

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-II**

IA. No. 1240/2021

In

CP(IB)No. 2985/MB/C-II/2018

**Application filed under section 30(6) of
the Insolvency and Bankruptcy Code,
2016**

Filed by

Rajender Kumar Girdhar,

Resolution Professional

Of RSAL Steel Private Limited

Oshiwara Mhada Complex,

Building No.5, Aster CHS,

Flat No. 205, 2nd Floor,

New Link Road, Oshiwara,

Andheri (West), Mumbai 400053

...Applicant

In the matter of

Bank of Baroda

(Erstwhile Dena Bank)

...Financial Creditor

Versus

RSAL Steel Private Limited

...Corporate Debtor

Order Pronounced on: - 09.01.2024

Coram:

Anil Raj Chellan
Member (Technical)

Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Resolution Professional : Adv. Amir Arsiwala

For the Successful Resolution Applicant: Adv. Savani Gupte

ORDER

Per: Anil Raj Chellan, Member Technical.

1. The present Interlocutory Application is filed by Mr. Rajender Kumar Girdhar, the Resolution Professional of RSAL Steel Private Limited seeking approval of the Resolution Plan submitted by the L. G. Balakrishnan and Bros Limited under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation ("the CIRP Regulations"). The Resolution Plan was duly approved by 100% of the Committee of Creditors (CoC) in its 16th CoC meeting held on 07.05.2021.
2. The Applicant submits that Bank of Baroda (Erstwhile Dena Bank) the Financial Creditor initiated the Corporate Insolvency Resolution Process ('CIRP') against RSAL Steel Private Limited (hereinafter called 'the Corporate Debtor') under Section 7 of the Code. This Tribunal vide order dated 03.09.2019 initiated CIRP against the Corporate Debtor and Mr. Rajender Kumar Girdhar was appointed as Interim Resolution Professional ('IRP'). The 1st meeting of CoC held on 09.12.2019 unanimously resolved

and confirmed the appointment of the Applicant as Resolution Professional ('RP') for the Corporate Debtor.

3. The Applicant appointed registered valuers : Mr. Rajubhai Kantilal Patel and Mr. Dilip Kumar Jain for Plant and Machinery; Mr. Rajubhai Kantilal Patel and Mr. Lalit Kale for Land & Building; and Mr. Shah Jigar Pradipchandra and Mr. Dilip Kumar Jain for Securities and Financial Assets.
4. In the 3rd CoC meeting held on 05.02.2020, the Applicant informed that invitation for expression of interest (EoI) in Form G was published on 23.11.2019 in newspapers namely Free Press Journal, English language and Navshakti, Regional Language (Mumbai Edition) and Economic Times English Language and Navbharat, Regional Language (Indore Edition) for inviting EoI from interested and eligible Prospective Resolution Applicants ('PRAs') wherein the last date for submission of EoI was specified as 09.12.2019.
5. The Applicant had received three Expression of Interest till 09.12.2019. The provisional list of PRAs was circulated to the CoC Members and PRAs on 19.12.2019 and objections were invited. Out of the three EOIs received, two were declared as eligible PRAs and final list of PRAs was issued on 03.01.2020. The Request For Resolution Plan (RFRP) and Evolution Matrix (EM) were duly approved by the CoC and issued to PRAs on 24.12.2019. The last date for submission of Resolution Plan was 23.01.2020. At the request of the PRAs and as approved by the CoC, the last date for submission of Resolution Plan was extended to 06.02.2020. And again to 12.02.2020 and again to 27.03.2020.
6. The CoC, in its 8th meeting, resolved to terminate/cancel the present process for submission, evaluation and selection of Resolution Plan and decided to

invite EoI afresh. Accordingly, fresh Form G was published on 17.09.2020 in Newspapers namely Free Press Journal, English Language and Navshakti, Regional Language(Mumbai Edition) and Free Press Journal, English Language and Samachar, Regional Language (Indore Edition) and the last date for submission of EoI was on 03.10.2020. In response to the EoI, the Applicant received three EoIs.

