IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
DIVISION BENCH
COURT-1

ITEM No.130
IA/833(AHM)2021 in CP(IB) 407 of 2018

Order under Section 30 IBC,2016

IN THE MATTER OF:

Shyam Rathi RP of K K Kadri Paper Mills Pvt ltd ....**Applicant**
V/s
Edelweiss Asset Reconstruction Company Ltd & Ors ....**Respondent**

Order delivered on ..15/02/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

MADAN B GOSAVI
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
COURT-1

IA 833 of 2021 in
CP (IB) No. 407/7/NCLT/AHM/2018

(An application under section 30(6) of Insolvency and Bankruptcy Code, 2016 for approval of Resolution Plan)

<u>In the matter of :</u>

Mr. Shyam Sundar Rathi
(RP of K K Kadri Paper Mills Pvt. Ltd.) ..... Applicant

Versus

Edelweiss Asset Reconstruction
Company Limited and Ors. ..... Respondents.

MEMO OF PARTIES

Mr. Shyam Sundar Rathi
RP of Corporate Debtor
Having its address at A1707, Oberoi
Splendor, JVLR, Andheri
East, Mumbai-400 060.

..... Applicant

Versus

1) Edelweiss Asset Reconstruction Company Limited, having its registered office at Edelweiss House, Off CST Road, Kalina, Santacruz (East) Mumbai-400 098

2) Mr. Kalekhan K Kadri,
Residing at Plot no. 4, Silvassa
Roads, Dungra, Vapi, Gujarat

3) Mr. Hussain F. Kadri,
Residing at Plot no. 4, Silvassa
Roads, Dungra, Vapi, Gujarat.

4) Mr. Sadasiv Shetty
Residing at 18A, Tower D, Viceroy
Park, Near Thakur Cinema,
Thakur Village, Kandivli East,
Mumbai-400 101, Maharashtra.

...Respondents

Order Reserved on : 02.02.2022
Order Pronounced on : 15.02.2022

Coram: Madan B. Gosavi, Member (Judicial)
Ajai Das Mehrotra, Member (Technical)

Appearance:
Mr. Gaurav Mathur, Advocate a.w. Mr. Shyam Rathi (RP) for the Applicant. Mr. Pavan S Godiawala, Advocate for the Respondent.

ORDER

[Per: Madan B. Gosavi, Member (Judicial)]

1. This application is filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by Mr. Shyam Sundar Rathi, Resolution Professional (hereinafter referred to as "RP") of the Corporate Debtor, viz., M/s. K K Kadri Paper Mills Pvt. Ltd.

2. The Corporate Debtor has been admitted in Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") vide order

dated 25.07.2019 as per the application filed by M/s. Edelweiss Asset Reconstruction Company Ltd./Financial Creditor under Section 7 of IBC, 2016. The Applicant was appointed as the Interim Resolution Professional (hereinafter referred to as "IRP").

3. On 09.08.2019, the Applicant who was then IRP had made a public announcement of CIRP of the Corporate Debtor and called upon the Creditors of the Corporate Debtor to submit their claims with proof of debts. The IRP received claims from two creditors i.e. (1) Edelweiss Asset Reconstruction Company Ltd./Financial Creditor (2) State Tax Department of Gujarat/Operational Creditor. The IRP then constituted Committee of Creditors (hereinafter referred to as "CoC") consisting of sole Financial Creditor i.e. Edelweiss Asset Reconstruction Company Ltd. with 100% voting rights.

4. On 05.09.2019, the first CoC meeting was held where the Applicant's appointment as the RP was confirmed. It is seen from the material on record that in its very first meeting the COC passed resolution requesting this Adjudicating Authority to pass order of liquidation of the Corporate Debtor. However, this Authority vide order dated 08.09.2020 in IA 638 of 2019 in CP(IB) 407 of 2018 noted that the COC did not make any effort to resolve insolvency of the Corporate Debtor, hence, rejected that application and directed the COC and the RP to make some efforts to resolve the insolvency. Order passed by this Adjudicating Authority rejecting application for liquidation was challenged before Hon'ble NCLAT. However, later that appeal was

withdrawn. Thereafter, the COC held its 2nd meeting on 20.08.2021.

5. In the meantime, CIRP period had completed. However, considering the pendency of various litigations in between the parties right upto the Hon'ble Supreme Court, this Adjudicating Authority allowed the application vide order dated 01.11.2021 in IA 675 of 2021 in CP(IB) 407 of 2018 filed by the RP for exclusion of certain period from CIRP period. This Adjudicating Authority directed the RP to complete the CIRP within 30 days.

