

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

**IA(IB) No. /KB/2020
 And
IA(IB) No. /KB/2020
 And
 IA(IB) No. 322/KB/2020
 In
CP(IB) No. 1127/KB/2020**

In the matter of:

An application u/s. 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

And

In the matter of:

An application u/s. 31(1) of the Insolvency and Bankruptcy Code, 2016;

And

In the matter of:

M/s. Swatch Group (India) Pvt. Ltd., a company incorporated under the provisions of the Companies Act, 1956, having CIN : U74999DL2000PTC105409 and having its registered office at 4th Floor, Rectangle One Building, Plot D-4, Saket District Centre, New Delhi 110017;

...Operational Creditor

-Versus-

M/s. Prime Retail India Ltd., a company incorporated under the provisions of the Companies Act, 1956, having CIN : U63090WB1990PLC048986, and having its registered office at 1/1, Camac Street (A.K.A. 8/1, Middleton Row, Kolkata – 71), 5th Floor, Shree Manjari Building, Suite No. 07, Kolkata– 700016, West Bengal;

...Corporate Debtor

And

In the matter of:

Mr. Kamalesh Kumar Singhania, Resolution Professional for Prime Retail India Ltd., appointed u/s. 22(2) of the Insolvency and Bankruptcy Code, 2016, having his Office at Room No. 412 & 413, 4th Floor, 2B, Grant Lane, Kolkata 700012, West Bengal.

...Applicant/Resolution Professional

Counsel appeared through Video Conferencing:

- | | |
|---|-------------------------|
| 1. Mr. Kamalelsh Kumar Singhania, Resolution Professional |] Self |
| 2. Mr. Rishav Banerjee, Advocate |] For the RP |
| 3. Mr. Pranay Agarwal, Advocate |] |
| 4. Ms. Ankita Baid, Advocate |] |
| 1. Mr. Manoj Kumar Budhia |] Representative of the |
| 2. Mr. Narendra Purohit |] Resolution Applicant |

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

Shri Harish Chander Suri, Hon'ble Member (Technical)

Date of hearing : 15th July, 2020.

Order pronounced on: 15th July, 2020.

ORDER

Per Shri Jinan K.R., Hon'ble Member (Judicial)

1. Mr. Kamalesh Kumar Singhania, Resolution Professional for Prime Retail India Ltd., has filed an unnumbered I.A(IB) No. /KB/2020 praying for an early hearing of I.A. No. /KB/2020 filed u/s. 31(1) of the Insolvency and Bankruptcy Code, 2016 on 21/02/2020 in C.P.(IB) No. 1127/KB/2020 for approval of the Resolution Plan of Prime Retail India Ltd., which was duly approved by the Committee of the Creditors (in short, 'CoC') at the 8th CoC meeting held on 13/02/2020. This unnumbered application was heard along with IA(IB) No. 322/KB/2020.

2. The urgency set out in the unnumbered interlocutory application has been satisfactorily explained. As lockdown was continuing due to pandemic COVID-19, the normal operation of NCLT, Kolkata Bench yet to be resumed, the I.A.(IB) No. /KB/2020 was listed along with I.A.(IB) No. /KB/2020 and IA(IB) No. 322/KB/2020 filed on 21/02/2020 as well as CP(IB) No. 1127/KB/2020 for hearing on today through Video Conferencing (VC) by giving notice from the Registry to the applicant.

