

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63(MB) 2021
AND
CP IB No 638(MB)2021
AND
CP (IBPP) No. 01/MB-IV/2022**

In application under Section 54(C) of Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

SUDAL INDUSTRIES LIMITED

[CIN: L21541MH1979PLC021541]

Order Dated: 20.04.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Gaurav Joshia/w Mr. Rohit Gupta i/b
Mr. Kunal Chheda, Ld. Counsel for the
Applicant present.
Mr. Shubhabrata Chakraborti Ld. Counsel
for the Objector/Financial Creditor
Jaldhara Properties and Trading Private
Limited.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This company application is filed under Section 54(C) of the Insolvency and Bankruptcy Code, 2016 {"the Code" or "IBC",2016} for seeking initiation of Pre-Packed Insolvency Resolution Process (PPIRP) in respect of the SUDAL INDUSTRIES LIMITED {"Corporate Applicant"}. This application was transferred from Bench 1 of Mumbai NCLT to this Bench on 23.01.2021 in view of pending section 7 application no. CP(IB)/638 (MB)2021 before this Bench.
2. The Corporate Applicant is a public limited Company incorporated on 08.08.1979 vide Registration no. L21541MH1979PLC021541. On the date of application, the Corporate Applicant was engaged in the business of manufacture of Aluminium Extrusions and Aluminium Base Alloys.
 - 2.1. The total amount of debt payable by the Corporate Applicant to its Financial Creditor is stated to be Rs. 132,15,14,678/- (Rupees One hundred thirty-Two Crore Fifteen Lakhs Fourteen Thousand Six Hundred Seventy-Eight Only) as on 30.06.2022, the details of which are as follows –

List of Creditors of Sudal Industries Ltd.

List of Financial Creditors (unrelated)			
I	II	III	IV
Sr. No.	Name of the Creditor	Amount of Claim	% of Claim
1	Canara Bank	103,44,95,827	78.28

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

2	Surya Spices Vyapar Pvt. Ltd	84,08,100	0.64
3	Jaldhara Properties & Trading Pvt. Ltd	13,83,56,712	10.47
4	Gilbert Investment Pvt Ltd	8,24,75,516	6.24
5	Effervescent Commercial Pvt. Ltd	1,77,34,452	1.34
6	Aarkey Tieup Pvt. Ltd	88,61,370	0.67
7	Kothsons Finance & Consultancy Pvt. Ltd.	88,58,904	0.67
8	Cosmos Tradelink Pvt. Ltd.	88,58,904	0.67
9	Nicholson Vanijya Pvt. Ltd.	88,58,904	0.67
10	GMB Finvest Pvt. Ltd.	46,05,989	0.35
	TOTAL	132,15,14,678	100.00

List of Financial Creditors (related)			
Sr. No.	Name of the Creditor	Amount of Claim	% of Claim
		NIL	

2.2. There is no Financial Debt due to related parties. The debt due to Operational Creditors, un-related and related, as on that date is Rs. 8,22,18,810.23 and Rs. 74,26,892.72 respectively.

2.3. The financial summary as per provisional financial statements as on 30.06.2022 annexed with the Application is as follows –

Details of Assets and Liabilities as on 30/06/2022

Sr No	Particulars	Value in Lakhs
ASSETS		
1	Free Hold Land-Golshi	38.71
2	Lease Hold land- Nashik	159.46

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

3	Factory Building	671.63
4	Plant and Equipment	2,877.02
5	Furniture & Fixtures	1.14
6	Vehicles	11.92
7	Office Equipment	4.31
8	Capital work in progress	
8(i)	Plant & Machinery	226.84
8(ii)	Building	0.51
NON -CURRENT ASSETS		
9	Trade Investment	0.08
10	Earmarked balance with Bank (Canara)	10.14
11	Advance Income Tax	86.30
12	Claim receivables- MSDEL/Octroi(incentive)	248.16
13	Deposits with MSEB/MNGas	43.71
14	Other claim	2.72
	Sub-Total	4328.65
CURRENT ASSETS		
15	Inventories	991.93
16	Sundry Debtors	794.08
17	Cash & Bank including FD	356.05
18	Adv paid to canara bank towards PPIRP	150.00
19	GST	196.61
20	Deposits/ Adv-staff	14.64
	SUB TOTAL	2503.31
LIABILITIES		
21	Other Financial liability- due to firm- Related parties	54.23
22	Creditors for Purchase & Expenses	877.79
23	Due to Canara Bank	10344.96
24	Inter Corporate Deposits	2945.93
25	Statutory Dues/Gratuity	438.73
	SUB TOTAL	14661.64

