

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

I.A. No. 3310/2020 in IB-1457(ND)/2018
filed under Section 31(1) read with 30(6)
of the Insolvency and Bankruptcy Code,
2016

In the matter of **M/s. Sampan Tradex Pvt. Ltd (CD)**

Mr. Ajay Gupta

Resolution Professional of M/s. Sampan Tradex Pvt. Ltd. ... Applicant

Order delivered on 23rd September, 2020

CORAM:

CH. MOHD SHARIEF TARIQ, HON'BLE MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER (TECHNICAL)

| | |
|--|------------------|
| For Resolution Professional: | Arvind Kr. Gupta |
| For Resolution Applicant: | Arjun Sirohi |
| For CoC: | Manohar Malik |
| For Suspended Board of Director of CD: | Achin Goel |

ORDER

Per. NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

1. The Resolution Professional has filed the instant application under 30(6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC") r/w Regulation 39 (4) of the

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Insolvency and Bankruptcy board of India (Insolvency Resolution Process For Corporate Persons) Regulations (hereinafter referred as "IBBI (ICRP) Regulation, 2016), in IA No.3310/2020 for seeking approval of Resolution Plan under

S. K. Gupta 19.10.2020
DD/DR/IA/IA Officer
National Company Law Tribunal
New Delhi



section 31(1) of IBC in the matter of M/s Sampan Tradex Private Limited (hereinafter referred as "CD")

2. Mr. Ajay Gupta is the Resolution Professional for CD, who has submitted the Resolution Plan duly approved by the Committee of Creditors (hereinafter referred as "CoC") which is accompanied by the compliance certificate in the prescribed Form H.
3. It is submitted that Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor was initiated by this authority vide its order dated 30.07.2019 pursuant to the application filed by one of the creditors and Mr. Pawan Kumar Goyal was appointed as the Interim Resolution Professional (IRP) vide same order. However, the order was communicated to IRP on 30.09.2019. In this regard, upon filing an application by Resolution Professional, the exclusion of 62 days from initial period of 180 days, during which the order was not communicated to the IRP, was granted by this adjudicating authority vide its order dated 30.01.2020. Resultantly the last date for conclusion of 180 days of CIRP was extended to 28.03.2020.



4. It is further submitted that the first meeting of CoC held on 30.10.2019 and resolved to appoint Ajay Gupta as Resolution Professional (RP) to conduct the CIR process of the Corporate Debtor, thereby replacing IRP. The appointment of RP was confirmed by this bench vide its order dated 05.11.2019.
5. It is further submitted that after seeking approval of CoC, the RP invited the Expression of Interests (EOIs) from the prospective Resolution Applicants for submission of Resolution Plan for the Resolution of Corporate Debtor and published Form-G on 19.12.2019 in Delhi NCR edition of financial Express-English and *Jansatta*- Hindi. Since no EOI was received the CoC further requested the RP to republish Form-G with extended timelines with latest being published on 04.02.2020 and last date for submission of Eoi being 09.02.2020.
6. It is averred that RP received Eoi's from two eligible Resolution Applicants and thereafter the Resolution Applicants were invited to submit the Resolution Plans for resolution of corporate debtor vide invitation issued on 14.02.2020 wherein the last date for submission of



Resolution Plan was 13.03.2020. The RP received the resolution plan from one of the resolution applicant's viz. Mr. Virender Tiwari. The resolution plan was presented to the CoC in its 5th CoC meeting held on 20.02.2020 wherein the resolution plan was discussed and resolution applicant was also invited for presentation of the resolution plan. After, discussion and deliberations, the CoC requested the resolution applicant to improve its offer under the resolution plan amount. The resolution applicant requested the CoC to grant one day time revise his offer and proposed to submit an addendum to the existing resolution plan with improved offer.

7. It is further submitted that the resolution applicant subsequently submitted addendum to the resolution plan and its revised offer on 21.03.2020 and the same was put before the CoC in its meeting held through audio visual means on 22.03.2020 due to Covid-19 pandemic. The resolution plan was again discussed at length in 6th CoC meeting and since CoC meeting was convened through audio visual means, the e-voting was held upon the resolution plan and the CoC with 100% voting share, voted in favour of the resolution plan. The Resolution Passed by the CoC is as follows; -



Resolved that pursuant to section 30(4) of the Insolvency and Bankruptcy Code, 2016 read with regulation 39 (3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the resolution plan of resolution applicant Mr. Virender Tiwari placed by resolution professional as per section 30 (3) of the Insolvency and Bankruptcy Code, 2016 read with regulation 39 (2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 be and is hereby approved today i.e. 20.03.2020 by the Committee of Creditors with such modifications as agreed by the resolution applicant in this meeting

Resolved Further That Resolution Professional be and is hereby instructed to file an appropriate application under section 30 (6) of IBC Code read with regulation 39(4) CIRP regulation before the adjudicating authority for seeking approval of the resolution plan, if approved by the Committee of Creditors (CoC).

