NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH,
COURT-1 MUMBAI

1. I.A 1067/2020

M.A. 3638/2019

IN

C.P.(IB)-593(MB-I)/2018

CORAM: SMT. SUCHITRA KANUPARTHI, MEMBER (J)

SHRI V. NALLASENAPATHY, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **21.07.2020**

NAME OF THE PARTIES: L & T Infrastructure Finance Company Ltd.

v/s.

Maharashtra Vidyut Nigam Pvt Ltd.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

MA 3638/2019

Application allowed vide separate orders.

IA 1067/2020

Heard Mr. Ashish Pyasi, the Counsel for Applicant and Heard Mr. Ayush Rajani, the Professional representing Resolution Professional.

IA No. 1067/2020 allowed vide separate orders.

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V NALLASENAPATHY
Member (Technical)

SUCHITRA KANUPARTHI
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO.1, MUMBAI BENCH

MA 3638/2019

In

C.P. (IB) 593/MB/2018

Under Section 30(6)of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Surya Pratap Gupta

…Resolution Professional / Applicant

And

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

L&T Infrastructure Finance Company Limited

… Financial Creditor

V/s

Maharashtra Vidyut Nigam Private Limited

… Corporate Debtor

Order Delivered on : 21-07-2020

Coram: Hon'ble Member (Judicial): Smt Suchitra Kanuparthi

Hon'ble Member (Technical): Shri V. Nallasenapathy

For Resolution Professional: Advocate Khushboo Shah Rajani a/w. Mr.Ayush J. Rajani (Chartered Accountant) i/b. AKR Advisors LLP

ORDER

Per: V. Nallasenapathy, Member (Technical)

1. This Miscellaneous Application (MA) No. 3638/2019 is filed by Mr Surya Pratap Gupta, Applicant Resolution Professional, under section 30(6) ofInsolvency and Bankruptcy Code, 2016 (I&B Code) in C.P. (IB) 593/MB/2018 which was admitted u/s 7 of I&B Code vide order of this Tribunal dated 14.02.2019,initiating Corporate Insolvency Resolution Process (CIRP) against Maharashtra Vidyut Nigam Private Limited,the Corporate Debtor.

2. The Resolution Professional (RP) has filed this application under Section 30(6) of the I&B Code, seeking order for approval of the resolution plan, as approved by the members of Committee of Creditors (CoC), for resolution of the Corporate Debtor submitted by Shanti G. D. Ispat and Power Private Limited (Resolution Applicant).

3. The Applicant was appointed as Resolution Professional in the 1stCoC meeting and the said appointment was confirmed by this Tribunal vide its order dated 26.03.2019.

4. The Resolution Professional invited three Expression of Interests (EoI). The first EoI was advertised vide publication dated 30.04.2019. The second EoI was advertised vide publication dated 27.05.2019 and the third EoI was

advertised vide publication dated 11.09.2019. Accordingly, the last date for submission of the EoI was 26.09.2019 and for submission of Resolution Plan was 11.10.2019.

5. The CIRP period for the Corporate Debtor was extended by 90 days vide order of this Tribunal dated 09.08.2019, accordingly, the CIRP period for the Corporate Debtor ended on 11.11.2019. The Applicant filed the present application on 11.11.2019.

6. After the publication of first EoI, the Resolution Professional received four EoIs along with refundable deposits. The prospective Resolution Applicants (RAs) were Alchemist ARC, Prudent ARC, Greta Industries PTE Limited and Shanti G. D. Ispat& Power Pvt. Ltd. However, later on Greta Industries PTE Limited decided to withdraw from the process and the remaining three RAs sought further time for submission of resolution plan and therefore the RP published second EoI. Eventually, after the publication of third EoI, only Shanti G. D. Ispat and Power Private Limited submitted a resolution plan. After multiple rounds of negotiations and subsequent revisions to the resolution plan, the final Resolution Plan dated 07.11.2019 submitted by Shanti G. D. Ispat and Power Private Limited was put for physical voting in the 14thCoC meeting.

7. The Resolution Plan of the Resolution Applicant - Shanti G. D. Ispat and Power Private Limited, was approved by 100% members of CoC voting in favor of the resolution plan.

