**THE NATIONAL COMPANY LAW TRIBUNAL,**
**MUMBAI BENCH, COURT II**

**IA. No. 106/2021**

In

**CP(IB)No. 1796/MB/C-II/2017**

**Application filed under section 30(6), r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.**

Filed by

**Mr. Deepak Mohanlal Panpaliya,**
**Resolution Professional**

**...Applicant**

*In the matter of*

**Hallmark Metals Private Limited**

**...Operational Creditor**

Versus

**Anand Teknow Aids Engineering India Limited**

**...Corporate Debtor**

**Order Pronounced on :- 17.06.2022**

***Coram:***

**Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)**
**Hon'ble Member (Technical) : Mr. Shyam Babu Gautam**

*Appearances (through video conferencing)*

**For the Resolution Professional : Mr. Sahil Menon, Advocate**
**For the Resolution Applicant : Mr. Gaurav Shrawat, Advocate**

## ORDER

***Per: Shyam Babu Gautam, Member Technical***

1. The present Interlocutory application is filed by **Mr. Deepak Mohanlal Panpaliya** the Applicant, Resolution Professional of **Anand Teknow Aids Engineering India Limited,** the Corporate Debtor by submitting a resolution plan under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 39 (4) of the IBBI )Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking approval of the Resolution Plan submitted by Mr. Rakesh Ranjan (ex-Director) jointly (45% equity) with M/s Equilibrated Venture CFLOW Private Limited (55% equity) in view of being exempt under the provisions of clause (c) and (h) of Section 29A read with Section 240A of the Code. The Plan was duly approved by the requisite majority of the Committee of Creditors (CoC).

2. The Applicant submits that the Hallmark Metals Private Limited, the Operational Creditor initiated the Corporate Insolvency Resolution process (CIRP) against the Corporate Debtor under Section 9 of the Code commenced on 04.10.2018 and appointed Mr. Hansraj Chandanlal Ahuja as the Interim Resolution Professional (IRP) of the Corporate Debtor. The Public announcement regarding the initiation of CIRP was made on 11.10.2018.

3. The first CoC meeting was convened on 14.11.2018. The second CoC meeting was held on 30.11.2018 wherein the name of the Applicant was proposed for the appointment of the Resolution Professional (RP) and the same was put to vote. Consequently, the CoC approved the name of the Applicant as RP and vide Order dated 10.01.2019 passed

by this Tribunal the Applicant was appointed as the RP.

4. Thereafter, the CoC in its 4th CoC meeting held on 08.02.2019, resolved to extend the period of CIRP by a further period of 90 days and accordingly filed an application seeking extension of 90 days of the CIRP period. The said application was allowed by the Tribunal vide its Order dated 09.04.219 and CIRP period was extended by further period of 90 days till 08.07.2019.

5. Further, the Applicant published an invitation for Expression of Interest (EoI) in Form G on 14.02.2019, inviting prospective bidders to submit their EoI and the last date for submission of the Resolution Plan was 17.04.2019. In response to the said EoI, the Applicant received only one expression of interest. Hence, the CoC decided to issue a revised Form G and accordingly a revised Form G was published on 06.03.2019 and the last date for submission of the Resolution Plan to be 04.05.20219. Thereafter, again a revised Form G was published on 02.04.2019 thereby providing the last date for submission of the Resolution Plan to be 24.05.2019.

6. In response, the Applicant received EoI from (i) M/s Valveworks India Private Limited and (ii) M/s Precise Venture Holdings Limited (PVH). Pursuant then to the Applicant requested for the Resolution Plan (RFRP) from the prospective resolution applicants. In terms of the RFRP, the Applicant received only one Resolution Plan from PVH. Consequently, the CoC approved PVH's Resolution Plan by a majority vote of 75.35% in the 9th CoC meeting held on 02.07.2019.

7. Further according to the terms of the RFRP, PVH was required to submit Performance Bank Guarantee (PBG) within 7 days of the

issuance of the LoI which was later reduced by the CoC to 2 days due to constraint of time. However, despite the passing of the agreed timelines, PVH failed to furnish the PBG. Therefore, the CoC in its 10th meeting held on 05.07.2019 approved a resolution to liquidate the Corporate Debtor and accordingly Application bearing IA No. 2497 of 2019 was filed with the Tribunal to pass an Order for liquidation. Meanwhile, the Applicant received an application filed by PVH seeking liberty to furnish PBG and relevant source of funds documents. Despite an opportunity granted by the Tribunal, PVH failed to file the PBG and source of funds documents.

8. Further, another prospective resolution applicant Adsum Techno Services Private Limited (Adsum) submitted an EOI on 04.01.2020 and requested the Tribunal to permit them to file a Resolution Plan along with PBG. The Tribunal granted short time to Adsum to file its Resolution Plan along with PBG on or before 15.01.2020. The Applicant states that despite giving multiple opportunities, neither Adsum or PVH filed the necessary documents before the CoC to consider their Resolution Plan.

