THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. 2298 (PB) / 2020 & I.A. 862 (PB) / 2020
IN
Company Petition No. (IB)- 1347 (PB)/2018

Submission of Resolution Plan under Section 30(6) for approval under Section 31 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

M/s ALCHEMIST ASSET RECONSTRUCTION

....Financial Creditor

vs.

M/s. MONET EXPORTS PRIVATE LIMITED

.....Corporate Debtor

AND

In the matter of:

Mr. DEVENDRA SINGH

.....Applicant/Resolution Professional

Order Pronounced on: 26.06.2020

Coram:

SH. B.S.V PRAKASH KUMAR,
HON'BLE ACTING PRESIDENT

SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

For the Res. Applicant: Ms. Varsha Banarjee, Adv.
For the Applicant : Mr. Milan Singh Negi, Adv.

ORDER

PER- HEMANT KUMAR SARANGI, MEMBER (T)

1. This is an application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") read with Rule 32 and 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') by the Resolution Professional ('Applicant') of M/s. Monet Exports Pvt. Ltd. ('Corporate Debtor') seeking listing of IA-862(PB)/2020 alongwith instant application on an urgent basis. The IA 862(PB)/2020 has been filed under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") seeking approval of the Resolution Plan under Section 31 of the Code read with regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in respect of the corporate debtor M/s. Monet Exports Private Limited.
2. The facts in brief, necessary for disposal of the present application, are that one of the Financial Creditors, M/s Alchemist Asset Reconstruction had preferred an application under Section 7 of the Code for initiation of Corporate

Insolvency Resolution Process (CIRP) against M/s. Monet Exports Private Limited ("Corporate Debtor"). The said Company Petition (IB)-1347 (PB)/2018 was admitted on 20.12.2018 imposing moratorium under Section 14 of the Code and Mr. Kapil Dev Taneja was appointed as an Interim Resolution Professional in respect of the Corporate Debtor M/s. Monet Exports Private Limited.

3. Thereafter, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ("CIRP Regulations"), the Interim Resolution Professional made a public announcement in FORM-A on 24.12.2018 *inter alia* calling for the submission of claims of the creditors.

4. In terms of the provisions of Section 18(1) (c) of the Code, the Interim Resolution Professional constituted the Committee of Creditors.

5. The Committee of Creditors ("CoC") in its fourth meeting, passed a resolution for replacement of the IRP Mr. Kapil Dev Taneja with Mr. Devendra Singh to act as the Resolution

Professional for the Corporate Debtor. The same was confirmed by this bench vide order dated 10.04.2019.

6. In terms of the Regulation 27 of the CIRP Regulations, 2016, the applicant appointed registered valuer for valuation of the securities/financial assets of the corporate debtor and for determination of the Fair Value and Liquidation Value of the Corporate Debtor in accordance with Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 ("CIRP Regulations, 2016").

7. The Applicant states that, with the approval of CoC in the second meeting, the Applicant had issued Form G on 05.03.2019 seeking a Resolution Plan for the Corporate Debtor. In view of non-receipt of any EOI, pursuant to the approval of CoC in the 3rd meeting held on 22.03.2019. However, very few EOI's were received. The Applicant further states that, In order to enable more prospective resolution applicants to submit EOI, the CoC in its 4th meeting dated 05.04.2019, directed the RP to publish fresh Forem-G, accordingly the third Form-G, was published by the RP inviting

EOI's on or before 03.05.2019, with the last date for submission of resolution plan to be 13.06.2019. In the fifth CoC meeting convened on 16.04.2019, the members of CoC directed the RP to proceed to invite EoI from the Prospective Resolution applicant by way of publication of Form G, published on 18.04.2019.

8. Thereafter in seventh meeting of CoC held on 02.08.2019, the RP placed before CoC the Resolution Plans received from 2 Prospective Resolution Applicants, namely:

   a. M/s. Shiva Consultants Private Limited

   b. M/s. Turnaround Consultants Private Limited

9. The Applicant states that, on 31.08.2019, Eighth Meeting of CoC was convened wherein he pointed out to the members of the CoC that 270 days of CIRP of the Corporate Debtor were expiring on 16.09.2019. Upon deliberation and discussion it was decided to file an application before this Tribunal seeking extension of 60 days in the CIRP of the Corporate Debtor. This tribunal vide its order dated 11.09.2019 extended the period of CIRP of the Corporate Debtor for another 60 days.

