NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

**PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL**
**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 01.03.2021 AT 10:30 AM

| | |
|---|---|
| **TRANSFER PETITION NO.** | |
| **COMPANY PETITION/APPLICATION NO.** | IA No. 1025/2020 in CP No. 351/9/HDB/2019 |
| **NAME OF THE COMPANY** | Panel Boards And Laminates Ltd |
| **NAME OF THE PETITIONER(S)** | NAC and Associates LLP |
| **NAME OF THE RESPONDENT(S)** | Panel Boards And Laminates Ltd |
| **UNDER SECTION** | 7 of IBC |

**Counsel for Petitioner(s):**

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|---|---|---|---|
| | | | |
| | | | |

**Counsel for Respondent(s):**

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|---|---|---|---|
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## ORDER

IA 1025/2020 in CP(IB) 351/9/HDB/2019 is listed today for orders.

Orders pronounced vide separate orders.

**MEMBER (T)** **MEMBER(J)**

**Syamala**

# NATIONAL COMPANY LAW TRIBUNAL
# BENCH-1, HYDERABAD

IA No.1025 of 2020
In
CP (IB) No. 351/9/HDB/2019

*Application under Section 30 (6) and 31 of IBC, 2016 R/w Regulations 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons)*

In the matter of M/s Panel Boards and Laminates Limited

Filed by:

Pavan Kankani
Resolution Professional
M/s Panel Boards and Laminates Limited
Surya Towers, 3rd Floor, "C" Block
104, S.P. Road, Secunderabad
Hyderabad- 500003 ....Applicant

AND

1. Committee of Creditors
   Panel Boards and Laminates Limited ...Respondent No.1/ Committee of Creditors
2. Mikata Industries and Tech Services LLP
   #8/7/152/1, Plot No. 20/B HAL Colony
   Old Bowenpally, Kukatpally
   Hyderabad – 500011 ...Respondent No.2/ Resolution Applicant

**Date of order: 01.03.2021**

**Coram:**

Hon'ble Shri Bhaskar Pantula Mohan, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

**Appearance:**

For Applicant: Shri V.K. Sajith, Advocate

Heard on: 01.02.2021 and 16.02.2021

## PER: SHRI BHASKARA PANTULA MOHAN MEMBER (JUDICIAL)

1. This is an Application under 30 (6) of the Insolvency & Bankruptcy Code, 2016 (the Code) by the Resolution professional seeking approval of the Resolution Plan submitted by Resolution Applicant i.e. Mikata Industries and Tech Services LLP.

2. The facts leading to filing the Application in brief are:-

2.1 The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order on 20.08.2019 and the Applicant was appointed as Interim Resolution Professional (IRP). The Committee of Creditors (CoC) comprising the following Financial Creditors, in its 1st meeting had confirmed the Applicant as Resolution Professional (RP). The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

| Name of the Financial Creditor | Voting share (%) |
|---|---|
| Chintala Vijayalatha | 0.06% |
| Avayaa Holdings and Trading Private Limited | 26.16% |
| Gulab Balaji Raut | 2.19% |
| Bakelite Hylam Limited | 71.58% |

2.2 During the period of CIRP two Resolution Plans were received, one from **M/s Avaya Holdings & Trading Private Limited** and another from **Mikata Industries and Tech Services LLP.** The CoC after several rounds of negotiations with the Resolution Applicants evaluated both the Resolution Plans as per the Evaluation Matrix. It accepted the Resolution Plan submitted by Mikata Industries of the successful Resolution Applicant in terms of Section 29 (A) of the Code, the CoC in its 9th Meeting held on 17.09.2020 considered the

Resolution Plan of M/s **Mikata Industries and Tech Services LLP** and approved the plan with the voting share of 100%.

3. The contour of the Resolution Plan:

A. The Resolution Applicant is a LLP which is under formation with two Hyderabad based partners led by Shri S V S Shetty, Shri C. Chandra Sekhar and Sh. Ramesh Kumar.

B. Financial Terms:

The Resolution Plan is made for Rs. 8.55 crores based on induction of funds as well as sale of assets/transfer. The term of plan is 4 years but Applicant submits that it will be curtailed depending on time taken for approval of conversion of leased land to Revenue land under compensatory Afforestation Scheme. The Applicant/ Resolution Professional has further submitted that, under the Resolution plan the Resolution Applicant would infuse the upfront payment of Rs.1,20,00,000/- (Rupees One Crore Twenty Lakhs only) within two months of the effective date and further induct Rs 80,00,000 (Rs eighty lacs) in the manner provided in the Resolution Plan at para 6.0 of the Resolution Plan, in the following manner:-

The Applicant/Resolution Professional has submitted that, the Resolution Plan has provided for repayment to the various stakeholders as under:-

| SL | PARTICULARS | CLAIM ADMITTED | % | TOTAL PAYABLE | TERMS |
|---|---|---|---|---|---|
| A | **Financial Creditors** | | | | |
| 1 | Secured -Mystic Woods Holdings | 9,00,70,628 | 30% | 2,70,21,188 | From Assets sale |
| 2 | Secured -Avaya Holdings | 2,24,78,904 | 30% | 67,43,671 | From Assets sale |
| | **TOTAL SECURED FINANCIAL CREDITORS** | **11,25,49,532** | | **3,37,64,860** | |

