

IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT - I, MUMBAI BENCH

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IA No. 1176 of 2020  
in  
C.P. (IB) No. 2851/MB/2018

In the matter of an Application under Section 30(6) read with Section 31 of the  
Insolvency and Bankruptcy Code, 2016

Bhuvnesh Maheshwari,  
Resolution Professional for  
Shree Kedarnath Sugar and Agro Products Limited  
Delite Cinema Building, Gate No. 2, 3<sup>rd</sup> Floor,  
Asaf Ali Road, New Delhi – 110 002.

... Applicant

In the matter of  
Indian Renewable Energy Development Agency Limited.

... Financial Creditor

V/s

Shree Kedarnath Sugar and Agro Products Limited

... Corporate Debtor

Date of Order: 21.09.2020

CORAM:

Hon'ble Janab Mohammed Ajmal, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

Appearance (via videoconferencing):

For the Applicant : Kinshuk Chatterjee with Akshay Goel Advocates and  
Bhuvnesh Maheshwari (RP)

For the CoC : Deep Roy and Nupur Malde, Advocates

For the Resolution Applicant : Mr Vijay Nirani (Representative)

*Per: Janab Mohammed Ajmal, Member (Judicial)*

**ORDER**

This is an Application under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (the Code) by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant Shri Sai Priya Sugars Limited.

2. The facts leading to the Application are as under. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order on 21/08/2019 and the Applicant was appointed as Interim Resolution Professional (IRP). The Committee of Creditors (CoC) comprising the following Financial Creditors, in its meeting held on 24/09/2019 confirmed the Applicant as the Resolution Professional (RP). The Applicant in compliance of the provision of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

Name of Financial Creditor	Voting Share (%)
Syndicate Bank	43.95
Edelweiss Asset Reconstruction Company	14.81
Asset Reconstruction Company (India) Limited	13.21
Indian Renewable Energy Development Agency Limited	12.20
Andhra Bank	5.85
IFCI Limited	4.79
Union Bank of India	3.40
Indian Overseas Bank	1.79
Total	100

3. During the period of CIRP two Resolution Plans were received, one from M/s Shri Sai Priya Sugars Limited and another from M/s Twentyone Sugars Limited. The CoC after several rounds of negotiations with the Resolution Applicants evaluated both the Resolution Plan as per the Evaluation Matrix. It accepted the Resolution Plan submitted by the highest bidder (H1) M/s Shri Sai Priya Sugars Limited. After due verification of the eligibility of the successful Resolution Applicant in terms of Section 29 (A) of the Code, the CoC in its 9<sup>th</sup> meeting held on 26/02/2020 considered the revised and final Resolution Plan of M/s Shri Sai Priya Sugars Limited and approved the Plan with the voting share of 95.21%.

4. The following are the salient features of the Resolution Plan:

A. The Resolution Applicant is a Public Limited Company promoted by Mr. Murugesh R. Nirani under his flagship MRN (Nirani) Group of Industries. The Group commenced its operation in 2015-2016 and has been operating in the same field as that of the Corporate Debtor.

B. Financial Terms:

The Resolution Applicant proposes to infuse a total sum of Rs. 60 Crores within 30 days of approval of the Resolution Plan by this Tribunal, in the following manner:

Particulars	Amount Admitted (INR in Crores)	Proposed Schedule of payment	Amount Proposed (INR in Crores)
CIRP Costs	0.90	To pay CIRP Costs at actual, and in priority over payments proposed to other creditors.	0.90
Secured Financial Creditor (FC)	570.23	To pay the Secured FC upfront, within 30 days from the date of approval of the Resolution Plan by this Tribunal.	54.25

		The distribution would be <i>pro rata</i> in terms of the voting percentage of each Secured FC	
Workmen’s Dues	0.20	To pay INR 0.02 Crores towards workmen’s dues	0.02
Wages and dues of Employees (other than workmen)	0.30	To pay INR 0.03 Crores towards Employees’ dues	0.03
Related Party – Unsecured Financial Creditors	4.36	No payment towards the dues of related parties of the Corporate Debtor.	NIL
Operational Creditors (OC)	31.04	To pay INR 4.80 Crores (as goodwill measure) to the Operational Creditors of the Corporate Debtor, with the assumption that the liquidation value due to such creditors is NIL. The distribution of the said amount is as follows: * Cane farmers – INR 3.76 crores * Statutory Authority (GST) – INR 0.93 crores * Other OCs – INR 0.11 Crores	4.80
<b>TOTAL</b>			<b>60.00</b>

C. Management of the Corporate Debtor:

The Resolution Applicant proposes to appoint Mr. Murugesh R Nirani and Mr. Rachappa V Karehonnas as the Directors of the Corporate Debtor after the approval of the Resolution Plan. It proposes to appoint following persons as the Members of the

Monitoring Committee for implementation of the Resolution Plan: Mr. Anand Sonbhadra (Monitoring Professional) as Chairman, Mr. Ajeyenulu Chelukuri (Representative of Syndicate Bank), Mr. Srinath Narsimhan (Representative of Edelweiss Asset Reconstruction Company), Mr. Nitin Kamble (Representative of Asset Reconstruction Company (India) Limited) as nominees of the Financial Creditors and Mr. Vinay M Nirani, Mr. Sudheendra Ghali and Mr. R. V. Vatanal as nominees of the Resolution Applicant.

