

(2025) 01 NCLT CK 0014

National Company Law Tribunal, Mumbai Bench

Case No: IA No. 59 of 2024 IN CP(IB) No.255 of 2020

CA Prashant Jain RP of Grey
Exim Private Limited

APPELLANT

Vs

UPS Express Pvt. Ltd.

RESPONDENT

Date of Decision: Jan. 29, 2025

Acts Referred:

- Insolvency and Bankruptcy Code 2016 - Section 31, 30, 38,39,9,15, 25, 43, 45, 50, 66, 53

Hon'ble Judges: Prabhat Kumar, Member (T); Virendra Singh Bisht, Member (J)

Bench: Division Bench

Advocate: Mily Ghoshal a/w Sophia Hussain, Shweta Thanekar, Prakhar Tandon i/b Agam Hmaloo

Final Decision: Allowed

Judgement

,Valuer 1,,Valuer 2,,Average,

,Fair Value,Liq Value,Fair Value,Liq Value,Fair Value,Liq Value

L&B,"2,01,00,000","1,51,00,000","2,21,28,700","1,54,90,090","2,11,00,000","1,52,50,000

P&M,"18,19,007","11,82,406","19,09,560","13,36,690","18,64,283.5","12,59,549

SFA,"2,62,189.30","2,09,751.44","2,34,751.44","1,87,801.15","2,48,470.37","1,98,776.295

Sr No.,Particulars,"Amount

Admitted/Â Â Claim

Amount (INR)","Settlement

ValueÂ Â offered

(INR)","Terms of Payment,,

1.,CIRP Cost,At Actual,At Actual,"To be paid within 60 days from the date of the ofÂ theÂ order Honâ€™ble NCLT approving the Resolution Plan",,,

2.,Secured,"68,68,83,153.40","5,85,00,000","To be paid within 150 days from the order of the NCLT approving the Resolution plan",,,

A,"Employee and Workmen dues","12,13,629","12,136.29","To be paid within 150 days from the date of the order of the NCLT approving the Resolution Plan",,,

B,"Operational Creditor","18,51,981","18,519.81","To be paid within 148 days from the date of the order of the NCLT approving the Resolution Plan",,,

C,"StatutoryÂ Dues (Income Tax Department)","6,59,27,003","3,29,635.02","To be paid within 150 days from the date of the order of the NCLT approving the

Resolution Plan",,,

C1,ESIC,"15,76,422","7,882.11","To be paid within 150
days from the date of the
order of the NCLT

approving the

Resolution Plan",,,

Section,Mandatory Provision,"Compliance in the Plan
Section/Clause/Page No.",,,,

30(1),"Affidavit of eligibility provided by the
Resolution Applicant",YES,,,,

30(2)(a),Payment of CIRP Cost,Part 7 sub part A at page 25,,,,

30(2)(b),"PriorityÂ paymentÂ toÂ theÂ debtÂ of
operational creditor",Part 7 sub part E on page 38,,,,

30(2)(b)(ii),Priority payment to dissenting FC,Part VII sub part D at page 37,,,,

30(2)(c),"Provides for the management and affairs
of the Corporate Debtor",Part XV at page 53,,,,

30(2)(d),"ImplementationÂ andÂ supervisionÂ of
resolution plan",Part XVII at page 60,,,,

30(2)(e),"Do not contravene any provision of law
for time being in force",Part XXV at Page 74-75,,,,

31(1),"ResolutionÂ PlanÂ hasÂ provisionÂ for
effective solution",Part VII at Page 21,,,,

Name,Claim amount,Settlement Amount,Period of payment,,,

Clix Capital Services

Pvt. Ltd.,"58,54,559","1,17,091.18","To be paid within 150

Days from the date of
the order of the
NCLT approving the

Resolution Plan",,,

Gemini Dyeing &

Printing Mills Pvt.

