

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No. 1054/IBC/NCLT/MB/MAH/2017

Under Section 31 (1) of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Mr. Anil Kanodia

..... Applicant
(Resolution Professional)

In

M/s. S. M. Dyechem Limited

.....Corporate Debtor

Order pronounced on : 30.07.2018

Coram :

Hon'ble M.K. Shrawat, Member (J)

For the Applicant / RP :

- 1) Mr. Shyam Kapadia, Counsel – Advocate for Applicant / Resolution Professional.
- 2) Mr. Anil Kanodia – Applicant / Resolution Professional in-Person.

For the Corporate Debtor :

Mr. Rohan Cama, Counsel a/w. Mr. Sanjay Udeshi, Advocate, Mr. Darshan Ashar, Advocate i/b. Sanjay Udeshi & Co. – Advocate for the Corporate Debtor.

Per: M. K. Shrawat, Member (J)

ORDER ON RESOLUTION-PLAN

1. In this case, the Petition/Application U/s. 10 of the Insolvency and Bankruptcy Code, 2016 (**The Code**) filed by the Corporate Debtor itself viz. 'M/s. S. M. Dyechem Limited' (hereinafter as **Corporate Debtor**) was Admitted vide an order dated 13.10.2017 by this Bench wherein 'Mr. Anil Kanodia (IBBI/IPA-001/IP-P00650/2016-17/2131)' was appointed as Interim Resolution Professional (**IRP**).
2. The Corporate Debtor was under proceedings of the Board for Industrial and Financial Reconstruction (hereinafter as **BIFR**) and had been declared as Sick Company under provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter as **SICA**). Under those proceedings, when the Corporate Debtor had been declared as Sick Company thereafter the Draft Rehabilitation

Scheme (hereinafter as **DRS**) was prepared for the Reconstruction of the Corporate Debtor and the IDBI Bank was appointed as Operating Agency (hereinafter as **OA**) by the BIFR. Thereafter because of non-grant of certain concessions under DRS the BIFR had directed to modify the said DRS and subsequently the DRS was modified. The Modified Draft Rehabilitation Scheme (hereinafter as **MDRS**) approved by the OA got sanctioned of the BIFR.

3. The Corporate Debtor had already complied with substantial portion of the said DRS and almost 98 % Financial Debts / Obligations were met by the Corporate Debtor. However, during the exercise of the MDRS, pursuant to Notification of the Central Government dated 25.11.2016 the SICA was repealed and the proceedings before BIFR were required to transfer to the NCLT in accordance with the provisions of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (hereinafter as **SICA Repeal Act**). Accordingly the Corporate Debtor has filed this Petition / Application bearing CP No. 1054/IBC/NCLT/MB/MAH/2017 and the same had been Adjudicated by this Bench. Alongwith this Petition / Application the Corporate Debtor had filed a Miscellaneous Application bearing MA No. 177/2017 praying that, there shall not be required a fresh exercise under the Code and the MDRS can be treated as the Resolution Plan U/s. 31 (1) of the Code. Accordingly this Bench, vide an Order dated 13.10.2017 taken a view as follows :

*"8. To conclude, the Petition is hereby "admitted" and the commencement of the Corporate Insolvency Resolution Process is hereby declared with effect from the receipt of this Order. The IRP is hereby directed that, the **Scheme Sanctioned** under SICA shall be deemed to be an **Approved Resolution Plan** as prescribed U/s. 31 (1) of the I & B Code, 2016. However, rest of the compliances are to be made as per the provisions of the Code, some of them specified hereinabove."*

4. In light of the Order dated 13.10.2017 the appointed IRP has commenced the CIRP and advertised in two local newspapers viz. 'Free Press Journal (English) and Navshakti (Marathi) on 11.11.2017. Accordingly, thereafter the Committee of Creditors (hereinafter as **CoC**) was formulated by the IRP and the First Meeting of the CoC were convened on 07.12.2017. In the said meeting the IRP was confirmed as Resolution Professional (hereinafter as **RP**) by the CoC.
5. In the said Order dated 13.10.2017 this Bench has directed the RP to verify the Consent Letters, given by the 98.90 % Creditors, stating that the MDRS can be

treated as the Resolution Plan under the provisions of the Code. The RP has called all those Creditors and reaffirmed the same. Thereafter this fact had also been placed before the CoC during the meeting.

