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NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH, BENGALURU, HELD ON 28.09.2018

PRESENT: 1.Hon'ble member (J) **Shri Rajeswara Rao Vittanala,**
2. Hon'ble member (T) **Dr. Ashok Kumar Mishra**

CP/CA No	Purpose	Section	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP 110/16, TP 57/17	for orders	Sec 433(e) of CA 1956	Ruchi Soya Industries Ltd.	Suresh S. Lokre, Advocate/ T. Gajendra, Rep. of RSIL.	BhadravathiBalaji Oil Palms Ltd.	

SL. NO.	NAME (IN CAPITAL) & PHONE NUMBER	REPRESENTATION TO WHOM	SIGNATURE
PETITIONER/s :	VINOD SUNDER RAMAN 9845884410	RESOLUTION PROFESSIONAL 1st PERSON	
RESPONDENT/s :			

ORDER

Heard Shri Vinod Sunder Raman, learned counsel for the Petitioner. CP disposed of by separate order.

Member(T) Member(J)

Prema Murray – Steno.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.No.110/2016 / (T.P.No.57/BB/2017)
U/s 9 of the IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

M/s. Ruchi Soya Industries Limited
'Ruchi House' Royal Palms,
Survey No.169, Arrey Milk Colony,
Near Mayur Nagar, Goregaon (East),
Mumbai – 400065.

Factory at:

Door No.595, 1st Floor,
Sri Lakshmi Adinarayanaswamy Arcade,
15th Cross, J.P Nagar, 1st Phase,
Bengaluru – 560078. - Petitioner/Operational Creditor

Versus

M/s. Bhadravati Balaji Oil Palms Limited
No.8, Karehalli Village, B.H Road,
Bhadravathi – 577245. - Respondent/Corporate Debtor

Order Delivered on: 28th September, 2018

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsel Present:

Resolution Professional : Shri Vinod Sunder Raman

Resolution Applicant : Ms. Medha Rao

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. Initially, the Company petition (C.P.No.110/2016) was filed by **M/s. Ruchi Soya Industries Limited** (Petitioner/Operational Creditor) before the Hon'ble High Court of Karnataka, under Section 433(e) of the Companies Act, 1956, by inter alia, seeking to wind-up the Company. Subsequently, as per Notification No.GSR.1119(E) dated 7th December 2016 issued by the Ministry of Corporate Affairs, New Delhi, the case was transferred to this Tribunal, and it is taken on record, and it is renumbered as T.P.No.57/2017. In compliance with the Notification, the Petitioner was directed to comply with the relevant provisions of the Insolvency and Bankruptcy Code, 2016. Accordingly, the Petitioner/Operational Creditor has filed amended Petition under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter alia, seeking to initiate Corporate Insolvency Resolution Process in respect of **M/s. Bhadravati Balaji Oil Palms Limited** (Respondent/Corporate Debtor Company), as it has committed default for Rs 1,40,38,462/- (Rupees One Crore Forty Lakhs Thirty Eight Thousand Four Hundred and Sixty Two only).

2. The Tribunal acting as Adjudicating Authority, after considering the issue admitted the case vide order dated 22.11.2017, by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Corporate Debtor, appointing Interim Resolution Professional, viz., Shri Vinod Sunder Raman, as Interim Resolution Professional, and subsequently he was confirmed as Resolution Professional.

3. Brief facts of the case, which are relevant to the issue in question, are as follows:

a. In pursuant to the above order, IRP issued a public announcement on 26th November, 2017 and first CoC (Committee of Creditors) was conducted on 22nd December, 2017. Since the Financial Creditor of Corporate Debtor viz. Karnataka State Industrial & Infrastructure

Development Corporation (KSIIDC) held 49% of Share Capital of Corporate Debtor, it was treated as Related Party, and thus, CoC was constituted with Ruchi Soya Industries Limited (Operational Creditor) as sole member. Though the CoC decided to liquidate the Company to realise its dues, it was decided to wait on the advice of R.P.

b. Accordingly, the R.P has convened 2ndCoC on 07.05.2018, by inter-alia, deciding to file an Interim Application u/s 12(2) of I&B Code, 2016 to seek further extension of time. Accordingly, I.A.No.123/2018 was filed by seeking extension of time, and it was allowed by granting extension of CIRP period by a further 90 days vide its order dated 11.05.2018.

