IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No. 472 of 2018
In
CP (IB) No. 49/7/HDB/2017

U/s 30 (6) & 31 of IBC, 2016
R/w Regulation 39 (4) of IBBI IIRPCP) Regulations 2016
R/w Rule 11 of NCLT Rules, 2016

In the matter of

Indian Bank Vs United Seamless Tubulaar Private Limited:

Mr. V. Venkatachalam
Resolution Professional
United Seamless Tubulaar Private Limited ....Applicant / Resolution Professional

VERSUS

1. Indian Bank
   66 Rajaji Salai
   Royapettah
   Chennai – 600014 ....Respondent / Financial Creditor

2. United Seamless Tubulaar Private Limited
   Survey No. 309, NH-65,
   Sripuram Narketpalli
   Nalgonda Telangana – 508254 ...Respondent / Corporate Debtor

3. Padmanabhan Venkatesh
   R/o Flat No. C-203, Sri Sai Rajendra Prestige Apts
   Street No.5, West Marredpally
   Secunderabad- 500026 ...Respondent/ Director (Suspended Board)

4. M/s Maharashtra Seamless Limited
   Pipe Nagar, Sukeli (V), NH-17, BKG Road
   Roha, Raigad – 402126 ...Respondent/ Intervenor

Date of order: 21.01.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / counsels present:

For the Applicant: Shri Raghunandan Rao, Senior Advocate along with Shri V. Venkatachalam, Resolution Professional

For Indian Bank: Shri V.K. Sajith, Advocate

For Corporate Debtor: Shri Santosh Jadhav, Advocate

For Resolution Applicant: Shri V.D'Costa, along with Shri Durga Bose Gandham, Advocates

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on: 26.10.2018, 02.11.2018, 08.11.2018, 09.11.2018, 12.11.2018, 14.11.2018, 27.11.2018, 30.11.2018, 13.12.2018, 19.12.2018, 04.01.2018 & 09.01.2019

ORDER

1. The Application is filed by Resolution Professional for Corporate Debtor M/s United Seamless Tubulaar Private Limited under Section 30 (6) and 31 of IBC, 2016 R/w Regulations 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons), R/w Rule 11 of NCLT Rules, 2016, seeking directions to consider and approve the resolution plan submitted by M/s Maharashtra Seamless Limited.

2. Subsequent to filing of above Application, IA No. 522 of 2018 in IA No. 472 of 2018 was filed by Shri Padmanabhan Venkatesh, Director (Suspended Board) of Corporate Debtor Company praying this Tribunal to implead the Applicant in IA 472 of 2018. Since Resolution Professional had no objection in impleading the Director (Suspended Board), it was allowed on 14.11.2018. Accordingly, the Application has been amended by arraying the Applicant in IA No. 522 of 2018 as Respondent No.3 in IA No.472 of 2018.

3. Brief averments made in Application No. 472 of 2018 are:-

(1) This Tribunal admitted the Petition filed under Section 7 of IBC, 2016 by Indian Bank (Financial Creditor) on 12.06.2017 and initiated CIRP against Corporate Debtor. Shri Ahalada Rao Vummenthala was appointed Interim Resolution Professional and subsequently vide order dated 10.10.2017 appointed Shri V. Venkatachalam as Resolution Professional.

(2) It is averred that this Tribunal vide order passed in IA 209 of 2017 extended the CIRP for a period 90 days beyond 180 days. Pursuant to above order Resolution Professional issued invitation calling for expression of interest on 10.01.2018 and the last date for submission of EOI was 28.02.2018 which was later extended till 15.3.2018. The last date for submission of resolution plan was on 30.03.2018. The resolution professional received four resolution plans.

(3) It is averred the four resolution plans were placed before the CoC on 04.04.2018 for consideration. The liquidation values and fair values were also placed before CoC. In the seventh CoC held on 13.4.2018 two Resolution Plans were deliberated upon. The two Resolution Applicants were informed to correct shortcomings noticed by the CoC. In the 8th CoC meeting held on 20.04.2018 resolution plan submitted by Maharashtra Seamless Limited was approved by majority of the CoC by 87.10% of voting share. As such, Resolution professional filed IA No.125 of 2018 on 27.4.2018 for approving plan under section 31 of the code, which was disposed of on 28.09.2018, with certain directions to Resolution Professional.

(4) It is the case of Applicant that pursuant to the above order, a CoC meeting was held on 16.10.2018 which recommended Resolution Plan submitted by Maharashtra Seamless Limited and Resolution Professional communicated the decision of the CoC in approving the resolution plan of the MSL with modifications.