6. It is not in dispute that the Corporate Debtor is Micro, Small and Medium Enterprises (hereinafter referred to as "MSME"). Hence, in view of Section 240A of IBC, 2016, the related parties of the Corporate Debtor were in position to submit resolution plan as they were not disqualified under Section 29A of IBC, 2016.

7. It is also evident from the material available on record that two directors of the Corporate Debtor namely Mr. Kalenkhan K Kadri and Mr. Hussain F. Kadri alongwith one Mr. Sadasiv Shetty submitted the resolution plan to the COC.

8. The COC considered feasibility and viability of the resolution plan as per Section 30(4) of IBC, 2016.

9. The COC approved the said plan with 100% vote. The Applicant/RP submitted before us the said resolution plan for our approval as per Section 31 of the IBC, 2016. Section 31 of IBC, 2016 requires this Authority to examine the resolution plan

as approved by the COC and to see whether the plan meets requirements stated under Sub-section 2 of Section 30 of IBC, 2016. In this case, the COC has approved the resolution plan by 100% vote in its commercial wisdom, hence, we cannot go into that aspect whether the plan is commercially viable or not. We have only to consider whether plan meets requirements as stated under Section 30(2) of IBC, 2016.

10. Section 30(2) of IBC, 2016 mandates that the resolution plan must comply the following requirements:

   a. It must provide for payment of CIRP costs.
   b. The plan must have provision for payment of debt of Operational Creditor and descending Financial Creditors (in this case there is no descending Financial Creditor).
   c. The plan must provide the mechanism for the management of the Corporate Debtor after approval of the resolution plan.
   d. It must provide mechanism for supervision and implementation of the resolution plan.
   e. The resolution plan should not be in contravention of any provision of law.
   f. The resolution plan must comply other requirements as specified by Insolvency and Bankruptcy Board of India.

   We can find these requirements in Regulation 37 and 38 of IBBI (Resolution Process of the Corporate Persons) Regulations, 2016.

11. Keeping before our sight above provisions of law, we have examined the resolution plan as submitted for our approval.

12. We have already noted that since the COC approved the resolution plan in its commercial wisdom, we will not go into the

details about its commercial viability. However, in order to get ourselves satisfied whether the plan complies the requirements as per Section 30(2)(a) and 30(2)(b) of IBC, 2016 we have reproduced herein below the chart showing distribution of payments.

CIRP Cost	**Amount claimed /or Liability**	**Amount accepted**	**Amount proposed to be paid**	**% of the accepted amount**
CIRP Cost (To be paid in full by adjustment from the payments marked for Financial Creditors			Actual	100%
Total CIRP Cost-Assumed			**Actual**	**100%**
Workmen/Employees	2,56,200.00	2,56,200.00	2,56,200.00	100.00%
Total Workman/Employees	**2,56,200**	**2,56,200**	**2,56,200**	**100%**
Edelweiss Asset Reconstruction Co. Pvt. Ltd.	44,51,74,964	44,51,74,964	5,60,00,000	13.48%
Total Financial Creditor	**44,51,74,964**	**44,51,74,964**	**5,60,00,000**	**13.48%**
GIDC	1,55,66,690.00		3,89,167	2.50%
Total Operational Creditors	1,55,66,690		3,89,167	2.50%
Government Dues				
GST/Sales Tax	2,62,00,000.00		4,05.18,016	2.50%
Income Tax	1,14,20,964.00		2,85,524/-	2.50%
Excise Duty	28,97,052.00		72,464/-	2.50%
Total (Government Dues)	**4,05,18,016**		**10,12,988**	**2.50%**

13. Above chart shows that the provision is made to pay CIRP cost in priority and thereby provisions of Section 30(2)(a) of IBC, 2016 are complied with. The provision for payment of debt of Operational Creditor has also been made in the plan and thereby provisions of Section 30(2)(b) of IBC, 2016 are complied with.

14. In para 9.3 of the resolution plan, mechanism is provided for looking after the affairs of the Corporate Debtor after the plan is approved. It is mentioned that Suspended Directors of the Corporate Debtor namely Mr. Kalenkhan K Kadri and Mr. Hussain F. Kadri will manage the affairs of the Corporate Debtor. They will continue to be the directors of the Corporate Debtor. We hold that in view of the above, provisions of Section 30(2)(c) of IBC, 2016 are complied with.

15. In para 10.1 of the resolution plan it is mentioned that the RP, Mr. Shyam Sundar Rathi has been appointed to monitor and supervise the implementation of the resolution plan. It is also mentioned that the resolution plan shall be implemented within period of three months from the date of its approval.