6. The Second Meeting of the CoC was convened on 10.01.2018 wherein the matter was discussed at length and as the 98.90 % Creditors had already given their No Objection to the consideration of the MDRS as Resolution Plan under the Code, hence, the CoC by 100 % voting has sanctioned the Resolution Plan i.e. MDRS alongwith the Addendum of the cost of CIRP and other Statutory requirements.
7. Thereafter the RP alongwith its Status Report dated 18.01.2018 has approached this Bench praying for the sanctioning of the Resolution Plan as approved by the CoC.
8. The Learned Counsel for the RP has informed that, pursuant to the MDRS there is one Strategic Investor namely, 'M/s. CGS Developers Private Limited' (hereinafter as **Investor**) an incorporated Company having a Registered Address as 'No. 3, Narayan Buildings, # 23, L. N. Road, Dadar (E), Mumbai, Maharashtra – 400014'. The Investor has been primarily engaged in the business of Financing Industrial and Commercial Projects.
9. It has also been informed that pursuant to the DRS the payment of an amount of ₹ 152,71,00,000/- had been made towards the Liabilities of the Corporate Debtor however, the Balance was only left of an amount of ₹ 2,13,00,000/-. The details of this are as follows :

Particulars	Amount Payable as per DRS	Amount Paid	Balance Amount Payable as per MDRS
Bank Dues	₹ 125,30,00,000/-	₹ 125,30,00,000/-	NIL
Workmen Dues	₹ 13,85,00,000/-	₹ 13,85,00,000/-	NIL
Capital Expenditure	₹ 2,20,00,000/-	₹ 2,20,00,000/-	NIL
Unsecured Creditors	₹ 4,31,00,000/-	₹ 4,13,00,000/-	₹ 18,00,000/-
Capital Expenditure Creditors	₹ 1,37,00,000/-	₹ 1,37,00,000/-	NIL
Sales Tax	₹ 4,42,00,000/-	₹ 2,72,00,000/-	₹ 1,70,00,000/-
Electricity Dues	₹ 1,40,00,000/-	₹ 1,40,00,000/-	NIL
Provident Fund	₹ 24,00,000/-	NIL	₹ 24,00,000/-

Dues			
ESI Dues	₹ 1,00,000/-	NIL	₹ 1,00,000/-
Working Capital	₹ 1,72,00,000/-	₹ 1,72,00,000/-	NIL
Total	₹ 152,84,00,000/-	₹ 150,71,00,000/-	₹ 2,13,00,000/-

10. Pursuant to above chart it is clear that there are still liabilities of ₹ 2,13,00,000/- to be met by the Corporate Debtor. Pursuant to above liabilities the Learned Counsel for the Corporate Debtor has informed that the Investor, as per the MDRS, is infusing the funds of ₹ 5,00,00,000/- which is in excess of the amount which are to be paid.
11. The Learned Counsel for the Corporate Debtor has also informed that, as per the agreed terms between the Corporate Debtor and the Investor, the Promoters of the Corporate Debtor had already divested 23.94 % of the fully paid-up Equity Share capital of the Corporate Debtor to the Investor. It is further stated that, pursuant to the MDRS, the Promoters of the Corporate Debtor will additionally divest further 21.06 % of the paid-up Equity Share capital of the Corporate Debtor in favour of the Investor.
12. It is also stated that, pursuant to the DRS, the Corporate Debtor is being managed by the Board of Directors comprising of 2 Independent and Professional Directors viz. Mr. C. R. Murali and Mr. Nilesh Gandhi.
13. It has also been stated that, the Independent Director Mr. Murali has filed an Affidavit before this Bench stating that the outstanding payments will be made within 7 days from the sanctioning of this Resolution Plan. Which means payment of Maharashtra Sales Tax liability of ₹ 1,70,00,000/-, Unsecured Creditors liability of ₹ 18,00,000/-, Dues of Provident Fund of ₹ 24,00,000/- and ESI dues of ₹ 1,00,000/- shall be made in light of this undertaking.
14. The Learned Counsel for the Corporate Debtor has also stated that, in addition to the MDRS, this Resolution Plan has a provision for making the payment of the CIRP Cost totaling ₹ 4,33,500/-.