(5) Meanwhile aggrieved by the order passed in IA No. 125 and IA No. 282 of 2018, MSL/ Resolution Applicant preferred an appeal and Hon'ble NCLAT passed an interim order on 22.10.2018 directing the Adjudicating Authority to pass an order under Section 31 of I&B Code if the Resolution Professional moves the application for approval of approved plan by the Committee of Creditors, uninfluenced by the

impugned order, subject to the decision of the appeal.

(6) It is the case of Applicant that the Resolution Plan submitted by MSL meets all the requirements of the Insolvency & Bankruptcy Code, 2016 and CIRP Regulations and does not contravene any of the provisions of Law and the same is also approved by the CoC with majority.

(7) Further, it is the case of Resolution Professional that as per the Resolution Plan, the Resolution Applicant will retain and provide employment to about 400 employees and revive the operations of the Corporate Debtor and would enable the Corporate Debtor to recover from its financial set back. The resolution plan would revive the operation of the facilities of the Corporate Debtor viz, plant for production of seamless pipes which has not been in operation since 2015 and would generate substantial employment opportunities. It is also stated the implementation of the Resolution Plan would be in the best interest of the Corporate Debtor and would result in the maximization of the value of assets of the Corporate Debtor, which being an Export Oriented Undertaking Unit would substantially benefit in terms of promoting exports. The Resolution professional prayed this Tribunal to approve the resolution plan as required under Section 31 (1) of the Code.

4. Counter / reply is filed by suspended Director/Respondent No.3. Averments made in brief are:

(1) It is contended that the entire process of conducting CoC meeting and approving the resolution plan were done against the procedures laid down in the Code and lacks transparency.

(2) It is averred that Resolution Professional submitted same old plan of Maharashtra Seamless Limited (herein after referred as MSL) before the CoC (which was approved in the 8th CoC Meeting) without communicating the revised liquidation value and thus, maximization of value of the assets of the Corporate Debtor is lost.

(3) It is contended that 7th CoC meeting has no relevance since no Resolution Plan was approved in the 7th CoC. Therefore, 7th CoC meeting does not come under the purview and cannot be quoted for the purpose of meeting requirements under Section 24 (3) of the Code as no voting took place on the Resolution Plans and no plan was approved in the said meeting and that it is only in the 8th CoC meeting held on 20.04.2018 voting was held on four Resolution Plans and resolution plan submitted by Maharashtra Seamless Ltd was approved. It is also alleged though notice was served upon Respondent No.3 by the Resolution Professional which specifically mentioned that meeting is for considering evaluation and approval of resolution plans and due to confidentiality, members of the suspended Board of Directors were directed to

excuse themselves for the entire proceedings of 8th CoC.

(4) It is contended since 8th CoC meeting was held exclusively to discuss Resolution Plans, Respondent No.3 refrained from attending the meeting as he was stopped from participating in the meetings earlier, when Resolution Plans were deliberated upon.

(5) It is contended that provisions of Section 24 of IBC and decision held in M/s Rajputana Properties were not adhered to by the Resolution Professional and violated the provisions of the Code. It is also alleged that the minutes of the meetings of CoC do not have the approval of the Indian Bank/Petitioner in the main petition.

(6) This Tribunal after adjudicating IA 125/2018 and IA 282/2018, passed a detailed order on 28.09.2018 with directions to Resolution Professional. It is alleged the order passed by the Tribunal is not followed in letter and spirit while submitting the Resolution Plan for approval in the 9th CoC meeting held on 16.10.2018.

(7) It is contended that the Resolution professional in the 9th CoC meeting has not made the Liquidation value available to Resolution Applicants and as such did not provide an opportunity to the Resolution Applicants to enable them to revise their Resolution Plans instead informed that the same is now available on the public domain. It is the contention of the Director (Suspended Board), had the revised Liquidation Value been provided to the Resolution

Applicants, they would have revised their proposals in view of higher liquidation value which would have benefitted all the stakeholders.

(8) It is contended, despite undertaking given by MSL / Resolution Applicant to the effect that the members of CoC has further right to renegotiate the terms of this Resolution Plan and decision of the CoC will be final, the Resolution Professional did not call for revised bids and renegotiate the terms of the Resolution Plan to increase the bid amount in view of Fair Value and Liquidation Value arrived as per valuation No.1 & 2, and as such there is violation of Regulation 37 and provisions of IBC, 2016.

(9) It is also averred that the 9th CoC meeting was exclusively convened on 16.10.2018 in pursuant to order passed in IA No.125 and 282 of 2018 on 28.09.2018 and that the Director (Suspended Board) clearly expressed his views about not calling the revised Resolution plan / bids and not following the order passed by this Tribunal. The same was also communicated to the Resolution Professional vide letter dated 16.10.2018.

