

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI BENCH (COURT NO. IV)**

IA No.404/2021

IN

CP (IB) NO. 1205/ND/2019

**(Under Section 31 of the Insolvency and Bankruptcy Code, 2016
for approval of Resolution Plan)****IN THE MATTER OF:****MANOHALALVIJ**

...Applicant/ Resolution Professional

AND IN THE MATTER OF**M/S AZAD IMPEX PRIVATE LIMITED**

...Operational Creditor

Versus

SURYAMANUFACTURINGPRIVATE LIMITED

...Corporate Debtor

Order delivered on: 28.07..2021

Coram:**DR. DEEPTI MUKESH****HON'BLE MEMBER (Judicial)****MS. SUMITA PURKAYASTHA****HON'BLE MEMBER (Technical)**

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For the Resolution Applicant : Mr. Shantanu Chaturvedi, Adv.
For the Resolution Professional : Mr. Abhishek Anand,
Mr. Kunal Godhwani,
Mr. Viren Sharma,
Mr. Mohak Sharma Advocates

For Suspended Board of Directors of CD : Mr. Naveen Kumar, Adv.

ORDER

Per Ms. Sumita Purkayastha , Member (T)

1. The instant application has been filed by the Resolution Professional, Mr. Manoharlal Vij for approval of Resolution Plan under Section 30 (6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereafter referred to as Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereafter referred to as Regulations) seeking approval of the Resolution Plan. The Resolution Plan was duly approved in the seventh meeting of committee of creditors (CoC), which has been placed on record.
2. The Company Application bearing C.P. No. IB-1205(ND)/2019 was filed by M/S Azad Impex Private Limited Operational Creditor under Section 9 of the Code for initiating Corporate Insolvency Resolution Process of Surya Manufacturing Private Limited/ Corporate Debtor. This Tribunal vide order dated 12.11.2019 admitted the application and appointed Mr.

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Manoharlal Vij as the Interim Resolution Professional (IRP) with necessary directions and to file regular reports of events. The Resolution Professional made a public announcement in Form A as prescribed under Regulation 6 (1) of the Regulations in Financial Express (English) and Jansatta (Hindi Edition) on 08.02.2020 of intimation of commencement of Corporate Insolvency Resolution Process of the Corporate Debtor and for calling the creditors to submit their claims along with the proof in the prescribed format. After publication dated 08.02.2020 the Applicant found that one unit of the Corporate Debtor exists at Araria, Bihar and accordingly publication was also made on 16.02.2020 in Morning India (English Patna Edition) and Dainik Jagran (Hindi) Araria Edition.

3. The appointment of Interim Resolution Professional was confirmed as the Resolution Professional pursuant to the first meeting of CoC on 02.03.2020 the IRP/ RP conducted CIRP as per the regulations mentioned above and carried out various tasks as per the provisions of the code. The IRP/RP have filed various status reports before this bench which were taken on record with all just exceptions. The 2nd meeting was held on 26.06.2020 vide Video Conferencing and the Applicant apprised the members that the two factories of the Corporate Debtor have been attached by the Enforcement Directorate ("ED") and that the ED has not allowed the Applicant to take physical possession of the factory premises,

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physical inspection of factory premises and records of the Corporate Debtor. That the applicant filed an Interlocutory Application being I.A. No.3058/2020 before this Adjudicating Authority seeking direction against ED, concerning the lifting of the attachment of the Subject Properties belonging to the Corporate Debtor and direct the Directorate of Enforcement to hand over the physical possession of the Subject Properties, assets and records of the Corporate Debtor to the Applicant in terms of provisions of the Code. However, said application was rejected and disposed of by the Adjudicating Authority vide its Order dated 21.10.2020.

