

**NATIONAL COMPANY LAW TRIBUNAL
BENCH-II AT HYDERABAD**

IA No. 821 of 2020
In
C.P.(IB)NO.652/7/ HDB/2018

*Application under Section 30 (6) and Section 31 of IBC, 2016 R/w
Regulation 39 (4) of IBBI (IRPCP) Regulations, 2016 R/w Rule 11 of
NCLT Rules, 2016*

IN THE MATTER OF

M/s Thirdwave Mercantile Company Pvt Ltd

Versus

M/s SQL Star International Limited

Between:

Mr. Sunit Jagdishchandra Shah
Resolution Professional of
M/s SQL Star International Limited
(CIN: L72200TG1987PLC048874)
H No. 1-11-252/11/A/1, Rama Mansion
4 Motilal Nehru Nagar, 1st floor Begumpet
Hyderabad 500016.

...Applicant

Date of order: 27.08.2021

Coram:

Shri Madan B Gosavi, Hon'ble Member (Judicial)
Dr Binod Kumar Sinha, Hon'ble Member (Technical)

Appearance:

For Applicant: Ms. MS Mano Ranjani, Advocate

PER: BENCH

1. The present Application bearing **IA No. 821/2020** is filed by the Resolution Professional under sections 30 (6) and 31(1) of Insolvency & Bankruptcy Code, 2016, R/w regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016, seeking





approval of resolution plan of **M/s Infinia Fabrics Private Limited** as duly approved by the Committee of Creditors.

2. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order on 08.07.2019 and the Applicant was appointed as Interim Resolution Professional (IRP). The Committee of Creditors (CoC) comprising of sole Financial Creditor / **Thirdwave Mercantile Company Private Limited**, in its 1st Meeting had confirmed the Applicant as Resolution Professional (RP). The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.
3. The CIRP period of 180 days ended on 23.08.2020 considering exclusion of covid induced lockdown period from 23.03.2020 to 07.06.2020. Subsequently after granting 90 days extension and further exclusions, the CIRP period came to end on 19.02.2021. A total of 12 CoC meetings were convened by the Resolution Professional.
4. During the period of CIRP, only one Expression of Interest was received from **M/s Infinia Fabrics Private Limited** which was deliberated in the 6th Committee of Creditors (CoC) meeting held on 21.08.2020. It is submitted, since the Corporate Debtor had no liquid assets the CoC finalised the revised plan dated 19.03.2020 submitted by **M/s Infinia Fabrics Private Limited** without going through the process of Evaluation Matrix.

It is further stated that the following are the current status of cases filed by and against the Corporate Debtor:

Proceedings initiated by	Court/ Authority	Related Law/ regulation	Parties	Notice received for amount Rs.in lacs	Contingent liability
CTO, Madhapur	Sales Tax Department	The Andhra Pradesh General	CTO Madhapur Circle	10.82	**



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Circle Hyderabad		Sales Tax Act, 1957	Hyderabad VS.SQL Star International Ltd		
Assistant Commissioner Service Tax	Central Board of Excise and Customs Dept (Service Tax)	Service Tax Act	Asst. Commissioner Service Tax Vs SQL Star International Limited	2,262.33	**

** *Suspended members of the Board of Corporate Debtor were non-cooperative and have not provided any financial and other data of the Corporate Debtor required for smooth conduct of the CIRP. The above information is as extracted from the annual reports for FY 2010-11 and 2011-12 available online with the Ministry of Corporate Affairs.*

6. The plan was approved by the CoC with 100% votes in favour of the Resolution Plan submitted by **M/s Infinia Fabrics Private Limited** under Section 30(4) of IBC and the Applicant further submits that all the requirements envisaged under the Code and Rules/Regulations made there under have been met.

