IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI

*MA/520/2018 in CP/668/IB/2017 filed by the Resolution Professional viz., Mr. S. Rajendran under **Section 31** of the Insolvency and Bankruptcy Code, 2016.*

In the matter of **M/s. Star Agro Marine Exports Private Limited**

M/s. Union Bank of India Limited
... Financial Creditor

Vs.

M/s. Star Agro Marine Exports Private Limited
... Corporate Debtor

Order delivered on 11th of March, 2019

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For Resolution Applicant: Mr. Thriyambak J. Kanan, Mr. Nakul Sachdeva & Mr. Prateek Mishra, Counsels
For RP : Ms. M. Savitha Devi & Ms. R.V Yaiura Devi, Counsels
RP in Person

ORDER

Per: CH.MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. The Miscellaneous Application No. MA/520/2018 has been filed in CP/668/IB/CB/2017 on 04.10.2018 by the Resolution Professional viz., Mr. S. Rajendran, under Section 31 of the Insolvency and Bankruptcy Code, 2016,

(in short 'I&B Code, 2016'). The prayer made by the Resolution Professional *inter alia* is to seek an order for ***approval*** of the Resolution Plan which has been approved by the Committee of Creditors (CoCs) under Section 30(4) of the Insolvency and Bankruptcy Code, 2016.

2. Initially, an Application i.e. CP/668/(IB)/CB/2017 under Section 7 of I&B Code, 2016 read with Rule 4 of the Insolvency Bankruptcy (Application to Adjudicating Authority) Rules, 2016, was filed by the Union Bank of India Limited (in short, 'Financial Creditor') against M/s. Star Agro Marine Exports Private Limited (in short, 'Corporate Debtor') and the same was admitted on 08.01.2018 under which CIR Process was initiated against the Corporate Debtor, moratorium was declared and the IRP was appointed.

3. The IRP took over the management and affairs of the Corporate Debtor and caused public announcement

under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016, for filing the claims by the creditors. After verification of the claims received, the IRP constituted Committee of Creditors (CoCs).

4. In 1st meeting of the CoCs held on 03.03.2018, the IRP viz., Mr. S. Rajendran, was recommended for appointment of Resolution Professional. The time period of CIR Process was extended by this Authority for a period of 90 days i.e. from 07.07.2018 to 04.10.2018 under Section 12 of I&B Code, 2016 by passing an order in MA/207/2018 on 06.07.2018. Thereafter, the CoCs was reconstituted subsequent to further claims received from Financial Creditors of the Corporate Debtor.

5. As per Section 25 (2) (h) of I&B Code, 2016, the Resolution Professional has invited 'Expression of Interest' (EoI) calling for the 'Resolution Plan' for the

Corporate Debtor from the prospective Resolution Applicants. Pursuant to the invitation of 'EoI', the Resolution Professional received two Resolution Plans from the proposed Resolution Applicants viz., ***Sandya Aqua Exports Private Limited (SAEPL)*** and ***Seelam Infra Developers Pvt. Ltd. (SIDPL).*** Both the Resolution Plans were placed before the CoCs in its 5th Meeting, held on 03.09.2018 for deliberation. After deliberations and discussions, the Resolution Applicants were given an opportunity to submit improved Resolution Plans for Rs.50.46 Crores.

6. One of the Resolution Applicants viz., SIDPL has submitted the improved Resolution Plan, which was placed before the CoCs in its 6th Meeting, held on 14.09.2018. The Resolution Plan submitted by SIDPL was unanimously approved by the CoCs in its 7th Meeting held on 01.10.2018 and the Resolution passed is as follows:-

***"RESOLVED** that the Resolution Plan submitted by Seelam Infra Developers Pvt. Ltd (CIN U452000TG2014PTC096306) be and is hereby accepted as per the voting percentage as given below.*