7. The RFRP and EM were duly approved by the CoC at its 9th meeting with 100% voting share and stipulated 11.11.2020 as the last date for submission of Resolution Plan. The provisional list of PRA was issued on 07.10.2020 and final list of PRA was issued on 22.10.2020. At the request of one of the PRAs (L. G. Balakrishnan and Bros Limited) and as approved by CoC, the last date for submission of Resolution Plan was extended till 26.11.2020 and the same was informed to all the three PRAs.
8. The Resolution Plans submitted by all the three PRAs were unsealed in the 10th CoC meeting held on 02.12.2020 and it was found that the said Resolution Plans were not in compliance with provisions of the Code, Regulations and provisions of RFRP. Accordingly, the Applicant vide his emails dated 16.12.2020 and 20.12.2020 shared the observations/shortcomings with the Resolutions Applicants (RAs) and requested them to cure the defect by 23.12.2020 which was extended further till 30.12.2020. The last date for curing the defects was extended by the CoC till 12.01.2021.
9. The Applicant informed the CoC meeting held on 05.01.2021 that the Resolution Plan submitted by MCM Pacific Pte Limited and Sterling Structural Limited are not in conformity with the Code and RFRP, but the Resolution Plan submitted by L. G. Balakrishnan and Bros Limited was not

in conformity with RFRP. Hence, further time was granted all the RAs to cure the defects till 21.01.2021. Again, it was observed that the Resolution Plans as revised by the RAs were not in conformity with the Code and RFRP and CoC extended further time to cure the defects by 12.02.2021. After discussions, time was again extended till 25.02.2021 for curing the defects.

10. The revised Resolution Plan received from all the three RAs had been shared with CoC and as per the legal opinion, it was found that only the Resolution Plan submitted by L. G. Balakrishnan and Bros Limited was found to be in conformity with the Code, Regulations and RFRP. Further opportunity was again granted to the other RAs to cure the defects and submit the addendum by 10.03.2021. Thereafter, MCM Pacific Pte Limited submitted the revised Resolution Plan dated 10.03.2021 and L. G. Balakrishnan and Bros Limited submitted its letter dated 09.03.2021 in reply to the suggestion given by CoC. No revised Resolution Plan was submitted by Sterling Structural Limited. Further opportunities were again given to all the three RAs to cure the defect and submit revised Resolution Plans.
11. Finally, the CoC at its meeting held on 30.04.2021 discussed the Resolution Plan submitted by L. G. Balakrishnan and Bros Limited dated 25.11.2020 as last revised dated 29.03.2021 and the Resolution Plan submitted by MCM Pacific Pte Limited dated 25.11.2020 as last revised dated 27.03.2020 and were put to vote through electronic voting system.
12. The Resolution Plan submitted by Resolution Applicant L. G. Balakrishnan and Bros Limited was approved by the CoC with 100% voting share and the Resolution Plan of MCM Pacific Pte Limited received 78.55% voting share. Therefore, the Resolution Plan submitted by L. G. Balakrishnan and Bros Limited was declared as selected Resolution Plan.

13. **Brief background of the Corporate Debtor:**

The Corporate Debtor is engaged in the business of manufacturing of Cold Rolled Close Annealed Steel Coils/sheets, semi-processed electrical steel/coils and value-added flat steel products. The factors leading to the distress of the Corporate Debtor as analyzed by the selected Resolution Applicant was inability to compete with bigger companies and its inadequacy in its sales force to bring in opportunities to sell to various clients.

14. **Brief background of the Resolution Applicant:**

- a. The Resolution Applicant is engaged in the business of manufacturing chain, sprockets and metal formed parts for automotive applications. The Resolution Applicant also offers metal forming products for internal use as well as for other chain manufacturing plants, spring steel suppliers and umbrella manufacturers.
- b. The Resolution Applicant is confident that the Resolution Plan would offer a mutually beneficial business partnership and the Resolution Applicant's experience would facilitate revival of the Corporate Debtor.

