

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT NO. II**

**IA No. 425/AHM/2022
IN
CP (IB) 184/AHM/2018**

Under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016.

IN THE MATTER OF IA No. 425/AHM/2022

**Mr. Avil Menezes
Resolution Professional of AMW Motors Ltd.**

...Applicant

AND

IN THE MATTER OF CP (IB) 184/AHM/2018

Indian Overseas Bank

...Financial Creditor

Versus

AMW Motors Ltd.

...Corporate Debtor

Order Pronounced On: 21/12/2022

Coram:

**DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

IA 425/AHM/2022

Mr. Avil Menezes

Resolution Professional of AMW Motors Ltd.

416, Crystal Paradise Co-op Soc. Ltd.

Dattaji Salvi Manrg,

Above Pizza Express Off. Veera Desai Road,

Andheri West, Mumbai- 400053

...Applicant

Present:

For the Resolution Professional	:	Mr. Bishwajit Dubey, Advocate
For the Resolution Applicant	:	Mr. Devang Nanavati, Sr. Advocate Mr. Monaal Davawala, Advocate
For Suspended Management	:	Mr. Prachiti Shah, Advocate
For CoC	:	Mr. Rahul Sarda, Advocate

ORDER

1. This application has been filed by Mr. **Avil Menezes**, Resolution Professional of the Corporate Debtor AMW Motors Ltd. under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') for approval of the Resolution Plan.
2. The facts in brief are that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process ('CIRP') by this Adjudicating Authority vide order dated 01.09.2020, in an application filed by the financial creditor Indian Overseas Bank under Section 7 of the Code triggering the moratorium and the Applicant herein Mr. Avil Menezes

was appointed as Interim Resolution Professional ('IRP'). The IRP made a public announcement in Form-A on 03.09.2020 and collated claims and thereafter constituted a Committee of Creditors ('CoC') of following financial creditors:

Sr. No.	Name of Financial Creditor	Voting Share
1	Bank of India	17.71%
2.	Punjab National Bank (including Oriental Bank of Commerce)	10.45%
3.	IDBI Bank	23.99%
4.	Central Bank of India	10.77%
5.	UCO Bank	9.91%
6.	JM Financial Asset Reconstruction Company Ltd.	2.04%
7.	BOB	5.76%
8	Indian Overseas Bank	18.49%
9.	SBI	0.40%
10.	OSI Steel Pvt. Ltd.	0.31%
11.	Frontier Steel Components Ltd.	0.17%
TOTAL		100%

3. It is submitted that CoC in its 1st meeting held on 01.10.2020, resolved to appoint the Applicant as Resolution Professional of the Corporate Debtor and had also resolved to appoint three separate registered valuers for valuation of financial assets, plant and machinery, land and building of the Corporate Debtor for each set of assets. Form-G was published on 27.10.2020 inviting Expression of Interest (EOIs). The CoC has also discussed and set parameters on the eligibility for submission of EOI by prospective resolution applicants. In 3rd CoC meeting held on 27.11.2020, the Applicant apprised CoC that further request for extension of time is required. Thereby CoC approved extension of last date for submission of EOI to 15.12.2020. Accordingly fresh Form-G was published on 30.11.2020 wherein last date for submission of EOI was fixed as

15.12.2020 and last date for submission of resolution plan was fixed as 18.01.2021.

4. It is submitted that CoC in its 5th meeting held on 19.01.2021, approved to seek extension of CIRP period by 90 days and vide order dated 19.02.2021 extension was allowed. The CoC also resolved to extend the timeline for submission of resolution plan by 30 days, i.e. till 17.02.2021 and thereafter twice resolved to further extend the last date for submission of resolution plan to 20.04.2021.
5. It is submitted that extension of CIRP period by 60 days beyond 270 days was allowed vide order dated 31.05.2021. In the 12th CoC meeting held on 18.05.2021 the resolution plan submitted by Gladiator Consortium was discussed and after due deliberation CoC directed Applicant Resolution Professional to inform prospective resolution applicant to improve the financial plan / commercial offer of the resolution plan. The CoC in its 14th meeting resolved to file an application for exclusion of 8 weeks on account of Covid-19 pandemic and the application by Resolution Professional for this exclusion was allowed vide order dated 26.07.2021. Despite various opportunities given to the prospective resolution applicant, Gladiator Consortium to revise the plan, no revised resolution plan was submitted. Thus, the CoC in its 18th meeting held on 10.08.2021 discussed the commercials of the resolution plan submitted by Gladiator Consortium. Post discussion, CoC unanimously opined that it is not viable and feasible and accordingly passed a resolution for liquidation of the Corporate Debtor. An application for liquidation of the Corporate Debtor was filed on 20.09.2021.
6. During the pendency of the liquidation Application, vide email dated 13.12.2021 an EOI for submission of resolution plan was received by the

