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17.3.23

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No: 103

IA/187(AHM)2023 in CP(IB) 759 of 2019

Order under Section 30(6) & 31 of IBC, 2016 r.w. Reg 39(4) of IBBI Regulations, 2016

IN THE MATTER OF:

Mr. Ashish Chhawchharia, RP of Sintex-BAPL Limited
V/s

.....Applicant

.....Respondents

COC of Sintex-BAPL Ltd Through Asset Reconstruction
Company (India) Ltd & Anr

Order delivered on .17//03/2023

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in open Court vide separate sheet.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B GOSAVI
MEMBER (JUDICIAL)

Rajeev Kr. Sen/Stenographer



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
AHMEDABAD BENCH
COURT-I**

**IA/187(AHM)2023
In
CP(IB) No. 759 of 2019**

[An application under Section 30(6) and 31(1) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 for approval of the resolution plan]

In the matter between:

Mr. Ashish Chhawchharia

Resolution Professional of

Sintex-BAPL Limited

Having its address at:

Abhijeet -1, 7th Floor, Mithakhali Six Road,

Ellisbridge, Ahmedabad, Gujarat-380006

Email: RP.SintexBAPL@IN.GT.Com

....Applicant

Versus

1. The Committee of Creditors

Sintex-BAPL Limited

Through Asset Reconstruction Company (India) Limited

Having its address at:

The Ruby, 10th Floor, The Ruby, 29,

Senapati Bapat Marg, Dadar West,

Mumbai, Maharashtra- 400028

Email: yaresh.kothari@arcil.co.in

2. Consortium of Propel Plastic Products Private Limited

And Plastauto Private Limited (erstwhile Tubular Pipes Private Limited)

Through Propel Plastic Products Private Limited

Having its address at:

C/o Welspun Metallics Limited,

Anjar Kachchh, Gujarat-370110

....Respondents



In the matter of:

C.P. (IB) No. 759/9/NCLT/AHM/2019

[An application under section 9 of the Insolvency and Bankruptcy Code, 2016]

M/s. Zilen Industries Pvt. Ltd.

....Operational Creditor

Versus

M/s. Sintex BAPL Ltd.

....Corporate Debtor

Order reserved on: 13.03.2023
Order pronounced on: 17.03.2023

Coram: DR. MADAN B. GOSAVI (MEMBER JUDICIAL)
KAUSHALENDRA KUMAR SINGH (MEMBER TECHNICAL)

Appearance:

For the RP : Mr. Saurabh Soparkar, Sr. Advocate. a.w. Mr. Raheel Patel, Mr. Yash Dadhich, Advocates.
For the RA : Mr. Navin Pahwa, Sr. Advocate along with Mr. M.N. Marfatia, Advocate
For the Income Tax : Ms. Maithili D. Mehta, Advocate
For the CoC : Mr. Deep Roy and Mr. Tarak Damani, Advocates.

ORDER

1. This application under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (for short **"IBC, 2016"**) is filed by Mr. Asish Chhawchharia - Resolution Professional (for short **"RP"**) of M/s. Sintex-BAPL Limited - the Corporate Debtor in Corporate Insolvency Resolution Process (for short **"CIRP"**) for approval of the resolution plan submitted by Resolution Applicant i.e., the consortium of Propel Plastic Products Private Limited and Plastauto Private Limited (for short **"Propel Consortium"**).

2. The following facts are relevant to take note of:-

I. M/s. Sintex-BAPL Limited - the Corporate Debtor has been admitted in CIRP vide order dated 18.12.2020. Mr. Ketul Ramubhai Patel - the Insolvency Professional was appointed as the



Interim Resolution Professional (for short **"IRP"**). On 23.12.2020, the IRP made a public announcement of CIRP of the Corporate Debtor calling upon its creditors to submit their claim with requisite proof.

