

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

MA 454/2018 in CP(IB)1161(MB)/2017

Under section 31 of the IBC, 2016

Jitendra Palande,
Resolution Professional ...Applicant

In the matter of

Parte Casters Pvt. Ltd.
...Corporate Debtor/Petitioner

Order reserved on: 5.10.2018

Order dated:22.10.2018

Coram: Hon'ble Shri V. P. Singh, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Applicant: CS Omkar V. Deosthale, Authorised Representative for
Resolution Professional

Per: V. P. Singh, Member (Judicial)

ORDER

1. It is an application filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 for the approval of the final resolution plan by this Adjudicating Authority under Section 31 (1) of the Code with the reliefs to Approve the resolution plan as submitted by "Resolution Applicant" under section 31(1) of the IBC.
2. The applicant herein is a Resolution Professional appointed in this case to carry out the Corporate Insolvency Resolution Process (CIRP) in respect to this Corporate Debtor against which a company petition filed under Section 10 of the IBC was admitted on 14.8.2017 and 180 days was expiring on 10.2.2018. An extension for 90 days was sought for and granted *vide* an order dated 9.2.2018. The Committee of Creditors comprises of the sole Financial Creditor, State Bank of India.
3. The Resolution Plan was approved by the Committee of Creditors on 9.5.2018 with 100% voting share. For the same being required to be approved by this Bench under Section 31 of the Code, hence this application.
4. The CIRP has proceeded as follows:

S. No.	Section / Regulation	Description of Activity
1.	Section 16(1)	CIRP commenced on 14.8.2017, and the IRP was appointed on 1.9.2017
2.	Regulation 6(1)	Public announcement inviting claims made on 3.9.2017
3.	Section 15(1)(c)/ Regulation 6(2)(c)	Last date for submission of claims as provided in the Public Announcement was 15.9.2017
4.	Regulation 17(1)	Report certifying constitution of CoC consisting of the sole creditor, State Bank of India was filed on 29.9.2017.
5.	Section 22(1) / Regulation 19(1)	1 st meeting of CoC was held on 27.9.2017
6.	Section 22(2)	Interim Resolution Professional was confirmed as Resolution Professional on 27.9.2017 in the First CoC
7.	Regulation 27	Mr S Narayanan Iyer and Mr Shashikant Dhumal were appointed as valuers
8.	Regulation 35A	Preferential and other transaction – the Resolution professional has filed another miscellaneous application, <i>inter-alia</i> , regarding fraudulent transactions.
9.	Regulation 36 (1)	Information Memorandum was prepared and submitted to the CoC
10.	Regulation 36A	Form G was published
		Invitation of EoI was published by the Resolution Professional
		Submission of EoI
11.	Section 12(2)	CoC resolved to seek for extension of CIRP by 90 days. Application filed before the Adjudicating

		Authority allowed.
12.	Regulation 36B	The Information Memorandum dated 16.10.2017 was issued by the Resolution Professional to prospective applicants
		In the 10 th CoC meeting, Mr Prithviraj Patil and Mr Amol Jagdale submitted a resolution plan for ₹ 4.79 Crores.
13.	Regulation 39(4)	Application filed to seek approval of resolution plan by the Adjudicating Authority on 10.5.2018
14.		CIRP end date 11.5.2018
15.	Section 31(1)	Application for seeking approval of resolution plan filed on 10.5.2018.

5. The COC meeting held at various dates as mentioned in the table below:

S.N.	Date	Particulars
1.	27.9.2017	First CoC meeting
2.	10.10.2017	Second CoC meeting
3.	24.11.2017	Third CoC meeting
4.	30.11.2017	Fourth CoC meeting
5.	7.12.2017	Fifth CoC meeting
6.	10.1.2018	Sixth CoC meeting
7.	29.1.2018	Seventh CoC meeting
8.	23.2.2018	Eighth CoC meeting
9.	21.4.2018	Ninth CoC meeting
10.	9.5.2018	Tenth CoC meeting

6. The total amount of claims admitted by the Applicant/ Resolution Professional in the CIRP of the Corporate Debtor are set out herein below:

S.N.	Category of Creditor	Amount of claims admitted (in ₹)
1.	State Bank of India	6.30 crores

2.	Trade Payables	0.93 crores
3.	Statutory Dues	1.48 crores
4.	Dues payable to workers	Nil
5.	Dues payable to employees	Nil

Claims not received but acknowledged in the Company's Balance Sheet as on 31.3.2017 are approximately ₹ 2.10 crores.

7. The Resolution Professional determined the liquidation value of the company as ₹ 1.30 crores.
8. The Resolution Plan dated 30.4.2018 has been jointly submitted by Mr Pritviraj Patil and Mr Amol Jagdale.
9. A resolution plan needs to meet the criteria laid down in Section 30(2) of the IBC along with the regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
10. To ascertain the compliance, information on how specific requirements have been dealt with in the plan is tabulated below:

Sub-clause of S. 30(2)	Requirement	How dealt with in the Plan
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board	At page 49, in Clause 4.07 of the miscellaneous application, the Plan provides for payment of CIRP costs in priority over payments to any other creditors.
(b)	Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53	At page 50, in Clause 4.13 of the miscellaneous application, the Plan states that the liquidation value payable to the operational creditors, except workmen is NIL. However, the Resolution Applicant proposes to pay some of the Operational Creditors subject to availability of adequate cash-flow and profitability in the following manner, an amount

		of 20% of their dues.
(c)	Management of the affairs of the CD after approval of the resolution plan	At page 54, in Clause 7 of the miscellaneous application, the Plan, <i>inter-alia</i> , lays down that the management of the company will be done by a new board formed within 90 days of approval of the resolution plan from the Adjudicating Authority.
(d)	Implementation and Supervision	At page 56, in Clause 8 of the miscellaneous application, the Plan provides for appointment of '7Circles Business Advisors LLP' as monitoring agency.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	The plan does not contravene any provision of law
(f)	Conforms to such other requirements as may be specified by the Board	Details regarding regulations are discussed below.

