THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI

C.A. 2435 (PB)/ 2019
IN
Company Petition No. (IB)-76 (PB)/2018

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

Order Dictated on: 17.07.2020
Order Delivered on: 27.08.2020

In the matter of:

M/s. ORIENTAL BANK OF COMMERCE

....Financial Creditor

vs.

M/s. PELLET ENERGY SYSTEMS PRIVATE LIMITED

.....Corporate Debtor

AND

In the matter of:

Ms. RESHMA MITTAL

.....Applicant &
Resolution Professional

Coram:
SH. B.S.V. PRAKASH KUMAR,
HON'BLE ACTG. PRESIDENT
SH. HEMANT KUMAR SARANGI,
HON'BLE MEMBER (TECHNICAL)

For the Applicant: Mr. Rajiv K. Virani, Mr. Videsh Vaish, Mr. Uttam Dutt,Advocates with Ms. Reshma Mittal RP
For the Respondent: Mr. Anupam Kumar, Sr. Manager (PNB), Mr. Pradeep Mishra and Mr. Suraj Singh, Advocates for UPCL, Mr. Amar Dave, Mr. Rahul Arya and Mr. Ashish Choudhary, Advocates, Mr. Ashish Anand, Advocate

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. Pellet Energy Systems Private Limited.

2. The facts in brief necessary for disposal of the present application are that, one of the Financial Creditors, M/s. Oriental Bank of Commerce had preferred an application under Section 7 of the Code, for initiation of Corporate Insolvency Resolution Process (CIRP), against M/s. Pellet Energy Systems Private Limited ("Corporate Debtor"). The said Company Petition (IB) - 76 (PB)/ 2018 was admitted on 20.07.2018, imposing moratorium under Section 14 of the Code. Ms. Reshma Mittal, was appointed as an Interim Resolution Professional (IRP), in respect of the Corporate Debtor.

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, *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. The CoC in its 1st meeting held on 17.08.2018 resolved to continue the IRP as Resolution Professional (RP), of the Corporate Debtor.
5. As per the requirements of Section 25(2)(h) of the IBC, 2016, the RP initiated the process of inviting Prospective Resolution Applicant(s), for submission of Resolution Plan(s) for the Corporate Debtor. In this regard, an Expression of Interest (EOI) was published in the All India Edition of Business Standard (Hindi & English), dated 01.10.2018 for widespread coverage. As per the said announcement, the last date of receipt of the EoI's was 18.10.2018 (06:00).
6. As per the submissions made by the Applicant, the average Fair Value as per valuation report is Rs. 12 crore and liquidation value is Rs. 6 crore.

7. Thereafter, in response to the afore stated public announcement, two (2) participants submitted their Expressions of Interest, namely:

    a. M/s. Abellon Clean Energy Limited

    b. Patanjali Ayurveda Limited

8. The Applicant further states that on 03.12.2018, the RP received the Resolution Plan from the representative of M/s. Abellon Clean Energy Limited. On 05.12.2018, the representative of M/s. Patanjali Ayurveda, vide its email informed the Resolution Professional that they have decided not to participate in the bidding process. The updated resolution plan was received from the Resolution Applicant on 12.04.2019.

9. The RP in compliance of provisions of Section 30(3) of the Code presented the said Resolution Plan before the CoC in its 11th CoC meeting held on 12.04.2019 for its approval. However, the said Resolution Plan submitted by the Resolution Applicant was unanimously (100%) rejected by the members of the CoC. In the same meeting, it was proposed for the Liquidation of the Corporate Debtor and the same was approved unanimously (100%), by the members of the CoC, in the said meeting.

10. Thereafter, considering the above background, an application under Section 33(2) of the IBC, 2016, for seeking directions from this Bench of the NCLT, for allowing initiation of liquidation process of the Corporate Debtor was filed on 22.04.2019.

11. In view of the same this bench in its order passed in CA-1025(PB)/ 2019, dated 02.09.2019, ordered as follows:

> *"Mr. Balvinder Ralhen, learned counsel for the financial creditor namely Oriental Bank of Commerce (who is the major financial creditor holding 85.75% voting share in addition to others), has stated that the Resolution Plan submitted by Abellon Clean Energy Limited and Mr. Bharat Sharma can be considered and the CoC Constituted by the Oriental Bank of Commerce- financial creditors has no objection.*
>
> *The RP shall also convene meetings of the CoC at the earliest and finalize the matter within ten days.*
>
> *In view of the above, the orders on the application filed under Section 33(2) of the Code (CA-775(PB)/2019) are deferred"*

12. Further, it has been stated by the Applicant that, in compliance of the said order dated 02.09.2019, of this bench, the RP convened the 12th meeting of CoC on 07.09.2019. The item for taking a decision on the Resolution Plan submitted by M/s.

Abellon Clean Energy Limited jointly with Mr. Bharat Sharma, the Resolution Applicant was discussed in the said 12th Meeting, however due to non-submission of the Resolution Plan within the timelines, no effective discussion took place on the said agenda item.

