NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-V

C.P. IB 1295/ND/2019

IA(I.B.C)/2946/2021
IA(I.B.C)/4103/2021

IN THE MATTER OF:

JAMMU AND KASHMIR BANK **...FINANCIAL CREDITOR**

VS.

VINAYAK RATHI STEELS ROLLING MILLS PVT. LTD. **...CORPORATE DEBTOR**

AND

In the Matter of :

M/s RAJATMETAAL POLYCHEM PRIVATE LIMITED

26/4, F.F. Onkar Nagar-B,

Tri Nagar, New Delhi-110035 **...APPLICANT/ OPERATIONAL CREDITOR**

VS.

Neeraj Bhatia

(Resolution Professional)

Vinayak Rathi Steels Rolling Private Limited

Z-196, LohaMandi, Naraina,

New Delhi-110028

...APPLICANT/RESOLUTION PROFESSIONAL

UNDER SECTION 30 (6) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER RESERVED ON: 06.01.2022

ORDER DELIVERED ON: 21.04.2022

CORAM:

SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

SH. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

PRESENT:

FOR THE FINANCIAL CREDITOR : Neeraj Bhatia, RP

For the Respondent/Corporate Debtor : Adv Vaibhav Dabas, for Ex Directors

For the Applicant/Operational Creditor : Mrinal Harshvardhan, Advocate for OC

ORDER

PER SH. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (TECHNICAL)

1. The petition **(IA-2946/2021)** has been filed under Section 30(6) and 31 of the Insolvency & Bankruptcy Code, 2016, (the Code) on behalf of the Resolution Professional (RP), seeking approval of the Resolution Plan as approved by COC. While **(IA-4103/2021)** is the objection to the Resolution Plan that has been filed by Operational Creditor **i.e. M/s RAJATMETAAL POLYCHEM PRIVATE LIMITED** against the Applicant/RP under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules. The Operational Creditor's claim is of Rs. **1,54,64,926/- out of which Rs. 93,00,564/- is the principal amount and remaining i.e. 61,00,000/- is the interest which is calculated on the basis of invoices raised. Therefore, Operational Creditor has filed this IA-4103/2021 against the rejection of the interest by RP.**
2. **As Both the IA's pertains to the Approval of Resolution Plan and Objection to the Resolution Plan, hence we are disposing both of them by common order of this Bench.**
3. The facts mentioned in the **IA 2946/2021** in brief are as follow:
   - The Corporate Debtor i.e. **M/s VINAYAK RATHI STEELS ROLLING MILLS PRIVATE LIMITED** is having its registered office located at Z-196, LohaMandi, Narayana, New Delhi-110028, and was originally incorporated as a private limited company under the name & style of Good Luck Sales Private Limited on

17th October, 1979 and in the year 2008 changed its name to Vinayak Rathi Steels Rolling Mills Private Limited. It is classified as a Non-govt Company and is registered with Registrar of Companies, NCT of Delhi & Haryana.

- The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor i.e. **M/s VINAYAK RATHI STEELS ROLLING MILLS PRIVATE LIMITED** vide order dated **16.06.2020** passed by this Adjudicating Authority, admitting the application under Section 7 of the Code filed by the sole Financial Creditor i.e. **JAMMU & KASHMIR BANK** (hereinafter referred as "FC") whereby Applicant was appointed as Interim Resolution Professional. The CIRP period commenced from 17.06.2020. Copy of the moratorium order dated **16.06.2020** is placed on record **Annexure A-2.**
- Thereafter the Applicant carried out a public announcement of initiation of CIRP and invitation of claims on **19.06.2020**. After collation of claims and determination of the financial position of the Corporate Debtor, a Committee of Creditors (CoC) was duly constituted by the Applicant. The first meeting was held on **13.07.2020.** The CoC consists of only one member i.e. FC as he is the sole Financial Creditor having 100% voting rights. After the first CoC held on **04.07.2020,** IRP was reappointed as the Resolution Professional on **13.07.2020 (hereinafter called as "RP")**. Minutes of the first CoC Meeting is placed on record **Annexure-A1.** RP had appointed 4 registered valuers on **13.07.2020** to determine the Fair Value and Liquidation Value of the assets of the Corporate Debtor. Each of them submitted independent valuation report. The Average Fair Value comes out to be **Rs. 24,47,50,000/-** and Average Liquidation Value to be **Rs. 16,86,95,000/-.**
- After the public announcement of initiation of CIRP, the RP received a total of 6 claims in which there was one FC and 5 Operational Creditors and the

