IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

IA (IB) No. 332/KB/2022
in
CP (IB) No. 892/KB/2019

Application under sections 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016 read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for approval of Resolution Plan.

In the matter of:
Borojalingah Tea Company

... Financial Creditor

Versus

IMECO Limited
(CIN: U10200WB1975PLC029830)

... Corporate Debtor

And

In the matter of:
Pratim Bayal
Resolution Professional of IMECO Limited

... Applicant

Coram:

Mr. Rohit Kapoor	:	Member (Judicial)
Mr. Harish Chander Suri	:	Member (Technical)

Appearances (via hybrid mode):

For the Applicant/RP	:	Mr. Rishav Banerjee, Advocate
		Mr. Rajarshi Banerjee, Advocate
		Mr. A. K. Awasthi, Advocate
For the successful Resolution Applicant	:	Mr. Joy Saha, Senior Advocate
		Mr. Yash Vardhan Deora, Advocate
		Mr. Nikunj Berlia, Advocate
		Ms. Anshu Jain, Advocate

Date of hearing: 13 May 2022
Date of pronouncement: 15 July, 2022

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. Preliminary

1.1. This Court convened through hybrid mode.

1.2. IA (IB) No. 332/KB/2022 is an application filed by Mr. Pratim Bayal, Resolution Professional of IMECO Limited [CIN: U10200WB1975PLC029830], under section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 and regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 *(CIRP Regulations)* for approval of the Resolution Plan in respect of IMECO Limited, the Corporate Debtor.

1.3. The underlying Company Petition in CP (IB) No. 892/KB/2019 was filed by Borojalingah Tea Company against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 29 August 2019.

1.4. Initially, Mr. Soumendra Podder was appointed as the Interim Resolution Professional (IRP). The Committee of Creditors (“CoC”) resolved to replace the Interim Resolution Professional with Mr Pratim Bayal (Reg. No. IBBI/IPA-003/IP-N00213/2018-2019/12385) in its 4th CoC meeting and Mr. Pratim Bayal was confirmed as the Resolution Professional (RP) of the Corporate Debtor by this Adjudicating Authority on 04 February 2020z.

2. Constitution of CoC

2.1. The IRP made public announcement on 05 September 2019 regarding initiation of Corporate Insolvency Resolution Process **[CIRP]** and called for claims from the financial and operational creditors, workers and employees of the Company in the specified forms till 16 September 2019.

2.2. The CoC was constituted with five Financial Creditors having voting rights *viz*. Axis Bank, State Bank of India, Borojalingah Tea Company, Stuti Securities Limited and Gliadin Intertrade Private Limited, as on 11.08.2020. A report of re-constitution of CoC was filed with the Adjudicating Authority on 11.08.2020.

2.3. The Applicant states that total of 17 (seventeen) CoC meetings have been held during CIRP period.

3. CIRP and compliances

3.1. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of CIRP Regulations, 2016, invitations in Form 'G' for Expressions of Interest *("EoI")* from potential resolution applicants was published on 24 December 2019 for submission of resolution plans for the Corporate Debtor, in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It was also published on the website of the Corporate Debtor and IBBI.

3.2. It is submitted that in response to the EoI published on 24 December 2019, the Applicant received an EoI from IMECO Overseas Private Limited, a related party of the Corporate Debtor by submitting a Resolution Plan on 03 January 2020.

3.3. The Resolution Plan was put for e-voting in the 8^{th} CoC meeting held on 13.07.2020, the Plan was rejected by 77.92%.

3.4. Thereafter, the Applicant issued a Revised Invitation for Expression of Interest on 19 July 2020 in *Financial Express* (English), *Aajkal* (Bengali-All Edition) newspapers. Pursuant to the publication, the Applicant received three EoIs. The Final List of Prospective Resolution

Applicants were SRP Infocom Private Limited and IMECO Overseas Private Limited.

3.5. The Resolution Plans submitted by IMECO Overseas Private Limited and SRP Infocom Private Limited were discussed in the 10th CoC meeting held on 25 September 2020 and after several discussions and negotiations, the CoC approved the Resolution Plan of SRP Infocom Private Limited with 77.74% voting share.

3.6. This Adjudicating Authority set aside the decision of the CoC approving the Resolution Plan filed by SRP Infrocom Private Limited and directed the CoC to accord fresh consideration to the revised Resolution Plan by both the Applicants.

3.7. The CoC considered the Resolution Plans and the same were placed for evoting from 15.02.2022 till 23.02.2022, the CoC voted in favour of the Resolution Plan submitted by IMECO Overseas Private Limited with 98.61% voting share.

3.8. The RP sent a letter of Intent dated 25.02.2022 to the successful Resolution Applicant which was duly accepted by the successful Resolution Applicant.

3.9. The Successful Resolution Applicant submitted Performance Bank Guarantee of ₹50,00,000/- (Rupees Fifty Lakh only), on 28.02.2022.

4. Compliance with statutory provisions

4.1. The Applicant has filed a Compliance Certificate in prescribed form, i.e. Form 'H' in compliance with regulation 39(4) of the CIRP Regulations.