4. Further the RP in the 2nd meeting of CoC held on 26.06.2020, had intimated the CoC that pursuant to the advertisement i.e. Form G dated 27.06.2020 inviting for Expression of Interest from potential resolution applicants for submitting resolution plan, one resolution applicant being Prudent ARC limited had submitted his interest however, the prospective resolution applicant failed to submit the resolution plan before the last date of submission of the resolution plan as stipulated in Form-G. The Applicant informed the CoC that fresh Form-G can be published immediately. Upon discussion and deliberation, the members of the CoC decided to republish Form G and revised the eligibility criteria for maximization of the value of the Corporate Debtor. The members of the CoC in the 3rd meeting were of the opinion that the Applicant should

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seek extension of CIRP period since the period of 180 days CIRP was expiring on 10.10.2020 and as the fresh FORM-G i.e Invitation for submission of resolution plan was proposed to be republished. According to the decision of the CoC in the 3rd meeting the Applicant filed an application bearing IA. No. 3990 of 2020 under Section 12(2) of the Code seeking extension of CIRP period by 90 days beyond 180 days. The Adjudicating Authority was pleased to allow the application and granted extension of 90 days of CIRP vide order dated 23.09.2020. The Applicant republished Invitation for Expression of Interest in FORM-G as approved by the CoC in the third meeting held on 31.08.2020 in Business Standard (English) and Business Standard (Hindi) on 09.09.2020, the last date of submission of the Expression of Interest was stipulated as 24.09.2020 and the last date of Resolution Plan was stipulated as 08.11.2020.

5. In the 4th meeting of the CoC convened on 07.11.2020 wherein, the Applicant apprised the members of CoC that the Applicant has received the Expression of Interest from four prospective resolution applicants ("PRA"). The Applicant prepared the provisional list of eligible PRA's on 04.10.2020 as under:-
- a. Alankit Finsec Limited
 - b. Cambell Advertising Private Limited
 - c. Giriraj Coated Fab Private Limited

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d. One City Infrastructure Private Limited

6. The Applicant informed the CoC that M/S Giriraj Coated Fab Pvt Ltd. was not included in the final list of PRA`s due to non-submission of requisite papers even after reminders. The Applicant further informed that the last date for submission of the resolution plan was 08.11.2020 and the Applicant had received two Resolution Plans in sealed envelopes. In the 5th meeting of the CoC held on 20.11.2020 the Applicant apprised the member of CoC that Applicant had received the resolution plans from M/S Alankit Finsec Limited and M/S Campbell Advertising Private Limited. M/S Alankit Finsec Limited submitted resolution plan for Rs.603.59 Lacs and M/S Campbell Advertising Private Limited submitted a resolution plan for Rs. 527.25Lacs. Both the PRA`S deposited the earnest money of Rs. 15,00,000/- in the name of the Corporate Debtor.
7. In the 6th meeting of CoC was held on 15.12.2020, the Applicant apprised the members of CoC that as per the due diligence report, both the PRA`s were eligible in terms of Section 29A of the Code to submit Resolution Plan. We members were of the view that the value offered under both the plans were substantially lower than the liquidation value and that both the plans are conditional. The members of the CoC decided to invite both the PRA`s to give presentation on the Resolution Plan submitted by them on 17.12.2020. Upon discussion and deliberation, the

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Applicant informed both the PRA`s that the conditional resolution plan is not acceptable and requested them to reconsider and submit the revised resolution plan on 18.12.2020. The Applicant further informed that M/S Alankit Finsec Limited has submitted two alternative resolution plans one with condition (i.e. refund of upfront amount in the event ED does not release the property within 6 months) and other being unconditional with different amounts offered under each plan. The amount offered under conditional plan was Rs. 7.25 Crore and amount offered under unconditional Plan was Rs. 6.75 Crore. Upon discussion and deliberation, the members of the CoC requested the PRA`s to increase the amount offered under the plan and submit their plan by 21.12.2020.

8. Further M/S Alankit Finsec Limited increased their amount from 6.75 Crore to 7.01 Crore for unconditional plan. Since CoC was not inclined to accept the conditional plan of M/S Campbell Advertising Private Limited therefore, no Evaluation Matrix was prepared and discussed by the member of CoC. Accordingly, the Resolution Plans were put for voting before the members of the CoC
9. After perusing the resolution plans and the requirements of Section 31 of the Code read with Regulation 39 of the Regulation being satisfied the resolution plan submitted by M/S Alankit Finsec Limited without any condition was approved by the CoC with 100% of voting in its favor vide