c. Pursuant to granting extension of CIRP period, the RP convened 3rd CoC meeting on 12.06.2018, which authorised RP to issue Express of Interest (EoI) and approved various matters as mentioned below:

   i) Invitation of Expression of Interest;
   ii) Content of advertisement for inviting Expression of Interest;
   iii) Form G to be uploaded on IBBI website;
   iv) Evaluation matrix;
   v) Schedules of events and deadlines.

d. In order to decide future course of action, the Resolution Professional vide notice dated 25th July, 2018 proposed to convene 4th COC on 1st August, 2018. On 31 July, 2018, he has received Resolution Plan from one of the Potential Resolution Applicants, i.e. Punjab Woolcombers Limited jointly with LVS Finance Limited. In consultation with the sole CoC member, the meeting was re-scheduled to be held on 2nd August, 2018. Upon being satisfied that the Resolution Plan met all the mandatory requirements, the R.P forwarded the same to CoC and suspended Members of Board of Directors of Corporate Debtors. After considering the Resolution plan in question, the CoC sought further clarification from the Resolution Applicant. Accordingly, a revised Resolution Plan was received on 3rd August, 2018, which was again revised on 9th August, 2018 (final) by increasing the payments to the Operation Creditor.

e. The R.P also sent an email dated 14.08.2018, by pointing out the urgency of the matter to be decided since the time granted by the Tribunal was going to expire on 19.08.2018, followed by another communication dated 16.08.2018. Since the R.P did not get any response from the CoC, the RP was thus forced to file I.A No.245/2018 under section 33(1) of I&B Code, 2016, by inter alia, seeking to pass liquidation order.

f. Subsequent to filing the above I.A, an Application (I.A.No.261/2018) is filed by the Resolution Applicants viz. Punjab Woolcombers Limited and LVS Finance Limited u/s 60(5) r/w Section 30 of IBC, 2016, by inter-alia, seeking to direct the Committee of Creditors to consider their Resolution Plan dated 09.08.2018 submitted by the Resolution Applicants.

4. Heard Shri Vinod Sunder Raman, Learned Resolution Professional and Ms. Vinuta Waman Rayadurga, Learned Counsel for Resolution Applicant (I.A.No.261/2018), and also carefully perused all pleadings of both the parties and the extant provisions of law.

5. The Learned Counsel for Applicant has filed I.A No.261/2018, by inter- alia stating as under:

i) The Corporate Debtor, originally known as M/s. Karnataka Oswal Oil Palms Ltd., was a joint venture between the Neelam Oswal Group and KSSIDC constituted on 26.12.1991 with the Neelam Oswal Group, having 51% shareholding. In the year 2004, after having run the Company for 13 years successfully, the Neelam Oswal Group sold its shares to Mr. Murugavel (deceased) whose family now constitutes the current management of Corporate Debtor. After the transfer of the ownership, the name of the Company was changed to M/s. Bhadravati Balaji Oil Palms Ltd. (Corporate Debtor) and

M/s. Neelam Oswal Group was no longer involved in the management of the Company;

ii) Pursuant to the notice inviting Expression of interest issued by the Resolution Professional, the Applicant No.1 along with Applicant No.2 (Resolution Applicant) has submitted the necessary documents for Expression of Interest and thus the R.P shared the Information Memorandum and the Annexures with the Applicants.

iii) The following are events taken place in submitting Resolution place:

a. On 31 July 2018, the Plan was submitted by the Applicants;
b. On 2 August 2018, the CoC in its 4th meeting considered the Plan and sought for clarifications from the Applicants;
c. On 2 August 2018, the Applicants effectively provided all the clarifications sought by the CoC;
d. On 3 August 2018, the Application submitted revised Plan at the Request of the CoC and on the same date the CoC considered the revised Plan;
e. On 9 August 2018, based on the communications with RP, the Applicants submitted a revised plan and requested the CoC to reconsider the Plan as the same was not only in complete compliance with the Code, but also had considered the interest of all the parties involved and especially treated the Operational Creditor at par;
f. On 10 August 2018, the CoC sought for further clarifications from the Applicants with respect to the feasibility and viability of the revised Plan;
g. On 12 August 2018, the Applicants provided all the clarifications sought by the CoC;
h. Further on 14 August 2018 at 18:53 PM, the CoC sought for further clarification from the Applicants;
i. On 16 August 2018 the Applicants issued a letter providing all the clarifications sought by the CoC to the RP.

