

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, DELHI
BENCH III**

CA-799/C-III/ND/2019 filed in CP No. 330/ND/2018 under Sections 30 (6) & 31 of IBC 2016 r/w rule 11 of NCLT Rules and Regulation 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

*In the matter of **Micromax Energy Limited.***

Order delivered on 24th June 2020.

CORAM

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
KAPAL KUMAR VOHRA, MEMBER (TECHNICAL)

*For RP: Mr. G.P. Madaan, Mr. Utkarsh Mishra, Ms. Pankhuri Kaur Rehsi,
Mr. Aditya Madaan, Advocates*

*For Objecting OC: Mr. Karunesh Tandon, Ms. Kamini Tandon,
Mr. Chandrashekhar Goswami, Through Tandon law
Associates*

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL).

1. By way of present CA-799/C-III/ND/2019 filed in CP No. 33/ND/2018, the Resolution Professional viz., Mr. Avineesh Matta has submitted the Resolution Plan approved by the Committee of Creditors (CoC) and prayed for approval of the same under Section 31 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC, 2016').
2. Before this Authority proceeds to examine the Resolution Plan, it is necessary to deal with the **objection** raised by one of the Operational Creditors viz., *Jay Ace Technologies Limited (herein referred as OC)*. The

OC has submitted that the Resolution Applicants viz., Mr. Mukesh Gupta and Mr. Krishan Bansal in terms of Section 5 (24) of the IBC, 2016 are related parties and is barred under Section 29 A of the IBC, 2016. The Resolution Plan is sham and collusive in its nature, as the voting share of the Operational Creditor was reduced from 100% to 36.12% on false and frivolous ground. The Operational Creditor has taken another objection with regarding to mode of the payment of the debts, which is by way of giving the respective stock /material procured from the related party M/s. Bhagwati Product limited (herein referred as BPL). Further, it is submitted that the Resolution Plan is in contravention of the requirement stated under Section 30 (2) (e) of the IBC, 2016 and there is breach of contract and the compensation should be provided in terms of Section 73 of the Contract Act.

3. In reply to the objections raised by the Objector/Operational Creditor, the Counsel for the Resolution professional has referred to the ruling of Hon'ble Apex Court given in **K. Sashidhar Vs. Indian Overseas Bank &Ors.**, reported in MANU/SC/0189/2019, wherein under Para 33, the Hon'ble Apex Court has observed as follows;-

"...the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by I&B Code. There is an intrinsic assumption that the Financial Creditors are fully informed about the viability of the Corporate Debtor and feasibility of the proposed Resolution Plan. They act on the basis of their examination of the proposed Resolution Plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after deliberations in the CoC meetings through voting, as per the voting shares, is a collective business decision. The legislature, consciously, has not provided

ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decisions before the Adjudicating Authority. That is non-justiciable.”

4. In view of the above noted observation of Hon'ble Supreme Court, the Counsel for the Resolution professional has submitted that the Objector/Operational Creditor cannot question the decision of the CoC. Moreover, the provision made in the Resolution Plan in favour of the Operational Creditors is more than the amount that the Operational Creditors could have received in the event of liquidation of the Corporate Debtor. In view of it, the issues raised by the Counsel for the above noted Objector/Operational Creditor stand rejected.

5. It is noted that the C.P (IB) No. 330 (ND)/ 2018 was filed by the Operational Creditor viz., *Jay Ace Technologies Limited* under Section 9 of the Code read with Rule 6 of the Insolvency and Bankruptcy Board (Application to Adjudicating Authority) Rules, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor namely *Micromax Energy Limited*(hereinafter referred as “Corporate Debtor”).

6. The said Application was admitted by this Adjudicating Authority vide Order dated 17.12.2018 and Mr. Avineesh Matta (IP Registration Number IBBI/IPA-001/IP-P00610/2017-2018/11070) was appointed as the Interim Resolution Professional. Pursuant to the Order dated 17.12.2018, the IRP /Applicant had immediately made a Public Announcement in accordance with Section 15 of the Code.

