<u>***Through Videoconference***</u>

**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**MUMBAI BENCH, COURT No. - I**

*** *** ***

IA No. 2419/MB/2020
in
C.P. (IB) No. 3456/MB/2018

(An Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016)

Vishal Bidawatjika,
Resolution Professional for Topman Exports Ltd.,
Office No. 307, 3rd Floor, Business Classic,
Behind H.P. Petrol Pump, Chincholi Junction, S. V. Road,
Malad (West), Mumbai – 400 064. ... *Applicant*

*In the matter of:*
C.P. (IB) No. 3456/MB/2018

Punjab National Bank … Petitioner
V/s
Topman Exports Limited … Corporate Debtor

<u>Date of Order: 22.06.2021</u>

CORAM:
Janab Mohammed Ajmal, Hon'ble Member (Judicial)
Shri V. Nallasenapathy, Hon'ble Member (Technical)

*Appearance:*
For the Applicant: Mr Akshay Gosavi with Ms Karishma Acharya, Advocates.

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

**<u>ORDER</u>**

This is an Application filed by the Resolution Professional of the Corporate Debtor under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the

Code), seeking approval of the Resolution Plan submitted by M/s Yashasvee Textiles Private Limited (Resolution Applicant).

2. The facts leading to the Application may be stated as under.

   a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by order dated 14.10.2019 upon admission of a Petition under Section 7 of the Code and the Applicant was appointed as the Interim Resolution Professional (IRP). The Applicant made public announcement on 20.10.2019 inviting claims from the creditors of the Corporate Debtor. After receipt of the claims the Applicant constituted the Committee of Creditors (CoC) of Corporate Debtor on 07.11.2019 and conducted its 1st meeting on 13.11.2019 wherein the CoC resolved to appoint the Applicant as Resolution Professional (RP). The same was confirmed by this Bench.
   b. The Applicant issued Form-G on 31.12.2019, inviting expression of interest (EoI) from prospective resolution applicants (PRAs). Two EoIs were received from PRAs namely, M/s Yashasvee Textiles Private Limited and M/s Accurate Bearings Private Limited.
   c. The Applicant received two Resolution Plans from the PRAs and the same were placed before the CoC for discussion. After discussions and negotiations between the CoC members and PRAs, it was decided that the PRAs should revise their respective plans. Accordingly, the Applicant received revised plans from M/s Yashasvee Textiles Private Limited on 25.02.2020, 17.03.2020, 26.05.2020, 06.08.2020, 09.09.2020 and 05.10.2020. However, M/s Accurate Bearings Private Limited was not inclined to revise its plan.
   d. The CoC in its 9th meeting held on 08.07.2020 resolved to file an Application for extension of CIRP period. Accordingly, the Applicant filed an Application in IA No. 1560 of 2020 for extension of CIRP period. The same was allowed by this Tribunal vide order dated

23.09.2020 by extending the period of CIRP by 90 days to end on 21.12.2020.

3. In the 12th meeting held on 17.10.2020, the Applicant put both the plans before the CoC and the CoC decided to put the plans for e-voting. Accordingly, the e-voting commenced from 20.10.2020 (@7.00 pm) and closed on 04.11.2020 (@7.00 pm). This was later extended twice i.e., to 13.11.2020 and 20.11.2020. After due verification of the eligibility of the PRAs in terms of Section 29A of the Code, the CoC considered the Resolution Plan submitted by M/s Yashasvee Textiles Private Limited and approved the same with 100% voting share.

4. **Salient features of the Resolution Plan:**

a. SUCCESSFUL RESOLUTION APPLICANT (SRA):
M/s Yashasvee Textiles Private Limited / SRA is a company limited by shares and incorporated on 03.01.2020. The SRA is having a paid up share capital of ₹. 2,00,00,000/- as on 10.02.2020.

b. TERMS OF RESOLUTION PLAN:
This Resolution Plan shall become binding on the Corporate Debtor, its employees, members, creditors, guarantors and Central and State Government Agencies including Tax Authorities, Stamp Duty Authorities, any other Government Authority in relation to the implementation of the Resolution Plan, upon its approval by this Authority. Further, "Transfer Date" means the date on which proposed transaction is completed in accordance with the terms of the RFRP, the definitive agreements and the applicable laws. "Proposed Transaction" means acquisition of management control or acquisition of assets or any other transaction as envisaged in the Resolution Plan.

c. The Resolution Plan does not envisage any term for its successful implementation. The 'Transfer Date' provided under the RFRP has also not been defined in the Resolution Plan. It will not be proper to leave the implementation of the Resolution Plan to an uncertain future. We accordingly are of the considered opinion that a definite date / time frame should be indicated for the implementation of the Resolution Plan and that would mean the Transfer Date contemplated under the RFRP. Such stipulation would not, in our opinion, go against the decision, commercial or otherwise, of the CoC. The transfer date would accordingly be the 90th day from the approval of the Resolution Plan by this Authority.