S.No.	Lenders	Voting share %	Name with designation (represented by)	Accepted / dissented/ abstained	Signature
1	Union Bank of India	95.35	Renjit Swaminathan Asst. General Manager	Accepted	Sd-
2	ICICI Bank ltd	4.65	Ganesh R Joint General Manager	Accepted	Sd-
	Total	100%			

***RESOLVED further** that the Committee of Creditors (CoC) hereby recommend for a "Monitoring Committee" comprising of Resolution Professional and representatives from CoC, Resolution Applicant, for effective implementation of the resolution plan. It was also decided to authorize the Resolution Professional Mr. S.Rajendran, (IBBI Regn. IBBI/IPA-0021/IP-N00098/2017-18/10241) to do all that are necessary to get the approval of NCLT in this regard.*

RESOLVED further *that the Committee of Creditors hereby authorise the Resolution Professional Mr. S.Rajendran, (IBBI Regn. IBBI/IPA-0021/IP-N00098/2017-18/10241) to submit the duly approved Resolution Plan to NCLT and complete all necessary formalities as are required in this connection".*

7. Based on the assumptions that the corporate debtor provides for the financial performance, estimated cash flow for consecutive three years and technical aspects such as it is having well equipped machine room and 100% power back up arrangement etc., the Resolution Applicant has proposed the 'Resolution Plan' which provides that various works are to be performed by the Resolution Applicant such as to continue to operate the Unit on job work basis by executing the orders of ITC Ltd.; to enhance the capacity utilization and increase production to the extent of 40 tons per day by completing the balance work. The human resource shall be planed

based on the requirements from time to time and working capital to be met out of equity and internal accruals and through additional sources i.e., debt. The 'Resolution Plan' further provides for the payment of the dues for workmen and employees of the Corporate Debtor. It provides the details of the liabilities & borrowings, Debtors and Loans of the Company, the position of the creditors of Corporate Debtor as accepted by the IRP, the securities held by the Financial Creditors and the details of the personal guarantees. It also provides the details of amounts due to the workmen and employees for the period of two years and twelve months respectively preceding the date of CIR process.

8. As regards to the distribution of money towards the statutory liabilities, the 'Resolution Plan' provides for the various creditors mentioned therein such as CIRP expenses, Employees and Workmen and *specifically noted that the Resolution Applicant will not consider any other liability pertaining to Operational Creditors such as Income*

Tax, Sales Tax and any other statutory dues apart from wages of workmen and salaries of employees. The reason given for the said treatment is that in the event of Liquidation of the company the said operational creditors would not get anything.

9. During the course of hearing, an issue has been raised as to *whether the claim of the Operational Creditors like the income tax department, sales tax department or any other statutory authority's dues can be waived off under the provisions of the I&B Code, 2016 and the regulations made thereunder while approving the 'Resolution Plan'.* In this connection we may make a reference to Clause (b) of Sub Section (2) of Section 30 which is extracted as follows:

> *"Section 30(2)- the Resolution professional shall examine each resolution plan received by him to confirm that each resolution plan-*
>
> > *(b) provides for the payment of the tax of the operational creditors in such manner as may be specified by the board which shall not be less than the amount to be paid to the operational*

creditors in the event of liquidation of the corporate debtor under Section 53."

Further, we may also refer to Regulation 37 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, which provides as follows:

> *"37. A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximasitation of value of its assets, including but not limited to the following;-*
>
> *(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;*
> *(f) reduction in the amount payable to the creditors."*

