

**THE NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

IA No. 03/2020

CP No. (IB)/ 10/GB/2019

*Under Sections 7 of the Insolvency & Bankruptcy Code, 2016 read with rule 4 of the
Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016*

In the matter of:

Langlai Tea and Industries Ltd. : Corporate Debtor
Mr. Sanjay Kumar Agarwal : Applicant

Versus

State Bank India and two Others : Financial Creditor

Coram:

Hon'ble Mr.Hari Venkata Subba Rao, Member (J)

For the Applicant/ Corporate Debtor : Mr. Sanjay Kumar Agarwal, RP
Mr.Subodh Kr. Agarwal,CA

For the Financial creditor : None

Order Dated : 05/02/2020

ORDER

1. The instant application IA No. 03 of 2020 is filed by the Resolution Professional of M/S Langlai Tea and Industries Ltd. (hereinafter referred to as Corporate Debtor) under Section 30(6) read with section 31 of Insolvency and Bankruptcy Code, 2016 (herein referred to as IB Code) for seeking approval of Resolution Plan dated 20.01.2020

submitted by M/S Sabrang Steel Private Ltd. for insolvency resolution of the corporate debtor as a going concern. The details of the resolution process is briefly mentioned below.

2. An application was filed under section 10 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC) read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016 by M/S Langlai Tea and Industries Ltd. having its registered office at Housing Colony Road, Rukmini Nagar, Dispur, Guwahati – 781006, Assam against itself for initiating a Corporate Insolvency Resolution Process. On consideration of all the facts and circumstances of the issues at hand, this application seeking Corporate Insolvency Resolution Process was admitted by this bench vide its order dated 29th March, 2019 and Mr. Yogendra Pal Singhal was appointed as Interim Resolution Professional. Further, vide order dated 21st June 2019; Mr. Yogendra Pal Singhal was replaced by Mr. Sanjay Kumar Agarwal as the new RP in the Second CoC meeting convened on 24.05.2019 by the members with 100% voting rights in favour of the resolution.
3. Learned RP Mr. Sanjay Kumar Agarwal filed an application praying for an exclusion of 34 (Thirty Four) days from 25.05.2019 to 27.06.2019 being the unutilized period of resolution process from computation of total period of 270 days of CIRP period on account of change in the Resolution Professional which was allowed by this Tribunal vide order dated 18.12.2019 by excluding the period of 34 days (Thirty Four) from computation of CIRP period.
4. As the CIRP was started and progressed, the RP has appraised this Bench of the CoC meetings and its deliberations, and reports were submitted from time to time which have been taken on record. It is seen that a public announcement in Form G was published on 02.07.2019 by the RP in Assam Tribune and Amar Assam in Guwahati and Financial Express in Kolkata. The last date for receipt of EOI was fixed on 31.07.2019. As

no EOI has been received within the said due date, CoC in the 5th meeting held on 25th July, 2019 extended the last date for submission of EOI from 31.07.2019 to 16.08.2019. The date was further extended from 16.08.2019 to 23.08.2019 by the CoC in the 6th CoC meeting held on 17.08.2019.

5. Pursuant to such public announcement, the Resolution Professional received Expression of Interest (EOI) from the following 3 prospective Resolution Applicants.

- I. M/S Terai Tea Company Limited
- II. M/S The Ananda Bag Tea Co. Ltd.
- III. M/S Rangkoman Warisa

Accordingly the Resolution Professional issued the provisional list of the eligible prospective Resolution Applicants on 26th August, 2019 containing all the Resolution Applicants. The last date for submission of objection to the provisional list was 31st August, 2019. As the RP has not received any objection to the inclusion or exclusion of any prospective applicant in the provisional list, the RP issued final list of prospective Resolution Applicant to the members of committee of creditors on 07.09.2019. The last date for submission of Resolution Plan was fixed on 30.09.2019. However the last date for submission of the Resolution Plan was extended from 30.09.2019 to 15.10.2019 in the 7th CoC meeting held on 25th September 2019.

6. Even after extending the last date for submission of Resolution Plan, no Resolution Plan was received as the Resolution Applicants have shown concern on the following issues relating to the corporate debtor.