j. On 16 August 2018 at 12:42 AM, the RP sent an email to the Applicants that the CoC had till such date not approved the Plan

iv) It is submitted that the Resolution Applicants has also filed an application under Section 60(5) of the Code, seeking directions from Tribunal to the CoC to consider the Plan submitted by it. The Final Resolution Plan dated 9th August 2018 submitted by Resolution Applicant satisfies all criteria mentioned in the Code, and the same was not considered by CoC so far. However, since the time granted by the Tribunal would be expiring on 19.08.2018, the present application has been filed by seeking the relief as prayed for.

v) The following aspects have been covered under the Resolution Plan, which prove that the Plan is feasible and viable and that there are no grounds for rejecting the same:

a. Payment of Rs.3,00,00,000/- (Rupees Three Crore Only) towards the Unsecured Loans owed to the Murugavel Family (Ananthi Murugavel, Viginesh Murugavel and Gayatru Murugavel) and their companies (Related party unsecured loans) as full and final settlement of any loans outstanding.

b. Upon the settlement of the unsecured loans, the Resolution Applicants will acquire 51% of the shareholding held by Murugavel family without any further payment and Murugavel family was to transfer control to the Resolution Applicants.

c. Infusion into the Corporate Debtor of a sum of around Rs.16,00,000/- (Rupees Sixteen Lakh Only) or such other higher amount as may be required, in order to meet the Insolvency Resolution Costs.

d. The amounts owed to the Financial Creditors, KSIIDC as per the claim approved by the RP is to be carried forward in the books of accounts. Upon approval of the Resolution Plan by the Adjudicating Authority and takeover of the new management, the amount owed to KSIIDC is to be mutually discussed and settled within a period of three months of the Resolution Plan being approved.

e. Infusion into the Corporate Debtor of a further sum of Rs.1,01,70,181/- (Rupees One Crore One Lakh Seventy Thousand One Hundred and Eighty One Only) in order to meet the claim of the Operation Creditors, on a pro rata basis viz.,
   (i) Ruchi Soya Industries Limited Rs.1,00,00,000/- (Rupees One Crore Only);
   (ii) MS Securities Rs.1,70,181/- (Rupees One Lakh Seventy Thousand One Hundred and Eighty One Only).

f. In the event the liquidation value declared by the RP is higher than the aforementioned amounts, then such amount will be paid to the Operational Creditors within a period of 30 dates from the date of approval of Resolution Plan.

g. In spite of no statutory dues were due from the Company as on date, the Resolution Applicants undertook to pay any demand raised by statutory authorities in the future.

h. Although the information memorandum states that no workmen compensation is due, the Resolution Applicants was willing to infuse Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) into the Corporate Debtor to be paid as settlement to laid off employees.

i. Operations of the factory which have been in ceased since July 2015, to recommence within nine months form the approval of the Resolution Plan by the Hon'ble Tribunal.

j. Select Employees laid off from the Corporate Debtor, will be employed upon commencement of operations, as needed.

k. The above project is also beneficial for farmers as it was the first project in the state sanctioned by the Government of India. The average life span of palm trees is 35 to 40 years. Therefore, if the liquidation application is allowed, and the Corporate Debtor is permitted to be liquidated, thousands of farmers in the state will be adversely affected.

l. It is evident from the above that the Plan is beneficial to all parties involved and treated the Operational Creditors at par. Therefore, there is absolutely no ground for the CoC to reject the plan and for the Corporate Debtor to be liquidated. Therefore, the learned Counsel for Resolution Applicant has urged the Tribunal to direct the CoC to consider the Resolution Plan submitted by the Resolution Applicant viz. Punjab Woolcombers Ltd. and LVS Finance Limited. The Resolution Plan met all conditions prescribed under the code and rules made there under, and it is viable plan too. Therefore, instead of throwing the Corporate Debtor to liquidation, it would be just and proper to direct the CoC to consider the plan.

6. In the above circumstances, the Adjudicating Authority, after considering the entire issue in the light of object of the Code, has passed a common order dated 3rd September 2018 in I.A.No.245 and 246 of 2018 by inter alia, extending time for a further period of four weeks from 19th August, 2018 by excluding time already granted by the Tribunal i.e.180+ 90 days in the interest of justice, with a direction to the RP to immediately convene a meeting of CoC of Corporate Debtor, and to place the Resolution Plan submitted by the Resolution Applicant viz. Punjab Woolcombers Ltd. and LVS Finance Limited before COC with a direction to CoC to consider the Resolution plan dispassionately by duly taking into consideration of opinion expressed by the Resolution Professional, etc.

