NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

1. M.A. 1099/2019
IN
C.P.(IB)-33(MB)/2018

CORAM: SHRI. H.V.SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **06.05.2022**

NAME OF THE PARTIES: Oriental Bank of Commerce

V/s

Mangal Iron Pvt Ltd

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Devarajan Raman, counsel appearing for the Resolution Applicant, Ms. Nikita Abhyankar, counsel appearing for the Resolution Professional are present through virtual hearing.

Order pronounced in the open court vide separate order. In the result, the above M.A. 1099/2019 is allowed, and the Resolution Plan is approved.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
H.V.SUBBA RAO
Member (Judicial)

SKS

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III

M.A. No. 1099 of 2019
IN
C.P. No. 33/IB/2018

In the matter of an Application under Section 30(6) and Section 31(1) of the Insolvency and Bankruptcy Code, 2016.

Concur

In the matter of
Oriental Bank of Commerce
… Financial Creditor
V/s.
M/s. Mangal Iron Pvt. Ltd.
… Corporate Debtor

<u>M.A. No. 1099/2019</u>
Mr. Anuj Bajpai
…Applicant/
Resolution Professional

Order delivered on: 06.05.2022

Coram:
Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance (through video conferencing):
For the Applicant : Ms. Nikita Abhyankar, Advocate
Mr. Anuj Bajpai-RP-in-person
Mr. Devranjan Raman, Counsel for Successful Resolution Applicant

Per Shri H. V. Subba Rao, Member (Judicial)

<u>ORDER</u>

1. This is an Application under Section 30(6) and Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant M/s. Mohit

Steel Industries Pvt. Ltd., which is approved by 86.69% of the voting share of the members of the Committee of Creditors (hereinafter referred to as 'COC').

2. The facts leading to the Application are as under:

   i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 19.07.2018 under section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Anuj Bajpai was appointed as Interim Resolution Professional. The COC in its 1st meeting held on 16.07.2018 appointed (the present Applicant) as the Resolution Professional (RP). The IRP published a public announcement on 27.07.2018 inviting claims from the creditors of the Corporate Debtor.

   ii. The status of claims of Financial Creditors, Operational Creditors and Employees & Workmen and class creditors as existed on the date of filing the present application is as follows:

<u>Claims of Financial Creditors:</u>

(in Rs. Crores)

Sr. No.	Financial Creditor	Amount Claimed	Amount Admitted	Rejected	Voting (%)
1	Oriental Bank of Commerce (Secured)	23.77	22.38	1.40	19.77%
2	State Bank of India (Unsecured)	75.74	75.74	-	66.92%
3	Bank of Baroda (Unsecured)	15.07	15.07	-	13.31%
	Total	114.58	113.19	1.35	100%

<u>Claims of Operational Creditors:</u>

(in Lakhs)

Sr. No.	Operational Creditor	Amount Claimed	Amount Admitted	Rejected

1	Hare Krishna Metallics Pvt. Ltd.	Rs. 41.40 Lacs	Rs. 34.89 Lacs	Rs. 6.51 Lacs

Claims of Employees, Workmen and class of Creditors:

Resolution professional has not received any claims from workmen, employees and class of creditors.

iii. Thereafter, Resolution Professional upon verification of the same, constituted the CoC. Pursuant to the public announcement RP received one Expression of Interest from the Prospective Resolution Applicant (PRA).

iv. The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

3. The Applicant states that two Registered Valuers were appointed to determine the Fair Value (FV) and Liquidation Value (LV) of the Corporate Debtor. The Applicant states that the liquidation value and fair value as per the valuation reports submitted by the valuers is as under:

Valuers	**Plant & Machinery**		**Land & Building (E-8)**		**Land & Building (E-5)**	
	FMV	**LV**	**FMV**	**LV**	**FMV**	**LV**
P. M Pai & Associate	32.13	24.00	N.A.	N.A.	N.A.	N.A.
V. M. Shanbhag	31.93	23.95	N.A.	N.A.	N.A.	N.A.
P.C. Gupta	N.A.	N.A.	162.85	146.56	141.32	127.19
M. K. Pant	N.A.	N.A.	163.41	147.06	N.A.	N.A.
S. V. Khuste	N.A.	N.A.	N.A.	N.A.	142.5	127.5
Average	32.03	23.98	163.13	146.81	141.91	127.35
Avg. Fair Market Value (FMV)	**Rs. 337.07 lacs / (Rs. 3.37 Crores)**					

Avg. Liquidation Value (LV)	**Rs. 298.13 lacs / (Rs. 2.98 Crores)**

Average Liquidation Value of the Corporate Debtor is Rs. 298.13 lacs/ (Rs. 2.98 Crores) and the average Fair market Value is Rs. 337.07 lacs/ (Rs. 3.37 Crores).

