IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA

IA No. 224/KOB/2020
In
IBA/49/KOB/2019

(Under Sections 30(6) & 31(1) of the Insolvency and Bankruptcy Code, 2016)

Order delivered on: 29th January, 2021

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)

Mr.Rajendran PR, Resolution Professional
Bristo Foods Private Limited
186/7, Padinjareparippil, Kulayettikkara PO
Ernakulam, Kerala-682317. ... Applicant/Resolution Professional

In the matter of

Mr.V.T.John, Palakkamannil House, Kalathipady Desom,
Vijayapuram Village, Vadavathoor PO,
Kottayam Taluk, Kerala-686010. …. Financial Creditor

Versus

M/s Bristo Foods Private Limited, Registered
Office at Plot No.VIII/636/E, NIDA,
Menonpara Road, Kanjikode, Palakkad-678621,
Kerala … Corporate Debtor

Parties/Counsel present (through video conference)

For applicant : Shri Vinod PV, Advocate alongwith the Resolution Professional Shri Rajendran PR

O R D E R

This Interlocutory Application has been filed under Section 30(6) and 31(1) of Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as 'I&B Code'] by Mr. Rajendran P. R Resolution Professional in the matter of Bristo Foods Private Limited through his counsel Mr. Vinod Padinhare Veetil, for approval of the Resolution Plan submitted by the Resolution Applicant Mr. N. Sasidharan Pillai which has been approved by the Committee of Creditors of the Corporate Debtor Company viz. Bristo Foods Private Limited.

2. V.T John (hereinafter referred to as "Financial Creditor") filed an application No. IBA/49/KOB/2020 on 19.11.2019 before this Bench u/s 7 of the Insolvency and Bankruptcy Code (IBC), 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. Bristo Foods Private Limited. The application was admitted by this Tribunal vide Order dated 20.12.2019 and Mr. Jasin Jose (Registration No. IBBI/IPA-001/IP P00695/2017-2018/11225) was appointed as the Interim Resolution Professional (IRP). The CIRP period commenced thereafter.

3. The IRP, so appointed had initiated action towards commencement of CIRP as under: -

a. Public announcement of CIRP under Regulation 6 in Form A dated 25.12.2019 was made in two newspapers and invited claims from the financial / operational creditors and workers / employees of the Company in terms of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;
b. Constituted the Committee of Creditors (CoC) on the basis of the claims received by him under Regulation 17(1) with only one Secured Financial Creditor, the Federal Bank Limited;
c. Appointed valuers to determine the liquidation value of the Corporate Debtor in accordance with Regulation 27 read with Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

4. It is stated that in the first meeting of CoC held on 24.01.2020 the members of CoC resolved to appoint Mr. Rajendran P.R [IBBI/IPA-001/IP-PO1748/2019-2020/12717] as Resolution Professional which was communicated to this Bench in terms of Section 22(3)(b) of IBC, 2016.

5. In accordance with the provisions of the Insolvency & Bankruptcy Code, the CoC instructed the Resolution Professional to invite Expression of Interests (EoI's) from Prospective Resolution Applicant(s) (PRA's) who would submit Resolution Plans.

6. In accordance with that instructions, the RP published an advertisement in the newspapers on 07.03.2020 inviting EoI's from interested parties for submitting a Resolution Plan of the Corporate Debtor on or before 22.03.2020 and the same was also uploaded on the website of the IBBI. The Resolution Professional received EOI from 6 Prospective Resolution Applicants ['PRA']. The date of issue of provisional list of Prospective Resolution Applicants was on 28.03.2020. On 24.03.2020 the Government of India ordered a nationwide lockdown for 21 days as a preventive measure against Covid-19. The Resolution Applicant published the Provisional list of Six Resolution Applicants on 01.07.2020 under Regulation 36 A (12).

