IA 1099/2022 in CP(IB)2119(MB)/2019

Vedanth.com Worldwide Limited

APPELLANT

Vs

Karthik Alloys Limited

RESPONDENT

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**Date of Decision:** March 3, 2023

**Acts Referred:**

- Insolvency and Bankruptcy Code, 2016 - Section 9, 12, 14, 29A, 30(2), 30(4), 30(6), 31(1), 66
- Insolvency and Bankruptcy Board of India (Insolvency Resolution Process Corporate Persons) Regulations, 2016 - Regulation 35A, 38(1)(a), 39(4)

**Hon'ble Judges:** Kishore Vemulapalli, Member (J); Prabhat Kumar, Member (T)

**Bench:** Division Bench

**Advocate:** Ranit Basu, Vishesh Srivastav

**Final Decision:** Disposed Of

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**Judgement**

Prabhat Kumar, Member (Technical)

1. This Application has been filed on 19.07.2021 by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'the Code') on behalf of the Committee of Creditors seeking approval of the Resolution Plan submitted by the Successful Resolution Applicant and approved by 100% of the voting share of the members of the Committee of Creditors (hereinafter referred to as 'CoC') of the Corporate Debtor viz. Karthik Alloys Limited [CIN: U31200GA1992PLC001969] (hereinafter referred to as 'Corporate Debtor').

2. The facts leading to the Application are as under:

i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated vide an order dated 17.12.2019 of this Court in C.P.(IB)-2119(MB)/2019 on an application filed by Vedanth.com Worldwide Ltd. (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code 2016. Mr. Anneel Saraogi (Reg. No.: IBBI/IPA-001/IP-P01320/2018-19/12009 was appointed as Interim Resolution Professional (IRP), who was confirmed as RP in the second CoC meeting held on 25.02.2020. The Applicant made a public announcement in the newspapers (in Kolkata and Goa) in Form-A on 06.01.2020 inviting claims from the creditors, workers/employees of the Corporate Debtor and from government bodies. IRP constituted the Committee of Creditors (CoC) based on the claims received by him and the first meeting of the CoC held on 30.01.2020.

ii. Form G was issued on 01.03.2020 wherein five (5) Expression of Interest (EoI) were received and the last date for submission of the resolution plan was 23.04.2020. However, due to the pandemic situation, the Prospective Resolution Applicant could submit only part of the documents. For the same reason, time limit for submission of EoI was extended after seeking approval from the CoC in the Fourth CoC held on 13.07.2020 whereby the CoC extended the last date for submission of resolution by a further period of 30 days to be started from 14.07.2020.

iii. The revised Form G was issued on 17.09.2020, wherein two (2) EoI i.e. from M/s. QVC Exports Pvt. Ltd. with CFM ARC as Financial Planner and M/s. Assam Valley Finance and Investments Private Limited were received till the last date of receipt of EoI i.e. on 02.10.2020 and thereafter, both the Resolution Applicant(s) submitted their Resolution Plan within the time specified in revised Form-G i.e. on 05.11.2020.

iv. The Resolution Plan submitted by M/s. Assam Valley Finance and Investments Private Limited, one of the Resolution Applicants, was found non-compliance with respect to valid EMD in view of the fact bank guarantee provided as EMD had expired and was not renewed despite request by the Resolution Professional. The Resolution Plan submitted by other eligible Resolution Applicants i.e. QVC Exports Pvt. Ltd. was evaluated by the RP and after finding it compliant, the RP presented the same to the CoC for its consideration and approval by voting.

v. After re-negotiations and alterations, the final resolution plan submitted by the Resolution Applicant viz. QVC Exports Pvt. Ltd. was approved by the CoC in the 20th meeting held on 13.07.2021 through e-voting by 100% of the CoC members voting in favor of the Resolution Plan. By passing following resolution –

**“Resolved that, after considering the feasibility and viability of the Resolution Plan and such other requirements as specified in the appropriate sections of the Insolvency and Bankruptcy Code 2016 and other Regulations as specified under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for**

**Corporate Persons) Regulations, 2016 including amendments, if any, by the Board, the Committee of Creditors, in pursuance to Sec. 30 of the Insolvency and Bankruptcy Code 2016 and subject to the approval of the Hon'ble National Company Law Tribunal, Mumbai Bench, hereby approves the Resolution Plan submitted by QVC Exports Private Limited being the Resolution Applicant."**

vi. The RP issued Letter of Intent on 16.07.2021 in favor of the Resolution Applicant and also sought for Performance Bank Guarantee of Rs.50 lakhs, which was duly complied by the Resolution Applicant on 16.07.2021. Therefore, RP states that the Resolution Plan approved by the CoC is in compliance with the requirements of Section 30(2) of the Code.