Applicant. Also, two applications were filed by prospective resolution applicants Triton Electric Vehicle LLC and Tube Investment India Ltd. seeking condonation of delay and permission to submit a resolution plan for the Corporate Debtor. These applications were allowed vide orders dated 31.01.2022 and 23.02.2022 respectively. In order dated 23.02.2022 following directions were passed:

“All the Resolution Plans may be received by the RP till 15th March, 2022 evening at 6.00 pm which then can be processed and put up before the CoC for consideration.”

Thereafter Tube Investment India Ltd. filed an application seeking further six weeks' time to submit a resolution plan. Considering the decision of CoC, vide order dated 16.03.2022, Tube Investment India Ltd. was allowed to submit a resolution plan on or before 21.03.2022. Relevant extract of the order dated 16.03.2022 is reproduced below:

“Learned Counsel for the RP states that the present Application was received by RP, and RP then consulted the five CoC members, being Nationalized Banks, were of unanimous opinion that the CoC can consider granting further time till the next date of hearing which is on 21.03.2022. The CoC was of the view that since 330 days have expired in September 2021, the process is to be completed at the earliest. Learned Counsel for the RP further states that Resolution Plan of another Proposed Applicant is already received and the same is being considered by CoC. The Present Applicant had originally filed the Application seeking six weeks for submitting Resolution Plan. Keeping in view the time given to the other Resolution Applicant of around three weeks, this Applicant also was granted three weeks' time to submit the Plan. Considering the decision of CoC we allow the present Applicant to submit the Plan on or before 21.03.2022 till 6:00 PM.”

It is submitted that no resolution plan was submitted by Tube Investment India Ltd. within the specified timelines nor beyond that.

7. The prospective resolution applicant Triton Electric Vehicle LLC has submitted its resolution plan and the same was discussed in 25th and 26th CoC meetings held on 23.03.2022 and 04.04.2022. The CoC in 26th meeting through e-voting held from 05.04.2022 to 29.04.2022 approved the resolution plan of Triton Electric Vehicle LLC by 99.6% voting share. The resolution passed by CoC is reproduced hereunder:

*"RESOLVED THAT the Resolution Plan dated February 23, 2022, and as amended from time to time and submitted on March 28, 2022 along with First Addendum to the Resolution Plan submitted on April 04, 2022 by Triton Electric Vehicle LLC ("**Triton Resolution Plan**") is hereby approved by the Committee of Creditors of the AMW Motors Limited pursuant to Section 30(4) of the Insolvency and Bankruptcy Code, 2016 and the rules and regulations thereunder."*

The copy of the e-voting is also annexed with the application.

8. As per Form-H annexed by the Applicant, the Fair Value and Liquidation Value of the Corporate Debtor are Rs. 271.43/- Crores and Rs. 162.59/- crores, respectively. The present Resolution Plan offers an amount of Rs. 210 crores including CIRP cost of Rs. 3.73 crores, which is higher than the liquidation value.
9. The letter of intent was issued on 29.04.2022 by Resolution Professional in terms of the Resolution Plan. The Resolution Applicant has given the performance security under sub-regulation (4A) of Regulation 36B of the CIRP Regulations, 2016 amounting to Rs. 30 crores and the same is confirmed by the Resolution Professional in an affidavit filed on 12.12.2022 and by IDBI Bank, one of the members of CoC, vide email dated 04.05.2022. Copy of email is annexed with the affidavit filed on 12.12.2022.