Ltd","55,00,000","55,000","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Kamlesh Jayantilal

Shah","6,75,000","6,750","To be paid within 150

Days from the date of",,,

,,, "the order of the

NCLT approving the

Resolution Plan",,,

Dhruv Gupta,"8,59,325","8,593.25","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Namrata Ahuja,"16,41,250","16,412.50","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Akshay Ahuja,"25,63,800","25,638.00","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Haresh Girdharilal

Chhabria","1,28,18,618","1,28,186.18","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Mulchand

Dipchand Shah","12,46,670","12,466.70","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Priyanka Gupta,"8,51,225","8,512.25","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Dilip Gaba,"15,25,725","15,257.25","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Rekha

Mulchandani","12,17,860","12,178.60","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Sumatilal M. Shah,"10,85,536","10,855.36","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Tex Weaves India,"86,49,500","86,495","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Hanisha Gaba,"5,17,080","5,170.80","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Dhiren Kapadia,"33,74,300","33,743","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Aditya Birla

Finance Ltd.,"24,66,185","49,323.70","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Dhani Loans

Consumer Finance","6,42,437","12,848.74","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

India Infoline

Finance Limited","9,85,951","19,719.02","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Magma Fincorp

Limited","17, 84,298","35,685.96","To be paid within 150

Days from the date of

the order of the

NCLT approving the

Resolution Plan",,,

Sl. No.,Particulars,Description,,,,

1,Name of the CD,"Greyâ€™s Exim Private

Limited",,,,

2,Date of Initiation of CIRP,"27/06/2023.

Order was received by the IRP

on 05/07/2024.",,,,

3,Date of Appointment of IRP,27/06/2023,,,,

4,Date of Publication of Public Announcement,07/07/2023,,,,

5,Date of Constitution of CoC,28/07/2023,,,,

6,Date of First Meeting of CoC,03/08/2023,,,,

7,Date of Appointment of RP,03/08/2023,,,,

8,Date of Appointment of Registered Valuers,14/08/2023,,,,

9,Date of Issue of Invitation for EoI,05/09/2023,,,,

10,Date of Final List of Eligible Prospective Resolution Applicants,30/07/2023,,,,

11,Date of Invitation of Resolution Plan,20/10/2023,,,,

12,Last Date of Submission of Resolution Plan,"20/11/2023.

Extended till 20.12.2023 with

the approval of CoC.",,,,

13,Date of Approval of Resolution Plan by CoC,24.06.2024,,,,

14,Date of Filing of Resolution Plan with Adjudicating Authority,03.07.2024,,,,

15,Date of Expiry of 180 days of CIRP,24/12/2023,,,,

16,Date of Order extending the period of CIRP,15/01/2024,,,,

Sl. No.,Name of Creditor,Voting Share (%),"Voting for Resolution Plan (Voted for / Dissented / Abstained)" ,,,

1.,Bank Of Baroda,99.31%,Voted For,,,

2.,Kotak Mahindra Bank,00.69%,Dissented,,,

(1),(2),(3),(4),(5),(6),(7)

1,"Secured

Financial

Creditors","(a) Creditors not

having a right to

vote under sub-

section (2) of

section 21" ,,,,

,"(b) Other than (a)

above:

(i) who did not

vote in favour of

the resolution

Plan

(ii) who voted in

favour of the

resolution plan", "68,68,83,153.40", "68,68,83,153.4

0", "5,85,00,000", 8.51%

„Total[(a) + (b)], "68,68,83,153.40", "68,68,83,153.4

0", "5,85,00,000", 8.51%

2, "Unsecure

d

Financial

Creditors

(Unsecur

ed FC

having

personal

guarante

e have", "(a) Creditors not

having a right to

vote under sub-

section (2) of

section 21", "2,94,42,178", "2,94,33,308", "5,88,843.56", 2%

„(b) Other than (a)

above:

(i) who did not

vote in favour of", "47,58,035", "47,58,035", "95,160.70", 2%

Total[(a) + (b)], "8,92,39,564", "72,10,74,496", "13,59,532.39", 1.52%, „

(a) Related Party

of Corporate

Debtor" ,,,,,,

„"Part XV at Page

53

Part XVII at

Page 60

Covering Letter

and Declaration

at Part XXV at

Page 74-

75", "Yes

Yes

No" ,,,

Section

30(4)", "Whether the Resolution Plan

(a) is feasible and viable, according to the CoC?