4. During the period of CIRP, the RP issued Form-G on 21.08.2019 inviting Expressions of Interest (EOI), the last date for receiving the expression of interest was 05.09.2018 and the last date of submission of resolution plan was till 15.10.2018. The Applicant further submits that he received an EOI from Prospective Resolution Applicant (PRA) i.e. Radha Industries Pvt. Ltd. However, the said Radha Industries Pvt. Ltd. failed to submit a Resolution plan before the last date of receipt of resolution plan being 15.10.2018.

5. The Applicant states that the COC in its 4th COC Meeting held on 23.10.2018, decided that a revised advertisement for inviting EOI be issued. Form G inviting EOI was published on 26.10.2018 in Business Standard and Times of India (Goa Edition). The last date for receipt of EOI was 06.11.2018 and last date of receipt of Resolution Plan was 20.11.2018.

6. The Applicant further states that in furtherance of the revised Form-G issued by applicant, he received EOIs from 2 Prospective Resolution Applicants (PRAs) within the stipulated time period. Below are the names of the prospective resolution applicant:
   a) Radha Industries Pvt. Ltd.
   b) Mohit Steel Industries Pvt. Ltd.

7. The Applicant submits that, during the 10th Meeting of COC held on 08.03.2019, both the revised proposed Resolution Plans were

evaluated on the basis of the evaluation matrix and it was declared that the plan submitted by the M/s. Mohit Steel Industries Pvt. Ltd. got highest score. The said proposed plans were e-voted. E-voting commenced on 11.03.2019 and ended on 14.03.2019.

8. The COC in its 10th meeting held on 08.03.2019 considered the revised and final Resolution Plan of M/s. Mohit Steel Industries Pvt. Ltd. and approved the Plan with a voting share of 86.69% and compliance certificate was in Form "H" was issued by the Resolution Professional.

9. **The salient features of the Resolution Plan are as under:**

A. The Resolution Applicant M/s Mohit Steel Industries Pvt. Ltd. was incorporated under the provisions of the Companies Act, 1956 in the year 1998. At the time of incorporation the Resolution Applicant was involved in the business of manufacturing Mild Steel Ingots. Since the year 2015, the Resolution Applicant has also started manufacturing MS-Billets which is much more superior to ingots and is widely accepted in the market. The group turnover of the Resolution Applicant, comprising of M/s Hare Krishna Metalllics Pvt. Ltd., M/s Mandovi Castings Pvt. Ltd. and the Resolution Applicant Company, has increased by 40% year-over-year. The Resolution Applicant in their plan has stated that the situation is likely to improve further in the coming three (3) to four (4) years.

B. It was also submitted by the authorized representative of the Resolution Applicant during the COC meetings that the Resolution Applicant company, previously had taken over M/s Mandovi Castings Pvt. Ltd. from Economic Development Corporation of Goa which was an NPA asset. Within a year, the Resolution Applicant has effectively turned around the output of the Company wherein Mandovi Castings Pvt. Ltd. is now a successfully running entity under the umbrella of the Resolution Applicant's group of companies.

C. The Corporate Debtor is registered at ROC, Goa on 16.09.1997 as a Non-govt. company. The Company's authorised share capital is Rs. 16,000,000/- and its paid-up capital is Rs.15,175,000/-. It is involved in manufacturing of MS ingots.

D. The existing shareholders of Corporate debtor will make way for Mohit Steel. As per the Resolution Plan, Mohit Steel will contribute for upfront payment (Rs. 472.55 Lacs) and additional margin contribution (Rs. 300 Lacs) for availing loans towards refurbishment and working capital needs. Thus, the company's new capital structure will be Rs. 772.55 Lacs as against the existing capital of Rs. 151.75 Lacs.

E. The Resolution Plan proposes a total consideration of Rs. 4.72 Crores for the settlement of claim by the Resolution Applicant.

10. The details of the proposed payments are as follows:

A) <u>CORPORATE INSOLVENCY RESOLUTION PROCESS</u>

(i) The actual Corporate Insolvency Resolution Process Cost (hereinafter referred to as 'CIRP'). CIRP Costs as determined by RP and payable, would be paid in priority to all other dues

a. The funding arrangement is also supported by the financial institution i.e. PNB Goa against letter dated 8th March 2019 for the full amount of Rs. 472 Lacs. There are no outstanding CIRP cost as on the day of submission of this Resolution Plan.

(ii) Section 30(2)(a) of the Code provides for the payment of the CIRP in priority to the payment of other debts of the Corporate Debtor.

