

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH : COURT-IV

IA-2083/2021  
in  
C.P.(IB)-500(MB)/2019

Under Section 30(6) of the Insolvency and  
Bankruptcy Code, 2016.

Application moved by:

Mr. Ankur Kumar

...Resolution Professional

*In the matter of*

UCO Bank

...Financial Creditor

Vs.

Gangakhed Sugar & Energy Ltd.

...Corporate Debtor

**Order Pronounced on : 17.02.2023**

*Coram:*

Hon'ble Shri Kishore Vemulapalli : Member (Judicial)

Hon'ble Shri Prabhat Kumar : Member (Technical)

*Appearances:*

For the Applicant(s) : Ms. Bindu Bhatia, Advocate.

**ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. This is an Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'the Code') filed by the Resolution Professional (RP) on behalf of the Committee of Creditors seeking approval of the Resolution Plan submitted by the Resolution Applicant, which is approved by 81.74% of the voting share of the members of the Committee of Creditors (hereinafter referred to as 'CoC') of the Debtor Company viz. Gangakhed Sugar & Energy Limited (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 admission order dated 10.10.2019 of this Court in C.P.(IB)-500(MB)/2019 under Section 7 of the Insolvency and Bankruptcy Code 2016 filed by UCO Bank (Financial Creditor) and Mr. Ankur Kumar (Reg. No.: IBBI/IPA-002/IP-N00113/2017-18/10283) was appointed as Interim Resolution Professional (IRP) and later on was confirmed as RP by CoC in its meeting held on 07.12.2019.
  - ii. The IRP published a public announcement in newspapers in Form-A on 16.10.2019 inviting claims from the creditors, workers/employees of the Corporate Debtor and from government bodies. IRP constituted the Committee of Creditors (CoC) on 06.11.2019 based on the claims received by him.

- iii. The Resolution Professional received Resolution Plan(s) from M/s. Six Sigma Investment Funds (SSIF) and M/s. Twentyone Sugars Limited (TSL). It is stated by him that both the Resolution Plan(s) met the requirements of the Code as well as the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and are also not in contravention of the provisions of section 29A of the Code.
- iv. The Applicant states that both the proposed resolution plan contained the mandatory contents of the resolution plan as provided under Regulation 38 of IBBI (IRP for Corporate Persons) Regulations, 2016 as per the Compliance Certificate placed before the CoC.
- v. Thereafter, the CoC in its Twenty-fourth meeting held on 13<sup>th</sup> July 2021 unanimously decided that both the Resolution Plan(s) be put for e-voting from 16.07.2021 to 29.07.2021.
- vi. As per the Valuation Reports of the Registered Valuers, the Fair Value and Liquidation Value of the Corporate Debtor are given as follows:

	Fair Value	Liquidation Value
1.	400.09 Crore	199.98 Crore
2.	454.63 Crore	184.85 Crore

The Average Fair Value and Liquidation Value as per Regulation 35 determined are as under:

1. Average Fair Value is Rs. 427.36.
  2. Average Liquidation Value is Rs. 192.415.
- vii. After ascertaining the feasibility and viability of the resolution plan submitted by both the Resolution Applicants namely, TSL and SSIF, the CoC members with 81.74% voting rights in favour approved the

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Resolution Plan of SSIF and with 81.74% voting rights rejected the Resolution Plan of TSL. The relevant resolution is reproduced below:

*“RESOLVED THAT in terms of Section 30 of the IBC, 2016 and Regulation 38 of IBBI (IRP for Corporate Persons) Regulations, 2016, final binding Resolution plan submitted by Six Sigma Investment Fund on 7<sup>th</sup> July 2021 as circulated to the CoC along with detailed agenda of 24<sup>th</sup> CoC meeting held on 13<sup>th</sup> July 2021 be and is hereby approved. The amount payable by the Resolution Applicant to the creditors is as under-*

	<i>Tenure</i>	<i>Principal</i>	<i>NPV</i>
<i>CIRP</i>	<i>30 days</i>		
<i>Secured Financial Creditors</i>	<i>24 months</i>	<i>2,95,86,10,047.00</i>	<i>2,49,38,40,148.00</i>
<i>Unsecured Financial Creditors</i>	<i>30 days</i>	<i>4,00,00,000.00</i>	<i>4,00,00,000.00</i>
<i>Operational Creditors</i>	<i>30 days</i>	<i>2,50,00,000.00</i>	<i>2,50,00,000.00</i>
<i>Employees</i>	<i>30 days</i>	<i>1,63,89,953.00</i>	<i>1,63,89,953.00</i>
<i>Total-A</i>		<i>3,04,00,00,000.00</i>	<i>2,57,52,30,101.00</i>
<i>Contingent Farmer Payments</i>		<i>-</i>	<i>-</i>
<i>Contingent Liability</i>		<i>--</i>	<i>0</i>
<i>Working capital</i>	<i>24 months</i>	<i>50,00,00,000.00</i>	<i>45,84,01,410.00</i>
<i>Total-B</i>		<b><i>50,00,00,000.00</i></b>	<b><i>45,84,01,410.00</i></b>
<i>Grand Total (A+B)</i>		<i>3,54,00,00,000.00</i>	<i>3,03,36,31,511.00</i>