7. Shri Vinod Sunder Raman, Learned Resolution Professional has filed I.A.No.277/2018, under Section 31(1) r/w Section 30(6) of the Insolvency & Bankruptcy Code, 2016, by inter alia, praying the Tribunal to accord approval

of Resolution Plan approved by the CoC dated 06.09.2018 by declaring that order shall be binding on the Corporate Debtor and its employees, Members, Creditors and Guarantors and Stakeholders, etc.

8. The following are the main contentions raised by Resolution Professional:

a. In pursuant to the Common Order dated 03.09.2018 passed in the I.A.Nos.245/2018 and 261/2018, he has convened a meeting of the CoC on 06.09.2018 by issuing a Notice dated 04.09.2018. Accordingly, 5th meeting of the CoC was held on 06.09.2018 at 12.00PM, in which the sole Committee member Ruchi Soya Industries Limited along with Resolution Applicant (RA) through Authorized Representative of the major Financial Creditor KSIIDC was present.

b. The RA has also offered an Earnest Deposit of Rs.10,00,000/- to Ruchi Soya Industries Limited to establish their bonafides and their intent to implement the Resolution Plan. Accordingly, the Resolution Professional received the cheque for the amount drawn in favour of Ruchi Soya Industries Limited.

c. KSIIDC was also invited to attend the 5th meeting and the Representative of KSIIDC expressed the following views:

   i. *"KSIIDC was a government corporation and their main intent and objective was the development of the area for the benefit of local farmers. It was with this objective that the land grant was made to the Corporate Debtor and therefore, it should be used for that purpose only.*

   ii. *They were very much in favour of the revival of unit, since it would be in line with their main objective and liquidation of the Corporate Debtor would defeat this objective.*

   iii. *Apart from the above, they were also interested in the settlement of the dues to them and are prepared to negotiate the same with the*

Resolution Applicant. However, such negotiation or settlement has to be as per the norms of KSIIDC and complying with their internal procedure. He further informed that the Resolution Applicant will have to comply with all legal formalities in this regard, including signing of necessary arrangements."

d. The CoC, after considering all the aspects of the Resolution Plan, have unanimously, by 100% voting majority, approved the Resolution Plan as proposed by the Resolution Applicant, under Section 30(4) of the Code during the meeting held on 6th September, 2018. The following is the text of the Resolution passed by the CoC approving the Resolution Plan:

"RESOLVED that the Committee of Creditors of Bhadravati Balaji Oil Palms Limited hereby unanimously approves the Revised and Final Resolution Plan dated August 9, 2018 (the "Resolution Plan") submitted by the Resolution Applicant, Punjab Wool Combers Limited jointly with LVS Finance Limited (the 'Resolution Applicant').

Further RESOLVED that the Committee of Creditors, having gone through the Resolution Plan and information made available by the Resolution Professional, hereby forms the opinion that the Resolution Plan submitted by the Resolution Applicant is a feasible and viable plan, having addressed the issue of the stakeholders and employees and farmers, and also since the operations will be restarted.

Further RESOLVED that based on affidavit submitted by the Resolution Applicant, the Committee hereby notes that the Resolution Applicant is not disqualified under Section 29A of the Insolvency and Bankruptcy Code, 2016 (the 'Code'), as amended

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by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018.

Further RESOLVED that the Committee approves the Resolution Plan based on its merits and also the Evaluation Matrix approved by the Committee at its 3rd meeting held on June 12, 2018 and further notes that since only one Resolution Plan has been received, the assignment of score under Evaluation Matrix earlier issued does not arise.

Further RESOLVED that the Committee hereby notes that for purposes of Regulation 38(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the 'Regulations'), the amounts payable from the resources under Resolution Plan shall be as follows:

Regulation 38(1)(a) : Insolvency Resolution Process costs – Rs.17,18,071 (upto September 6, 2018)

Regulation 38(1)(b) : Liquidation Value due to Operational Creditors – Rs. Nil.