d. FINANCIAL TERMS:

The total consideration under the Plan is ₹. 1,962 lakh + ₹. 383 lakh (to be infused as capital expenditure and working capital). Details of the plan outlay (plan consideration) are as follows:

*(Amount in Lakhs)*

| Sr. No. | Category of Stakeholders | Sub-Category of Stakeholders | Amount Claimed | Amount Admitted | Amount Provided under the Plan |
|---|---|---|---|---|---|
| 1. | CIRP Cost (Note1) | | - | - | - |
| 2. | Secured Financial Creditors | (a) Creditors not having right to vote under sub-section (2) of Section 21 | - | - | - |
| | | (b) Other than (a) above:<br>(i) Who did not vote in favour of the Resolution Plan | - | - | - |
| | | (ii) Who voted in favour of the Resolution Plan | 19072 | 19072 | 1700 |
| | | Total (a) + (b) | 19072 | 19072 | 1700 |
| 3 | Unsecured Financial Creditors | (a) Creditors not having a right to vote under sub-section (2) of Section 21 | - | - | - |
| | | (b) Other than (a) above:<br>(i) Who did not voted in favour | - | - | - |

| | | | | | |
|---|---|---|---|---|---|
| | | of the Resolution Plan<br>(ii) Who voted in favour of the Resolution Plan | - | - | - |
| | | Total (a) + (b) | - | - | - |
| 4 | Operational Creditors | (a) Related Party of Corporate Debtor | - | - | - |
| | | (b) Other than (a) above:<br>(i) Government<br>(ii) Workmen<br>(iii) Employees | <br>565<br>-<br>- | <br>565<br>-<br>- | 247<br>15<br>-<br>- |
| | | Total (a) +(b) | 565 | 565 | 262 |
| 5 | Other debts and dues | | - | - | - |
| Grand Total | | | | | 1962 |

<u>Note 1</u>: Since during the CIRP the company has been functioning as a going concern, it is thus able to cover all the costs incurred with the revenues derived through such operations, hence there is no CIRP cost which remains unpaid. However, vide Affidavit dated 10.06.2021, the Resolution Applicant has undertaken to pay CIRP costs, if any.

e. PAYMENT TERMS:

| Description | Amount (₹. in Lakhs) | Source of Funds | Payment terms |
|---|---|---|---|
| A) Upfront payment | 10 | Infusion by RA | Earnest Money Deposit/EMD (along with Resolution Plan) |
| B) Escrow Account deposit (in lieu of performance bank guarantee equivalent to 15% of the Resolution Plan amount) | 255 | Infusion by RA | After approval of the Resolution Plan by CoC |
| C) Balance Payment | i. 1180 | Infusion by CFM ARC Ltd (assignment of debt by all | Within 30 days from the approval of the Resolution Plan by |

| | | | |
|---|---|---|---|
| | ii. 255 | Financial Creditors to CFM ARC Ltd)<br><br>Infusion by SRA | NCLT. |
| Total | 1700 | | |

f. MEANS OF FINANCE:

SRA has already made a payment of ₹. 10 Lakhs as EMD and has also deposited ₹. 255 Lakhs + ₹. 86.75 Lakhs in an Escrow Account in lieu of performance bank guarantee. Further, CFM ARC Ltd has submitted an undertaking to the RP, offering to pay ₹. 1,180 Lakhs towards the assignment of outstanding dues of Corporate Debtor in accordance with Resolution Plan. The remaining ₹. 255 Lakhs will be met by SRA from its own funds.

g. REDUCTION OF SHARE CAPITAL:

The Resolution Plan provides that all the existing shares will stand extinguished and the Shareholders would be payed Nil amount. Fresh equity shares would be issued in favour of the Resolution Applicant.

h. PERFORMANCE SECURITY:

SRA has provided EMD of ₹. 10 lakhs equivalent to 10% of amount payable to financial creditors and has deposited ₹. 255 lakhs in the Escrow account maintained at Oriental Bank of Commerce (Account Number and Branch Name not furnished) towards performance security as per Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the Regulations). The CoC, however, has while approving the Plan have taken this into account and apparently were satisfied with the payment and deposit. Further, to bridge the gap in respect of 15% amount of the Resolution Plan Amount (₹.23.45 Crores) towards performance guarantee as required under the RFRP document, the SRA has issued a cheque dated 03.06.2021 for ₹. 86,75,000/- to the Corporate Debtor which is deposited (since realised) in the Corporate Debtor's Account maintained by the RP and this amount shall be utilised towards payments to the financial creditors.

i. SUPERVISION OF THE RESOLUTION PLAN:

A Monitoring Committee consisting of three members- one representatives of SRA, one from CoC and the RP will be constituted. The Monitoring Committee shall supervise the implementation of Resolution Plan from the approval date till the transfer date.

j. MANAGEMENT OF THE CORPORATE DEBTOR:

The Applicant herein shall continue to manage the business and operations of the Corporate Debtor till the transfer date. Thereupon, after implementation of the Resolution Plan the shareholding of the Corporate Debtor shall be held by the SRA and the SRA is at liberty to reconstitute the Board of Directors of the Corporate Debtor in accordance with law.

k. COMPLIANCE OF MANDATORY CONTENTS OF RESOLUTION PLAN UNDER THE CODE AND THE 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 Regulations and has submitted his Form H under Regulation 39(4). The Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the Resolution Applicant is not hit by the provisions of Section 29A of the Code. The Resolution Applicant has submitted an Affidavit dated 25.02.2020 confirming its eligibility in that regard.

