

IN THE NATIONAL COMPANY LAW TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

I.A. NO. 1410 OF 2021
In
C.P. NO. (IB)- 816 (PB)/ 2018

IN THE MATTER OF:

DENA BANK

...FINANCIAL CREDITOR

VERSUS

KANSAL BUILDING SOLUTIONS PVT. LTD.

...CORPORATE DEBTOR

AND IN THE MATTER OF:

Kansal Building Solutions
Private Limited
Through The Liquidator
Mr. Alok Kumar Agarwal

.... Applicant/Liquidator

VERSUS

1. Bank of Baroda
Office at:
Stressed Asset Management Branch,
4th Floor Rajendra Bhawan,
Rajendra Place, New Delhi-110008

.... Respondent No. 1

2. Ashwani Aggarwal
Resident of:
H.No. 775, Sector 29,
Faridabad, Haryana
Office at:
509/5, Maa Anand Mai Marg,
Govindpuri, New Delhi-110019

.... Respondent No. 2

3. Abhishek Aggarwal
Resident of:
H.No. 775, Sector 29,



Faridabad, Haryana
Office at:
509/5, Maa Anand Mai Marg,
Govindpuri, New Delhi-110019

.... Respondent No. 3

4. Kanwar Bhan Aggarwal
Resident of:
H.No. 775, Sector 29,
Faridabad, Haryana
Office at:
509/5, Maa Anand Mai Marg,
Govindpuri, New Delhi-110019

.... Respondent No.4

5. Registrar of Companies
NCT of Delhi
4th Floor, IFCI Tower, 61,
Nehru Place, New Delhi-110019

.... Respondent No. 5

6. Regional Director, MCA
Ministry of Corporate Affairs
B-2 Wing, 2nd Floor
Paryawaran Bhawan,
CGO Complex, New Delhi-110003

.... Respondent No. 6

Under Section 230-232 Of the Companies Act, 2013

And Other Applicable Provisions Of The Companies Act, 2013 Read With Regulation 2B Of

IBBI (Liquidation Process) Regulations, 2016

In the matter of Scheme of Compromise and Arrangement for

Kansal Building Solutions Pvt Ltd

CORAM:

Order Pronounced on: 24.12.2021

**SH. BHASKARA PANTULA MOHAN
HON'BLE MEMBER (JUDICIAL)**

**SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)**

For the Liquidator/Applicant: Mr. Abhishek Anand with Mr. Kunal

Godhwani & Mr. Samriddh Bindal, Advs.



ORDER

PER: BHASKARA PANTULA MOHAN, MEMBER (JUDICIAL)

1. This application is filed by the Applicant/ Liquidator of the Corporate Debtor, M/s Kansal Building Solutions Private Limited through Mr. Alok Kumar Agarwal under Section 230 of the Companies Act, 2013 (brevity "The Act") read with Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016 read with the Insolvency & Bankruptcy Code, 2016 (brevity "Code") sought approval for the Scheme of Compromise & Arrangement as submitted for the Company (in Liquidation) i.e. Kansal Building Solutions Pvt. Ltd. The Scheme has been submitted by the promoters of the Company (in Liquidation) and has been approved by 97.33% of the creditor in terms of Section 230(9) of the Act.

2. By way of the present Application, the Liquidator has inter-alia sought for the following reliefs:

(a) Allow the present application and to pass appropriate orders dispensing with holding of any meetings of the creditors and meeting of shareholders for the approval of scheme in view of affidavit dated 03.03.2021 executed by Bank of Baroda in terms of Section 230(9) of the Companies Act, 2013;

(b) Allow the Scheme of Arrangement and Compromise proposed by Mr. Ashwani Aggarwal, Mr. Kanwar Bhan Agarwal and Mr. Abhishek Agarwal under Section 230 of the Companies



Act,2013 in the liquidation process of Kansal Building Solutions Private Limited.

3. This application has been filed by the Applicant/Liquidator of the Corporate Debtor Mr. Alok Kumar Agarwal, who was appointed as a liquidator vide liquidation order dated 06.02.2020. The Liquidator upon his appointment as the Liquidator of the Corporate Debtor, undertook appropriate steps as required under the provisions of the Code for inviting claims from the stakeholders of the Corporate Debtor.
4. It is further stated by the learned counsel for the Applicant/Liquidator that during the Liquidation process a request was received from the erstwhile Directors/Shareholders/Promoters, whereby the Liquidator was informed that One Time Settlement (brevity 'OTS') has been entered by them with the sole secured creditor i.e. Dena Bank (now Bank of Baroda). It is further submitted by the Ld. Counsel that subsequently, in view of the said OTS, the promoters i.e. Mr. Ashwani Aggarwal, Mr. Kanwar Bhan Agarwal and Mr. Abhishek Agarwal (brevity "Propounder of Scheme") submitted a Scheme under Section 230 of the Act, on 13.07.2020, which was revised on various occasions and finally the revised Scheme was submitted with the Liquidator on 20.01.2021.
5. The counsel for the Liquidator further, submitted that the Corporate Debtor is a Micro Small and Medium Enterprise (brevity 'MSME') and the promoters of the Corporate Debtor who have submitted the



Scheme are not barred under Section 29A (c) & (h) of the Code from submitting the scheme under Section 230 of the Act as the Section 240A of the Code carves out such exception for MSME. The Propounder of the Scheme have also filed an affidavit under Section 29A of the Code stating that they are eligible to submit a Scheme during the liquidation process of the Corporate Debtor in terms of Section 240A of the Code being a MSME.

