

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.139

IA/297(AHM)2022 in CP(IB) 353 of 2020

Order under Section 30(6) & 31 IBC r.w 39(4) IBBI,2016

IN THE MATTER OF:

Naresh Ghanshyamchandra Bheda RP of Jay Bharat Fabrics Mills Ltd**Applicant**

V/s**Respondent**

Ravinder Kumar Agarwal Proprietor of Santosh Fashion & Ors

Order delivered on ..18/07/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**MADAN B. GOSAVI
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
COURT-1**

IA No. 297 of 2022

in

CP (IB) No. 353 of 2020

IA No. 297 of 2022

[An application under section 30(6) of the Insolvency and Bankruptcy Code, 2016]

Naresh Ghanshyamchandra Bheda

Resolution Professional of
M/s Jay Bharat Fabrics Mills Limited
Having registered office at:
B-604, Fairdeal House,
Near, Swastik Char Rasta, Navrangpura,
Ahmedabad – 380009

...Applicant

Versus

1. Ravinder Kumar Agarwal,

D-403, Alok Paradise, Vastral,
Ahmedabad-382418

2. Adarsh Eletex Industries Private Limited

Having registered address at:
172, Saijpur-Gopalpur,
Pirana road, Piplaj,
Ahmedabad-382405

3. Shanti Metals Private Limited

Having registered address at:

B-810, Fairdeal House,
Near Swastik Char Rasta, Navrangpura,
Ahmedabad-380009

4. Babulal Mafatlal Raval

Juno Raval Vas, Mandali, Ambaliansan,
Mehsana-382732

5. Mohd. Hanif Abdul Rajak Shaikh

1290, Akunji ki Pole,
Near Hoj wali Masjid, Goptipur,
Ahmedabad-380021

6. Ankit Dashrathbhai Panchal

18/277, Laximnagar flat,
Near, Balkrishan Mandir, Ranip,
Ahmedabad-382480

7. Jay Bharat Fabrics Mills Limited

Having registered address at:
802, Saffron building,
Near panchwati five rasta, Ambawadi,
Ahmedabad-380006

8. Rajgopal Processing Mills Private Limited

Having registered address at:
B-811, Fairdeal House,
Near Swastik Char Rasta, Navrangpura,
Ahmedabad-380009

9. Income Tax Department

Income Tax Officer
Ward 4(2)(1),
Mumbai

...Respondents

In the matter of

CP (IB) No. 353 of 2020

[An application under section 7 of the Insolvency and Bankruptcy Code, 2016]

Mr. Ravindra Kumar Agarwal,

Proprietor of Santosh Fashion
Having address at:
D-403, Alok Paradise, Vastral,
Ahmedabad-382418

...Financial Creditor

Versus

M/s Jai Bharat Fabrics Mills Limited

[CIN: L17119GJ1988PLC010430]
Having registered office at:
802, Saffron building,
Near panchwati five rasta, Ambawadi,
Ahmedabad-380006

... Corporate Debtor

Order reserved on 07.06.2022

Order pronounced on 18.07.2022

**Coram: MADAN B. GOSAVI, MEMBER (J)
KAUSHALENDRA KUMAR SINGH, MEMBER (T)**

Appearance:

For the Applicant: Learned Counsel Mr. Pratik Thakkar

ORDER

1. This application under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (**IBC, 2016**) is filed by Naresh Ghanshyamchandra Bheda - Resolution Professional (**RP**) of the Corporate Debtor – Jay Bharat Fabrics Mills Limited for approval of the Resolution Plan submitted by Rajgopal Processing Mills Pvt. Ltd.
2. On 13.09.2021, the Corporate Debtor was admitted in the Corporate Insolvency Resolution Process (**CIRP**). Mr. Naresh Ghanshyamchandra Bheda was appointed as the Interim Resolution Professional (**IRP**). On 18.09.2021, the IRP made a public announcement of the CIRP of the Corporate Debtor in “Financial Express” English and Gujarati edition and called upon its creditors to submit claims with requisite proofs. He collated the claims. On 07.10.2021, the IRP formed the Committee of Creditors (**CoC**) consisting of the following Financial Creditors having voting percentage right stated below:
 - i. Adarsh Eletex Industries Private Limited having 48.78% voting share
 - ii. Ravinder Kumar Agarwal, proprietor of Santosh Fashion having 16.57% voting share
 - iii. Shanti Metals Private Limited having 34.65% voting share
3. On 29.11.2021, the RP published Form-G in widely circulated English as well as in Vernacular newspaper calling upon the prospective Resolution Applicants to submit Expression of Interests (**EoI**)/Resolution Plans on the basis of the information memorandum of the assets and liabilities of the Corporate Debtor.

