

**THE NATIONAL COMPANY LAW TRIBUNAL
JAI PUR BENCH, JAI PUR
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**IA No. 310/JPR/2020
IN
CP (IB) No. 157/7/JPR/2019
(Admitted matter)**

**Under Section 31 of Insolvency and
Bankruptcy Code, 2016**

In the matter of:-

STCI FINANCE LIMITED.Financial Creditor.

Versus

Bohra Industries Limited.Corporate Debtor.

And in the matter of:

IA No.310/JPR/2020 :

Naresh Verma, Resolution Professional of
Bohra Industries Limited.

....Applicant/Resolution Professional.

Order delivered on: 13.10.2021

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the Resolution Professional:

1. Mr. Amol Vyas, Advocate
2. Mr. M. Maharshi Viswaraj,
Advocate
3. Mr. Naresh Verma, Resolution
Professional in person.

For the Respondent:

1. Mr. Vinugopal Swami B., CA
2. Ms. Meera Murali, Advocate
3. Mr. Ankur Mittal, Advocate

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4. Ms. Aishwarya Pandey, Advocate
for the CoC.

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

The STCI Finance Limited, a financial creditor of the respondent Bohra Industries Private Limited, (the corporate debtor) filed CP (IB) No. 157/7/JPR/2019 under Section 7 of the Code before this Adjudicating Authority seeking initiation of CIRP against the said corporate debtor. This Adjudicating Authority vide its order dated 07.08.2019 admitted the said CP and declared moratorium. Further, Mr. Naresh Verma was appointed as the Interim Resolution Professional vide its order dated 07.08.2019 in the said CP (IB) No. 157/7/JPR/2019.

2. It is submitted that pursuant to the public announcement, claims were received from 2 financial creditors, 17 operational creditors, 6 workmen & employees and 1 authorized representative of workmen & employee.

3. It is further submitted that after the verification and admission of the claims, the CoC was constituted on 29.08.2019, consisting of two financial creditors namely State Bank of India (74.12% share) and STCI Finance Limited (25.88% share).

4. It is stated that the CoC in its 2nd meeting dated 30.09.2019, informed that the applicant had supplied the information memorandum to the members of the CoC on 18.09.2019 after obtaining the confidentiality undertaking from them.

5. It is submitted that Form G for the first time was published on 21.10.2019 and thereafter, CoC in its 5th meeting was informed that one resolution plan was received from Indian Potash Limited (IPL) and the Prospective Resolution Applicant has also submitted the bank guarantee of Rs. 1 crore with SBI, a CoC member. It was also informed by the applicant that the RP is yet to verify whether the Resolution Plan meets the requirements of the IBC Code and its regulations and accordingly, the CoC members deferred the consideration of the plan till the next meeting of CoC for modification/updating of plan by IPL and submission of plan by other Prospective Resolution Applicants.

6. It is stated in the 8th meeting of the CoC dated 16.03.2020, the applicant placed the IPL's final plan dated 07.03.2020 for consideration of CoC. It was decided by the CoC to not to publish fresh Form-G again and further, time period for submission of the Resolution Plan for the pre-existing Potential Resolution Applicants.

7. It is submitted that this Tribunal vide its order dated 05.08.2020, extended the CIRP period by 60 days beyond 270 days (after excluding the lockdown period w.e.f. 25.03.2020 to 30.06.2020) and therefore the CIRP was scheduled to end on 08.10.2020.

8. It is stated that CoC in its 10th meeting held on 25.08.2020, the applicant informed the CoC, that two resolution plans have been received before the due date of 16.08.2020 and the same can be deliberated by them. It is submitted that CoC members discussed the resolution plans submitted by two applicants namely (1) **IPL** & (2)

Consortium of 6 individuals led by Mr. Krishna Aggarwal (**“Consortium”**) and thereafter, both of them were asked to further revise their resolution plans, to be submitted to RP on or before 02.09.2020.

9. It is stated that on 15.09.2020, STCI Finance Limited, one of the CoC member having 25.88% voting rights have withdrawn their claim. It is further stated that the CIRP of the Corporate Debtor is ongoing and no resolution plan has been approved by the CoC until now and the said loans & advances to the Corporate Debtor by STCI Finance Limited are secured by the corporate guarantee of Bohra Pratisthan Private Limited (BPPL) and mortgage of immovable properties owned by BPPL. It is also stated that BPPL is also undergoing CIRP and further, STCI Finance Limited will file their claim in those proceedings and hence, are withdrawing their claim from the CIRP of Bohra Industries Limited with immediate effect.

10. It is submitted that RP on the receipt of the above information, immediately reconstituted the CoC and the new CoC only comprised of State Bank of India with 100% voting rights. Further, the CoC in its 13th meeting, took note of the reconstitution of CoC and accordingly, granted one more opportunity to the resolution applicants to revise their resolution plans (by way of addendum) after considering the exit of STCI.

11. It is further stated that CoC in its 14th meeting held on 06.10.2020, approved the Revised Resolution Plan submitted by the Consortium with 100% votes. Copy of the Revised Resolution Plan by the Consortium is attached as Annexure-3 of this application.

12. Having heard the learned counsels for the Resolution Professional and the Resolution Applicant, we find that it would be first necessary to ascertain whether the requirements of the Code and Regulations made thereunder, have been complied with or not.

13. In view of the mandatory requirements of Section 30(2) of the Code, and the peculiar facts of this case, we examine the resolution plan of the **Consortium** dated 09.09.2020 along with the addendum dated 19.09.2020, as approved by the Committee of Creditors.