8. It is submitted that as per the terms of the request for resolution plan ("RFRP") the successful Resolution Applicant had to make a deposit an equivalent to 25% of the Resolution



Plan amount as Performance Bank Guarantee amounting to Rs. 32.50 Lakhs upon declaration as successful RA by the CoC. However, the country wide lock down imposed by government in the wake of COVID-19 pandemic across the globe as a result the resolution applicant could not complete its commitment of depositing the performance bank guarantee after approval of the plan by CoC. Thus, the application for seeking the approval of the resolution plan could not be filed before the Hon'ble Adjudicating Authority.

9. It is further submitted that after partial lifting of lockdown when the resolution applicant was approached for depositing the performance bank guarantee amount, the resolution applicant agreed to abide by the plan and no request for change the terms of the plan was made by him. However, the resolution applicant requested to provide extension of 30 days for depositing the performance bank guarantee and same was approved by the CoC unanimously in the 7th CoC meeting held on 27.06.2020.

10. It is averred that the resolution applicant deposited Rs 25 Lakh in the bank account of the corporate debtor against performance bank guarantee amount of Rs. 32.50 Lakh,



which was required to be deposited as per the terms of the RFRP. The Resolution Applicant further requested the RP to appropriate the balance of 7.5 Lakh from the amount of EMD of Rs. 10 Lakh already deposited by it and the request was approved by the CoC and authorized the RP to treat this as a modification of the terms of RFRP.

11. It is further averred that in terms of the provisions of regulation 39(4) of IBBI (CIRP) Regulation, the RP is required to submit the Resolution plan approved by the CoC along with a compliance certificate in form H of the schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B. The same is complied with.

12. **Provisions of the Resolution Plan along with the addendum submitted by resolution applicant:**

a) Total Financial Cost of Resolution Plan

| Particulars | Amount (INR) in Lakh |
|--|----------------------|
| Amount offered to be paid by resolution applicant to be allocated in order of priority as per section 53 of IBC, 2016 | 120.00 |
| Amounts towards 100% purchase of equity shares in favour of resolution applicant, the amount shall be retained with the corporate debtor | 10.00 |
| Total Financial cost of Resolution | 130.00 |



| | |
|-------|--|
| Plan. | |
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b) Proposed allocation of offered amount in compliance
with order of priority as per section 53 of IBC, 2016

(Amounts in Lakh)

| S. No | Outstanding dues in order of priority as per section 53 of IBC, 2016 | Total Claims Filed (CIRP Date) | Total Claims admitted as on CIRP Date | Total Amount Offered | Remarks |
|-------|--|--------------------------------|---------------------------------------|----------------------|---|
| A | Insolvency Resolution Process (CIRP) Cost | - | - | - | The CIRP Costs (to the extent unpaid) shall be paid in priority to any other creditors of the corporate debtor in the manner and from the sources of funds as set forth in financial proposal of the resolution plan. The |

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| | | | | | details of the CIRP costs have not been made available in IM, hence, it is assumed that the same have been paid regularly. However, CIRP cost, if any, remains outstanding to be paid out of the Amount of Rs.130.00 Lakh offered by the Resolution Applicant. |
| B | Workmen's Dues 24 months preceding CIRP | 0.00 | 0.00 | 0.00 | No such dues reported |
| (i) | | | | | |
| (ii) | Debts due to Secured Financial Creditors | 0.00 | 0.00 | 0.00 | No such dues reported |
| C | Employees Dues 12 months | 0.00 | 0.00 | 0.00 | No such dues reported |



| | | | | | |
|------|--|---------|---------|-------------------------------|--|
| | precedin g CIRP | | | | |
| D | Statutory dues (State & Central duties and taxes) within 24 months | 0.00 | 0.00 | 0.00 | No claim has been admitted of any statutory authorities |
| E. | Other Debts & Dues | | | | |
| (i) | Operational Creditors – claims filed/Admitted Shivansh Diamond Pvt. Ltd- | 3143.56 | 3143.56 | 120.00 minus unpaid CIRP cost | The balance of resolution plan amount (120.00 lakh after deducting the unpaid CIRP cost) shall be paid towards satisfaction of the claim of sole operational creditor and waiver for the balance amount is sought. |
| (ii) | Operational Creditors - claim not filed | 0.00 | 0.00 | 0.00 | 100% waiver sought for all operational |



| | | | | | |
|--------|-------------------------------------|------|------|--------|---|
| | | | | | creditors outstanding as on date whose claims has not been filed/ admitted in the CIR Process |
| (iii) | Any other liability- No claim filed | 0.00 | 0.00 | 0.00 | 100% waiver sought for any other creditors outstanding as on date. |
| F | Equity Shareholder | - | - | - | No Payment Proposed |
| | Total | | | 120.00 | |

13. It is submitted that the initial payment of Rs.50.00 Lakh of the resolution amount to be made within a period of 30 days from the effective date, from which 10 lakh shall be utilized towards the issue of 1,00,000 equity shares of Rs. 10/- each fully paid up to the resolution applicant which shall be retained with the corporate debtor and balance of Rs. 40.00 Lakh shall be utilized towards payment of unpaid CIRP cost, if any and balance towards the payments to the creditors. It is further submitted that the amount paid as EMD, if any,



shall be adjusted against the initial payment and only balance amount shall be paid in designated account.