7. On 28.01.2019, the Committee of Creditors (herein after referred to as “CoC”) unanimously approved the appointment of Interim Resolution Professional as Resolution Professional in the second meeting of the Committee of Creditors.

8. In 9th meeting of the CoCheld on 07.08.2019 the following resolutions were passed: -

*“**RESOLVED THAT** pursuant to the applicable provisions of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the Evaluation Matrix for Resolution Plan, as placed before the members of Committee, be and is hereby approved.*

***RESOLVED FURTHER THAT** Resolution Professional be and is hereby authorised to do all such acts, deeds and things as may be required or considered necessary or incidental thereto to give effect to the said resolution.”*

*“**RESOLVED THAT** for the purposes of submission of Resolution Plan, the COC hereby decides not to fix any particular criteria, except as contained in the Evaluation Matrix and as provided under the provisions of Insolvency and Bankruptcy Code, 2016 and rules and regulations made there under.*

***RESOLVED FURTHER THAT** draft Form ‘G’, as tabled before the CoC, be and is hereby approved.*

***RESOLVED FURTHER THAT** Resolution Professional be and is hereby authorized to do all such acts, deeds and things as may be required or considered necessary, expedient or*

incidental thereto to give effect to these resolutions, including making suitable modifications in Form G.”

9. The resolutions as stated above were passed with a voting percentage of 55.99% in the 9th meeting of the CoC. The Resolution Professional on 20.08.2019 published Form-G in the Newspaper(s).

10. The 10th meeting of the CoC was held on 11.09.2019 wherein the Resolution Professional informed to the members that after the publication of Form-G, six EOIs were received by the Resolution Professional, of which one was received after the last date of submission of EOIs and another was submitted without declaration u/s 29A. The CoC decided to authorise the Resolution Professional to send Request for Resolution Plan (RFRP) to the rest of the four Prospective Resolution Applicants (PRAs). Further agenda item i.e. to consider and approve Request for Resolution Plan (RFRP) was put up for voting and the resolution passed is as follows: -

“RESOLVED THAT *for the purposes of inviting Resolution Plans from the Prospective Resolution Applicants, the Committee of Creditors approve the Request for Resolution Plan document.*

RESOLVED FURTHER THAT *the Resolution Professional be and is hereby authorized to circulate the same in accordance with the extant regulations and in such manner as is provided in the said document.*

RESOLVED ALSO THAT *the Resolution Professional be and is hereby authorized to make any corrections, modifications or alterations as is deemed fit by him to comply with the regulatory framework governing the Corporate Insolvency Regulation Process including the date lines in accordance therewith.”*

The above-mentioned resolution was passed with a voting percentage of 85.70%.

11. The 11th meeting of the CoC was held on 24.10.2019 wherein the Resolution Professional apprised the members of the CoC that out of four eligible prospective resolution applicants (PRAs), who were part of the final list of PRAs, two PRAs namely, Shri Mukesh Gupta and Shri Krishna Bansal jointly submitted a Resolution Plan along with Performance Security amount. The Resolution Plan was circulated on 23.10.2019 to all the CoC members through email. After deliberations on the same the agenda item i.e., “to present the Resolution Plan received, before CoC and to consider approval of the same, if found compliant” was put up for voting and resolution passed by the members of the CoC is as follows: -

“RESOLVED THAT the Resolution Plan being compliant with the laid down regulatory framework under the Code, as submitted by the Joint Resolution Applicants, Shri Mukesh Gupta and Shri Krishan Bansal, be and is hereby approved by the committee of creditors.

RESOLVED FURTHER THAT in pursuance to sub-section (6) of section 30 and other applicable rules and regulations made under the Code, Mr. Avineesh Matta, the resolution professional be and is hereby authorized to submit the resolution plan so approved by the committee of creditors, to the hon’ble adjudicating authority for appropriate orders.

RESOLVED ALSO THAT the Committee of Creditors hereby authorizes Mr. Avineesh Matta, Resolution Professional to do all such acts, deeds and take any action to give effect to this resolution.”