3. As per the minutes of the meeting of Financial Creditors duly signed by Canara Bank authorized representative, the amount of Financial Debt owed to each Creditor by the Corporate Debtor is as follows –

List of Financial Creditors (unrelated)			
I	II	III	IV
Sr. No.	Name of the Creditor	Amount of Claim	% of Claim
1	Canara Bank	102,07,43,324	78.09
2	Surya Spices Vyapar Pvt. Ltd	83,91,508	0.64
3	Jaldhara Properties & Trading Pvt. Ltd	13,80,83,711	10.56

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

4	Gilbert Investment Pvt Ltd	8,23,12,778	6.30
5	Effervescent Commercial Pvt. Ltd	1,76,60,479	1.35
6	Aarkey Tieup Pvt. Ltd	88,24,383	0.68
7	Kothsons Finance & Consultancy Pvt. Ltd.	88,21,917	0.67
8	Cosmos Tradelink Pvt. Ltd.	88,21,917	0.67
9	Nicholson Vanijya Pvt. Ltd.	88,21,917	0.67
10	GMB Finvest Pvt. Ltd.	45,86,756	0.37
	TOTAL	130,70,68,690	100.00

3.1. The Canara Bank, whose financial debt accounts for 78.09% of total financial debt, had sanctioned the Term Loan, Overdraft and Non-fund-based credit facilities to the Corporate Applicant against security of **Term Loan Facility I of Rs.12.50 crores are secured by the following:**

- a) First charge by way of hypothecation created under the charge and hypothecation of book debts agreement dated 28th November 2011.

- b) Mortgage by deposit of title deeds created under the confirmation of creation of second/subsequent equitable mortgage' on 28th November 2011, over all those pieces and parcels of land admeasuring about 20,000 square meters situated at Plot No. A-5, Nasik Industrial Area, within the Village limits of Patherdi and Ambad and outside the Municipal Limits Taluka and Registration Sub-district Nasik, District and registration District, Nasik and bounded as follows-

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022

On or towards the North by: MIDC Land

On or towards the South by: MIDC Land

On or towards the East by: MIDC Land

On or towards the West by: Plot No. A-4/2 and Plot No. A-4/1

Together with all buildings and structures thereon and plant and machinery attached to the earth, or permanently fastened to anything attached to the earth (**mortgage property**).

- c) First charge by way of hypothecation created under the composite hypothecation agreement dated 31st January, 2014 along with deed of rectification dated 23rd April 2015.

Term Loan Facility II, Overdraft Facility and Non-fund-based facility are secured by the following:

- (a) First charge by way of hypothecation created under the composite Hypothecation Agreement dated 31.01.2014/23.04.2015.
- (b) First Charge by way of hypothecation created under the charge and hypothecation of book debts agreement dated 31st January 2014.
- (c) Mortgage by deposit of title deeds created under the confirmation of creation of second/subsequent equitable mortgage' on January 31, 2014 over the mortgaged property. Copies of certificates or registration of charge in favour of Canara Bank.

- 3.2. The Corporate Applicant is duly registered MSME (Micro, Small & Medium Enterprise) under The MSME Act, 2002 in the category (Small

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

Manufacturing Unit) and the requisite certificate is annexed as Exhibit C with the application. The Corporate Applicant is eligible to file this application as per Section 54 A (1) of the Code.

- 3.3. A special resolution by the Members of the Corporate Applicant to initiate the Pre Packed Insolvency Resolution Process (“PPIRP”) under Section 54 A (2)(g) of the Code was passed on 25.02.2022 and the same is annexed as Exhibit E5 with the Application.
- 3.4. The declaration given by majority of the directors of the corporate Applicant pursuant to their meeting held on 5th July, 2022 as per Section 54A (2)(f) of the Code in Form P6 is annexed as Exhibit F3 with the application.
- 3.5. The financial creditor i.e. Canara Bank holding 78.09% vote share has approved the decision of the directors to file this application as contemplated under Section 54A (3) of the Code after considering the formalities completed by the Corporate Debtor including submission of Base resolution Plan; M/s Jaldhara Properties & Trading Private Limited holding 10.56% vote and other 2 financial creditors holding together 6.94% vote attended the meeting but abstained from the voting on the plan. The 5 financial creditors holding 3.74% vote attended the meeting but voted against and the remaining 1 financial creditor holding 0.67% vote neither attended the meeting nor participated in the voting. The Form P4 duly signed by the authorised signatory of Canara bank along with form 2 is annexed as Exhibit G3 & K with the application.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

