

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

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

CP (IB) No.148/KB/2018 alongwith CA(IB)1819/KB/19

In the Matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;;

-And-

In the Matter of

An application under section 30(6) read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 for submission of Resolution Plan read with regulation 49(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

-And-

In the matter of:

State Bank of India has been constituted having under State Bank of India Act, 1955 having its registered office at State Bank Bhawan, 14th floor, Corporate Centre, Madame Cama Road, Nariman Point, Mumbai, Maharashtra-400021;

... Financial Creditor

-Versus-

In the matter of:

M/s. Tantia Constructions Limited, registered under the Companies Act, 1956 having its registered office at Block DD-30, Sector-I, Salt Lake City, 7th floor, Kolkata- 700 064; L74210WB1964PLC026284;

.... Corporate Debtor

-And-
In the matter of:

Mr. Kshitiz Chhawchharia, Resolution Professional of
Tantia Constructions Limited, having his office at C/o-
B. Chhawchharia & Co.8A & B, Satyam Towers, 8, Alipore
Road, Kolkata- 700 027;

Counsel appeared:

- | | | |
|-------------------------------------|---|-------------------------|
| 1. Mr. Deep Roy, Advocate |] | For the R.P. |
| 2. Mr. Shwetank Nigam, Advocate |] | |
| 3. Mr. Kshitiz Chhawchharia |] | Resolution Professional |
| 1. Mr. Santanu Chatterjee, Advocate |] | Income-Tax Authority |

Date of Pronouncement of Order: 24.02.2020

ORDER

Per Shri M.B.Gosavi, Member(J)

State Bank of India - the Financial Creditor filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **M/s. Tantia Constructions Limited** - the Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor on a ground that the Corporate Debtor committed default in paying the financial debt of Rs.213,90,70,549/-.

2. This authority by order dated 13.03.2019 admitted the corporate debtor in CIRP. One, Mr. Kshitiz Chhawchharia having registration no. IBBI/IPA-001/IP-P00358/2017-18/10616 was appointed as the Interim Resolution Professional. On 18.03.2019, the IRP made public announcement of CIRP of the corporate debtor. He called upon the creditors of the corporate debtor to submit their claims with the proof. He received claims from 16 financial creditors and some of the operational creditors. He constituted the CoC consisting of all 16 financial creditors.

gd

Sch

3. On 11.04.2019, 1st CoC meeting was held. In that meeting itself, the appointment of IRP was confirmed as the RP. RP on the basis of the financial statement of the corporate debtor and the assets the corporate debtor having, prepared Information Memorandum. On 11.06.2019, RP published the notice calling upon the Expression of Interest/ Resolution Plan from intended resolution applicants. In pursuant thereto, RP had received Expression of Interest from Consortium of M/s. EDCL Infrastructure Ltd. & Upendra Singh Constructions Pvt. Ltd., Kaushna Infrastructure Development Corporation Ltd. and some Walt Projects Private Ltd. However, in the process of CIRP, only one Resolution Applicant stayed in the race, i.e. Resolution Applicant, EDCL Infrastructure Ltd.

4. On 08.09.2019, the CIRP period of 180 days was completed. However, this authority extended the same at the request of the RP and CoC for 90 days.

5. During CIRP, the members of the CoC held 11 meetings. They considered the resolution plan that was submitted by EDCL Infrastructure Ltd. The members of Committee of Creditors discussed the legal and economic viability of the Resolution Plan. The CoC approved and accepted the resolution plan for the corporate debtor submitted by M/s. EDCL Infrastructure Ltd. by 74.34% votes. The said plan is submitted before us for approval as per section 31(a) of I&B Code.

6. Section 31 of IBC requires this authority to approve the resolution plan, approved by the CoC, as per section 30(4) of IBC provided the plan meets the requirement, as referred to in section 30(2) of IBC. So, by keeping before our sight the provisions of section 30(2) of the IBC, we have examined the resolution plan, submitted for our approval.