(10) It is alleged, approval of the Resolution Plan of MSL without giving reasons for such approval is in disregard to the directions of this Tribunal and contrary to the provisions of the IBC.

(11) It is contended that valuation is done in a very vague manner and in utter disregard to the CIRP process without any sense of responsibility and accuracy of the valuations. It is alleged that even the liquidation value provided by the 3rd valuer did

not consider all the assets in his valuation report which was accepted by the RP.

(12) It is averred that amending Regulation 35 and introducing the concept of Fair Value in addition to the existing Liquidation value is for the sole purpose that in the event the Corporate Debtor Company does not go for liquidation the "Fair Value" should be adopted at the time of finalizing the Resolution Plan. It is contended as the Corporate Debtor is not going for liquidation, the concept of Liquidation Value does not hold in the present case and "Fair Value" has to be adopted while finalising the Resolution Plan in the CIRP.

(13) It is averred that as per Regulation 35 & 2 (i)(hb), the fair value is also to be arrived at and the same is mentioned in the Resolution Plan which should form the basis at the time of finalizing the Resolution Plan and should be followed in letter and spirit, but the Resolution Professional has arrived only at the liquidation value and has not considered the fair value.

(14) It is alleged that only to favour MSL with huge financial benefit of about Rs.300 crores to Rs. 400 crores the resolution plan submitted by MSL was approved on 20.04.2018 and without any changes again on 16.10.2018. Further, outsourcing the entire CIRP process to M/s Brahmayya & Co is against the guidelines of IBC, 2016.

(15) It is alleged that MSL is not eligible to bid under Competition Act, 2002 and that the Resolution

Professional ought not to have confirmed to MSL without prior approval from the Tribunal.

(16) It is averred that already Hon'ble NCLAT vide order dated 22.10.2018 directed the Tribunal either to approve or reject the Resolution Plan as per Section 30 (2) of the Code. However, it would be subject to the decision on the appeal filed by MSL vide CA No.637/2018 before Hon'ble NCLAT. It is averred MSL in its letter dated 29.03.2018 stated that the Resolution Plan need the approval of CCI.

(17) It is further contended that provisions under the IBC, 2016 were not followed by the Resolution Professional and that Resolution Applicants were not provided an opportunity to place their revised proposals in view of the revised Liquidation Value Thus, the 9th CoC meeting held on 16.10.2018 which approved the resolution plan did not have the participation of Resolution Applicants and no reasons/views were provided upon accepting or rejecting the same and that the entire exercise was carried out in disregard to the orders dated 28.09.2018 of this Tribunal.

(18) Hence it is prayed that the Resolution Plan submitted by MSL duly approved by the CoC on 16.10.2018 under Section 30 (4) does not meet/confirm the requirements and has to be rejected by the Tribunal.

5. I have heard the Counsel for Resolution Professional who has filed this Application under Section 30 and Section 31 of IBC for approval of the Resolution Plan which was approved by CoC in its 9th meeting held on

16.10.2018 on the orders of this Tribunal passed in IAs 125 & IA 282 of 2018 dated 28.09.2018.

6. I heard the Counsel for Financial Creditor who is member of CoC viz., Indian Bank which is arrayed as Respondent No.1. The Corporate Debtor is arrayed as Respondent No.2. The Director (Suspended Board) Shri P. Venkatesh is arrayed as Respondent No.3. The successful Resolution Applicant is shown as Respondent No.4. I heard the Counsel for Director (Suspended Board) and also the Counsel for Resolution Applicant.

7. The Resolution Professional earlier filed IA 125/2018 under Section 30 and Section 31 of IBC, 2018 for approval of Resolution Plan submitted by M/s Maharashtra Seamless Limited (MSL). The said Resolution Plan was also approved by majority of members of CoC having voting share of 87.10%. The other financial creditor / Indian Bank having 12.90% has dissented. This Tribunal after hearing both sides passed an order dated 28.09.2018 by directing the Resolution Professional to re-determine the liquidation value and thereafter to place all the eligible Resolution plans along with M/s MSL for consideration by CoC in the light of revised Liquidation Value. The Resolution Applicant preferred an Appeal to the Hon'ble NCLAT aggrieved by the order. During the pendency of the Appeal before Hon'ble NCLAT, the Resolution Professional in the meantime complied the directions issued by this Tribunal and the same was also

informed to the Appellate Tribunal. Hon'ble NCLAT in Company Appeal 637/2018 disposed of the Appeal directing this Tribunal to pass an order under Section 31 of I & B Code uninfluenced by its earlier order which is under challenge. Thus, direction is given by Hon'ble Appellate to this Adjudicating Authority to dispose of the Application under Section 31 of IBC uninfluenced by the previous order.

