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BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

IA 678 of 2020 in C.P.(I.B) No. 750/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 18.02.2021

Name of the Company: Sunit Jagdischandra Shah RP for Sungracia Tiles Pvt. Ltd.
V/s
Sungracia Tiles Pvt. Ltd. & Ors.

Section 30(6) of the Insolvency and Bankruptcy Code, 2016

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER
(through video conferencing)

Mr. Nipun Singhvi, Advocate appeared on behalf of Applicant. Mr. Jaimin Dave, Advocate appeared on behalf of Respondent.

The order is pronounced in the open court vide separate sheet.

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 18th day of February, 2021

BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

I.A. No. 678 of 2020
in
CP(IB) No. 750 of 2019

In the matter of:

Sunit Jagdishchandra Shah
Resolution Professional for
Sungracia Tiles Private Limited ... Applicant

Versus

Sungracia Tiles Private Limited & Ors ... Respondents

Order delivered on 18th February, 2021

Coram:
Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:
Mr. Vishal Dave along with Mr. Nipun Singhvi, Advocates for the Applicant. Mr. Navin Pahwa, Senior Advocate along with Mr. Vishal Raval, Advocate for CoC Members. Mr. Tirth Nayak, Advocate for Operational Creditor. Ms. Hirva Dave for Mr Jamin R. Dave, Advocates for one of the Respondent and Mr. Harmish K. Shah for Respondent No. 2.

ORDER

[Per se: Ms. Manorama Kumari, Member (J)]

1. The instant application is filed by the Applicant, the Resolution Professional of M/s. Sungracia Tiles Private Limited (hereinafter referred to as "Corporate Debtor") under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IB Code") for seeking approval of Resolution Plan.

2. The facts of the case is/are herein under:

2.1 CP(IB) No. 750 of 2019 was admitted by this Adjudicating Authority on 04.12.2019 which was filed by Operational Creditor viz. Durst (India) Pvt. Ltd. under section 9 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor and Mr. Sunit Jagdishchandra Shah was appointed as Interim Resolution Professional (hereinafter referred as "IRP").

2.2 That the Committee of Creditors (hereinafter referred as "CoC") was formed and public announcement in Form-A was made on 07.12.2019, fixing 20.12.2019 as the last date of submission of claims. In the First Meeting of CoC held on 02.01.2020, CoC decided for appointing the Applicant as RP.

2.3 After calling for Expression of Interest (hereinafter referred as "EoI") twice, 3 EoIs were received and thereafter, three Resolution Plans were received by- i) Sepal Tiles Private Limited, (ii) Sepal Ceramic and (iii) Sonata Ceramic Private Limited.

2.4 That on the expiry of 180 days of CIRP further 90 days beyond 180 days along with lockdown exclusion was granted vide order dated 07.08.2020.

2.5 That on 18.08.2020, an offer letter from Ravi Microns was received proposing and desirous of acquiring Sungracia Tiles

Pvt. Ltd. However, since Ravi Microns has not submitted his EoI, CoC decided not to proceed with the plan submitted by him and further decided to call for final Resolution Plans from three prospective Resolution Applicants.

2.6 Pursuant to the Resolution Plans received, Sepal Tiles Pvt. Ltd. Submitted a revised Resolution Plan on 09.09.2020 and thereafter, e-voting was conducted for the approval of the Resolution Plan on 10.09.2020 and accordingly, in the 6th CoC meeting Resolution Plan submitted by Sepal Tiles Pvt. Ltd was approved by majority of 89.68% of the CoC members.

2.8 The Applicant filed Compliance Certificate in 'Form H' as reflected at page no. 304 as **Annexure-Q** of the application. Applicant has also submitted Liquidation value and fair value as reflected from page no. 305 of the application.

3. Heard the parties and also seen the documents annexed, the present application has been filed for approval of the Resolution Plan under Section 31 of the IB Code (as amended upto date) submitted by RP in respect of the Corporate Debtor. The Applicant/ the Resolution Professional, deliberating the sequence of events right from calling of EoI up to approval of the Resolution Plan by the CoC in its 6th meeting submitted the Resolution Plan duly approved by the CoC by 89.68% in favour of the Resolution Plan so submitted by Resolution Applicant as the Resolution Plan complies with the requirements as envisaged under Regulation 38 of the Insolvency and Bankruptcy

Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as well as Section 30 of the Code, and sought for approval of the Resolution Plan by this Adjudicating Authority.

4. On perusal of the records, it is found that the Resolution Applicant has taken account the interest of all stakeholders of the Corporate Debtor to the extent possible, as envisaged in this Resolution Plan for insolvency resolution of "Sungracia Tiles Private Limited".