- II. Meantime, the CIRP of the Corporate Debtor remains stayed by various orders passed by this Adjudicating Authority and also by Hon'ble NCLAT.
- III. On 29.06.2022, this Adjudicating Authority passed detailed order in IA/374(AHM)2022 along with IA/413(AHM)2022 and IA/474(AHM)2022 in IA/374(AHM)2022 in CP(IB) 759 of 2019 and directed the RP to proceed with the CIRP of the Corporate Debtor as per sections 18 to 21 of the IBC, 2016.
- IV. The IRP constituted the Committee of Creditors (for short **"CoC"**) consisting of the following Financial Creditors and allotted them voting percentage based on the debt value of each of them. It is as follows:
 - i. Mahatva Plastic Products and Building Materials Pvt. Ltd., having 37.12% voting share;
 - ii. Asset Reconstruction Company India Ltd., having 19.84% voting share;
 - iii. State Bank of India, having 7.24% voting share;
 - iv. Bank of Baroda ("BOB"), having 4.27% voting share;
 - v. KKR India Financial Services Limited, having 9.28% voting share;
 - vi. Vistra ITCL (India) Limited, having 7.55% voting share;
 - vii. HDC Bank Ltd., having 8.11% voting share;
 - viii. Abu Dhabi Commercial Bank, having 6.59% voting share.
- V. The second CoC meeting was held on 15.07.2022. The CoC passed the resolution by 92.76% votes to replace the IRP by appointing the applicant herein as the RP.
- VI. On 22.09.2022, the RP published Form-G thereby calling upon the Prospective Resolution Applicants to submit the Expression of Interest (for short **"EoI"**) to resolve the of insolvency of the



Corporate Debtor on the basis of the Information Memorandum of the assets and liabilities of the Corporate Debtor. It appears that since there was no response from any Resolution Applicants, on 07.10.2022 the RP published another Form-G.

VII. By that time the CIRP period of 330 days had come to an end. The RP filed an application bearing IA No. 719(AHM)2022 to exclude certain days from the CIRP period on the ground that the CIRP of the Corporate Debtor was remained stayed for more than 18 months. This Adjudicating Authority by order dated 11.10.2022 permitted the exclusion of 18 months from the CIRP period noting that the CIRP was remained stayed during that period and directed the RP to complete the entire process within time.

VIII. It is seen from the record that the RP received resolution plans from two Resolution Applicants i.e., (i) JM Financial Asset Reconstruction Company Limited (for short "JMFARC") and (ii) Propel Consortium consisting of Propel Plastic Products Private Limited and Plastauto Private Limited. He examined those plans and submitted both plans for consideration of CoC with his comments.

IX. The 14th CoC meeting was held on 28.01.2023. The CoC by 74.26% votes approved the resolution plan of Propel Consortium. The same plan has been submitted for our approval as per section 30(6) of the IBC, 2016.

3. As the resolution plan is approved by the CoC with the requisite voting majority as provided under the Insolvency and Bankruptcy Code, 2016, we need not to go into the details of the commercial viability of the resolution plan. Suffice to note that this Adjudicating Authority has only to see whether the resolution plan submitted for our approval complies with the provisions of section 30(2)(a) to (f) of the IBC, 2016 and Regulations 38 and 39 of IBBI (CIRP of the Corporate Persons) Regulations, 2016.

4. To appreciate the factual aspect of the resolution plan submitted for our approval in the light of the provisions of the law, we hereby reproduce the



gist of the provisions of section 30(2) of IBC, 2016 for ready reference as under:

(i) The plan should provide for the payment of insolvency resolution process costs in priority to the repayment of other debts of the Corporate Debtor.

[Section 30(2)(a)]

(ii) The repayment of the debts of Operational Creditors and dissenting Financial Creditors should not be less than the amount to be paid to such respective creditors in the event of liquidation of the Corporate Debtor under section 53 of the IBC, 2016. Moreover, the payment to the Operational Creditor is to be made in priority over the Financial Creditor; and the payment to dissenting Financial Creditor is to be made in priority to the consenting Financial Creditors.

[Section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b)];

(iii) Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan.