10. It is further submitted by the Applicant Resolution Professional that the resolution plan complies with provisions of Section 30(2) of Code and Regulation 38 (3A) of the CIRP Regulations. As recorded in the daily order dated 25.07.2022, the ex-management is not objecting to the plan. No application from any person was received objecting to the plan.
11. The amount provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. Crores)

Sr. No.	Category of Shareholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan#	Amount provided to the Amount Claimed (%)
(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	0	0	-	0.00
		(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	0 3,733.56	0 3,722.78	- 198.52	0.00 5.32%
		Total [(a)+(b)]	3,733.56	3,722.78	198.52	5.32%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	8.3	8.3	0	0

		(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	14.9 17.9	14.9 17.9	0 1.2	0 6.71%
		Total[(a)+(b)]	41.1	41.1	1.2	2.92%
3	Operational Creditors	(a)Related party of the Corporate Debtor	-	-	-	-
		(b)Other than(a) above: (i) Government (ii) Workmen (iii)Employees (iv) Others	83.51 0 64.25 192.58	17.97 0 43.77 133.82	0.06 0 6.05 0.44	0.07% 0 9.42% 0.23%
		Total[(a)+(b)]	340.34	195.56	6.55	1.92%
4	Other debts and dues		31.82	8.03	-	-
	Grand Total	[1+2+3]	4146.82	3967.47	206.27	4.97%

Note 1:

The total Resolution Plan payout of INR 210 Crores to the financial creditors is subject to the following deductions;

- *Unpaid CIRP Cost over and above INR 3.73 Crores as provided in the resolution plan submitted dated 28th March 2022.*
- *Statutory dues payable to employee in excess of INR 6.05 Crores as provided in the resolution plan.*

Note 2:

SREI Infrastructure Finance Limited ("SREI") had filed a claim as an unsecured financial creditor for a sum of approximately Rs. 253.40 crores pursuant to a purported corporate guarantee furnished in favor of SREI by the Corporate Debtor. However, the claim was not admitted by the RP due to insufficient documents provided by SREI. SREI did not furnish the requisite documents nor took any action on account of such non-admission of its claim. The Resolution Plan, however, provides that any

liability arising out of the said corporate guarantee before or after the Approval Date shall be payable from the Upfront Cash and shall be adjusted against the amounts payable to the unsecured Financial Creditors under the Resolution Plan.

12. It is noted that Form-H has been filed by Resolution Professional wherein all information as regard to conduct of CIRP, as well as process adopted for Resolution Plan, has been given. It is stated in clause 4.02 of the resolution plan that CIRP costs shall be paid at actuals from the upfront cash in priority to any other debt and / or creditor of the Corporate Debtor.
13. The sources of funds for making payments to various stakeholders by the Resolution Applicant as provided at clause 5.01 of the Resolution plan is reproduced below:
 - a) *The Upfront Cash and any subsequent working capital infusion shall be brought in by the Resolution Applicant/ its Nominee(s) and shall be contributed to the Corporate Debtor as a mix of equity capital or preference capital or loans or other instrument by the Resolution Applicant/ its Nominee(s).*
 - b) *The portion of the Upfront Cash to be paid to the Financial Creditors as part of the assignment of the Financial Debt, if any, as per the terms of the Resolution Plan may be paid directly by the Resolution Applicant/ its Nominee(s) to the Financial Creditors simultaneously along with the assignment.*
 - c) *The Resolution Applicant has sufficient liquid funds to honour its commitment to pay the Upfront Cash in accordance with this Resolution Plan. However, the Resolution Applicant retains the right to arrange the requisite funds from various sources including but not limited to investors, group companies, business associates, individuals, banks and financial institutions, etc. and/or to alter the funding mix and capital structure.”*
14. During the hearing of the Application on 25.07.2022, a query was raised by bench regarding obtaining of permission from Foreign Investment

Promotion Board (FIPB) as the Resolution Applicant is a foreign entity. Counsel for the Resolution Professional undertook to file a statement and declaration with regard to the query raised. Consequent thereto, a note has been filed vide Inward No. 4649/2022 dated 22.08.2022 and submitted as under:

“16. It is submitted that in any event the Successful Resolution Applicant is planning to set up a manufacturing unit of electric vehicles in Bhuj, Gujarat, through its Indian subsidiary, by way of the Resolution Plan. Therefore, the Successful Resolution Applicant does not require approval from FIPB or any other authority under the terms of FEM NDI Rules and Consolidated Foreign Direct Investment Policy.”