*RESOLVED FURTHER THAT the Resolution Professional, in accordance with the process note, may issue the letter of Intent and enter into necessary agreements (as per the drafts approved by CoC) with the successful Resolution Applicant for implementation of Resolution Plan and approach Hon’ble NCLT for necessary direction and approvals”.*

- viii. The RP issued Letter of Intent on 02.09.2021 in favour of the successful Resolution Applicant viz. Six Sigma Investment Fund (SSIF), which is accepted by SSIF unconditionally on 06.09.2021.

In the circumstances mentioned hereinabove, the Applicant has filed Application seeking appropriate directions of this Tribunal approving the resolution plan submitted by the Resolution Applicant i.e. SSIF is in

accordance with the Section 30(2) and other provisions laid down under the Code.

3. The Resolution Applicant viz. M/s. Six Sigma Investment Funds (SSIF) is a company incorporated in January 2017, under the laws of Cayman under registration number CR-319163. It has presence in various countries. It is stated that “The fund has got special interest in distillery, ethanol in view of blend ability of ethanol with Petrol and diesel. Sustainable energy is a business with good prospect. It operates in India through the experts working with it in multiple fields. It has expert team in the managerial positions. It has collaboration with Indian companies viz. (i) Global Cane Sugar Services Pvt. Ltd. (GCSPL) and (ii) Manas Agro Industries & Infrastructure Ltd. (MAIIL)”.

The Resolution Applicant has confirmed that -

- i. its connected persons are not disqualified under Section 29A of the Code and will continue to be not disqualified as of the Effective Date i.e. date of NCLT order approving the plan. Also, a confirmation has been given by way of an affidavit annexed along with the Resolution Plan.
- ii. The Resolution Applicant or any of its related parties have not failed to implement or not contributed to the failure of implementation of any other resolution plan approved under the IBC 2016 by the Adjudicating Authority at any time in the past.
- iii. the Resolution Applicant or any of its connected persons has not withdrawn from any resolution plan after its approval by the relevant committee of creditors.

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- iv. present Resolution Plan is not in contravention of provisions of the Applicable Laws for the time being in force and is in strict compliance with the IBC and the CIRP Regulations.

**4. Resolution Plan for the Corporate Debtor:**

**4.1 Summary of the Financial Proposal**

The Resolution Applicant proposes to take over the management and ownership control of the Company by acquiring 100% shareholding of the Corporate Debtor. The Resolution Applicant proposes a total consideration of **Rs.3,04,00,00,000/- (Rupees Three Hundred Four Crores)** to all the stakeholders to be paid within a period of 720 days from the effective date of this resolution plan and has kept **Rs.50,00,00,000 for CAPEX and Margin** for Working Capital for operations of the Corporate Debtor.

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

Sr. #	Particulars	Category	Amount Admitted	Proposed Distribution	Upfront Payment made (as a % of Proposed Distribution)	Remarks
1	CIRP Cost		NA	At Actuals	100%	As per the certified statement containing details of Unpaid CIRP Cost as on Effective Date provided by the Resolution Professional
2	Financial Creditors		8,54,81,98,735.35	2,99,86,10,047	35.08%	Para 7.4.4. of the Resolution Plan provides for detailed distribution
3	Operational Creditors	Workmen and Employees	2,07,58,457	1,63,89,953	78.96%	
		Operational Creditors	79,02,80,497	2,50,00,000	3.16%	

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		including Statutory Authorities				
	<b>Total</b>			<b>304,00,00,000</b>		

4.1.1 The dissenting Financial Creditors (i.e. those Financial Creditors who voted against or abstained from voting for the Resolution Plan approved by the CoC), as per section 30(2) of the Code, are being paid an amount not less than an amount to be paid to them in accordance with Sec 53(1) in the event of Liquidation of the Corporate Debtor.

4.1.2 Payments to the Operational Creditors (Including Statutory Dues) and to Workmen and Employees have been given in priority of payment over financial creditors in terms of Regulation 38(1) of the CIRP Regulations.