- i) Land which belongs to the Company is taken on lease from National Hills Council which has been confiscated by the Hill council for non -payment of dues.
- ii) Outstanding amount of lease rent is approx Rs. 73.10 lakhs till the FY 2020.
- iii) Labour officer Dima Hasao, Haflong allowed increased minimum wages at an interim amount of Rs. 30 per day for the workers effective from March 2018

which has not been paid yet. If the Resolution Applicant needs to bear this amount he has to make additional payment of approx Rs. 35 lakhs- 40 lakhs.

7. Subsequently some more Resolution Applicants have shown interest in the corporate resolution and, hence the CoC in its 8th meeting convened on 21.10.2019, further extended the last date for submission of EOIs to 15.11.2019 and last date for submission of Resolution Plan to 30.11.2019. With the extension of last date of submission of EOI, one new EOI was received from M/S Sabrang Steel Private Limited within the extended due date of 15.11.2019. RP further issued provisional list of eligible Resolution Applicants on 16.11.2019. As M/S Rangkoman Warisa has withdrawn his EOI after the issue of provisional list, the final list of prospective Resolution Applicants issued by the RP on 27th Nov, 2019 to the CoC containing the following two as prospective eligible Resolution Applicants:

- I. M/S Sabrang Steel Pvt. Ltd.
- II. M/S The Ananda Bag Tea Co. Ltd.

8. Subsequently, Resolution Professional had received only one Resolution Plan, M/S SABRANG STEEL PVT.LTD. before the stipulated deadline of 30.11.2019. The Resolution Plan was placed in the 11th CoC meeting held on 20.01.2020 for discussion of the members.

Learned RP placed the broad terms of the Resolution Plan as under:

Sl No	Details	Amount (Rs. In lakhs)
A	Payment of CIRP Costs	60.00
B	Payment to Financial Creditors	120.00
C	Payment to Operational Creditor	0.13
	Total Payment under Resolution Plan	180.13

Apart from the above, the Resolution Applicant shall also make additional payment towards their outstanding dues against land revenue which has been estimated by them as Rs. 53.59 Lakhs.

9. Discussion on Resolution Plan:

The plan was discussed in detail by the committee. CoC members mentioned that payment to financial creditors was proposed as Rs. 1.20 crore which is much below the average liquidation value of Rs 2.45 Crore. However, CoC members were of the view that in case the Resolution Plan is approved, financial creditors will get Rs 1.20 crores whereas if the corporate debtor goes into liquidation, realization to the financial creditors will be lower than the amount proposed in the Resolution Plan. Considering that in liquidation, even if the liquidator realizes an amount equivalent to the liquidation value, balance available for distribution to financial creditors will be only 0.51 crores which is much lower than the amount of Rs. 1.20 Crores being received by them in CIRP.

Estimated realization for the financial creditors in Liquidation is determined by the CoC members as under:

Estimated Realization (Average Liquidation Value)		245.00
Less:		
Payment of CIRP Costs	60.00	
Payment of outstanding land revenue of Hill Council	73.10	
Estimated Liquidation Costs as above(Note 1)	61.00	189.00
Balance available for distribution to FCs		51.00

(Note 1) Calculation of Estimated Liquidation Costs

Estimated Time Period to complete the Process for Liquidation: 9 months

Estimated Liquidation Costs

(Rs in Lakhs)

Nature of Costs	Per month Cost	Total Cost for 9 months
Liquidation Fees	3.00	27.00
Cost of running the unit from Jan to April (Being lean Season)	8.00	32.00
Estimated Legal and Other expenses during 9 months	LS	2.00
Total Liquidation Costs		61.00

CoC members also prefer resolution over Liquidation due to following reasons:

1. Amount realized during Resolution is 1.20 crores against 0.51 crores in Liquidation.
2. The resolution amount of Rs. 1.20 crore is received instantly in resolution whereas in Liquidation payment of Rs 0.51 crore is received after 9 months.
3. If the liability for outstanding labour dues estimated at Rs 35 to 40 lakhs is required to be paid out of the sale proceeds of Liquidation Estate, then the Financial Creditors will not be having any balance for distribution.