B) <u>FINANCIAL CREDITOR</u>

The Resolution Plan provided one time upfront settlement amount of Rs.3.90 Crores to OBC being the only secured financial creditor for the Corporate Debtor, within 60 days of the Adjudicating Authority's approval, approving the Resolution Plan.

The Resolution Plan retains the two unsecured financial creditors namely State Bank of India (SBI) and Bank of Baroda (BOB). An amount of Rs. 36 Las (BOB-Rs. 6 Lacs & SBI-Rs. 30 Lacs) or 0.4% of the admitted claims is provided in the Resolution Plan which will be paid by RA within 60 days of the Adjudicating Authority's approval, approving the Resolution Plan.

C) <u>OPERATIONAL CREDITORS – GOVERNMENT/SEMI GOVERNMENT AUTHORITIES</u>

- The Resolution plan provided a nominal amount of Rs. 2.13 Lacs, although no claims were raised by the State electricity department. Electricity deposit of Rs. 9.65 lakhs already with the Electricity Department is likely to be forfeited by the Department.
- Operational Creditors- Raw material
  M/s. Hare Krishna Metalliks Pvt. Ltd. supplier of raw material has raised claim of Rs. 41.40 Lacs, for which Rs. 3.48 Lacs has been provided as full and final settlement. The said amount to be paid without interest, within 60 days of Adjudicating Authority's order, approving the Resolution plan.

D) <u>CENTRAL BOARD OF DIRECT TAXES</u>

There is Income tax liability of Rs. 30 lacs. However, no provisions is made towards any payment to the tax Authority within the Resolution Plan.

E) <u>CENTRAL BAORD OF EXCISE AND CUSTOM</u>

As per the audited financial statement of FY-2014, central excise duty is payable by the Corporate Debtor on finished goods of value Rs. 194 Lacs under the statute of Central Excise and custom, 1944.

Deposit (assets) worth Rs. 35.30 Lac with Govt. Department assumed to be forfeited and will not be carried forward in company's accounts.

F) <u>EMPLOYEES PROVIDENT FUND</u>

Resolution applicant has provisioned to fully pay the Employers contribution to EPF amounting to Rs. 3.35 Lacs based on the last audited balance sheet for the year ended 31.03.2014.

G) <u>EMPLOYEES/WORKMEN CLAIMS</u>

No Employee or workmen have filed any claim with the RP. However, an amount of Rs. 1.16 Lacs towards 'provisions for employee benefits under the head 'other current liabilities' has been accepted as resolution cost.

11. **<u>DISBURSEMENT OF AMOUNT SHALL BE CARRIED OUT IN ACCORDANCE WITH THE TABLE BELOW:</u>**

The total payment envisaged under the Resolution Plan is to the tune of Rs. 4.72 crores wherein the settlement of claim by the Resolution Applicant as under the Resolution Plan is as follows:

Sr. No.	Particulars	Verified Claim Amount / Estimates	Amount payable in Plan	Percentage recovery
1.	**CIRP Cost**	Rs. 47 lakhs	Rs. 47 lakhs	100.00%
2.	**Workmen dues**	Nil	Nil	Nil
3.	Secured Financial Creditors (Oriental Bank of Commerce)	Rs. 22.37 crores	Rs. 3.90 crores	17.40%
Unsecured Financial Creditors (Invocation of Corporate Guarantees)		Rs. 90.80 crores	Rs 36 lakhs	0.40%
4.	SBI (Guarantee against loan given to Anshul Steel Ltd.)	Rs. 75.73 crores	Rs. 30 lakhs	0.40%
5.	Bank of Baroda (Guarantee against loan given to Ambey Gouri Steels Ltd.)	Rs. 15.06 crores	Rs. 6 lakhs	0.40%
6.	Employees / Workmen Claims	Nil	Nil	Nil
7.	Employee Statutory Dues			
8.	Employers ESIC Contribution	Rs. 1.43lakhs	Rs. 1.43lakhs	100%
9.	Employers PF Contribution	Rs. 3.35lakhs	Rs. 3.35lakhs	100%
10.	Provisions for Employee Benefits	Rs. 1.16lakhs	1.16lakhs	100%
Operational Creditors (claims received)				
11.	Hare Krishna Metalliks Pvt. Ltd.	Rs. 34.75lakhs	Rs. 3.48lakhs	10.00%
Operational Creditors – Claims (Estimated)				
12.	Goa State Electricity	Rs. 2 crores	Rs. 2.13 lakhs#	1.10%
Govt. Dues				
13.	Income Tax	Rs. 30 lakhs	NIL	
14.	Central Excise and Customs	Rs. 1.93 crores	NIL	
	Total payments		**Rs. 4.72 crores**	

*estimated

 # Electricity deposit of Rs. 9.65 lakhs already with the Electricity Department is likely to be forfeited by the Department.