15. The Income Tax Department has filed a letter stating that a demand of Rs. 24,027/- is outstanding against Corporate Debtor and further an assessment proceeding for A.Y. 2014-15 & 2017-18 are going on against Corporate Debtor.
16. On perusal of records certain clarifications were sought on 29.09.2022 and an affidavit clarifying the issues were filed on 13.10.2022. The clarification sought and submission thereof made by the Applicant Resolution Professional is as under:

Clarification 1: *Whether the Resolution Plan under reference is in compliance with the decision of the Hon’ble Supreme Court in the case of Rainbow Papers Limited on the issue of priority of statutory dues payable by the corporate debtor.*

Submission: The Resolution Plan approved was already in compliance with the directives pronounced by the Hon’ble Supreme Court in case of Rainbow Papers Ltd. as clause 4.07 of the resolution plan provides as under:

“In the event the Claim/Debt of any creditor is reclassified whether by a court order or otherwise, such creditor shall be

only entitled to the amount payable to them as per the relevant category such creditors they are reclassified. For example, (i) if the creditor of such additional claim/Debt is a workman, such workman shall be payable from the amounts set out in Section 4.03.01 above on a proportionate basis; (ii) if an Operational Creditor is reclassified as a Financial Creditor such a Creditor shall then be payable from the amounts set out in Section 4.06 above on a proportionate basis.”

It was further submitted that only the Assistant Commissioner, Special Circle-II Udaipur Rajasthan, had filed its claim arising under the Rajasthan Value Added Tax Act, 2003 which has a provision for first charge similar to GVAT Act. Thus, being a secured government dues, under a summary of payments to be made to different classes of creditors and stakeholders of the Corporate Debtor under resolution plan, the percentage of amount provided to secured government dues is similar to the percentage of amount provided to secured financial creditors i.e. 5.33%. (The revised summary is given in page 19 of the affidavit bifurcating government dues into ‘secured’ and ‘unsecured’ categories.)

Clarification 2: *As per Form-H (page 767), no provision for payment is made for unsecured Financial Creditors who have not voted in favour of the Resolution Plan whereas those who have voted in favour of the Resolution Plan are being paid 6.71% of the admitted claims. This is apparently a violation of Sub-section (2) of Section 30 and the plan is liable to be rejected in view of the provisions of Sub-section (1) & (2) of Section 31 of IBC, 2016.*

Submission: It is submitted that an amount of Rs. 14.9 cr. reflecting in Form-H is an amount claimed by State Bank of India (‘SBI’) pertaining to a corporate guarantee of Rs. 25 crores issued by the Corporate Debtor on behalf of Tranztar Commercial Vehicle

Applications Ltd. ('TCVAL') and the said claim was satisfied on account of entering into a compromise agreement with TCVAL and issuance of no due certificate dated 21.05.2022 by TCVAL. Nevertheless, the amount payable to SBI being dissenting unsecured financial creditor in case of liquidation was nil.

It is also stated that one SREI Infrastructure Finance Ltd. ('SREI') had filed its claim as financial debt towards corporate guarantee given by the Corporate Debtor on behalf of AMW Commercial Vehicles Applications Limited, on November 24, 2020 and after submission of additional documents sought by the Applicant, vide email dated 11.05.2022 its claim was admitted as an unsecured financial creditor by the Applicant on 02.06.2022 i.e. after filling of present application. Thereafter report dated 07.06.2022 certifying the reconstituted CoC was filed.

***Clarification 3:** The discrepancy in the amounts reflected in the Resolution Plan in Form-H (pages 766 & 767) and in the IA (pages 43 to 45).*

Submission: The approximate amount of Rs. 253.40 crore claimed by SREI was admitted on 02.06.2022 i.e. after filling of present application and Form-H. Thus, the said claim amount is not reflecting in Form-H. However, the said amount was mentioned in Annexure I of the resolution plan and also at page 43 of the present Application.