aggregate amount of their claims sum up to **Rs. 66,66,33,906/-, out of which an amount of Rs. 60,13,50,956 i.e. 94.33 percent of the aggregate amount was due to the Sole FC and an amount of Rs. 6,52,82,950/- is due to the Operational Creditors.**

- Thereafter, CoC in its 4th Meeting held on 19.10.2020 approved the publication of Form G and pursuant to approval, invitation for Expression of Interest (EoI) was published in prescribed Form G as per Regulation 36A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on **21.10.2020** in newspapers. In response to invitation for EoI total of four applications were received. Out of those 4, only one of them had deposited the EMD of Rs. 1,00,000/-. The CoC in its 5th meeting resolved to call for fresh EoI with revised eligibility criteria. Copy of the revised EoI, Evaluation Matrix and RFRP is attached at **Annexure- A8.** On the publication of revised EoI on 02.12.2020, four applicants namely Sunrise Industries, K.L. Rathi Steels Ltd, ASC Consulting Pvt. Ltd. and Subhash Bhati & Ashok Kumar Bhati had shown their interest by submitting their response and all the applicants had deposited EMD of Rs. 1,00,000/-. Out of those 4, only one Resolution Applicant (RA) viz. **Mr. Subhash Bhati & Ashok Kumar Bhati** had submitted their Resolution plan. That the said RA belongs to Category C – Individual investor / Consortium of individual Investors.
- Since the CIRP period of 180 days was originally ending on **17.12.2020,** this Adjudicating Authority vide order dated 04.02.2021 allowed the exclusion of 14 days on account of nationwide lockdown and further passed the order of extension of CIRP period for 90 days in **IA 5485/2020** and further, in **IA 1748/2021** excluded the period of 50 days and extended the period for 60 days vide order dated 10.06.2021 upto **13.07.2021.**

- It is submitted that the CoC in the 14th CoC meeting held on 08.07.2021, with 100% voting shares, approved the Final Resolution Plan post five iterations submitted by **Mr. Subhash Bhati & Ashok Kumar Bhati**. The copy of Minutes of 14thCoC Meeting has been placed on record **Annexure A-13.** The copy of final resolution plan has also been filed along with the application **Annexure A11.**
- The Applicant has submitted that the Successful Resolution Applicant has submitted an affidavit of eligibility under section 29A of the Code which is at page no. 162 of the Resolution Plan.
- The Applicant RP has submitted on record the Compliance Certificate in FORM-H as required under Regulation 39(4) of the CIRP regulations. That the true copy of the FORM-H is being filed herewith as **Annexure A12.**
- **It is submitted by the Resolution Applicant in Section V of the Resolution Plan that there is an uptrend visible in demand from Steel sector which is likely to continue. CD being an old and established player including the "RATHI" brand which enjoys goodwill in the steel industry in the Delhi-NCR region. Therefore, the company is likely to get good margin orders during the plan period from key customers resulting in revival of CD. Moreover, the Resolution Applicants are having adequate experience in running this kind of plants along with sufficient funds to run this plant. Moreover, the Resolution Applicants will also get the benefit of "RATHI" TMT brand which they will receive as an ASSET along with plant. Secondly, after restructuring/payment/waiver of debt as proposed in the plan will substantially reduce in interest servicing burden and bringing it to profitable level.**