7. **CONTOUR OF THE RESOLUTION PLAN:**

(A) The Resolution Plan is submitted by **M/s Infinia Fabrics Private Limited** (herein after referred to as **Resolution Applicant/IFIPL**). It is a Company incorporated on 25.01.2018 under the Companies Act, 2013 having Registered Office in Ahmedabad and is registered with RoC (Ahmedabad). The Company is engaged in cloth and fabrics industry, led by Mr. Mukesh Sharma, Ms. Savita Sharma and Mr. Anshul Sharma, the promoters.

(B) The CoC comprised of the following financial creditors and the distribution of voting share among them is as under:-

Sl. No.	Name of Creditor	Voting Share)%(Voting for Resolution Plan)Voted for / Dissented / Abstained(
1.	Thirdwave Mercantile Company Pvt Ltd	100	Voted for Approval of Resolution Plan

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(C) The Resolution Plan dated 19.05.2019 for an amount of Rs. Rs.15,04,970/- provided for the stake holders under the Resolution Plan is as under:-

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount 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	-	-	-	-
		Total[(a) + (b)]	-	-	-	-
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	2,17,00,000	2,17,00,000	10,00,000	100
		Total[(a) + (b)]	2,17,00,000	2,17,00,000	10,00,000	100
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:	-	-	-	-
		(i) Government	9,04,52,273	9,04,52,273	-	-
		(ii) Workmen & Employees Dues	2,56,531	2,56,531	4970	1.94
		(iv) other	6,25,893	6,25,893	-	-
		Total[(a) + (b)]	9,13,34,697	9,13,34,697	4970	1.94
4	Other debts and dues					
Grand Total			11,30,34,697	11,30,34,697	10,04,970	



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*If there are sub-categories in a category, please add rows for each sub-category.
Amount provided over time under the Resolution Plan and Includes estimated value of non-cash components. It is not NPV.]

(D) TERM OF THE RESOLUTION PLAN AND IMPLEMENTATION SCHEDULE:

Particulars	Time from effective date
Upfront cash payment (Initial/Down payment) Rs.4970/-	Within 30 Days of effective date
Payment of Rs.5,00,000/- for Corporate Insolvency Resolution Process Costs	Within 30 Days of effective date
50% Payment of Rs.5,00,000/- to Financial creditor	Within 1 year
Balance 50% payment of Rs.5,00,000/- to Financial Creditor.	Within 2 years

(E) PROPOSAL FOR EXISTING SHAREHOLDERS:

As per the Resolution Plan, the existing equity shares i.e. 3,31,82,032 Equity Shares of Rs. 10/- each (Share capital of Rs. 33,18,20,320/-) shall stand cancelled without any further act or deed as per regulation 37(ca) of IBBI (Insolvency Resolution process for corporate person) Regulations. Such Share Capital shall stand extinguished without any payment (including any cancelled value of the said equity shares) to the shareholders of the Corporate debtor holding such existing share capital.

(F) Management of Corporate Debtor

The Resolution Plan proposes a Committee consisting of the Board of Directors of Resolution Applicant, Resolution Professional and Board of Directors of Financial Creditor for the supervision of the Corporate Debtor till the implementation and execution of the Resolution Plan. However, post the transfer date, the management of the Corporate Debtor shall be handed over to the Board of Directors of the Resolution Applicant and that the existing team of other business of the Resolution Applicant as well as the KMPs of the Corporate Debtor shall be



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involved in the functioning as well as restarting of the commercial operations of the Corporate Debtor.

(G) Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:-

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (herein after referred to as Regulation) and has submitted his Form H under Regulation 39 (4). It is submitted that the Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the Resolution Applicant is not ineligible under Section 29A of the Code. That the liquidation value and fair value were also placed before the CoC in order to ensure the conformity of the plan with respect to the provisions of code. The fair value and Liquidation value are nil as per Form-H.

8. Further the Learned Counsel for the Applicant stated that the Resolution Plan takes care of the interest of the stakeholders concerned which includes Financial Creditors, Operational Creditors and payment of CIRP costs is being taken care in priority to payment to the other creditors.