4.2. The Applicant has submitted that the Resolution Applicant is eligible to file a Resolution Plan and has filed an affidavit under section 29A of the Code.

4.3. The Applicant has submitted details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan should adhere to, which are reproduced hereunder:

I. Submission of Resolution Plan in terms of sub-section (2) of section 30 of the Code (as amended vide Amendment dated 16 August 2019):

Clause of s.30(2)	Requirement	How dealt with in the Plan
1.	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Clause 3.2 at Page 16 of the Resolution Plan.
2.	(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53;	Clause 3.4 at Page 18 of the Resolution Plan.
	(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than 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;	Clause 3.4 at Page 18 of the Resolution Plan.
	(iii) provides for 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.	Clause 3.4 at Page 18 of the Resolution Plan.
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 3.6 at Page 22 of the Resolution Plan.

Clause of s.30(2)	Requirement	How dealt with in the Plan
(d)	Implementation and Supervision	Clause 3.8 at Page 24 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 4.5 at Page 30 of the Resolution Plan.
(f)	Conforms to such other requirements as may be specified by the Board.	Clause 4.5 at Page 30 of the Resolution Plan.

II. Measures required for implementation of the Resolution Plan in terms of regulation 37 of CIRP Regulations:

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed in the Resolution Plan.
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed in the Resolution Plan.
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not proposed in the Resolution Plan.

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Clause 3.6 at Page 32 of the Resolution Plan.
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause 3.6 at Page 32 of the Resolution Plan.
(f) satisfaction or modification of any security interest;	Not proposed in the Resolution Plan.
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not proposed in the Resolution Plan.
(h) reduction in the amount payable to the creditors;	Clause 3.1 at Page 15 of the Resolution Plan
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not proposed in the Resolution Plan
(j) amendment of the constitutional documents of the corporate debtor;	Not proposed in the Resolution Plan
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Clause 3.6 at Page 22 of the Resolution Plan.
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed in the Resolution Plan

Particulars	**Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation**
(m) change in technology used by the corporate debtor; and	Not proposed in the Resolution Plan
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	----

III. Mandatory contents of Resolution Plan in terms of regulation 38 of CIRP Regulations:

Ref to relevant reg.	Requirement	How Dealt with in the Plan
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Clause 3.4 at Page 18 of the Resolution Plan.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Clause 3.3 and 3.4 at Pages 17-18 of the Resolution Plan.
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the adjudicating authority at any time in the past.	--------

Ref to relevant reg.	Requirement		How Dealt with in the Plan
38(2)	A Resolution Plan shall provide:		
	(a)	The term of the plan and its implementation schedule;	Clause 3.7 at Page 23 of the Resolution Plan.
	(b)	The management and control of the business of the corporate debtor during its term; and	Clause 3.6 at Page 22 of the Resolution Plan.
	(c)	Adequate means for supervising its implementation.	Clause 3.8 at Page 24 of the Resolution Plan.
38(3)	A Resolution Plan shall demonstrate that –		
	(a)	It addresses the cause of default;	Page 10 of the Resolution Plan
	(b)	It is feasible and viable;	Declaration at Page 3 of the Resolution Plan
	(c)	It has provisions for its effective implementation;	Clause 4.7 at Page 32 of the Resolution Plan.
	(d)	It has provisions for approvals required and the timeline for the same; and	Declaration at Page 3 of the Resolution Plan
	(e)	The resolution applicant has the capability to implement the resolution plan.	Clause 3.9 at Page 25 of the Resolution Plan.

5. Details of Resolution Plan/ Payment Schedule

5.1. The Applicant submits the relevant information with regard to the amount claimed, amount admitted, and the amount proposed to be paid by the Successful Resolution Applicant, *i.e.*, IMECO Overseas Private Limited under the said Resolution Plan is tabulated as under:

Sl. No	Name of Claimant	Claim admitted	Claim proposed	Amount provided (%)
			To be paid within 15 days	
1.	CIRP Cost	Rs.45,00,000/-	Rs.45,00,000/-	100%
2.	Workman & Employees Dues	Rs3,32,758/-	Rs3,32,758/-	100%
3.	Secured Financial Creditors	Rs.80,93,34,332/-	Rs.3,79,55,512/-	4.56%
4.	Unsecured Financial Creditors	Rs.2,23,49,085/-	Rs.2,23,483/-	1.95%
5.	Operational Creditors (Other than Workman & Employees)	Rs.17,64,94,844/-	Rs.88,247/-	0.26%
6.	Contingent Liabilities	Rs.20,03,46,749/-	Rs.10,00,000/-[1]	0.5%
7.	Fresh Investment in CD for revival	________	Rs.50,00,000/-[2]	--
TOTAL		Rs.121,08,57,768/-	Rs.491,00,000/-	---

5.2. The Resolution Plan defines ***"Effective Date"*** as "*date on which the National Company Law Tribunal approved the Resolution Plan*."

Details on Management/ Implementation and Reliefs as per the Resolution Plan:

5.3. The Resolution Plan also provides for the following:

(a) Management of company after resolution in Clause 3.6 at Page 22 of the Resolution Plan.