16. Upon our perusal of the plan, we hold that the plan does not contravene any provision of law. It is also seen that the provision has been made to deal with the interest of all the stakeholders including Financial Creditor, Operational Creditor of the Corporate Debtor and other requirements stated in Sub-regulation 1A of Regulation 38 of Insolvency Resolution Process for Corporate Persons Regulations, 2016. We hold that there is no legal impediment to approve this resolution plan.

17. It was noted by us that resolution plan proposes the payment of money less than the liquidation value of the assets of the Corporate Debtor. We have also noted that the plan is less than liquidation value marginally by 6.5% only. Hence, we called upon the learned counsel for the RP to explain why the plan value is less than the liquidation value. He brought to our notice the fact that the Corporate Debtor is closed unit since 2013 and because

the building and machinery have been damaged/destroyed due to fire incident.

18. We have considered his submission. In fact, in case of *Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Ors. (Civil Appeal No. 4242 of 2019)*, the *Hon'ble Supreme Court* held that, "*No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*". This point has been dealt in case of Essar Steel (supra). We have quoted above the relevant portion from this judgment.

19. It appears to us that the object behind such valuation process is to assist the COC to take the decision on a resolution plan properly. Once resolution plan is approved by the COC, the statutory mandate on Adjudicating Authority under Section 30 & 31(1) of the Code is to ascertain that resolution plan meets the requirements of Sub section (2) and (4) of Section 30 of IBC, 2016 thereof emphasis supplied.

20. In view of the above, it is clear that there is no bar in the law to accept the resolution plan which proposes the payment less than the liquidation value of the Corporate Debtor, more particularly when the plan has been approved by the COC in its commercial wisdom.

21. So having considered evidence and material on record and after carefully going through the resolution plan, we hold that the resolution plan submitted by the Applicant/RP for our approval

complies with the provisions of Section 30(2) of IBC, 2016. Hence, we approve this plan and proceed to pass the following order.

ORDER

i. The resolution plan of Mr. Kalenkhan K Kadri, Mr. Hussain F. Kadri and Mr. Sadasiv Shetty for the Corporate Debtor, viz., **M/s. K K Kadri Paper Mills Pvt. Ltd.,** as approved by the Committee of Creditors (CoC) with 100% voting is hereby approved and shall be binding upon the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders including Government Authorities / Institutions, involved in the present resolution plan.

ii. For reliefs and concessions sought from the Government/Statutory Authorities, we direct the Resolution Applicant to approach the concerned Authorities who shall decide the issues.

iii. As regard to relief prayed under various provisions of Income Tax Act, 1961, the Corporate Debtor/Resolution Applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the Resolution Applicant in accordance with the provisions of Income Tax Act, 1961.

iv. On the effective date, all claims except provided in the plan of the suspended management, erstwhile directors, and erstwhile shareholders shall stand permanently extinguished.

v. The approved resolution plan shall come into force with immediate effect.

vi. The moratorium order passed, under Section 14 of the IBC, shall cease to have effect.

vii. A monitoring committee shall be constituted as per the resolution of CoC by giving representation to its all financial creditors/members and Resolution Professional, so as to facilitate and monitor the progress in implementation of the resolution plan by the Resolution Applicant.

viii. The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the Resolution Applicant for proper running operations of the business of the Corporate Debtor.

ix. The resolution plan is approved with such observation that the resolution applicant shall follow the provisions of Section 31(4) of the IBC to obtain necessary approval required under any law for the time being in force within the period of one year from the date of approval of the resolution plan by this Adjudicating Authority under sub-section 1 of Section 31 of the IBC.

x. On the effective date, all claims of the suspended management, erstwhile directors and erstwhile shareholders shall stand permanently extinguished.

xi. The RP shall complete the accounting entries to give effect to the resolution plan in the Books of Account as per the applicable Accounting Standards and provisions of the Companies Act, 2013.

xii. Personal Guarantors, if any, shall not stand released or extinguished and the financial creditors shall be at liberty to deal with such personal guarantee as per the applicable law.

xiii. The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Insolvency and Bankruptcy Board of India on its database.

xiv. The RP shall stand discharged from his duties with effect from the date of this Order.

xv. The Resolution Applicant shall file a copy of this order with Registrar of Companies, Gujarat.

22. With the aforesaid directions, IA No. 833 of 2021 in CP (IB) No. 407/7/NCLT/AHM/2018 stands disposed of.

23. Registry is directed to serve certified copy of this order, if applied for, to all concerned parties upon compliance with all requisite formalities.

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

MADAN B. GOSAVI
MEMBER (JUDICIAL)

Sapna