

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

IA. No. 1057/2022

In

CP(IB)No. 4336/MB/C-II/2019

**Application filed under section 30(6), r/w
Regulation 39(4) of the IBBI (Insolvency
Resolution Process for Corporate Persons)
Regulations, 2016.**

Filed by

**Mr. Hari Kishan Bhoklay,
Resolution Professional**

...Applicant

In the matter of

Pentaaleon Packaging LLP

...Operational Creditor

Versus

Himadri Foods Limited

...Corporate Debtor

Order Pronounced on :- 07.10.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances (through video conferencing)

For the Resolution Professional : Mr. Ayush Rajani, PCA

ORDER

Per: Shyam Babu Gautam, Member Technical

1. The present Interlocutory application is filed by **Mr. Hari Kishan Bhoklay** the Applicant, Resolution Professional of **Himadri Foods Limited**, the Corporate Debtor by submitting a resolution plan under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking approval of the Resolution Plan submitted by Consortium of Viraki Brothers, Dipen Shah and Anish Shah (Viraki Consortium) The Plan was duly approved by the requisite majority of the Committee of Creditors (CoC).
2. The Applicant submits that the Pentaaleon Packaging LLP, the Operational Creditor initiated the Corporate Insolvency Resolution process (CIRP) against the Corporate Debtor under Section 9 of the Code on 09.12.2020 and appointed Mr. Ramchandra Dallaram Choudhary as the Interim Resolution Professional (IRP) of the Corporate Debtor. The Public announcement regarding the initiation of CIRP was made on 06.01.2021.
3. Pursuant to receipt of claims, IRP constituted a Committee of Creditors (CoC) . the first CoC meeting was held on 03.02.2021. The second CoC meeting was held on 22.02.2021 wherein the name of the Applicant was proposed for the appointment of the Resolution Professional (RP) and the same was put to vote. Consequently, the CoC approved the name of the Applicant as RP and vide Order dated 31.05.2021 passed by this Tribunal and the Applicant was appointed as

the RP.

4. The Applicants submits that Expression of Interest (EoI) was called from potential resolution applicants for the submission of the Resolution Plans for the Corporate Debtor. The advertisement (Form - G) was published on 13.05.2021 in Business Standard and Loksatta inviting EoI wherein the last day for submission of EoI was 28.05.2021 and last day for submission of Resolution Plan was 05.07.2021.
5. The Applicant submits that against the advertisement 7 parties were shortlisted in the final list of Prospective Resolution Applicants (PRA's). As against the last date of 28.05.2021 for submission of EoI, on 21.06.2021 a fresh EoI was received from Mr. Jesal Singh on behalf of Mr. Jitesh Chhajed, Partner in Webtech Industries. The said was not accepted by the Applicant as the same was received after the closure of the date of receipt of the EoI.
6. Further with a view to increase the number of prospective applicants, the CoC decided to issue fresh Form G. After issuing second EoI, seven fresh EoI were received from PRA's. The Applicant submits that total 3 Form G were published and 25 applicants were shortlisted in the final list of PRA's and 5 PRA's submitted their Resolution Plan.
7. An Application for extension of the CIRP was filed. The said was allowed vide Order dated 31.01.2022. Accordingly, the 270th day of the CIRP expired on 24.03.2022. further an exclusion Application was filed and the period of second wave of Covid-19 was excluded and the CIRP period was extended till 23.05.2022.
8. Thereafter, 15th CoC meeting was held on 15.11.2021 and 22nd meeting held on 08.03.2022, deliberations and negotiations were going on

between the Resolution Applicants for improvement in the Resolution Plans. Pursuant to the discussion held in the 21st CoC meeting, among top two Resolution Applicants, e-bidding was held on 24.02.2022.

9. In the 22nd CoC meeting held on 08.03.2022, evaluation sheet of the five Resolution Applicants were placed on record and as per the evaluation matrix, final marks for each Resolution Plan was given. Thereafter one more round of bidding was taken place as there were identical marks given to the two PRA's. Further, in the 23rd COC meeting held on 14.03.2022, all Resolution Plans were put for vote.
10. The Applicant submits that the CoC further suggested that the Plan which receiving highest marks as per the evaluation matrix would be considered as the Successful Resolution Plan. Revised Resolution Plan was received from the Consortium of Viraki Brothers, Dipen Shah and Anish Shah dated 26.10.2021 further revised on 10.03.2022 was approved by the members of the CoC with 87.15% votes in favour of the Plan.
11. A Consortium Agreement dated 26.10.2021 is executed between Viraki Brothers, Anish Shah and Dipen Shah.