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 payment of CIRP cost in full and in priority from the fund to be infused by the SRA [Section 30(2)(a)].

B. Proposes to pay the Operational Creditors of the Corporate Debtor in priority over the Financial Creditor. [Section 30(2)(b)].

C. The Management of the affairs of the Corporate Debtor after approval of the Resolution Plan would be with the Resolution Applicant [Section 30(2)(c)].

D. The Plan also provides for implementation and supervision of the Resolution Plan as stated above [Section 30(2)(d)].

E. 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 [Section 30(2)(e)].

6. The Resolution Plan is in compliance of Regulation 38 of the Regulations in terms of Section 30(2)(f) of the Code as under:

a) Payment to Operational Creditor under the Resolution plan shall be given priority in payment over financial Creditors (Regulation 38(1)(a) of the Regulations).

b) Since the plan has been approved by 100% voting share of the CoC, provision of dissenting financial creditors does not arise. This is in compliance of Regulation 38(1)(b) of the Regulations.

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) of the Regulations).

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 (Regulation 38(1B) of the Regulations).

e) The Plan also provides for term and implementation schedule, management and control of the Corporate Debtor and adequate means for supervising its implementation (Regulation 38(2) of the Regulations).

f) The Resolution Plan also addresses the cause of default, feasibility and viability, as required under Regulation 38(3) of the Regulations.

7. The SRA has sought certain reliefs, concessions and waivers at Clause 8 of the Resolution Plan.

8. 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.:(2019) SCC OnLine SC 1478* 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."*

9. 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. As already indicated the Resolution Plan has been approved by the CoC with 100% voting.

10. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150)*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan with 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.

11. 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)."*

12. In view of the discussions and the law thus settled, we are satisfied that the Resolution Plan as approved by the CoC under Section 30(4) of the Code meets the requirements of Section 30(2) of the Code and Regulations 37 and 38 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 as provided under Section 31 of the Code. Hence ordered.

ORDER

The Application be and the same is allowed. The Resolution Plan submitted by M/s Yashasvee Textiles Private Limited annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

a. 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 arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

b. As far as the permits held by the Corporate Debtor and the rights and benefits accrued therein, the Corporate Debtor (under the new Management) needs to approach the authorities concerned for renewal and that the same may have to be considered by them favourably, subject to relevant Law and Rules, so that the implementation of Plan becomes smooth.

c. With regard to the reliefs and concessions sought by the Resolution Applicant in respect of the Corporate Debtor, the Monitoring Committee or the new Management, as the case maybe, may approach the respective authorities and departments for such reliefs. The authorities concerned may favourably consider such applications as deemed proper under law, keeping in view the object of resolution of the Corporate Debtor as envisaged in the Code and various pronouncements of the Hon'ble Apex Court.

d. The 'Transfer Date' shall be in accordance with the observation in para 4(c) (Supra).

e. 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.

f. Henceforth, no erstwhile creditors of the Corporate Debtor can claim anything other than the liabilities taken over by the Resolution Applicant.

g. The moratorium under Section 14 of the Code shall cease to have effect from this date.

h. The Applicant shall supervise the implementation of the Resolution Plan and shall file Status Report of its implementation before this Authority from time to time, preferably every quarter.

i. 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.

j. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant for necessary compliance. The certified copy so granted shall include the Resolution Plan approved herein.

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|---|---|
| Sd/- | Sd/- |
| V. Nallasenapathy | Janab Mohammed Ajmal |
| Member (Technical) | Member (Judicial) |

**NATIONAL COMPANY LAW TRIBUNAL**
**COURT No. – I, MUMBAI**
**URGENT BENCH**

*** *** ***

**I.A. No. 2419/2020**
**in**
**C.P. (IB) No. 3456/MB/2018**

**Oriental Bank of Commerce**
**V/s**
**Topman Exports Ltd**

*** *** ***

**Dated 22nd June, 2021**

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**ORDER**

Sr. No. 4

The matter is taken up on VC. Counsel for the Applicant is present. Order pronounced. IA No. 2419 of 2020 is allowed subject to certain directions, vide separate order.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **V. NALLASENAPATHY** | **JANAB MOHAMMED AJMAL** |
| **Member (Technical)** | **Member (Judicial)** |

*Steno: - Smita*