8. The Resolution Professional has submitted his Form H under Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Resolution Professional has certified that the resolution plan complies with all the provisions of the I&B Code, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

9. The Successful Resolution Applicant,Shanti G. D. Ispat and Power Private Limited, has submitted an Affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The Resolution Professional has further certified that the said Resolution Plan has been approved by the CoC in accordance with the provisions of the I&B Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

10. The manner of voting by the CoC is as per the following table:

Sr. No.	Name of the Creditor	Percentage of voting share (%)	Voted Assent	Voted Dissent	Voted Abstained

1.	Yes Bank Limited	5.81%	5.81%	_	_
2.	L&T Infrastructure Finance Co. Ltd.	25.06%	25.06%	_	_
3.	Axis Bank	27.36%	27.36%	_	_
4.	State Bank of India	24.53%	24.53%	_	_
5.	Punjab National Bank	12.68%	12.68%	_	_
6.	IDBI Bank	4.56%	4.56%	_	_
	TOTAL	100%	100%	_	_

11. The Resolution Professional has received ₹10,00,000/- (Rupees Ten Lakh Only) from the Resolution Applicant as and by way of Earnest Money Deposit (EMD).

12. The Resolution Professional has confirmed that he has received Performance Security in the form of Performance Bank Guarantee of ₹5,00,00,000/-(Rupees Five Crore Only) from the Resolution Applicant as required and to the satisfaction of CoC.

13. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the I&B Code and Regulations made thereunder.

14. The Resolution Professional appointed two registered valuers as per the Regulation 27 of the CIRP Regulations to determine fair value and liquidation value of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulations. The liquidation value of the corporate debtor as arrived at by the registered valuers appointed by Resolution Professional is ₹25,19,50,000/-(Rupees Twenty FiveCrore Nineteen Lakh Fifty Thousand Only) and the fair market value is ₹42,09,20,000/- (Rupees Forty Two Crore Nine Lakh Twenty Thousand Only).

Salient features of the Resolution Plan:

15. The Resolution Plan provides that the term of the Resolution Plan shall be from the Effective date until the Completion Date. The Resolution Plan defines "Effective Date" as the date on which this Resolution Plan shall come into effect on the receipt of the certified copy of the approval of this Plan from this Tribunal and "Completion Date" means the date on which all measures specified in Part F of this Plan have been implemented, being within 12 months from the Effective Date, i.e. after the complete payment of Rs. 25.30 crores to the stakeholdersor such other date as may be mutually agreed between the Resolution Applicant and the members of the CoC who consent to this Resolution Plan. However, any approvals or permission required by the resolution applicant under any law for time being in force, shall be obtained from relevant statutory and regulatory authorities in time specified under the law, but not later than 12 months from the effective date.

16. The Resolution Applicant proposes an aggregate Consideration of ₹25,30,00,000/- (Rupees Twenty Five Crores and Thirty Lakhs only) to all stakeholders under the Resolution Plan, out of which ₹5,30,00,000/- (Rupees Five Crores and Thirty Lakhs only) shall be paid within 15 days from the effective date and balance₹20,00,00,000/- (Rupees Twenty Crores) shall be paid in 4 quarterly installments of ₹5,00,00,000/- (Rupees Five Crores) each.

17. The Resolution Applicant is a Private Limited Company, having CIN- U23201CT1994PTC008192 incorporated on 18/03/1994 under the Companies Act 1956 and having its registered office at 504, 4TH Floor, Rajeev Gandhi Complex, Balashram Compound, Kutchery Chowk Raipur-492001. The Company is having 15 MW Biomass based power plant at village: Madhua, Dist: Janjgir, Champa, Chhatishgarh which is running successfully since 2013. The Company is having 20 years of Power Purchase Agreement (PPA) for the sale of its entire generation of power with State Government of Chhattisgarh. The Company has made total revenue of Rs.75.28 crores and Rs.71.82 crores respectively for the FY 2017-18 and FY 2016-17 on a standalone basis. The standalone net-worth of the company stood at Rs.40.82 crores and Rs.36.62 crores for the FY 2017-18 and FY 2016-17 respectively. The Company is using rice husk as the major fuel for the generation of electricity. In addition to rice husk, coal is also used to the extent permitted as a support fuel.