(b) has been approved by the CoC with 66% voting share?" ,,"Yes

Yes" ,,,

Section

31(1)", "Whether the Resolution Plan has provisions for its effective

implementation plan, according to the CoC?" ,,"Yes,,,

Regulati

on38 (1)

(a)

Regulati

on 38 (1)

(b)", "Whether the amount due to the operational creditors under the

resolution plan has been given priority in payment over financial

creditors?]

Priority payment to financial creditor who did not vote in favor of resolution plan", "Part VII Page 24 and Page 38

Part VII Page 37", Yes,,,

Regulati

on

38(1A)", "Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?", Part IX Page 44, Yes,,,

Regulati

on 38(2)", "(a) 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?", "Part XVI Page 56

Part XVII Page

60", "Yes

Yes

Yes",,,

38(3)", "Whether the resolution plan demonstrates that â€

(a) it addresses the cause of default?

(b) it is feasible and viable?

(c) it has provisions for its effective implementation?

(d) it has provisions for approvals required and the timeline for the same?", "VÂ

Part Para 3

Page 18-

19

IVÂ

Part Para f

page 16

Part VII. Page 60

Part XXI Page

69-

70", "Yes

Yes

Yes

Yes",,,

, "(e) the resolution applicant has the capability to implement the resolution plan?", "Sources of Fund

at Page 61. The

RA will

implement the

Plan along with

an investor.", "Yes",,,

39(2), "(b) Whether the RP has filed applications in respect of transactions observed, found or determined by him?",,, "No",,,

Regulati

on 39(4)", "ProvideÂ detailsÂ ofÂ performanceÂ

(c) security

received, as referred to in sub-regulation (4A)

of regulation 36B.]", "Received PBG of

INR 52,97,910/-" ,,,,

35. The Applicant had further filed IA 4541 of 2024 for seeking condonation of delay for including claims which are received later of 90 days or issue,,,,,,

of RFRP, which was allowed vide order dated 03.10.2024 and IA 4310 of 2024 seeking extension for 26 days beyond 345 days, which was allowed",,,,,,

vide order dated 19.09.2024.,,,,,,

36. The Resolution Professional has filed an additional affidavit dated 27.01.2025 that the Performance Bank Guarantee to be issued by the,,,,,

Successful Resolution Applicant in favor of Financial Creditor shall be valid till the term of the Resolution Plan and can be invoked only upon failure in,,,,,

implementation of the Resolution plan.,,,,,,

37. In K Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Honâ€™ble Apex Court held that,,,,,

if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the" ,,,,,,

Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is" ,,,,,,

required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Honâ€™ble Apex Court,,,,,

further observed that the role of the NCLT is â€œno more and no lessâ€™. The Honâ€™ble Apex Court further held that the discretion of the,,,,,

Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan â€œas approvedâ€™ by the requisite percent of,,,,,

voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference" ,,,,,,

to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.,,,,,,

38. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and" ,,,,,,

Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the" ,,,,,,

Code and is in accordance with law. The same needs to be approved. Hence, ordered." ,,,,,,

39. The Resolution Plan is hereby approved. It shall become effective from this date and shall form part of this order with the following directions:,,,,,

i. 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.,,,,,,

ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities 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 in light of the Judgment of Supreme Court in Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset ,,,,,,

Reconstruction Company Limited, the relevant paragraphs of which are extracted herein below:" ,,,,,,

â€œ95. (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.â€ ,,,,,,

iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with ,,,,,,

the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record." ,,,,,,

iv. 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 and subject to following of procedure as may be prescribed. It is clarified that" ,,,,,,

the authorities shall not withhold the approval/consent/extension for the reason of insolvency of the Corporate Debtor or ,,,,,,

extinguishment of their dues upto approval of Resolution plan in terms of the approved plan. Any relief or concession as ,,,,,,

sought on the plan shall be subject to the provisions of the relevant Act. ,,,,,,

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

vi. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this ,,,,,,

Authority from time to time, preferably every quarter." ,,,,,,

vii. 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. ,,,,,,

viii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively" ,,,,,,

for necessary compliance. ,,,,,,

Â ,,,,,,

Â ,,,,,,