

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 2.
IA/28(AHM) 2021
in
CP(IB) 345 of 2018

Order under Section 30(6) IBC, 2016

IN THE MATTER OF:

Pradeep Kumar Kabra RP for Jyoti Power Corporation
Pvt. Ltd.

.....Applicant

V/s

Suspended Board of Directors of Jyoti Power Corporation
Pvt. Ltd & Ors..

.....Respondent

Order delivered on ..14/10/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

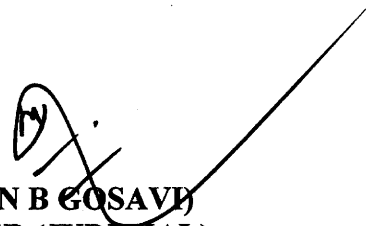
For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1**

**IA/288 (AHM)2021 with
IA 28 (AHM)2021
in
CP (IB) No. 345/7/NCLT/AHM/2018**

IA/288 (AHM)2021

[an application under Section 60(5) of Insolvency and Bankruptcy Code, 2016]

In the matter of:

Gujarat Energy Transmission Corporation Ltd.

Having address at:

9th Floor, Sardar Patel Vidyut Bhavan,
Race Course, Vadodara-390007.

....Applicant

Versus

Mr. Pradeepkumar Kabra

RP of M/s. Jyoti Power Corporation Pvt. Ltd.

Having address at:

M-19-20-21, Metro Tower,
Ring Road, Surat-395002.

....Respondent

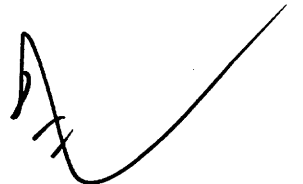
IA 28 (AHM)2021

[An application under Section 30(6) of Insolvency and Bankruptcy Code, 2016 for approval of Resolution Plan].

In the matter of:

Mr. Pradeep Kumar Kabra

(Resolution Professional)



M/s. Jyoti Power Corporation Private Limited

Having address at:

M-19-20-21, Metro Tower,
Ring Road, Surat-395002.

....Applicant

V/s

**1. Suspended Board of Directors of
Jyoti Power Corporation Private Limited**

Having address at:

Matru Jyot, 1st Floor, Opp. Agro Petrol Pump,
Gondal, Dist. Rajkot-360311.

**2. Members of Committee of Creditors of
Jyoti Power Corporation Private Limited**

A. Bank of India

Having address at:

Rajkot Main Branch,
(Erstwhile Rajkot Mid Corporate Branch)
Para Bazar, MG Road,
Rajkot-360001, Gujarat

B. State Bank of India

Having address at:

Stressed Assets Management Branch
2nd Floor "Paramsiddhi Complex"
Opp. V. S. Hospital, Ellisbridge, Ashram Road,
Ahmedabad-380006, Gujarat

C. IDBI Bank Ltd.

IDBI Bank Zonal Office,
NPA Management Group,
IDBI Complex, Near Lal Bungalow,
Off. C.G. Road, Ahmedabad-380006.

D. Kotak Mahindra Bank Ltd.

Zone 1, 4th Floor, Siddhivinayak Complex,
Shivranjani Cross Road,
Ahmedabad-380015.

3. Zaveri & Co. Private Limited

U-02, Upper Plaza, Swagar Building,
Near Lal Bunglow, C.G. Road,
Ahmedabad- 380006

....Respondents

Date of Hearing: 05.10.2021

Date of Pronouncement of Order: 14.10.2021

**Coram: MADAN B. GOSAVI, MEMBER (J)
VIRENDRA KUMAR GUPTA, MEMBER (T)**

Appearance :

For the Applicant : Learned Senior Counsel Mr. Saurabh
Soparkar a.w. Learned Counsels Mr. Tirth
Nayak and Mr. Aditya Raval
For the IRP/RP : Learned Counsel Ms. Nitu Chaturvedi
For the Respondent : Learned Counsel Mr. Kuldeep K Adesara
[in IA/28(AHM)2021]
For the Suspended Management: Learend Counsel Mr. Arjun
Sheth a.w. Learned Counsel Mr. Dev Shah

ORDER

[Per: VIRENDRA KUMAR GUPTA, MEMBER (T)]

IA/288 (AHM)2021

1. This application is filed by Gujarat Energy Transmission Corporation Limited under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") seeking direction to the Respondent to verify and admit the claim filed in Form-B of IBBI (CIRP) Regulations and to include the same in the Information Memorandum as per Section 29 of

IBC, 2016.

