



**Ref. No. ML/BSE/001/19-20**

**Date: 18.05.2019**

The Secretary,  
Bombay Stock Exchange Limited  
Phiroze Jeejeebhoy Tower  
Dalal Street,  
Mumbai-400001

**Ref: Scrip Code: 517467**

Sir,

Please find enclosed herewith the copy of Order passed by the National Company Law Tribunal (NCLT), Kolkata Bench on 09.05.2019 in the matter of Company Petition (IB) No. 628/KB/2018 alongwith CA (IB) Nos. 366/367/KB/2019 (RITESH MORE Vs MARSONS LIMITED).

Moreover, as per Court's direction a Monitoring Committee has been formed to oversee the effective implementation of Resolution Plan.

This is for your information and record.

Thanking You,  
Yours faithfully,  
**For Marsons Ltd**

Akhilesh Kotia  
Director  
(DIN:00076777)

Encl: As above

Cc: Dy. Registrar of Companies, West Bengal  
Office of the Registrar of Companies, West Bengal  
"Nizam Palace", 2nd Floor,  
234/4, A J C Bose Road,  
Kolkata - 700 020

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

Before Shri M.B. Gosavi, Hon'ble Member(J)

**Company Petition (IB) No.628/KB/2018**  
**alongwith CA(IB) Nos.366 & 367/KB/2019**

**In the Matter of:**

Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

**In the Matter of**

An application under section 30(6) read with section 31 of the Insolvency and Bankruptcy Code, 2016 read with regulation 49(4) of The Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

-And-

**In the Matter of:**

Ritesh More, of 8 Camac Street, Room No.606, 6<sup>th</sup> floor,  
Kolkata- 700 017;

... **Operational Creditor**

-Versus-

**In the Matter of:**

Marsons Limited, Marsons House, Budge Budge Trunk Road,  
Village-Chakmir, P.O. Maheshtala, Kolkata- 700 142;

... **Corporate Debtor**

-And-

**In the Matter of:**

Sanjit Kumar Nayak, Resolution Professional appointed under Section 16 read with section 22(3)(a) of the Insolvency and Bankruptcy Code, 2016 s/o Mr. Tribhanga Murari Nayak, working for gain at 30E, Haramohan Ghosh Lane, Flat 2B, Suryadeep, Beliaghata, Kolkata- 700 085;

.. **Applicant/ Resolution Professional**

**Counsels appeared:**

1. Mr. Vikash Singh, Advocate - ] Resolution Professional
1. Mr. Rishav Banerjee, Advocate - ] Successful Bidder/ RA  
2. Mr. Yash V. , Advocate - ]
1. Mr. D.N. Sharma, Advocate - ] Hammond Power Solution(P) Ltd.  
2. Mr. I. K. , Advocate - ]
1. Mr. Sailesh Mishra for Ashok Kr. Jhunjunwala
1. Mr. S.K.Nayak, ] For Resolution Professional

Date of Pronouncing the Order: 09.05.2019

**ORDER**

Mr. Ritesh More - Operational Creditor has filed this application under section 9 of Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against M/s. Marsons Limited - Corporate Debtor to start Corporate Insolvency Resolution Process (in short, the CIRP) of the Corporate Debtor as the Corporate Debtor committed default in paying the operational debt of Rs.9 lakhs payable towards professional charges.

2. This authority by order dated 20.06.2018 admitted the corporate debtor in CIRP. One, Mr.Sanjit Kumar Nayak having registration no. IBBI/IPA-003/IP-N00079/2017-18/10702 is appointed as the Interim Resolution Professional. Moratorium under section 14 of I&B Code was issued.

3. The IRP took possession of the assets of the corporate debtor alongwith management. On 22.06.2018, he made public announcement of CIRP of the corporate debtor by publishing notice in Financial Express



(English) and Sukhabar (in Bengali). In pursuant thereto, the IRP received the claims from various financial as well as operational creditors. After verification of the claims, he formed CoC consisted of four financial creditors by allotting them voting percentage in following manner:

i) Allahabad Bank	- 98.97%
ii) Nandeshwar Fintrade Private Limited	- 0.29%
iii) Kirti Probuild Private Limited	- 0.18%
iv) P. Jainex Trade Finance Pvt.Ltd.	- 0.56%

4. 1<sup>st</sup> CoC meeting was held on 17.07.2018. In that meeting itself, the appointment of IRP is confirmed as the RP by 100% votes who was instructed to proceed with the CIRP as per the rules. The RP prepared information memorandum upon getting valuation report of assets of the corporate debtor from two valuers and on the basis of annual returns.

5. On 01.09.2018, the RP published notice in Finance Express (English) and Aajkal (in Bengali) calling upon proposed resolution applicants to submit EoU/Resolution Plan for the Corporate Debtor. In response thereto, 12 applicants submitted expression of interest. Last date to submit resolution plan was 18.09.2018. The CIRP period of 180 days was to complete on 16.12.2018. However, RP, as per instructions of the CoC, filed application under section 12(2) of IBC for extension of CIRP period for 90 days. Accordingly, this authority extended the CIRP period. It is completed on 16.03.2019. Since the RP and CoC did not receive any resolution plan till 16.12.2018, the CoC decided to re-publish the notice by extending the last date of submission of resolution plan till 06.02.2019.

