

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**IA(IB) No. 680/KB/2020
In
CP(IB) NO. 1440/KB/2018**

In the matter of:

**An application for initiation of CIRP under Section 7 of the IBC 2016
read with Rule 4 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016.**

And

In the matter of:

Dena Bank (now Bank of Baroda)

... Financial Creditor

Versus

In the matter of:

Kharkia Steels Private Limited

... Corporate Debtor

And

In the matter of:

**An application for approval of Resolution Plan approved by the Committee of
Creditors under Section 30(6) and 31 of the IBC 2016 read with Regulation 38
and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) 2016**

And

In the matter of:

Uday Narayan Mitra, Resolution Professional of Kharkia Steels Private Limited with registration number IBBI/IPA-001/IP-P00793/2017-2018/11360 c/o. LSI Resolution Private Limited, S P Mukherjee Road, Sagar Trade Cube, Second Floor, Kolkata 700026.

... Applicant

Counsels on record:

1. **Mr. Utsav Mukherjee, Advocate] For the Applicant**
2. **Mr. Uday Narayan Mitra] Resolution Professional**

Coram: Shri M.B. Gosavi, Hon'ble Member (Judicial) & Shri Harish Chander Suri, Hon'ble Member (Technical)

Date of hearing: 18/09/2020

Order pronounced on: 21 /09/2020

O R D E R

Per Shri Harish Chander Suri, Member (Technical):

1. This is an Application filed by the Resolution Professional **Mr. Uday Narayan Mitra** under Section 60(5) and Sec 30 of the Insolvency and Bankruptcy Code, 2016 for approval of the Resolution Plan of **M/s. Amritvani Exim Private Limited** which has been approved by the Committee of Creditors by a voting share of 82.75%.

2. The Financial Creditor **M/s. Dena Bank (Now Bank of Baroda)** had filed the **CP(IB) No. 1440/KB/2018** for initiating Corporate Insolvency Resolution Process (in short CIRP) against M/s. Kharkia Steels Private Limited. The

Application was admitted vide Order dated 20th September, 2019 by appointing **Mr. Uday Narayan Mitra**, as the Interim Resolution Professional. In the meeting convened on 19.10.2019, the name of IRP was confirmed as RP with 95% voting share of the creditors. It was also approved by this Bench vide order dated 30.10.2019. Upon appointment of the Resolution Professional, the CIRP commenced against the Corporate Debtor, M/s. Kharkia Steels Private Limited.

3. It is stated that Form G inviting EOI was published in newspapers on 10.01.2020 and upon the same only one Applicant i.e. Amritvani Exim Private Limited filed a resolution plan within the timeline contemplated under the EOI. The Resolution Plan contemplates an upfront payout of Rs.8.52 crores and Rs.0.14 crores respectively to the secured and unsecured creditors. Further, the plan envisages a 2nd tranche funding of Rs. 25 crores in order to facilitate setting up of new plant and machinery and seeks certain reliefs and concessions to enable the Corporate Debtor to have a fresh start and make it viable again and for successful implementation of the Resolution Plan under the aegis of the Monitoring Committee to achieve resolution of the Corporate Debtor. In the 4th Progress Report submitted by the RP on 12.03.2020, it is mentioned that on the request of the members the RA agreed to make payment for the CIRP cost separately and not to include it in the amount of Rs.33.66 crores that has been proposed in the Plan from their end. It has been noted that the actual CIRP cost incurred till date is Rs.23,90,413 and considering the projected cost that will be incurred during the CIRP period, it will go up to Rs.30.00 lacs. Hence, on the request of members, a revised Plan has been sent by the RA increasing the total amount as per the Resolution Plan to Rs.33.964 crores, the revised plan is annexed as **Annexure 'E'** to the application.

4. It is further stated that the CoC in its 8th meeting held on 6th March, 2020, has approved the Resolution Plan of M/s. Amritvani Exim Private Limited by a voting share of 82.75% and the applicant has already submitted Fourth progress report on 12.03.2020 before this Bench for approval of the Resolution Plan under Section 31(1) of the Code. The Committee of Creditors has exercised its commercial wisdom and voted on a resolution to approve the Resolution Plan. The matter was fixed for hearing on 24.04.2020, but due to closure of all offices in West Bengal from 22.03.2020 and thereafter due to a nationwide lockdown, from 25.03.2020 onwards, the matter could not be taken up.

5. Heard the Ld. Counsel **Mr. Utsav Mukherjee** for the applicant. Perused the records.

6. Ld. Counsel for the applicant has prayed for urgent hearing of the case through video conference as the Corporate Debtor has been non operational for a long time and the present Resolution Plan is the only viable plan received which if approved would enable the Company to be revived and operated as a going concern. Furthermore, the Resolution Plan envisages the implementation of the Plan in a manner to enable the revival of the company to commence on a fresh slate in accordance with the judgement of the Hon'ble Supreme Court in Committee of Creditors of Essar Steel India Limited v. Satish Gupta.

7. The CIRP period of 180 days has completed on 17.03.2020 and an application has been filed by the RP for extension of CIRP period. It is submitted that the CoC in its meeting dated 05.03.2020 passed resolution within 87.9% votes for extension of CIRP period, and the application was allowed and CIRP period was extended for 90 days from 18.03.2020 by this Tribunal vide order dated 12th March, 2020. In the meanwhile lockdown was imposed due to Covid-

19 pandemic with effect from 25.03.2020 and continues till date. However, as per notification dated 29th March, 2020, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted due to such lockdown and has to be excluded, in relation to a corporate insolvency resolution process, and thereby approval of the Plan by the CoC is within the period of 270 days.

8. The Ld. Counsel for the Resolution Professional further submits that in compliance of Regulation 39(4), a Certificate in Form H of the Schedule as laid down in Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 has been annexed along with the resolution plan. With regard to Regulation 38, it was discussed that the plan addressed the interests of all stakeholders, provided for payment to Operational Creditors in priority over Financial creditors, addressed the causes of default, was feasible and viable, had provisions for its effective implementation and the resolution applicant had the capacity and experience to revive the operations of the Corporate Debtor in accordance with the timeline stated in the plan. In the plan, provision is made to meet out the resolution process. There is provision made to make payment of debt of the Operational Creditors. Mechanism is suggested for the management of the affairs of the Corporate Debtor. Mechanism is also provided for effective supervision and implementation of the plan.

9. Therefore, the resolution plan meets the requirements under section 30(2) of the Code.

10. Having regard to what has been said above, we are satisfied that the Resolution Plan as approved by the CoC Under Section 30(4) of the Code, meets

the requirements, as referred to under Sub-Section (2) of Section 30 of the Code, and thus, we hereby approve the resolution plan upon the following directions:-

ORDERS

i) The **Resolution Plan of M/s. Amritvani Exim Private Limited**, which is approved by the CoC with 82.75% voting share, is hereby **approved** under provisions of sub-section(1) of Section 31 of the Insolvency and Bankruptcy Code, 2016, which shall be binding on the Corporate Debtor, **M/s. Kharkia Steels Private Limited** along with all its employees, members, secured, unsecured, financial and operational creditors creditors, guarantors, and the central Government, any State Government or any local authority and other stakeholders involved in the Resolution Plan.

ii) The Resolution Plan, shall come into force from the date of pronouncement of this order.

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

iv) 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 in its database.**

v) **CP (IB) No 1440/KB/2018 along with I.A.(IB) No. 680/KB/2020** is disposed of accordingly.

vi) Registry is hereby directed to communicate the order to all the concerned persons through e-mail.

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

(Harish Chander Suri)
Member (T)

(M.B. Gosavi)
Member (J)

VC