8. The Resolution Professional has now filed the present Application under Section 30 & 31 of IBC, 2016, R/w Regulation 39 (4) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Resolution Professional has stated in the Application that the Liquidation Value of the Corporate Debtor Company is enhanced as per direction of the Tribunal and the present liquidation value of the Corporate Debtor Company is Rs. 597.54 crores.

9. In the earlier order this Tribunal directed the Resolution Professional to revise the Liquidation Value by taking into account the average of two valuations given by two Registered Valuers who were appointed by IRP instead of taking the average between the valuations of 2nd and 3rd Valuers. This Tribunal further ordered that members of the Suspended Board of Directors were to be permitted to attend the CoC meetings to express their views at the time when Resolution Plans come up for consideration. The members of the Suspended Board of Director were accordingly permitted to express their views in the 9th

CoC meeting held in pursuance of the order passed by this Tribunal. The minutes of the 9th CoC meeting held on 16.10.2018 is filed. It is shown as Annexure-5 which is enclosed at page Nos 46-59. The views of the Directors were also recorded. The Resolution Plan submitted by M/s MSL was approved by the CoC by majority members having voting share 87.10% and the other Financial Creditor/Indian Bank dissented. It is clear, CoC did not ask the Resolution Applicants, particularly MSL to revise the bid in the light of revised Liquidation Value which is at Rs.597.54 crores whereas the Resolution plan filed by MSL, the bid is for Rs. 477 crores which is far below the revised Liquidation Value. Indian Bank / Financial Creditor is one of the stakeholders who will get more amount than what it is going to get in case the bid is over and above the revised liquidation value. The CoC has approved the same resolution plan submitted by MSL even though the bid amount is far below the revised liquidation value. The Learned Counsel for Resolution Professional contended that CoC by majority members having voting share of 87.10% approved the Resolution Plan. The Counsel would contend the Resolution Plan meets all requirements of Section 30 (2) of IBC. Counsel would contend the feasibility and viability of Resolution Plan is within the domain of CoC. The Adjudicating Authority cannot sit in Appeal over the commercial wisdom of the members of CoC in approving the Resolution Plan. In this connection, Learned Counsel for Resolution Professional relied on the decision of Hon'ble NCLAT in the case of M/s

Bhaskara Agro Agencies Vs M/s Super Agri Seeds Private Limited wherein it was held " *so far as feasibility and viability of Resolution Plan is concerned, the Adjudicating Authority or Appellate Tribunal cannot sit in appeal over the decision of CoC. They are the experts to find out the viability and the feasibility of a plan and the matrix".* The Counsel for Resolution Professional further relied on the decision of Hon'ble NCLAT in the matter of Sri Ram Residency Private Limited Vs. Kuldeep Verma wherein it was held that "*the Resolution Plan of the Appellant having been approved by the Committee of Creditors with 98.05% voting shares and it having been found viable and feasible and as it meets the requirements as referred to in sub-section (2) of Section 30, Adjudicating Authority is directed to approve the Resolution Plan submitted by the Appellant as approved by the Committee of Creditors and pass appropriate order. For such order no further hearing is required to be given except the information to the parties as the matter has been finally decided by this Appellate Tribunal".* The Counsel contended, the decision of the CoC prevails in deciding the feasibility and viability of any Resolution Plan and no third party can question the decision taken by the CoC. Counsel contended the erstwhile Director of Suspended Board/ Respondent No.3 herein has no locus standi to raise objection in an Application filed for approval of the Resolution Plan under Section 31 of the Code. Counsel contended that Regulation 35 (3) of IBBI (IRPCP) Regulations, 2016 prohibits sharing / divulging liquidation value to anyone except members of CoC and that too under a non-disclosure agreement. So, any Resolution Applicant to submit Resolution Plan based on its own assessment of the Corporate Debtor. Counsel contended the purpose of ascertaining the Liquidation value is only for the benefit of the CoC members to make an informed decision on whether to accept or reject the Resolution Plan. Counsel contended, Liquidation value is not a "reserve price" and CoC has power to accept a Resolution Plan which on the face of it is lesser than the liquidation value. Counsel contended, there is no prohibition in any of the provisions of IBC which provides that CoC cannot accept the Resolution Plan even if it is below the liquidation value. Thus, Counsel for Resolution Professional contended Resolution Plan cannot be rejected on the ground that it is far below the Liquidation value.

