THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI

Company Petition No. (IB)-939 (PB)/2018

I.A. 2251/2020

In the main matter of:

M/s. ORIENTAL BANK OF COMMERCE

.... FINANCIAL CREDITOR

VERSUS

M/s. SIKKA PAPERS LTD.

.... CORPORATE DEBTOR

In the matter of:

AJIT KUMAR

.... RESOLUTION PROFESSIONAL

Order pronounced on: 01.04.2022

Coram:
CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT
HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

For the Applicant: Mr. Ajit Kumar, Adv., CSP Rajesh Ramnani
For the SRA : Mr. Abhirup Dasgupta
For the Respondent: Mr. C.S. Gupta for the Resp. Maruti Paper Ltd.

ORDER

PER- HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. The application has been filed by the Resolution Professional, under Section 30 (6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the

"Code"), seeking approval of the Resolution Plan, submitted by Mr. Naresh Gill ('Resolution Applicant'), under Section 31 of the Code, read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in respect of the corporate debtor M/s. Sikka Papers Ltd.

2. The facts in brief, necessary for disposal of the present application, are that M/s. Oriental Bank of Commerce, one of the Financial Creditors, had preferred an application under Section 7 of the Code, for initiation of Corporate Insolvency Resolution Process ("CIRP") against M/s. Sikka Paper Limited ("Corporate Debtor"). The said Company Petition was admitted on 24.04.2019, imposing moratorium under Section 14 of the Code and thereby, initiating CIRP, against the Corporate Debtor. Further, the applicant herein, Mr. Ajit Kumar, was appointed as the Interim Resolution Professional ("IRP").

3. The Applicant made Public Announcement in the newspaper, "the Pioneer", in both English and Hindi languages(s), inviting claims from the creditors of the CD.

Further, the IRP convened the first meeting of the CoC on 22.05.2019, wherein the CoC resolved to appoint the IRP, Mr. Ajit Kumar, as the Resolution Professional ("RP"), of the Corporate Debtor.

4. The Applicant states that it appointed Mr. Pranav Goyal, Mr. Deepak Bansal, Mr. Nishant Chandra Aggarwal & Mr. Devinder Arora as the Registered Valuer(s) on 03.06.2019, for determining Fair Value and Liquidation Value of the assets of CD in terms of Regulation 27 and 35 of the CIRP Regulations.

5. The Applicant states that on 13.07.2019, the Applicant, in compliance with its duties under Section 25(2)(h), of the Code, read with Regulation 36A, published an invitation for Expression of Interest (EoI), in Form-G as prescribed under CIRP Regulations, in Financial Express, Jansatta, Pioneer in English and Hindi, inviting EoI from Prospective Resolution Applicants (PRA's), in accordance with the provisions of the Code and therein, declared that 28.07.2019, be the last date for the receipt of the EoI. Based on which only one Mr. Neeraj Kumar expressed his

interest, however, the Resolution Plan was not in conformity with the invitation and was therefore rejected.

6. Further, the Applicant filed an application for extension of the CIRP period and the same was approved by CoC in its fourth meeting on 01.10.2019. The Hon'ble Tribunal granted an extension of 90 days for the Completion of the CIRP vide order dated 01.11.2019.

7. The Applicant brought to the attention of CoC that the sole Resolution Plan received by him, was not fully compliant, as the EoI was received from a single individual, viz. Mr. Neeraj Kumar whereas the Resolution Plan was received from joint Applicants. The CoC then decided that the last date for the receipt of Invitation of EoI be extended, so that fresh EoIs could be received from the PRA's, as this would help in the maximization of the value of assets of the CD. On 12.11.2019, second invitation for EoI was published by the Applicant based on which, the sole resolution applicant, Mr. Naresh Gill, Proprietor of M/s. Gill Polymers, expressed his Interest to be the Resolution Applicant of the CD.

