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IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH-III
NEW DELHI

CA. NO. 313/C-III/ND/2018

CA.NO. 365/C-III/ND/2018

CA.NO. 397/C-III/ND/2018

IN

C.P.No.IB-306/ (ND)/2017

Sections Under Section 30 (4) read with section 31 of the Insolvency and Bankruptcy Code, 2016 and Regulation 39 of the Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016

In the matter of

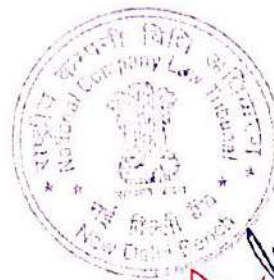
SHEON SKINCARE PVT.LTD.
FLAT NO.6A, 6TH FLOOR,
ATMA RAM HOUSE,
NO 1 TOLSTOY MARG,
CANNAUGHT PLACE,
NEW DELHI -110001.

Under CNF, initiated vide order dated 03.12.2017

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R.VARADHARAJAN,
Hon'ble Member (Judicial)

Dr. V.H. SUBBURAJ
Hon'ble Member (Technical)



SHEON SKINCARE PRIVATE LIMITED

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Counsel for Resolution Professional: Mr. Ashok Kumar Juneja, Mr. Mithlesh, Advocates
Resolution Professional: Mr. Navjit Singh

ORDER

Delivered On: 09.08.2019

1. The present proceedings were initiated by the filing of an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("the Code") by an operational creditor which was admitted vide order dated 13.01.2018 where in one Mr. Navjit Singh was appointed as the interim resolution professional, who also continues to be the resolution professional ("RP") / Applicant presently in this matter.
2. The RP has submitted the progress reports from time to time and the meetings of the CoC were held as prescribed under the Code. On 21.07.2018 an Expression of Interest ("EOI") for inviting resolution plans for the Corporate Debtor ("CD") was published in Business Standard (Hindi/English) against which only one application was received that too from the promoter one Mr. Sanjay Jain on 06.08.2018. Thereafter resolution Applicant cum promoter namely Mr. Sanjay Jain submitted the resolution plan on 23.08.2018, to the Resolution professional, the last date of submission being 24.08.2018. The Resolution Plan was again modified as represented in Application no. CAA-397/C-III/NDY 2018, and discussed in the meeting held on



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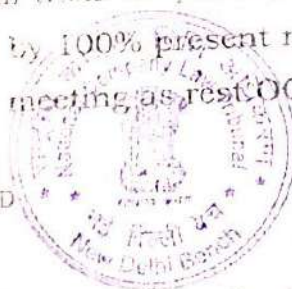
29.08.2018. An affidavit has also been filed by the Resolution Applicant to the following effect:

"I, Sanjay Jain S/o Sh. Avinash Jain R/O. House No, C-131, Preet Vihar, New Delhi- 110092 do hereby declares and solemnly affirms as under : 1) In my previous resolution plan dated 23-8-18 of Rs. 35 lakhs now as per my discussion and approval from COC member on 29-8-18, I do hereby give revised Resolution Plan of Rs. 41.19 Lakhs (Rs. Forty One lakhs and nineteen thousand only) to the resolution professional as per IBC - 16 compliance (priority for CIRP cost as per regulation 31/32 of IBC-16 Rs. 20.34 Lakhs and balance Rs. 20.85/-lakhs for operational creditors. Further for it handing over Rs. 30.86 balance amount of PDC dated 15-10-2018 in this regard. "

3. The resolution plan initially filed was modified in the CoC meeting on 29.08.2018 for accounting for avoidable transactions carried out by Mr. Sanjay Jain under section 43 of the code. Further, the meeting held on 06/12.2018, the following was resolved:

"It is resolved that the shortfall of bank guarantee of Rs. 3.36 lakhs shall not to be considered for acceptance of resolution plan from Shri. Sanjay Jain as he was given concession of Rs. 3.36 lakhs bank guarantee as promised by resolution applicant in the original resolution plan and thus this modified resolution plan with only Rs. 27.50 lakhs bank guarantee as final modified resolution plan approved by CoC today i.e. 6/12/2018 (100%) and thus petition to be filed before honorable court for necessary approval from them on priority basis. In this regard the approval was given by 100% present member OC-1 and OC-4 by email at this COC meeting as rest COC-2/3/5/6/7 (does not

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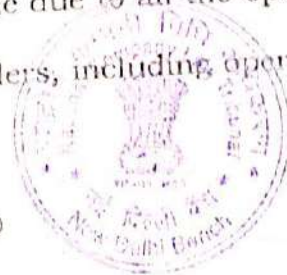
give their e-vote facility request to resolution professional before this meeting and during this meeting not available on email etc. on line facilities even today and not availed this facility before filing this petition before honorable AA this minutes sent to all on request of COC member after ends of this meeting to all for necessary action from them and no reply from them received till time of filing this meeting as per IBC -2016 amended procedure for conducting COC meeting and e-voting etc."

"That this modified resolution plan with concession of Rs. 3.36 lakhs bank guarantee in resolution applicant resolution plan accepted by COC on 29/8/18 with bank guarantee of Rs. 27.50 lakhs only submitted before NCLT on 5/11/2018 by resolution applicant cum promoter Sh. Sanjay Jain fulfilled all IBC 2016 compliance as he give full amount of cheque for balance amount of resolution plan amount of Rs. 30.86 dated 15.10.2018 to resolution professional and thus it is as per compliance of regulation as mentioned above as required from resolution professional as per sec-25(1) (i) section 208 of IBC-2016."