-
- 3.6. The financial creditor approved the appointment of Insolvency Professional, Prashant Jain having Registration No. IBBI/ IPA-001/IP-P01368/2018-19/12131, holding AFA No. AFA1/12131/02/021122/103018 email: -ipprashantjain@gmail.com and has the proposed Insolvency Professional has filed given his written consent in form P1. It is annexed as Exhibit H4 with the Application, thereby complying with the provisions of Section 54A(2) (e) of IBC, 2016 read with Regulation 14(5) of IBBI (Pre packed Insolvency Resolution Process) Regulations, 2021. The said Insolvency Professional proposed to be is appointed as Resolution Professional to conduct the PPIRP and to discharge duties before initiation of PPIRP. The resolution for appointment of Insolvency Professional was voted by 78.09% vote; M/s Jaldhara Properties & Trading Private Limited holding 10.56% vote and other 2 financial creditors holding together 6.94% vote attended the meeting but abstained from the voting on the plan; the 5 financial creditors holding 3.74% vote attended the meeting but voted against; and the remaining 1 financial creditor holding 0.67% vote neither attended the meeting nor participated in the voting.
- 3.7. The Resolution Professional's report dated 22.08.202 under Section 54B (1)(a) of the Code in Form-P8 is annexed as Exhibit M with the application.
4. This Bench heard the counsel(s) appearing before us and perused the material on record.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022

-
5. During the course of hearing, this bench notice that Jaldhara Properties and Trading Private Limited sought to intervene for opposing the admission of present application on the ground that this application cannot have precedence over earlier two application(s) filed u/s 7 of the Code by the financial creditors of the Corporate applicant in view of provisions of section 11A (4) of the Code. Accordingly, this Bench heard counsel for the Intervenor as well as Counsel for the Applicant in this application to decide “*whether the Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') filed by Jaldhara Properties & Trading Pvt. Ltd. (Jaldhara) on 9th December 2020 and another filed by Canara bank on 17.07.2020 against the Corporate Applicant seeking initiation of Corporate Insolvency Resolution Process (CIRP), is required to be adjudicated prior to the present Petition under Section 54C filed by Sudal on 4th September 2022 seeking initiation of Pre-packaged Insolvency Resolution Process (PIRP) in view of Section 11A of the Code*”.

5.1. This Bench notes that the Canara Bank had filed an application No. CP(IB)/638 (MB)2021 dated 17.07.2020 u/s 7 of the Code for seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Applicant. Pending consideration of this application, the Present Application for Pre-packaged Insolvency came to be transferred before us from Bench I of NCLT Mumbai along with another application CP(IB)/63(MB)2021 was also transferred from Bench V of NCLT Mumbai to us tagging it with the present application consequent to order by Principal Bench, NCLT. It was submitted that the applicant in CP(IB)/638/(MB)2021 i.e. Canara Bank has approved the Base Plan forming part of the Pre-Packaged Insolvency proposal and the applicant in CP(IB)/63/(MB)2021 i.e.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

Jaldhara Properties & Trading Private Limited had participated in Creditors meeting held for approval of Base Resolution Plan in terms of Section 54C, but abstained from voting on that plan. Accordingly, it was argued that vote in favor by applicant in CP(IB)/638/(MB)2021 and act of participation in meeting of financial creditors to consider approval of base resolution plan and conscious abstention by applicant in CP(IB)/63/(MB)2021, which is indirect support of the plan, requires to be taken into consideration while deciding upon the order in which the pending application under the Code are to be disposed of by Adjudicating Authority.