2. The facts, in brief, are that the M/s. Jyoti Power Corporation Pvt. Ltd. was admitted into CIRP vide order dated 05.02.2020 in an application filed under Section 7 of IBC, 2016. Interim Resolution Professional (in short "IRP") was appointed who made Public Announcement on 17.02.2020 calling upon the stakeholders of Corporate Debtor to submit their claims on or before 29.02.2020. The Committee of Creditors in its 1st Committee of Creditors meeting dated 16.03.2020 resolved to replace the IRP. The Adjudicating Authority vide its order dated 26.06.2020 confirmed the appointment of Mr. Pradeepkumar Kabra as Resolution Professional (in short "RP").
3. Learned Counsel for the Applicant submitted that the Applicant came to know about the public announcement for submission of claim after the last date of submission of claim i.e., 29.02.2020. The Resolution Professional informed the initiation of CIRP to the applicant on 14.07.2020. Thereafter, the applicant informed to the Resolution Professional vide dated 13.10.2020 that the claim be lodged by applicant after completion of risk purchase procedure. Finally, the Applicant filed the claim to the Resolution Professional on 18.01.2021 at

Rs. 26,77,88,385.96 as an operational debt. After filing of the claim, no communication was received by the Applicant from the Respondent. However, the Respondent on 02.02.2021 rejected the claim of the Applicant on the ground of delay. Learned Counsel of the Applicant referred the judgment of Hon'ble Madras High Court in the case of *T.R. Rajkumari v. Motion Picture Producers Combile Ltd. AIR 1942 Madras 349* wherein the Hon'ble High Court held that a creditor may come in and prove its debt at any time before final distribution of the assets but cannot disturb any dividend which is already paid. Thus, the claim of the Applicant was liable to be admitted.

4. Learend Counsel for the Respondent appeared and submitted that Applicant filed its claim after the approval of Resolution Plan by COC. It is submitted that as per sub-regulation (2) of Regulation 12 of IBBI (insolvency resolution process for corporate person) Regulations, 2016, a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the IRP or the RP, as the case may be, on or before the ninetieth day of the insolvency commencement date. However, the Applicant approached the RP much after the expiry of the last date for

submission of claim. The Respondent further contended that there are correspondences dated 14.07.2020 and 13.10.2020 with the applicant which makes it clear that Applicant was aware about the fact of appointment of RP and initiation of CIRP. Hence, the plea of the Applicant that Applicant was not aware about CIRP is factually incorrect. It is also submitted that Respondent vide letter dated 14.07.2020 informed the Applicant about the CIRP proceeding against the Corporate Debtor makes it crystal clear that Applicant had sufficient time to file the claim before the RP but Applicant chosen not to file the same in time. However, vide letter dated 18.01.2021 the Applicant filed the claim to the Resolution Professional, hence, the averments made by the Applicant vide letter dated 13.10.2020 that claim may be lodged by GETCO after the completion of risk purchase procedure so that crystallized amount could be claimed is baseless.

5. Learned Counsel for the RP also relied on various decisions in support of his view that after approval of Resolution Plan by COC, RP is not authorized to accept any claim from any creditors. Hence, this application is not maintainable and liable to be rejected.

6. We have considered the submissions made by Learned Counsels for both sides and perused the material produced before us. It appears that last date of submission of claim was 29.02.2020. However, as per the submission of the Applicant, came to know about the initiation of CIRP against the Corporate Debtor on 14.07.2020 and filed the claim on 18.01.2021 which is after the actual date of submission of claim. As the plan was approved by COC on 31.12.2020 and claim was filed by the Applicant on 18.01.2021 which is after the approval of resolution plan, however, the Applicant was having knowledge about initiation of CIRP on 14.07.2020 but the Applicant has negligently not filed its claim even having sufficient time to file the claim without any valid ground. It is a clear mandate of Regulation 12(2) of CIRP Regulations, 2016 that a creditor who fails to file the claim within stipulated time in the public announcement, may submit the claim with proof to the Interim Resolution Professional or Resolution Professional, as the case may be, at the most before the approval of resolution plan by COC. Moreover, law saves those who are vigilant about their right. Hon'ble NCLAT in a number of decisions hold that such belated claims need not be entertained as it would be

prejudicial to the interest other creditors and also violate sanctity of timelines prescribed under IBC, 2016. In view of the above observations, application is rejected.

