

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

Before Shri Madan B. Gosavi, Hon'ble Member (J)

**CP (IB) No. 70/KB/2018 alongwith CA(IB) Nos. 633/KB/19, CA(IB) 660/KB/19,
CA(IB) 705/KB/19 & CA(IB) 720/KB/19 and CP(IB) No.284/KB/2019**

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

State Bank of India, Stressed Assets Management Branch, Nagaland House, 8th floor, 11 and 13, Shakespeare Sarani, Kolkata- 700 071 and registered office at Samridhi Bhavan, Block-B, 1, Strand Road, Kolkata- 700 001 and Corporate Office being at State Bank Bhavan, 16th floor, Madam Cama Road, Mumbai- 400 021;;

... Applicant/ Financial Creditor

-Versus-

In the matter of:

Network Industries Limited, CIN No.U17111WB1989PLC046577 having its registered office at 171/1, Mahatma Gandhi Road, Kolkata- 700 007, West Bengal;

.... Respondent/Corporate Debtor

Counsel appeared:

1. Mrs. Swati Agarwal, Advocate
2. Mr. S. K. Bhattacharyya

] For the R.P.
] Resolution Professional

- 1 Mr. Ajay Gaggar, Advocate

] For Bhutoria Constructions(P) Ltd.

2. Mrs. Rakhi Purnima Paul , Advocate]
1. Mr. Kuldip Mallik, Advocate] For the Director

1. Mr. Abishek Sikdar, Advocate] For Prerna Traders Pvt. Ltd.
2. Mr. Samarjit Ghosal, Advocate

Date of Pronouncement of Order: 04.07.2019

ORDER

State Bank of India - the Financial Creditor filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **Network Industries Limited-** Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying the financial debt of Rs.100,92,57,516/-.

2. This authority vide order dated 26.09.2018 admitted the application and set in motion CIRP of the corporate debtor. One, Mr. Samir Kumar Bhattacharyya having registration no. IBBI/IPA-002/IP-N00273/2017-18/10831 is appointed as the I.R.P.

3. On 27.09.2018, I.R.P. made public announcement of the CIRP of the corporate debtor by public notice in Business Standard in English and Aajkal in Bengali and thereby called the claims from the creditors. IRP received number of claims. He received eight claims from financial creditors. He formed CoC by giving them voting rights in the following manner:

- | | |
|------------------------|----------|
| i) State Bank of India | - 60.86% |
| ii) Corporation Bank | - 25.11% |

iii) Union Bank of India	- 11.27%
iv) K.D.Jag Holdings Pvt. Ltd.	- 1.02%
v) M/s. Singhania Trading Corporation	- 1.54%
vi) Kirti Stocks & Securities Limited	- 0.04%
vii) Kirti Land Developers Private Ltd.	- 0.04%
viii) Nandeshwar Fintrade (P) Ltd.	- 0.12%

4. CoC in its first meeting dated 25.10.2018 confirmed the appointment of IRP, Mr. Samir Kr. Bhattacharyya as the RP by 100% votes. His fees was finalised. The RP was directed to make public announcement in order to call EoI/Resolution Plan from the Resolution Applicants.

5. The RP prepared Information Memorandum about the assets and liabilities of the corporate debtor by fixing liquidation value of the assets. On 16.01.2019, the RP issued public notice calling upon EoI/Plan but only one Resolution applicant, i.e. M/s. Gloster Limited submitted only EoI. No plan was submitted at that point of time.

6. On 24.04.2019, the CIRP period of 180 days was completed. However, it was extended for further 90 days at the request of CoC and the RP. Since there was no adequate response from the prospective resolution applicants for submitting EoI/Plan, the RP in concurrence with the CoC again published notice in Business Standard in English and Aajkal in Bengali calling upon the EoI/Plan afresh which was to be submitted on or before 13.04.2019. In response thereto, the RP received resolution plan from four applicants. They were: (a) Gloster Limited, (b) Indo Nabin Projects Ltd., (c) Nagareeka Exports Limited, (d) Macro Commodeal Private Limited.

7. RP submitted all resolution plans for consideration of CoC. CoC in its 9th meeting held in between 04.06.2019 to 07.06.2019 approved the resolution plan submitted by M/s. Gloster Limited by 74.78% votes. The said plan is submitted for approval of this authority under section 30(6) of I&B Code.