10. The Applicant states that, thereafter in the tenth CoC meeting the Resolution Plan submitted by M/s. Shiva Consultants Private Limited has duly been approved by 100% members of the CoC.

11. Thereafter, as per the discussions in the tenth meeting of CoC held on 11.01.2020, the successful Resolution Applicant i.e., M/s. Shiva Consultants Private Limited, has provided a Performance deposit of an amount of Rs. 67,50,000/- (equivalent to 25% of the Resolution Bid Amount) favouring M/s. Alchemist Asset Reconstruction Company Limited by the Successful Resolution Applicant.

12. The Applicant, further submits that as per the discussions in the 10th CoC meeting held on 11.01.2020, Revised Resolution Plan of Shiva Consultants Private Limited provides the financial bid as under:

PARTICULARS	AMOUNT (Rs. IN LAKH)	PAYMENT PERIOD
Upfront payment including CIRP cost	120	Upfront within 90 days from the NCLT Approval date or on the effective date (whichever is later), as the case may be
Remaining payment	150	The remaining payment

		will be made within 3 years from the effective date (Rs. 50.00 Lakh per year)
Capex/Working Capital		As per the requirement from time to time
Total (Rs.)	270	

13. Meanwhile, since the CIRP period was going to end, the Resolution Professional filed another application before this Tribunal for extension of the CIRP period by 58 days. The said application was allowed on 21.11.2019 and the CIRP period was extended for another 58 days.

14. That on 25.11.2019, the Applicant sent emails to both of the prospective resolution applicants, thereby, intimating that this Tribunal has extended the CIRP of the Corporate Debtor by another period of 58 days and hence requested them to submit revised/improved plan along with all the pending documents within the extended period. Pursuant to which the RP received the revised Resolution Plan from M/s. Shiva Consultants Private Limited on 07.01.2020. However, M/s. Turnaround Consultants Private Limited did not submit its revised

Resolution Plan and stated that the Resolution Plan submitted earlier was final on their behalf.

15. The applicant submits that revised plan submitted by M/s. Shiva Consultants Private Limited and the Resolution Plan submitted by M/s. Turnaround Consultants PRivate Limited were discussed and deliberate upon by the members of the CoC, as per the discussions in the 10th CoC meeting held on 11.01.2020. Revised Resolution Plan of M/s. SHiva Consultants Private Limited provides the financial bid as under:

PARTICULARS	AMOUNT (Rs. IN LAKH)	PAYMENT PERIOD
Upfront payment including CIRP Cost	120	Upfront within 90 days from the NCLT Approval date or on the effective date (whichever is later), as the case may be
Remaining Payment	150	The remaining payment will be made within 3 years from the effective date (Rs. 50.00 Lakh per year)
Capex/Working Capital		As per the requirement from time to time
Total (Rs.)	270	

16. Further, the Resolution Plan of Turnaround Consultants Private Limited provides the financial bid as under:

PARTICULARS	AMOUNT (Rs. IN LAKH)	PAYMENT PERIOD
Upfront payment including CIRP cost	115	Upfront within 90 days from the NCLT Approval date or on the effective date or on the effective date (whichever is later), as the case may be
Remaining Payment	125	The remaining payment will be made within 3 years from the effective date (Rs. 40 Lakh first year, Rs. 40 Lakh Second Year and Rs. 45 Lakh in the Third Year)
Total (Rs.)	240	

17. It is submitted that on 15.01.2020, the RP sent a letter of Intent to M/s. Shiva Consultants Private Limited, thereby, intimating that the Resolution Plan submitted by it in the CIRP of the Corporate Debtor has been approved by the CoC. The Applicant vide the said letter requested the successful Resolution Applicant to furnish an irrevocable Performance Guarantee/Performance Deposit/Amount through RTGS or Demand Draft of an equitable amount to 25% of the Resolution Bid Amount within 7 days of issuance of the Letter of Intent by the RP. Pursuant thereto on 23.01.2020, the successful Resolution Applicant, i.e., M/s. Shiva Consultants Private

Limited has provided Performance Deposit for an amount of Rs. 67,50,000/- favouring M/s. Alchemist Asset Reconstruction Company Limited being the Member of the CoC. That upon acceptance the RP remitted back the EDM amount submitted earlier.