3. Brief Facts.

4. The Corporate Debtor, Prime Retail India Ltd., was admitted under Corporate Insolvency Resolution Process (in Short 'CIRP') u/s. 9 of the Insolvency and Bankruptcy Code, 2016 (in short, 'I & B Code') vide order dated 27/08/2019 passed in CP(IB) No. 1127/KB/2019 appointing Mr. Kamallesh Kumar Singhania as Interim Resolution Professional (Annexure 'A'). Publication was made inviting claims from the creditors and a Committee of Creditors (in short, 'CoC') was formed. At the 1st CoC meeting held on 27/09/2019 his appointment was confirmed as Resolution Professional by a vote share of 86.12%. The said appointment was also recorded by the Adjudicating Authority in its order dated 22/10/2019 (Annexure 'B'). Thereafter, publication was made in Form G in the Newspapers "The Business Standard" and "Aajkal" inviting Expression of Interest (in short, 'EoI') on 20/11/2019 from the prospective resolution applicants fixing last date of receipt of EoI on 06/12/2019 (Annexure 'C'). In response to the advertisement two EoIs were received from the prospective resolution applicants - (1) Mrs. Shakuntala Devi and (2) M/s. BMS Commercial Pvt. Ltd., within the stipulated time. The CoC approved the RFRP (Annexure 'C') in the meeting held on 16/12/2019 and shared the same with the prospective resolution applicants by the Resolution Professional for submission of Resolution Plan. The Resolution Professional has received two (2) Resolution Plans on 24/01/2020. Thereafter, the CoC had deliberated and negotiated with the Resolution Applicants, who had submitted their Resolution Plans.

5. One of the Resolution Applicants, Mrs. Shakuntala Devi, has revised her offer and submitted it on 13/02/2020 before the CoC. The CoC in its 8th meeting (Annexure 'D')

held on 13/02/2020 has discussed the matter and decided that no further negotiations will be held and took the final decision as the offer of M/s. BMS Commercial Pvt. Ltd. is much higher than that of the revised offer of Mrs. Shakuntala Devi and as such accepted the Resolution Plan of M/s. BMS Commercial Pvt. Ltd.

6. In the meanwhile the CoC has approved the Resolution Plan of BMS Commercial Pvt. Ltd. at the adjourned 8th CoC meeting (Annexure 'D') held on 13/02/2020 by 89.21% voting share through e-voting conducted on 03/03/2020 – 04/03/2020.

7. It is stated that, based on the affidavits received from BMS Commercial Pvt. Ltd. by the Resolution Professional, the resolution applicant was found eligible u/s. 29A of the I & B Code.

8. Heard the Ld. Counsel for the Resolution Professional and perused the records.

9. Ld.Counsel Mr. Rishav Banerjee, for the RP, submitted that at the 8th CoC meeting (Annexure 'D') held on 13/02/2020 members of the CoC by 90.39% voting share, through e-voting held on 18/02/2020 and 19/02/2020, has decided to file an application for extension of the CIRP period by 60 (sixty) days as the 180 days CIRP period would be expiring on 23/02/2020. Accordingly, the Resolution Professional had filed an application being I.A. No. 322/KB/2020 on 21/02/2020 for extension of CIRP by 60 (sixty) days beyond 180 days. Upon mentioning the matter on 24/02/2020 before the Adjudicating Authority, this Tribunal observed that the said application will be taken up on the next date of hearing, i.e., on 24/03/2020 and that the Resolution Professional could proceed with the CIRP. However, due to lockdown, and disruption of work of this Tribunal could not consider the application for extension.

10. When this IA was taken up for hearing the Ld.Counsel for the RP submitted that the period of CIRP to be extended beyond 180 days as per section 12(2) of the Code and if it is extended, the extended period would be on 23.04.2020. According to him since the lockdown was declared on 23.03.2020 the period from 23.03.2020 to 23.04.2020 is to be excluded as per Regulation 40-C of the CIRP Regulations, and therefore filing of the

application for approval was within 270 days of the CIRP. Being satisfied with the submission on the side of the applicant and that the CoC has already passed a resolution by 90.39% voting shares and that insolvency resolution process cannot be completed within the 180 days, IA(IB) No. 322/KB/2020 is liable to be allowed.

11. Coming to the approval of the resolution plan the Ld. Counsel for the Resolution Professional has submitted that the resolution plan contains all the mandatory requirements to be meted out as per Regulation 38 of IBBI (IRP For Corporate Persons) Regulations, 2016 and that an affidavit stating that the resolution applicant, BMS Commercial Pvt. Ltd., is eligible u/s. 29A of the I & B Code has been annexed with the resolution plan in compliance of Section 30(1) and that the resolution plan submitted to the CoC for its approval conforms to all the conditions referred to in sub-section (2) of Section 30 and annexed as Annexure – F (pages 128-135) .