a. The Resolution Plan explicitly states that:

> *"Nothing in this Resolution Plan shall affect the rights of the Financial Creditor to enforce personal/collateral security furnished before the Effective Date by the existing promoter/s or other third parties, in their personal capacity, with respect to any liabilities of the Corporate Debtor. Moreover, the Resolution Plan has no bearing or will not affect the right of SBI and BoB to proceed against their respective primary borrower's M/s Anshul Steel Ltd. and M/s Ambey Gouri Steel Ltd."*

b. Further, as a Margin contribution, for availing bank facilities, the Resolution Applicant shall infuse Rs. 3 crores in the first year of the Company's operations over and above the upfront payment of Rs 4.72 crores as per the Resolution Plan. Therefore, the Company's new capital structure will be Rs. 7.72 crores as against the existing capital of Rs. 1.51 crores.

c. All payments of Rs.4.72 Crores shall be paid by Resolution Applicant within 60 days of approval of Resolution Plan by this Adjudicating Authority.

12. **IMPLEMENTATION OF RESOLUTION PLAN**

The Resolution plan provides for a 'Monitoring Committee' to supervise the effective implementation of the Resolution Plan and the affairs of the Company after approval of the Resolution Plan by this Tribunal till the claims of the Financial Creditors are fully settled and as mentioned under clause 14.1 Value Maximisation of Resolution Plan. The consideration of the Monitoring Committee as per the Resolution plan is as under:

Sr. No.	Name of Person	Description
1.	Mr. Anuj Bajpai	Resolution Professional
2.	Mr. B.L Biyani	Key Managerial – Technical
3.	Mr. Devendra Singh	OBC Senior Manager

The committee shall be operational after approval of the Resolution Plan by this Tribunal and will supervise/monitor the account till the financial creditors' claims are settled as proposed in the Resolution Plan.

13. The Resolution Applicant is eligible to submit resolution plan, and the declaration in terms of Section 29A of the Insolvency & Bankruptcy Code, 2016 is given by the Resolution Applicant.

14. A certificate of in-principal approval of credit facilities to the tune of Rs. 4.72 crores is also issued by Punjab National Bank vide a certificate dated March 8th, 2019 in favour of the Resolution Applicant.

15. Further, the Resolution Applicant, Mohit Steel Industries has provided a Bank Guarantee to the tune of Rs. 50 lakhs from Punjab National Bank which may be encashed in case of any breach of the payment terms by the Resolution Applicant.

16. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor in terms of Section 30(2)(c). The Plan also provides for implementation of provision of the Resolution Plan as stated above as per Section 30(2)(d). The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:

a) Payment of CIRP cost will be made in priority over Financial Creditor (Regulation 38(1)(a)).
b) That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
c) Declaration has been given by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A)).
d) Declaration has also been given by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan.

17. The Resolution Plan has been approved in the 10th meeting of the COC held on 08.03.2019 with 86.69% votes in accordance with the provisions of the Code.

18. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150)*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the

Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

19. In **CoC of Essar Steel** (*supra*) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

> *"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in* ***K. Sashidhar*** *(supra)."*

20. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (COC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.

21. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. There are no workers claims. Resolution

Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and COC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

i. The Miscellaneous Application No. 1099 of 2019 is allowed. The Resolution Plan submitted by **M/s. Mohit Steel Industries Pvt. Ltd.** is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

ii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

iii. This Bench hereby directs Goa Electricity Department and Public Works Department to reconnect power and continue supply the utilities (water/sanitation) in an uninterrupted manner to the Resolution Applicant. It should grant necessary reliefs. Both the departments shall not insist the Resolution Applicant for payment of minimum demand charges/delayed penalties raised during non-operational period till the date of reconnection.

iv. The Resolution Applicant shall obtain necessary approvals under the law time being in force within a period of one (1) year from the date of receipt of the order approving Resolution Plan.

v. The Goa Electricity Department shall provide necessary power connection to the Resolution Applicant in required power capacity i.e. 10 MW against the existing connection of 3MW.

vi. It is seen that the Resolution Plan seeks several dispensations, concessions and waivers. Approval of Resolution Plan does not mean automatic waivers. The Resolution Applicant on approval of the Plan may approach those competent authorities/ courts/ legal forms/ office(s) Government or Semi-Government/State or Central Government for appropriate relief'(s) sought in the plan.

vii. The moratorium under Section 14 of the Code shall cease to have effect from this date.

viii. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.

ix. In terms of the judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited***, "*on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate* *or continue any proceedings in, respect to a claim, which is not part of the resolution plan."*

x. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.

xi. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

xii. The Miscellaneous Application No. 1099 of 2019 is accordingly allowed and disposed of.

Sd/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)