vii. As per the RP the Fair Value and Liquidation Value determined by the registered Valuer are as follows:

Fair Value Rs. 22,09,52,444.00

Liquidation Value Rs. 14,78,75,882.00

viii. In the circumstances mentioned hereinabove, the Applicant has filed Application seeking approval of this Tribunal on the resolution plan, submitted by the Resolution Applicant i.e. QVC Exports Pvt. Ltd., stating that the plan is in accordance with the Section 30(2) and other provisions laid down under the Code.

3. The Resolution Applicant viz. QVC Exports Private Limited (with CFM ARC as Financial Partner) is a company engaged in the business of Import/ Purchase of Manganese Ore across the World and cater to the Ferro Alloy Manufacturers / Manganese Traders and Exports of Ferro Alloys Products across the World, incorporated at Kolkata in August 2005 [CIN: U27109WB2005PTC104672] having office at 6, Dr. Meghnad Saha Sarani, 2nd Floor, Southern Avenue, Kolkata – 700026. The Resolution Applicant confirmed that it is eligible to submit Resolution Plan as per Section 29A of Insolvency and Bankruptcy Code.

4. The Resolution Applicant has confirmed that -

i. its connected persons are not convicted for any offence during the preceding five years and no criminal proceedings are pending against any person.

ii. not disqualified under Companies Act, 2013 to act as a Director.

iii. not identified as a willful defaulter by any bank of financial institution or consortium thereof in accordance with the guidelines of the Reserve Bank of India.

iv. not debarred from accessing to, or trading in securities markets under any order or directions of the Securities and Exchange Board of India.

## 5. Resolution Plan for the Corporate Debtor:

### 5.1 Summary of the Financial Proposal

The Resolution Applicant has proposed to take-over the management and ownership control of the Corporate Debtor by acquiring 100% ownership of the Company in the manner specified at page 31 of the Plan. The Resolution Applicant proposes a total consideration of Rs.21.726 (Rupees Twenty-one Crore Seventy-two Lak Six Thousand only) to all the stakeholders to be paid within a period of 18 months from the effective date of this resolution plan.

The structure of the payment to the stakeholders with timeline is given hereunder:

Particulars	Resolution Debt	Resolution Amount (Rs. in Cr.)	Upfront Amount	12 months from NCLT Order	18 months from NCLT Order
CIRP Secured	2.178	2.178	2.178	0	0
Financial Creditors	57.370	17.321	6.321	4.000	7.000
Workmen due	0.806	0.201	0.201	0	0
Unsecured Financial Creditors	5.551	1.726	0	0	1.726
Statutory Dues	2.135	0	0	0	0
Operational Creditors	18.910	0.100	0.100	0	0
DVC Dues	27.789	0.200	0.200	0	0
<b>Total</b>	<b>114.739</b>	<b>21.726</b>	<b>9.000</b>	<b>4.000</b>	<b>8.726</b>

a) In accordance with Regulation 38 (1) (a) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process Corporate Persons) is required to be paid in priority to other creditors and the CIRP Cost will be paid from the upfront Payment of Rs.9.000 Crores in priority to all other creditors.

b) Payment of CIRP Costs will be Rs.2.178 Crores or Actuals whichever is higher (as determined by RP) in priority to Payment to Operational Creditors and Secured Financial Creditors and any CIRP costs over and above Rs.2.178 Crores will be adjusted from the Upfront payment to secured Financial Creditors.

c) Admitted Claims of Secured Financial Creditors is Rs 57.37 Crores and Resolution Applicant proposes Resolution Plan payment of Rs 17.321 Crores (includes payment of Rs 1.78 Crores by ARC for assignment of personal/corporate/third party guarantees including all underlying securities).

d) Admitted Claims of Workers and Employees in respect of wages of workers and salaries of employees, including PF, ESI and Gratuity dues, is Rs. 0.806 Crores and RA proposes to pay Rs 0.201 Crores within 60 days of the approval of the Resolution plan by NCLT.

e) Admitted Claims of Unsecured Financial Creditors is Rs.5.551 Crores and Resolution Plan Payment is Rs. 1.726 Crores.

f) Admitted Claims of Operational Creditors is Rs. 48.834 Crores (excluding Workmen and Employees, but including Statutory Dues, DVC Dues and RA and its Group Dues) and Resolution Plan Payment is Rs.0.30 Crores.

g) RA will prioritize payment of Dues to Operational Creditors over the Financial Creditors under the Resolution Plan, if there would have been any possibility of such payment. Therefore, Rs 0.30 Crores envisaged to be paid to Other Operational Creditors including of DVC Dues but excluding Workmen and employees as well as Statutory Dues, will be paid before any payment to be made to Financial Creditors under the Resolution Plan and would not consider any payment made to Financial Creditors under the Original Approved Resolution plan as violative of the provisions of the IBC 2016.

h) No amount is offered to Equity Shareholders because o Surplus from Resolution Amount is available or in case of Liquidation, no amount would be available for distribution among them.