6. The Applicant further submitted that the Regulation 2B(1) of the Liquidation Process Regulations, 2016 provides for Compromise and Arrangement proposed under Section 230 of the Act, which shall be completed within a period of 90 days from the date of the Liquidation Order. The Applicant has submitted that in the instant case the 90 days period from the Liquidation Commencement date came to an end on 06.05.2020 and after taking into account the exclusion, the 90 days in terms of Regulation 47A of the Liquidation Process Regulations, 2016 came to an end on 14.07.2020. The Applicant after receiving the Scheme of Compromise or Arrangement filed an application bearing ***I.A. No. 3784/2020*** before this Tribunal seeking directions for convening a meeting of the Stakeholders and Creditors and to place the Scheme of Compromise and Arrangement as submitted by the promoters of the Corporate Debtor for approval in terms of Regulation 2B of the Liquidation Process Regulations, 2016. This Tribunal vide its order dated 28.09.2020 condoned the delay of



67 days in submitting the Scheme of Compromise and Arrangement as proposed by the suspended board of directors/ex-promoters and thereby paved the way for holding the Meeting of the Stakeholder Consultation Committee (brevity 'SCC').

7. It was further submitted by the Applicant that in the 4th meeting of the SCC held on 30.12.2020 the Scheme of Compromise and Arrangement was placed by the Applicant before the Stakeholders and after discussions and deliberations, the financial creditor being Bank of Baroda sought 15 days' time to respond, for internal consideration by the competent authority and for a decision.
8. Subsequently, an application was filed by the Liquidator being **I.A. No. 5396 of 2020** seeking extension of time, to consider the Scheme submitted before the Liquidator. This Tribunal extended the period till 31.01.2021 by vide order dated 05.01.2021. Similarly, further extension w.e.f. 01.02.2021 till 03.03.2021 was sought by the Liquidator, which was granted by this Tribunal vide its order dated 16.02.2021.
9. That the Applicant conducted the 5th meeting of the SCC wherein the members of the SCC considered and approved the Scheme submitted by the promoters under Section 230 of the Act, having voting share of 97.33%.
10. In light of the aforesaid backdrop of facts, it is seen that the Scheme of the Promoters as approved by the Stakeholders does not

provide for transfer of shares or control of the Corporate Debtor and envisages entire payment by 31.03.2021 (which has now been extended till 30.09.2021) as stated by the Counsel during the course of the hearing in the following manner:

PARTICULAR	RS. CRORE
<i>CIRP and Liquidation Cost:</i>	<i>Liquidation Cost for an amount of Rs. 38.11 lakh till September, 2020 plus future monthly cost till the approval of this Scheme.</i>
<i>Financial Creditor</i>	<i>13.80 Cr. (Rs. 2.60 Cr has already deposited with Bank of Baroda and Rs. 2.00 Cr. In no lien account with BOB Rs. 6.50 lakhs to Kotak Mahindra Bank pursuant to OTS).</i>
<i>Payment Claims and dues of various creditors other than Financial Creditor</i>	<i>0.24 Cr.</i>
<i>Related Parties to the Promoters of the Company</i>	<i>NIL</i>
<i>Total</i>	<i>Rs. 14.04 Cr. Plus Liquidation Cost</i>
<i>Timeline of utilization of Funds:</i>	
<i>-Upfront Amount (already deposited with Bank of Baroda)</i>	<i>Rs. 2.60 Cr. Rs. 2.00 Cr. (in no lien account)</i>
<i>-Rest of the amount (before 31.03.2021)</i>	<i>Rs. 9.365 Cr</i>
<i>TOTAL</i>	<i>Rs. 14.04 Cr. Plus Liquidation Costs</i>

11. The details of settlement amount against claims of Stakeholders as per the Scheme proposed by the stakeholders of the Corporate Debtor is provided herein below:

ORDER OF PRIORITY	NATURE OF CREDITOR	BASIS OF SETTLEMENT & INDICATIVE AMOUNTS
1 st	CIRP Cost and Liquidation Cost	<p>The CIRP and Liquidation Cost shall be paid in full towards final payment of Liquidation Process, in terms of Section 53 of Code. And as per Code, the CIRP and Liquidation Cost to be paid on actual basis fully.</p> <p>Therefore, the actual CIRP Cost, as approved by the CoC / Stakeholders, till the effective date is to be paid by Bank of Baroda in pursuant to Scheme of Arrangement</p> <p>Further, the actual Liquidation Cost, as approved by the CoC/Stakeholders, till the effective date is to be paid by Promoters of Company.</p>
2 nd	Due to Workmen / Employees (other than Related Parties to the Company) and Secured Financial Creditor.	As per Section 53(1)(b) of Insolvency and Bankruptcy Code, 2016, the workmen's dues for the period of twenty-four months preceding the Liquidation Commencement date, rank equally with the dues of secured financial creditor.