12. The mandatory contents of the Resolution Plan as required to be meted out as per Regulation 38 of IBBI (IRP For Corporate Persons) Regulations, 2016 provides, inter alia, for :

(1) A resolution plan shall identify specific sources of funds that will be used to pay the-

(a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;

(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of the resolution plan by the Adjudicating Authority; and

(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.

(2) A resolution plan shall provide :

(a) the term of the plan and its implementation schedule;

(b) The management and control of the business of the corporate debtor during the term; and

(c) Adequate means for supervising its implementation.

13. The Resolution Professional states that he has verified the contents of the Resolution Plan and confirms that it complies with the requirements as envisaged under Regulation 38 of IBBI (IRP for Corporate Persons) Regulations, 2016 as well as Section 30 of the Code, for which a copy of Form H – Compliance Certificate issued by the Resolution Professional u/s. 39(4) of the I & B Code is annexed as Annexure 'H' (pages 138-147).

14. It is submitted by the Resolution Professional that by giving fairly good opportunities to both the resolution applicants for arriving at the maximization of value of the stressed assets of the Corporate Debtor, the CoC has approved the resolution plan of BMS Commercial Pvt. Ltd, as the best plan among the two plans under consideration of the CoC and it is that plan which was approved by the CoC by a 89.21% voting share of the members of the CoC. It is understood that CoC has taken a wise decision after considering the feasibility and viability of the plan and all other requirements to be meted out. No waiver or extinguishments in contravention of the provisions of the Code or in violation of existing laws is seen not brought out. Therefore, the Resolution Plan of BMS Commercial Pvt. Ltd. is liable to be approved as per Section 31(1) of the I & B Code.

15. A reference to the Resolution Plan, it is understood that the assets of the Corporate Debtor are going to rest in a safer hand. The Resolution Professional deserves special appreciation for finding a resolution applicant whose plan has been approved by the CoC by 89.21% voting share even in this difficult time of pandemic COVID-19 situation. All the provisions of mandatory requirements are seen compiled by the resolution applicant as per Form – H submitted by the Resolution Professional. The total plan outlay is Rs. 11.05 Crores. It provides provision for the payment of insolvency resolution process cost (estimated) Rs.0.05 Crore, payment of debts of secured financial creditors Rs.10.06

Crores (29.80% of claimed amount), unsecured financial creditors Rs.0.41 Crore (7.50% of claimed amount) and operational creditors Rs.0.53 Crore (5.00% of claimed amount), management of the affairs of the Corporate Debtor, and provides provision for implementation and supervision of the resolution plan. It also provides terms of the plan and its implementation schedule. So it is a feasible and viable plan. This is a case in which the CoC has judiciously distributed the financial bids to the stakeholders according to their entitlements. There is nothing in the plan, so as to disapprove it. The CoC has very well deliberated with the two plans and decided the viability, feasibility and financial matrix of each plan and approved one with 89.21% voting shares of the CoC. Accordingly, we hereby approve the resolution plan of BMS Commercial Pvt. Ltd. upon the following directions:-

i). IA(IB) No. 322/KB/2020 is allowed, by extending the period CIRP beyond 180 days by 60 days as prayed for.

ii). The Resolution Plan of M/s. Prime Retail India Ltd., which was approved by the CoC with 89.21% voting share, is hereby approved under the provisions of sub-section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016, which shall be binding on the Corporate Debtor (Prime Retail India Ltd.), its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.

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

iv). The moratorium order passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have effect.

v). 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 in its database.

vi). Unnumbered IA(IB) No. /KB/2020 in CP(IB) No. 1127/KB/2019 is disposed of accordingly.

vii). Accordingly, CP(IB) No. 1127/KB/2019 along with all the IAs filed and/or pending, if any, in this context is disposed of.

viii). The Registry is directed to send e-mail copies of the order forthwith to all parties inclusive of the Counsel.

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

(Harish Chander Suri)
Member (Technical)

(Jinan K.R)
Member (Judicial)

Signed on this, the 15th day of July, 2020.

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