IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301

IA 159 of 2020 in CP(IB) 157 of 2018

Order under Section 30(6) r.w 39(4) IBBI 2016

IN THE MATTER OF:

........Applicant

Divyesh Desai RP For GPT Steel Industries Ltd

........Respondent

Order delivered on: 08/04/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

IN THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT No.2

IA 159/NCLT/AHM/2020
in
CP (IB) 157/NCLT/AHM/2018

(An application under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (CIRP Regulations), 2016 for approval of Resolution Plan)

Mr. Divyesh Desai
Resolution Professional of
GPT Steel Industries Limited
Having Office at B2, 402, Marathon Innova
Off. Ganpatrao Kadam Marg
Opp. Peninsula Corporate Park
Lower Parel (West)
Mumbai

.... Applicant / Resolution Professional

Order pronounced on 08.04.2024

Coram: **Mrs. Chitra Hankare, Member(J)**
Dr. Velamur G Venkata Chalapathy, Member(T)

Appearance:

For the Applicant	:	Mr. Monaal J Davawala, Adv.
RP in person		Mr. Divyesh Desai

JUDGMENT

1. The present application is filed by Mr. Divyesh Desai, Resolution Professional (RP/Applicant) of GPT Steel Industries Limited (Corporate Debtor) for approval of the Resolution Plan as approved by the Committee of Creditors (CoC).

2. The Corporate Debtor was admitted into CIRP vide order dated 02.05.2019 passed by this Tribunal and Mr. Divyesh Desai was appointed as IRP who invited the claims from the creditors of the Corporate Debtor through paper publication.

3. The first CoC Meeting was held on 31.05.2019, wherein the IRP was confirmed as the RP by the CoC. In the same meeting, the CoC Members and their shares of voting had been determined based on the admission of the claim the CoC consists of 8 Financial Creditors such as Asset Reconstruction Company (India) Limited with 49.78% voting shares, Invent Assets Securitisation and Reconstruction Pvt. Ltd. with 14.86% voting shares, Syndicate Bank with 10.37%, Punjab National Bank Ltd. with 8.60%, J & K Bank Ltd. with 5.97%, State Bank of India with 4.81%, JM Financial Asset Reconstruction Company Ltd. with 2.85% and Andhra Bank with 2.74%.

4. The RP published a notice on 17.07.2019 inviting Expression of Interest (EOI) from the Prospective Resolution Applicants (PRS) and published Form G on 17.07.2019 which was revised on 22.08.2019. The RP received 8 EoIs as of 22.08.2019 and approval of the Evaluation Matrix and RFRP started the process of receiving the Resolution Plans after taking an extension of the CIRP from this Tribunal on 03.10.2019. M/s Duff & Phelps were appointed as process advisors for CIRP of the CD. Various meetings were held of the CoC to narrow down the appropriate resolution plan from two bidders namely M/s Panch Tatva Promoters Limited and GP Global.

5. According to the applicant / RP, the 16th CoC meeting was held on 29.01.2020, the financial proposals received after making sufficient improvements in biddings were at Rs 84.00 crores of M/s. Panch Tatva Promoters Pvt. Ltd. and that GP Global were at Rs.98.11 crores. In the same meeting, the highest bidder was awarded the bid at Rs.98.11 crores.

6. The 17th CoC meeting was held on 10.02.2020, wherein the RP informed the CoC members regarding IA No. 116 of 2020 filed by M/s. Panch Tatva Promoters Pvt Ltd, the H2 bidder alleging certain misrepresentation by the successful bidder. Clarifications were sought and after discussions, the CoC

decided to consider the GP Global and put a resolution for voting and approval. The H2 bidder was provided with an opportunity to increase the bid during the 5 rounds of the out-bidding process and found that he was still not the highest bidder. One of the suspended management members, submitted an OTS proposal meanwhile, which was rejected by COC as it did not contain any significant advance when the resolution proposal was pending approval.

7. The CoC was also presented with the reports of two values of the liquidation and fair value of the CD which were at Rs.95.19 crores and Rs.162.49 crores respectively. The CoC further conducted the inter-se bidding process between both the PRAs for better price discovery. It also factored two quantitative parameters i.e. covering upfront payment and NPV of deferred payment. Finally, the H1 bidder (SRA) revised the bid to Rs.98.11 crores. After further deliberations and considering resolving other issues including exploring the possibility of selling the CD as a going concern and finalising the liquidation cost, the Resolution Plan was put to vote in the 17th meeting of CoC held on 18.02.2020 when the plan was approved with a vote of 82.41% of the voting share of CoC members. Even though the H2 bidder tried to give a fresh proposal, the CoC

had already considered and approved the proposal of the H1 bidder who is the Successful Resolution Applicant i.e. M/s. GP Global.