8. Accordingly, an application was filed before this Hon'ble Tribunal, with the unanimous approval of CoC, sought in the Sixth Meeting of the CoC dated 18.01.2020, for extension of the period of CIRP by 60 days, in conformity with the second proviso to Section 12(3) of the I & B Code, 2016. This Hon'ble Tribunal allowed the said Application on 05.02.2020.

9. It is stated by the Applicant that in the seventh CoC meeting dated 24.02.2020, the Resolution Plan was discussed with the CoC and the CoC suggested certain changes in the Resolution Plan and therefore, deferred the approval of Resolution Plan for the next CoC meeting.

10. The Applicant presented the said plan, with suggested changes, before the eighth meeting of CoC on 04.03.2020 and allowed the members of CoC to make their observations. Thereafter, the members of the CoC deliberated upon the Resolution Plan and approved it with 79.15% votes, through e-voting, which concluded on 18.03.2020.

11. The present Application is being filed by the Applicant herein, in pursuance of and in terms of the approval of

the CoC, of the Resolution Plan submitted by Mr. Naresh Gill, approved by 79.15% of the voting share of the CoC, after considering the feasibility and viability of the resolution plan and other requirements under CIRP Regulations.

12. The Applicant further states that the average liquidation value of the Corporate Debtor, under Regulation 35 of the IBBI (Insolvency Regulation Process for Corporate Persons) Regulations 2016 ("CIRP Regulations"), as valued by the two registered valuers is approximately **Rs.8,35,00,906/-**, and the Plan Value of this Resolution Plan is **Rs.8,15,00,000/-**, as provided in the Form H, by the Resolution Professional.

13. The Resolution Professional has submitted its Compliance Certificate, under Section 39(4) of the Code, along with the resolution plan, under Section 39(4) for approval before the Committee of Creditors.

14. Resolution professional has also placed a copy of the resolution plan as approved by CoC, stated to have been signed by the Authorized Signatory of the resolution applicant, being Mr. Naresh Gill.

15. The Compliance Certificate, filed by the Resolution Professional in Form H, under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, has also been placed on record.

16. That brief contours as per Form H, of the Resolution Plan, as approved by the CoC, along with the amounts provided for the stakeholders, under the Resolution Plan is detailed herein below: - **(Amount in Rs. Lakh)**

S.No.	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan	Amount provided to the amount claimed
1.	Dissenting Secured Financial Creditors	42,98,50,570	42,98,50,570	1,66,64,000	3.88%
2.	Other Secured Financial Creditors	204,75,48,153	163,20,04,545	6,47,36,000	3.97%
3.	Dissenting Unsecured Financial Creditors	NIL	NIL	NIL	NIL
4.	Other Unsecured Financial Creditors	NIL	NIL	NIL	NIL
5.	Operational Creditors	1,23,63,717	51,20,895	1,00,000	1.95%
	Government	NIL	NIL	NIL	NIL
	Workmen	NIL	NIL	NIL	NIL
	Employees	NIL	NIL	NIL	NIL
Grand Total		**248,97,62,444**	**206,69,76,010**	**8,15,00000**	**3.94%**

17. In terms of Section 30 (6) of the Code, read with Regulation 39 of the CIRP Regulations, 2016, the resolution professional has submitted the Resolution Plan for seeking an order under Section 31(1) of the Code, for approval of the resolution plan, passed by the committee of creditors, under sub-section (4) of Section 30, with *79.15%* voting share.

18. Section 31 of the Insolvency and Bankruptcy Code, deals with the approval or rejection of a resolution plan by the Adjudicating Authority. Approval of the resolution Plan is accorded under the provisions of Section 31(1) of the Code.

19. Sub-section 2 of Section 30 casts a duty on the Resolution Professional, to examine the Resolution Plan received by him and to confirm that such Resolution Plan provides for the payment of Insolvency Resolution Process costs, provides for, the payment of the debts of the operational creditors and financial creditors in such manner as specified, provides for the management of the affairs of the corporate debtor, after approval of the Resolution Plan; the implementation and supervision of

the Resolution Plan, that the Resolution Plan does not contravene any of the provisions of the law, and that the Resolution Plan conforms to such other requirements as may be specified by the Board.

