In the National Company Law Tribunal
Mumbai Bench
Court-III

IA 2062/2021 in C.P.(IB)-1890/(MB)/2018

Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016

In the matter of

Nitin Shah ....Applicant

In the matter of

Dena Bank ...... Financial Creditor

V/s

M/s Nitin Fire Protection Industries Limited.
..... Corporate Debtor

Order delivered on: **18.01.2022**

Coram:
Hon'ble Shri H V Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicants : Adv. Devanshu Desai.

For the Respondent(s) : Adv. Rohan Agarwal a/w Adv. Nishit Dhruva, Mr S.M. Algaus, Ms Pratiksha Agrawal, i/b MDP & Partners for Resolution Professional.

For the CoC : Mr. Zaman Ali, a/w Adv. Umar Farooque Azam, i/b Orbit Law Service.

Per: Chandra Bhan Singh, Member (Technical).

ORDER

1. IA 2062/2021 in CP(IB)-1890(MB)/2018 has been filed by the Applicant who is ex-Promoter/ suspended Director of the Corporate

Debtor Company, M/s Nitin Fire Protection Industries Limited. This Application has been filed challenging the CoC which has rejected the Applicant's Resolution Plan on 21.09.2021 after the discussion on the Resolution Plan which was held in the 26th meeting of the CoC on 31.08.2021 and the Resolution Plan was subsequently put to vote.

2. The Bench notes that the Applicant's Resolution Plan was considered by the Respondent Nos.2 to 7 viz. IDBI Bank Limited, Mumbai-400005 (**R2**), Axis Bank Limited, Mumbai-400025 (**R3**), IFCI Limited, Mumbai-400021 (**R4**), Bank of Baroda, Mumbai-400001 (**R5**), Aditya Birla Capital Limited, Thane (W)-400601 (**R6**) and PNB Housing Finance Limited, Thane (W)-400601 (**R7**) in the 21st, 22nd, 23rd, 24th, 25th and 26th meeting of the CoC wherein he was asked to revise the Resolution Plan upon the suggestions made by the CoC. Pursuant to the suggestions, the Bench notes, the Applicant revised his Plan several times and finally the Resolution Plan dated 28.08.2021 along with Addendum dated 04.09.2021 was put to vote on 01.09.2021 and concluded on 20.09.2021 after proper extension of voting period was granted by the Bench. The e-voting results of the 26th meeting of the CoC regarding approval of Resolution Plan dated 28.08.2021 submitted by the Applicant Mr. Nitin M Shah was put to vote, a snap shot of which is provided by RP in his reply is as under:-

Item no. 1 - Approval of the Resolution Plan dated 28th August 2021 submitted by Mr Nitin M Shah.						
#	Name of Financial Creditors	Voted For	Voted Against	Abstained from Voting	Share (%)	Remarks
1	IDBI			✔	42.08%	
2	Axis Bank		✔		37.52%	
3	Bank of Baroda (including Dena Bank share)	✔			17.98%	
4	IFCI		✔		0.74%	
5	PNB Housing Finance		✔		0.95%	
6	Aditya Birla Finance Ltd		✔		0.72%	
	Grand Total of Financial Creditors Entitled to Vote	**17.98%**	**39.94%**	**42.08%**	**100.00%**	

PNB Housing finance and Aditya Birla Finance Ltd - Voted in the first phase of voting i.e. between 1st September to 6th Sept

Bank of Baroda and Axis bank - voted in the second phase i.e. between 8th Sept and 14th Sept.

IDBI bank – abstained from voting.

Conclusion of item no 1:

Item No.1 relating to Approval of the Resolution Plan dated 28th August 2021 submitted by Mr Nitin M Shah, was voted in favor by 17.98 % ; rejected by 39.94 % and abstained by 42.08 % of the voting share of financial creditors.

AS PER SEC 30(4) OF IBC, 2016, THE RESOLUTION PLAN IS APPROVED IN CASE OF THE FINANCIAL CREDITORS HAVE VOTED FOR BY ATLEAST 66 %

42.08 HAS ABSTAINED FROM VOTING. SINCE IT IS A RESOLUTION PLAN APPROVAL, THEY WILL BE TREATED AS DISSENTING THE RESOLUTION PLAN

AGENDA NOT APPROVED.

Sd/-

U Balakrishna Bhat
Resolution Professional

Nitin Fire Protection Industries Limited
Registration No.: IBBI/IPA-001/IP-P00658/2017-18/11107
Email Id: ubbhat@radissonindia.in

Place: Mumbai
Date: 21-09-2021

TRUE COPY
MDP & PARTNERS
Advocates & Solicitors

NOTARY
S M H ZAIDI
Mumbai & Thane Dist.
Reg. No. 3640
GOVT. OF INDIA

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3. The Agenda item regarding approval, the Bench notes, was not approved by the CoC. The Bench notes that the CoC constitutes all

the Financial Creditors of the Corporate Debtor and is primarily a decision making body regarding the administration of the Corporate Debtor and to take a decision on the basis of the majority vote of members in accordance with provisions of Section 30 of the IBC. It is the sole commercial wisdom of the CoC to consider and approve the Resolution Plan by a minimum of 66% of the voting share. This Bench notes here that the Resolution Plan submitted by the Applicant was rightly rejected by the CoC as there was no required mandate of 66%. The commercial wisdom of the CoC is supreme which has been reaffirmed time and again by the Hon'ble NCLAT and the Hon'ble Supreme Court in their various judgments.

4. In addition, the Bench also notes that the CoC has not rejected the Resolution Plan submitted by the Applicant without due diligence. The Resolution Plan as mentioned in the reply by the RP was discussed in several CoC meetings and finally it was considered to be as commercially not fit and nonviable by the CoC and thus there is no illegality or irregularity committed by CoC in rejecting the Plan submitted by the applicant and the rejection is in accordance with law and as per the Scheme of the Code.

5. In view of the above facts and circumstances, IA 2062/2021 in CP IB-1890/MB/2018 is **not allowed** and "**Dismissed**".

Sd/-	Sd/-
Chandra Bhan Singh	H V Subba Rao
Member (Technical)	Member (Judicial)