[Section 30(2)(c) read with CIRP Regulation 38(2)(b)];

(iv) The implementation and supervision of the Resolution Plan.

[Section 30(2)(d) read with CIRP Regulation 38(2)(c)];

(v) It does not contravene any of the provisions of the law for the time being in force.

[Section 30(2)(e)];

(vi) It conforms to such other requirements as may be specified by the Board.

[Section 30(2)(f)]

Such other requirements of the Resolution Plan as detailed in IBBI (Resolution Process for Corporate Persons) Regulations, 2016 which are not covered above, are as under:



(a) The Resolution Plan should include statement as to how it has dealt with the interests of all stakeholders including Financial Creditors and Operational Creditors of the Corporate Debtor.

[CIRP Regulation 38 (1A)]

(b) The Resolution Plan should include a statement giving details as to whether the Resolution Applicant or any of its related parties has at any time failed to implement or caused to the failure of implementation of any other Resolution Plan which was approved by the Adjudicating Authority.

[CIRP Regulation 38 (1B)]

(c) The Resolution Plan should contain the term of the plan and its implementation schedule.

[CIRP Regulation 38(2)(a)]

(d) The Resolution Plan should also demonstrate that it addresses the cause of default; is feasible and viable; has provisions for its effective implementation; has provisions for approvals required and timeline for the same. Further that the Resolution Applicant has the capability to implement the Resolution Plan.

[CIRP Regulation 38(3)]

5. We have examined the resolution plan in view of the above provisions of the law.

6. In para 3.2 of the resolution plan, the provision is made for payment of CIRP in priority in the following words:

"....3.2. (a) Insolvency Resolution Process Cost:-

We assume that the Insolvency Resolution Process Costs shall be paid in full, from the internal accruals/cash available with the Corporate Debtor. However, to the extent such costs remain outstanding (as notified by the Resolution Professional on the Plan Approval Date) and cash available with the Corporate Debtor is insufficient, it shall be paid from the Upfront Cash



Recovery. As per the data made available by the Resolution Professional, the Cash and Cash Equivalents as on December 31, 2022 (excluding Appropriated Cash) was approximately INR 280 Crores and the Unpaid Insolvency Resolution Process Costs was approximately INR 102 Crores (One Hundred and Two Crores Only) as set out in Schedule XII. Therefore, it is likely that the entire Unpaid Insolvency Resolution Process Costs will be met from the Cash and Cash Equivalents...”.

7. In view of the above, we hold that provisions of section 30(2)(a) of the IBC, 2016 are complied with. Para 3.3.3 of the resolution plan deals with the provisions for payment of the debt of the Operational Creditors in priority. An amount of Rs. 7,67,58,227/- is provided to clear the debts of the Operational Creditors including Workmen and Employees.

8. The liquidation value of the assets of the Corporate Debtor as estimated by the RP as per Form-H produced at Annexure-A-23 is stated to be Rs. 1,208/- Crores. There are number of Secured and Unsecured Creditors of the Corporate Debtor. There are also claims submitted by the employees and workmen of the Corporate Debtor. They are to be settled first in priority. If we take into consideration the amount of total debt payable to such Secured, Unsecured Creditors, Workmen, and Employees and also payment of CIRP costs, we have to hold that the Operational Creditors will get nothing if the Corporate Debtor goes in liquidation. However, in this case, an amount of Rs. 2,67,58,227/- is kept separately for making payment of debts of Workmen, and Employees and Rs. 5,00,00,000/- to Operational Creditors (other than workmen and employees). Moreover, in case, there is any increase in admitted claim amount for workmen and employees, then the same would be paid at actuals such that the OC Discharge Amount is capped at Rs. 7,67,58,227/-.

9. There appears one Dissenting Financial Creditor i.e., Asset Reconstruction Company India Limited. It appears from the record that during the pendency of the CIRP of the Corporate Debtor, Asset Reconstruction Company India Limited has taken over debts of HDFC Bank,

Incred Financial Services Limited, State Bank of India, and Bank of Baroda etc. (by way of a deed of assignment). All they were original CoC members. As per section 30(2)(b)(ii) read with explanation thereto the debt of Dissenting Financial Creditors has to be paid in priority as per the waterfall mechanism under section 53 of the IBC, 2016.