10. The Learned Counsel again contended that there is no basis for Indian Bank/Financial Creditor in the CoC to raise any objection for approval of the Resolution Plan submitted by M/s MSL since Indian Bank has voted in favour of M/s Area Projects Consultants Private Limited who filed the Resolution Plan for Rs.145 crores which came up for discussion in the 8th CoC meeting. M/s MSL on the other hand offered upfront payment of Rs. 477 Crores. The Counsel contended the plan filed by M/s MSL is in conformity with provisions of Section 30 (2) of IBC. The Resolution Professional has given certificate in Form-H stating that the Resolution

Plan confirms to the requirements mandated by the Code. The Resolution Plan as per the direction of the Tribunal was again placed before the CoC and the Plan of M/s MSL is approved by CoC with majority voting share of 87.10%. Counsel contended the plan provides for insolvency resolution costs, management of the affairs of the company and also implementation and supervision of Resolution plan and that Resolution Professional will be the person to supervise the implementation of the Resolution Plan. The counsel contended M/s MSL is financially a good company and it has filed a letter of comfort furnished by HDFC Bank which assured for arranging necessary funds to the Resolution Applicant for giving effect to the Resolution Plan. Counsel contended the plan submitted by M/s MSL is a viable and feasible plan and majority of members of CoC in their commercial wisdom accepted the plan and that the plan needs to be approved.

11. The Learned Counsel for Resolution Professional has relied upon the decision of Hon'ble Apex Court in Arcelormittal India Private Limited vs. Satish Kumar Gupta and others and relied on the relevant paragraphs of the judgement. Similarly, Learned Counsel also relied on the decision of Hon'ble Apex Court in the matter of Binani Industries Limited vs. Bank of Baroda and Ors.

12. The Learned Counsel for the Director (Suspended Board) would contend that Resolution Professional has not followed the directions of this Tribunal dated

28.09.2018 in IA 125 of 2018. The Counsel would contend Resolution Professional has not communicated the revised liquidation value to the Resolution Applicants to enable them to submit the revised bids. The Counsel contended the Resolution Professional ought to have given opportunity to revise the bids in the light of revised Liquidation Value. Counsel contended the concept of maximization of the Value of the assets is not adhered to and it is in violation of Regulation 37. Counsel contended the Resolution Professional ought to have called for revision of the bid amount to safeguard the interest of the stakeholders including achieving the object of maximization of the value of the assets of the Corporate Debtor. Thus, there is a violation of Regulation 37 of CIRP Regulations.

13. Counsel contended the Resolution Plan submitted by M/s MSL which was approved in the 8th CoC meeting held on 20.04.2018 was again placed in the same condition before the 9th CoC meeting held on 16.10.2018 without making any further improvements to the Plan thereby benefitting the Resolution Applicant of about Rs. 300-400 crores.

14. Counsel contended there is a huge variation between the bid of M/s MSL at Rs. 477 crores and the revised Liquidation value at Rs. 597.54 crores and the amount of difference is staggering Rs. 120 crores. Thus, contention of the Learned Counsel, the object of achieving the maximization of value of assets is lost

by approving the same Resolution Plan without asking the Resolution Applicant M/s MSL to revise the bid. The Counsel contended the Fair Value as per computation in accordance with the Regulations 35 & 2 (i) (hb) is Rs. 802 Crores. The Liquidation value as per IBC amended Regulations 35 and 2 (ii) (k) is Rs. 597.54 Crores. The Counsel contended the entire exercise is only to benefit the Resolution Applicant / M/s MSL at a huge discount. Counsel contended, the Resolution Plan does not confirm to the requirements as provided in Section 30 of the Code.

15. The Counsel contended that in almost all the cases where Resolution Plans were approved, the bid amount in all the cases is higher than the liquidation value. Counsel also contended the Resolution Plan submitted by M/s MSL cannot be accepted as the Resolution Applicant contravenes the provisions of Competition Act. Thus, Learned Counsel prayed for rejecting the Resolution Plan and pass necessary orders.