8. A detailed statement of the voting pattern of stakeholders who approved the plan along with the payment schedule has been submitted.

i) It is observed that the Resolution Plan says the total CIRP costs including dues of creditors during the CIRP period.

ii) There would be upfront payment within 30 days from the effective date to the category of Operational Creditors on a pro-rata basis, which includes:-

a) to outstanding dues of workmen and employees,
b) payment towards outstanding statutory dues as mentioned in the Information Memorandum in full and final settlement towards their admitted claims before any payment to financial creditors,
c) Payment towards dues of other creditors within 30 days in full and final settlement'
d) Waiver sought from Operational creditors

iii) Payment to financial creditors: An amount of Rs 82.11 crores is to be paid within 90 days from the effective date.

iv) With no additional payment to dissenting financial creditors, but shall be paid by sub-section (1) of Section 53 in the event of liquidation of the CD.

v) Continuation of the existing contracts of GPTSIL shall be continued, except as stated herein (statutory or otherwise) of GPTSIL after the effective date, arising from any contractual arrangements entered into by GPTSIL, any claims against GPTSIL, or liabilities of GPTSIL, arising or having crystallized before the Effective Date shall be deemed to be cancelled and written off on the effective date under NCLT approval order. Further, any claim against GPTSIL, arising from any contractual arrangements about any period before the Effective Date, will be written off in full and will be deemed to be permanently extinguished by the NCLT approval Order and the Resolution Applicant, GPTSIL and/or the management of GPTSIL shall, at no point, be made directly or indirectly responsible or liable for the same.

vi) Other liabilities and Contingent liabilities.. shall immediately, irrevocably and unconditionally stand fully discharged and settled.... By the foregoing, all claims (whether final or contingent, whether disputed or undisputed, whether or not notified and whether assessed and demand raised or not and whether claimed or not claimed against GPTSIL) of all Government Authorities (including about Taxes, Export obligation, Advance licence obligations, EPCGC obligations and export realisation and obligations and all other dues and/or statutory payments to any Government Authority) relating to the period before the Effective Date, shall stand fully and finally discharged and settled. Any legal proceedings (including any show cause notice, adjudication proceedings, petitions, complaints, assessment proceedings regulatory orders etc.) initiated before any forum by or on behalf of any Operational Creditors and/or all other creditors or Governmental Authorities, to enforce any rights or claims, demand, dispute against GPTSIL shall stand immediately irrevocable and unconditionally withdrawn, abated, settled and/or extinguished.

9. The Resolution Plan further lays down the financial payment outlay and mentions that the payment to Financial creditors would be Rs.86.11 crores of the total Rs.98.11 crores of payment to be made and the SRA would bring in Rs.86.11 crores by way of infusion of funds and redemption of Preference Shares will be done by ploughing back of profit or equity infusion. It is further mentioned that GP Global is a global trading conglomerate with an annual global turnover of more than USD 5.5 billion and there will be a letter of comfort issued by the parent company i.e. Gulf Petrochem FZC. The net worth of the company as of Sept 30, 2019, is given as Rs.246.18 crores. The SRA has the authority to fund the proposal through SPV to be formed for the specific purpose of funding and takeover of the assets of the CD under the Resolution Plan.

10. The Resolution Plan also lays down the management, control and supervision of the CD. It is further mentioned that the Information Memorandum has mentioned that the CD has the leasehold rights of the GIDC land bearing plot No.301 and 338-341 admeasuring 1,50,240 Sq Mts and 40432 Sq mts and expects the leasehold rights in said assets shall continue in favour of GPTSIL even after the change of management as per the Resolution Plan. No further dues would be demanded by GIDC immediately on receipt of intimation in this regard and further no dues/obligation including but not limited to (Fee, charges, Interest and Penalty) shall be recovered from the RA up to the effective date.

11. The Resolution Plan has sought various other treatments, reliefs and concessions from statutory authorities, financial creditors and Adjudicating authority which is dealt with separately.