10. Learned Senior Counsel Mr. Saurabh Soparkar appearing for the RP brought to our notice that the provision to pay a sum of Rs. 392.40 Crore is made in the resolution plan for the payment of debts of the Dissenting Financial Creditor. It is more than what such Dissenting Financial Creditor would get if the Corporate Debtor goes in liquidation.

11. We have considered this aspect. The provision of payment of Rs. 392.40 Crore is made in the resolution plan for payment of debts of Dissenting Financial Creditor in priority. It is much more than what such Dissenting Financial Creditor would get in case the Corporate Debtor goes in liquidation. We hold that the provisions of section 30(2)(b)(ii) of the IBC, 2016 are complied with.

12. Para 3.5.4 of the resolution plan states the mechanism for management and control of the business of the Corporate Debtor pending implementation of the resolution plan. The Monitoring Committee is formed and appointed for that. The Monitoring Committee consists of two representatives of implementing entity/management, two representatives of RA, and two representatives of the Financial Creditors. This committee has also given a task to get the resolution plan implemented. In view of this provision in the resolution plan, we hold that the provisions of section 30(2)(c) and (d) of the IBC, 2016 are complied with.

13. In Form-H (at Annexure A-23), the RP has certified that the resolution plan does not contravene any provisions of law. We have also examined the resolution plan very minutely. We hold that the resolution plan is not in



contravention of any provisions of the law for the time being in force. Hence, we hold that provisions of section 30(2)(e) of the IBC, 2016 are complied with.

14. Section 30(2)(f) of the IBC, 2016 mandates that the resolution plan must comply with the other requirements specified by the Board i.e., Insolvency and Bankruptcy Board of India. Those requirements appear in Regulations 38 and 39 of IBBI (CIRP of the Corporate Persons) Regulations, 2016. There are three major requirements relating to the contents of the resolution plan i.e., (i) the resolution plan must give equal treatment to all stakeholders; (ii) the resolution plan must set fixed term for its implementation, and (iii) the resolution applicant must have the capacity to submit and implement the resolution plan. We have examined the resolution plan on the above touchstone. The following is the financial outlay suggested in the resolution plan.

<i>Sr.</i>	<i>Particulars</i>	<i>Timing of Payment</i>	<i>Amount (INR)</i>
1	<i>Insolvency Resolution Process Costs to be paid from the internal accruals or the cash available with the Corporate Debtor ("CD"). However, to the extent they remain outstanding as on the Effective Date and cash available with the CD is insufficient, they will be paid out of the Upfront Cash Recovery.</i>	<i>Upfront, in priority to payment of other debts of the Corporate Debtor.</i>	<i>At actuals</i>
2	<i>Standstill Period Costs to be paid from the internal accruals or the cash available with the Corporate Debtor ("CD"). However, to the extent they remain outstanding as on the Effective Date and cash available with the CD is insufficient, they will be paid out of the Upfront Cash Recovery.</i>	<i>Upfront</i>	<i>At actuals</i>