16. M/s MSL filed written submission as an Intervenor, contending, inter-alia, that CoC has approved the plan submitted by it with comfortable majority of the members of CoC having voting share of 87.10%. The Counsel for MSL would contend, it has preferred an Appeal (AT) (Insolvency) No. 637 of 2018 to the Hon'ble NCLAT against the order dated 28.09.2018. When Appeal was pending, the order of this Tribunal was complied with and plan submitted by M/s MSL was again approved. The Hon'ble Appellate Tribunal

directed this Tribunal to pass order under Section 31 of the IBC. Therefore, the present Application is filed by Resolution Professional for approval of the plan. The CoC considered the plan on merits where under the Resolution Applicant would provide for Rs. 477 Crores to the members of CoC within a month from the date of order of the Tribunal and that M/s MSL is a reputed Company. The CoC further considered the technical knowhow of the Resolution Applicant to run the Corporate Debtor and also financial capacity for upgrading the plant etc and that Resolution Applicant is manufacturer of seamless pipes and is one of the leaders in manufacturing of such pipes in India. The Counsel for Resolution Applicant would contend, Hon'ble Apex Court also held in Arcelor Mittal vs. Satish Kumar Gupta that if there is a Resolution Applicant who can continue to run the Corporate Debtor as a going concern, every effort must be made to try and see that this is made possible. Counsel also contended that the Liquidation Value is to be seen at the stage of liquidation but not at the stage of CIRP. The Counsel for Resolution Applicant would contend, Tribunal has to test the Resolution plan approved by CoC in the light of Section 30 (2) of the Code. Counsel would contend that there is no payment for operational creditors since Operational Creditors are not to receive any payment in the event of liquidation of Corporate Debtor. Thus, Plan does not provide for payment to the Operational Creditor. The Learned Counsel for Resolution Applicant relied on the decision of Hon'ble NCLT Chandigarh Bench in the matter of

Seashells Infrastructures Private Limited vs. Rajpur Hydro Power Private Limited in CA No. 287/2018 in CP (IB) No. 35/CHG/HP/2017. Thus, Learned Counsel would contend the CoC has taken a right decision in approving the Resolution Plan submitted by Resolution Applicant and that it is in conformity with the provisions of Section 30 (2) of the Code.

17. The Applicant / Resolution Professional earlier filed IA No. 125/2018 for approval of the Resolution Plan submitted by M/s MSL. The said Application was disposed of along with IA 282 of 2018 on 28.09.2018. While considering the Application filed by Resolution Professional, the Tribunal noticed that the Liquidation Value of the Corporate Debtor needs to be raised by taking into account the average of the two valuations given by two Registered Valuers appointed by Resolution Professional besides direction to place the bids and to examine them in the light of revised Liquidation Value. This Tribunal further directed CoC to give opportunity to the Director (Suspended Board) to be present in the CoC meeting and permit them to offer their comments if any and record the same. However, Resolution Applicant preferred an Appeal to the Hon'ble NCLAT against the order. While Appeal was pending, the order of this Tribunal was complied. The Hon'ble NCLAT decided the main Appeal by observing that this Tribunal to pass order under Section 31 of IBC uninfluenced by its earlier order which is under challenge. The Appeal is thus, disposed of with above observations and directions. Hon'ble

NCLAT further passed an order in IA No.114 of 2019 dated 15.01.2019 that this Application IA 472 of 2018 to be disposed by 21.01.2019, the next date of hearing, by passing order under Section 31 of IBC.

18. The Resolution Professional has filed IA 472/2018 for approval of the Resolution Plan of M/s MSL. He filed Form-H shown as Annexure-11 at page No.285-289. The Liquidation Value which is revised at Rs. 597.54 crores is shown in Column No. 19. He has stated in Form-H that majority of CoC having voting share 87.10% of financial creditors approved the resolution plan. The Fair Value is shown as Rs.818.97 Crores. The CoC has considered the Resolution Plan submitted by M/s MSL along with eligible Resolution Plans in its 9th CoC meeting held on 16.10.2018 and approved the plan of MSL with the same percentage of voting of the Financial Creditors, as was done in the 8th CoC meeting held on 20.04.2018. It is not in dispute that the Resolution Plan of M/s MSL which was reconsidered by the CoC is for the same upfront payment of Rs. 477 crores even though there was increase in the Liquidation Value. To make it clear MSL did not revise the bid amount even though there is enhancement in the Liquidation value. Nevertheless, the CoC approved the Resolution Plan submitted by MSL even though the bid amount is far below the revised Liquidation Value.

