IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – II

IA/2192/2021 In C.P.(IB)/918(MB)2020

(Under Section 30(6) r/w Section 31(1) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.)

Bhavesh Rathod, *Resolution Professional for M/s. IGOPL Offshore Private Limited*

……Applicant

In the matter of

IGOPL Offshore Private Limited

Floral Deck Plaza, A-Wing, 6th Floor, Unit no. 603-606, Central MIDC Road, Opp. Seepz, Andheri (E), Mumbai-400093.

…….Corporate Debtor/Applicant

Order delivered on: 11.11.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Shri Shyam Babu Gautam

Appearances:

For the Resolution Applicant : Mr. Ashish S. Kamat, Advocate

For the Resolution Professional: Mr. Yahya Batatawala, Advocate

ORDER

Per- Coram

It is an application filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ("**the Code**") read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process Corporate Persons) Regulations, 2016 for approval of the Resolution Plan by this Bench based on the approval already given by the Committee of Creditors **("CoC")** in its 8th Meeting with requisite majority of 100% u/s 30(4) of the Code.

2. Looking at the application moved by the Resolution Professional, it reveals that IGOPL Offshore Private Limited/Corporate Debtor has filed the petition u/s 10 of the Code for initiation of CIRP. This Bench admitted the aforesaid petition on 15.11.2021 by initiating Corporate Insolvency Resolution Process **("CIRP")** and appointing Mr. Bhavesh Rathod, as Interim Resolution Professional. IRP accordingly made Public announcement in Form A for inviting claims from the Creditors of the Corporate Debtor. Further, constituted CoC with 6 Financial Creditors out of which 2 were related parties. Subsequently, IRP was confirmed as the Resolution Professional in 1st CoC meeting held on 17.02.2021. Thereafter, the Resolution Professional/Applicant appointed registered valuers namely (1) Sanjay Dayal (2) Girish Pawar (3) Prasad Kulkarni and (4) Asha Ghoshal as per Regulation 27 of the CIRP Regulations to

determine valuation of Plant and Machinery and Securities and Financial Assets of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulations, same was approved by the CoC in its 2nd meeting. After carrying out the Valuation by the Registered Valuer, the Fair Value was Rs. 33.16 Crore and Liquidation Value was Rs. 22.87 Crore.

The Applicant has issued invitation for Expression of Interest **("EoI")**, as approved by the CoC, and has also made paper advertisement in Financial Express (English Ed.) and Mumbai Lakshadeep (Marathi Ed.) on 06.04.2021, by fixing the last date for EoI as 21.04.2021. Further, the Resolution Professional received five EoI's. However, the Applicant has received the Resolution Plan from two Resolution Applicants viz. (1) Mr. Jai Kishan Thappa and (2) Jubliant Enpro Private Limited only along with declaration of Confidentiality and Non-Disclosure Agreement. The CoC discussed both the resolution plan submitted and requested the Successful RA's to revise their Resolution Plan. Meanwhile, this Tribunal allowed the extension of 90 days, on the application made by the present applicant.

3. Further, Jai Kishan Thappa submitted its revised Resolution Plan on 31.08.2021 and Jubilant Enpro Private Limited submitted its revised Resolution Plan on 03.09.2021. The Applicant obtained Report from M/s. ASC Insolvency Services LLP on eligibility of Resolution Applicant under Section 29A of the IBC, 2016, Resolution Plan compliance certificate and evaluation

matrix. In 8th CoC meeting held on 09.09.2021, the Applicant apprised the CoC that he has received 6 claims from Financial Creditors amounting to Rs. 50,42,37,123/-; 225 claims from Operational Creditors amounting to Rs. 37,52,59,525/-; 13 claims from Employees amounting to Rs. 1,47,45,873/- and claim from GST Department amounting to Rs. 73,61,946/-. Further on 09.09.2021, the CoC approved the plan of Jubilant Enpro Private Limited with 100% voting shares by CoC members in its 8th meeting. The Resolution Applicant had submitted the Resolution Plan of Rs. 24 Crores.

4. As regards the Resolution Plan, from Form – H filed by the Resolution Professional, it is evident that Fair Value is Rs. 33,15,72,056/- and the Liquidation Value is 22,86,97,925/-. It is also observed that admitted claim value against the debtor company is more than the liquidation value of the company.

Further, it is evident that the total consideration amount under the Resolution Plan will be INR 24 Crores, out of which the Secured Financial Creditors shall receive INR 19,39,08,568/- and Unsecured Financial Creditors shall receive INR 25,06,303/-; Unrelated Employees shall receive INR 34,66,814/- and Operational Creditors shall receive 6.18% of claim. Further, the amount of INR 50,24,721/- is proposed for the CIRP cost. Resolution Plan approved by CoC is of Rs. 24 Crores out of which Rs. 4,73,00,000/- by was of Equity and Rs. 19,27,00,000/- by way of unsecured loan. Payment outlay is as under:

CIRP Cost (Unpaid & Projected)	Rs. 50,24,721/-	100%
Secured Financial Creditors	Rs. 19,39,08,568/-	100%
Unsecured Financial Creditors	Rs. 25,06,303/-	100%
Related Parties Financial Creditors	Rs. 30,78,22,252/-	0%
Employees (Unrelated)	Rs. 34,66,814/-	100%
Employees (Related)	Rs. 1,12,79,059/-	0%
GST Department	Rs. 73,61,946/-	100%
Operational Creditors	Rs. 37,52,59,525/-	6.18%
Other Statutory Dues (Claim not received)	Rs. 76,82,254/-	100%

5. Jubilant Enpro Private Limited submitted a financial guarantee of INR 1,20,00,000/- equivalent to 5% of Resolution Plan Value being guarantee No. 00220100003194 dated 17.09.2021 issued by Axis Bank Limited, which shall remain in force until 12.03.2022 with an additional claim period of 30 days thereafter.