17. Thereafter further clarifications were sought with respect to clause 11.12. which is reproduced below:

“11.12. Validity of Proposed Plan

Unless approved by the CoC, this Resolution Plan shall be valid only up to 22nd August, 2022 save and except where extended with prior written consent of the Resolution Applicant”

In this respect through an affidavit filed on 12.12.2022 the Applicant Resolution Professional has submitted that the Resolution Plan is not affected in respect of contents of Clause 11.12. It is further submitted that clause 11.12 reflects that if the Resolution Plan was not approved by the CoC before 22.08.2022, the Resolution Applicant would not have been bound by the terms of the Resolution Plan. However, the Resolution Plan has already been approved by the CoC on 29.04.2022 i.e. prior to 22.08.2022. Therefore, this clause is not a condition to the implementation of the Resolution Plan and the Resolution Plan and / or its validity remains unaffected by the above said clause.

The Resolution Professional has further, submitted that,

“In any event, I say that during the hearing dated December 9, 2022, the Ld. Counsel Mr. Nanavati, appearing on behalf of the Resolution Applicant made a statement on record that the Resolution Applicant is ready and willing to implement the Resolution Plan in terms of the above mentioned clause. Therefore, the clause is not an impediment to the sanctity / implementation of the Resolution Plan.”

18. It is noted that certificate as regard to eligibility of resolution applicant under Section 29A alongwith undertaking of the Resolution Applicant to this effect has been filed in the form of affidavit. We have perused the contents of Resolution Plan and we are of the view that all requirements provided under Section 30(2) of Code and Regulation 36 to 39 of CIRP Regulations, 2016 have been complied with. We also find that the Resolution Plan addresses the cause for default and contains measures to run the Corporate Debtor in future. We also find that Resolution plan is both feasible and viable as held by CoC and it also contains provision for its effective implementation. Accordingly, we, being satisfied, approve the Resolution Plan and pass following order:

- I. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- II. The order of moratorium dated 01.09.2020 passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of this order.
- III. The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.
- IV. The monitoring committee as proposed in the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan.
- V. The Resolution Professional, Mr. Avil Menezes, is released from the duties of the resolution professional of the Corporate Debtor from the date of this order.
- VI. The Resolution Professional shall forthwith send a copy of this Order to the parties concerned.
- 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. As regards to various reliefs and concessions which are being sought, we hereby grant the following reliefs and concessions only as against reliefs and concessions claimed by the resolution applicant:
 - a) After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders prior to CIRP against the corporate debtor shall stand permanently extinguished and other claims including

- Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;
- b) From the date of this order, all claims against the corporate debtor, except those provided in the resolution plan of the Corporate Debtor stand extinguished.
 - c) From the date of this order, all encumbrances on the assets of the Corporate Debtor before the plan shall stand permanently extinguished.
 - d) For reliefs and concessions sought from the Government/Statutory Authorities in connection with the implementation of the Resolution plan, we direct the resolution applicant to approach the concerned Authorities. The concerned Authorities may decide the matter as per applicable provisions of law for effective implementation of the Resolution Plan.
 - e) The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the Successful Resolution Applicant for proper running operations of the business of the Corporate Debtor;
 - f) The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution;
 - g) The resolution applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, 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;

- h) All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the resolution plan as regard to the restructuring of capital shall be binding on them.
- i) With respect to the grant of license/ Government approval if the license or approval is terminated, suspended and revoked, the resolution applicant may approach the concerned Department/ Authorities for such approval/ renewal and Government Authorities may consider the request of the resolution applicant as per applicable provisions of law for effective implementation of the resolution plan.
- j) As far as right of Financial Creditors against the personal guarantees / corporate guarantees in connection with loan / debt obtained by Corporate Debtor is concerned, such financial creditors shall be at liberty to pursue their rights independent of approval of Resolution Plan. We further make it clear that there will not be any right of subrogation of such guarantors qua Corporate Debtor.

19. As a sequel to above application is allowed with the above-mentioned observations and directions. Application stands disposed of.

20. A certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Mansi J./LRA