## **5.2 Effective Date**

The Effective Date of the Resolution Plan shall be the date when the Resolution Plan is approved by this Tribunal.

## **5.3 Term of Resolution Plan**

This Resolution Plan is valid for a term of Eighteen (18) months till all the payments are made to all the stakeholders as per the terms and conditions of the Resolution Plan. The obligations of the Resolution Applicant to implement the Resolution Plan shall

become effective only from the Effective Date.

The Resolution Plan shall become binding on the Corporate Debtor and its employees, members, creditors, guarantors, Central Government, any State Government, any local authority and other stakeholders involved in the Resolution Plan on the Effective Date.

5.4 The Resolution Applicant has sought various reliefs and concessions as set out in the Resolution Plan.

5.5 The Applicant has submitted that the Resolution Plan, submitted by QVC Exports Private Limited and approved with 100% voting of the members of the Committee of Creditors, has been examined and the Resolution Plan:

- a. provides for payment of Insolvency Resolution Process Costs in a manner specified by the board in priority to the payment of other debts of Corporate Debtor;
- b. provides for payment of the debts of the Operational Creditors in such manner as specified by Regulation 38(1) of the IBBI (Insolvency Resolution Process for Corporate Persons Regulations) 2016;
- c. provides for management of the affairs of the Corporate Debtor after the approval of the Resolution Plan; and
- d. does not contravene any of the provisions of the law for the time being in force.

6. The Applicant/Resolution Professional further submits that –

6.1 There is one Application bearing No. IA-813(MB)/2021 filed in relation to fraudulent transaction(s) under the provisions of Section 66 of the Code is pending before this Bench.

6.2 The Resolution Plan is not subject to any contingency, however, the RA has specified that in case of occurrence of any Force Majeure event or an event of “Material Adverse Effect” or DVC/GSEB refuses to provide/resume supply of power or any stay/injunction being granted for implementation of the plan, then under such circumstances RA would have right to approach the requisite Adjudicating Authority for modification or extension of timeline of the implementation of the Approved Resolution Plan.

6.3 The application seeking approval of Plan of the Bench is filed before the expiry of the period of CIRP provided in Section 12 of the Code, as this Bench had granted an extension in the CIRP period vide its orders dated 23.11.2020 and 27.10.2021 whereby the extended period of CIRP ends on 12.09.2021.

6.4 The Applicant has filed application along with Form ‘H’ prescribed under Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for

Corporate Persons) Regulations, 2016 and has appended a tabular summary of Applicant's determination of compliance of the Resolution Plan with various provisions and regulations under the Code and CIRP Regulations.

Section the Code / Regulation No.	of Requirement with respect to Resolution Plan Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD? Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)			Yes
Section 29A			Yes

Section  
30(1)

Whether the  
Resolution  
Applicant  
has  
submitted  
an affidavit  
stating  
that it is  
eligible?

Yes



Section 30(2)	Whether the Resolution Plan-			
	(a) provides for the payment of insolvency resolution process costs?			
	(b)provides for the payment to the operational creditors?			
	(c)provides for the payment to the financial creditors who did not vote in favour of the resolution plan?			Yes
	(d) provides for management of the affairs of the corporate debtor?	Form Page 20-27	VA Nos.	Yes
	(e) provides for implementation and supervision of the resolution plan?			Yes
	(f) contravenes any of the provisions of the law for the time being in force?			No

	Whether the Resolution Plan	
	(a) is	
	feasible	
	and viable,	Yes
Section 30(4)	according to the CoC?	Yes
	(b) has been approved by the CoC with 66% voting share?	
	Whether the Resolution Plan has	
	provisions for its effective	
Section 31(1)	implementation plan,	Yes
	according to the CoC?	