4. Pursuant to the advertisement, the RP received EoI from 1 (one) prospective Resolution Applicant namely Rajgopal Processing Mills Pvt. Ltd. On 29.01.2022, the prospective Resolution Applicant submitted Resolution Plan for the revival of the Corporate Debtor.
5. In the third CoC meeting held on 17.02.2022, members of CoC were of view that there was scope of improvement in the Resolution Plan and the prospective Resolution Applicant should be given an opportunity to submit revised Resolution Plan. Thereafter, the prospective Resolution Applicant revised the Resolution Plan and submitted the revised Resolution Plan on 22.02.2022.
6. In the fourth CoC meeting held on 26.02.2022, members of CoC approved the revised Resolution Plan of Rajgopal Processing Mills Pvt. Ltd with 100% voting rights.
7. The Resolution Applicant- Rajgopal Processing Mills Pvt. Ltd has proposed to pay a sum of Rs. 20,71,495/- against the total admitted claim of Rs. 41,52,557/-. The total haircut under the proposed plan is 50.12%. The details are as follows:

Payment to	Amount Claimed	Amount proposed to be paid
CIRP Cost (Estimated)	Rs. 1,50,000/-	Rs. 1,50,000/-
Financial Creditors (Unsecured)	Rs. 39,90,757/-	Rs. 18,95,610/- (47.5% of the claim)
Operational Creditors (Unsecured)	Rs. 11,800	Rs.885 (5% of the claim)
Contingent Liabilities (Including pending litigation,	NIL	Rs. 25,000/-

rejected claims or claims not made)		
Total	Rs. 41,52,557/-	Rs. 20,71,495/-

8. The liquidation value and the fair value of the Corporate Debtor are reported at Rs.1,87,768 /- and Rs. 4,47,768/- respectively. The Resolution Applicant of Rajgopal Processing Mills Pvt. Ltd. has proposed to pay a sum of Rs. 20,71,495/- within 30 days from the approval of Resolution Plan by this Adjudicating Authority.
9. We now take up the Resolution Plan of Rajgopal Processing Mills Pvt. Ltd. for examining the same in view of provisions of section 30(2) of the IBC, 2016.
10. Section 30(2)(a) requires that the Resolution Plan shall provide for the payment of the CIRP costs in priority to the payment of other debts of the Corporate Debtor. Upon going through the plan, we noted that a sum of Rs. 1,50,000/- is provided to meet out the expenses towards the CIRP costs. We hold that provisions of section 30(2)(a) are complied with.
11. The perusal of the Resolution Plan shows that the Unsecured Financial Creditor will get a sum of Rs. 18,95,610/- against their total claimed amount of Rs. 39,90,757/-. The Unsecured Operational Creditors will get a sum of Rs. 885/- against their total claimed amount of Rs. 11,800/-. A sum of Rs. 25,000/- is proposed for contingent liabilities (which includes pending litigation, rejected claims or claims not made). The CIRP cost has been kept by the Resolution Applicant of Rs. 1,50,000/-. The amount of Rs. 20,71,495/- will be paid within 30 days from the receipt of the order from

the Adjudicating Authority. In view thereof we hold that this complies with provisions of section 30(2)(b) of the IBC, 2016.

12. In the Resolution Plan (at page-46) proposal for management of the business of the Corporate Debtor is given. The existing Board or interim Board will be replaced by a new Board of Directors constituted with adequate representation from the members of the group and independent Directors in compliance with applicable laws. The existing Director shall assist for filing of relevant forms/documents with the Registrar of Companies for change in Directorship. The Applicant shall have the right to replace the existing auditors (statutory and internal) of the Company and appoint new auditors as deemed fit upon acquisition of the control over the Company by the Applicant. The Applicant has proposed to employ requisite employee in the Company to bring its operational efficiencies in the Company. With this, we hold that the provisions of section 30(2)(c) is complied with.

13. In the Resolution Plan (at page-47) supervision and implementation of the Resolution Plan is given. After the approval of the Resolution Plan until the implementation, steering committee will consist of one representative from consenting Unsecured Financial Creditor, one representative of Resolution Applicant and Resolution Professional will supervise the implementation of Plan. All major decisions impacting the interest of Unsecured Financial Creditors shall be made by said committee in consultation with Resolution Applicant only. With this, we hold that the provisions of section 30(2)(d) is complied with.

14. The RP has certified that the Resolution Plan does not contravene any provisions of law for the time being in force. On

examination of the Resolution Plan, we also find that the Resolution Plan does not contravene any provisions of law. We also hold that the Resolution Plan is in compliance with the provisions stated in Regulations 38 and 39 of the IBBI (CIRP of the Corporate Person) Regulations, 2016, and the interests of all stakeholders are taken care of. The term of the plan is also stated. Hence, we see no reason to reject this Resolution Plan on any grounds.

