BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

IA 794 of 2019 in CP(IB) 120 of 2019

Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 18.01.2021

Name of the Company: Prawincharan P Dwary RP of Nijinoy Trading Pvt Ltd
V/s
Mehsana Nagrik Sahakari Bank Ltd & Ors.

Section: 30(6) r.w 31 IBC

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Dated this the 18th day of January, 2021.

63

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
COURT-1

IA No. 794 of 2019

IN

CP(IB) No. 120/7/NCLT/AHM/2018

THROUGH;

Mr. Parwincharan P. Dwari
Resolution Professional of,
M/s Nijinoy Trading Private Limited
Having Addressed at,
407, Akchhat Tower, Pakwan Cross Road,
S.G Highway, Bodakdev,
Ahmedabad, Gujarat- 380015

......Applicant

IN THE MATTER OF;

Mr. Harendra Singh Rathore
T-3, Raju Flat, Nr. Bus Stop,
Memnagar, Memnagar Gam
Ahmedabad-380052
Gujarat

Versus

M/s Nijinoy Trading Pvt. Ltd

B/504, Rajshree Avenue
Near Dinesh Hall
Ashram Road
Ahmedabad-380009
Gujarat

....Corporate Debtor

Delivered on January 18, 2021

Coram: **Madan B. Gosavi, Member (Judicial)**
Virendra Kumar Gupta, Member (Technical)

Appearance:

Ld. Counsel Mr. Vicky Dang a.w Resolution Professional Mr. Parwincharan Dwary appeared.

ORDER

[Per Bench]
(Through Video Conferencing)

1. The instant application has filed by the applicant/ Resolution Professional for approval of resolution plan under section 30 (6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"IB Code"**) read with section 31 of IB Code and Regulation 39 (4) of The Insolvency and Bankruptcy Board of India (Insolvency Process of Corporate Persons) Regulations, 2016 (hereinafter referred to as **"CIRP Regulations"**) after approving the plan by COC with 100% percent vote.

2. The Corporate Debtor was admitted in CIRP vide order dated 25.04.2019 passed by this Authority in application filed by the Financial Creditor u/s 7 of IB Code, wherein, moratorium was declared, Corporate Insolvency Resolution Process was initiated and Mr. Parwincharan P. Dwari was appointed as Interim Resolution Professional (hereinafter referred to as **"IRP"**).

3. It is submitted by the applicant that after, receiving the claim from the creditors the IRP had constituted the Committee of Creditors (hereinafter referred to as **"COC")** comprises of 7 (seven) Financial Creditor on 07.12.2018. Thereafter, CoC in the first meeting dated 29.05.2019 resolved unanimously to appoint IRP as a RP subject to approval from this Authority.

4. In the second meeting dated 08.07.2019 COC resolved for the publishing the Expression of Interest (hereinafter referred to as **"EOI"**) and also resolved to appoint the registered valuer. Thereafter, the Resolution Professional published the EOI in two newspaper **"DNA"** English newspaper and "**Jai Hind**" Gujrati newspaper in form **"G"** under regulation 36A **of** CIRP Regulations. One interest was received by the Resolution Applicant namely Mr. Ramesh Kumar Talkaji Suther .In the third COC meeting dated 19.10.2019 the detail discussion were made by and between Resolution applicant and COC, thereafter, Resolution Applicant was enhanced the value of Resolution Plan, and Resolution professional presented the plan for the approval by the COC, wherein, the COC approved the modified Resolution plan with 100% vote.

5. The successful Resolution Applicant agreed for a consideration of Rs. 19.36 lakhs to the Creditors of the Corporate Debtor including CIRP costs and contingent liability to the tune of Rs. 1,00,000/-.

6. The key features of the Resolution Plan are summarized as under;

I. The Resolution Plan provide for payment of Rs. 3 Lakhs CIRP Cost at actual as priority payment as per section 30(2). The CIRP cost shall be first appropriate from **the EMD** paid by the Resolution Applicant, in case, any short fall arise, same shall be paid additionally by the Resolution Applicant. The amount of short fall shall be paid within 15 days from the date of approval by the Adjudicating Authority.