20. The Resolution Professional has filed compliance certificate in Form H and *inter alia,* has confirmed that it has examined and verified the Resolution Plan, approved by the CoC of M/s. Sikka Paper Ltd., in the light of the requirements of the Code and Regulations and that it is compliant to the relevant provisions of the Code and Regulations.

21. It has been submitted in the application and in Form H, duly certified by RP, that the final Resolution Plan, approved by *79.15%* vote share of the members of the Committee of Creditors, meets the requirements as laid down in various clauses of Section 30 (2) of the Code.

22. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the resolution plan, at *Chapter 6* which provides for payment of CIRP costs, in priority over payments to any other creditors, from the upfront amount brought in by the SRA. The Resolution

Professional has also confirmed in the compliance certificate, given in Form H, that the Resolution Plan provides for the payment of Insolvency Resolution Process costs.

23. As regards compliance of clause (b) of Section 30 (2) of the Code, the Resolution Professional has certified that the resolution plan provides for the payment 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 liquidation of the corporate debtor under Section 53.

24. There appears to be no discrimination in the resolution plan in respective class of creditors, as same treatment is provided to each similarly situated class of creditors.

25. Besides, the resolution plan provides for the payment 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 liquidation of the corporate debtor under Section 53.

26. As a sequel to the aforesaid discussion it is seen that clause (b) of sub-section (2) of Section 30 of the Code stands satisfied.

27. In terms of Section 30(2)(c), the Resolution Plan provides for management of affairs of the corporate debtor, after approval of the Resolution Plan. The management of the affairs and control of the business of the corporate debtor, after approval of the Resolution Plan, has been provided at *Chapter 6* of the Resolution plan, which, *inter alia,* provides that the Company shall continue as a going concern and operate in its normal course of business, upon implementation of the Resolution Plan. The Resolution Professional has confirmed, in the compliance certificate given in Form H, that the Resolution Plan provides for the management and control of the business of the corporate debtor.

28. The fourth requirement envisaged by Section 30(2)(d) is that it must provide for the implementation and supervision of the resolution plan. The Resolution Professional has confirmed, in the compliance certificate

given in Form H, that the Resolution Plan provides for adequate means for supervising its implementation.

29. The fifth and sixth conditions in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code, provide to ensure that the Resolution Plan does not contravene any of the provisions of law and conforms to such other requirements as may be specified by the Board.

30. In this regard the resolution professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of law, for the time being in force. *Be that as it may in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code, we make it clear that the Resolution Applicant shall comply with all applicable laws under the proposed Resolution Plan, whether or not specifically provided therein.*

31. It is pertinent to state here that Section 29A of the Code prescribes certain eligibility criteria and disqualifications, for persons who submit a resolution plan. Resolution

Applicant has given adequate declaration and undertaking on their eligibility to submit the Resolution Plan. At para 4(ii) of Form H, Resolution Professional has also certified that *the Resolution Applicant,* confirmed that the Resolution Applicant is eligible to submit a resolution plan and does not fall under any of the categories as mentioned in Section 29A of the Code.

32. Regulation 36B(4A) of the CIRP Regulations requires that the Resolution Applicant shall provide a performance security. Resolution professional has stated that the Resolution Applicant has submitted a Performance Guarantee of Rs. 2,23,00,000/- (Rupees Two Crores Twenty Three Lakhs Only), in compliance of Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

33. As to the Reliefs and Concessions stated in Chapter IX of the Resolution Plan, the exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan, the same is declined by this Bench

and therefore is not granted. As regards the other reliefs and concessions as sought for, which exempts the Corporate Debtor from holding them liable for any offenses committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016, is hereby granted to the Resolution Applicant. With regard to other concessions and reliefs, most of them are subsumed in the reliefs above granted, whichever is beyond the reliefs granted above, they shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified, that such exemptions shall be construed as not granted.