15. It is mentioned in the Resolution Plan that the present issued, subscribed and fully paid-up share capital of the Company which aggregates to Rs. 2,92,00,000/- shall be reduced to Rs. 20,00,000/- for which shares shall be issued to Resolution Applicant or to any of its nominee. In order to implement the Resolution Plan, Applicant may incorporate/use Special Purpose Vehicle (hereinafter referred to as “**SPV**”). The SPV shall be funded by way of equity infusion by the Applicant /Directors/Shareholders/Promoters/Relatives/Associates/Investors/Applicant Level. Simultaneously, with the capital reduction, the Applicant will make necessary subscription for allotment of Rs. 2,00,000/- equity shares of Rs. 10 each at par aggregating to Rs. 20,00,000/- in order to enable the Company to make necessary allotment of equity shares to the subscribers.
16. As far as reliefs and concessions claimed by the resolution applicant, the law has been well settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021*** in the following words:

- I. “The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.
 - II. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of IB Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief...”
17. In view of the above, we hold that the Resolution Applicant cannot be saddled with any previous claim against the Corporate Debtor prior to initiation of its CIRP. For the permits, licenses, leases, or any other statutory right vested in the Corporate Debtor shall remain with the Corporate Debtor and for the continuation of such statutory rights, the Resolution Applicant has to approach the concerned statutory authorities under relevant laws.
18. With these directions, we approve the Resolution Plan submitted by Rajgopal Processing Mills Pvt. Ltd. and proceed to pass the following orders:

ORDER

- I. Application is allowed.
- II. The Resolution Plan of Rajgopal Processing Mills Pvt. Ltd. for Corporate Debtor i.e. Jay Bharat Fabrics Mills Limited, stands allowed as per section 30(6) of the IBC, 2016.

- III. The Resolution Applicant claimed various reliefs and concessions in the Resolution Plan. However, we grant the reliefs in the following manner and to this extent;
- a. After the payment of the dues to the creditors, as per the Resolution Plan, all the liabilities of the said stakeholders prior to CIRP against the Corporate Debtor shall stand permanently extinguished after the approval of the resolution plan. We further hold that other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall also stand extinguished against the Corporate Debtor after the approval of the Resolution Plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;
 - b. On the effective date, all claims, except provided in the Resolution Plan, of the suspended management, erstwhile directors, and erstwhile shareholders shall stand permanently extinguished;
 - c. On the effective date and with effect from the appointed date, all encumbrances on the assets of the Corporate Debtor prior to the plan shall stand permanently extinguished on completion of procedural formalities as provided in Companies Act, 2013; and laws time in force as applicable;
 - d. For reliefs and concessions sought from the Government/Statutory Authorities, we direct the Resolution Applicant to approach the concerned Authorities who shall decide the issues.
 - e. For reliefs and concessions pertaining to environment and forests, we direct the Resolution

Applicant to approach the concerned Authorities who shall decide the issues.

- f. For reliefs and concessions pertaining to State Pollution Control Board, we direct the Resolution Applicant to approach the concerned Authorities who shall decide the issues.
- g. As regard to relief prayed before the Central Board of Direct Taxes or any other relevant Government Authority under various provisions of Income Tax Act, 1961, the Corporate Debtor / Resolution Applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the Resolution Applicant in accordance with the provisions of Income Tax Act, 1961.
- h. The Resolution Applicant shall be entitled to review, revise or terminate any appointments/agreements entered into by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements/MoUs/contracts;
- i. The RP shall complete the accounting entries to give effect to the Resolution Plan in the books of account as per the applicable accounting standards and provisions of the Companies Act, 2013;
- j. The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the Resolution Applicant for proper running operations of the business of the Corporate Debtor;

- k. The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution;
 - l. The Resolution Applicant shall, pursuant to the resolution plan approved under section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under section 31 or within such period as provided for in such law, whichever is later, as the case may be;
 - m. All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the Resolution Plan as regard to the restructuring of capital shall be binding on them. This order shall be treated as evidence of compliances of all formalities as may be required in this regard under the provisions of the Companies Act, 2013.
- IV. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
 - V. The order of moratorium dated 13.09.2021 passed by this Adjudicating Authority under section 14 of IBC, 2016 shall cease to have effect from the date of passing of this order.
 - VI. The RP shall forthwith send a copy of this order to the participants and the Resolution Applicant(s).
 - VII. The RP shall forward all records relating to the conduct of the CIRP and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

- VIII. Accordingly, IA 297 of 2022 in CP (IB) 353 of 2020 is allowed and stands disposed of in terms of the above directions.
- IX. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**MADAN B. GOSAVI
MEMBER (JUDICIAL)**

Shweta Desai- LRA