7. In response thereto, out of Six PRAs only Mr. N Sasidharan Pillai filed physical documents and submitted his Resolution Plan on 20.09.2020. The Resolution Professional found that the Resolution Plan submitted by the Resolution Applicant satisfies the requirement under Section 30(2) and presented that Resolution Plan before the CoC. The CoC approved the Resolution Plan without any modification in the 4th CoC meeting dated 30.09.2020 with 99.59% voting right.

8. Pursuant to the approval of the CoC, Resolution Professional has issued letter of intent on 08.10.2020 to the Resolution Applicant to furnish the performance security

within 7 days as required under Regulation 36 B(4A) by way of bank guarantee. The 5th CoC meeting held on 03.11.2020 considered the request of the Resolution Applicant and approved the following: -

a. to grant the further time of 30 days for executing performance bank guarantee in the form of advance deposit of ₹20 lakhs which shall be adjusted against the final instalment due under the plan.
b. to grant additional time of 30 days for making upfront payment as stipulated in the plan

9. Thereafter, the Resolution Applicant modified the Resolution Plan after the approval of the suggestions of CoC and submitted the revised plan on 05.11.2020. Thereafter, the Resolution Applicant has deposited ₹20,00,0000/- (Rupees Twenty Lakhs Only) to the account of the Corporate Debtor and executed an irrevocable performance guarantee agreement with the applicant under Section 36 B (4A).

10. Sub-Section (2) of Section 30 requires the following criteria for approval of the Resolution Plan: -

a. Provides for the payment of Insolvency Resolution Process costs in a manner specified by the Board in priority to the payment of other debts of the Corporate Debtor. (Section 30(2) (a)).

b. Provides for payment to the Operational Creditor in a manner as prescribed by the Board under Section 30(2) (b)), which shall not be less than:

   (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under Section 53; or

   (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in Sub-Section (1) of Section 53,

c. provides for management of the Corporate Debtor after approval of the Resolution Plan under Section 30(2)(c)

d. the implementation and supervision of the Resolution Plan under Section 30(2)(d)

e. does not contravene any provisions of the law under Section 30(2)(e)

f. confirms to such other requirements as specified by the Board under Section 30(2) (f)

11. The Resolution Applicant has sought various concessions and exemptions in the Resolution Plan while the Resolution Plan is approved by this Tribunal. The CoC observed that the concession sought are not violative of any provisions of the law and that all the concessions and exemptions sought to the extent as permissible under the Law, may be allowed. The concession sought by the Applicant are as under: -

a. Waiver from the levy of stamp duty and fees by the stamp authorities and Ministry of Corporate Affairs, applicable in relation to this Resolution Plan and its implementation, including issuance and transfer of new Equity Shares as permissible under the IBC code.

b. The Resolution Applicant shall be entitled to terminate, cancel or modify, as it deems appropriate, all existing contracts, which are entered into prior to the insolvency commencement date.

c. Waiver of tax liabilities, including interest, fine, penalty, etc, under the Income Tax Act, 1961 on BRISTO, Resolution Applicant and its shareholders on account of financial restructuring of the accounts of the BRISTO as proposed in the Resolution Plan including but not limited to liabilities arising due to write back/write off of liabilities if any in the books of accounts of BRISTO without any impact on brought forward loss / depreciation, pursuant to this Resolution Plan which are permissible under the Income Tax Act.

d. On and after the Effective Date, the Resolution Applicant shall be permitted to draw up the financial statements of BRISTO, for a period ending on the Effective Date (or any date closest to that date as may be practicable) in compliance with applicable accounting standards and BRISTO, shall be permitted to carry out necessary write off of assets, creation of additional liability or expenses or write back of liability or provision (as the case may be) in the books of accounts of BRISTO as permissible under the prevailing law.

e. All licence, permits, statutory order, approvals from Governmental Authorities or any statutory authorities/public utility services, whether lapsed, expired, revoked or terminated for non-compliance, shall be renewed/reinstated subject to the applicable laws, however reasonable time shall be granted to the BRISTO and its new management for such renewal/reinstatement or permission to operate the business of the Corporate Debtor. No license, permits or approvals shall be cancelled, withheld or terminated on account of CIRP of the Corporate Debtor/ noncompliance prior to the Effective Date, change in ownership / change in control of BRISTO.