12. The resolution mentioned above was passed with a voting percentage of 86.33%. The highlights of the “Resolution Plan” are as follows:

Resolution Applicants:

Shri Mukesh Gupta MD of CD (here in referred as MG) and Shri Krishan Bansal, CFO of CD (here in referred as KB)

Resolution Debt:

- a. The Operational Creditors' claims admitted of Rs. 181.22 Lakhs.
- b. No claim received from the Financial Creditors- all related parties unsecured directors' loans.

Resolutions proposal:

- a. All admitted claims of OCs would be settled in 100% value.
- b. Mode of repayment= by off grid inverter stock at the rate of Rs. 200/- per unit plus applicable GST and or on grid inverter stock at the rate of Rs. 3.50/- per watt plus GST.

CIRP Cost:

- a. Rs. 28.38 Lakhs till September 2019
- b. All CIRP cost to have first priority

Sources of Settlement:

- a. Off Grid and on Grid to be supplied by M/s Bhagwati Products Limited (herein referred as BPL)
- b. CIRP cost shall be fully funded by joint resolution applicants in the ratio of 60:40 (MG: KB). All CIRP cost to be funded accruing until approval of the Resolution Plan by the Adjudicating Authority.

Implementation Period:

- a. Within 30 days, from the date of approval of the Resolution Plan by the Adjudicating Authority.
- b. Monitoring by RP viz., Avineesh Matta
- c. No extension shall be sought by the Resolution Applicants.

Repayment of Related Parties' Debts:

- a. BPL Rs. 322.62 Lakhs, Microlyte Rs. 102.43 Lakhs.
- b. To be paid by the internal accruals over 5 Years, including those goods being supplied by the BPL under plan.
- c. Undertaking from parties and comfort letter from BPL submitted.
- d. Resolutions from respective Boards of the related parties submitted.

Other Issues:

- a. All past unclaimed debts for which claims not filed or filed but not admitted by RP will stand extinguished.
- b. No change in management or capital structure is proposed.
- c. One of the resolution applicants' viz., KB to be appointed on Board of CD within 60 days of the approval of the Resolution Plan.
- d. Joint Resolution Applicants propose to exit LA (lead acid) battery business in CD.
- e. No reduction in claims already admitted.

13. It is specifically noted that the Joint Resolution Applicants propose to exit LA (lead acid) battery business in CD and switch over to lithium business, with respect to which the Directors of the Corporate Debtor and one of the Resolution Applicants namely, Mr. Makesh Gupta have considerable experience in the lithium industry and have great chances of success. The Corporate Debtor has the necessary ICAT Certifications for lithium business. The GST Registrations are also in place, thus, no approval from government or statutory body would be required to restart the business.

14. The Resolution applicants have filed the Affidavits stating that at the time of submission of Resolution Plan, the accounts of the Resolution applicants and any connected person, as per Explanation-1 provided under Section 29 A of the IBC or an account of the Corporate Debtor under the management or control of such person, of whom, such person is a Promoter, is not classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulations Act, 1949 or guidelines of a Financial Sector Regulator issued under any other law for the time being enforce and atleast a period of one year or more has lapsed from the date of such classification till the date of commencement of Corporate Insolvency Resolution Process of the Corporate Debtor and the applicants have not failed to make the payment of all overdue amounts with interest therein and charges related to non-performing assets before submission of the Resolution Plan. The other conditions provided under Section 29-A are also not attracted in case of the Resolution applicants, even though, they were holding the positions of the MD and CFO in the CD. Form-H, as required under Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for corporate persons) Regulation, 2016 and the evidence of receipt of performance security required under sub-regulation (4A) of Regulation 36B has also been filed by the Resolution Professional. Form-H, indicates the fair value as Rs.25.89 Lakhs, liquidation value Rs.18.19 Lakhs and the Resolution Plan proposes to pay to the Creditors more than the fair value.