6. From Form – H filed by the Applicant, it is evident that the Applicant has not filed any applications under Section 43, 45, 50 and 66 of IBC, 2016. RP appointed Transaction Auditor to conduct Audit of transactions covered under Section 43, 44, 50

and 66 of the Code and as per the report received, there were no transactions which were observed and found.

7. As per the provision of the Code, this Tribunal is duty bound to examine the Resolution Plan as to whether it satisfies the conditions as laid down in Section 30(2) of the Code. A comparison of the mandatory compliance under the Code *vis-à-vis* the same made under the Resolution Plan is tabulated hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	**COMPLIANCE UNDER RESOLUTION PLAN**
S.30(1)- Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	The Resolution Professional in Form-H has certified that the Resolution Applicant has submitted an affidavit.
S.30(2)(a)- Payment of insolvency resolution process cost in the manner specified by the Board	It is anticipated that during the CIRP period, cash flows generated by the Company, together with the amounts to be infused by the Resolution Applicant as per ***Section 3*** of the plan will be sufficient to pay the CIRP Costs. CIRP Costs incurred until the date of NCLT Approval Date shall be paid at actuals (as approved by the CoC or as otherwise payable under the IBC). It is hereby clarified that in the event the cash in the Company during the CIRP period is not sufficient to pay the CIRP Costs, and the Resolution Applicant is required to utilize its own funds for meeting such CIRP Costs, then such amount will be reduced from the Total Financial Outlay that is payable to the Operational Creditors.
S. 30(2)(b) -Payment of debts of Operational	***Section 3, Part C (Second)*** of Resolution Plan: The Operational Creditors shall be paid

<table>
<tr><td>Creditors in such manner as may be specified by the Board, which shall not be less that the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53</td><td>the amounts as set out below in accordance with Section 30 of the IBC read with Regulation 38 of the CIRP Regulations ("OC Settlement Value") : 359.03 Lacs.
[1. Outstanding Workmen and Employees Dues: 34.67 Lacs; 2. Operational Debt of the Company (including claims admitted post 90 days of commencement of CIRP) excluding payments to Governmental Authorities: 250.74 Lacs; 3. Goods and Services Taxes payable: 73.62 Lacs]
It also states that the value due to such Operational Creditors as aforesaid will be discharged out of the Financial creditors Settlement Amount, in priority to any payments being made to the Financial Creditors.</td></tr>
<tr><td><u>S. 30(2)(c)</u>- provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;</td><td>Yes, the Resolution Plan in Section 6 provides for management of the Corporate Debtor by the Resolution Applicant.</td></tr>
<tr><td><u>S.30(2)(d)</u>-
Implementation and Supervision of the Resolution Plan</td><td>
<table>
<tr><th>Event</th><th>Estimated Timeline</th></tr>
<tr><td>Approval of the NCLT</td><td>NCLT Approval Date</td></tr>
<tr><td>Cancellation of the Previously Issued Shares</td><td>Within 21 Business Days from completion of Step 1 above.</td></tr>
<tr><td>Infusion of Total Financial Outlay</td><td>Within 2 Business Days from completion of Step 2 above.</td></tr>
<tr><td>Payment of the Financial Creditors settlement amount and other payments in the manner set</td><td>Within 15 Business Days from completion of Step 3 above.</td></tr>
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<tr><td></td><td><table><tr><td>out in section 2.1 of Part C.</td><td></td></tr><tr><td>Transfer of the Company's equity shareholding in the Investee Company, to the Financial Creditors.</td><td>Within 15 Business Days from competition of Step 4 above.</td></tr></table></td></tr>
<tr><td><u>S. 30(2)(e)</u>- Contravene any of the provisions of the law for the time being in force.</td><td>Does not contravene any of the provisions of the law for the time being in force.</td></tr>
<tr><td><u>S. 30(4)</u>- Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board</td><td>The CoC, in its 8th meeting has approved the Resolution Plan in the following voting pattern;<table><tr><th>S. No</th><th>Name of Creditor</th><th>Ascent (%)</th><th>Dissent (%)</th></tr><tr><td>1.</td><td>Induslnd Bank Limited</td><td>100</td><td>-</td></tr><tr><td></td><td>TOTAL</td><td>100</td><td>-</td></tr></table></td></tr>
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8. A perusal of Form-H as filed by the Resolution Professional also posits the fact that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code and also the Resolution Applicant has filed an Affidavit to the effect that he is eligible to submit the Resolution Plan taking into consideration Section 29A of the Code. The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall be in control of the management and affairs of the Corporate Debtor till Closing Date.

9. As to the Reliefs and Concessions stated in Clause 1.7 and 1.8 of the Resolution Plan, the exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted. As regards the other reliefs and concessions as sought for, which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016 is granted to the Resolution Applicant. With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted. Further in terms of the Judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited***, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan. In view of the same, this plan is hereby **approved**.

10. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to

finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise the further line of action required for starting of the operation.

11. Accordingly, the Resolution Plan in **IA/2192/2021** is hereby allowed and approved.

Sd/-

SHYAM BABU GAUTAM

(MEMBER TECHNICAL)

Sd/-

JUSTICE P.N. DESHMUKH

(MEMBER JUDICIAL)

Arpan, LRA