15. **Salient features of the approved Resolution Plan:**

- a. The Resolution Applicant proposes to acquire all the business and assets of the Corporate Debtor on a going concern basis on payment of Rs. 24 crores as provided here under:

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(Rs. In lakhs)

i.	CIRP Costs to be paid in priority to other debt of the Company:		
a.	Estimated professional fees payable from CIRP Commencement date to 10.02.2021 less any amounts paid up to 31.10.2020.	1,100.00	Within 30 days of the Approval Date
b.	Estimated Essentials/Operating expenses for the period from CIRP Commencement Date to 10.02.2021 less any amounts paid up to 31.10.2020.		
	Total CIRP Costs	1,100.00	
ii.	Payments to Secured Financial Creditors:		
a.	Upfront Cash Payment (100%)	2,270.42	Within 30 days of the Approval Date
b.	Waivers sought from Financial Creditors, if any	30,193.84	Financial Creditor to consent to release of all security interest over the property (moveable and immoveable) of the Company on the date of receipt of Upfront Cash Payment.
	Total Payments to Financial Creditors	2,270.42	
iii.	Payments to Unsecured Financial Creditor:	Not applicable	
iv.	Payments to Dissenting Financial Creditors	Not applicable	Approved by 100% voting of CoC.
v.	Payment to Operational Creditors (Other than employees, workmen and statutory authorities):		Operational Creditors to be paid in priority to Financial Creditors in accordance with

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			Regulation 38(1) o the CIRP Regulations
a.	Upfront Cash Payment	129.58	Within 30 days of Approval Date
b.	Waivers from Operational Creditors, if any	None	
	Total	129.58	
vi.	Payment to Employees and Workmen	None	
vii.	Payments to Statutory Authorities	None	
viii.	Payments to other Operational Creditors not covered in (v), (vi) and (vii)	None	
ix.	Equity Infusion into Corporate Debtor	10.0	
	Total Financial Outlay	3,510.00	

- In the event that the actual CIRP costs are higher, the upfront cash payment to Financial Creditors shall be reduced, but the total financial outlay shall remain unchanged.
 - The said Rs. 24 crores shall be brought in by the Resolution Applicant within 30 days from the date of approval of Resolution Plan by NCLT.
- b. The Resolution Applicant will use its own funds from internal accruals to make the payments under the Resolution Plan. In this regard, the Resolution Applicant has provided its net worth certificate and an undertaking that the consideration to be paid under the Resolution plan shall be earmarked in a separate fixed deposit account.

c. The Resolution Applicant also proposes to infuse Rs. 10 Lakhs as equity capital in the Company for the subscription to 1,00,000 newly issued equity shares of face value of Rs. 10/- each. All the equity shares and all redeemable preference shares held by the erstwhile shareholders of the Corporate Debtor would stand extinguished by way of reduction in capital of the Corporate Debtor and consequently, the entire share capital of the Corporate Debtor shall stand cancelled without any payment to the shareholders of the Corporate Debtor holding such equity shares without the requirement of writing the words “and reduced” in the Corporate name and style of the Corporate Debtor. Upon approval of the Resolution Plan, it shall be deemed that the NCLT has also granted the necessary approval for reduction of share capital as required under the Companies Act, 2013 including Section 66 of the Companies Act, 2013 without the requirement of any further approval, act or action. The cancellation shall not require the consent of any of the creditors, or shareholders of the Corporate Debtor and the Resolution Plan as approved by the NCLT shall be binding on the Corporate Debtor and its various stakeholders.

d. **Management Control of Business:**

The Resolution Applicant proposes to form the monitoring agency consisting of three persons from the Resolution Applicant (as specified in the Resolution Plan), two nominees from the Financial Creditors and the Resolution Professional for overseeing/supervising the implementation of the approved Resolution Plan in terms of provisions of Section 30(2)(d) of the Code read with Regulation 38(2)(c) of the CIRP Regulations.