5.2. In view of Canara bank supporting the present application for PIRP, even during the pendency of its application u/s 7 of the Code against the Corporate Applicant, this Bench feels that the Canara Bank has expressed its intent in unequivocal terms that the present application needs to be decided in precedence over its earlier application u/s 7 of the Code. Accordingly, this bench feels that the present application can be given precedence over CP(IB)/638/(MB)2021 filed by Canara Bank against the Corporate Applicant u/s 7 of the Code, as present application, in its intent and object, also seeks resolution of the Corporate Applicant and in case the present exercise of resolution under Section 54C of the Code fails, the Corporate Applicant is to be liquidated in terms of provisions of Section 54N of the Code or the CoC can decide to initiate Corporate Insolvency Resolution Process against the Corporate Applicant u/s 54O of the Code.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

5.3. Having said so, this Bench now moves to deal with the CP(IB)/63(MB)2021 filed by Jaldhara u/s 7 of the Code. This Bench notes that Jaldhara had participated in the meeting of financial creditor held to consider the proposal to initiate Pre-packaged Insolvency Resolution Process; holds 10.56% share of total financial debt; and had abstained from voting on resolution for approval for initiation of PIRP. From the perusal of the application filed u/s 7 numbered as CP(IB)/63(MB)2021, this Bench finds that Jaldhara had extended the loan in 3 instalments aggregating to Rs. 2,66,00,000/- (Rupees Two Crore Sixty-Six Lakhs only) during the period from December, 2014 to March, 2015 and such loan carried interest @ 24% p.a. and each instalment of loan was repayable on expiry of 30 days from each disbursement. However, each of three loans were renewed time and again and finally by 90 days stipulating the amount of loans along with accrued interest payable on 19th October 2019 and the Corporate Applicant had provided postdated cheques for maturity amount and a promissory note in this regard. These cheques were not honoured on presentation and Jaldhara claimed a total debt, including interest, of Rs. 7,13,25,010/- (Rupees Seven Crores Thirteen Lakhs Twenty-Five Thousand and Ten only).

5.4. The Canara Bank initiated action to exercise its right over the assets of Corporate Applicant, held as security by it, under Section 13(2) of the SARFAESI Act vide notice dated 21.2.2019 upon occurrence of default by the Corporate Applicant and also filed an application u/s 7 of the Code, as referred in preceding para. Later on, the Canara Bank, holding 78.09% of total financial debt due from the Corporate

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022

Applicant, found it prudent to explore the newly inserted provision for faster resolution of the Corporate Applicant and supported the Corporate applicant by approving its proposal for application u/s 54C of the Code. This Bench feels that this action of the Canara Bank indicates that the resolution of the Corporate Applicant can be arrived in terms of section 54C of the Code also, while admission u/s section 7 of the Code also results into the resolution of the Corporate Applicant. In other words, both the sections achieve the sole objective i.e. Resolution of Corporate Applicant.

5.5. This Bench finds that Section 54N of the Code provides that Committee of Creditors can at any time resolve to initiate Corporate Insolvency Resolution process before approval of resolution plan under chapter IIIA of the Code. Further, Section 54O of the Code provides that the Corporate Applicant shall be ordered to be liquidated in case the resolution plan is not achieved or rejected by the Adjudicating Authority, the consequence which follows from rejection of plan u/s 31 of the Code.

5.6. The Ld. Counsel for the applicant submitted that S.11A (4) is clear, plain, unambiguous and susceptible to only one meaning that the provisions of 11A are not applicable to Applications under Sections 7,9 or 10 pending as on the date of the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2021 i.e., 4th April 2021. Therefore, there arises no question of interpretation of S. 11A (4) and relied upon the decision of Hon'ble Apex Court, as in the matter of *Natha Devi v Radha Devi Gupta*, (2005) 2 SCC 271. It was also

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022

argued that Interpretation that pending CIRP Petitions shall have precedence over PIRP Petitions as suggested by Jaldhara shall render 11A(4) redundant and it was submitted that Jaldhara has applied the legislative intent behind S. 11A(3) to submit that all Applications under Sections 7, 9 or 10 pending as on the date of the amendment shall be disposed of prior to the Application to initiate PIRP and this proposition is contrary to Section 11A (4) which clearly states that provisions of 11A (1), (2) and (3) would not be applicable to such Applications. The Ld. Counsel relied upon decision(s) of the Hon'ble Supreme Court in *Sonia Bhatia v. State of U.P. and Others*, (1981) 2 SCC 585; and *Visitor, Amu and Others v. K.S. Misra*. (2007) 8 SCC 593; It was also argued that PIRP is introduced as an alternative to CIRP for insolvency resolution of MSMEs with features which shall better cater to the needs of MSMEs as CIRP was proving to be too burdensome for MSMEs. [Pg. 23, 31, 32, 33 of ILC Report]. Therefore, the question of precedence inter se PIRP Petition and CIRP Petition must be interpreted so as to advance the object of the legislature. For this proposition, he relied upon decision of the Hon'ble Supreme Court in *Kanai Lal Sur v. Paramnidhi Sadhukhan*, 1958 SCR 360; *K.H. Nazar v Mathew Jacob and Others*, (2020) 14 SCC 126; and *Brahmpal v National Insurance Co.* (2021) 6 SCC 512. It was also argued that the purpose of the amendment is that the insolvency resolution of MSMEs is achieved through PIRP instead of CIRP and it would help achieve the object of the amendment if a PIRP Petition is adjudicated before the adjudication of Petitions under Sections 7, 9 or 10 pending as on the date of the amendment, so as to give way to the insolvency resolution of MSMEs by PIRP before initiation of CIRP. The Corporate