4.1.3 The Operational Creditors have been paid an amount which is not less than the amount to be paid to such creditors in the event of liquidation of the corporate debtor under section 53 or the amount payable to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53 of the Code, whichever is higher.

4.1.4 The shares held by the existing shareholders of the Company shall be extinguished. In the estimate of the Resolution Applicant, the Liquidation Value that would be payable to the shareholders, would also be NIL. Accordingly, the existing shareholders, whether equity or preference, shall not be paid any amount for the transfer, cancellation or reduction of their share capital and any claims in relation thereto shall stand extinguished without any payment or recourse.

4.1.5 The Resolution Applicant has submitted that once the payments set aside in the Resolution Plan have been paid in full in terms of the said Plan -

- i. all claims, debts and dues of the Creditors pertaining or related to the period prior to the CIRP commencement date shall stand satisfied and extinguished, and no such existing claim, debt or due shall subsist against the Corporate Debtor and the Resolution Applicant by any Creditor(s) unless such Claims are specifically admitted by the Resolution Professional or covered under the CIRP Cost. It is also submitted that in the event any Claim of the Operational Creditors is not submitted to the Resolution Professional prior to the approval of the Resolution Plan by the NCLT or such claim is rejected by the Resolution Professional or such Claim raised subsequently, however, pertains or related to period prior to the approval of the Resolution Plan by the NCLT, such Creditors will not be entitled to receive payments, if any, under the Resolution Plan with respect to such claims.
- ii. All the litigations/ proceedings by the creditors, whether in relation to admitted claims or not (whether present or future litigations) against the Company for the period prior to the takeover of the control and management of the Company by the Resolution Applicant, shall stand quashed and the Corporate Debtor shall no longer be required to make any payments and have no liabilities in relation to such litigations/ proceedings.

#### 4.2 *Effective Date*

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

#### 4.3 *Term of Resolution Plan*



The Resolution Plan is valid for a term of 720 days 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(s), any local authority and other stakeholders involved in the Resolution Plan on the Effective Date.

- 4.4 The Resolution Applicant has sought various reliefs and concessions as set out in the Resolution Plan.
- 4.5 The Applicant has submitted that the Resolution Plan, submitted by Six Sigma Investment Funds, approved with 81.74% 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.

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5. The Applicant/Resolution Professional further submits that -
- 5.1 There are five Applications viz. IA-2331/2020, IA-2368/2020, IA-2385/2020, IA-840/2021 and IA-819/2021 filed in relation to preferential transaction(s) under the provisions of section 43 of the Code are pending before this Bench.
- 5.2 The Resolution Plan is not subject to any contingency and 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 order dated 20.11.2020.
- 5.3 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 of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional?	Declaration u/s 29A	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Declaration u/s 29A	Yes

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Section 30(2)	<p>Whether the Resolution Plan-</p> <p>(a) provides for the payment of insolvency resolution process costs?</p> <p>(b) provides for the payment to the operational creditors?</p> <p>(c) provides for the management of the affairs of the corporate debtor?</p> <p>(d) provides for the implementation and supervision of the resolution plan?</p> <p>(e) contravenes any of the provisions of the law for the time being in force?</p>	<p>Clause 3.2 Page No. 33</p> <p>Clause 3.3 Page No.33-40</p> <p>Clause 7 Page No. 53-54</p> <p>Clause 4.2 Page No. 50. Clause 7.1 Page No. 53</p> <p>Clause 8.9 Page 56</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Regulation 38 (1)	<p>Whether the Resolution Plan identifies specific sources of funds that will be used to pay the –</p> <p>(a) Insolvency resolution process costs?</p> <p>(b) Liquidation value due to operational creditors?</p> <p>(c) Liquidation value due to dissenting financial creditors?</p>	<p>Clause 8.23 Page 66</p>	<p>Yes</p>
Regulation 38(1A)	<p>Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?</p>	<p>Clause 8, 10 Page 56-57</p>	<p>Yes</p>
Regulation 38(2)	<p>Whether the Resolution Plan provides:</p>		

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	(a) the term of the plan and its implementation schedule?	Clause 4 Page No. 49-51	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Clause 6 & 7 Page No. 52-54	Yes
	(c) adequate means for supervising its implementation?	Clause 4.2 Page No.50 Clause 7.1 Page No. 53	Yes
38(3)	Whether the resolution plan demonstrates that –		
	(a) it addresses the cause of default?	Clause 8.22 Page No. 65-66	Yes
	(b) It is Feasible and Viable?	Clause 4.5 Page No. 51	Yes
	c) it has provisions for its effective implementation?	Clause 4 Page No. 49-51	Yes
	(d) it has provisions for approvals required and the timeline for the same?	Clause 4.3 Page No. 50-51	Yes

6. The Interlocutory Application No. 2083 of 2021 is **allowed**. The Resolution Plan submitted by *Six Sigma Investment Funds* is hereby **approved**. It 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.