15. The parameters for approval of Resolution Plan are set out in Sections 30(2) and 31 of the IBC, 2016. The Resolution Plan under consideration has met with mandatory compliance, which are briefly set forth herein below;

Section / Regulation	Compliance made
Section 30(1) of the IBC, 2016	Resolution Applicant has submitted an affidavit stating that he is not disqualified under the provisions of Section 29A.
Section 30(2)(a) of the I&B Code, 2016 And Regulation 38(1A) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016	The Resolution Plan provides payment of the CIRP Cost, in priority to the payment of other debts of the Corporate Debtor. The Resolution Plan also dealt with the interest of all the stakeholders.
Section 30(2)(b) of the I&B Code, 2016 And Regulation 38(1) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016	The Resolution Plan provides for the payment of 100% of the admitted claims of the Operational Creditor including those of the Employee and Workmen, which is much more than the amount paid to the Operational Creditor in the event of liquidation of the Corporate Debtor. Not Applicable as there are no financial creditors
Section 30(2)(c) and Section 30(2)(d) of the I&B Code, 2016,	The Resolution Plan provides that there will be no change in management or capital structure by the Resolution Applicants during the plan period. Mr. Krishan


<p style="text-align: center;"><i>And</i></p> <p>Regulation 38(2) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016</p>	<p>Bansal to be appointed on Board of Corporate Debtor within 60 days of approval</p> <p>The implementation of plan as stated by the Resolution Applicants in the Resolution plan is 30 days from the approval.</p>
<p>Section 30(2)(e) of the I&B Code, 2016</p>	<p>The Resolution Plan does not contravene any of the provisions of law for time being in force.</p>
<p>Section 30(4) of I&B Code, 2016,</p> <p style="text-align: center;"><i>And</i></p> <p>Regulation 38(3) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016.</p>	<p>The Committee of Creditors, after considering the feasibility and viability of the Resolution Plan have approved the same by 100% voting.</p> <p>Amongst the 4 prospective resolution applicants, Shri Mukesh Gupta and Shri Krishna Bansal jointly submitted a Resolution Plan along with Performance Security amount.</p> <p>Joint Resolution Applicants propose to exit LA batteries business of the Corporate Debtor.</p>

16. In view of the above, the “Resolution Plan” annexed with the CA-799/C-III/ND/2019 filed in CP No. 33/ND/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 the Resolution Applicants.

17. While approving the Resolution Plan, as mentioned above, it is clarified that the Resolution Applicants shall pursuant to the Resolution Plan approved under Section 31(1) of the I&B Code, 2016, obtain all the necessary approval as may be 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 this authority or within such period as provided for in such law.

18. The order of moratorium passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order.
19. The Resolution Professional shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI, so that the Board may record the same on the database.
20. The approved Resolution Plan shall become effective from the date of passing of this Order.
21. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicants.
22. Accordingly, CA-799/C-III/ND/2019 filed in CP No. 33/ND/2018 stands **disposed of**.
23. This Order is pronounced.


(K.K. VOHRA)
MEMBER (TECHNICAL)


CH. MOHD. SHARIEF TARIQ
MEMBER (JUDICIAL)

This order of the Bench consisting of the above-mentioned members was pronounced in the open Court by one of the members on behalf of the Bench under Rule 151 of the NCLT Rules, 2016.

Court officer

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, DELHI
BENCH III**

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*In the matter of **Micromax Energy Limited.***

Order delivered on 24th June, 2020.

CORAM

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

Present : Mr. G.P. Madaan, Advocate : For R.P.

Mr. Avinash : Resolution Professional

Mr. Mukesh Gupta & Mr. Krishan : For Res. Applicant
Bansal.

ORDER

The Resolution Professional along with the Counsel is present.
Counsel for the Resolution Applicant is present.

It is submitted by the Counsel for the Resolution Applicant that the Resolution Applicant stands by the Resolution Plan that is approved by the COC. The Resolution Plan is approved by this Authority. The Order is pronounced by the undersigned on behalf of the other Member (Technical) Shri K.K. Vohra as well. Copies of the order shall be provided by the Registry to the parties and files shall be consigned to Record Room after due completion.


**(CH. MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)**

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