9. Thereafter, Mr. Rakesh Ranjan approached the Tribunal seeking an Order from the Tribunal directing the CoC to consider his Resolution Plan. Hence this Tribunal vide an Order dated 04.11.2020 held that there is an possibility of revival of the Corporate Debtor Company rather than liquidation and granted time to the Applicant to conduct a CoC meeting to submit revise Plan for consideration. In the 11th CoC meeting held on 12.11.2020, the Resolution Plan submitted by the Resolution Applicant was discussed and the Applicant shared the preliminary compliance report on the initial Resolution Plan submitted

by the Resolution Applicant. Upon discussing the Plan, the Applicant informed the Resolution Applicant to incorporate the proposed commercial elements and submit the final Resolution Plan in order for the CoC to vote.

10. Further, in the 12th CoC meeting, the Applicant recorded the legal compliance report on the final Resolution Plan and the Plan was put to vote. Upon conclusion, the final Resolution Plan submitted by Mr. Rakesh Ranjan and M/s Equilibrated Venture CFLOW Private Limited was approved by the CoC by a voting percentage of 76.69%.

11. The Applicant stated that the Resolution Applicant submitted its performance bank guarantee from scheduled commercial bank in favour of State Bank of India (SBI) for an amount of Rs. 1,00,00,000/- to be paid within 7 business days from the date of issuance of the letter of intent. The final Resolution Plan meets the requirements of the Code and is in accordance with Regulation 39(4) of the CIRP Regulations. Compliance Certificate in Form H and copy of performance bank guarantee in favour of SBI is placed on record.

12. The Resolution Plan submitted by the Resolution Applicant is in compliance with the provisions of the Code, the CIRP Regulations and does not contravene any of the provisions of law. The Resolution Plan consists of a financial outlay of Rs. 64.75 Crores (Rupees Sixty-Four Crores Seventy-Five Lakhs Only) out of which the total payout to the Creditors is Rs. 55.25 Crores (Rupees Fifty-Five Crores and Twenty-Five Lakhs Only).

## SALIENT FEATURES OF THE APPROVED RESOLUTION PLAN

13. The summary of the Resolution Plan is as under ;-

| Sr. No. | Category of Stakeholders | Sub Category of Stakeholders | Amount Claimed | Amount Admitted | Amount provide under the Plan | Amount provided to the amount Admitted (%) |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 1 | Secured Financial Creditors | (a) Creditors not having a right to vote under sub-section (2) of section 21 | 0 | 0 | 0 | |
| | | (b) Other than (a) above: | 21,269 | 21,269 | 5,000 | |
| | | (i) Who did not vote in favour of the resolution Plan | No separate figure provided in the plan except clause mentioned in the plan i.e. Amount equivalent to proportionate liquidation value, in instalments, to the financial creditors in the manner as specified under section 53(10, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan, within the period of the plan | | | |
| | | (ii) Who voted in favour of the resolution plan | No separate figure provided in the plan | | | |
| | | **Total [(a)+(b)]** | **21,269** | **21,269** | **5,000** | **23.51%** |
| 2. | Unsecured Financial Creditors | (a) Creditors not having a right to vote under sub-section (2) of section 21 | 228 | 228 | | |
| | | (b) Other than (a) | 5,141 | 4,371 | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | above: | | | | |
| | | (i) Who did not vote in favour of the resolution Plan | No separate figure provided in the plan except clause mentioned in the plan i.e. Amount equivalent to proportionate liquidation value, in instalments, to the financial creditors in the manner as specified under section 53(10, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan, within the period of the plan | | | |
| | | (ii) Who voted in favour of the resolution plan | No separate figure provided in the plan | | | |
| | | **Total [(a)+(b)]** | **5,369** | **4,599** | **323** | **7%** |
| 3. | Operational Creditors | (a) Related Party of Corporate Debtor | 0 | 0 | 0 | |
| | | (b) Other than (a) above: | | | | |
| | | (i) Government | 3,281 | 3,281 | | |
| | | (ii) Non-Govt. OC | 1,260 | 916 | | |
| | | **Total[(a)+(b)]** | **4,541** | **4,198** | **80** | **2%** |
| 4. | Employees & workmen | (a) Workmen | 0 | 0 | 0 | |
| | | (b) Employees | 104 | 88 | 88 | |
| | | **Total[(a)+(b)]** | **104** | **88** | **88** | **100%** |
| 5. | Other debts and dues | Other category | 1,726 | 1,545 | 34 | |
| | | Total | 1,726 | 1,545 | 34 | 2% |
| | | | | | | |
| **Grand Total** | | | **33,009** | **31,699** | **5,525** | **17%** |
| | | | | | | |
| In addition to above payout, Interest payment @ SBI MCLR commencing after 180 days from Effective Date on Deferred Payment amount i.e. INR 9.25 Cr. During the plan period is payable as interest to Financial Creditors who voted in favour of the plan. | | | | | | |

14. The Resolution Plan submitted by the Resolution Applicant is in compliance with the provisions of the Code, the CIRP Regulations and does not contravene any of the provisions of law. The Resolution Plan consists of a financial outlay of Rs. 64.75 Crores (Rupees Sixty-Four

Crores Seventy Five Lakhs Only) out of which the total pay out to the Creditors is Rs. 55.25 Crores (Rupees Fifty-Five Crores and Twenty Five Lakhs Only).

