

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.227/BB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

&

I.A. No.265 of 2020
U/s 30(6) of IBC, 2016
r/w Regulation 39 (4) of CIRP Regulations 2016

In the matter of:

Shri. V.S. Varun,

Resolution Profession of

Aradhya Steel Private Limited,

Office at flat No. IB, 108, The Tree by Provident,

2nd Main, herohalli, Off MagadiRoad,

Near Andhrahalli,

Bengaluru - 560 091

- Applicant/Resolution Professional

Date of pronouncement: 24th August, 2020

- Coram:**
1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
 2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant : Mr. S.K.Srinivasan

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No. 265 of 2020 in C.P. (IB) No.227/BB/2019 is filed by Mr. V.S Varun, Resolution Professional of M/s. Aradhya Steel Private Limited(hereinafter referred to as 'Applicant/Resolution Professional') u/s30(6) of I&B Code, 2016 r/w Regulation 39 (4) of CIRP Regulations 2016 & Rule 11 of the NCLT Rules, by seeking approval of the Resolution plan, which shall be binding on the Corporate Debtor and

its employees Members, 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, such as authorities to whom statutory dues are owed, creditors, guarantors and other stakeholders involved in the Resolution plan and to pass an order for excluding 82 days from the CIRP period

2. Brief facts of the case, which are relevant to the issue in question, are as follows:

(1) C.P.(IB) No.227/BB/2019 is filed by M/s. Peddington Chemical Industries (India) ('Petitioner/Operational Creditor') U/s 9 of I&B Code, 2016 was admitted by the Adjudicating Authority vide Order dated 29th August 2019 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor i.e. M/s. Aradhya Steel Private Limited, appointing V.S Varun as IRP, imposing moratorium, etc. Subsequently, he was confirmed as RP and the same was confirmed by the Adjudicating Authority vide its dated 15.11.2019 passed in I.A. No.597 of 2019 on 15.11.2019.

(2) In Pursuant to Section 15 R/w Regulation 6 of the CIRP Regulations, 2016, the RP made Public Announcement inviting claims from Creditors on 19.09.2019 in Form A published in Financial Express (English newspaper), in Kannada Prabha (regional language) and also in the website of IBBI. He has diligently verified the claims received from the Financial Creditors and Operational Creditors and from ex-employees, the same was filed under Regulation 13 with the Adjudicating Authority on 14.10.2019. Further, the RP constituted the Committee of Creditors under Regulation 17 comprising of eight Financial



Creditors and called for first COC meeting on 14.10.2019. The RP appointed two valuers viz., Mr. Hemant Ambalsekar and Mr. Jigar Shah to determine the Fair value and the Liquidation value of the Corporate Debtor. As per the valuation reports, the average Fair value has been Rs. 82. 12 crores and average Liquidation value has been Rs. 53.05 crores and the same was submitted before COC for review.

- (3) A publication seeking expression of Interest (EOI) in Form G was published on 29th November 2019 in Financial Express (English Language Newspaper) and in (Kannada Prabha) Kannada Language Newspaper and also in the website of IBBI. Subsequently, further extension of 90 days of CIRP period was sought and granted by the Adjudicating Authority vide order passed in I.A. No. 89 of 2020 dated 14.02.2020. Accordingly, Expression of Interest (EOI) were received from two Applicants viz., Bansal Wire Industries Limited and Raj Rattan Global Wire Limited. However, COC felt that the plans were not matching expectations and decided to go in for fresh invitation of EOI. Further with the approval of the COC, RP carried out publications for the second time in Form G which was published in the newspapers on 16.02.2020 and also in the website of IBBI. Accordingly, Resolution plans were received only from two Applicants out of three Applicants viz., Bansal Wire Industries Limited and Raj Rattan Global Wire Limited. The eligibility criteria, balance sheet and profit and loss statements, the Net-worth Certificates of the Resolution Applicant had been duly perused by the RP. Upon compliance with the conditions under Section 30 (2) of IBC and based on the Forensic Audit and Transaction Audit report where no transactions u/s 43, 45, 50 &



66 were observed, found or determined, the RP submitted the plan to COC for its conditions,. The COC deliberated extensively on the two persons i.e., Forensic and Transaction Audit reports and unanimously gave its approval to RP to proceed further to complete the CIRP at the earliest in compliance with Reg. 39 (2). It is pertinent to state that during the CoC deliberations on the two reports, there was a claim received from the GST Dept., Mumbai Zonal Office and a letter alleging that the Corporate Debtor in connivance with its creditors and debtors was involved in circuitous transaction, availed ineligible CENVAT credit, wrong input tax credit, and the GST Dept. had initiated inquiry into the same. Considering the matter as was in the preliminary investigation stage by the GST intelligence without confirmed or crystallized liability of the corporate debtor to pay any dues without adherence to proper adjudication and due process of law, RP requested to GST dept. to submit more information to substantiate their claim which is still yet to the received.