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022

Applicant has contended that Section 11A(4) is not applicable to Petitions u/s 7,9 or 10 pending as on the Amendment Date. The Ld. Counsel submitted that the decision of Hon'ble National Company Law Tribunal, Principal Bench in the matter of CHD Developers (IBPP)-02/PB/2022 is in challenge in Company Appeal No. 1168 of 2022 ("said Appeal") before the Hon'ble NCLAT and the same is presently *sub-judice*. Further, this Bench feels that the facts of this case are distinguishable as in that case the Corporate Debtor had consented to admission of Financial Creditor's application u/s 7 of the code prior to filing of application u/s 54C of the Code.

5.7. Per Contra, the Ld. Counsel for Intervenor, allowed vide order dated 7th February 2023 to file its Reply/Objections to the captioned PIRP application filed its Reply on 2nd March 2023; a brief note on 24th February 2023; and a written submission pleading that the PIRP Petition is not in accordance with the mandatory provisions of the IB Code and the PIRP Regulations, as Precedence should be given to the petition which is filed first. It was submitted that the Corporate Applicant sought several adjournments under the garb of initiating PPIRP and delayed proceedings for admission u/s 7 pursuant to its application. It was further submitted that PIRP is a hybrid method of insolvency resolution process; the Legislature in its wisdom had perceived a situation where the Adjudicating Authority would face a situation when during the pendency of a petition filed u/s 7 or 9 of the IB Code, a corporate debtor files a petition for initiating PIRP; in order to ensure that the Adjudication Authority does not face a logjam and to resolve the overlap, Section 11A has been inserted to provide

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

clarifications about the acceptance of applications for PIRP when there is an interplay or overlap with applications for CIRP; the legislative intent is clear that a petition already pending under Sections 7, 9 or 10 of the IB Code as on the Amendment Date would get precedence over a PIRP Petition; Section 11A permits the Adjudicating Authority to consider a petition already filed and pending under Section 7, 9 or 10 of the IB Code as on the Amendment Date; the statute does not permit a PIRP Petition to gain inroads to a petition filed u/s 7 of the IB Code much prior thereto, thereby erasing the right already accrued; and if the Legislature in its wisdom wanted to provide that all petitions filed u/s 7,9 or 10 of the IB Code and pending as on Amendment Date will have no application, then the Legislature would have clearly said so. The Ld. Counsel further objected to the quantum of Financial Debt, claim to be owed to Canara bank, and submitted that this amount has been inflated so as to achieve minimum requirement of 75% vote of Financial Creditors. To clarify on this objection this bench directed the Corporate Applicant to submit a certificate from its statutory auditor certifying the amount of Financial Debts owed to the Creditors as claimed in the application. The Corporate Applicant filed the said certificate by way of additional affidavit confirming the amount of Financial Debts owed to the Creditors as claimed in the application as correct.

5.8. This Bench has considered the submission of both the Counsel(s). This Bench finds that the intervenor had extended loan to the Corporate Applicant, in default of which it had filed section 7 application CP (IB) 63/(MB)/2021, in the year 2014/15 and the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

intervenor kept on rolling over the said loan along with accrued interest by 30-90 days. The said loan constitutes 10.56% of total financial debt owed by the Corporate Applicant. This bench finds that the effect of Section 54C and Section 7 is identical i.e. initiation of resolution process, but the procedure is different. Also, section 54C contemplates Debtor-in-control model, while Section 7 contemplate Creditor-in-control model. On the other hand, Canara Bank, holding security interest over the asset forming substratum of the Corporate Applicant, owes 78.09% of total financial debt due from the Corporate Applicant.