The above quoted provisions of the I&B Code and the Regulations bring out that a provision has to be made in the resolution plan in favour of the operational creditors which shall not be less than the amount to be paid to them in the event of liquidation of the Corporate Debtor under Section 53. Here emerged two situations, e.g. first, in the event of liquidation of the Corporate Debtor, if the assets of the corporate debtor are sufficient to meet out the liability of the all the stakeholders including the operational creditors then a provision could be made, which shall not be less than the amount to be paid to them in the event of liquidation of the corporate debtor under Section 53, second, if the assets of the corporate debtor are not sufficient to meet out the liability of the operational creditors in the event of liquidation of the Corporate Debtor, then no provision could be made as provided under Section 30(2)(b) of the IBC. Therefore, under second situation the claims of the operational creditors like income tax department, sales tax department or any of the other statutory authorities cannot be met out of the sale of the assets of the corporate debtor in the event of liquidation. In the said situation no provision could be possible to be made in the 'Resolution Plan'. Besides this, the Regulation quoted above clearly provides that a resolution plan shall provide for measures as may be necessary for insolvency resolution process of the corporate debtor for maximization of value of its assets by curing or waiving off any breach of the terms of any debt due from the corporate debtor and to reduce the amount payable to the creditors. This makes it clear that the Resolution Plan which cures or waives of any breach of the terms of any debt due from the corporate debtor and reduces the amount payable to the creditors is valid in the eye of law and can be approved by the adjudicating authority provided the same is in compliance with Section 30(2) of the I&B Code, 2016 and the Regulations made thereunder. The net effect of the approval of such Resolution Plan may be that the Operational Creditors/statutory authorities may not be getting anything for the satisfaction of their claims. Moreover, there are precedents which show that the NCLT has waived off statutory dues while approving the Resolution Plans, some of which are as follows:

- *M/s. Reliance Commercial Finance Ltd –vs- M/s. Ved Celluse Ltd (NCLT, New Delhi, Principal Bench – (IB)-156(PB)/2017*
- *M/s. SREI Infrastructure Finance Pvt. Ltd –vs- Assam Company India Ltd And C.A.Kannan Tiruvengadam (on behalf of Assam Company India Ltd-CD) (NCLT,*

Guwahati Bench, I.A.No.58/2018 in CP(IB).No.20/GB/2017)

- *State Bank of India –vs- MOR Farms Pvt. Ltd (NCLT, Chandigarh Bench, Chandigarh)*
- *M/s. Jekpl Private Limited, through its Resolution Professional (NCLT, Allahabad Bench – CA No.223/2017 in CP No.24/ALD/2017)*

Besides the above, there is no requirement to issue notice to the operational creditors or any of the other creditors at the time of approval of the resolution plan under Section 31(1) of the IBC 2016 by the Adjudicating Authority. This view is fortified with the observation made by the Hon'ble NCLAT in *M/s. Madhya Gujrat Vij Company Ltd –vs- M/s. Kalptaru Alloys Pvt. Ltd & Ors (Company Appeal (AT) (Insolvency) No.211 of 2018) which is as follows;*

> *"2....such submission cannot be accepted as there is no requirement to issue notice to the Operational Creditor(s)' or any other 'creditors' for approving a 'Resolution Plan' under Section 31 of the I&B Code, having already approved by the Committee of Creditors' by majority voting share and in absence of any violation of Section 30(2) of the I&B Code."*

Therefore, the issue raised herein above stands answered in affirmative.

10. The Resolution Applicant has proposed to invest a sum of Rs. 50.46 crores for taking over the business of the Corporate Debtor. The amounts proposed by the Resolution Applicant viz. SIDPL in the Resolution Plan and final allocation made by the COC are as below:

Particulars of Creditor/Expenses	**Amount proposed by SIDPL (Rs. Crores)**	**Amount allocated by COC(Rs. Crores)**
CIRP	0.95	0.95
Operational Creditors		
Workmen	0.11	0.11
Employees	0.78	0.78
Audit Fees	0.06	0.06
Director's remuneration	0.19	-----
Combat Security Services	0.06	0.06
ESIC	0.09	0.09
PF	0.11	0.11
Essae Teraoka P. Ltd	0.02	0.02
Secured Financial Creditors-Union Bank of India	45.86	45.86
Unsecured Financial Creditor- ICICI Bank	2.23	2.23
Allocation towards statutory dues	-----	0.19
Total	50.46	50.46