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- The Applicant has submitted that in compliance of Regulation 27 of CIRP Regulations 2016, two valuers for each class of Asset were appointed to determine the Fair Value and Liquidation Value of the Corporate Debtor in accordance with Regulation 35 of CIRP Regulations 2016. The average value of all the assets in Plant & Machinery (P&M) and in Land and Building (L&B) were considered to determine the Fair Value and Liquidation Value in accordance with Regulation 35 of CIRP Regulations 2016 which is as under: -

ASSET CLASS	**AVERAGE FAIR VALUE (VALUER 1 + VALUER 2) / 2** **[in INR]**	**LIQUIDATION VALUE (VALUER 1 + VALUER 2) / 2** **[in INR]**
LAND AND BUIDLIDNG	11,43,50,000	7,74,15,000
PLANT & MACHINERY AND OTHER MOVABLE ASSET	13,04,00,000	9,12,80,000
AVERAGE VALUE OF ALL THE ASSETS	**24,47,50,000**	**16,86,95,000**

- **Following is the payment plan as per the Resolution Plan:**

S. No	**Particulars**	**Claim received**	**Claim Admitted**	**Proposed amount in ResolutionPlan**	**Payment term**
1.	**CIRP Cost**			30,50,206/-	
2.	**Financial Creditors**	60,13,50,956/-	60,13,50,956/-	23,12,50,000/-	100% within 4 years
4.	**Operational Creditors**	6,52,82,950/-	3,61,28,713.00	NIL	NA
7.	**Fresh Infusion of capital**			5,00,00,000/-	100% within 4 years
	Total	**66,66,33,906/-**	**63,74,79,669/-**	**28,43,00,206/-**	

Note: The Resolution Applicant also proposes to generate Rs. 845.47 lakhs within 4 years from Business revenue from the date of LOI and handover of Corporate Debtor for working capital and other running expenditure for factory. Therefore, based on above, the resolution applicant plans to bring total fund contribution of Rs. 28,45,47,000/- within 4 years.

Aks

- It is submitted that the entire payment plan to the Financial Creditor is as per the due diligence and valuation conducted by the Resolution Applicant in compliance with the Section 30(2) of the Insolvency And Bankruptcy Code, 2016 read with Regulation 38(1) of the CIRP Regulations.
- It is submitted that pursuant to the advertisement issued for the 2nd EoI, only one Resolution Applicant viz. Mr. Subhash Bhati & Ashok Kumar Bhati submitted their resolution plan against the RFRP (Request for Resolution Plan) issued. It is submitted that Resolution Plan had undergone five iterations. and is in compliance of Section 30 of IBC, 2016 r/w regulation 37, 38 & 39 of CIRP Regulations, 2016. The Successful Resolution Applicant has submitted performance security deposit on 23.06.2021 for an amount of Rs. 150 lacs in the account of CD/FC.

4. After the Submission of Resolution Plan, IA 4103/2021 which is the objection to the Resolution Plan is filed by one Operational Creditor.

5. Brief Facts submitted by the Objector/Operational Creditor is as follows:

- IA 4103/2021 is filed by **M/s RAJATMETAAL POLYCHEM PVT. LTD.** (hereinafter called "OC") under Sec 60(5) of the IBC, 2016 read with Rule 11 objecting to the Resolution plan submitted by the Applicant/ RP for Approval.
- The OC of the Corporate Debtor has submitted its claim of Rs. 1,54,64,926/- on the basis of invoices raised before the Applicant/RP. OC submits that, out of the aforesaid amount, amount of Rs. 93,00,564/- is the principal amount and an amount of Rs. 61,00,000/- was calculated on account of interest which forms part of the invoices.