Findings :

15. Before I consider the Resolution Plan, at the outset it is appropriate to state that the said Resolution Plan is to be seen in light of the view (Supra) taken by this Bench in the Order dated 13.10.2017.

16. It is also noteworthy to mention that, this Resolution Plan is to be seen in light of the Notification bearing no. S.O. 1683 (E) dated 24.05.2017, which provides for the 'Removal of Difficulties'. Vide this Notification a Proviso, in Eighth Schedule of the Code, to the S. 4 (b) of the SICA Repeal Act has been inserted which reads as under :

"Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall be deemed to be an approved resolution plan under sub-section (1) of section 31 of the Insolvency and Bankruptcy Code, 2016 and the same shall be dealt with, in accordance with the provisions of Part II of the said Code:"

17. In the light of the above detailed narrations and the data submitted, prima facie the proposed Resolution Plan stated to be sanctioned unanimously in a Committee of Creditors meeting held on 10.01.2018 deserves to be **approved**.

18. **Sec. 30 (2) of The Code** provides for the following requirements of the Resolution Plan :-

"The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) provides for the repayment of the debts of 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 a liquidation of the corporate debtor under section 53;

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board."

19. Further, **Sec. 31 (1) of The Code** provides that, *If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2)*

of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. (Emphasis supplied). For purpose of this Section the Adjudicating Authority shall record its **satisfaction** in writing for approval of the Resolution Plan.

20. That, the proposed Resolution Plan has a provision for making the payment of the CIRP Cost of ₹ 4,33,500/-. Therefore, this Bench records its satisfaction that the proposed Resolution Plan is in conformity of the Sec. 30 (2) (a).
21. That, there are no dues for the Secured Creditors; as all the Secured Creditors were paid as per the DRS.
22. That there are Operational dues of ₹ 2,13,00,000/- outstanding as per the MDRS and the Resolution Plan provides for the payment of the same. It is also noticed that the Investor is infusing ₹ 5,00,00,000/- for the payment of outstanding dues. Hence, this Bench records its satisfaction that the proposed Resolution Plan is in conformity of the Sec. 30 (2) (b).
23. That, the Corporate Debtor is already under management of two Independent Directors pursuant to the DRS. Therefore, this Bench records its satisfaction that the proposed Resolution Plan is in conformity of the Sec. 30 (2) (c).
24. That, the Investor is infusing the amount as stated above and further the promoters of the Corporate Debtor, pursuant to the MDRS, are additionally divesting more 21.06% of the paid-up Equity Share capital of the Corporate Debtor in favour of the Investor. Further, the Independent Director has affirmed in an Affidavit that the balance dues will be paid within 7 days of the sanctioning of the Plan. Therefore, this Bench hereby records its satisfaction to the effect that the proposed Resolution Plan is in conference of the Sec. 30 (2) (d).
25. That, the proposed Resolution Plan also in conformity of the S. 30 (2) (e) and S. 30 (2) (f) as there is nothing contradictory to the provisions of Law.
26. This Bench hereby orders that, the above proposed Resolution Plan needs no modification and is hereby approved by this Bench in light of above discussion.

27. From the date of this Order, the 'Moratorium' imposed under section 14 of The code shall ceased to have any effect henceforth.
28. The Resolution Professional shall submit the records collected during CIRP to IBBI, New Delhi for their record and also return to Resolution Applicant / New Promoters.
29. Consequence upon the taking over the business and stepping into the shoes of the erstwhile management, the new management of the Corporate Debtor shall be abided by the provisions of the Companies Act, 2013, hence directed to submit a copy of this Order in the Office of the concerned Registrar of Companies having jurisdiction.
30. That the directions embodied and the period of implementation as provided herein above shall be effective from the date of receipt of this Order.
31. Ordered Accordingly.

Dated : 30.07.2018

SD/ -

**M. K. SHRAWAT
MEMBER (JUDICIAL)**

Avinash