11. The total amount offered by the Resolution Applicant is Rs. 50.46 Crores which will be brought through a mix of debt and equity. The details of the release of funds is given as follows:

No.	Details	Amount Rs. In Crores
1	Within 30 days from the Receipt of Official Communication Received from COC and Resolution Professional about the Approval of Resolution Plan	10.00
2.	Within further 30 days (overall 60 days) from the final order	40.46
	Total	**50.46**

However, it has been noted that the Resolution Applicant has arranged the upfront payment of Rs. 10 crores after extension of the period of time for approval of the Resolution Plan, to which the COC concurred in.

12. The terms and conditions of the Resolution Plan provide that the management and control of the business of the Corporate Debtor would remain with duly appointed monitoring committee. The Monitoring

Committee shall submit a detailed report to NCLT upon completion of implementation of the Resolution plan which has been approved with 100% of voting share by the financial creditors. The expenses incurred by the Monitoring committee shall be borne by the Resolution Applicant on agreed terms. The payments contemplated in the Resolution Plan shall be the Corporate Debtor's full and final performance and satisfaction of all its claims. No other payments or settlement (of any kind) will be made to any other person in respect of the claims filed under the Resolution Process against the Corporate Debtor. All the guarantees which have not been invoked till the plan approve date shall stand abated/extinguished. All the outstanding negotiable instrument issued by the Corporate Debtor including demand promissory note, post-dated cheques and letters of credit shall stand terminated and the Corporate Debtor's liability under such instrument shall stand extinguished. This authority deems it fit to direct to the ECGC/RBI/DRI/Income tax/sales Tax/ESI or any regulatory/revenue authority to remove the company's name from SAL, defaulters' list/ willful defaulters' list and discharge/write off any liability levied on, etc. The reason for giving this direction is that the operational creditors, except the provision(s) made in the Resolution Plan, would not get anything in the event of liquidation of the Corporate Debtor. Therefore, for successful implement of the Resolution Plan as approved by the COC, the Resolution Applicant and its nominees will take over the management of the Company and if the Resolution Application is saddled with statutory liabilities then the Resolution Plan will get frustrated and the Company has to face the liquidation under the IBC 2016. Therefore, there must not be any financial obligations other than as provided in the Resolution Plan to be met by the Resolution Applicant and the Corporate Debtor till the Resolution Plan is implemented in its length and breath.

13. From the plan approval date, all inquiries, investigation and proceedings, whether civil or criminal,

suits, claims, disputes, proceedings in connection with the Corporate Debtor or affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand withdrawn and dismissed.

14. In short, the 'Resolution Plan' approved by the CoCs with 100% voting share and placed before this authority appears to be in line with the object and purport of I&B Code, 2016, as it provides for insolvency resolution in a time bound manner for maximization of value of assets, viability of credit and balancing the interest of the stakeholders.

15. Thus, 'Resolution Plan' filed meets the requirements of Section 30(2) of I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A. The

Resolution Professional has also certified that the "Resolution Plan" approved by the CoCs does not contravene any of the provisions of the law for the time being in force. The Compliance Certificate is placed at pages 56 to 61 of the typed set filed with the Application. The 'Resolution Plan' annexed with MA/520/2018 filed in CP/668/IB/2017 is hereby approved, which will become effective from the date of passing of this Order and is binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan including Resolution Applicant.

16. The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1) of Section 31 of the I&B Coded, 2016, obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by this Authority or within such period as provided for in such law.

17. The order of moratorium dated 08.01.2018 passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall ceased to have effect from the date of passing this Order.

18. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI, so that the Board may record the same on its data-base.

19. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.

20. Accordingly, MA/520/2018 filed in CP 668/IB/2017 stands disposed of.

21. The Order is pronounced in the open court.

(CH.MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)

P. ATHISTAMANI