6. It is seen from the record that one resolution application M/s. Yashoda Inn Private Limited alongwith M/s. Uneecops Solar Private Limited jointly

submitted the resolution plan. The said plan was submitted before the CoC for their consideration. CoC considered the plan in its meeting dated 14.03.2019. The CoC by 100% votes approved and accepted the resolution plan for the corporate debtor submitted by Yashoda Inn Private Limited and M/s. Uneecops Solar Private Limited jointly. The said plan is submitted before me for approval as per section 31(a) of I&B Code.

7. I heard the Ld. RP. I perused the plan submitted for my approval. This plan is approved by CoC by 100% votes in the meeting dated 14.03.2019. As per section 31(4) of I&B Code, the same plan is submitted for my approval. In view of the latest ruling of the Hon'ble Supreme Court in case of S. Sashidharan-vs- Indian Overseas Bank reported in (2019) 2 IJ (JD) 161(SC), it is held that, ***"In terms of section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the resolution professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the "commercial/business decision" of the financial creditors taken collectively or for that matter their individual option, as the case may be, on this count."***

8. In short, the jurisdiction of this Adjudicating Authority, while approving or rejecting the RP, which is approved by the CoC is limited to extend of whether the plan is in conformity of provisions of section 30(2) of I&B Code



or any other law for the time being in force. In view of this settled legal position, I proceed to consider the plan.

9. Section 30(2) of I&B Code requires that the resolution plan should be in conformity with the following requirements:

a) It provides for the payment of resolution process cost in priority to other debt.

In this case, it is mentioned in the plan that the Resolution Professional shall determine the cost and the resolution applicant undertakes to pay the same. In fact, the RP ought to have determined the actual cost amount but it is not done. Nonetheless the Resolution Applicant gave undertaking to pay the same. I hold that this point is complied with.

b) The plan provides for payment of debt of operational creditor subject to provision of section 53 of IBC.

Section 53 of I&B Code states the list of creditors priority in payment of debt. The payment towards operational debt placed at 6<sup>th</sup> rank in priority. In this case, after making provisions for payment of dues towards resolution cost, financial debts (secured/ unsecured) debts payable towards workmen and employees, etc. there remains no liquidation value. Hence, no provision is made towards payment of operational debt. However, it is further mentioned in the plan that it shall be considered before expiry of 30 days after approval of the plan.

10. One of the operational creditor, M/s. Hammond Solutions Private Ltd. filed application against the approval of plan on the ground that no provision is made in the plan to pay the operational debt. The plan is not in conformity with the provision of law.

11. I heard the Ld. Advocate, Mr. Sharma for the Objector. He submitted that the plan is discriminatory as against the operational creditor. It cannot be approved. He relied on the order of this authority in case of Bank of Baroda -vs- Binani Cements Ltd. (CA No. 359/KB/2017 and other CAs) dated 02.05.2018.

12. I have gone through that order. In that case the claim of some of the operational creditors were considered in part and claims of some other operational creditors were completely rejected. In that situation, it was held that such discriminatory approach towards equally placed operational creditors is not permitted. Here, in this case, the facts are different. In this case, no provision of upfront payment is made towards any operational creditors' claim. There is no discrimination made in between operational creditors *inter se*. Hence, above order does not have binding precedent. The plan is approved by CoC by 100% votes. The CoC took commercial decisions in their wisdom, while approving the plan. Now this authority cannot sit in appeal against the CoC's decision. I reject the objection raised by one of the operational creditors against the approval of this plan.

13. Clause (c) and (d) of section 30(2) of I&B Code requires the plan should provide mechanism of its effective implementation and mechanism for management of affairs of the corporate debtor. Part-B, sub-para (c) and (d) (page 58 onwards) in the plan, it is mentioned that after approval of the plan, the resolution applicant will appoint Board of Directors to take over the affairs of the corporate debtor from the RP. The Monitoring Committee is also confirmed to oversee effective implementation of the plan.

14. It is seen from the perusal of the plan that it does not contravene any provisions of law for the time being in force. It also meets all other requirements as specified by the IBBI. The RP submitted compliance



certificate as required under Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. The resolution applicant also submitted affidavit stating that they are not disqualified as per section 29A of I&B Code. In short, the Resolution Plan submitted for approval of this authority complies all provisions contained in section 30(2) of I&B Code. Hence, I approve the same by following order.

### ORDER

The Resolution Plan filed jointly by Yashoda Inn Private Limited and M/s. Uneecops Solar Private Limited for M/s. Marsons Limited- Corporate Debtor, which is approved by the CoC with 100% voting percentage, is hereby approved under provisions of section 31(1) of the Insolvency & Bankruptcy Code, 2016, which will be binding on the Corporate Debtor, its employees, members, creditors, coordinators and other stakeholders involved in the Resolution Plan.

2. The revival plan of the company in accordance with approved Resolution Plan shall come into force with immediate effect.
3. The moratorium order passed under Section 14 shall cease to have effect.
4. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.
5. Before parting with, it appears to me that I have to endorse my appreciation to the work rendered by the Resolution Professional, Sanjit Kumar Nayak for seeing that the Resolution Plan is approved by the CoC so as to give a rebirth to the dying company.



6. Accordingly, C.P.(I.B.) No.628/KB/2018 alongwith CA(IB) Nos.366 & 367/KB/2019 in this context are disposed off.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Sd/-  
(Madan B. Gosavi)  
Member (J)

Signed on this, the 9<sup>th</sup> May, 2019