IA 28 (AHM)2021

7. This application is filed by Resolution Professional under Section 30(6) of IBC, 2016 for approval of the Resolution Plan.
8. The facts, in brief, are that the Corporate Debtor was admitted into CIRP on 05.02.2020. Mr. Chandra Prakash Jain was appointed as IRP. The IRP made public announcement in prescribed Form-A on 17.02.2020 and constituted the COC comprising of Bank of India, State Bank of India, IDBI Bank and Kotak Mahindra Bank Ltd., having voting share of 46.92%, 15.02%, 37.47% and 0.59% respectively. The first meeting of COC was held on 16.03.2020 wherein the Committee of Creditors resolved to appoint Mr. Pradeep Kumar Kabra as Resolution Professional in place of IRP Mr. Chandra Prakash Jain with 100% voting share. EOI was published on 24.07.2020 in two newspapers viz "**Business Standard**" in English and "**Sandesh**" in Gujarati. The COC in its 4th meeting held on 31.07.2020 resolved to file an application for exclusion of lockdown period from 25.03.2020 to 30.06.2020 and

extension of CIRP period of further 90 days beyond 180 days. IA 463 of 2020 filed for extension and exclusion was allowed by this Adjudicating Authority on 08.09.2020 and the total period granted as extension and exclusion of 120 days. In the 5th meeting of COC held on 20.08.2020, the appointment of Forensic Auditor, RFRP, Evaluation Matrix was approved by COC. Thereafter, the revised list of creditors was prepared by the RP on 15.09.2020. In response to the publication of Form-G, four EOI was received out of which two prospective Resolution Applicants, namely, M/s Zaveri and Company Private Limited and M/s Khandwala Finstock Private Limited submitted their Resolution Plans. The COC in its 8th meeting held on 10.12.2020 approved the resolution plan of M/s. Zaveri and Company Private Limited with 100% voting share.

9. Learned Counsel on behalf of Applicant appeared and after narrating the above facts submitted that Applicant had received performance security of Rs. 10,00,00,000/- (Rupees Ten Crores Only) by way of RTGS on 02.01.2021 under sub-regulation (4A) of Regulation 36B of the CIRP Regulations, 2016 from Successful Resolution Applicant. It is submitted that pursuant to the request of the successful Resolution Applicant the said

amount is converted into Fixed Deposit having maturity date of 25.03.2021 with the Bank of India.

10. It is further submitted that Resolution Applicant has filed an affidavit under Section 29A of IBC, 2016 stating that Resolution Applicant is eligible to submit Resolution Plan. Resolution Professional has also concurred in this regard.
11. The Applicant has received valuation reports of the Corporate Debtor from the registered valuers wherein the Fair Value and Liquidation Value stands at Rs. 21,69,34,272/- and Rs. 15,06,91,349/- respectively.
12. Learned Counsel drew our attention to the Resolution Plan in detail. Based upon the contents of the Plan, it was submitted that Resolution Plan approved by COC complies with all the requirements of Section 30(2) of IBC, 2016 and r.w. relevant regulations made there-under.
13. We have considered the submissions made by the learned senior counsel for the Resolution Applicant and perused the material available on record. The amounts provided for the various stakeholders under the Resolution Plan are as under:

(Amount in Rs. Lakhs)

Sr. No.	Category of Shareholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the	Amount provided to the Amount
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					Plan#	Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21	-	-	-	-
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	68297.04	67813.77	2660.68	3.92
		Total [(a)+(b)]	68297.04	67813.77	2660.68	3.92
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21				
		(b) Other than (a) above: (i) who did not vote in favour of the resolution plan				
		(ii) who voted in favour of the resolution plan	16.08	16.01	0.32	2.00
		Total [(a)+(b)]	16.08	16.01	0.32	2.00
3	Operational Creditors	(a) Related party of the Corporate Debtor				
		(b) Other than (a) above: (i) Government	6203.50	5749.85	9.67	0.17
		(ii) Workmen & employees	0.00	0.00	2.00	** if any
		(iii) Operation Creditors (not included in I & ii)	194.64	194.67	0.33	0.17
		Total [(a)+(b)]	6398.17	5944.52	12.00	0.17
4	Other debts and dues		N.A.	N.A.	N.A.	N.A.
5	CIRP Costs		74711.29	73774.30	At Actual	100%
Grand Total			74711.29	73774.30	2673.00	

14. It is further noted that COC in its 8th meeting held on 10.12.2020 with 100% voting right approved the resolution plan submitted by Resolution Applicant. It is also noted that Resolution Applicant is not a related party of the Corporate Debtor. Resolution Applicant has also filed an affidavit regarding the eligibility to submit a resolution plan under Section 29A of IBC, 2016. It is also noted that application under Section 43(2), 66 and 67 of IBC, is pending. Resolution Applicant has also proposed the performance security amounting to Rs. 10,00,00,000/- by way of RTGS and pursuant to the request made by Resolution Applicant the said amount is converted into Fixed Deposit, having maturity date of 25.03.2021 with the Bank of India. We have also perused the contents of the resolution plan and all documents/compliances certificates as brought on record to meet the requirements of Section 30(2) of IBC, 2016 r.w. Regulations 36 to 39 of CIRP Regulations, 2016 which have been placed on record. The Resolution Plan complies with all these provisions. The total outstanding debt claims by all stakeholders stand at Rs. 73774.30 Lakhs and Resolution Applicant has committed for payment to them at Rs. 2673.00 Lakhs which amounts to

3.62% of total outstanding debt. The resolution plan also contains provisions for its effective implementation. The Monitoring Committee and Supervisory Committee as mentioned in the resolution plan shall be formed for effective implementation of the resolution plan. We as Adjudicating Authority are satisfied that the resolution plan so approved can be successfully implemented.