<i>Sr.</i>	<i>Particulars</i>	<i>Timing of Payment</i>	<i>Amount (INR)</i>
3	<i>Operational Debt (including Workmen and Employee dues and Governmental Dues/ statutory dues)</i>	<i>Upfront</i>	<p><i>Payout to Workmen and Employees – INR 2,67,58,227/- (Rupees Two Crore Sixty Seven Lakh Fifty Eight Thousand Two Hundred and Twenty Seven) (viz admitted claim as of Nov 15, 2022)</i></p> <p><i>Payout to Operational Creditors (other than workmen and employees) – INR 5,00,00,000/- (Rupees Five Crore Only)</i></p> <p><i>Note: Any increase in admitted claim amount for workmen and employees would be paid at actuals such that the OC Discharge Amount is capped at INR 7,67,58,227 (Rupees Seven Crore Sixty-Seven Lac Fifty Eight Thousand Two Hundred Twenty Seven Only).</i></p>
4	<i>Financial Debt</i>	<i>Upfront</i>	<i>FC Discharge Amount (i.e. INR 1,243.32 Crore (One Thousand Two Hundred Forty Three Crore Thirty Two Lacs Forty One Thousand Seven Hundred Seventy Three Only), subject to adjustments for (1), (2) and (3))</i>
5	<i>Other Creditors</i>	<i>Nil</i>	<i>Nil</i>
<i>Upfront Cash Recovery</i>			<i>INR 1,251 Crore (INR One Thousand Two Hundred Fifty One Crore Only)</i>

15. On perusal of the above financial outlay, which is separately submitted for our consideration, shows that all stakeholders are treated equally. In the resolution plan, it is mentioned that the entire payment would be made to the creditors and other stakeholders within 30 to 90 days from the date of approval of the resolution plan by this Adjudicating Authority (para 3.5.1 of the resolution plan).



16. This resolution plan is submitted by Propel Consortium consisting of the group companies of Welpun Group. The Welpun Group's net worth is about 2.3 billion USD. The CoC in its commercial wisdom has already taken note of this fact and we see no reason to make more comments thereon.

17. Now, taking into consideration the provisions made in the resolution plan and upon our examining the resolution plan, we find that the resolution plan complies with the provision of section 30(2)(a) to (f) of the IBC, 2016 read with Regulations, 38 and 39 of the IBBI (CIRP of Corporate Persons) Regulations, 2016. Hence, we approve this resolution subject to compliance of the decision of the Hon'ble Supreme Court in the case of *State Tax Officer (1) Versus Rainbow Papers Limited in Civil Appeal No. 1661 of 2020* as regards to the statutory liabilities including Income Tax dues and Stamp Duty charges even claimed belatedly.

18. While approving this plan, we have also taken note of the fact the liquidation of the Corporate Debtor may not be a proper solution. It would be against the interests of all stakeholders. The plan value is more than the liquidation value of the assets of the Corporate Debtor.

19. We have also noted that as per para 7.1 of the resolution plan as contained in page nos. 246 to 254 of the interlocutory application, relief and concessions have been sought on various issues including the carry forward losses of the Corporate Debtor, after the takeover by the Resolution Applicant. During the course of hearing, our attention was drawn onto the provisions of section 79 of the Income Tax Act, by Mr Saurabh Soparkar Sr. Advocate appearing for the RP. He submitted that the losses in a company are automatically allowed to be carried forward for set-off against the profits in subsequent years in accordance with relevant provisions of Income Tax Act; that in order to prevent misuse of the provisions, section 79 was brought in statute to prevent the carry forwards of losses in certain cases, but that section is not applicable onto the company in which public are substantially interest. Mr Soparkar also submitted that the Corporate Debtor is 100%



subsidiary of Sintex Plastics Technology Limited, which is a listed company and therefore it (corporate debtor) is to be treated in the category of a company in which the public are substantially interested and as such the provisions of section 79 of the Income Tax Act are not applicable onto it in the event of take over; and the corporate debtor is eligible to carry forward its losses for set-off against profits of subsequent years even after take over as a result of resolution plan.

Mr Soparkar also submitted that the Information Memorandum prepared by the RP included all information of the Corporate Debtor, including the financial statements and that all current and past financial records were made available to the statkeholders for their perusal and consideration. He submitted that the draft of Request For Resolution Plan (RFRP) was prepared on the basis of Information Memorandum and the Propsective Resolution Applicants were asked to submit their plan accordingly. He also submitted that the resolution plan under reference, duly approved by the CoC, is placed for approval of the Adjudicating Authority. Accordingly, he submitted that the Corporate Debtor be allowed for carry forward and set off of its losses after the take over by the Resolution Applicant.