18. The Resolution Applicant proposes following payments to various stakeholders under the Resolution Plan:

Sr. No.	Description	AmountAdmitted (in Rupees)	Payment Under Plan (in Rupees)
1.	IRP Costs	Nil	Nil
2.	Secured Financial Creditor		(80% of amount to lender)
	Yes Bank	22,56,00,000	20,24,00,000
3.	Unsecured Financial Creditor		(20% of amount to lender)
	L&T Infrastructure Finance Co Ltd	97,34,00,000	1,34,59,751
	Axis Bank	106,30,00,000	1,46,98,631
	State Bank of India	95,30,00,000	1,31,77,823
	Punjab National Bank	49,28,00,000	68,14,284
	IDBI Bank	17,71,00,000	24,49,511
4.	Operational Creditor	63,85,000	Nil
5.	Workmen & Employees	Nil	Nil
6.	Any Other liability, including Contingent liabilities	-	Nil
	Total	389,12,85,000	25,30,00,000

19. The Resolution Plan proposed that the Insolvency Resolution Process Costs (IRPC) are being met from the regular cash flows of the Company. Hence the IRPC is shown as NIL.

20. The Resolution Plan proposed that the Operational Creditors shall be paid as Nil. However, on our persuasion, the Resolution Applicant improved its offer for payment to the Operational Creditors and agreed to a sum of ₹89,000/- (1.38% of ₹63,85,000/-) to be paid to Operational Creditors

towards settlement of their claims, in line with the payment of 1.38% to the unsecured financial creditors. It is further directed that the Resolution Professional and the Resolution Applicant shall ensure that the amount payable to Operational Creditors under resolution plan must be paid in accordance with Section 30(2) of the I&B Code.

21. That the admitted claims of employees and workmen are NIL. However, in the event that the RP receives any claim from Workmen & Employees, from the date of approval of this plan by the CoC till the Completion date, the same shall be deemed to be fully admitted for the purposes of this Resolution Plan and the claim of the Workmen & Employees shall be paid out of the total consideration to all stakeholders as laid out in this Resolution Plan.The amount due to the workmen and employees under the Resolution Plan shall be given priority in payment over financial creditors as per Regulation 38(1) of the CIRP Regulations.

22. The Resolution Plan proposes that any liabilities, claim and debts, both current and future, arising out of the on-going litigations, shall not be a liability on the Resolution Applicant in the event of adverse outcome. Further, the Resolution Professional may not have received claims for certain liabilities of the Corporate Debtor as on the Insolvency Commencement Date whether arising on account of contractual obligation or otherwise and which are not identified as liabilities/contingent in financial statements provided in information memorandum. Such liabilities shall be called as “Unidentified Potential Liabilities”. Without prejudice to the rights of the Corporate Debtor to challenge the validity

of any claims relating to such Unidentified Potential Liabilities, such Unidentified Potential Liabilities shall stand extinguished and fully discharged without any monetary payment. Also, any remaining claims and debts and other dues from the Corporate Debtor to any person for the period prior to the Effective Date, that is not expressly provided for in the Resolution Plan, including any claims from third parties relating to any contract entered into by the Corporate Debtor including damages on account of termination of such contracts pursuant to this Resolution Plan or claims which are in the nature of recovery, disgorgement, penalty, fees or recoupment of loss, shall be deemed to have been extinguished upon approval of this Resolution Plan, without any liability whatsoever on the Corporate Debtor.

23. The Resolution amount of ₹25,30,00,000/- will be funded by the internal accruals of the Resolution Applicant. The Resolution Applicant also has the right to arrange funding from various other sources including but not limited to investors, banks and financial institutions, issuance of Debt Instruments, etc. or to alter the funding mix and capital structure. The Resolution Applicant also proposes to fund via Equity / Preference Share will be funded in the form of debt / quasi debt / family loans etc. The Resolution Applicant has confirmed that it has sufficient funds to make the Resolution payments and/or has the ability to raise such amounts from other sources also.

24. The Resolution Applicant has noted that, upon approval of the Resolution plan, the business of the Corporate Debtor will require significant amount of capital expenditure for revival

and improvement/enhancement of efficiency of manufacturing units and for operating the plant at full capacity and additional working capital investment to revive the business and to reach a consistent reasonable level of production. Therefore, the Resolution Applicant under the Resolution Plan undertakes to incur capital expenditure of ₹5,00,00,000/- to improve the efficiency of the plant during the implementation period of 12 months.