8. Section 30(2) of I&B Code states mandatory requirements, the plan should contain (a) it should provide payment of resolution process fees and costs, (b) it should have provision for payment of claims of operational creditors including wages of employees and workmen, (c) it should provide mechanism for the management of affairs of the corporate debtor, (d) the plan must contain the modalities for its implementation and supervision, (e) the plan should not be in contravention of any of the provisions of law and (f) it should conform with other requirements as specified by the Board. Besides this, the Successful Resolution Applicant has to submit affidavit stating that they are not ineligible under section 29A of I&B Code. RP has to issue certificate as contemplated under Regulation 39(4) of IBBI (Insolvency Resolution Process for the Corporate Person) Regulations, 2016

9. Keeping at my sight above provisions of law, I have considered the resolution plan. The plan has been approved by the CoC by more than 66% votes as contemplated under section 30(4) of IBC. CoC being Master as far as commercial angle of the plan is concerned, this authority cannot go into the aspect of its commercial viability.

10. It is seen from the perusal of the plan that the provision of amount of Rs.0.55 crores is made towards resolution cost and fees. The amount of Rs.0.64 crores is provided for payments of dues of operational creditors including employees and workers. Part-IX of the plan deals with the mechanism

of its proper implementation. Monitoring Committee appears to have been appointed for management of affairs of the corporate debtor as well as to oversee effective implementation of the plan. The plan does not contravene any provisions of law and RP has certified the same as contemplated under Regulation 39(4) of IBBI (Insolvency Resolution Process for the Corporate Person) Regulations, 2016. I hold the plan is in conformity with all requirements as stated under section 30(2) of I&B Code.

11. One of the operational creditors, M/s. Bhutoria Constructions Ltd. filed application under section 60(5) of Insolvency & Bankruptcy Code (CA(iB) No.633/KB/2019) issuing direction to RP to consider their claim of sum of Rs.61 lakhs. The RP has rejected their claim as it was filed beyond the last date fixed for submission of the claims. I do not find any anomaly in the RP's decision of not considering their claim as by the time when claim was submitted, the RP was in final stage of the submission of the plan to CoC for consideration. However, this authority sincerely feels that since the claim was submitted during CIRP period, at least it has to be considered now. The plan is approved by the CoC. It is seen from the record that provision of an amount of Rs.0.63 crores is made for payment of dues of the operational creditors. I direct the Monitoring Committee to consider the claim of M/s. Bhutoria Constructions Private Ltd. as per the rules. With this, the application CA(IB) 633/KB/2019 stands disposed off.

12. CA(IB) 660/KB/2019 and C.P.(IB) 284/KB/2019 are filed by one M/s. Prerna Traders Private Limited. Prerna Traders claimed to be Financial Creditors. Their claim of Rs.5 lakhs was rejected by the RP on the ground of late submission of claim. I find from record that the claim was submitted at the fag end of CIRP period. In such situation, although I direct the Monitoring Committee to consider their claim as per the rules, Prerna Traders Private Ltd.,

though appears to be a financial creditor, can not claim their privilege as a CoC member. At this stage, the approved plan cannot be set aside at their instance. Monitoring Committee to consider their claim as per the rules. With this observation, CA(IB) 660/KB/2019 and C.P.(IB) 284/KB/2019 filed by Prerna Traders Private Ltd. against the corporate debtor stand disposed off.

13. In view of the above order of approving the Resolution Plan, CA(IB) No.720/KB19 stands disposed off. **Regarding CA(IB) 705/KB/2019** filed by the RP on account of forensic audit questioning some transactions to be fraudulent, it shall be heard separately.

14. It is seen from the records that CoC and RP took lot of efforts to resolve the insolvency of the corporate debtor. I do appreciate their work. I approve the resolution plan by M/s. Gloster Limited as per section 31 of the I&B Code, 2016. I proceed to pass the following order.

ORDER

The Resolution Plan filed by Gloster Limited for M/s. Network Industries Ltd.- Corporate Debtor, which is approved by the CoC with 74.78% voting percentage, is hereby approved under provisions of section 31(1) of the Insolvency & Bankruptcy Code, 2016, which will be binding on the Corporate Debtor, its employees, members, creditors, coordinators and other stakeholders involved in the Resolution Plan.

2. The revival plan of the company in accordance with approved Resolution Plan shall come into force with immediate effect.

3. The moratorium order passed under Section 14 shall cease to have effect.

4. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.

5. Before parting with, it appears to me that I have to endorse my appreciation to the work rendered by the Resolution Professional, Shri Samir Kumar Bhattacharyya for seeing that the Resolution Plan is approved by the CoC so as to give a rebirth to the dying company.

6. Accordingly, CP (IB) No. 70/KB/2018 alongwith CA(IB) Nos. 633/KB/19, CA(IB) 660/KB/19, CP(IB) No.720/KB/2019 and CP(IB) No.284/KB/2019 in this context are disposed off.

7. CA(IB) No.705/KB/2019 is fixed for further consideration on 08.08.2019.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Registry is hereby directed to communicate the order to the Financial Creditor and Corporate Debtor by Speed Post and also by email.

Let the certified copy of the order be issued upon compliance with requisite formalities

Sd/-
(Madan B. Gosavi)
Member (J)

Signed on this, the 4th day of July, 2019.