**D. Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:**

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 and 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (the Regulation) and has submitted his Form H under Regulation 39 (4). It is submitted that the Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the Resolution Applicant is not ineligible under Section 29A of the Code.

**E. Performance Security:**

The Applicant submits that in terms of the Request for Resolution Plan (RFRP), the letter of intent issued by the Applicant has been unconditionally accepted by the Karnataka State Co-operative Apex Bank Ltd. and the Bank has provided Performance Bank Guarantee dated 26.03.2020 for Rs. 25 Crores.

5. The Applicant submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code in the following manner:
  - A. Plan provides for the priority payment of CIRP costs in full from the fund to be infused by the Resolution Applicant.
  - B. To pay the Operational Creditors of the Corporate Debtor in the manner indicated supra. It is submitted that the Liquidation Value of the Corporate Debtor is Rs. 28.7 Crores and Fair Market Value is Rs. 80.995 Crores. In view of the fact that the claim of Secured Financial Creditor is Rs. 570.23 Crores, the Minimum Liquidation Value to the Operational Creditors would be NIL. However, a sum of Rs. 4.83 Crores is provided to all the Operational Creditors.
6. It is submitted that IFCI Limited one of the Financial Creditors with voting share of 4.79% in the CoC abstained from voting and the said Creditor is treated as dissenting Financial Creditor and payment is provided to the dissenting Financial Creditor as per Regulation 38(1)(b) and the same will be paid in priority to the other financial creditors.
7. The Karnataka State Co-operative Apex Bank Ltd. vide letter dated 22.11.2019 addressed to the Resolution Professional, has stated that they will consider the request of the Resolution Applicant herein for the sanction of the financial assistance of Rs. 120 Crores, subject to terms and conditions applicable for such loans, if the Resolution Plan submitted by Shri Sai Priya Sugars Limited is finalised in its favour.
8. The Resolution Applicant proposes to appoint Directors to the Board of the Director as stated above in terms of Section 30(2)(c). The Plan also provides for implementation of provision of the Resolution Plan as stated above as per

Section 30(2)(d). The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:

- a) the payment to Operational Creditor will be made in priority over Financial Creditor (Regulation 38(1)(a)).
  - b) Payment to dissenting Financial Creditor will be paid in priority over the other Financial Creditors (Regulation 38(1)(b)).
  - c) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A)).
  - d) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan.
9. During the hearing of the Application the Representative of the Resolution Applicant on the persuasion of this Bench agreed to increase the payment from 10% to 20% of the liability with respect to employees and workmen. Accordingly, the Resolution Applicant by letter dated 03.09.2020 has undertaken to increase the amount payable to Employees to Rs. 6 Lakhs (from Rs. 3 Lakhs) and Workmen to Rs. 4 Lakhs (from Rs. 2 Lakhs). Resolution Applicant also undertook to give preference in employment/engagement to the labourers/ workmen, employed/engaged with the Corporate Debtor before the closure of operations.
10. The Resolution Applicant has sought certain reliefs, concessions, waivers. We however are not inclined to grant such concessions or waivers. The Resolution

Applicant needs to approach the authorities concerned for permits, if required (such as licenses, renewal of license, electricity connection etc.), and same will be considered by the concerned authorities in accordance with law.

11. It is beneficial to refer to the observation of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. (MANU/SC/1577/2019)*, as under:

“67. ....

*A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove.”*

12. In view of the above ruling of the Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets, and liabilities as specified in the Resolution Plan subject to orders passed herein. The Resolution Plan has been approved by the CoC in its meeting held on 26.02.2020 with 95.21% votes.
13. 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.

14. In **CoC of Essar Steel** (*supra*) 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*).”*

15. 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. The same needs to be approved. Hence ordered.

### **ORDER**

- i. The Application be and the same is allowed. The Resolution Plan submitted by Shri Sai Priya Sugars Limited annexed to the Application 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. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. As far as the permits held by the Corporate Debtor and the rights and benefits accrued therein, the Corporate Debtor has to approach the authorities concerned for those permits and that the same has to be processed and decision has to be taken by the authorities at the earliest without any delay as the Corporate Debtor is engaged in agricultural industry, lest it would adversely affect the sugarcane farmers in that area. We trust that the authorities concerned will do the needful in such a way that the Corporate Debtor is granted with required permits/licenses/electricity connection etc., when applied for, before the commencement of the upcoming sugarcane crushing season.
- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned 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. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in Para 4.B and Para 9 *supra*.
- v. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- vi. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- vii. 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.
- viii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant.

Sd/-  
V. Nallasenapathy  
MEMBER (TECHNICAL)

Sd/-  
Janab Mohammed Ajmal  
MEMBER (JUDICAL)