II. The Corporate Debtor has seven Financial Creditors for claim amount as well as admitted amount of Rs. 1,24,49,127/- wherein, the resolution applicant shall pay Rs. 10,00,000/- for the said admitted claim. The details of the payment which is to be made to financial creditors are as under;

Sr. No.	Name of Financial Creditors	Amount claimed	Amount Admitted	Voting share

1.	The Mehsana Nagriksaha Kari Bank Ltd.	10,303,926/-	10,303,926/-	82.77%
2.	Harendra Rathore	5,66,946/-	5,66,946/-	4.55%
3.	Harendra Rathore (HUF)	1,08,581/-	1,08,581/-	0.87%
4.	Dhaval Chaudhary	1,62,798/-	1,62,798/-	1.33%
5.	Kinjan M. Chaudhary	2,71,330/-	2,71,330/-	2.18%
6.	Dhaval Mistry	1,35,546/-	1,35,546/-	1.09%
7.	Manthan Infrastructure Private Limited	9,00,000/-	9,00,000/-	7.23%
	Total	12,44,9,127/-	12,44,9,127/-	100%

III. Only one operational Creditor namely G. Rabinathan who had claimed of Rs. 10,33,415/- and Resolution Applicant Propose to pay 0.5% i.e. Rs. 5200/-

IV. The amount of Rs. 3,65,00,000/- is payable to the Apex Enterprises, no claim was received , however, Resolution Applicant has proposed to pay 0.5% i.e. Rs. 1,82,500/- against the full and final payment.

V. The amount of Rs. 49,50,000/- (as on 25.04.2019 amount outstanding as per book is Rs. 80,00,000/-) is payable to the Classique International, no claim was received , however, Resolution Applicant has proposed to pay 0.5% i.e. Rs. 24,800/- against the full and final payment.

VI. The amount of Rs. 4,32,02,247/- is payable to the Apex Enterprises, no claim was received , however, Resolution Applicant has proposed to pay 0.5% i.e. Rs. 2,16,100/- against the full and final payment.

Proposal for Statutory dues

VII. There is pending TDS liability on the Corporate Debtor of Rs. 4,82,598/- for the FY 2007-08 to 2018-2019, no claim received from the TDS, However, RA has proposed to pay 0.5% i.e. Rs. 2,500/- against the full and final settlement.

VIII. There is pending Income Tax liability on Corporate Debtor of Rs. 3,18,920/- from Jurisdictional Income Tax Officer and CPC for FY 2010 -2011 and 2012 and 2013, no claim received from Income Tax Officer, however, Resolution Applicant has proposed to pay 0.5% i.e. Rs. 1600/- against the full and final settlement.

IX. There is pending dues of Karnatka State Value Added Tax and central State liability on corporate Debtor of Rs. 2,07,36,075/-, no claim received against the aforesaid dues, however, Resolution Applicant proposed to Pay 0.5% i.e. Rs. 1,03,700/- against full and final settlement.

X. The applicant submitted that any liabilities arise from the pending litigations, Resolution Applicant shall pay 0.5% of amount subject to maximum Rs. 1,00,000/- and remaining all the liabilities over and above 0.5% subject to maximum Rs. 1,00,000/- shall extend extinguished. No, further amount shall be paid by Resolution Applicant once the Resolution Plan approved by this Authority apart from the amount proposed to pay under the Resolution Plan.

7. The Resolution applicant submitted that M/s Twenty First Century Wire Rods Limited has filed a claim in the Court of Principal Judge,

Harihar claiming the share of 9 Acre and 22 Ghuntas land situated at Mysore Kirloskar Limited, Harihar and claimed Rs. 5,51,00,000/- against the corporate debtor, if the demand is raised in future after the order of the said court such claim shall stand extinguish in perpetuity. Further, the applicant submitted that any proceedings by the Corporate Debtor against the M/s Twenty First Century Wire Rods Limited shall be continued and Resolution Applicant shall appoint legal counsel to deal with such claim.