15. The Resolution Applicant and Investor shall pay the entire CIRP cost within 60 days from the Effective date i.e. (the date on which the Resolution Plan is approved by the Adjudicating Authority) at actuals in priority to all other debts of the Corporate Debtor and the said payment shall be deducted from the Upfront Amount of Rs. 11.34 Crores.

16. The Resolution Plan outlines the payment to be made to creditors and stakeholders of the Corporate Debtor. The Resolution Plan provides for total payment of Rs. 57.75 Crores to the Creditors and stakeholders comprising of payment of Rs. 11.34 Crores within 180 days from the Effective Date out of funds infused by EVCPL in the form of capital/unsecured loans and Deferred Payment of Rs. 46.40 Crores along with Applicable Interest on reducing balance basis to be paid out of cash accruals of the Corporate Debtor.

17. Further in the Resolution Plan, an amount of Rs. 80 lakhs is to be paid in priority over the Financial Creditors, against the Verified Amount of the Operational Creditors. The entire payment of Rs. 80 lakhs shall be made within 180 days from the Effective date on a pro-rata basis amongst all the Operational Creditors whose claims have been admitted on or prior to the date of approval.

18. The Applicant further submits that the Resolution Plan submitted is in compliance **with Section 30 (2) of the Code and Regulation 38 (A) of the CIRP Regulations**. The RP has provided a compliance certificate in "**FORM H**" as mandated under the Code for seeking approval of the Resolution Plan from this Hon'ble Bench.

## OBSERVATIONS OF THE ADJUDICATING AUTHORITY

19. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.

20. It is seen that the Resolution Applicant has given an Undertaken with respect to Bank Guarantee of Rs. 1,00,00,000/- in favour of SBI. Further, an additional Bank Guarantee of Rs. 50,00,000/- will be infused over and above the Bank Guarantee during the period of 180 days after the receipt of the Order of approving the Resolution Plan and the said additional Bank Guarantee can be adjusted in the next payment due under the Resolution Plan.

21. The Investor will infuse Rs. 10.89 Crores in the Corporate Debtor. Out of aforesaid amount, an amount of Rs. 55 Lakhs would be introduced in form of equity share capital within 30 days of the Effective date to hold 55% stake in the Corporate Debtor and balance amount brought in from of unsecured loans shall be utilized towards payment to creditors and stakeholders.

22. The Investor shall infuse Rs. 45 Lakhs in the form of equity share capital to hold the remaining stake. The entire existing equity capital of Rs.

32 Crores shall be written off or reduced to NIL and shall be replaced with the new 10,00,000 equity shares of face value of Rs. 10 each.

23. Further, the Creditors are at liberty to proceed against the Personal Guarantors. The approval of the Resolution Plan does not bar the Creditors to proceed against the Personal Guarantors.

24. Further, it is observed that Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such 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 - For the purpose of this section –

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and

(ii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

c) Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

a) The implementation and supervision of the resolution plan;

b) Does not contravene any of the provisions of the law for the time being in force;

c) Confirms to such other requirements as may be specified by the Board.

25. Section 30 (4) of the Code reads as follows:

"(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.

26. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.

27. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.

a) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
b) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified u/s 30(2)(c) of the Code.
c) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

28. The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through two registered valuers. The aggregate of the average of Fair Value of all the assets is Rs. 43.16 Crores and that of the Liquidation Value of all the assets is Rs. 31.54 Crores.

29. One of the justifications for approval of this resolution plan is that the amount proposed under the plan is higher than liquidation value of the Corporate Debtor.

30. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a),38(2)(b), 38(2)(c) & 38(3) of the Regulations.

31. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of The Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.

32. The Resolution Plan has been approved by the CoC in the with 76.69% votes in terms of Section 30(4) of the Code.

33. 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.

34. In ***CoC of Essar Steel*** (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) 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)."*

35. 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. We are thus inclined to dispose of the Application in the following terms. Hence Ordered.

## ORDER

(i) **The Application IA No. 106 of 2021 in CP 1796 of 2018 be and the same is allowed.** The Resolution Plan submitted by Mr. Rakesh Ranjan jointly with M/s Equilibrated Venture CFLOW Private Limited 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) Further in terms of the Judgment of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited v/s Edelweiss Asset Reconstruction Company Limited***, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.

(iii) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra 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) The moratorium under Section 14 of the Code shall cease to have effect from this date.

(v) The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.

(vi) 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.

(vii) The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

| | |
|---|---|
| Sd/- | Sd/- |
| **SHYAM BABU GAUTAM** | **JUSTICE P.N. DESHMUKH** |
| **MEMBER (TECHNICAL)** | **MEMBER (JUDICIAL)** |