14. It is averred that the balance payment of the resolution plan amount i.e. a sum of Rs. 80.00 Lakh, to be paid within 60 days from the effective date to the RP which shall be utilized towards full and final payment to the creditors. In case of cash deposit of the performance guarantee, the same shall be adjusted in this payment of Rs 80.00 Lakh.

15. **Appointment of monitoring agency/ Approval.**

The term of the monitoring agency shall be maximum of 3 months or till date resolution plan is implemented, whichever is less as the resolution plan implementation period is 60 days and fees payable to the agency shall be Rs. 75,000/- per month (plus applicable taxes) to be paid by CoC. The Monitoring agency shall comprise of 3 members; -

- i) Resolution Professional being the Chairman
- ii) One representative of the CoC
- iii) One representative of the Resolution Applicant

16. The parameters for approval of resolution plan are set out in section 30 and 31 of the IBC, 2016 and CIRP Regulations.



The Resolution Plan seems to have complied with such 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 that he is not disqualified under the provisions of section 29A. |
| Section 30(2)(a) of the IBC, 2016 And Regulation 38(1A) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016 | The Resolution Plan provides of the CIRP cost in priority to the payment of other debts of the Corporate Debtor. The Resolution Plan provides that the interest and treat of stakeholders, consisting of sole operational creditors of the Corporate Debtor is dealt with. |
| Section 30(2)(b) of the IBC, 2016 And Regulation 38(1) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016 | The Resolution plan provides for the payment of Rs.120.00 Lakh minus unpaid CIRP cost out of Rs.3143.56 Lakh (Admitted Claim) of the operational Creditor i.e.3.81%. Sufficiently liquidity declared as per net-worth certificate. |
| Section 30(2)(c) and Section 30(2)(d) of the IBC, 2016 | An additional affidavit is filed by the Resolution Professional with the minutes of 9 th CoC stating that there will be monitoring agency as appointed by this authority which will look after the affairs |



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|---|--|
| <p style="text-align: center;">And</p> <p>Regulation 38(2) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016</p> | <p>and business of the Corporate Debtor. The term of the monitoring agency shall come to end on the implementation date or on expiry of 3 months, whichever is earlier.</p> <p>The implementation of plan as stated by the Resolution Applicant in the Resolution Plan is 60 days from the approval date and on payment to sole operational creditor and also the CIRP cost.</p> |
| <p>Section 30(2)(e) of the IBC, 2016</p> | <p>The Resolution Plan does not contravene any of the provisions of law for the time being in force.</p> |
| <p>Section 30(4) of the IBC, 2016</p> | <p>The Committee of Creditors, after considering the feasibility and viability of the Resolution Plan have approved the same by 100% voting share.</p> |

17. Thus, the resolution plan filed with the Application meets the requirements of section 30 and 31 of IBC, 2016 and Regulation 37, 38, 38(1A) and 39(4) of the IBBI(CIRP) Regulations, 2016. The provisions of section 29A of IBC are not attracted. The RP has also verified that the "Resolution Plan" approved by the CoC does not contravene any of the provisions of the law for the time being in force. The RP has



filed compliance certificate in Form H as required under regulation 39(4) of the IBBI (CIRP) Regulations, 2016.

18. All waivers/concessions prayed for by the Resolution Applicant as detailed in the IA/Resolution Plan fall within the preview of IBC and other applicable laws. Therefore, the Resolution Applicant is held legally entitled to the said waivers/concessions.

19. In view of the above, the "Resolution Plan" annexed with I.A. No. 3310/2020 filed in IB-1457(ND)/2018 is hereby **approved**, which shall be binding on the corporate debtor and its employees, members, creditors, guarantors, other stakeholders including statutory authorities and the Resolution Applicant.

20. While approving the "Resolution Plan", as mentioned above, it is clarified that the Resolution Applicant shall pursuant to the Resolution Plan approved under sub Section (1) of Section 31 of the IBC, 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 periods as provided for under such law.

21. The Resolution Applicants or Monitoring Agency as the case may be is at liberty to approach this authority for seeking appropriate directions for effective implementation of the Resolution Plan.
22. The order of moratorium date 30.07.2019 passed by this adjudicating authority under section 14 of IBC shall cease to have effect from the date of this order.
23. The RP 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 its data base.
24. The approved resolution plan shall become effective from the date of passing of this order.
25. The Resolution Professional shall forthwith send a copy of this order to the participants and the Resolution Applicant.
26. Accordingly, I.A. No. 3310/2020 filed in IB-1457(ND)/2018 stands **disposed of**.

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(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)



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(CH.MOHD SHARIEF TAR0IQ)
MEMBER (JUDICIAL)

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19.10.2020
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003