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- ballot paper voting on 07.01.2021. The resolution being passed as on 07.01.2021.
10. The Resolution Applicant has submitted undertaking and affidavits dated 06.11.2020, stating that the Resolution Applicant is eligible under Section 29A of the Code with the Applicant. the copy of the undertaking and affidavit submitted by the Resolution Applicant under Section 29A of the Code and Regulation 39(1) of CIRP Regulation, 2016 are annexed.
11. The Compliance Certificate in Form H as prescribed under Regulation 39 (4) as amended by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018, is also filed by the RP.
12. Pursuant to approval of the Resolution Plan by the CoC, the Applicant issued a Letter of Intent (LoI) dated 08.01.2021 to the Resolution Applicant and the Resolution Applicant was requested to convey their unconditional acceptance. The Resolution Applicant duly submitted their unconditional acceptance on the same day and submitted a Performance security in the form of Demand Draft dated 11.01.2021 of a total of Rs. 10 Lakhs, besides the EMD amount submitted earlier of Rs. 15,00,000.
13. It is stated in the Resolution Plan Schedule 3(**Implementation schedule supervision and term**), the Effective date, the Resolution Applicant shall constitute Monitoring Committee to monitor the

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implementation of the resolution plan as permitted herein and execute all required tasks after the order of this bench approving the resolution plan is passed.

Number of Members	Comprising of
1	Representative of the Secured Financial Creditors
1	Representative of the Resolution applicant
1	Resolution Professional

14. The parameters for approval of resolution plan are set out in the IBC, 2016 read with IBBI (CIRP) Regulations, 2016. Which are briefly set forth herein below:

Section/Regulation	Compliance made
Section 30(1) of the IBC, 2016	As per form H separate affidavit has been filed by Resolution Applicant to confirm its eligibility
Section 30(2)(a) of the IBC, 2016 And	As per Schedule 4 Clause 1.2 the Resolution applicant CIRP cost as provided by the Resolution professional, approved by the CoC as on approval by the NCLT will be paid in full and in priority to the payment to any other debts of the Company. The following shall be implemented as per Schedule 3(Implementation schedule supervision and term) of the resolution plan.
Regulation 38(1A) of IBBI (Insolvency Process for Corporate Persons)	The As per Schedule 4 Clause 1.9 (Statement in relation to dealing with all stakeholders) Resolution Plan provides for

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Regulations, 2016	the interest of all stakeholder, including Financial Creditors and Operational Creditors, of the Corporate Debtor.
Section 30(2)(b) of the IBC, 2016 And Regulation 38(2)(c) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	Schedule 4 Clause 1.5 (Proposal for the Operational Creditors) read with Schedule 3 (Implementation schedule supervision and term) of the resolution plan provides for the treatment of the operational creditor Adequate means for supervising the resolution plan implementation has been provided in Schedule 3 (Implementation schedule supervision and term) of the resolution plan
Section 30(2)(c) and Section 30(2)(d) of the IBC, 2016	As per Schedule 3(Implementation schedule supervision and term) of the resolution plan a committee consisting of Resolution applicant and 1 Representative of the Secured Financial Creditors and Resolution Professional shall manage the Corporate Debtor during the implementation of Resolution Plan.
Section 30(2)(e) of the IBC, 2016	The Resolution Plan does not contravene any of the provisions of law for the time being in force
Section 30(4) of the IBC, 2016	Resolution Plan is approved by 100%

15. It is submitted that the date of expiry of 180 days of CIRP was 10.10.2020. The date of order extending the period for 90 days was 23.09.2020 and this extension has been granted from the expiry of 180 days i.e 10.10.2020. It is submitted by the counsel that the resolution plan had been filed on 13.01.2021.

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16. In view of the above discussion that the resolution plan, as approved by the CoC, is in accordance with the sub-section 2 of Section 30 read with Section 31 of the Code and as the Resolution Applicant is not disqualified under Section 29A of the Code; we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.
17. It is hereby declared that the Resolution Plan is binding on the corporate debtor, members, employees of the corporate debtor, creditors of the corporate debtor and other stakeholders involved in the Resolution Plan.
18. It is also declared that the moratorium order passed by this bench under Section 14 of the Code shall cease to have effect.
19. The Resolution Professional shall forward all records relating to the CIRP process and the resolution plan to IBBI to be recorded at its data base in terms of Section-31(3)(b) of the Code.
20. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
21. The Monitoring Committee shall timely submit report of the implementation of the Resolution Plan as provided under the code.



22. I.A. No. 404 /2021 is allowed and disposed of accordingly.

Let the copy of the order be served to the parties.

SD/-

(MS. SUMITA PURKAYASTHA)

MEMBER (T)

SD/-

(DR. DEEPTI MUKESH)

MEMBER (J)