Sd

Sd

7. Sub-section (2) of Section 30 of I&B Code states that the resolution plan must comply the following requirements:

- a) The resolution plan must provide for the payment of resolution process cost in priority to the payment of other debt of the operational creditor.
- b) It must have provision for payment of debt of operational creditor subject to provision of section 53 of IBC.
- c) The plan must state the modalities of the management of the affairs of the corporate debtor, after approval of the plan.
- d) The plan must provide mechanism for supervision and implementation of the resolution plan.
- e) The resolution plan should not be in contravention of any provision of law for the time being in force.
- f) The resolution plan must be in conformity with the other requirements specified by the Board, which are stated in Regulation 37 and 38 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

8. We have examined the resolution plan submitted for our approval, in the light of above provisions of the law. We note that in this resolution plan, the provision is made for payment of resolution cost in clause 12.3.1 and 24.1 (page 27,55, 82 & 101) of the plan. Clause no.24.2 (page 55 and 110) of the plan shows that provision for payment of the debt of the operational creditor and dissenting financial creditor is also made. Clause nos.14.2, 22 and 24.3 of the plan (page 34, 53, 55, 89, 108 and 110) state how the management of the corporate debtor shall be done after the approval of the resolution plan.

9. It is noticed that in the plan, provision is made of certain sum of money to pay the operational debts. We make it clear that while making distribution of the said amount, the Monitoring Committee shall observe provisions of

Sd/

Sd/

section 53 of IBC and will pay the amount in proportionate to each of the operational creditors. We also make it clear that in case, the RP/Monitoring Committee receives some contribution from the directors of the corporate debtor or from related parties upon conclusion of enquiry of sections 43,45,50 and 60 of IBC, that amount shall be paid to each creditor in proportionate of its dues.

10. In this case, the CoC has approved the plan. We do not wish to challenge CoC's commercial wisdom used while approving the plan. If we do so, then we will be leaving with no option but to pass order of liquidation of the corporate debtor and such order would be in conflict with object of the Code, i.e. Resolution is the first and liquidation is later.

11. Resolution Professional has certified that the plan does not contravene any provisions of law. Upon our perusal of the resolution plan, we are also of the considered opinion that the plan does not contravene any provisions of law for the time being in force. Successful Resolution Applicant filed affidavit stating that it is not disqualified under provisions of section 29A of IBC (related party of the corporate debtor). It is settled law that this authority cannot sit in appeal over the commercial decisions of the CoC being taken while approving the plan. This plan is approved by more than 74% votes. Hence, we approve the resolution plan of M/s. EDCL Infrastructure Ltd. for the corporate debtor, M/s. Tantia Constructions Ltd. by following order. The RP submitted compliance certificate as required under Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

ORDER

The Resolution Plan of **M/s. EDCL Infrastructure Ltd.**, which is approved by the CoC with more than 74% voting share is hereby approved under provisions of section 31(1) of the Insolvency & Bankruptcy Code, 2016,





which will be binding on the **Corporate Debtor- M/s. Tantia Constructions Ltd.**, its employees, members, creditors, coordinators and other stakeholders involved in the Resolution Plan.

2. In the plan, some exemptions of statutory dues are claimed but since those statutory dues are the operational debt within the meaning of IBC and provision is made to make payment of operational debt, we allow that exemptions.

3. The revival plan of the company in accordance with approved Resolution Plan shall come into force with immediate effect subject to payment of government dues and taxes.

4. The moratorium order passed under Section 14 shall cease to have effect.

5. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.

6. Before parting with, it appears to us that we have to endorse our appreciation to the work rendered by the Resolution Professional, Mr. Kshitiz Chhawchharia for seeing that the Resolution Plan is approved by the CoC so as to give a rebirth to the dying company.


7. Accordingly, CP (IB) No.148/KB/2018 and CA(IB)1819/KB/19 stand disposed off.


8. CA(IB) No.1840/KB/2019, I.A.No.183/KB/2020 and IA(IB) 304/KB/2020 are to appear in the list on 24.03.2020.

Sd

Sd

Certified copy of the order may be issued to all the concerned parties,
if applied for, upon compliance with all requisite formalities.


(Virendra Kumar Gupta)
Member (T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 24th February, 2020