14. As per Section 30 (2) (a) of the Code, the Resolution plan approved by the Committee of Creditors must provide for payment of insolvency resolution process cost in a manner specified by the Board in priority to the payment of other debts of the corporate debtor. In Part 7.3 of the Resolution Plan (Page 55 of the application), it is stated that the unpaid CIRP costs of Rs. 0.90 Crore will be paid in full and in priority to other creditors. It is also stated that the CIRP amount, if exceeds above the mentioned amount shall be paid from amount kept for contingencies on priority. It is further stated that the Resolution Applicant shall be allowed to pay CIRP costs from the amount lying in the bank account of the Corporate Debtor.

15. As per Section 30(2)(b) of the Code, the resolution plan must provide for payments 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 liquidation of the corporate debtor under Section 53 or the amount that would have been paid

to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority under Section 53(1) whichever is higher. It is stated in Part 7.3 of the Resolution Plan (Page 59 of the application) that the Operational Creditors shall be paid Rs. 10.50 lakh in lieu of their respective outstanding claims which amount is expected to be more than the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under Section 53. It is further stated that the said amount shall be paid on priority immediately after payment of CIRP Cost in full and in priority to all other including financial creditors.

16. As per Section 30(2) (c) of the Code, the resolution plan must provide for the management of the affairs of the corporate debtor after its approval. There is specific provision made for the management and control of the company after the approval of the resolution plan. A detailed mechanism regarding the management and control is discussed in Part 12 (Page 66 of the application) under the heading 'Pre-effective Date Conditions and Obligations'. It is stated therein that upon the approval and after the effective date, the existing directors of the corporate debtor shall resign, and the new directors shall be appointed to manage the affairs of the Company.

17. Section 30(2) (d) of the Code envisages that it must provide for implementation and supervision of the resolution plan. Part 11 of the Resolution Plan (Page 65 of the application) provides for a detailed mechanism for effective implementation of the resolution plan.

18. Section 30 (2) (e) of the Code requires that the resolution plan does not contravene any of the provisions of the law for the time being

in force. In Revised Form H, filed as Annexure-1 of Diary No. 497/2021 dated 22.02.2021, submitted by the RP as per the requirement of Regulation 39(4) of the CIRP Regulations, he has certified that the resolution plan did not contravene any of the provisions of the law for the time being in force and is in compliance with the provisions of the Code and the CIRP Regulations.

19. It is also certified by the RP that the **Consortium** has submitted an affidavit pursuant to Section 30 (1) of the Code confirming its eligibility under Section 29A of the Code to submit its resolution plan (Page 8 of Diary No. 497/2021). The above mentioned affidavit by Mr. Krishna Agarwal, the Lead Member of the **Consortium** is attached at Page 151-152 of the application.

20. The Resolution Plan should conform to all such requirements which may be specified by the IBBI. A statement to this effect has been made by the RP in the Revised Form H referred above.

21. With regard to compliance of Regulation 39 (4) in relation to submission of the Performance Bank Guarantee by the successful resolution applicant is concerned, the resolution applicant has submitted a performance bank guarantee of ₹ 10 Crores [10 Performance Guarantee of ₹ 1 Crore each aggregating Rs.10 Crores issued by Guarantor bank- Canara Bank (Specialized Mid Corporate Branch, Somajiguda, Hyderabad)] were received by the RP on 23.10.2020.

22. With regard to the compliance of the second proviso to Section 31 (4) of the Code i.e. obtaining the approval of the Competition

Commission of India, it is observed that there is no statement made anywhere in this application.

23. With regard to the compliance under Regulation 35A, it is stated that there was delay in the determination of preferential transaction of Corporate Debtor and the same was determined on 152nd day on 06.01.2020 and has filed an application being IA No. 80/JPR/2020, which is pending before this Adjudicating Authority and the same is to be continued even after approval of the Resolution Plan.

24. Further, the resolution plan fulfills all the requirements of Regulation 38 and 39 of the CIRP Regulations. A perusal of Regulation 38 would clearly show that by virtue of mandatory contents of resolution plan as discussed in the preceding paragraphs in relation to Section 30 and Section 31 of the Code, the requirement of Regulation 38 also stands fulfilled. Even the requirement of Regulation 39 has been satisfied, as the RP has submitted that the resolution plan of Resolution applicant, as approved by the Committee of Creditors, to this Tribunal along with the compliance certificate in Revised Form H, as per the requirements of Regulation 39(4) of the CIRP Regulations meets all the requirements of the Code and the CIRP Regulations and that the resolution plan has been duly approved by the Committee of Creditors.

25. In view of our finding that the resolution plan dated 09.09.2020 along with addendum dated 19.09.2020, as approved by the COC satisfies all the requirements of the Code and Regulations made thereunder, we pass the following orders:-

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- a. The Resolution Plan, as approved by the Committee of Creditors and submitted by the “**Consortium**” (**Successful Resolution Applicant**) is approved and the same is binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any Local Authority to whom a debt is due in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and the other stakeholders involved in the Resolution Plan.
- b. The Resolution Applicant is directed to obtain the approval of the Competition Commission of India within a period of one year of approval of this resolution plan by this Tribunal as stated under Section 31 (4) of the Code.
- c. The moratorium order passed by the Adjudicating Authority under Section 14 shall cease to have effect.
- d. The RP shall forward all records relating to the CIRP and the resolution plan to IBBI to be recorded at its database in terms of Section 31(3) (b) of the Code.

26. Accordingly, IA No.310/JPR/2020 is disposed of.

Sd/-
(Raghu Nayyar)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

October 13th, 2021
AV

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