ORDER

34. As a sequel to aforesaid discussions, we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law, for the time being in force, appears to have been contravened.

35. The Resolution Professional has further certified that the Resolution Plan has been approved by *79.15%* of voting share of financial creditors, after considering its

feasibility and viability and other requirements specified by the Code and IBBI Regulations.

36. The Adjudicating Authority is not expected to substitute its view with the commercial wisdom of the CoC nor should it deal with the technical complexity and merits of the Resolution Plan, unless it is found contrary to express provisions of law and goes against public interest. The object of the Code is to promote resolution and every effort must be made to try and see that resolution is made possible.

37. Accepting the Resolution Plan is advantageous to all the stakeholders and amounts to maximization of the assets of the Corporate Debtor and promotes entrepreneurship and ensures that the Company continues to function as a going concern. The right of rejection or approval of a plan is with the CoC. In a particular case, what should be the percentage of claim amount payable to one or other 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor', can be decided by the Committee of Creditors, based on facts and circumstances of each case. What can be screened by this Bench is,

whether the plan approved by CoC meets the requirements as referred to in sub-section (2) of Section 30 of the Code.

38. The Hon'ble Supreme Court in the case of ***Kalparaj Dharamshi v. Kotak Investment Advisors Ltd, 2021 SCC OnLine SC 204, decided on 10.03.2021***, held as follows;

> "... the appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same."
>
> "... the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis."
>
> *"155. It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code."*

39. In the present case the resolution plan has been unanimously approved with *79.15%* voting share of the CoC, much above the statutory requirement of 66%, in terms of Section 30 (4) of the Code and has the requisite statutory voting share. Besides the decision of CoC is a reasoned and self-speaking one, as required under proviso to Regulation 39(3) of the CIRP Regulations, 2016.

Needless to state here that the Resolution Plan cannot take care of total outstanding dues of the creditors in its entirety. It is however seen that the resolution applicant proposes to pay the total consideration amount.

40. It is a well settled proposition of law that commercial and business decisions of CoC are not open to judicial review. The Adjudicating Authority cannot enquire into the commercial wisdom of CoC. The ground for rejection is limited to the matter specified under Section 30(2). It is however reiterated that the resolution plan in question meets the requirements specified in Section 30(2) of the Code and the reasoned commercial decision of CoC is neither discriminatory nor perverse.

41. In view of these facts we are satisfied that the requirements, as per the Code and the relevant Regulations, have been complied with. Moreover, the Resolution Plan has been approved by *79.15%* voting share of the members of CoC and has been submitted in compliance with Section 30 of the Code for approval. In view of the aforesaid discussions and as no infirmity has been brought out upon screening of the Resolution Plan;

we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.

42. In respect of reliefs and concessions sought for in the Plan which are beyond the jurisdiction of this Tribunal, the Monitoring committee can make such a claim before the respective authorities, which shall be considered in accordance with law.

43. The resolution applicant shall obtain the necessary approval required, under any law for the time being in force, within a period of one year, from the date of this order or within such period as provided for in such law, whichever is later.

44. It is clarified that Section 30 (2) (f) of the Code mandates that the resolution plan should not be against any provisions of existing law. The Resolution applicant therefore, shall adhere to all the applicable laws for the time being in force, under the proposed Resolution Plan, whether or not specifically provided therein.

45. We hereby exclude the period spent under adjudication and it is declared that the moratorium order passed by

this Bench under Section 14 of the Code shall cease to have effect from the date of this order.

46. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its database.

47. The approved 'Resolution Plan' shall become effective from the date of passing of this order.

48. Accordingly, I.A. 2251/2020, are allowed & disposed of.

Let the copy of the order be served to the parties.

-Sd-

[CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR]
(PRESIDENT)

-Sd-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)