19. Regulation 37 of IBBI (IRPCP) Regulations, 2016 provides for maximization of value of assets of

Corporate Debtor. Regulation 37 provides that Resolution Plan shall provide for the measures as may be necessary for insolvency resolution of the Corporate Debtor for maximization of value of its assets. The Plan shall provide for maximization of value of the assets of Corporate Debtor. Normally, Liquidation Value would presuppose actual value of the assets of the Corporate Debtor. The amount shown in the Liquidation Value is at Rs. 597.54 Crores which is the value of the assets of the Company. In other words, if the company goes for liquidation, the Company may realise the amount equivalent to the Liquidation Value if the assets of the company are sold. The maximization of the assets can be achieved only if the Resolution Plan submitted must be equivalent to the Liquidation Value. However, in this case, the CoC has approved the plan of MSL even though bid amount is far below the revised Liquidation Value. The difference between upfront / bid amount and the Liquidation Value is about Rs. 120 crores. It is true, the decision of Hon'ble NCLAT cited by Resolution Applicant, the Hon'ble Appellate Tribunal held that feasibility and viability of any Resolution Plan is to be decided by the CoC. It is within the wisdom of CoC to decide the feasibility and viability of any resolution plan. However, it is for the Adjudicating Authority to decide whether the plan is in conformity with the provisions of Section 30 (2) of the Code.

20. The next contention of the Learned Counsel to the Resolution Professional that the Plan submitted by

MSL is a most viable plan and also feasible and provides upfront payment of Rs. 477 crores to be paid to the creditors. Counsel contended, Liquidation Value is not to be looked into at CIRP stage. It can be looked into only at the time of liquidation. However, Regulation 37 provides for maximization of value of the assets of the Corporate Debtor. The Tribunal to consider whether plan approved by CoC provides for maximization of assets of Corporate Debtor. Though the Liquidation Value has been revised but there is a direction from the Hon'ble Appellate Tribunal that the plan submitted by MSL is to be considered under Section 31 of the Code, without being influenced by the previous order. Therefore, Tribunal to test the Resolution Plan in the light of parameters provided under Section 30 (2) of IBC. Section 30 (2) provides that Resolution plan to provide for payment of CIRP costs in priority to the payment of other debtors of Corporate Debtor. Secondly, plan must provide for payment of debt of Financial Creditors. Thirdly, to provide for management of the affairs of Corporate Debtor after approval of the Resolution Plan. Fourthly, to provide for implementation and supervision of Resolution Plan and fifthly, it does not contravene any of the provisions of law for the time being in force.

21. The contention of the Learned Counsel for Director (Suspended Board) that Resolution Plan filed by Resolution Applicant contravene Regulation 37, in the sense Plan does not provide for maximization of value of the assets of Corporate Debtor. The contention of

the Learned Counsel, plan contravenes Regulation 37 and therefore it is liable to be rejected. The Hon'ble NCLAT has directed this Tribunal to decide the plan filed by MSL under Section 31 of the Code without being influenced by the earlier order. The Resolution Professional filed fresh Application under Section 30 & 31 of the Code for approval of the plan along with minutes of 9th CoC meeting held on 16.10.2018. This Application is to be decided on the averments made therein by taking into consideration the minutes of the 9th CoC meeting.

22. The next contention of the Learned Counsel for Director (Suspended Board) that CoC has not called for revised bids and also failed to call for fresh bids following increase in Liquidation Value. On the other hand, Learned Counsel for Resolution Professional contended that there is no direction from the Adjudicating Authority to call for fresh bids or to ask the Resolution Applicants to revise the bids. When Liquidation Value is increased, the CoC should have asked the Resolution Applicants to revise the bids and opportunity should have been given to Resolution Applicants to revise the bids to achieve the object of maximization of value of assets even though there is no direction by the Tribunal in the earlier order. CoC ought to have directed the Resolution Applicants to revise their bid. However, in this case, such a step was not taken by the CoC.

23. The Resolution Professional filed fresh Application under Section 30 & 31 of the Code. He has given details in Form-H and furnished Liquidation Value at Rs. 432.92 crores as per Regulation 35 of IBBI (Insolvency Resolution Process for Corporate persons) Regulations, 2016, and Rs. 597.54 crores as per orders of this Tribunal dated 28.09.2018. The Resolution Plans were again considered by CoC in its 9th CoC meeting held on 16.10.2018. The Minutes of the 9th CoC is shown as Annexure-5. The minutes are shown at page Nos. 46-59. This meeting was called in pursuance of the orders of this Tribunal. The Resolution Plan submitted by M/s MSL was also taken up for consideration. The CoC has stated in the minutes that revised bids were not called for as there is no direction from the Tribunal and only direction is plans submitted by Resolution Applicants including MSL to be placed before CoC again for consideration. So, the plan submitted by M/s MSL alone was approved by majority of the members of CoC having 87.10% voting share. The Hon'ble NCLAT directed this Tribunal to dispose of Application under Section 31 of the Code without being influenced by the earlier order. The Resolution Professional has filed present Application enclosing the minutes of 9th CoC meeting wherein the CoC has considered the Resolution Plans including the Plan submitted by M/s MSL. The CoC has approved the plan submitted by M/s MSL even though it is below the revised Liquidation Value but CoC has considered the financial capability of M/s MSL and it has approved the same. The CoC has taken into

consideration the upfront amount at Rs. 477 crores as one of the grounds for approving the Resolution Plan submitted by M/s MSL.