4. According to the resolution plan as submitted by Mr. Sanjay Jain:

- a) Provides for a Resolution Plan with an outlay of Rs. 41,19,000/- (Forty One Lakhs Nineteen Thousand Only)
- b) Provides for the payment of insolvency resolution process in manner specified by the Board in priority to the repayment of the debts of the corporate debtor.
- c) For the repayment of the debts of operational creditors which taken at liquidation value due to all the operational creditor in the interests of all stakeholders, including operational creditors, of the

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to the debtor, which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority.

- d) Postdated cheques to be handed over to the Committee on the approval of the plan by CoC.
- e) An amount of Rs. 4,50,000/- (Rupees Four lacs Fifty Thousand Only) is paid as earnest money as approved by the CoC.
- f) That a bank guarantee for an amount of Rs. 30,86,000/- (Rupees Thirty Lacs Eighty Six Thousand Only) will be provided to the committee for compliance of the Resolution Plan for implementation of this resolution plan, after adding amount of 0.36 Lakhs towards the fraudulent Trading done by the Resolution Applicant.

5: An overview of the ingredients of the resolution plan and its compliance/non-compliance with the ingredients specified in Section 30 of the Code and attendant regulations is mentioned below.

Condition	Compliance under Resolution Plan
S. 30(1) - resolution applicant submits affidavit stating that he is eligible under Section 29A	The resolution applicant has submitted an affidavit.

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	to this effect as annexure - F
S. 30(2)(a) - provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.	Yes.
S.30(2)(b) - provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the CD under section 53. Regulation 38(1) - amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Yes.
Regulation 38(iA) - a resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.	



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S.30(2)(c) - provides for the management of the affairs of the CD after approval of the resolution plan	After approval the CD will be owned, managed and controlled by the RA.
S.30(2)(d) - The implementation and supervision of the resolution plan	
S.30(2)(e) - does not contravene any of the provisions of the law for the time being in force	Preferential transactions under section 43, an affidavit is also filed by the Resolution Professional, in compliance of the avoidable transaction and modification of the resolution plan.
S.30(4) - The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board	CoC has approved the resolution plan by a vote of 100% on 29.08.2019.

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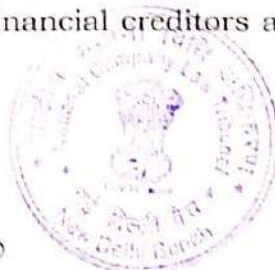
6. In relation to the preferential transaction, also as mentioned at point 15 of the form H filed vide diary no 6219 dated 4/9/18 in CA. 313/C-3/ND/2018, this Tribunal vide order dated 19.12.2018 directed the Resolution Professional to file an affidavit to such context. In accordance to such order the Resolution Professional has filed and affidavit on 20.12.2018 with diary no. 10552 stating as follows;

3. That I further state that in the COC meeting held on 29/8/2018, the COC formed a committee for compliance/ modification of resolution plan as submitted by applicant cum promoter Sh. Sanjay Jain as per regulation 39(3) of Insolvency Resolution Regulations, 2016.

4. That in resolution plan as submitted by the applicant cum promoter Sh. Sanjay Jain, dated 23/8/18, a sum of Rs. 36,000/- was added for unavoidable transaction and the modified resolution plan dated 29/8/18 for Rs. 41.19 lakhs was passed by 82.57% positive voting shares of COC and I issued the Compliance Certificate for the modified resolution plan as per IBC-2016. “

7. This Bench in view of the RP as well as the CoC having approved the Resolution Plan record its satisfaction for granting approval to the resolution plan submitted by Mr. Sanjay Jain, subject to the following conditions:

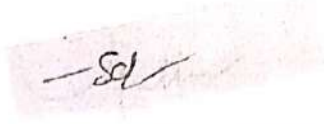
- i. It is directed that any amounts recovered by the CD would be, before being put to any other use, would be used to pay the balance amount to financial creditors and operational creditors



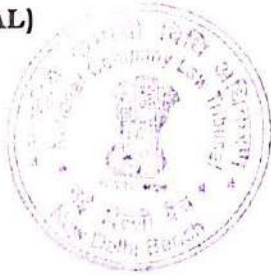
of the CD which has been accepted as haircut to the total amount due to them, under this resolution plan.

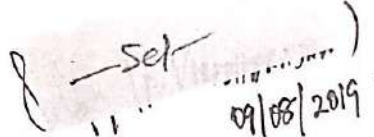
- ii. If there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, in accordance with law, against the concerned persons, directors and officials of the CD.

8. Henceforth the moratorium order shall cease to have effect. The resolution professional shall further act upon as prescribed, on approval of the resolution plan to forward the records, to the concerned authorities and to intimate the closure of the insolvency proceedings. Resultantly the case-file is now required to be consigned to records.


Dr. V.K. SUBBURAJ
MEMBER (TECHNICAL)

U.D.MEHTA/K




(R.VARADHARAJAN)
MEMBER (JUDICIAL)


सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
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