8. The applicant further submitted that the creditors who have not submitted the claim part from the creditors mentioned in the Resolution Plan shall be deemed to be settled the claim or ward of their claim. It is also submitted by the applicant that all the assets of the corporate debtor including the Bank balance, FD and interest accrued shall be transferred to the Resolution applicant, if any, lien or charge created by any of the creditors that would be released.

9. The applicant stated that if any claim admitted by this Authority after the submission of plan for the approval by this Authority that would be added in the Resolution plan and amount shall be distributed on the prorate basis.

10. The source of funds for the payment of cost of Resolution Plan is internal savings and from existing business of Resolution Applicant .Further, Resolution Applicant has proposed to pay the entire amount of resolution plan within 60 days from the approval of the Resolution Plan.

11. Learned Counsel for the successful Resolution Applicant appeared and narrated the basic facts. He drew our attention to the Resolution Plan in detail. Based upon the contents of the Plan, it was submitted that approved Resolution Plan complied with all the requirements of Section 30(2) of IBC, 2016 and r.w. relevant Regulations made there-under. It was also submitted that Resolution Plan had been filed before the expiry period of CIRP.

12. Now, we consider the facts and submissions made on behalf of the Resolution Applicant. It is noted that the Resolution Plan, submitted for our approval, has been duly approved by the CoC in its meeting dated 19.10.2019 by 100% votes. The Resolution Professional has given requisite certificate that plan complies with all requirements Section 30(2) of IBC, 2016 r.w. relevant CIRP Regulations. The perusal of the Resolution Plan shows that the Financial Creditor will get a sum of Rs. 10,00,000/- against the

their total claimed amount of Rs.12,44,9,127/- The Operational Creditors would receive a sum of Rs. 4,28,000/- as against their total claimed of Rs. 8,56,85,662./- and provisions for statutory liabilities has been made to the tune of Rs. 1,07,800/- and Resolution Applicant also made the provisions of contingent liabilities of Rs. 1,00,000/-. There is no claim submitted by the workmen. Thus, in sum and substance, the Resolution Plan provides for settlement of claim of various stakeholders. It is also noted that the Resolution Plan provides the background of successful Resolution Applicant and its associates. It also provides the details of financial capabilities of the successful Resolution Applicant. The Resolution Plan also provides implementation of Resolution plan within 60 days from the date of approval of the plan by this Authority.

13. The Resolution plan also provides for appointment of RP as the person in-charge to look after the implementation of Resolution Plan. The Resolution Plan has also addressed the issues which resulted into Insolvency of the Corporate Debtor and future business plan so as to such situation does not arise again.

14. Thus, the revised 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of I&B Code, 2016 and

Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A, affidavit under section 29A has also been filed by the Resolution Applicant. The Resolution Professional has also certified that the 'Resolution Plan' approved by the CoC does not contravene any of the provisions of the law for the time being in force. The Compliance Certificate is placed on record. The 'Resolution Plan' has been approved by the CoC with 100% voting share.

15. In view of the above, the revised 'Resolution Plan' annexed with IA 794 of 2019 filed in CP (IB) No. 120 of 2018 is hereby approved, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan including Resolution Applicant.

16. The Resolution Applicant has liberty to approach Competent Authorities for any concession, relief or dispensation as the case may be as when required for proper and effective implementation of the Plan. As per relevant provisions of applicable laws. The competent Authority shall consider the same taking in view the objects of IB Code.

17. It is declared that the amount of Rs. 1,00,000/- which is reserve as a contingent fund in the Resolution plan, if, not utilised, the same shall be distributed to all creditors in proportionate to their respective claims.

18. Apart from the above observations and directions, it is further directed that :

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

    ii. The order of moratorium dated 24.04.2019 passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this order.

    iii. The Resolution Plan shall be subject to the various existing laws in force and shall also confirm to such other requirements specified by the Board and other Statutory/Competent Authorities, as the case may be.

    iv. The Resolution Applicant(s) shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority under section 31(1) or within such period as provided for in such law, whichever is later, as the case may be.

v. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

19. Accordingly, IA 794 of 2019 is allowed with the above said observations and directions and stand disposed of.

20. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

(Virendra Kumar Gupta)
Member (Technical)

(Madan B. Gosavi)
Member (Judicial)

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