13. This bench vide its order dated 16.09.2019, inter-alia, directed that:

> *"Learned counsel for the Resolution applicant submits that he may be allowed to visit the plant of the Corporate Debtor. Learned counsel for the Resolution Professional has submitted that the Resolution Applicant shall be allowed to visit the plant of the Corporate Debtor. Be that as it may in the interest of justice and in order to explore the possibility of having a resolution plan, we allow another opportunity to convene the meeting of CoC within 7 days thereof to decide on the Resolution Plan submitted by the resolution applicant. The decision of CoC may be placed before us on the ensuing date of hering."*

14. The Applicant states that, the representative(s) of M/s. Abellon Clean Energy Limited, visited the plant of Corporate

Debtor on 18.09.2019, thereafter on 19.09.2019, M/s. Abellon Clean Energy Limited, jointly with Mr. Bharat Sharma, submitted a Resolution Plan dated 19.09.2019, with better terms and the same was shared with the members of the CoC on 19.09.2019.

15. The Applicant further states that, in compliance of the order dated 16.09.2019, passed by this Tribunal, the RP convened 13th meeting of the CoC on 20.09.2019, wherein, in the agenda, inter-alia, the subject matter was to take decision on Resolution Plan submitted by M/s. Abellon Clean Energy Limited jointly with Mr. Bharat Sharma, the Resolution Applicant. The members of the CoC requested the representative of the Resolution Applicant, who was present in the said meeting, to increase the amount and also requested them to shorten the time period for the Resolution Plan. The Resolution Applicant agreed to the said request and after sometime, submitted the revised resolution plan dated 20.09.2019 ("Final Resolution Plan").

16. Thereafter, in the said 13th CoC meeting, after discussion & deliberations and as per the directions of the CoC, the Resolution Plan dated 20.09.2019, received from M/s. Abellon Clean Energy Limited jointly with Mr. Bharat Sharma was put to vote by way of physical voting.

17. As per the voting conducted as mentioned above, the Resolution Plan dated 20.09.2019, submitted by M/s. Abellon Clean Energy Limited jointly with Mr. Bharat Sharma was voted in affirmative with 85.75% voting percentage, and the said Resolution Plan has been approved by the CoC.

18. 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, r/w 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 authorized representative of the resolution applicant.

19. 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, passed by the committee of creditors under sub-section (4) of Section 30.

20. It has been submitted in the application, and in Form H duly certified by Resolution Professional, that the Resolution Plan 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.

21. The proposed payment plan and other terms and conditions in the Final Resolution Plan of M/s. Abellon Clean Energy with Mr. Bharat Sharma as approved by the CoC are, inter alia, as follows:

(Amount in Rs. lakh)

	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to theAmount Claimed (%)
	(2)	(3)	(4)	(5)	(6)	(7)
	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:				

		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	3781.52	3781.52	2006.85	53.07%
		Total[(a) + (b)]	3781.52	3781.52	2006.85	53.07%
	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:				

		(i) who did not vote in favour of the resolution Plan	643.90	608.21	NIL	NIL
		(ii) who voted in favour of the resolution plan	NA	NA	NA	NA
		Total[(a) + (b)]	643.90	608.21	NIL	NIL
	Operational Creditors	(a) Related Party of Corporate Debtor	NA	NA	NA	NA
		(b)Other than (a) above:				
		(i)Government				

		(ii)Workmen		NA	NA	NA	NA
		(iii)Employees PF		NA	NA	NA	NA
		(iv) Other Operational Creditors		5.06 335.90	5.06 268.20	5.06 70.00	100% 21.40%
		Total[(a) + (b)]		340.96	273.26	75.06	-----

	Other debts and dues -					
		-Labour Claim	NA	NA	1.00	------
		-Appeal pending with Commissioner of income tax	NA	NA	2.00	-------
		-Uttrakhand power Corporation Limited	55.48	37.08	21.40% of the outstanding amount as on CIRP commencement date	21.40% of the outstanding amount as on CIRP commencement date plus amount of invoice

					plus amount of invoice raised during CIRP less amount waived by UPCL less amount paid by RP	raised during CIRP less amount waived by UPCL less amount paid by RP
Grand Total		4776.16	4662.77			

22. In respect of compliance of Section 30(2)(a), of the Code, it is seen that there is a provision in the resolution plan which 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.

23. As regards compliance of clause (b) of Section 30 (2) of the Code, the Resolution Professional has certified that 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.

24. There appears to be no discrimination in the resolution plan in respective class of creditors, as same treatment is provided to similarly situated 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 to 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.

25. 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. 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 in 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.

26. 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 the supervision and implementation of the Resolution Plan will be done by the Resolution Applicant company through submission of quarterly report on the compliance and supervision of the Resolution Plan to the secured Creditors till their dues are fully settled.

27. 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.

28. 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 categories as mentioned in Section 29A of the Code.

29. 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.

30. In respect of provisions of Regulation 39 (4),the RP in Form H states that, the evaluation matrix, RFRP, Bidding process was approved by COC on 29.10.2018 and RFRP was issued on 02.11.2018 which is prior to regulation 36B (4A).

31. The Resolution Professional has confirmed compliance of Section 38 (2) and (3) in the compliance filed along with the application.

32. 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. Abellon Clean Energy Limited with Mr. Bharat Sharma under sub-section (1) of Section 31 of the Code.***

33. 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.

34. In respect of reliefs and concessions sought for in the Plan, an order dated 17.07.2020 has already been passed by this bench in that regard and the same may be referred to along with this order.

35. In terms of sub-section (4) of Section 31 of the Code, the resolution applicant shall obtain 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.

36. 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.

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

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

39. C.A. 2435 (PB)/ 2019, in CP No. (IB) 76 (PB)/ 2018 is disposed of accordingly.

Let the copy of the order be served to the parties involved in the plan.

Sd/-

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)