

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

C.P. (IB) No. 570/KB/2018

C.A. (IB) No. 709/KB/2019

In the matter of:

An Application by the Resolution Professional under Section 30(6) and 31 of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) for seeking approval of the Resolution Plan as approved by the Committee of Creditors.

And

In the matter of:

Aristo Texcon Private Limited, having its registered office at DD House, P-32, Kasba Industrial Estate, Phase-I, Kolkata, West Bengal-700107.

-Corporate Debtor

**CORAM: 1. Shri M.B. Gosavi, Member (Judicial)
2. Shri Virendra Kumar Gupta, Member (Technical)**

Counsels on Record:

For the Resolution Professional

1. Ms. Mamta Binani, Resolution Professional

For Canara Bank

1. Mr. Somdutt Bose, Advocate

Date of pronouncement of Order: 20th August, 2019.

ORDER

Per Shri M.B. Gosavi, Member(J)

1. M/s. Aristo Texcon Pvt. Ltd., the Corporate Person filed this application under Section 10 of Insolvency and Bankruptcy Code, 2016 to start its Corporate Insolvency Resolution Process (in short "CIRP") on ground that the Company was in position to pay the various debts to Financial Creditors amounting to Rs. 29,00,00,000/-
2. This Adjudicating Authority by order dated 31.08.2018 admitted the Corporate Person in CIRP Moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 was issued. One Mr. Ram Ratan Modi was appointed as Interim Resolution Professional (in short "IRP"). The IRP made public announcement of CIRP of the Corporate Debtor and called its creditors to submit the claims. He received claims from two public sector banks and one Non Banking Financial Company. He allotted the vote matrix to them based on their debts in following manner:-
 - (i) Canara Bank- 24.30%
 - (ii) North Eastern Development Finance Corporation Ltd. – 47.77%
 - (iii) Punjab National Bank – 29.93%
3. In the first meeting of Committee of Creditors (in short "CoC") dated 28.09.2018, IRP Mr. Ram Ratn Modi was replaced by Ms. Mamta Binani as Resolution Professional (in short "RP") having registration

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no. IBBI/IPA-002/IP-N00086/2017-18/10227 by 100% voting share. The RP then prepared Information Memorandum. CoC directed RP to call for Expression of Interest and resolution plans from the perspective resolution applicants. Accordingly notice calling EoI/resolution plan was published in one English Daily and one in Bengali Daily newspapers having wide circulation. In pursuant thereto the RP and the CoC received four(4) resolution plans from Dalmia Industrial Development Limited, Damani Infracon Private Limited, Jagannath Financial Advisory Private Limited and KMG Industrial Traders Private Limited.

The CoC considered all resolution plans. In 11th meeting dated 24.04.2019, the CoC decided to approve the resolution plan submitted by M/s Jagannath Financial Advisory Private Limited. In next meeting, the CoC took decision about the distribution of resolution funds in following manner:-

- (i) Canara Bank -24.30%
- (ii) North Eastern Development Finance Corporation Ltd. – 47.77%
- (iii) Punjab National Bank – 27.93%

One of the member of CoC, Canara Bank tendered dissenting vote for approval of the plan on the ground that distribution of resolution funds is discriminatory as against them. According to Canara Bank, they hold more than 80% of the assets of the Corporate Debtor as a security as per their debt. Hence, they are entitled to have equivalent share in distribution of the resolution funds. However, the CoC approved the resolution plan of M/s Jagannath Financial Advisory Private Limited by 75.70% of votes.

4. The RP filed application being CA(IB)No.709/KB/2019 under Section 31 of Insolvency and Bankruptcy Code before this Authority for approval of the resolution plan of M/s Jagannath Financial Advisory Private Limited.



