IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

M.A. No. 02/2019
In
CP. No. 1745/I&BP/NCLT/MAH/2017
Under section 30(6) of IBC, 2016
Mr. Mahendra Prasad Jindal
Resolution Professional
… Applicant
In the matter of
Gajanan Paper Mills Pvt. Ltd.
… Corporate Debtor

Order delivered on: 14.10.2018

Coram:
Hon'ble Bhaskara Pantula Mohan, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Applicant: Mr. Jayesh Rathod, Advocate a/w Mr. Mahendra Prasad Jindal, Resolution professional

Per V. Nallasenapathy, Member (Technical)

1. This is an Application filed by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016, read with Regulation 39(4) of the IBBI (Insolvency Resolution Process of Corporate Person) Regulations 2016, seeking approval of the Resolution Plan, as approved by the Committee of Creditors (CoC) in its meeting held on 18.12.2018 with 100% voting in favour of the Resolution Plan submitted by the Resolution Applicant.

2. The Corporate Debtor, Gajanan Paper Mills Pvt. Ltd. was put under Insolvency Resolution Process by an order of this Adjudicating Authority dated 12.04.2018. Mr. Mahendra Prasad Jindal was appointed as Interim Resolution Professional (IRP), the said IRP issued Public Announcement inviting the Creditors to submit the proof of their claim on 16.04.2018 as per Section 13 of the Insolvency and Bankruptcy Code read with Regulation 6(2)(b)(i) of the CIRP Regulations in two newspapers and a request was made to IBBI to upload the public announcement on the website of IBBI.

3. On 10.05.2018, the Applicant filed a report of constitution of CoC and conducted the first meeting of CoC, wherein the IRP was confirmed as Resolution Professional (RP). The RP also prepared Information Memorandum as per Regulation 6 of the Insolvency and Bankruptcy Board of India Regulations, 2016.

4. Subsequently, on 17.05.2018 the RP appointed two Registered Valuers for valuing the assets of the Corporate Debtor.

5. The Applicant submits that, the second CoC meeting was held on 02.07.2018, wherein the Evaluation Matrix was presented and discussed and the CoC members passed a resolution for the publication of Expression of Interest (EOI) in newspaper by RP. In the same meeting, the RP appraised the members of CoC regarding updated claim list after admitting new claims and rectification of defective claims.

6. The third CoC meeting was held on 16.08.2018, wherein a resolution plan received from a Resolution Applicant was presented before the CoC by RP.

7. The Applicant further submits that the fourth CoC meeting was held on 01.10.2018, where the CoC members with 100% voting rights approved for filing an application for extension of the Corporate Insolvency Resolution Process (CIRP) by a period of 90 days. Subsequently, the said application (M.A. 1157/2018) was allowed by this Bench on 16.10.2018.

8. The resolution plan submitted by Mr. Prabhakar N. Patil, the Resolution Applicant (RA) dated 13.10.2018, was considered by CoC in the sixth meeting held on 18.12.2018 where the RP informed that the plan complies with the requirements of section 30(2) of IBC. The said resolution plan was approved with 100 % voting by CoC.

9. The Resolution Plan approved by the Committee of Creditors provides for the following payments to the stakeholders:

Particular	Claim admitted	Total payable as per resolution plan
Resolution cost	--	5,00,000
<u>Financial creditors-secured</u> Secured loan-SBI-Cash credit	1,99,64,157	50,00,000
<u>Financial creditors-unsecured</u> Unsecured loan-relative (director)	3,84,22,629	--

<u>Others</u> Unsecured other advances	 18,00,000	 1,80,000
<u>Operational creditor (unsecured)</u> Pressing creditors (adv. against material) Pressing creditors (supply of material) Pressing creditors (exp and labour) Non-moving statutory payable Non-moving sundry creditors	 2,40,74,070 43,10,085 4,14,962 1,53,52,820 86,69,020	 2,40,74,070 43,10,085 4,14,962 7,67,641 4,33,451
<u>Equity share capital</u> Equity share capital	 1,99,00,000	 --
Total	13,29,07,742	3,56,80,209

10. The Resolution Applicant filed an affidavit on 14.02.2019, wherein he has agreed to increase the proposed full and final payment towards non-moving statutory liabilities from 5% (Rs. 7,67,641/-) to 10% (Rs.15,35,282/-) payable within 12 months from the date of approval of resolution plan.

11. Section 30 of the Code provides as below:

"(1) A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan— (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor; (b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53; (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan; (d) the implementation and supervision of the resolution plan; (e) does not contravene any of the provisions of the law for the time being in force; (f) conforms to such other requirements as may be specified by the Board.

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

(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.

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority"

12. Section 31 of the Code provides as below:

"(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),— (a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and (b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database."

13. It is also necessary to refer the provisions of Regulation 38 and 39 of CIRP Regulations to come to a conclusion that requirements of the Regulations are fulfilled and the same reads as below:

"Regulation 38 - Mandatory contents of the resolution plan:

(1) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.

(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.

(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 its term; and

(c) adequate means for supervising its implementation.

(3) A resolution plan shall demonstrate 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; and (e) the resolution applicant has the capability to implement the resolution plan."

"Regulation 39 - Approval of resolution plan:

(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with

(a) an affidavit stating that it is eligible under section 29A to submit resolution plans;

(c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.

(1A) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.

(2) [The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him:-

(a) preferential transactions under section 43;

(b) undervalued transactions under section 45;

(c) extortionate credit transactions under section 50; and

(d) fraudulent transactions under section 66,

(3) The committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit: Provided that the committee shall record the reasons for approving or rejecting a resolution plan.]

(4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule.

(7) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.

(8) A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.

(9) No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.

(10) A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan."

14. As discussed supra by virtue of mandatory contents of resolution plan, the same is in accordance with Section 30 and 31 of the Code, and also complies with the requirement of the Regulations 38 and 39 of CIRP Regulations.

15. The RP has enclosed a certificate in Form H at page 144 of the application stating that, the resolution plan of the Resolution Applicant provides for and is compliant of provisions of the Code and Regulations.

16. On perusal of the resolution plan, this Bench being satisfied with the valuation given by the registered valuers, estimation of turnover during the resolution period, repayment schedule to the creditors both secured and unsecured and the approval of resolution plan as approved by the CoC with 100% voting, approves the resolution plan with a condition that the Resolution Applicant shall make the additional payment towards non-moving statutory liability as undertaken.

17. Accordingly, this MA No: 02/2019 is hereby allowed by vacating the moratorium already granted at the time of admission of Company Petition No: 1745/2017.

18. In view of the approval of the Resolution Plan as sought by the RP, this Bench hereby discharges the RP from duties of the RP by submitting all the records maintained by him to the Insolvency and Bankruptcy Board of India as provided under the Insolvency and Bankruptcy Code, 2016 and the regulations thereunder.

SD/-
V. Nallasenapathy
Member (T)

SD/-
Bhaskara Pantula Mohan
Member (J)