We heard the Counsel for Applicant. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code in the following manner:

- A. Plan provides for the priority payment of CIRP costs estimated to the extent of Rs. 5 lakhs that is proposed to be infused by the Resolution Applicant towards the same. Any change in the CIRP cost would be proportionately adjusted against the payments to be made to Secured Financial Creditors so that the overall financial obligation of the Resolution Applicant remains unchanged.



B. To pay the amount due to Operational Creditors of the Corporate Debtor in the manner indicated supra. It is submitted that the information memorandum did not specify the liquidation value and is presumed to be NIL as no data was available for the Resolution Professional. Thus, dues to the operational creditors as required under Section 30(2)(b) of the Code read with regulation 38(1) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for the Corporate Persons) Regulations, 2016 is taken as Nil and the Resolution Applicant does not propose any amount for Operational Creditor. Further, if the Liquidation value of the Operational Creditors is more than the amount proposed by the Resolution Applicant, the remaining specified amount will be borne by Financial Creditors/ adjusted from the amount payable to Financial Creditor. However, the Resolution Plan has earmarked for payment of 2% of the debts to employees of the Corporate Debtor.

10. The Resolution Applicant has inter-alia, sought certain directions to the statutory and regulatory bodies to grant necessary approvals.

11. The Resolution Applicant proposed to appoint Directors to the Board of Directors as stated above in terms of Section 30 (2) (d). The Plan also provides for the implementation and supervision of the Resolution Plan. The Resolution Plan has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of Regulation 38 of the Regulations.

- (a) The payment due to operational creditors will be made in priority over Financial Creditors (Regulation 38 (1) (a)).
- (b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the



stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38 (1A).

- (c) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38 (1B).

12. In view of the ruling of Hon'ble Apex Court in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors (MANU/SC/1577/2019)**, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. The Resolution Plan has been approved by the CoC with 100% votes in favour of it. For better appreciation we refer to para 67 of the Judgement of Hon'ble Supreme Court, which is reproduced below:-

“ 67: A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by the successful resolution applicant.

It is further held in the same judgement that **“the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC.** As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved as held in para 25 of the said judgement.

13. Further, in **K. Sashidhar v. Indian Overseas Bank & Others (In Civil Appeal No. 10673/2018)** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per Section 30 (6) of the Code, it is imperative for the Resolution Professional to submit the



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same to the Adjudicating Authority. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less.

14. The Hon'ble Court has further held at para 35 of the said judgement that ***the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements.***
15. The Applicant/Resolution Professional has submitted that the Resolution Applicant has sought certain waivers and reliefs. We are, however, not inclined to grant such concession or waivers. The Resolution Applicant needs to approach the authorities concerned for permits, if required, and the same will be considered by the authorities concerned in accordance with law.

An affidavit dated 04.08.2021 is filed by the Resolution Professional stating that Rs. 1,75,250/- which includes EMD amount of Rs. 75,250/- already paid by the Resolution Applicant to be considered as performance security. The same has been accepted by the CoC vide its letter of intent dated 26.08.2020.
17. In the light of above and settled position of law, the instant Resolution Plan meets the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law.



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ORDER

18. The Resolution plan submitted by **M/s Infinia Fabrics Private Limited** ("Resolution Applicant") for M/s SQL Star International Limited (the Corporate Debtor) annexed to the Application is hereby approved. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
19. It is clarified under the Insolvency and Bankruptcy Code, 2016, all crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.
20. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. As regards to the reliefs sought, the Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful.
21. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.



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22. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in para 7 (C) supra.
23. The moratorium under Section 14 of the Code shall cease to have effect from this date.
24. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.
25. The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.



The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.

(Dr Binod Kumar Sinha)
Member (Technical)

(Madan B. Gosavi)
Member (Judicial)

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Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench

19/21

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस नंबर
CASE NUMBER... Cp(18)NO. 652/7/HDB/2018
निर्णय का तारीख
DATE OF JUDGEMENT... 27.08.2021
प्रति केस नंबर
प्रति केस नंबर
COPY MADE READY ON... 01.09.2021