Where the  
Resolution  
Professional  
made a  
determination  
if the  
Corporate  
Debtor has  
been  
subjected to  
any  
transaction  
of the  
nature  
covered  
under  
sections  
43,45,50 or  
66, before  
the one  
hundred  
and  
fifteenth day  
of the  
insolvency  
commencement  
date, under  
intimation to  
the Board?

Yes, the  
same was  
filled but  
was filled  
after one  
hundred and  
fifteenth day  
of  
insolvency  
commencement  
date due  
to  
spread of  
pandemic  
Covid-19 and  
the  
lockdown  
prevailing in  
the country.

Regulation 35  
A

Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors? Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Page No.60 Clause b	Yes
Regulation 38(1A)		Format VA Page No. 27	Yes

	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	NA
Regulation 38(1B)	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	NA

Whether the  
Resolution  
Plan  
provides:  
(a) the term  
of the plan  
and its  
implementation  
schedule?

(b) for the  
management  
and control  
of the  
business of  
the  
corporate  
debtor  
during its  
term?

(c)  
adequate  
means for  
supervising  
its  
implementation?

Format  
Page No.65  
Format VA  
Page No.61  
Clause c&d

VA

Yes

Yes

Yes

Regulation  
38(2)

	Whether the resolution plan demonstrates that –			
	(a) it addresses the cause of default?			
	(b) It is feasible and viable?			
	(c) it has provisions for its effective implementation?	Format	VA	Yes
38(3)	(d) it has provisions for approvals required and the timeline for the same?	Page No.66-67.		Yes
	(e) the resolution applicant has the capability to implement the resolution plan?			Yes

39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him? Provide details of performance security received, as referred to in sub-regulation (4A) regulation 36B.	Yes
Regulation 39(4)		PBG of Rs. 50,00,000/- has been received on 16.07.2021, issued by SBI. of

7. The Resolution Plan submitted by QVC Exports Private Limited is hereby approved. Accordingly, Interlocutory Application No. 1657 of 2021 is allowed. The Resolution Plan shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

7.1 The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

7.2 The Resolution Applicant (RA) has sought reasonable period to assess the status of license. It is the duty of RA, more particularly when it claims to have enough experience in the business of Corporate Debtor, to assess this requirement at the time of



submission of plan itself and no further concession can be considered. The renewable/extension shall be considered by the respective authorities in accordance and upon compliance with the procedure/formalities stipulated by the authorities.

7.3 The moratorium under Section 14 of the Code shall cease to have effect from this date.

7.4 The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.

7.5 The Fraudulent Application(s) numbered as IA-813/2021, which is pending for adjudication before this Adjudicating Authority, shall be pursued by the Committee of Creditors through incumbent Resolution Professional or any other person nominated by the CoC. The cost in this relation shall be borne by CoC and the amounts recovered under these Applications shall be distributed amongst the Financial Creditors.

7.6 The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. Further, any application for renewal or extension or restoration of any license or approval or connection from any authority shall be subject to payment of prescribed fee and/or deposit(s) and adherence to the procedure stipulated by such authority, however such authority shall not refuse/deny approval/extension/restoration merely on ground of previous defaults/non-compliance of the Corporate Debtor.

7.7 The prayer for refund of money/asset lying with DVC or statutory authorities or any other department(s) shall be dealt with in accordance with the applicable provisions of that Act and subject to right of set off available to the claimant under the law of the land.

7.8 The claim of Workmen/Employees shall be dealt with in accordance with our decision in IA-1786/2022 and amounts set aside under the relevant class shall be accordingly modified, if required.

7.9 The claim of the Statutory Authorities which has not been admitted because of the same being subject matter of appeal. The definition of claim includes contingent claim also, hence, the claim of statutory dues is required to be admitted and settled in accordance with the proposed settlement in the relevant class.

7.10 In terms of the judgement of Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited**, "on the date of approval of the Resolution Plan by the Adjudicating Authority,

all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

**“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;**

**(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;**

**(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”**

7.11 In view of the above judgement, the applicant is entitled to waivers/concessions/reliefs as expressly provided under the Code and under any other law for the time being in force.

7.12 The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.

7.13 The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

**8. IA-1099/2022:** This Application has been filed by M/s. QVC Export Private Limited, the successful Resolution Applicant, seeking impleadment in IA-1657/2021. Since the orders in IA-1657/2021 has already been reserved on 06.01.2023 and the Plan is approved by this Adjudicating Authority as supra, this IA is **dismissed** as infructuous.

9. With the above directions, the Resolution Plan of the Applicant is approved by this Bench and accordingly IA-1657/2021 is **allowed**. IA-1099/2022 and IA-1657/2021 are **disposed of**, accordingly.