THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI

I.A. 1773 (PB) / 2020
IN
Company Petition No. (IB)- 452 (PB)/2018

Submission of Resolution Plan under Section 30(6) for approval under Section 31 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

M/s Nupur Finvest Private Limited

....Financial Creditor

vs.

M/s. Unnati Fortune Industries Private Limited

.....Corporate Debtor

AND

In the matter of:

Mr. Pradeep Kumar Mittal

Applicant/Resolution Professional

Order Pronounced on: 01.07.2020

Coram:

SH.CH. MOHD. SHARIEF TARIQ,
HON'BLE MEMBER (JUDICIAL)

SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

For the Applicant: Mr. Nipun Gautam, & Mr. Kanishk Khetan, Advs.

ORDER

PER- HEMANT KUMAR SARANGI, MEMBER (T)

1. This is an application filed by the Resolution Professional under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") seeking approval of the Resolution Plan under Section 31 of the Code read with regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in respect of the corporate debtor M/s. Unnati Fortune Private Limited.

2. The facts in brief necessary for disposal of the present application are that one of the Financial Creditors, M/s Nupur Finvest Private Limited, had preferred an application under Section 7 of the Code, for initiation of Corporate Insolvency Resolution Process against M/s. Unnati Fortune Private Limited ("Corporate Debtor"). The said Company Petition (IB)-452 (PB) / 2018 was admitted on 11.06.2019 imposing moratorium under Section 14 of the Code and the applicant Mr. Pradeep Kumar Mittal was appointed as an Interim Resolution Professional in

respect of the Corporate Debtor M/s. Unnati Fortune Private Limited.

3. Thereafter, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ("CIRP Regulations"), the Interim Resolution Professional made a public announcement in FORM-A on 18.06.2019 *inter alia* calling for the submission of claims of the creditors.

4. In terms of the provisions of Section 18(1) (c) of the Code, the Interim Resolution Professional constituted the Committee of Creditors.

5. The first meeting of the Committee of Creditors ("CoC") was convened on 17.07.2019. In the second meeting of CoC held on 28.08.2019 the IRP (applicant) was appointed to act as the Resolution Professional for the Corporate Debtor.

6. In terms of the Regulation 27 of the CIRP Regulations, 2016, the applicant appointed registered for valuation of the securities/financial assets of the corporate debtor and for determination of the Fair Value and Liquidation Value of the Corporate Debtor in accordance with Regulation 35 of the

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 ("CIRP Regulations, 2016").

7. With the approval of CoC in second meeting, the Applicant had issued Form G on 11.09.2019 seeking Resolution Plan for the Corporate Debtor. The last date for submission of Expression of Interest ["EOI"] was 26.09.2019 and a further Form-G was published after approval of CoC in third meeting held on 11.10.2019, wherein the last date of submission of EoI was 22.10.2019.

8. Thereafter in fourth meeting of CoC held on 16.11.2019,, the RP placed before CoC that he has received 2 Prospective Resolution Applicants, namely:

   a. One City Infrastructure Private Limited

   b. OESPL Private Limited

9. Thereafter in fifth meeting of CoC held on 28.11.2019, the resolution plans submitted by both the Prospective Resolution Applicants were discussed. Subsequently, in sixth meeting of CoC held on 04.12.2019 the RP invited both the Resolution

Applicants for bidding process and M/s. One City Infrastructure Private Limited was proclaimed as a higher bidder (H1) and became successful resolution applicant.

10. Meanwhile since the CIRP period was going to end the Resolution Professional filed an application before this Tribunal for extension of the CIRP period. The said application was allowed on 16.12.2019 and the CIRP period was extended till 06.03.2020.

11. It is submitted that the resolution plan was first proposed on 23.11.2019 and was subsequently modified on 05.12.2019, 18.12.2019, 02.01.2020, 24.01.2020 and 07.02.2020. Idn ninth meeting of CoC held on 07.02.2020 the final resolution plan was discussed and put up for e-voting and the resolution plan was approved unanimously.

12. It is submitted that pursuant to approval of the Resolution Plan by the CoC, the Applicant issued a Letter of Intent to the Resolution Applicant, inter-alia, informing that the revised resolution plan, as submitted before the CoC, was approved. Copies of Letter of Intent, Performance guarantee have been placed on record.

13. The resolution professional has placed the compliance certificate under Section 30(2) of the Code and has confirmed that the resolution plan submitted is in compliance with Section 30 of the Code read with Regulation 38 and 39 of the Regulations. Resolution professional has also placed a copy of the resolution plan as approved by CoC, stated to have been signed by the authorised representative of the resolution applicant.

14. In terms of Section 30 (6) of the Code read with Regulation 39 of the CIRP Regulations, 2016 the resolution professional has submitted the Resolution Plan for seeking an order under Section 31(1) of the Code for approval of the resolution plan unanimously passed by the committee of creditors under sub-section (4) of Section 30.

15. It has been submitted in the application and in Form H duly certified by Resolution Professional, that the Resolution Plan unanimously approved by the Committee of Creditors, meets the requirements as laid down in various clauses of sub-section (2) of Section 30 of the Code.

16. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the resolution plan clause 10.1 and 18.2 provides for payment of CIRP costs in priority over payments to any other creditors. *Be that as it may it is made clear that Insolvency Resolution Process cost shall be paid in its entirety by the resolution applicant in priority to other debts of the corporate debtor.*

17. As regards compliance of clause (b) of Section 30 (2) of the Code, the Resolution Professional has certified that clause 10.2 of the resolution plan provides for the payment of the debts of operational creditors in such manner as may be specified by the Board (IBBI) which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under Section 53.

18. There appears to be no discrimination in the resolution plan in respective class of creditors, as same treatment is provided to similarly situated each class of creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a

resolution plan, which may involve differential payment to different classes of creditors. Needless to say, that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors. Equitable treatment has been accorded to each creditor depending upon the class to which it belongs.

19. As a sequel to the aforesaid discussion it is seen that clause (b) of sub-section (2) of Section 30 of the Code stands satisfied.

20. In terms of Section 30(2)(c), the Resolution Plan provides for management of affairs of the corporate debtor after approval of the Resolution Plan. The management of the affairs and control of the business of the corporate debtor after approval of the Resolution Plan has been provided at clause 10.3 of the Resolution plan which *inter alia* provides that the Company shall continue as a going concern and operate in its normal course of business upon implementation of the Resolution Plan. The Resolution Professional has confirmed in the compliance certificate given in Form H that the Resolution Plan provides for the management and control of the business of the corporate debtor.

21. Clause 10.4 of the Resolution Plan provides for adequate means for supervising its implementation that fulfills the requirement envisaged by Section 32(2)(d) of the Code. It has been stated that one representative of Lenders alongwith two representatives of resolution applicant shall act as the monitoring agency.

22. In short, the resolution professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of the law for the time being in force. The Resolution Applicant has also given a declaration to that effect in clause 10.5 of the Resolution Plan.

23. The Resolution Applicant has given adequate declaration and undertaking on their eligibility to submit the Resolution Plan. At para 4(ii) of Form H Resolution Professional has also certified that *the Resolution Applicant has submitted an affidavit in this regard.* It has been confirmed that the Resolution Applicant is eligible to submit resolution plan and does not fall

under any of the category as mentioned in Section 29A of the Code.

24. As a sequel to aforesaid discussions, we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law for the time being in force appears to have been contravened.

25. In respect of provisions of Regulation 39 (4) a copy of performance security as deposited by resolution applicant has been placed on record. It seen that Bank Guarantee of Rs. 2 Crores issued by DCB Bank cover from 29.02.2020 to 28.11.2020 has been submitted by resolution applicant.

26. The Resolution Professional has confirmed compliance of Section 38 (2) and (3) in the compliance filed alongwith the application.

27. It is pertinent to mention here that in the resolution plan it is mentioned that Rs. 1 lac is to be paid to the Custom Department, however during hearing the resolution applicant has stated that Rs. 34 lacs have to be given to the custom department. For clarity in this regard the resolution applicant

was directed to file an affidavit vide order dated 13.03.2020 passed by this Bench.

28. In compliance of the aforementioned order the Resolution applicant has filed affidavit dated 20.03.2020 and submitted as follows:

> *"4. That the resolution applicant undertakes to ensure the compliances of section 30 (2) (b) of the Insolvency and Bankruptcy Code, 2016 by clarifying that:*
>
> *i. the Insolvency Resolution Process Cost (hereinafter called as CIRP Cost) is already paid from the internal accruals of the Corporate Debtor.*
>
> *ii. the CIRP cost which provided as 33 Lakhs in Resolution Plan shall be paid towards the claim of Custom Department alongwith Rs. 1 Lakh which is already proposed in the Resolution Plan itself.*
>
> *iii. the Custom Department will be paid Rs. 34 Lakhs as directed in the order dated 13.03.2020 which is the amount to be paid to an operational creditor in consonance with section 30 (2) (b) of the Insolvency and Bankruptcy Code, 2016."*

29. In view of the aforesaid discussions and as no infirmity have been brought out upon screening of the Resolution Plan; ***we hereby approve the Resolution Plan submitted by M/s One City Infrastructure Private Limited under sub-section (1) of Section 31 of the Code.***

30. We also grant Liberty to the monitoring Committee to apply to the Tribunal for any further direction in order to ensure effective implementation of the plan, if such a necessity arises.

31. In respect of reliefs and concession sought for in the Plan which are beyond the jurisdiction of this Tribunal, liberty is accorded to the Monitoring Committee to pursue such matters before the relevant authorities which shall be considered in accordance with law.

32. In terms of sub-section (4) of Section 31 of the Code the resolution applicant shall obtain the necessary approval required under any law for the time being in force within a period of one year from the date of this order or within such period as provided for in such law, whichever is later.

33. It is clarified that Section 30 (2) (f) of the Code mandates that the resolution plan should not be against any provisions of

the existing law. The Resolution applicant therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein.

34. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its data base in terms of Section-31(3)(b) of the Code.

35. The approved 'Resolution Plan' shall become effective from the date of passing of this order.

36. I.A. 1773 (PB) 2020 and CP No. (IB) 452 (PB)/ 2018 are disposed of accordingly.

37. The order is pronounced. Let the copy of the order be served to the parties involved in the plan.

-Sd-

(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)

-Sd-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)