- 5.9. This Bench also notes that the applicant in CP(IB) 63 (MB) 2021 had attended the meeting of Financial Creditors but chose to abstain from participating in the voting on resolution. Considering this in the light of opposition to present application of Jaldhara, applicant in CP(IB) 63 (MB) 2021, this Bench feels its opposition stems from its intent to displace the existing promoter(s) from its management than to resolve the Corporate Applicant, as the promoters of the Corporate debtor are entitled to seek restoration of control under resolution in CIRP in precedence over any other applicant. Accordingly, this Bench feels that its application CP(IB) 63 (MB) 2021 is not in accordance with the intent and object of the code and deserve to be dealt with accordingly. In view of this, this Bench feels that the CP(IB) 63 (MB) 2021 is not maintainable as being against the basic intent and purport of the Code.
- 5.10. This Bench finds that section 11A (4) is clear and unambiguous and makes it clear that rule of precedence as provided in sub-section (1) to

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

(3) does not apply to application(s) filed prior introduction of PIRP regime in the code. Further, this Bench finds the intent of legislature to allow the management of MSMEs to restore its control as contemplated under section 240A of the Code providing waiver of clause © to (h) of section 29A in case of MSMEs where the promoters are otherwise qualified u/s remaining clauses of section 29A of the Code. On the harmonious construction of provisions of section 240A and 54C, this Bench finds that while section 240A of the Code allows restoration of control back to the Promoters of MSME in resolution in precedence of other prospective resolution applicants, section 54C allows the promoters to keep it with them till the resolution plan proposed by MSME is not found acceptable by the financial creditors. Accordingly, this Bench feels it would in order to adjudicate application filed u/s 54C of the Code prior to adjudication of application filed u/s 7 of the Code, where such section 7 application filed prior to introduction of PIRP regime remain pending with the Adjudicating Authority. However, as held in preceding para, the intervenor's application CP(IB) 63 (MB) 2021 is not in accordance with the intent and object of the code and is not maintainable under the Code. This Bench proceeds to decide on the present application, as no application is pending before us.

6. Details of Base Resolution Plan

II. AMOUNT UNDER THE RESOLUTION PLAN

1. Amount envisaged under the Resolution Plan is Rs. 33,00,73,041 (Rupees Thirty-Three Crores Seventy-Three Thousand and Forty-One

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

only) out of which Rs. 30,00,00,000/- shall be infused by an investor within 15 days of approval of the Resolution Plan and Rs. 1,00,00,000/- shall be paid against allotment of 10,00,000/- equity shares of Rs. 10 each.

2. The aforesaid amount as envisaged under the Resolution Plan shall be payable in the following manner-

Sr. No.	Particulars of Claim	Type of Claim (INR)	Claim Amount (INR)	Settlement Amount (INR)
1	PIRP Costs	At actuals	-	-
2	Secured Financial Creditors	Secured First Charge	96,77,21,328	32,17,10,279
3		Secured Second Charge	5,25,97,231	76,35,262
4	Unsecured Financial Creditors	Unsecured	26,19,86,180	7,27,500
5	Operational Creditors	Unsecured	10,32,57,854.33	Payment as a going concern
6	Employees and Workmen	Unsecured		Payment as a going concern
7	Grand Total			33,00,73,041

III. TREATMENT OF PIRP COST (PART III-B, PAGE 97)

3. Costs shall be paid in priority to the payment of other debts of Sudal.

IV. TREATMENT OF SECURED FINANCIAL CREDITOR (*FIRST CHARGE*)

4. Details of payment of secured financial creditors are given below:

Sr. No.	Particulars of Claim	Claim Amount (INR)	Settlement Amount (INR)
1.	Canara Bank	96,77,21,328	32,17,10,279

5. The Resolution Applicant process to pay Canara Bank in the following two steps:
- a. Rs. 1.5 Crores

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

Paid at the time of submitting the base resolution plan. The said amount is kept in a no lien account such that the amount shall be reimbursed if the resolution plan is not approved by the Hon'ble NCLT.

Rs. 1,72,00,000/- to be paid on approval

Rs. 23,84,95,835/- to be paid within 15 days of approval

Rs.5,00,00,000/- to be paid within 1 year of approval

6. TREATMENT OF SECURED FINANCIAL CREDITOR (SECOND CHARGE)

7. Details of payment to secured financial creditors are given below. Pertinently, the said amount is already paid to SIDBI as per the timeline mentioned in the Plan.