Referen ce of relevan t Reg.	Requirement	How dealt with in the Plan
38(1)(a)	Plan shall identify specific sources of funds that will be used to pay the CIRP cost in priority to any other creditor	Mr Amol Jagdale and Mr Pritviraj Patil have filed affidavits verifying the self-declaration certificates. In the same certificates, they have annexed source of funds letters' which appear at pages 66 and 72 of the miscellaneous application. Mr Pritviraj Patil has also annexed letter from The Karad Urban Co-Operative Bank Ltd., Karad informing
38(1)(b)	Plan shall identify specific sources of funds that will be used to pay liquidation value due to OCs and provide for such payment in priority to any financial creditor and payment shall be made within 30 days after the approval of the Plan by	

	Adjudicating Authority	him about the principle
38(1)(c)	Plan shall identify specific sources of funds that will be used to pay the liquidation value due to the dissenting financial creditor which shall be made within 30 days after the approval of the Plan by Adjudicating Authority	approval to sanction a credit facility of Rupees One Crore and Fifty Lacs.
38(1A)	Plan shall include a statement as to how it has dealt with the interests of all stakeholders. Including financial creditors and operational creditors, of CD	At page 52, in Clause 4.17 of the miscellaneous application, the plan states that it is balancing the interests of all stakeholders. Even though the liquidation value payable to any creditor other than secured creditor and workers is NIL, the Resolution Applicant still proposes to make some payments.
38(2)(a)	Plan shall provide the term of the Plan and its implementation schedule	At page 53, in para 6, the plan provides for 'Timeline' of the plan and seeks an estimated time of 180 days to obtain necessary approvals from various authorities for implementation.
38(2)(b)	Plan shall provide for the management and control of the business of Corporate Debtor during its term.	As stated above, at page 54, in Clause 7 of the miscellaneous application, the Plan, <i>inter-alia</i> , lays down that the management of the company will be done by a new board formed within 90 days of approval of the resolution plan from the Adjudicating Authority.
38(2)(c)	Plan shall provide for	As stated above, at page 56,

	adequate means for supervising its implementation	in Clause 8 of the miscellaneous application, the Plan provides for appointment of '7Circles Business Advisors LLP' as monitoring agency.
38(3)	Plan shall contain details of resolution applicant and other connected persons as mentioned in Explanation to this Regulation	At page 47, in clause 3, an over-view of the Resolution Applicant is provided.
39(4)	Resolution Professional shall submit the Plan to Adjudicating Authority with certification that the contents of the plan meet all the requirements of the IBC and the Regulations	At page 89 of the miscellaneous application, the Resolution Professional has provided a certificate stating that the plan complies with the IBC.

11. As regards *the substantial acquisition of shares of the corporate debtor*, the plan provides that the entire equity shareholding will be acquired by them with the shareholding of 75% and 25% respectively and the existing suspended Board of Directors will not have any equity shareholding. The Memorandum of Association and the Articles of Association shall be amended appropriately if required.
12. As regards *the modification of any security interest*, the plan provides that the Financial Creditor, State Bank of India would be required to release all charges/liens/securities of assets of the company after payment of ₹ 1,78,60,000/- is made by the Resolution Applicant to it. After that, the Resolution Applicant proposes to raise a fresh working capital loan of ₹3 crores.
13. The plan provides that the Secured Financial Creditor shall be paid ₹1.79 crores inclusive of CIRP costs. The break up is proposed as First instalment of ₹ 0.79 crores within 30 days from the Effective Date and second instalment of ₹1 crore within 90 days from the Effective Date.
14. The plan provides that the only Unsecured Financial Creditor is the same as Secured Financial Creditor and it is not being paid for unsecured financial debt.

15. As to Clause 9.08, titled Affirmative Actions, of the Resolution Plan, the decisions of Corporate Debtor shall be made in consultation with the Resolution Applicant for the time between the approval of plan by CoC and approval from the Adjudicating Authority, this bench clarifies that only the Resolution Professional will hold the management of the Corporate Debtor.
16. On perusal of this entire resolution plan, this Bench hereby noticed that this resolution plan has provided for payment of insolvency resolution process costs in the manner specified by the Board in priority to the repayment of the other debts of the Corporate Debtor, provided for the repayment of debts of the operational creditors as per the waterfall mechanism mentioned under Section 53 of the Code, provided for the management of the affairs of the Corporate Debtor after the approval of the Resolution Plan, provided plan for payment to the creditors as mentioned in the resolution plan and this plan is not in contravention to any of the provisions of law for the time being in force with an undertaking that this plan will remain in conformity with the other requirements as specified by the Board.
17. This plan shall be binding on the Corporate Debtor and its employees, members, creditors and other stakeholders as said out under Section 31(1) of the Code.
18. Accordingly this bench hereby approves the Resolution Plan without any modification, which has already been approved by CoC in its meeting DT. 9.5.2018 with 100 % vote share.

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)