25. The Resolution Plan provides that on the effective date all the shares of the Corporate Debtor shall be transferred in the favor of the Special Purpose Vehicle Company to be floated by the Resolution Applicant post approval of Resolution Plan by the NCLT. The Resolution Applicant shall create and/or continue pledge over existing equity pledged in favour of Yes Bank limited. The same shall be released upon receipt of total consideration along-with other security interest of Yes Bank limited. Further, there shall not be any change in authorized share capital of the Corporate Debtor.

26. On acquisition of the Corporate Debtor by the Resolution Applicant in accordance with the present Resolution Plan, the Resolution Applicant proposes that the workmen and employees of the Corporate Debtor will be employed by the Resolution Applicant on their suitability and as per operational requirements.

27. Even though the Resolution Applicant reserved their right to replace/remove existing employees to bring in operational efficiencies in the operations, the Resolution Applicant is directed to retain the employees to the extent possible.

28. The Resolution Applicant may also enter into appropriate agreements with the employees of the Corporate Debtor in respect of their terms of employment. We accept this proposal and further direct the Resolution Applicant to comply with all the Industrial, Labour and any other applicable laws in this regard.

29. Pursuant to approval of the Resolution Plan, the suspended Board of directors shall stand dissolved and the directors of the corporate debtor immediately prior to the completion date, shall be deemed to have resigned and shall vacate their office and the persons nominated by the resolution applicant shall be appointed as the directors of the Corporate Debtor. The reconstituted board of directors of the Corporate Debtor shall constitute of such number of directors as shall be determined by the Resolution Applicant and one director to be nominated by the Financial Creditors. Further, Resolution Applicant shall do necessary compliance with MCA and other concerned and applicable authorities as per applicable laws.

30. The Resolution Plan proposes to appoint a monitoring agency consisting of the Resolution Professional, one member of the CoC, which will be Yes Bank and one nominee of the Resolution Applicant.The Monitoring Agency shall manage the Corporate Debtor in trust and shall appoint the Resolution Professional to manage the day-to-day affairs of the Corporate Debtor under its supervision, until the full hand-over of assets of the Corporate Debtor including business records and all statutory records, tax filings, account books

and account records taken into custody by the Resolution Professional.

31. The Resolution Applicant has sought certain reliefs and concessions in the Resolution Plan. The said relief and concessions are mentioned under Clause '15' of the Resolution Plan annexed to the application. This bench is not inclined to allow any of the said reliefs and concessions prayed by the Resolution Applicant. Therefore, the resolution applicant may apply to the relevant regulatory authorities for said reliefs and concessions and the relevant authorities may consider it as per relevant applicable laws.

32. Any relief sought for in the Resolution Plan, where the contract/agreement/understanding/proceedings/actions/notice etc. is not specifically identified or is for future and contingent liability, is at this moment rejected.

33. The Resolution Applicant, on taking control of the Corporate Debtor, shall ensure compliance under all applicable laws for the time being in force.

34. We shall clarify here that the Resolution Applicant shall take over the Corporate Debtor with all its assets and liabilities as per terms of the approved Resolution Plan.

35. On perusal of the Resolution Plan, we find that the resolution plan has necessary provisions for its effective implementation.

36. The Resolution Applicant shall obtain the necessary approval required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.

37. We are satisfied that the Resolution Plan fulfils the mandatory requirements of Section 30 of the I&B Code and Regulation 38 & 39 of IBBI (CIRP) Regulations, 2016.

38. Given the above observations, we approve the resolution plan with modifications, as mentioned above, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the resolution plan.

39. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.

40. The Resolution Plan is approved as per directions above, under Section 31(1) of I&B Code. The MA 3638/2019 is accordingly allowed and disposed of.

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V. NALLASENAPATHY	SUCHITRA KANUPARTHI
Member (Technical)	Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

I.A. No. 1067/2020
in
MA 3638/2019
in
C.P. (IB) 593/2018

Under Section 60 (5) of the I&B Code, 2016

I.A. No. 1067/2020
Shanti GD Ispat and Power Private Limited
V/s
….. Applicant
Resolution Professional Of Maharashtra Vidyut Nigam Private Limited
... Respondent

MA 3638/2019

Surya Pratap Gupta,

The Resolutional Professional

……. Applicant

C.P. (IB) No. 593/NCLT/MB/2018

L & T Infrastructure Finance Company Limited
… Petitioner

V/s

Maharashtra Vidyut Nigam Private Limited
... Corporate Debtor

Order pronounced on : 21.07.2020

Coram:

Hon'ble Member (Judicial), Smt. Suchitra Kanuparthi

Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearance:

For the Applicant: Mr. Ashish Pyasi, Advocate

For the Respondent: Mr. Ayush Rajani, Representative of Resolution Professional

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This is an Application filed by the Resolution Applicant of the Corporate Debtor praying for extension of time in repayment schedule provided in the Resolution Plan submitted by it by extending the time for payment of Rs.5.30 Crores under the Resolution Plan within a period of 3 months instead of 15 days from the date of approval of the Resolution Plan and also permitting the Applicant to make the remaining balance payment in 4 quarterly instalments thereafter.

2. This Bench has today approved the Resolution Plan submitted by the Applicant herein by allowing the Misc. Application No. 3638 of 2019.

3. Para No. 16 of our order in MA No. 3638 of 2019, wherein the Resolution Plain is approved, read as below:-

> *"16. The Resolution Applicant proposes an aggregate consideration of Rs.25,30,00,000/- (Rupees Twenty Five Crores and Thirty Lakhs only) to all stakeholders under the Resolution Plan, out of which Rs.5,30,00,000/- (Rupees Five Crores and Thirty Lakhs only) shall be paid within 15 days from the effective date and balance Rs.20,00,00,000/- (Rupees Twenty Crores) shall be paid in 4 quarterly instalments of Rs.5,00,00,000/- (Rupees Five Crores) each"*

4. The above proposal of the Resolution Applicant was approved by this Bench in the above said order.

5. Now by this Application filed on 08.07.2020, the successful Resolution Applicant seeks for extension of time as below:

a. The initial payment of Rs.5.30 Crores (wrongly mentioned in the application as 5.00 Crores) will be paid in 3 months from 21.07.2020 instead of 15 days as proposed in the Resolution Plan.

b. After the payment of Rs.5.30 Crores as above, the remaining balance of Rs.20.00 Crores will be paid in four quarterly instalments of Rs.5.00 Crores each.

6. It is seen that the successful Resolution Applicant effectively seeks 75 days extra time for payment of the whole amount of Rs.25.30 Crores.

7. Heard the Counsel for the Applicant as well as the professional representing the Resolution Professional. The Professional representing the Resolution Professional submitted that the successful Resolution Applicant is trying to gain time and vehemently opposed the application saying that the decision of the COC cannot be diluted by allowing this interlocutory application filed by the successful Resolution Applicant who is seeking change in the timelines for implementation of the Resolution Plan much after the hearing was over on the application for approval of Resolution Plan. He submits that the COC meeting was called on 13.07.2020 for seeking the opinion of the COC on the application filed by the Resolution Applicant for extension of time. Even though the Resolution Applicant was invited to attend the COC meeting on 13.07.2020, the Resolution Applicant chosen not to attend the said meeting and not bothered to explain the circumstances for extension of time to the COC. He further submitted that the COC unanimously decided not to extend the time for payment as sought by the applicant.

8. After hearing both sides, this bench of the view that the applicant has to make substantial payment and considering the prevalent Covid-19 pandemic situation we are inclined to extend the time by 75 days for making the payment. We are unable to agree with the contention of the Professional that this will affect the commercial wisdom of COC. The present Covid-19 situation is an extra ordinary circumstance.

9. Accordingly, the Application is allowed with the following directions to the Resolution Applicant regarding the payment:

i. Initial payment of Rs.5.30 Crores in monthly instalment:-

a. The first Rs.1.00 Crores has to be paid on or before 21.08.2020;

b. Another Rs.1.5 Crores has to be paid on or before 21.09.2020;

c. Another Rs.2.8 Crores has to be paid on or before 21.10.2020.

ii. Balance Rs.20.00 Crores in quarterly instalments as below:

a. Rs. 5.00 Crores will be paid on or before 21.01.2021

b. Rs. 5.00 Crores will be paid on or before 21.04.2021

c. Rs. 5.00 Crores will be paid on or before Next 21.07.2021

d. Balance Rs. 5.00 Crores will be paid on or before 21.10.2021.

10. The IA No. 1067/2020 is allowed in above terms.

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V. Nallasenapathy	Suchitra Kanuparthi
Member (Technical)	Member (Judicial)