Sr. No.	Particular of Claim	Admitted Amount (INR)	Settlement Amount (INR)
1.	SIDBI	5,25,97,231	76,35,262

V. TREATMENT OF UNSECURED FINANCIAL CREDITOR (SECOND CHARGE)

8. The Resolution Plan proposes a payment of Rs. 7,27,500/- to the unsecured financial creditors against the total outstanding amount of Rs26,19,86,180/- within 45 days of approval of the Resolution Plan.

Sr. No	Name	Total amount outstanding Rs.	Settlement amount Rs.
1.	Jaldhara Properties & Trading Pvt. Ltd.	12,43,39,407	2,46,000
2.	Gilbert Investments Pvt. Ltd.	7,41,20,690	1,40,000
3.	Surya Spices Vyapar Pvt. Ltd.	75,56,250	15,500
4.	Effervescent Commercial Pvt. Ltd.	1,71,09,691	1,00,000
5.	Aarkwy Tirup Pvt. Ltd.	85,49,575	50,000
6.	Kothsons Finance and Consultancy Pvt. Ltd	85,47,356	50,000
7.	Cosmos Tradelink Pvt. Ltd.	85,47,356	50,000

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

8.	Nicholson Vanijya Pvt. Ltd	85,47,356	50,000
9.	GMB Finvest Pvt. Ltd	46,68,499	26,000
Total		26,19,86,180	7,27,500

9. TREATMENT OF DISSENTING FINANCIAL CREDITORS

10. In compliance of Section 30 (2) of the Code, the Resolution Plan provides that the dissenting financial creditors shall receive the amount that they would receive in the event of liquidation in accordance with Section 53(1) of the Code.

VI. TREATMENT OF EMPLOYEES AND WORKMEN

11. Employees and workmen are being paid as going concern.
12. There is no sacrifice or concession sought as far as payment to Employees and workmen is concerned.

VII. TREATMENT OF OPERATIONAL CREDITORS:

13. The Operational Creditors are being paid as going concern and shall be paid the entire amount outstanding.
14. There is no sacrifice or concession sought as far as payment of statutory dues or other operational creditors is concerned. [Part III-H, Part III-I@Pg. 111]

VIII. ISSUANCE OF EQUITY SHARES

15. 10,00,000/-equity shares of face value of Rs. 10/- each amounting to Rs. 1 crore will be issued by Sudal to a non-promoter entity on approval of the Resolution Plan.

IX. SUPERVISION AND IMPLEMENTATION OF THE PLAN

16. The Monitoring Committee for supervising the implementation of the Plan shall comprise of the Resolution Professional, Managing Director and Representative of Canara Bank.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022

X. SOURCES OF FUNDS FOR THE RESOLUTION PLAN

**XI. MANDATORY THE CONTENTS OF THE RESOLUTION PLAN
AS PER THE REGULATIONS 45**

17. The RP has certified that the Resolution Plan complies with the requirements of the Code by providing the Report in Form P8 @Pg. 186

1(a)	A Resolution Plan shall include an affidavit that resolution applicant is eligible to submit a resolution plan for resolution of the Corporate Debtor under the Code	Ex-O @pg. 192
1(b)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved by the adjudicating authority at any time in the past	III N-2 @Pg. 185
1(c)	A resolution Plan shall include an undertaking that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the resolution applicant ineligible to participate in any resolution process under the Code.	Pg.96
2(a)	A resolution plan shall provide for the terms of the plan and its implementation schedule:	III-A(a) @pg.95
2(b)	A resolution plan shall provide for the management and control of the business of the corporate debtor during its term	N.A.
2(c)	A resolution plan shall provide for adequate means for supervising its implementation	III M @Pg. 115
3(a)	A resolution plan shall demonstrate shall it address the cause of default;	III A-(1) @Pg. 92
3(b)	A resolution plan shall demonstrate that it is feasible and viable;	III N-1 @Pg. 185