Regulation 38(1)(c) : Liquidation Value to dissenting Financial Creditors – Rs. Nil (no Dissenting Financial Creditor identified)

Further RESOLVED that on basis of the discussions made above, the Committee of Creditors of Bhadravati Balaji Oil Palms Limited hereby approves the Resolution Plan."

e. The Resolution Plan proposes a haircut of 23.82%, based on the claims admitted (or 43.63% based on claims made by claimants). This haircut is calculated based on total amount made available under the Resolution Plan and includes those to

Financial Creditors as well as Operational Creditors. In respect of the Financial Creditors alone, the haircut proposed is 23.86% based on claims admitted (or 42.14% based on claims made by claimants). In respect of the Operational Creditors, the haircut proposed under the plan is 23.09% based on claims admitted (or 61.57% based on claims made).

f. The Resolution Plan provides for payment of unpaid Insolvency Resolution costs in priority to all other creditors as required under Section 30(2)(a) of the Code. Further, as per Regulation 38(1)(a) of the CIRP Regulations, the source of fund identified for this purpose is the fresh funds infused by the Resolution Applicant into the Corporate Debtor specifically for this purpose. The relevant provisions in this regard are contained in the Resolution Plan.

g. The Resolution Plan, as prescribed under Section 30(2)(b) of the Code further provides for payment to Operational Creditors, a sum which is not less than the amount to be paid to the Operational Creditors in the event of liquidation of Corporate Debtor under Section 53 of the Code. Further, as required under Regulation 38(1)(b) of the CIRP Regulations, the liquidation value payable to Operational Creditors is payable in priority to the Financial Creditors, and in any case within 30days of approval of Resolution Plan by this Tribunal and the balance amount within three months of approval of Resolution Plan by the Tribunal. The relevant paras are contained in the Resolution Plan. The Applicant Resolution Professional also states that the liquidation value payable to Operational Creditors is Nil.

h. The Resolution Plan contains separate paras on the following points, and therefore the Resolution Plan sufficiently demonstrates, in terms of Regulation 38(3) of the CIRP Regulations that,

a. it addresses the cause of default
b. it is feasible and viable
c. it has provisions for its effective implementation
d. it has provisions for approvals required and the timeline for the same
e. the resolution applicant has the capability to implement the resolution plan.

i. The Resolution Plan, when implemented, would settle all aggrieved parties. It would also address the grievance of employees who have been indefinitely laid off, by paying monetary compensation. It would add impetus to the economy by restarting the factory and recommencing operations. It would provide much needed employment to the workmen. Further, since the raw material for the Corporate Debtor is fresh palm fruit bunches, it would be a very good catalyst for the farmers of that region who would supply them to the Corporate Debtor. All in all, the Resolution Plan is a win-win situation for all stakeholders.

j. He has also filed Compliance Certificate as per Form-H of the Schedule to the Regulation 39(4) of the CIRP Regulations, as amended by notification IBBI/2018-19/GN/REG031, dated 03.07.2018. He has also submitted Affidavit for Compliance Certificate (Form-H) vide Memo dated 27.09.2018.

k. He has submitted Affidavit dated 30.07.2018 of the Resolution Applicant required under Section 29A vide Memo dated 27.09.2018.

l. He has submitted detailed breakup of CIRP costs in respect of the Corporate Insolvency Resolution of Corporate Debtor vide Memo dated 27.09.2018.

9. We have carefully perused the Resolution Plan dated 09.08.2018 in detail, and also the various statements made by the Learned Resolution

Professional. We are satisfied that the Resolution Plan is approved by Sole Committee of Creditors and the Plan in question meets as the requirements as prescribed under 30(2) of the code. Therefore, the Resolution plan deserves to be accepted.

10. By exercising powers under Section 31(1) of IBC, 2016, we, the Adjudicating Authority disposed of C.P.No.110/2016/(T.P.No.57/BB/2017) and also I.A.No.277/2018 with the following directions:

a. We hereby approve the Resolution Plan dated 09.08.2018 enclosed at Annexure A) by declaring the plan will be binding on the Corporate Debtor, its employees, creditors, guarantors and other stakeholders etc., involved in the Resolution Plan. All the concerned Statutory Authorities are also bound by the resolution plan and they are directed to take necessary action on their part in terms of Resolution plan;
b. The moratorium order passed by the Adjudicating Authority on 22.11.2017, at the time of admission under Section 14 shall cease to have effect;
c. The Resolution Professional is directed to forward all the records related to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Krishna