12. The Resolution Plan also outlines 90 days for payment to all creditors and 180 days for infusion of funds towards working capital and CAPEX and the term of the plan is considered as 6 months from the effective date or the period within which this plan is fully implemented whichever is later. A monitoring Committee for supervision of the Plan has been proposed and

the management and control during the term have been specified a detailed action plan for future execution/implementation schedule has been given in the plan along with an estimated amount of Capex proposed. It also complies with the requirements of Section 30(2) read with Regulation 38 of the CIRP regulations is eligible to submit the plan and does not fall under any of the categories as mentioned under Section 29A of IB Code, 2016. It undertakes to pay the operational creditors by order of priorities specified in Section 53 of the IB Code.

13. Three IAs are pending in the matter viz. IA 51 of 2020 – Preferential Transactions, IA 461 of 2022 – RP application against termination of lease by GIDC and stay granted by this tribunal vide order dated 31.05.2022 and IA 362 of 2024 filed by Successful Resolution Application to not pronounce of order on Resolution Plan till IA 461 of 2022 is finally adjudicated upon.

13.A The Information Memorandum submitted reveals a few points which have been considered in the plan as of 02.05.2019:-

i) There were 10 employees;
ii) The landed property at Plot No.301, 338-341 is on lease from GIDC for 99 years;

iii) There are certain other current authorities, mainly balanced with GST Authorities, amounting to Rs.24.76 crores.

iv) The total borrowings (outside liabilities) amount to Rs.628.00 crores which includes dues to 12 banks.

v) Audited and unaudited balance sheets from 2015-16 to 2018-19 were enclosed including provision accounts from 1.4.2019 to 2.5.2019. The amount of claim received was Rs.3136.76 crores of which the RP had accepted claims amounting to Rs.2935.70 crores which includes the operational creditors. A detailed list of shareholders with at least a per cent stake has been provided along with guarantees provided. It also states that secured loans are guaranteed by Irrevocable and Unconditional Corporate Guarantee of Grosvenor House Trading. The CD had not fulfilled the export obligation of the EPCG licence and may be liable to pay the duty-said amount with interest. There were no material litigations as of that date.

vi) The valuation reports were produced in the Information Memorandum as assessed by Kanti Karamsey & Co.(Govt registered valuer) & Dharmesh L Trivedi (CA – registered valuers). The first valuer had assessed the land value at Rs.42.84 crores (Fair value) and Rs.29.99 crores (liquidation value, which are leased lands of GIDC (99 years). The lease deeds of the properties leased by GIDC are stated to be of Oct 6th 2004 and 20th December 2005. It is further mentioned that all the plant buildings were standing over plot No.301 whereas Plot No.338 to 31 is open and empty. The valuer had not done any title verification but mentioned only the lease period of Plot No.301 with an area of 1,50,000 to be of 99 years and Plot 338 to 341 is allotted to GPT steel industries for industrial purposes. There has been no dispute raised in the report (stated to have been raised by GIDC or any demand pending and due). The second valuer (M/s Dharmesh L Trivedi had valued the land and building to have an aggregate fair market value of Rs 86.51 crores (land at Rs.42.85 FMV and liquidation value of Rs.29.99 crores) and liquidation value of Rs.45.41 crores. The valuation also gives by bifurcation the fair value, realisable value and distressed sale value of the property at Rs.64.48 crores. It has also commented that the lease deed of freehold land leased by GIDC was for 99 years and was freely transferable of ownership. It also stated that the infrastructure necessary was built by GID itself and fetches extra value. Both values appear to be not on the approved list of IBBI and have not specified any amount due to GIDC as of the date of their valuation or the chances of termination of the properties leased to the CD.

vii) The GIDC issued a letter in Form F on 30/7/2019 for an amount of Rs.3,96,92,490 due and payable. A detailed explanation was given to the queries of the RP raised by email on 19.07.2019. Vide letter dated 06.08. 2019 the Resolution Professional had paid the claim partially amounting to Rs.1,01,65,984 and further stated that there was no provision for payment of interest in the lease agreement. The GIDC vide their letter dated