10. Committee of Creditors noted the feasibility and viability of the Resolution Plan submitted by M/S Sabrang Steels Pvt. Ltd. CoC member also noted that the Resolution Applicant has the capability of implementation of the Resolution Plan. It was also noted that the Resolution Applicant was not ineligible to submit the Resolution Plan under Section 29 A of the Insolvency and Bankruptcy Code, 2016. It noted that specific sources of funds were identified to pay CIRP Costs, Liquidation Value due to Operational Creditors and also noted that the interests of all the stakeholders of the Corporate

Debtor have been safeguarded in the Resolution Plan. It was noted that the Resolution Plan does not contravene any of the provisions of the law. The committee also noted that the approved Resolution Plan provided for the terms and implementation schedule of the Resolution Plan, the management and control of the business of the corporate debtor during the term of Resolution Plan and had adequate means of supervision of the implementation of the Resolution Plan. The CoC also noted that the approved Resolution Plan contained details of the Resolution Applicant and other connected persons to enable it to assess the credibility of such applicant and other connected parties.

11. The CoC applying its **"COMMERCIAL WISDOM"** based upon the facts and figures and exercising its prudence by having sufficient knowledge of the subject decided to consider the Resolution Plan submitted by M/S Sabrang Steel Private Limited and the following resolution was put to vote:

"RESOLVED THAT the Resolution Plan submitted by the Resolution Applicant- M/S Sabrang Steel Private Ltd in respect of the Corporate Debtor, M/S Langlai Tea & Industries Limited placed before the CoC meeting be and is hereby approved and adopted and that the Resolution Professional be and is hereby authorized to file the same with the Hon'ble NCLT, Guwahati Bench for their consideration and final approval."

The Resolution was passed with 100% voting in favour of the Resolution Plan.

12. As examined, the Proposals contained in the Resolution Plan from the perspective of the specific provisions of the Code of 2016, as also the features of the commercial deal proposed therein. Section 30 of the Code of 2016 relates to Submission of the Resolution Plan, and the duties of the RP to examine various aspects thereof as referred to in section 30(2) to 30(6) and also Regulations 37 and 38.

13. The Resolution Plan contains clause for terms and implementation of Resolution Plan.

"9. Terms and Implementation of Resolution Plan:

The Resolution applicant proposes to use all efforts as may be commercially reasonable to implement these Resolution Plan within a period of 60 days from NCLT approval date or earlier as the case may be.

"10. SOURCE OF FUNDS:

The total amount of Rs. 1,75,13,359.00 is proposed to be infused by the Director's/ Share holders of M/S Sabrang Steel Pvt. Ltd., the Resolution Applicant as below:-

Means of Finance	Amount
Fresh Equity to be infused by Sanjiv Bidasaria in SSPL	10,00,000
Fresh Equity to be infused by Manisha Bidasaria in SSPL	10,00,000
Interest free Unsecured Loan by Sanjiv Bidasaria	77,50,000
Interest free Unsecured Loan by Manisha Bidasaria	77,63,359

Copies of bank statement certifying availability of fund is enclosed at page 104 and 105 of the Resolution Plan.

14. It is further seen from the Resolution Plan of M/S Sabrang Steel Pvt. Ltd. as submitted by the RP, that:

"Resolution applicant further states that the plan demonstrates that it addresses the cause of default, it is feasible and viable, it has provisions for its effective

implementation. It has provisions for approvals required and the timeline for the same and that the Resolution Applicant has the capability to implement the plan.

The Resolution Applicant further declare that the plan is in compliance of Section 30(2)(b) and other applicable provisions of IBC Code, 2016 and regulations made there.

Notwithstanding anything to the contrary contained in this Resolution Plan or any other documents including any definitive documents, the Resolution Applicant [together with the co-applicants] agrees and confirms that there are no conditions, assumptions and/or qualifications for effectiveness of the Resolution Plan by the Resolution Applicant[and co-applicants]. Whether before approval by the Adjudicating Authority or thereafter until the [effective date] as per the current terms of resolution plan being submitted.

The Resolution applicant [and the co-applicant] hereby jointly and severally, and unconditionally and irrevocably agree and undertake to implement and give effect to the transactions contemplated in the Resolution Plan immediately upon completion of the Condition Precedent.

We understand that the Resolution Professional have further right to renegotiate the contents of this Resolution Plan and the decision of RP and / or the CoC in the selection of the Resolution Applicant and / or the successful Resolution Applicant shall be final and binding onus."