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| | | | | | |
|---|---|---|---|---|---|
| **B** | **Financial creditors-Unsecured** | | | | |
| 1 | Bakelite Hylam Ltd. | 6,14,99,082 | 25% | 1,53,74,771 | From Assets sale |
| 2 | N P S Shinh | ₹ 68,31,738 | 25% | 17,07,935 | After Oper.cr are paid |
| 3 | Gulab Raut | ₹ 18,84,817 | 25% | 4,71,204 | After Oper.cr are paid |
| 4 | Vijaya Latha | ₹ 50,000 | 25% | 12,500 | After Oper.cr are paid |
| 5 | Chandrakant Katage | 5,000 | 25% | 1,250 | After Oper.cr are paid |
| | **Total - Unsecured Financial Crs** | **7,02,70,637** | **25%** | **1,75,67,659** | |
| C | **TOTAL FINANCIAL CREDITORS** | **18,28,20,169** | **28%** | **5,13,32,519** | |
| D | EMPLOYEE DUES-GRATUITY | 2,42,21,461 | 100% | 2,42,21,461 | Rs 23,61,457 immed is, bal in 3 instal. in 3 years |
| E | **OTHER DUES- EMPLOYEES/EX-EMPLOYEES** | | | | |
| 1 | 24/12 MOS DUES | 19,12,083 | 30% | 5,73,625 | within 2 months |
| 2 | VRS FUTURE DUES | 13,12,981 | 30% | 3,93,894 | within 2 months |
| 3 | EX-GRATIA -PRE 24 MONTHS | 94,01,961 | 2.5% | 2,35,049 | within 2 months |
| 4 | VRS Dues | 1,11,28,697 | 2.5% | 2,78,217 | within 2 months |
| 6 | BONUS | 11,60,324 | 2.5% | 29,008 | within 2 months |
| 5 | LEAVE ENCASHMENT | 16,86,944 | 2.5% | 42,174 | within 2 months |
| 6 | UNPAID WAGES/SALARIES | 3,62,980 | 2.5% | 9,075 | within 2 months |

| | | | | | |
|---|---|---|---|---|---|
| 7 | **TOTAL EMPLOYEE DUES** | **2,69,65,970** | | **15,61,042** | **within 2 months** |
| F | **OPERATIONAL CREDITORS** | | | | |
| 1 | Operational creditors- Sales Tax /deferment dues | 13,06,68,946 | 2.5% | 32,66,724 | within 2 months |
| 2 | NAC & Associates LLP | 7,21,364 | 2.5% | 18,034 | |
| | **Operational creditors- Govt dues/excise** | **25,00,000** | **2.5%** | **62,500** | **within 2 months** |
| 3 | operational creditors others | 10,00,000 | 2.5% | 25,000 | within 2 months |
| 4 | **TOTAL OPERATIONAL CREDITORS** | **13,48,90,310** | **2.5%** | **33,72,258** | **within 2 months** |
| G | **TOTAL ADMITTED CLAIMS** | **36,88,97,910** | | **8,04,87,279** | |
| H | I R P COSTS- at actuals | 50,00,000 | 100% | 50,00,000 | Priority before others |
| I | Contingency/other claims | 20,00,000 | 2.5% | 50,000 | |
| J | **TOTAL CLAIMS** | **37,58,97,910** | | **8,55,37,279** | |

D. The Resolution Applicant proposes to obtain alternative lands adjoining reserve forests for being offered under the Compensatory Afforestation scheme to enable de-notification of the existing Forest land and its conversion to revenue land to ensure maximization of value for the Corporate Debtor. Part of such land will be utilized by way of sale/ transfer for settlement of the dues to the Financial Creditors while the balance land & buildings would be utilised for the purposes as provided in the Resolution Plan.

E. Management of Corporate Debtor"

Pursuant to approval of the Resolution Plan, the suspended Board of Directors shall stand dissolved and the Directors of the Corporate Debtor immediately prior to the completion date, shall be deemed to have resigned and shall vacate their office. Further the persons nominated by the Resolution Applicant shall be appointed as the Directors of the Corporate Debtor. The Resolution Plan proposes to appoint a Monitoring Committee consisting of one nominee of the Financial Creditors, one nominee of Resolution Applicant and one Director from the Board of Directors of the Corporate Debtor and the said Committee shall monitor the implementation of the Resolution Plan and will continue to operate until all the dues to the Financial Creditors are settled in terms of the Resolution Plan.

F. Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:-

The Applicant has conducted a thorough compliance heck of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (herein after referred to as Regulation) and has submitted his Form H under Regulation 39 (4). It is submitted that the Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the Resolution Applicant is not ineligible under Section 29A of the Code.