It was further submitted that as per provisions of section 79 of the Income Tax Act, carry forward and set off of losses in a company, which is not a company in which public are substantially interested, can be allowed only if there is a continuity in the beneficial owner of the shares carrying not less than 51% of the voting power, on the last date of the year or years in which the loss was incurred. The learned counsel Mr Soparkar has also drawn our attention to the clause (c) of sub-section (2) to the said section which provides that nothing contained in that section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to resolution plan approved under the IBC, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.



For ready reference, the relevant provisions of section 79 of Income Tax Act is reproduced hereunder:

Carry forward and set off losses in case of certain companies

79 (1). Notwithstanding anything contained in this Chapter, where a change in shareholding has taken place during the previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred:

(2) Nothing contained in sub-section (1) shall apply,—

(c) to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (31 of 2016), after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner;

In the context, he stated that the RP had also served a notice dated 09.02.2023 to the jurisdictional Assessing Officer in the Income Tax Department and submitted the copies of the interlocutory application seeking approval of the resolution plan under section 30 of the IBC, 2016. When the matter had come up for hearing on 06.03.2023 for giving clarification as regards to the carry forward losses as well as the proposed Scheme of Amalgamation, the applicant was asked once again to serve the notice upon the Income Tax Department. In pursuance thereof, notice was served to the jurisdictional Principal Commissioner of Income Tax. The learned counsel Ms Maithili Mehta appearing on behalf of Income Tax Department sought time to make submissions. On 13.03.2023 when the matter came up again for



hearing, the learned counsel Ms. Mehta stated that applicant company had provided voluminous records that requires due ascertainment of records & assessment orders for several years to come to a conclusion as to whether the company would be entitled to carry forward and set off of its losses following take over on approval of the resolution plan. She also stated that reasonable opportunity need to be given to the Department to file its say on the matter. On this, the learned senior counsel Shri Saurabh Soparkar stated that the four volumes which were submitted in the Income Tax Department were nothing but the copy of the resolution plan only and that on the issue of carry forward and set off losses, the Department could have referred to its own records including the returns filed by the Corporate Debtor and assessments made thereon. He also stated that he has submitted such notice to the Assessing Officer and thereafter to the Principal Commissioner of Income Tax Department as a matter of abundant precaution, though the Corporate Debtor being a company in which public or substantially interested, the provisions of section 79 of the Income Tax are not applicable to its case. Shri Navin Pahwa, Sr. Advocate appearing for the Resolution Applicant also made similar submissions.

We have duly considered the submissions made by the learned counsels for the RP, RA as well as the Income Tax Department. A bare reading of the provisions of section 79 of the Income Tax Act makes it very clear that the provision is applicable for the closely held/private companies only. The provision is not at all applicable in case of a company in which public are substantially interest (i.e. a widely held company). It is noted that the provision is intended to curb taxpayers intention to transfer losses of a closely held company through a transfer of shareholding by putting a restriction for continuity of the beneficial owner of the shares carrying not less than 51% of the voting power. To that provision, exceptions are carved out in sub-section (2) thereof wherein the clause (c) relates to the take over/ change in shareholding pursuant to approval of the resolution plan under the IBC; and in the event of such take over / change in shareholding, the condition of continuity of 51% shareholding is dispensed with. But it requires giving of



reasonable opportunity to the Principal Commissioner. We have also noted that for the purpose of the applicability of section 79 of the Income Tax Act, the status of the company at the time of change in shareholding is relevant. We are of the considered view that section 79 shall not be applicable if a company was a widely held company (i.e. a company in which public are substantially interested). As such, section 79 shall not be applicable when a widely held company, after take over, acquires an status of closely held company; but the section would be applicable even if a closely held company, after take over/ change in shareholding acquires the status of widely held company.