15. In view of the foregoing, and other details mentioned in the Resolution Plan, as approved by a 100% vote by the CoC, this Adjudicating Authority holds that the Resolution Plan of M/S Sabrang Steel Pvt. Ltd, as submitted by the RP is in conformity with the purposes and objects of the IBC, and all Rules and Regulations and the same meets the requirements of provisions of Section 30 of the Code of 2016 and Regulation 37 and 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Plan not only appears to be viable but also takes care of all the stakeholders, notably the financial creditors,

Operational creditors, Workmen and employees, Other Current Liabilities and Contingent Liabilities. It appears from clause 8.2 of the Resolution Plan i.e Employees contract and retention, that:

- Fresh agreement would be entered into by the Resolution Applicant on behalf of LTAIL for the successful implementation of this Resolution Plan with the labours/worker or employees or their registered unions. All endeavor would be made by the applicant towards retaining the existing workforce, however Resolution Applicant may rescind the contract with any or all the employees and worker of the corporate debtor at its sole discretion.
- The applicant proposes to revamp the top management of the corporate debtor and bring in new personnel to efficiently manage the affairs.
- All the workers and employees of the corporate debtor are proposed to be retain subject to review by the management of the Resolution Applicant and the acceptance of various terms of this Resolution Plan and their suitability, requirement and availability.

16. It appears from clause 11.3 of the Resolution Plan that a Monitoring Committee shall be formed comprising of the Resolution Professional, Members of Financial Creditors/ Banks and representatives of the successful Resolution Applicant to monitor the progress and implementation of the plan at regular intervals, till the creditors are paid their dues as envisaged under the Resolution Plan. Cost or expenses of the monitoring committee including fees of Resolution Professional post approval of Resolution Plan by the NCLT shall be borne by the successful Resolution Applicant with a capping of Rs. 2 lakh (Rupees two lakh) only.

17. Therefore, and in view of the above, the Adjudicating Authority records its satisfaction for granting approval to the final Resolution Plan. It also believes that it would be in the

best interest of the FCs, its employees, OC, and all stake holders to accept the final Resolution Plan.

18. It is seen that the Resolution Plan seeks several Dispensation, Concession and Waivers. In this regard, we are of the view that approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/own jurisdiction to pass any appropriate order as the case may be. The Resolution Applicants on approval of the plan may approach those Competent Authorities/ Courts/ Legal Forums/ Offices- Govt. or Semi Govt. / State or Central Govt. for appropriate relief(s) sought for in.

19. The Adjudicating Authority therefore orders as under:


- (a) The Final Resolution Plan as submitted by M/S Sabrang Steel Pvt. Ltd which has been approved by the CoC in its 11th meeting dated 20.01.2020 by a vote of 100% is hereby approved.
- (b) The Approved Final Resolution Plan shall come into force with immediate effect.
- (c) The moratorium Order passed under Section 14 shall cease to have effect.
- (d) All relevant parties in relation to the Final Resolution Plan are bound by the terms and conditions mentioned therein in accordance with Section 31(1) of the IBC 2016.
- (e) All relevant parties are directed to extend full co-operation to M/S Sabrang Steel Private Limited, to carry out the terms and conditions of the Final Resolution Plan, failing which the concerned parties/entities will be liable for punishment as per Chapter 7 (Offences and Penalties) of the IBC, 2016.
- (f) The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Final Resolutions Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.

(g) Accordingly, these proceedings in C.P (IB)/10/GB/2019 along with connected IAs/ objections filled till the submission of the Resolution Plan are disposed of in terms of the approval, as indicated above.

(h) None of the directions or observations, made above, shall be treated as exempting the RA/CD from paying any fee etc. that may lawfully be charged/levied/realizable from the RA/CD.

(i) All the concerned parties are hereby directed to strictly comply with the Resolution Plan approved by the Adjudicating Authority. If there is any deviation in implementing the Resolution Plan, the concerned parties/entity will be liable for punishment as per Chapter 7 (Offences and Penalties) of IBC.

20. Accordingly the above IA No 03/2020 alongwith C.P (IB)/10/GB/2019 stands disposed of as above. A copy of the order is filed with the Registrar of Companies, Guwahati.


Member (Judicial)