24. The Resolution Plan submitted by M/s MSL is far below the revised Liquidation Value. The difference as I already stated is Rs. 120 crores. The upfront amount offered by M/s MSL is at Rs. 477 crores and the revised Liquidation value considered by CoC is Rs. 597.54 crores. The CoC is accepting the plan on the ground it is most feasible and viable and considering the financial status of M/s MSL, the Resolution Applicant.

25. The contention of the Counsel for Financial creditor / Indian Bank, the Resolution Plan submitted by M/s MSL is below the revised Liquidation Value and therefore the plan should have been rejected as it is not in conformity with Regulation 37. The contention of the Counsel for Indian Bank/Financial Creditor that the Bank will get more in case the Company goes for Liquidation than the share it is going to get from out of the upfront amount. The Indian Bank / Financial Creditor no doubt opposed for approval of the Plan in the 9th CoC meeting. However, majority of Financial Creditors having voting share of 87.10% approved the plan.

26. There is a direction from Hon'ble Appellate Tribunal that this Tribunal to pass orders under Section 31 without being influenced by the earlier order. The plan

submitted by M/s MSL is to be decided with reference to Section 30 (2).

27. The Resolution Professional has filed the present Application enclosing the minutes of 9th CoC. The question whether the plan submitted by M/s MSL is in conformity with Section 30 (2) of the Code. If it is in conformity, then the plan is to be approved under Section 31 of the Code. The CoC has examined all eligible resolution plans again in the 9th CoC meeting held on 16.10.2018. The Resolution Plan submitted by M/s MSL is below the revised Liquidation Value. The difference is about Rs. 120 crores. However, as per directions of the Hon'ble NCLAT, this Tribunal to decide the plan filed by M/s MSL without being influenced by its previous order.

28. The CoC has approved the Resolution Plan submitted by M/s MSL with a majority of voting share of Financial Creditors at 87.10%. The CoC in its wisdom has approved the Plan. No doubt Indian Bank, the other Financial Creditor having voting share at 12.90% opposed for approval of the Resolution Plan. The minimum required percentage of voting for approval of the Resolution Plan as per the latest amendment is 66%. In this case, the Resolution Plan with voting share of 87.10 of the Financial Creditors approved the plan.

29. The other contention raised that upfront payment is below the revised liquidation value and therefore, the Plan could not be accepted. On the other hand,

Hon'ble NCLAT has held in Company Appeal No. 637/2018 that this Tribunal to decide the Application under Section 31 of IBC without being influenced by the previous order. When such is the case, the revised Liquidation value has no role to pay while considering the Resolution Plan submitted by M/s MSL. The Tribunal has to test the Resolution Plan with reference to provisions of Section 30 (2) of IBC. The Resolution Professional certified that Plan of M/s MSL is in conformity with provisions of Section 30 (2) of the Code. So, the Liquidation Value prior to re-determination if taken into account, the upfront payment offered by M/s MSL is over and above the Liquidation Value. Therefore, the objection taken by the Director (Suspended Board) and also Indian Bank could not be taken into account in view of the direction of Hon'ble NCLAT.

30. The next contention raised that the Resolution Applicant has not obtained prior approval of the CCI as required under Section 31 (4) of the Code. The Counsel for Resolution Professional would contend that there is no need to obtain prior approval of CCI as the plan submitted by M/s MSL does not fall under the provisions of CCI. The Director (Suspended Board) has raised the same in the 9th CoC meeting and it is answered that such approval is not necessary. Even otherwise Section 31 (4) provides that necessary approval required under any law for the time being in force is to be obtained by Resolution Applicant within a period of one year or within the prescribed period

under such law. Therefore, Resolution Applicant can obtain necessary approvals in a period of one year if it is required. Thus, the Resolution Plan of M/s MSL filed by Resolution Professional is to be approved as it meets all the requirements of Section 30 (2) of IBC.

31. In the result, the Resolution plan submitted by M/s Maharashtra Seamless Limited is approved and that the same shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.

32. The revival plan of the company in accordance with the approved resolution plan shall come into force with immediate effect. The moratorium order passed by this Tribunal under Section 14 shall cease to have vacated.

33. The resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.

34. CA No. 472/2018 in CP (IB) No.49/7/HBD/2017 is disposed of in terms of the above.

21.1.19

RATAKONDA MURALI
MEMBER (JUDICIAL)

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