In the present case, the Corporate Debtor under CIRP is a subsidiary of a listed company. Therefore, the status of the Corporate Debtor before take over (on approval of the resolution plan under IBC, 2016) is of widely held company i.e. a company in which public are substantially interest. We have also noted that after the take over its status would be of a closely held company. But as discussed herein above, for the purpose of applicability of section 79, the status of the company at the time of change in shareholding (i.e., prior to take over) is only relevant. In that view of the matter, we hold that section 79 of the Income Tax Act is not at all applicable on the Corporate Debtor even after its take over on approval of the resolution plan under IBC, 2016. Accordingly, it shall be automatically entitled to carry forward its losses for set-off against income in subsequent years in accordance with the provisions of Income Tax Act and to that extent relief sought is allowed.

During the course of hearing, the RP was asked to file a chart giving details of yearwise losses which are claimed for carry forward. The RP filed a purshish dated 13.03.2023 containing the required details at annexure-1 thereof which reflects the unabsorbed depreciation relating to A.Y. 2010-11 to 2022-23 amounting to Rs. 412.86 crores, business loss relating to A.Y. 2020-21 amounting to Rs. 290.73 crores and long term capital losses relating to A.Y. 2016-17, 2017-18 amounting to Rs. 475.22 crores. The Assessing Officer and/or Principal Commissioner would verify the claim from the assessment records and shall allow the eligible losses incurred in the past to be carried



forward ahead for set-off against profit in subsequent years, after the take over on approval of the resolution plan, in accordance with the provisions under the Income Tax Act. It would also meet the requirement of giving reasonable opportunity to the Income Tax Department, if at all required, in terms of the section 79(2)(c).

20. As far as reliefs and concessions claimed by the Resolution Applicant relating to previous claims of the Corporate Debtor is concerned, the law has been well settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021*** in the following words:

“...86. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

87. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief..”

In view of the above, we hold that the Resolution Applicant cannot be saddled with any previous claim against the Corporate Debtor prior to initiation of its CIRP. For the permits, licenses, leases, or any other statutory right vested in the Corporate Debtor shall remain with the Corporate Debtor and for the continuation of such statutory rights, the resolution applicant has to approach the concerned statutory authorities under relevant laws. For any other relief and concession also the Resolution Applicant has to approach the concerned Statutory Authorities under relevant laws.



21. It is also noted that the resolution plan also includes a proposal for reverse merger of the company Propel Plastic Products Private Limited (which is resolution applicant-1 of the consortium) with the Corporate Debtor pursuant to the approval of the resolution plan. In the context, an affidavit has been filed on behalf of the Successful Resolution Applicant containing therewith a certified true copy of the resolution passed by the Board of Directors of Propel Pastic Products Private Limited in its meeting held on 21.12.2022. Considering the proposal as contained in the resolution plan, no further formalities are required as per section 230-232 of the Companies Act, 2013 as regards to the Corporate Debtor Sintex-BAPL Limited. Accordingly, we allow the merger which will be effective from the date of this order subject to the condition that as per the said resolution dated 21.12.2022, the company Propel Plastic Products Private Limited shall seek the formal approval separately as per the Companies Act, 2013.

22. With these directions, we approve this Resolution Plan and pass the following orders:

ORDER

- I. Application is allowed;
- II. The Resolution Plan submitted by Propel Consortium stands allowed as per section 30(6) of the IBC, 2016;
- III. The approved 'Resolution Plan' shall become effective from the date of passing of this order;
- IV. The order of moratorium dated 18.12.2020 passed by this Adjudicating Authority under section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this order;
- V. The Resolution Professional shall forthwith send a copy of this order to the participants and the Resolution Applicant(s);
- VI. The Resolution Applicant shall, pursuant to the resolution plan approved under section 31(1) of the IBC, 2016, obtain necessary



approvals required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority under section 31 or within such period as provided for in such law, whichever is later, as the case may be;

- VII. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database;
- VIII. Accordingly, IA/187(AHM)2023 in CP (IB) 759 of 2019 is allowed and stands disposed of in terms of the above directions;
- IX. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

Rajeev Kr. Sen/Stenographer



Prepared by Vimal
Signature [Handwritten Signature]
Date 17-3-23