- (4) Further after carefully analyzing the plans, COC in its meeting held on 01.06.2020 ranked the plan submitted by one of the Resolution Applicant i.e, Bansal Wire Industries Limited plan as H1. The COC in their commercial wisdom accorded their unanimous consent to RP to initiate voting exercise which was held from 15.07.2020 to 22.07.2020. The RP submitted an affidavit and also an undertaking in compliance with Reg. 39 (1) (a) and (b). Further, a declaration stating that the RP do not suffer from any of the disqualifications contemplated u/s 29A and further under Regulation 38 (2) Resolution Applicant have submitted a term of the plan as well an implementation schedule.

- (5) Further, after the conclusion of the voting on 22.07.2020, and in the COC meeting held on 23.07.2020, the voting results were announced to COC with 79% infavour of the resolution plan submitted by Bansal Wire Industries Limited. The Resolution plan dated 10.04.2020(amended as on 10.07.2020) as submitted by Resolution Applicant viz., Bansal Wire Industries Limited a company incorporated and having registered office at F-3, Main Road, Shastri Nagar, New Delhi – 110052 was duly approved in compliance with Section 30 (4).
- (6) In the light of the detailed reproduction of the resolution plan, one of the justifications for approval of the resolution plan is the Liquidation value is less comparing the proposals made in the resolution plan. Further in the 14thCoC meeting, after approving the resolution plan of M/s. Bansal Wire Industries Limited, the CoC authorized the RP to submit the resolution plan to this Hon'ble Tribunal u/s 30(6) of IBC for approval of the said resolution plan u/s 31 (1), IBC. There is exclusion of CIRP period by 82 days due to lockdown announced by State and Central Government because of Covid 19 pandemic and last date was 21.08.2020.
- (7) The RA has already received agreement in principal from Tata Capital Limited as well as IndusInd Bank (copies enclosed) in terms to part funding available @ Rs. 2500 lacs each to meet the requirement of the resolution plan. The promoters and the group companies of the RA having good liquidity in terms to available resources for meeting the requirements by way of equity/quasi equity. The group companies have got potential for further borrowing if required in view of having external rating i.e., A-(stable) from CRISIL. In view of external rating of CRISIL of A-



(stable) together with successful track record about 35 years in the field of wire trade business, the RA may avail credit facilities of Rs. 4000 lacs from any of the consortium lenders of ASPL on RLLR and its repayment under equated installments of 81 months including 6 months of moratorium period from the date of the order of NCLT. The resolution plan is proposed to be implemented within 24 months from the date of the approval by the adjudicating authority. The major advantage of the present resolution plan being offered by the RA are as under:

- a. *The offer amount is substantially higher than our estimated realizable value of assets, if sold on piecemeal basis.*
- b. *The present resolution plan provides for complete offer amount to be paid to secured financial creditors/other stakeholders within 24 months from the order of the adjudicating authority as compared to liquidation process time frame of 5-6 years, particularly given the complexity of the CDs case, present economic environment in country and unprecedented slump in economy ad in real estate sector.*
- c. *The Resolution plan envisaged continuation of business of CD as "going concern" with no adverse effect on existing employees/workers as it does not contemplate any retrenchments nor any further changes to the current employment terms and conditions, compared to liquidation where jobs are lost immediately, which will have a significant impact on the society and in such case.*
- d. *The manufacturing unit of CD is located in rural/backward area in state of Karnataka, with very less employment opportunities and therefore any event of closure/liquidation of the same will result in serious financial and social loss for nearby villages with unemployment of workers in large numbers.*
- e. *Resolution plan envisaged to continue the business of the CD and maintain "going concern status". The Ras also engaged in same*

manufacturing activities; they are confident to manage the business without any difficult.

f. The entire costs of the Resolution will be significantly lower than the liquidation costs.

3. Heard Mr. S.K. Srinivasan, Learned Counsel for the RP through Video Conference. We have carefully perused the pleadings of Party and extant provisions of the Code and the Rules made thereunder and the Law on the issue.
4. Mr.S.K.Srinivasan, learned Counsel, while reiterating various averments made in the Application/Petition, has further submitted that the Resolution Plan has been approved by the CoC with requisite majority, and it satisfy all requisite conditions as per the provisions of the Code. Therefore, he urged the Adjudicating Authority to approve the Resolution Plan as prayed for.
5. In order to approve a Resolution Plan U/s 31(1) of the Code, Resolution Professional should examine each Resolution Plan as prescribed under Section 30(2) of the Code, as mentioned below:
 - 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 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 a liquidation of the corporate debtor under Section 53;*
 - 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) confirms to such other requirements as may be specified by the Board.