22.08.2019 has stated that in the lease deed executed on 06.10.2004 in clause 1(c), it is mentioned that "the lessee will have to pay the interest, additional compensation, overheads, margin etc. as may be demanded or by the bearing in connection of the Government land. If the payment is received late from the lessee, the interest at the rate of 17% will be charged on that amount. It further states that the amount of principal of Rs 78,12,480 is due on Plot No.301 and interest is calculated from the period from 01.05.2005 to 31.8.2019 total amounting to Rs.1,94,88,820. RP vide his email dated 27 August 2019 after reckoning the date of CIRP commencement date on 03.05.2019, revised the interest figure to Rs. 52,69,329 and considered the total amount of claim to be paid at Rs.1,54,35,313. As regards the interest in power substation infrastructure usage, he did not consider any interest since there is no provision of interest on the same in the lease agreement. The GIDC had vide their reply dated 11.9.2019 clarified while accepting the payment of Rs.1,54,35,313 offered but quoted clause 2(b), 2(b)(i) & 2(b) (iii) of the lease deed executed with the company on 6 October 2004 whereby there was a provision to claim such charges and company was liable to pay the interest at 15% on power supply cost and demanded payment from 1.1.2005 till resolution process is finalised. Thereby it may a claim further of Rs.1,72,92,336. The Resolution Professional vide his letter dated Sept 26, 2019, sought certain details from the GIDC which include a demand letter or invoices or any other document(s) of such nature where GIDC has raised a demand or claim about the interest on power supply cost from the CD. This was reiterated by the RP in his letter dated 25.10.2019 which stated that in the absence of such details or specific mention in the lease deed, the claim cannot be considered. A copy of the lease deed signed on 06.10.2004 was produced. There was no reply to this letter produced by the applicant.

viii) Further, GIDC vides their letter dated 07.04.2022 issued a show cause notice under Sec 4(1) of the GPP Act in respect of property in Plot No. 301 issued in the name of the Corporate Debtor for recovering an amount of Rs.69,82,644 along with certain other breach of conditions of terms and stated that by an order of eviction the Corporate Debtor would have to vacate the said premises on the grounds mentioned in the letter. A date of hearing was fixed on 28.04.2022 between 11:00 and 5:00 PM. Further, vide letter dated 07.04.2022 a termination of lease deed agreement was issued to the Corporate Debtor at the registered office address in Vadodara, Mumbai and at the Company's Factory address in Gandhidham and a copy marked to the RP without stating any further reasons.

14. Heard the submissions and perused the documents on record.

15. It is observed that the RP has not amended the Information Memorandum, but rightly included the nature of the asset leased which exhibits certain risks. We are not aware of the fact that the unadmitted claim was brought to the Resolution

Applicant. In view of the leased ownership, if the claim is admissible for which necessary documents were not provided, it has to be paid either from the liquid funds of the Corporate Debtor by the RP who has to appear before the GIDC in person and appeal against the order and the Secured Creditors who have charge on the land leased by the GIDC are directed to pay the dues payable in case there are no sufficient funds to meet the liability and the penalty if any levied and retrieve the lease agreement before the Resolution Plan is reconsidered for submission to this Tribunal. The Resolution Applicant thus would get the possession only after the same is complied with even if the approval of the plan has been accorded by COC which is pending adjudication before this Tribunal.

16. In the judgement of the Hon'ble NCLAT in M/s. Sel Manufacturing Company Limited Vs. Punjab Small Industries & Export in CA (AT) No. 881 of 2022 passed on 20 March, 2024 wherein the Hon'ble NCLAT held that "What rights and liability Corporate Debtor had to the land, in question, the same at best can be transferred to the Resolution Applicant in event any Resolution Plan is approved ." and in the judgement of the Hon'ble Supreme Court in Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni and Anr. in

Civil Appeal Nos. 7590-7591 of 2023 wherein it was held that the “Adjudicating Authority can always take notice of any shortcoming in the resolution plan in terms of the parameters specified in sub-section (2) of Section 30 of the IBC coupled with Regulations 37 and 38 of the CIRP Regulations 2016. If any such shortcoming appears in the resolution plan, it may send the resolution plan back to the COC for re-submission after satisfying the parameters so laid down.”

17. Further, in the judgment of the Hon'ble Supreme Court in K. Sashidhar Vs. Indian Overseas Bank and Ors. (2019) ibclaw.in SC, wherein the Hon’ble Supreme Court held that the law is well settled that the Adjudicating Authority has ample power to remit the Resolution Plan for reconsideration by the CoC when there is a violation of Section 30(2) of the IB Code, 2016.

18. Hence, we pass the following orders:

ORDER

The Resolution Plan is sent back to the COC for reconsideration.

Sd/-	Sd/-
DR. V. G. VENKATA CHALAPATHY	**CHITRA HANKARE**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**