		<p>As per Section 53(1)(c) of Insolvency and Bankruptcy Code, 2016, the Employees dues for the period of twelve months preceding the Liquidation Commencement date are ranked at the next level.</p> <p>Final Cumulative amount to be paid to Employees / Workmen in proportion to their debt – Rs. 21,540/-</p> <p>Final amount to be paid to Secured Financial Creditor in proportion to their debt – Rs. 13.80 Cr.</p>
3 rd	Operational Creditor (Other than workmen and Employees)	<p>Liquidation value due to Operational Creditor (Other than Workmen / Employees) is NIL. Consequently, the amount required to be paid to Operational Creditor for liabilities until Liquidation Commencement Date is NIL.</p> <p>However, as part of this Scheme, it is proposed to pay Operational Creditor(Other than</p>

		<p><i>workmen's / employees) an amount of Rs. 23,31,114/-</i></p> <p><i>In case liquidation value due to Operational Creditor exceeds the Final amount proposed to be paid by the promoters, such excess amount shall be paid in full as per the Insolvency and Bankruptcy Code, 2016.</i></p>
<i>4th</i>	<i>Dissenting Financial Creditor</i>	<p><i>As per Insolvency and Bankruptcy Code, 2016 Dissenting Financial Creditor, if any, shall be paid at par with consenting Financial Creditor. If there is any Dissenting Financial Creditor, then promoters of the Company will pay accordingly.</i></p> <p><i>Final Amount to be paid - NIL</i></p>

12. That the liquidation value of Corporate Debtor is Rs. 12,99,93,608/- and the Scheme submitted by Promoters under Section 230 of the Act, envisages payment of Rs. 14.04 Cr. plus the liquidation cost.

13. It is noted that Bank of Baroda (erstwhile Dena Bank) having a voting share of 97.33% have submitted an affidavit under Section



230(9) of the Act, thereby agreeing and confirming to the Scheme of Compromise & Arrangement.

14. Further, in terms of proviso to Section 230(7) of the Act, a Certificate of Auditor has been filed with the Application to the effect that the accounting treatment proposed in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Act.

15. The Counsel for the Liquidator has relied on the decision passed by the Hon'ble Appellate Tribunal in the matter of *Y. Shivram Prasad Vs. S. Dhanapal & Ors. in Company Appeal (AT)(Ins.) No. 224 of 2018* "the Adjudicating Authority is to play dual role, one as the Adjudicating Authority in the matter of liquidation and other as a Tribunal for passing order under Section 230 of the Companies Act, 2013". Accordingly, this Tribunal has put in its logical attempts and efforts in combining the provisions of these two statutes in perfect harmony.

ORDER

16. Taking into consideration the submissions made and documents placed on record, it is hereby ordered as follows:

- i. In terms of Section 230(9) of the Act and in view of the affidavit filed by Dena Bank (Now Bank of Baroda) in its capacity as a secured creditor of the Corporate Debtor having 97.33% voting



share in the Stakeholder Consultation Committee, thereby agreeing and confirming to the Scheme, this Tribunal allows dispensation of convening/holding the meeting of Creditor or class of Creditors of the Corporate Debtor as prayed for by the Applicant/Liquidator.

ii. Scheme as propounded by Mr. Ashwani Aggarwal, Mr. Kanwar Bhan Agarwal and Mr. Abhishek Agarwal under Section 230 of the Companies Act, 2013 in the liquidation process of M/s. Kansal Building Solutions Private Ltd. is hereby **approved** and the same shall be binding on the Corporate Debtor, its creditors, members and stakeholders.

iii.—From the date of approval of the Scheme, all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the scheme approval date, or arising on account of implementation of this scheme shall stand withdrawn, satisfied and discharged from the date of approval of the 'Scheme'. The Applicant shall be legally authorized to seek appropriate orders from respective authorities/courts/tribunals for renewal of licences/ withdrawal/dismissal or abatement of the proceedings, as the case may be. Further, The Applicant/Liquidator is



directed to send notices to the respective statutory authorities and seek approval for pending dues and liabilities.

- iv. The Liquidator is directed to file the certified copy of this order to the Registrar of Companies.
- v. Costs incurred by the Liquidator in relation to the Scheme of Compromise or Arrangement shall be borne by Mr. Ashwani Aggarwal, Mr. Kanwar Bhan Agarwal and Mr. Abhishek Agarwal as per Regulation 2B of the Liquidation Process Regulations, 2016.
- vi. Liquidator is further directed to file application for closure of Liquidation process as initiated under Section 33 of the I & B Code, 2016 before this Tribunal.
- vii. Therefore, **I.A. No. 1410 of 2021** stands **allowed**.

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

Sd/-

(BHASKARA PANTULA MOHAN)
MEMBER (JUDICIAL)