6. In compliance with the said conditions, the Resolution Professional has submitted various documents and statements as per provisions of the Code and the Rules made there under. And these compliances are briefly pointed out as under:

(1) The Resolution Professional has filed Compliance Certificate in Form-H, under Regulation 39(4) of the IBBI (Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:+Lockdown days: Total 82 days calculated from 14th March – 21st March (7 days), 25th March – 31st May (67 days), 14th July -22nd July (8 days). For fair value and Liquidation value, the higher of two values are considered

Particulars	Fair Value	Liquidation value
Total valuation – Jigar Shah and R.K Patel	80,84,85,195	53,05,78,543
Total Valuation – Mr. VyshnaviDevenahalli Nagaraj and Mr. Prajapati HitenkumarJayantilal	82,12,85,626	51,64,20,359

The Resolution Plan dated 10.07.2020 is received from the Resolution Applicant M/s. Bansal Wire Industries Limited and is approved by the Committee of Creditors (CoC) of Aradhya Steel Private Limited.

(2) The Resolution Applicant BANSAL WIRE INDUSTRIES LIMITED submitted an affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit resolution plan.



S.No.	Name of Creditors	Share of COC voting %	Share of secured Limits	Share of Unsecured Limits	Voting for Resolution plan (voted for/ dissented/ Abstained)	Voted for voting %	Dissented voting %
1	Union Bank of India	30.49%	36.96%	0.00%	Voted for	30.49%	0.00%
2	HDFC Bank Ltd	17.48%	11.00%	47.97%	Dissented	0.00%	17.48%
3	Bank of Baroda	17.26%	20.92%	0.00%	Voted for	17.26%	0.00%
4	Hero Fincorp Ltd	14.26%	17.29%	0.00%	Voted for	14.26%	0.00%
5.	Indian Bank	11.41%	13.83%	0.00%	Voted for	11.41%	0.00%
6.	Axis Bank Ltd	5.60%	0.00%	31.99%	Voted	5.60%	0.00%
7	Tata Capital Financial Services Ltd	2.02%	0.00%	11.53%	Dissented	0.00%	2.02%
8	Siemens financial services Pvt Ltd	1.47%	0.00%	8.41%	Dissented	0.00%	1.47%
9	Sundaram Finance Ltd	0.02%	0.00%	0.09%	Dissented	0.00%	0.02%
	Total	100%	100%	100%		79.02%	20.98%

(3) The Resolution Plan includes statement under Regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and Regulations made thereunder.

(4) The Resolution plan is being filed 25 days (considering COVID lockdown period) before the expiry of the period of CIRP provided in Section 12 of the Code.

7. The above facts and circumstances clearly established that the Resolution Plan dated 10th July 2020, which was approved by the Committee of Creditors on 23.07.2020 for Bansal Wire Industries Limited, Resolution Applicant, confirm all the requisite conditions and reasonably satisfy all the stake holders of Corporate Debtor and it was



approved with requisite majority. Therefore, we are satisfied that the said Resolution Plan is a fit to be approved, under Section 31(1) of the IBC, 2016.

8. In the result, by exercising the powers conferred on this Adjudicating Authority, under Section 31(1) IBC, 2016 and the extant provisions of Rules made thereunder, both **C.P.(IB)No.227/BB/2019 & I.A.No.265 of 2020** are disposed of with the following directions:

- (1) The Resolution Plan dated 10th July,2020 submitted by Bansal Wire Industries Limited (Resolution Applicant) as approved by the Committee of Creditors at their 14thmeeting held on 23rd July, 2020is hereby approved by declaring that the Resolution Plan will be binding on the Corporate Debtor (Applicant) and its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force, as authorities to whom statutory dues are owed, guarantors, and other stakeholders involved in the resolution plan.
- (2) It is hereby condoned the delay of exclusion of 82 days from the CIRP period.
- (3) The moratorium imposed vide Order dated 29.08.2019 passed in the CP shall cease to have effect from the date of communication of the order.
- (4) The Resolution Professional is directed to handover the management control of all the assets, documents/records in physical and/or digital form on an as is where is basis to the



Resolution Applicant immediately, and the Resolution Professional will be ceased to be Resolution Professional.

- (5) The Resolution Professional shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the Board to be recorded on its database.
- (6) The Resolution Applicant shall pursuant to the Resolution Plan approved under sub-section (1) obtain the necessary approval required under any law for the time being in force within a period of the one year from the date of approval of the Resolution Plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, which is later:
- (7) The Resolution Applicant is at liberty to file miscellaneous Application seeking for clarification(s) , if any requires, in the implementation of the terms and conditions to the Resolution Plan.
- (8) No order as to costs.



**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**