The final Resolution Plan meets the requirements of the Code and is in accordance with Regulation 39(4) of the CIRP Regulations.

SALIENT FEATURES OF THE APPROVED RESOLUTION PLAN

13. The summary of the Resolution Plan is as under ;-

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Sr. No	Parameters	Amounts Payable	Source of Funds
1.	Payment to all Stakeholders within T + 90 days	35.61 Crores	25 Crores shall be infused through Bank

Treatment of all Stakeholders out of the above Payment/Outflow

1.	Operational Creditors, excluding employees and workmen along with Statutory Dues <u>Timelines :</u> Within T+60 days – Rs. 0.20 Crores	0.20 Crores	Infusion through Resolution Applicant
2.	CIRP Cost <u>Timelines :</u> Within T +60 days – Rs. 1.71 Crores	1.71 Crores	Infusion through Resolution Applicant
3.	Employees and Workmen	0.10 Crores	Infusion through

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	Within T+ 60 days – Rs. 0.10 Crores		Resolution Applicant
4.	Operational Creditors (Statutory dues) Within T + 60 days _ Rs. 0.05 Crores	0.05 Crores	Infusion through Resolution Applicant
5.	Financial Creditors Secured Timelines : Upfront Within T + 90 days	33.30 Crores	Rs. 25 Crores through Bank Loan and Balance shall be from Resolution Applicant
6.	Financial Creditors Unsecured <u>Timelines :</u> Upfront Within T + 60 days	0.25 Crores	Infusion through Resolution Applicant
7.	Related Party dues	NIL	Not Applicable
8.	Equity Shareholders	NIL	Not Applicable
	Total :-	35.61 Crores	

14. The Resolution Applicant proposes to infuse Rs. 7,00,00,000 as working capital requirement of Corporate Debtor. The Resolution Applicant will infuse funds as per the working capital cycle of Corporate Debtor as working capital cycle is very volatile between all the months.
15. The Resolution Applicant has submitted the performance Bank Guarantee for a sum of Rs. 1,78,05,000/- into the designated account and the same has been submitted with the Applicant.
16. The Resolution Plan submitted by the Resolution Applicant is in compliance with the provisions of the Code, the CIRP Regulations and does not contravene any of the provisions of law. The Resolution Plan consists of a financial outlay of Rs. 35.61 Crores (Rupees Thirty Five Crores Sixty One Lakhs Only).
17. 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 RP has provided a compliance certificate in “**FORM H**” as mandated under the Code for seeking approval of the Resolution Plan from this Hon’ble Bench.

OBSERVATIONS OF THE ADJUDICATING AUTHORITY

18. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.

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 the law for the time being in force appears to have been contravened.

20. In view of the provision of the Code Letter of Intent dated 28.03.2022, the Applicant called upon the Resolution Applicant to furnish an unconditional and irrevocable Performance Guarantee/Direct Deposit of Rs. 1,78,05,000.

21. Further, it is observed that Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such 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;
- b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board 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, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with subsection (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation - For the purpose of this section –

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and
 - (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).
- c) Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- a) The implementation and supervision of the resolution plan;
 - b) Does not contravene any of the provisions of the law for the time being in force;

- c) Confirms to such other requirements as may be specified by the Board.

22. 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 sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.

23. 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.

24. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.

- a) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.

- b) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified u/s 30(2)(c) of the Code.
- c) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

25. The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through two registered valuers. The aggregate of the average of Fair Value of all the assets is Rs. 3244.42 Lakhs and that of the Liquidation Value of all the assets is Rs. 2472.82 Lakhs.

26. One of the justifications for approval of this resolution plan is that the amount proposed under the plan is higher than liquidation value of the Corporate Debtor.

27. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.

28. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of The Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.

29. The Resolution Plan has been approved by the CoC in the with 87.15% votes in terms of Section 30(4) of the Code.

30. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) 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.

31. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) 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).”

32. 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. We are thus inclined to dispose of the Application in the following terms. Hence Ordered.

ORDER

(i) **The Application IA No. 1057 of 2022 in CP 4336 of 2019 be and the same is allowed.** The Resolution Plan submitted by Viraki Consortium 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) Further in terms of the Judgment of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited v/s 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 a part of the Resolution Plan.

- (iii) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra 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.
- (iv) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (v) Further from the effective date and until the transfer date, a 3-member Monitoring Committee to be constituted. The Committee shall consist of one representative of Resolution Applicant, one representative of CoC along with Resolution Professional (Monitoring agent) for overseeing the implementation of the Resolution Plan.
- (vi) 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.

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- (vii) The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

**SHYAM BABU GAUTAM
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE P.N. DESHMUKH
MEMBER (JUDICIAL)**