18. It is submitted that pursuant to approval of the Resolution Plan by the CoC, the Applicant issued a Letter of Intent to the Resolution Applicant inter-alia informing that the revised resolution plan as submitted before the CoC was approved. Copies of Letter of Intent and the Performance guarantee have been placed on record.

19. The resolution professional has placed the compliance certificate under Section 30(2) of the Code and has confirmed that the resolution plan submitted is in compliance with Section 30 of the Code read with Regulation 38 and 39 of the Regulations. Resolution professional has also placed a copy of the resolution plan as approved by CoC, stated to have been signed by the authorised representative of the resolution applicant.

20. The Compliance Certificate filed by the Resolution Professional in Form H under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has also been placed on record.

21. In terms of Section 30 (6) of the Code read with Regulation 39 of the CIRP Regulations, 2016 the resolution professional has submitted the Resolution Plan for seeking an order under Section 31(1) of the Code for approval of the resolution plan unanimously passed by the committee of creditors under sub-section (4) of Section 30.

22. Section 31 of the Insolvency and Bankruptcy Code, deals with the approval or rejection of a resolution plan by the Adjudicating Authority. Approval of the resolution Plan is accorded under the provisions of Section 31(1) of the Code.

23. Section 31 of the Insolvency and Bankruptcy Code, 2016 is reproduced below for ready reference.

"Approval of Resolution Plan-

31. *(1) <u>If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of</u>*

creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and 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, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section(1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition

Commission of India under the Act prior to the approval of such resolution plan by the Committee of Creditors."

(Emphasis given)

24. Therefore, before approving the Resolution Plan, the Code mandates the Adjudicating Authority to ensure that,

(1) the Resolution Plan meets the requirements of Section 30(2) of the Code and

(2) the resolution plan has provisions for its effective implementation.

25. In respect of compliance of condition (1) above, it is necessary to refer to sub-section (2) of Section 30 of the Code which reads as follows:

"*30.* **Submission of resolution plan.** -*(1)* ....

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

(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;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors. Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the

Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) The implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) confirms to such other requirements as may be specified by the Board.

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.

(3) ...."

26. Sub-section 2 of Section 30 casts a duty on the Resolution Professional to examine the Resolution Plan received by him/ her to confirm that such Resolution Plan provides for the payment of insolvency resolution process costs, provides for the payment of the debts of the operational creditors and financial creditors in such manner as specified, provides for the management of the affairs of the corporate debtor after approval of the Resolution Plan; the implementation and supervision of the Resolution Plan, that the Resolution Plan does not contravene any of the provisions of the law, and that the Resolution Plan conforms to such other requirements as may be specified by the Board.

27. The Resolution Professional has filed compliance certificate in Form H and *inter alia* has confirmed that he has examined and verified the Resolution Plan approved by the Committee of Creditors of the Corporate Debtor in the light of the requirements of the Code and Regulations and that the approved plan is compliant to the relevant provisions of the Code and Regulations.

28. In terms of Section 31(1) of the Code, the Adjudicating Authority has also to examine whether the requirements of sub-section (2) of Section 30 have been complied with or not.

29. It has been submitted in the application and in Form H duly certified by Resolution Professional that the Resolution Plan unanimously approved by the Committee of Creditors meets the requirements as laid down in various clauses of sub-section (2) of Section 30 of the Code.

30. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the resolution plan clause 10.1 and 18.2 provides for payment of CIRP costs in priority over payments to any other creditors. *Be that as it may, it is made clear that Insolvency Resolution Process cost shall be paid in its entirety by the resolution applicant, in priority to other debts of the corporate debtor.*

31. As regards compliance of clause (b) of Section 30 (2) of the Code, the Resolution Professional has certified that clause 10.2 of the resolution plan 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 corporate debtor under Section 53.

32. There appears to be no discrimination in the resolution plan among respective class of creditors, as same treatment is provided for each of the similarly situated class of creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors. Needless to say, that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors. Equitable treatment has been accorded to each creditor depending upon the class to which it belongs.