Aks

- It is the submission of the OC that, on receipt of the claim form, Applicant/RP has admitted the principal amount but rejected the interest.
- It is submitted by the OC that Applicant/RP informed the OC regarding the admission of principal amount on 02.09.2020, but when OC sought a copy of Information Memorandum from RP, it was not provided to OC. OC further submits that he enquired regarding the status of CIRP several times vide emails, but applicant/RP did not respond to the emails sent by OC. That vide email dated 31.03.2021, applicant/RP informed the OC that prospective Resolution Applicant has not made any provision for payment to Operational Creditors. He further submits that, Applicant/RP did not even inform regarding the successful RA. Email Correspondence between the OC and Applicant/RP has been placed on Record **Annexure B.**
- It is submitted by the OC that while looking the viability and feasibility of the Resolution plans , the CoC must assess as to whether Operational Creditors are given same treatment as financial creditors or not and if same treatment is not given to them, the plan either be rejected or modified so that operational Creditors rights can be safeguarded.
- It is the submission of the OC that a resolution plan cannot pass the muster under Sec 30(2)(b) read with Sec 31 unless a minimum payment is made to operational Creditors, being not less than liquidation value. OC further contends that if the Operational Creditors are ignored presumably on misreading of Sec 30(2)(b) of the IBC, then in such case no creditor will supply the goods or render services on credit to any corporate debtor which will affect the Indian economy. Hence, it is prayed by OC to reject the Resolution Plan being discriminatory in nature to the Operational Creditor.

Aks

6. We have heard the parties and perused the case records. Before the disposal of both the IAs, we find it pertinent to mention the relevant provisions of the Code. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code. **Section 30 (2) is quoted below: -**

> *"30(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.]"*

7. Further, as per Regulation 38 of the CIRP Regulations, a Resolution Plan is required to contain a statement as to how it has dealt with the interests of all the stakeholders including Financial Creditors and the Operational Creditors and if these are sufficiently provided in the Resolution Plan, the Adjudicating Authority may approve the Resolution Plan.

8. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a proposal in the Resolution Plan at **page no. 134** that provides that the 100% CIRP cost will be paid.

9. As regards compliance of Clause (b) of Section 30(2) of the Code, which provides for the payment of the debts of operational creditors 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. The Resolution plan has no provision for the payment to Operational Creditors **(Clause VI (b) of the Resolution Plan)** and **it provides the entire payment plan to the Financial Creditor as per the due diligence and valuation conducted by the resolution applicant in compliance with the Section 30(2) of the IBC, 2016 read along with regulation 38(1) of the CIRP Regulations.**

10. In terms of Section 30(2)(c), management of the affairs and control of the business of the Corporate Debtor shall vest with the Resolution Applicants and this has been provided at page **142 &143 & at page 146 point 5** of the Resolution Plan.

11. The next requirement envisaged by Section 30 (2)(d) is that it must provide for the implementation and supervision of the Resolution Plan. In this regard, relevant entry are given at page no 189 and 190 (Form H) of the Resolution Plan. **Page 14** of the Resolution Plan provides for the Formation of the Monitoring Committee which says that CoC has ratified and approved the formation of the Monitoring Committee for Initial 1 year upon approval of Resolution plan. Monitoring Committee will comprise of FC, RP and RA to monitor the implementation of Resolution Plan. They will hold monthly/quarterly meetings

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and a fee of Rs. 50,000 (exclusive of taxes) per meeting is fixed for Resolution professional and same has to be borne by the Resolution Applicant.

12. Ld. Counsel appearing for the Resolution Applicant submitted that the Resolution Plan is as per the provisions contained in the Code and so, the same may be approved. In terms of Regulation 39(4) of the CIRP Regulations, the Resolution Professional has filed compliance certificate in Form-H which is annexed as **Annexure A-12** from page **186-192.** It has been submitted in the application and in Form H duly certified by Resolution Professional that the final Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016 and does not contravene any of the provisions of the law for time being in force. The term of the Resolution Plan is four (4) years.

13. As a sequel to aforesaid discussions, we are satisfied that all the requirements of Section 30(2) are fulfilled. In respect of compliances regarding CIRP Regulations especially Regulations 38 and 39, the Resolution Professional has certified in Form-H and explained in details that the Resolution Plan has complied with all the required Regulations.