5. The Canara Bank filed affidavit in opposition raising same plea that the distribution of the resolution funds is improper. They must get due share considering the fact that they hold 80% of the assets of the Corporate Debtor as security.
6. We have gone through the record. We heard Ld. RP, Ms. Mamta Binani and Ld. Counsel Somdutt Bose for Canara Bank at length. Ld. RP submitted that objection raised against approval of the plan by Canara Bank cannot be considered in view of Ruling of Apex Court in case of K. Sashidharan Vs. Indian Overseas Bank Ltd.. According to her, it is a commercial wisdom on CoC as to how to distribute the resolution funds and the decision of CoC cannot be called in question before this Authority.
7. As against this, Ld. Counsel appearing for the Canara Bank relied on order of NCLAT in case of Standard Chartered Bank Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors. (Company Appeal (AT)(Ins.) No.243 of 2019) and submitted that Hon'ble NCLAT hold that distribution of assets in discriminatory manner cannot be said to be commercial wisdom of the CoC. This Adjudicating Authority can look into that aspect.
8. We have given our thoughtful consideration to the submission made by the Ld. Counsel for the Canara Bank. We hold that order passed by NCLAT in case of Standard Chartered Bank Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors. is now the subject to appeal before Hon'ble Supreme Court. Hon'ble Supreme Court stayed the execution of that order. Secondly, the facts before Hon'ble NCLAT and point for consideration was whether Operational Creditor can be treated in discriminatory manner while distributing assets of the Corporate Debtor in between them and the Financial Creditors. In this case, there are some Operational Creditors but no provision is made to pay any sum in view of Section 53 of Insolvency and Bankruptcy

Code, 2016. All Financial Creditors are equally treated while distributing funds.

9. In case of K. Sashidhar Vs. Indian Overseas Bank Limited (Civil Appeal No. 10673 of 2018), the Hon'ble Apex Court hold that, **"the legislature has not endowed on the Adjudicating Authority (NCLT) with the jurisdiction or authority to analyse or evaluate commercial decision of CoC which lies to enquire into the justness of the rejection of resolution plan by descending financial creditors."**
10. In short it is held that this Authority cannot sit in appeal against the financial decisions that are taken by CoC, In our considered opinion, it is within commercial wisdom of the CoC as to what Financial Creditors will get what share of the resolution funds.
11. Hence, we reject the objection of Canara Bank and proceed to check whether the resolution plan submitted for our approval complies the approval under Section 30(2) of Insolvency and Bankrutpcy Code, 2016.
12. Section 30(2) of Insolvency and Bankruptcy Code, 2016 mandates that resolution plan shall provide:-
 - (a) the payment of insolvency resolution process cause in priority and payment of other debts of the Corporate Debtor.
 - (b) provides for payment of debts of Operational Creditors in such a manner specified by the Board subject to Section 153 of Insolvency and Bankrutpcy Code, 2016.
 - (c) provides mechanism for management of affairs of the Corporate Debtor after approval of the resolution plan.
 - (d) provides mechanism for implementation and supervision of the resolution plan.

- (e) the plan should not contravene in provision of law for time being in force.
- (f) plan must confirm other requirement as specified by the Board.
13. Keeping before our sight, we have examined the resolution plan produced for our approval. It is seen that there is no Operational Creditor, employees or the workmen and hence no provision made towards their payment.
14. Para 6 of mandatory contents of the plan provides mechanism regarding management in control of affairs of the Corporate Debtor. It is also provided therein the mechanism for effective supervision and implementation of the plan. Provision is also made to pay resolution costs. The resolution fund appears to be equally distributed among all the Financial Creditors giving them equal share i.e. 23.43%. RP has certified the plan and compliance Certificate is produced as Annexure-F. The affidavit of resolution applicant is also produced stating that they are not disqualified under Section 25A of Insolvency and Bankruptcy Code, 2016.
15. Perusal of plan shows that it does not contravene any provision of law time being in force and it complies all requirement of Insolvency and Bankruptcy Board of India (in short "IBBI"). In view of this, we accept and approve resolution plan of M/s Jagannath Financial Advisory Private Limited. We pass the following order:-

ORDERS

- (i) The Resolution Plan of **M/s Jagannath Financial Advisory Private Limited**, which is approved by the CoC with 75.70% voting share, is hereby approved under the provisions of sub-

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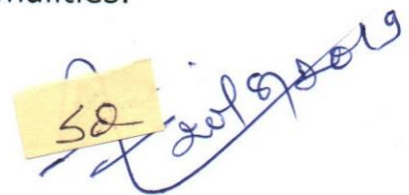
section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016, which will be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.

- (ii) The revival plan of the Company in accordance with the approved Resolution Plan shall come into force with immediate effect.
- (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 on its database.
- (v) CA(IB)No.709/KB/2019 is disposed of accordingly. No order as to costs.
- (vi) CP(IB)No.570/KB/2018 along with all the CAs filed and/or pending, if any, in this context are also disposed of.

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



(Virendra Kumar Gupta)
Member(T)



(Madan.B. Gosavi)
Member(J)

Signed on this, the 20th day of August, 2019.