e. **Liability of third parties/guarantors:**

The guarantors or third party security providers shall continue to be liable to the Financial Creditors for the unpaid debt under their guarantees. The Financial Creditors shall have all rights and benefits available to them to enforce such guarantees or third party security provided by persons at their sole discretion, at any time in future to recover and realize the unpaid debt.

f. **Implementation of the Resolution Plan:**

All payments as outlined in the Resolution Plan shall be made within a period of 30 days from the date of approval by NCLT. Further, within 10 days from the date of approval by NCLT, the Resolution Applicant shall infuse Rs. 500 Lakhs into the Corporate Debtor as initial working capital margin. Thus the term of the implementation of the Resolution Plan shall be 40 days from the date of approval by NCLT.

g. **Recoveries from Preferential/Fraudulent Transaction:**

No petition under Section 43, 46, 50 and 66 has either been filed or pending before the NCLT.

h. **Performance Security:**

In accordance with regulation 36B (4A) of the CIRP Regulations and as required by item V(I) of the RFRP, the Resolution Applicant has provided performance security by way of bank guarantee dated 11.05.2021 issued by ICICI Bank for a sum of Rs. 2 crores and the same shall be valid till the term of the Resolution Plan.

i. **Eligibility under section 29A of the Code:**

The Resolution Applicant has submitted an affidavit dated 28.12.2020 confirming the eligibility under Section 29A of the Code to submit the Resolution Plan.

j. **Employees and Workmen:**

The existing employees and workmen of the Corporate Debtor will continue to be employees and workmen of the Corporate Debtor, under the control of the newly constituted Board of Directors.

16. The Applicant further submits that the Resolution Plan submitted is in compliance with Section 30(2) of the Code and Regulation 38(A) of the CIRP Regulations. The Applicant has confirmed the compliance of various provisions as contained in Form H dated 12.05.2021 as mandated under the code for seeking approval of the Resolution Plan from this Tribunal. The period of CIRP has been extended from time to time by the Tribunal upto 16.05.2021. The present Interlocutory Application has been filed on 12.05.2021, i.e. before the expiry of the period of CIRP.

Observations of the Adjudicating Authority:

17. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with the Application.
18. As per the records, the liquidation value of the Corporate Debtor is about Rs. 29.13 crores and the fair value is Rs. 42.59 crores. The Resolution Plan provides for upfront cash infusion of Rs. 2270.42 lakhs to Financial Creditors and Rs. 129.58 Lakhs to Operational Creditors. Thus, there is a recovery of 6.99% dues to secured Financial Creditors and 64.29% dues of Operational Creditors. There are no claims from the employees/workmen or other creditors. It is observed that the Resolution amount under the Resolution

Plan is lower than the liquidation value of the Corporate Debtor. In this connection, it is observed that the Hon'ble Supreme Court in the matter of *Maharashtra Seamless Limited vs. Padmanabham Venkatesh and Ors.* held that there is no requirement that the Resolution plan should match the maximized asset value of the Corporate Debtor. It also observed that there is no provision in the Code or regulations under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate person) Regulations, 2016 and the intent of conducting valuation is only to assist the CoC in decision making.

19. As referred to the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30(2) are fulfilled and no provision of law for the time being in force appears to have been contravened.
20. Section 30(4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty six percent of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in subsection (1) of Section 53, including the priority and value of the security interest of a secured creditor and such other requirement or may be specified by the Board.’

Regulation 39 (3B) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that where two or more Resolution Plans are put to vote simultaneously, the Resolution Plan, which receives the highest votes but not less than requisite votes, shall be considered as approved. In this case two Resolution Plans have been put to vote and the

Resolution Plan submitted by L. G. Balakrishnan and Bros Limited received highest votes (100%) and hence this Resolution Plan is considered as approved by the CoC.

21. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. section 31 of the Code deals with the approval of the Resolution Plan by the Authority if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.
22. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
 - a. Payment of CIRP cost as specified under Section 30(2)(a) of the Code;
 - b. Payment of debts of Operational Creditors as specified under Section 30(2)(b) of the Code;
 - c. For the management of the affairs of the Corporate Debtor after approval of the Resolution Plan; and
 - d. The implementation and supervision of the Resolution Plan by the RP and the CoC as specified under Section 30(2)(d) of the Code.
23. In *K Sashidhar vs. Indian Overseas Bank and Ors. (Civil Appeal No. 10673/2018 decided on 05.02.2019) (2019)* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by the 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. On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by the CoC, meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex 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. The legislature, consciously, has not provided any ground to challenge the commercial wisdom of the individual financial creditors or their collective decision before the Adjudicating Authority.

24. In CoC of *SR Steel India Limited vs. Satish Kumar Gupta and Ors (2020) 8 SCC 531* 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 has approved. In para 42, the Hon'ble Court observed as under:

'Thus, it is clear that the limited judicial review available which can in no circumstances 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, in so far 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).'

25. In view of the discussions and the law thus settled, we are of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and the Regulations 37, 38, 38(1A) and 39(4) of the CIRP 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. We, therefore, allow the Application in the following terms:

ORDER

26. The Application **IA No. 1240 of 2021 in CP(IB) 2985 of 2018 is allowed** and the Resolution Plan submitted by L. G. Balakrishnan and Bros Limited 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.
27. In terms of the judgment of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (Civil Appeal No. 8129 of 2019 decided on 13.04.2021) (2021) SC 212*, on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which are not a part of the Resolution Plan. Accordingly, no person including the Central Government, any State Government or any local authority, guarantors and other stakeholders, will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which is not a part of the Resolution Plan.

28. All the past liabilities including levies/tax dues to any Government authorities which are not part of the Resolution Plan and pertaining to Corporate Insolvency Resolution Process period shall stand extinguished from the date of approval of the Resolution Plan.
29. The Monitoring Agency as proposed in Section XII of the Resolution Plan shall be constituted to supervise and implement the Resolution Plan.
30. In accordance with Section 32A of the Code, the liability of the Corporate Debtor for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process shall cease, and the Corporate Debtor shall not be prosecuted for such an offence committed prior to the commencement of Corporate Insolvency Resolution Process from the date of this order.
31. All the equity shares and preference shares of the Corporate Debtor would stand extinguished by way of reduction in capital of the Company without any payment to the shareholders holding such shares without the requirement of writing the words 'and reduced'. Such reduction of share capital shall not require any further approval, act or action as required under the Companies Act, 2013 including Section 66 of the Companies Act, 2013 and such cancellation shall not require the consent of any of the creditors or shareholders of the Corporate Debtor.
32. The approval of the Resolution Plan shall not be construed as waiver of any future statutory obligations and shall be dealt with by the appropriate Authorities in accordance with law. The Corporate Debtor may obtain necessary approval required under any law for the time being in force from the appropriate Authority within a period of one year from the date of approval of the Resolution Plan.

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33. The guarantors and third-party security providers (not being the Corporate Debtor or the Resolution Applicant) shall continue to be liable to the Financial Creditors for the unpaid debt under their guarantees. However, such guarantors shall not be entitled to exercise any right of subrogation in respect of such amounts against the Corporate Debtor and/or the Resolution Applicant.
34. Other reliefs and concessions not covered in the aforesaid paragraphs including exemption from levy of stamp duty, fees and registration charges that may be applicable in relation to this Resolution Plan and its implementation are not granted.
35. The moratorium declared under Section 14 of the Code shall cease to have effect from this date.
36. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with the copy of this order for information.
37. The Applicant shall forthwith send a certified copy of this order to the CoC and the Resolution Applicant respectively for necessary compliance.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

ANKIT

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)