14. Further, we have perused the application made and document produced on behalf of the OC and we are of the considered opinion that:

- The Liquidation Value of the Corporate Debtor is **Rs. 1686.95 lakhs** while the Resolution Plan submitted by the Resolution Applicant is much higher than that of the Liquidation Value. The Sole FC constitutes COC whose admitted claim is **Rs. 6013.50 lakhs** which is 94.33% of the total amount of claims admitted. Against this the Resolution plan which proposes to pay 100% CIRP cost i.e. Rs. 30,50,206/- and a payment of Rs. 2312.50 lakhs to the Sole Financial Creditor and above that Rs. 5 crore would be infused by the Resolution Applicant over a period of 4 years. On perusing the Resolution Plan, it seems that the Sole Resolution plan which was approved by CoC with 100% voting is in the best interest of the Corporate Debtor.
- The Resolution Plan submitted by Applicant/RP for approval is in accordance with the scheme of the IBC, 2016 i.e. maximization of the assets' value and revival of the Corporate Debtor. Time and again, Hon'ble Supreme Court in many landmark cases has held that Adjudicating Authority has a very limited role to play when

the question comes for approval/ rejection of Resolution Plan. Its only duty is to check whether the proposed Resolution plan has complied with the provisions of Sec 30(2) of the Code and whether it has received the assent of CoC Members with 66% or more. It is the CoC wisdom which should prevail and Adjudicating Authority cannot interfere in the business decisions when there is no contravention of any of the provisions of the Code.

- As regards compliance of Clause (b) of Section 30(2) of the Code, which provides for the payment of the debts of operational creditors 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. **The Resolution plan has no provision for the payment to Operational Creditors (Clause VI(b) of the Resolution Plan) and it provides the entire payment plan to the Financial Creditor as per the due diligence and valuation conducted by the resolution applicant in compliance with the Section 30(2) of the IBC, 2016 read along with regulation 38(1) of the CIRP Regulations.**

15. On perusal of the Resolution Plan, we are of opinion that Resolution plan does not contravene any of the provisions of the Code, **Resolution Applicant has made the payment provisions with due diligence and the Resolution Plan is approved with 100% vote. Resolution Applicant has devised a proper way of implementing and supervising the Resolution plan by formation of a Monitoring Committee.** Accordingly, this Application (**IA 4103/2021)** is hereby **REJECTED AND DISMISSED.**

16. For the reasons discussed above, **IA 2946/2021 i.e. Application for the Approval of Resolution Plan is concerned, Resolution Plan** fulfills the requirement as referred in Section 30(2) of the Code and there are sufficient provisions in the Plan for its effective implementation as required under the proviso of Section 31(1) of the Code. The Resolution Plan has been approved by CoC with

100% voting. Many judgements of Hon'ble Supreme Court and Hon'ble NCLAT have treated the commercial wisdom of CoC as final. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan.

17. Accordingly, the **application (IA 2946/2021) hereby stands ALLOWED. We approve the Resolution Plan**, which was earlier approved by the CoC by the majority vote of 100%.

18. It is clarified that Section 30(2)(f) of the Code mandates that the Resolution Plan should not be against any provisions of the existing law. The Resolution applicant, therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein. As regards the reliefs and concessions sought in the Resolution Plan, same will be provided only as per law.

19. On perusal of the documents for Resolution Plan Form H Compliance Certificate Annexure A-12, item 15 which provides the details of Sec 66 or avoidance application pending, any preferential transaction u/s 43, undervalued transaction u/s 45, extortionate credit transactions u/s 50, fraudulent transaction u/s 66, the Resolution Professional has submitted that it is not applicable in this case. In case there are any avoidance transaction application u/3 43, 47, 50 or 66 of the IBC, 2016 pending before the Adjudicating Authority and if the orders in favour of Applicant therein are passed, the same shall go to the benefit of the Financial Creditors and Operational Creditors as may be decided by CoC.

20. It is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.

21. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded on its database in terms of Section 31(3)(b) of the Code.

22. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.

23. Let the copy of the order be served to the parties.

Sd/- 21/4/2022

AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)

Sd/- 21.04.2022

ABNI RANJAN KUMAR SINHA
MEMBER (JUDICIAL)