(b) Term of the Resolution Plan in Clause 3.7 at Page 23 of the Resolution Plan.

(c) Implementation and Supervision of the resolution plan in Clause 3.8

[1] Shall be paid when required
[2] Shall be paid when required

at Page 24 of the Resolution Plan.

6. Reliefs, exemptions and waivers sought and orders passed thereon

6.1. The Reliefs, Exemptions and Waivers sought by the Resolution Applicant in Clause 4.1 of the Resolution Plan, from the Adjudicating Authority are set out below for the successful implementation of the Resolution Plan. The orders thereon are indicated against each:

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
1.	4.1	The following liabilities, if any, as on / within CIRP shall stand relinquished / extinguished / waived after the approval of the Proposed Resolution Plan by the CoC members and the AA	
		All Corporate / Performance Guarantees issued by IMECO Ltd in favour of or on behalf of any of its subsidiaries, associates, group companies or any third party	Granted in terms of ***Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruc-tion Company Ltd,*** [3] the Hon'ble Supreme Court held in paragraph 95, that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
		All securities including Guarantees provided by Directors / Third Party on behalf of the CD	The judgement of the Hon’ble Supreme Court in ***Lalit Kumar Jain v Union of India & ors,***[4] will apply, where in paragraph 133 it was held that sanction of a resolution plan and finality imparted to it by section 31 does not *per se* operate as a discharge of the guarantor’s liability.

[3] 2021 SCC OnLine SC 313 decided on 13.04.2021.
[4] 2021 SCC OnLine SC 396 decided on 21.05.2021.

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		All the dues of IMECO Ltd to related parties	Granted in terms of ***Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruc-tion Company Ltd,***[5]
		All the Contingent Liabilities of IMECO Ltd	
		All the Statutory dues / Government dues of IMECO Ltd	
		All the Current Liabilities of IMECO Ltd other than those covered under the Resolution Plan.	
		All the Litigations / Claims / Suits / legal proceedings against IMECO Ltd / Directors	Granted with respect to IMECO Limited but not the Directors.
		Any Operational / Other dues pertaining to any previous transaction or operation or activity whether crystallised or not as on CIRP date would stand extinguished as part of the Resolution Plan	Granted in terms of ***Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruc-tion Company Ltd,***[6]
2.		The Resolution Plan once passed by the AA would be binding on all the stakeholders of IMECO Ltd, Statutory Authorities, Third Parties, Current Related Parties of IMECO Ltd / Others as may be required	
3.		We require the lease of the CD Factory at Kharagpur, West Bengal to be renewed at the same Terms and Conditions as before – request the AA to	Not granted, unless the service being provided by such authorities or person is being discontinued. Such concessions cannot be granted across the

[5] 2021 SCC OnLine SC 313 decided on 13.04.2021.
[6] 2021 SCC OnLine SC 313 decided on 13.04.2021.

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		direct the West Bengal Industrial Development Corporation to consider renewal of the lease under the earlier Terms and Conditions	board without understanding the implications thereof.
4.		The Property of the CD in Chennai that is pledged with the Bankers should be released in our favour.	Granted.
5.	4.2	**Retention of Existing Rights / Licenses / Registrations / Approvals / Leases**	
		All the Existing Statutory Rights, Licenses, Registrations, Approvals, Leases, permits, and so on shall remain in force upon the Approval of the Proposed Resolution Plan including the lease of the CD Factory at Kharagpur	No general reliefs can be granted in the manner sought for. It is for the appropriate Authorities to consider the same in accordance with the relevant law.
		All Licenses / Registrations / Approvals / Leases that are pending / have been suspended / cancelled are to be renewed / continued as the case may be	

7. Analysis and Orders

7.1. On hearing the submissions made by the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 98.61% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the Resolution Professional and the Resolution Applicant for making the plan effective after approval by this Bench.

7.2. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

7.3. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the Code.

7.4. In case of non-compliance of this order or withdrawal of Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.

7.5. Subject to the observations made in this Order, the Resolution Plan dated 03.09.2020 which was revised on 15.01.2021 along with the financial offer dated 25.01.2021, is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order.**

7.6. The Resolution Plan thus approved shall be binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.

7.7. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.

7.8. The Resolution Professional shall submit copies of the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.

7.9. The Resolution Professional shall stand discharged from his duties with effect from the date of this order.

7.10. The Resolution Professional is further directed to hand over all records, and properties to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises of the corporate debtor through the Resolution Professional to finalise the further line of action required for starting of the operation.

7.11. Liberty is hereby granted for moving applications, if required, in connection with implementation of this Resolution Plan.

7.12. The Resolution Applicant shall file a copy of this order with the Registrar of Companies, West Bengal, *inter alia* for updating the status of the Corporate Debtor.

7.13. The application bearing **IA (IB) No. 332/KB/2022** and **C.P. (IB)No. 892/KB/2019** is disposed of accordingly.

7.14. Additionally, the Registry shall send a copy of this order to the Registrar of Companies, West Bengal.

7.15. Certified copy of this order be issued on demand to the concerned parties, upon due compliance.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on the 15th day of July, 2022

GGRB[LRA]