G. The Resolution plan provides to write off 90% of the present equity of the Corporate Debtor and conversion of the balance 10% into 1 equity share of Rs.100/- face value for every 10 shares held after such write off with a provision to purchase such converted shares at par by the Resolution Applicant, without any further procedures/approvals

H. Performance Security:

Memo dated 20.02.2021 is filed by the Applicant herein enclosing Bank Guarantee bearing No. 021GT02210500003 dated 19.02.2021 from HDFC Bank for an amount of Rs. 20,00,000/- valid upto 18.02.2022 apart from Security Deposit of Rs. 10 lakhs as surety & security.

4. The Applicant submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code in the following manner:

A. Plan provides for the priority payment of CIRP costs in full from the fund to be infused by the Resolution Applicant.

B. To pay the amount due to Operational Creditors of the Corporate Debtor in the manner indicated supra. It is submitted that the Liquidation value of the Corporate Debtor is Rs. 7,02,09,248.10 and Fair Market value is Rs. 9,25,02,361.71. In view of the fact that the claim of Secured Financial Creditors is Rs. 11.26 crores, the minimum liquidation value to the Operational Creditors would be Nil. However the Resolution Professional has provided for a payment of 2.5% of admitted claims to the Operational Creditors including the employees and ex-employees.

5. The Resolution Applicant has sought certain directions not involving financial impact from this Hon'ble Tribunal, vide para 11 of the Resolution Plan:

a) A direction to the Ministry of Environment, Forests & Climate Change and the State Government of Maharashtra to implement the Change of name from Indian Plywood Manufacturing Company to Panel Boards Limited, the Corporate Debtor herein, in respect of the leased land of 30.15 Acres within 3 months from the date of the order, as already approved by MOEF & CC.

b) A direction has been sought to the Ministry of Environment, Forests & Climate Change (MOEF & CC) and State Government of Maharashtra to re-examine the matter relating to classification of the Revenue Land of 30.15 Acres as Forest Land in terms of the GR issued on 24.04.1980 for which full occupancy price at market rates had been paid to the Forest Department as conversion fee.

c) A direction that upon the Corporate Debtor offering alternative land(s) in the same condition (without forest cover) as when leased land was handed over to Corporate Debtor, located adjoining an existing reserve forest(s) under the Compensatory Afforestation Scheme of the Government of India, MOEF & CC, the same will be not unduly delayed or denied, and upon acceptance of such land, to de-notify the existing 30.15 Acres land save for the representation B above by permitting conversion of the same to Revenue Land for being put to use as per the Resolution Plan.

d) The Resolution Applicant has sought directions to local administration to provide assistance as required in implementing the terms of the Resolution plan, against any threats, obstructions or interference from any persons/parties at any stage.

7. The Applicant/Resolution Professional has submitted that, the Resolution Applicant has sought certain reliefs and concessions in the Resolution Plan relating to Income Tax in respect of remissions arising out of the resolution plan and for exemption of Capital gains to enable the dues to be settled through sale of assets as are mentioned in Para 12.0 of the Resolution Plan annexed to the application. We are however, not inclined to grant such concessions or waivers. The Resolution Applicant needs to approach the

authorities concerned for permits, if required, and the same will be considered by the concerned authorities in accordance with law.

8. The Resolution Applicant proposes to appoint Directors to the Board of Directors as stated above in terms of Section 30 (2) (d). The Plan also provides for the implementation and supervision of the Resolution Plan. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of Regulation 38 of the Regulations.

a) The payment due to operational creditors will be made in priority over Financial Creditors (Regulation 38 (1) (a))

b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A).

c) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38(1B).

8. For better appreciation we refer to para 67 of the Judgement of Hon'ble Supreme Court in the matter of ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors (MANU/SC/1577/2019), which is as under:-***

**". 67: A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by the successful resolution applicant.**

9. In view of the above ruling of Hon'ble Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders

passed herein. The Resolution Plan has been approved by the CoC in its meeting held on 17.09.2020 with 100% votes.

10. In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per Section 30 (6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less.

11. Further, the Hon'ble Court has further held at para 35 of the said judgement that ***the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements.***

12. As held by Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors "the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC.*** As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved as held in para 42 of the said judgement.

12. In the light of above and settled position of law, the instant Resolution Plan meets the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same deserves favourable consideration and accordingly IA No. 1025/2020 is allowed with the following directions.

**ORDER**

12.1 The Resolution Plan submitted by **Mikata Industries and Tech Services LLP** annexed to the Application 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.

12.2 The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities 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. As regards to the reliefs sought under para 5 (a) to (d) is concerned, the Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful.

12.3 The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad 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.

12.4 Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in para 3 (B) supra.

12.5 The moratorium under Section 14 of the Code shall cease to have effect from this date.

12.6 The Applicant and Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority every quarterly.

12.7 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.

12.8 The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.

12.9 The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.

01/03/24.

(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)

(BHASKARA PANTULA MOHAN)
MEMBER (JUDICIAL)

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