5. The amounts provided for the stakeholders under the Resolution Plan is as under-

Sl. No.	**Category of Stakeholder***	**Sub-Category of Stakeholder**	**Amount claimed**	**Amount Admitted**	**Amount provided under the Plan#**	**Amount provided to the amount claimed (%)**
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under	-	-	-	-

		sub-section (2) of section 21				
		(b) Other than (a) above:	-	-	-	-
		(i) who did not vote in favour of the resolution plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	10,82,67,125	10,82,67,125	10,82,67,125	100%
		Total [(a) + (b)]	**10,82,67,125**	**10,82,67,125**	**10,82,67,125**	**100**
2	Unsecured Financial Creditors	(a) Creditors not having	3,43,92388	3,43,92388	-	-

		a right to vote under sub-section (2) of section 21				
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution plan	875,321	875,321	147140	-
		(ii) who abstained in favour of the resolution plan	1,26,96,951	1,26,96,951	2134333	
		(iii) who voted in favour of	96,81,398	96,81,398	1627435	17

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		the resolution plan				
		Total [(a) + (b)]	**16,59,13,183**	**16,59,13,183**	**39,08,908**	**17**
3	Operational Creditors	(a) (i) Related Party of Corporate Debtor	-	-	-	-
		(ii) Non-Related Party of Corporate Debtor (including Govt Dues)	9,44,62,563	9,44,62,563	25,00,000	2.65
		(b) Other than (a) above: (i) Workmen & Employees	20,83,904	20,83,904	-	-

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		Dues [Related Party] (ii) Workmen & Employees Dues [Non-Related Party] (iv) Other	7,23,967	7,23,967	7,23,967	25.78
		Total [(a) + (b)]	**97,270,434**	**97,270,434**	**32,23,967**	**28.43**
4	Other debts and dues					
Grand Total			**26,31,83,617**	**26,31,83,617**	**11,54,00,000**	

6. The source of funds are stated below:

Applications of funds	**INR**
CIRP Cost	47,00,000
Financial Creditors- Secured	10,82,67,125
Financial Creditors- Unsecured (Non-related party)	39,08,908
Operational Creditor & Statutory Dues	25,00,000

Workmen & Employees (Non-related party)	7,23,967
Total	**12,01,00,000**

Sources of Funds	**INR**
Resolution Applicant (Sepal Tiles Private Limited) as well as diecrtor (Pravinbhai Dava) and shareholder (Chirag Dava) contribution **[17.98%]** [net worth certificate and KYC attached with the plan]	2,16,00,000
Non- Bank Finance **[Raj-radhe Finance Limited]** 302, Shaswat Complex, Nr. Hotel Kanak, Opp. Gujarat College, Elishbridge, Ahmedabad- 380006 **[82.02%]** [sanction letter attached]	9,85,00,000
Total	12,01,00,000

7. The summary of payment terms under the Proposed Plan is reproduced herein below:

Sr. No.	Category of Creditors	Amount of claim	Claim admitted	Amount provided in the Plan	Payment mode	Payment Term
1.	Insolvency	NA	NA	47,00,000	Cash	The CIRP

	Resolution Process Cost					cost will be paid within 10 days from the date of approval of Resolution Plan by NCLT
2.	Operational Creditors (including Govt/ statutory authorities, other than Workmen and Employees)	9,44,62,563	9,44,62,563	25,00,000	Cash	Within 30 days from the date of approval of Resolution Plan by NCLT
3.	Workme	28,07,871	28,07,871	7,23,96	Cash	Within

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	n and Employees			7		30 days from the date of approval of Resolution Plan by NCLT
4(a)	Secured Financial Creditors	10,82,67,125	10,82,67,125	10,82,67,125	Deferred Payment: Rs. 2,70,66,781 (1st Instalment) Rs. 8,12,00,344 (2nd Instalment)	1st Instalment will be paid within 15 days from the date of approval of Resolution Plan by NCLT 2nd Instalment will be paid within

						45 days from the date of approval of Resolution Plan by NCLT. With grace period of 30 days along with9% interest.
4(b)	Unsecured Financial Creditors (Except Related Party)	2,32,53,670	2,32,53,670	39,08,908	Cash	Within 30 days from the date of approval of Resolution Plan by NCLT
	Total-A (1+2+3+	22,87,91,299	22,87,91,299	12,01,00,000		

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	4)					
5.	Creditors (other than Financial and Operational Creditors)	NIL	NIL	NIL		
6.	Contingent Liabilities	NIL	NIL	NIL		
	Total- B (5+6)	22,87,91,299	22,87,91,299	12,01,00,000		

8. On perusal of the record, it is found that the Resolution Applicant has also filed "Form-H" as **Annexure-Q** under regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 at page no. 304 of the application, which is self explanatory.

9. In view of above, Section 30(2) and 30(4) is applicable in the instant case. For sake of the convenience the amended provision is reproduced herein below-

"***30. Submission of Resolution Plan***

(1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each 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;

[(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 sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]"

FINDINGS:

10. During the pendency of the instant application for approval of Resolution Plan, Respondent No. 16 i.e. Precera Exim (Representative of the Operational Creditors) filed his reply praying for rejection of the Resolution Plan and sending the same to CoC for reconsideration with appropriate directions to ensure that interest of all the stakeholders is adequately addressed by the CoC. He further prayed that this Tribunal may also pass necessary orders to undertake a fresh valuation of the assets of the Corporate Debtor by an independent third party valuer and direct the Applicant to produce the valuation report, details of liquidation, value of assets of the Corporate Debtor, etc, apart from other prayers.