33. As a sequel to the aforesaid discussion, it is seen that clause (b) of sub-section (2) of Section 30 of the Code stands satisfied.

34. In terms of Section 30(2)(c), the Resolution Plan provides for management of affairs of the corporate debtor after approval of the Resolution Plan. The management of the affairs and control of the business of the corporate debtor after approval of the

Resolution Plan, has been provided at clause 10.3 of the Resolution plan, which, *inter alia,* provides that the Company shall continue as a going concern and operate its normal course of business upon implementation of the Resolution Plan. The Resolution Professional has confirmed in the compliance certificate given in Form H that the Resolution Plan provides for the management and control of the business of the corporate debtor.

35. The fourth requirement envisaged by Section 32(2)(d) is that it must provide for the implementation and supervision of the resolution plan. The Resolution Professional has confirmed, in the compliance certificate given in Form H, that clause 10.4 of the Resolution Plan provides for adequate means for supervising its implementation.

36. It has been stated that one representative of Lenders, alongwith two representatives of resolution applicants, shall act as the monitoring agency.

37. The fifth and sixth conditions in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code provide to ensure that the Resolution Plan does not contravene any of the provisions of

the law and conforms to such other requirements as may be specified by the Board.

38. In this regard the resolution professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of the law for the time being in force. The Resolution Applicant has also given a declaration to that effect in clause 10.5 of the Resolution Plan. *Be that as it may, in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code, we make it clear that the Resolution Applicant shall comply with all applicable laws under the proposed Resolution Plan, whether or not specifically provided therein.*

39. It is pertinent to state here that Section 29A of the Code prescribes certain eligibility criteria and disqualifications for persons who submit a resolution plan. Resolution Applicant has given adequate declaration and undertaking on their eligibility to submit the Resolution Plan. At para 4(ii) of Form H Resolution Professional has also certified that *the Resolution*

Applicant has submitted an affidavit in this regard. It has been confirmed that the Resolution Applicant is eligible to submit resolution plan and does not fall under any of the categories as mentioned in Section 29A of the Code.

40. As a sequel to aforesaid discussions we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law for the time being in force appears to have been contravened.

41. In respect of provisions of Regulation 39 (4) the RP states in Form H that Performance deposit equivalent to 25% of Resolution Plan amount deposited on 22.01.2020.

42. The Resolution Professional has confirmed compliance of Section 38 (2) and (3) in the compliance filed alongwith the application.

43. We are therefore satisfied that the requirements as per the Code and regulations have been complied with. Moreover, the Resolution Plan has been unanimously approved by CoC and has been submitted in compliance of Section 30 of the Code for approval.

44. In view of the aforesaid discussions and as no infirmity have been brought out upon screening of the Resolution Plan; ***we hereby approve the Resolution Plan submitted by M/s Shiva Consultants Private Limited under sub-section (1) of Section 31 of the Code.***

45. We also grant Liberty to the monitoring Committee to apply to the Tribunal for any further direction in order to ensure effective implementation of the plan, if such a necessity arises.

46. In respect of reliefs and concessions sought for in the Plan, which are beyond the jurisdiction of this Tribunal, liberty is accorded to the Monitoring Committee to pursue such matters before the relevant authorities which shall be considered in accordance with law.

47. In terms of sub-section (4) of Section 31 of the Code the resolution applicant shall obtain the necessary approval required under any law for the time being in force within a period of one year from the date of this order or within such period as provided for in such law, whichever is later.

48. It is clarified that Section 30 (2) (f) of the Code mandates that the resolution plan should not be against any provisions of

existing law. The Resolution applicant therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein.

49. Approval of Resolution Plan shall confer change in the management and ownership of the corporate debtor and the control of the corporate debtor shall vest with the new management.

50. We hereby exclude the period spent under adjudication and it is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.

51. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its database in terms of Section-31(3)(b) of the Code.

52. The approved 'Resolution Plan' shall become effective from the date of passing of this order.

53. I.A. 2298 (PB)/ 2020, I.A. 862 (PB)/ 2020 and CP No. (IB) 1347 (PB)/ 2018 are disposed of accordingly.

Let the copy of the order be served to the parties.

Sd/-

(B.S.V. PRAKASH KUMAR)
ACTING PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

SIDDHANT