15. As far as relief and concessions are concerned, the applicants have sought various reliefs, however, we grant relief and concessions in the following manner and to this extent only:

- i. After the payment of the dues to the Secured Creditors, Unsecured Creditors, Operational Creditors, as per the resolution plan all the liabilities of the said stakeholders shall stand permanently extinguished after the approval of the resolution plan. We further hold that other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished.

- ii. All claims of Financial Creditors, Operational Creditors and other creditors including Government/Statutory Authorities, whether claimed during CIRP or not, shall stand extinguished after the approval of the resolution plan and no such liability shall survive hereafter.
- iii. On the effective date, all claims of the suspended management, erstwhile directors, and erstwhile shareholders shall stand permanently extinguished.
- iv. On the effective date and with effect from the appointed date, all encumbrances, security, interest, liens, pledge on the assets of the Corporate Debtor prior to the plan shall stand permanently extinguished on completion of procedural formalities as provided in Companies Act, 2013.
- v. For reliefs and concessions sought from the Government/Statutory Authorities, we direct the Resolution Applicant to approach the concerned Authorities who shall decide the issues under the respective statutes.
- vi. The Resolution Applicant shall be entitled to review, revise or terminate any appointments/agreements entered into

by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements/MoUs/contracts.

- vii. The RP shall complete the accounting entries to give effect to the resolution plan in the Books of Account as per the applicable Accounting Standards and provisions of the Companies Act, 2013.
- viii. The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the Resolution Applicant for proper running operations of the business of the Corporate Debtor.
- ix. The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution.
- x. The Resolution Applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtained the necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 or within such period as

provided for in such law, whichever is later, as the case may be.

- xi. All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the resolution plan as regard to the restructuring of capital shall be binding on them. This order shall be treated as evidence of compliances of all formalities as may be required in this regard under the provisions of the Companies Act, 2013.
- xii. On the effective date and with effect from the appointed date, the entire existing share capital of the Corporate Debtor shall stand extinguished without any payment (including any cancelled value of the said equity shares or preference shares) to shareholders of the Corporate Debtor holding such existing share capital. The Resolution Applicant would be entitled to issue new equity share capital in accordance with the provisions of Companies Act, 2013 r.w. rules and regulations made there-under.
- xiii. We further hold that avoidable transactions in the form of preferential or undervalued or extortionate credit and fraudulent transactions pending on the date of approval

of plan may be pursued by the Resolution Applicant if it is so decided and recovery proceeds, if any, shall be distributed among all stakeholders in terms of provisions of Section 53 of IBC, 2016.

- xiv. Relief with respect to the revocation of power of authority given by corporate debtor for pursuing the matters before the various forums and execute the documents on behalf of the corporate debtor prior to initiation of CIRP, the Resolution Applicant/ Corporate Debtor has liberty to revoke the same as per law.
- xv. Relief with respect to the any cheque negotiable instrument, PDC cheque or any bond issued by the corporate debtor before initiation of CIRP, the resolution applicant has also right to terminate the aforesaid instruments.
- xvi. In respect to the relief and concessions for business permit, liscence or approval which are required to run the business of corporate debtor which have already expired or may expire during implementation, the resolution applicant has right to approach the appropriate authorities for extension/renewas/ approval for the

aforesaid purpose and appropriate authority shall consider the request of the corporate debtor under the applicable provisions of law.

- xvii. In the resolution plan, it has been provided that right of creditors to proceed against personal guarantees or other third party guarantees for security obtained by the Banks and Financial Creditors from the promoters or third party shall be binding on such guarantors and such guarantors will not have a right of subrogation against the Corporate Debtor. We confirm this clause and hold that there will not be any right of subrogation against the Corporate Debtor and such Financial Creditors shall be at liberty to invoke such guarantees independently irrespective of approval of resolution plan.

16. Apart from the above observations and directions, it is further directed that:

- i. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- ii. The order of moratorium dated 05.02.2020 passed by this Adjudicating Authority under Section 14 of I&B Code,

2016 shall cease to have effect from the date of passing of this order.

- iii. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).
- iv. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

17. Accordingly, IA/288 (AHM)2021 is rejected. IA 28 (AHM)2021 is allowed in terms indicated above. Thus, both IAS stand disposed of.

18. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Dated this the 14th day of October, 2021

Rajeev K Sen/Stenographer