- 6.1 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.
- 6.3 The moratorium under Section 14 of the Code shall cease to have effect from this date.
- 6.4 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.
- 6.5 The Avoidance Application(s) numbered as IA-2331/2020; IA-2368/2020; IA-2385/2020; IA-840/2021; IA-819/2021, which are 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.
- 6.6 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.

- 6.7 Clause 'O' of Para 30 of the Resolution Plan has stipulated that the counterparties to any agreement shall have no right to suspend the agreements with the Corporate Debtor and shall not terminate these agreements. It is clarified that these agreement(s) shall be subject to mutual consent of both the parties for its future application.
- 6.8 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.
- 6.9 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.”*

6.10 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.

6.11 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.

- 6.12 The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
7. **IA-886/2022:** This Application has been filed by Sustainable Agro-Commercial Finance Limited seeking indulgence of this Bench against the order of Resolution Professional whereby the RP has rejected the claim of the Applicant on the ground that the Applicant has not submitted its claim in accordance with the Insolvency Bankruptcy Board of India (Insolvency Regulation Process for Corporate Persons) Regulations, 2016, instead, it has filed claim in Form-C prescribed under some other Regulations. The claim was filed vide letter dated 13.10.2021 while the last date for submission of the claim was 26.10.2019. Also, the CoC approved the Plan on 09.09.2021 and the approved Plan was before consideration of the Adjudicating Authority. The Applicant has submitted that he has sent a letter dated 23.10.2020 to the RP vide registered A.D. and has placed on record the copy of acknowledgement issued by the Post Office in this relation. After considering the facts of the case, we direct the RP to consider the claim of the Applicant under appropriate class and include him as one of the claimants under the class after verification of the amounts claimed to be due. RP shall distribute the amounts allocated to that class accordingly. With these directions, IA-886/2022 is **allowed**.
8. **IA-2438/2021:** This Application has been filed by Twentyone Sugars Limited, one of the shortlisted prospective Resolution Applicants seeking supply of evaluation matrix, minutes of the meetings of CoC, voting results, copy of Resolution Plan submitted by the successful Resolution Applicant.



It is noticed from the Application filed for approval of resolution plan in IA-2083/2021, the resolution plan of the Applicant was rejected by the CoC with 81.74% votes. It is settled legal proposition that the commercial wisdom of the CoC is supreme and cannot be interfered by the Adjudicating Authority in normal circumstances. The demand of information/documents by the Applicant is not maintainable and hence rejected. In these circumstances, IA-2438/2021 is **dismissed**.

9. **IA-831/2021, IA-869/2021:** These Applications have been filed by the Resolution Professional seeking to set aside of Provisional Attachment Order (PAO) No. 01 of 2020 dated 23.12.2020 and PAO No. 02 dated 03.07.2019 along with Show Cause notices dated 05.02.2021 and conditional *status quo* order dated 20.2.2020 passed by Appellate Authority under PMLA. Under these PAOs, the office of the Enforcement Directorate, Govt. of India had provisionally attached the Land, Buildings, Plant & Machinery and Bank Accounts of the Corporate Debtor alleging such properties to be proceeds of crime.

In so far as attachment of Corporate Debtor's assets by the Enforcement Directorate is concerned, these assets are protected by the provisions contained u/s 32A (1) & 32A (2) of the Code, which provides for immunity to such assets and offence(s) after the resolution of Corporate Debtor provided such assets have been acquired prior to commencement of Corporate Insolvency Resolution Process. Accordingly, the Enforcement Directorate shall release the attachment on such assets, which have been acquired prior to commencement of Corporate Insolvency Resolution Process. The Enforcement Directorate shall also discharge the Corporate

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Debtor from the offences alleged to have been commissioned prior to commencement of Corporate Insolvency Resolution Process. Accordingly, IA is **allowed**.

10. With the above directions, the Resolution Plan of the Applicant is hereby **allowed** and the IA-2083/2021, IA-886/2022, IA-2438/2021, IA-831/2021 and IA-869/2021 in CP(IB)-500(MB)/2019 are hereby **disposed** of.

Sd/-

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

Sd/-

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**

17.02.2023/pvs