11. Gone through the record and the said reply, it is found that Resolution Plan has duly been approved by 89.68% of voting majority and CoC has taken care of all the stakeholders. Under such circumstances, we do not find any ambiguity in the Resolution Plan. Moreover, in view of the ***K. Shashidhar's*** Judgement and other judgements in this respect, this Adjudicating Authority has no power to interfere in the commercial wisdom of the CoC, until and unless there is gross violation of principle of law. Thus, the objection so raised by Respondent No. 16 is not sustainable.

12. Looking to the entire facts of the case, it is found that the COC has approved the plan with 89.68% voting in favour of the approval of the plan. Moreso, the Resolution Applicant fulfils the mandatory contents of the Resolution Plan as provided under Regulation 38 of Insolvency

and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. Regulation 38 is reproduced herein under-

*"**38. Mandatory contents of the resolution plan**.*

(1) A resolution plan shall identify specific sources of funds that will be used to pay the –

(a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;

(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and

(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.

["(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor."]

(2) A resolution plan shall provide:

(a) the term of the plan and its implementation schedule;

(b) the management and control of the business of the corporate debtor during its term; and

(c) adequate means for supervising its implementation."

13. Further, from the object of the IBC, it is amply clear that the **"Resolution is Rule and the Liquidation is an Exception"**. Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only, if there is any surplus after satisfying the claims of a prior set of stakeholders fully. The IB Code', therefore, does not allow liquidation of a corporate debtor' directly. It allows liquidation only on failure of corporate insolvency resolution process'. It rather facilitates and encourages resolution in several ways.

14. *In the case of* ***K. Shashidhar v. Indian Overseas Bank &Ors****, the Hon'ble Supreme Court stated, "As aforesaid, upon receipt of a "rejected plan" the adjudicating authority (NCLT) is not expected to do anything more, but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyze or evaluate the commercial decision of the COC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors."*

The Hon'ble Supreme Court further held that "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". In the most *recent judgment dated 15th November 2019 of* ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta &Ors*** *delivered by the Hon'ble Supreme Court, it was strongly opined by the Hon'ble Apex Court that the AA can exercise only a limited judicial review in respect of any COC decision. NCLT/NCLAT does not have jurisdiction under the provisions of the Code to interfere in the merits of a business decision taken by the majority of COC.*

The Hon'ble Supreme Court held that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the CoC and that the CoC is the final authority in this regard. The Hon'ble Supreme Court restricted the role of NCLT to only adjudicate whether the CoC has complied with the objects of the Code i.e. the corporate debtor needs to keep going as a going concern during CIRP, it needs to maximize the value of the assets of the corporate debtor, and interests of all stakeholders have to be taken care of.

The Court referred to its judgment in K Shashidhar's matter wherein it was provided that there is no provision under the Code which empowers the Adjudicating Authority to oversee the justness of the reason or the commercial decision taken by the financial creditors in approving or rejecting the proposed resolution plan. The apex court upheld the autonomy of the COC regarding the commercial matters and decisions that cannot be questioned by the AA.

15. With regard to the **Section 7- Reliefs and Waivers** (Clause of the Resolution Plan at page no. 242 of the application), it is to be mention that since all the Financial Creditors, Operational Creditors and other Stakeholders have already lodged their claims during the CIRP and the same has been already considered by CoC and accordingly, Resolution Plan has been approved by CoC with majority. The claims of any Stakeholder and others, if remained unaddressed or not considered by CoC, shall not claim upon Corporate Debtor after the approval of Resolution Plan. It is to be specifically mention herein that no claim against the Resolution Applicant will lie on and from the date of approval of the Resolution Plan by this Adjudicating Authority. However, any extinguishment, waiver or concession, if claimed, by the Resolution Applicant from any competent authority of Government/ Semi Government/ Central or Local Authority, Resolution Applicant is required to approach them for such relief, claim and/or any waiver.

16. It is needless to mention herein that approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/own jurisdiction to pass any appropriate order or as the case may be. The Resolution Applicant(s) on approval of the Plan may approach those Competent Authorities/Courts/Legal Forums/Offices- Govt, or Semi Govt. / State or Central Govt, for appropriate relief(s) sought for in the Resolution Plan.

17. Thus, not allowing the above said relief and/or concession and/or waiver are not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant(s) has/have 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.

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

    i. The approved Resolution Plan shall come into force with immediate effect.

    ii. 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.

    iii. 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 laws 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 or as the case may be.

iv. 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 on its database.

19. Under such facts and circumstances, we, the Adjudicating Authority, is of the considered opinion and also being satisfied that the Resolution Plan as approved by the Committee of Creditors (CoC) meets the requirements as referred to under section 30(2) of the Code.

20. Accordingly, IA 678 of 2020 is allowed with the above said observations and directions and stands disposed of in view of the above order.

21. Any IA(s), if pending, in relation to the instant Resolution Plan stands infructuous.

Chockalingam Thirunavukkarasu
Adjudicating Authority
Member(Technical)

Manorama Kumari
Adjudicating Authority
Member(Judicial)

Shreya