f. Upon approval of the Resolution Plan, all -non-compliances, breaches and defaults by BRISTO for the period prior to the Effective Date shall be deemed to be waived and no action will be taken against BRISTO for any breach, non-compliance, default committed prior to the effective date and no fine, interest, penalty or assessment shall be made and levied in relation to the said period , by any authority under Income Tax Act, Sales Tax Act, Customs Act, Central Excise & Customs Act, GST , FEMA, PF Act, RBI Act, ESI, Factory Act, Electricity Department, Fire Department, Pollution Department, Industries, Labor Department or any other department created by a Statute.

g. The Resolution Plan shall be binding on all creditors of BRISTO, irrespective of whether they filed claim or not and all legal proceedings against BRISTO in relation to claims by any creditors including all criminal proceedings, proceedings under Section 138 of the Negotiable Instruments Act, 1881 and proceedings under SARFAESI and RDDBFI, from the Effective Date shall stand terminated.

h. From the Effective Date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, in connection with BRISTO or affairs of BRISTO (including those initiated by Governmental and Statutory Authorities), pending or threatened, present or future in relation to any period prior to the Effective Date, or arising on account of implementation of this Resolution Plan shall stand withdrawn and dismissed, and all liabilities and obligations therefore, whether or not set out in the balance sheets of BRISTO or the profit and loss account statements of BRISTO will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to BRISTO or the Resolution Applicant.

i. Except to the extent of payments to be made to the Financial Creditors, Operational Creditors, Employees, Workmen and Other creditors including Government/Statutory Authorities under the Resolution Plan, the Resolution Applicant and BRISTO shall have no liability towards any creditors with respect to any claims (as defined under the Code) relating in any manner to the period prior to the Effective Date.

j. Neither the Resolution Applicant nor BRISTO, nor their respective directors, officers and employees appointed as on or after the Effective Date shall be liable, prosecuted or made accountable for any violations, liabilities, penalties, interests on statutory payments and/ or fines with respect to or pursuant to any order of any Governmental Authority or on account of non-compliance of Applicable Laws by BRISTO for the default, breach or offence committed by BRISTO, its management or officers prior to the Effective Date.

12. The Resolution Plan submitted by N. Sasidharan Pillai is approved by the CoC with 99.59% is enclosed in its entirety for further reference, which is self-explanatory.

FINDINGS: -

(i) This Tribunal heard the submissions made by the learned Counsel appeared for the Resolution Professional through video conferencing and had meticulously gone through the Resolution Plan submitted by Shri. N. Sasidharan Pillai which satisfies the threshold approval by more than 60% voting right of the CoC, as per rules. As per the resolution of CoC, the plan stands the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the Resolution Professional and the Resolution Applicant for making the Plan effective after approval by this Bench.

(ii) It is ordered that the Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the “Moratorium” imposed under Section 14 shall cease to have any effect henceforth. Thus, this Bench hereby discharges Mr. Rajendran P.R from the duties of Resolution Professional and the Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant.

(iii) Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application, if required, in connection with implementation of this Resolution Plan.

(iv) 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.

(v) The Resolution Professional is further directed to handover all records, premises/factories/documents to Resolution Applicant to finalise further line of action required for starting their operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through Resolution Professional to finalise further line of action required for starting the operation.

(vi) Given the above observations, this Tribunal **approves the Resolution plan submitted by Mr. N. Sasidharan Pillai**, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the Resolution Plan, except the reliefs and concessions sought in Chapter XII of the Resolution Plan.

(vii) The Approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the Appropriate Authorities in accordance with Law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities.

13. Accordingly, **IA No: 224/KOB/2020 is allowed** by vacating the moratorium already granted at the time of admission of IBA/49/KOB/2020, under Section 31(1) of I&B Code.

Dated this the 29th day of January, 2021

Sd/-
(Ashok Kumar Borah)
Member (Judicial)