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022

3(c)	A resolution plan shall demonstrate that it has provisions for its effective implementation	III L @Pg. 115 III M @Pg. 115
3(d)	A resolution plan shall demonstrate that it has provisions for approvals required and the timeline for the same	III J-(4) @Pg. 113
3(e)	A resolution plan shall demonstrate that the resolution applicant has the capability to implement the resolution plan	III L @Pg. 115
4	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including Financial Creditors and Operational Creditors, of the Corporate Debtor.	III-B @ Pg.97 to III-I @ Pg.111
5	The amount payable under a resolution plan- a) To the Operational Creditors shall be paid in priority over Financial Creditors; and b) To the Financial Creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of plan.	III F @Pg. 107 III E-1 @Pg. 185

7. Compliance with Provisions of Section 54C

7.1. The declaration regarding non-existence of avoidance transactions relating to the company and its directors as per Section 54C(3)(c) of the Code read with Regulation 16(2) of IBBI (Pre-packed Insolvency Resolution Process) Regulations, 2021 in Form P7, is annexed as Exhibit N with the application.

7.2. The affidavit stating that the Corporate Applicant is eligible under Section 29A of IBC, 2016 to submit Resolution Plan has also been annexed as Exhibit O with the application as an affidavit dated 30.08.2022, thus complying with the provisions

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022

of Section 54A (2)(d) of the Code.

- 7.3. The Corporate Applicant has also annexed the audited financial statements of the company for the Year 2020-2021 and 2021-2022 and provisional financial statements as on 30.06.2022 which are annexed as Exhibit Q with the application, thus complying with the provisions of Section 54C(3)(d) of the Code.
- 7.4. The Corporate Applicant has furnished name of Insolvency Professional to be appointed as Resolution Professional as per the provision of Section 54C (3)(b) of the Code and the consent of such Insolvency Professional has also been filed.
- 7.5. On perusal of the proceedings, this Bench finds that the Corporate Applicant has produced all the required documents and materials in order to comply the provisions of the Code in this relation. Therefore, this Bench feels that this application deserves to be admitted under Section 54C of the Code.
8. The application is complete in all respects and meets all requirements of Law. Hence, this Bench admits this application and pass the following orders: -

ORDER

9. The application CP(IBPP) No. 1 (MB) 2022 for Pre-Packaged Insolvency Resolution Process of SUDAL INDUSTRIES LIMITED is admitted under Section 54C of the Code. In view of the commencement of the PPIRP, the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

moratorium is declared, under Section 14 of Code, 2016, for prohibiting all of the following in terms of Section 14(1) of the Code.

- a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002;
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate Debtor.
10. The Resolution Professional as proposed by the Financial Creditor namely, Prashant Jain having Registration No. IBBI/ IPA- 001/IP-P01368/2018-19/12131, holding AFA No. AFA1/12131/02/021122/103018 email: ipprashantjain@gmail.com is appointed as a Resolution Professional to conduct Pre-Packaged Insolvency Resolution Process ("PPIRP") as per the Provisions of Chapter III A of the Insolvency Regulations. Further, the Resolution Professional shall also perform his duties and functions as per the provisions given under Section 54F of the Code.
11. This Adjudicating Authority directs the RP to make a public announcement of Pre-Packaged Insolvency Resolution Process (" PPIRP") of the Corporate

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022**

Debtor as per Section 54A of the Code and invite and collate the claim of the creditors.

12. As mentioned under Section 54F (5), the personnel of the Corporate Debtor shall extend all assistance and cooperation to RP.
13. In case of non-cooperation, the RP can approach this Adjudicating Authority under Section 19(2) of the Code. The management of the Corporate Debtor shall remain vested with the Board of Directors of the Corporate Debtor as per the provisions of Section 54H, subject to action under Section 54J of the Code, if, any. The Board of Directors shall discharge their duties as specified under Section 54H(b) and Section 54H(c) of the Code.
14. This Bench directs Resolution Professional to file an interim report within thirty days to this Authority.
15. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.
16. The registry is further directed to send the copy of the order to the IBBI also for their record.
17. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP(IB) No.63/MB-IV/2021
AND
CP IB No. 638/MB-IV/2021
AND
CP (IBPP) No. 01/MB-IV/2022

-
18. Accordingly, CP(IBPP) No. 1 (MB) 2022 stands disposed of in terms indicated above.
19. CP(IB) No.63(MB) 2021 is dismissed as not maintainable and CP IB No 638(MB)2021 is dismissed as infructuous in view of applicant therein consenting and voting in favour of resolution approving Pre-Packaged Insolvency Resolution Process u/s 54A(3) of the Code.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
20.04.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)