BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
ALLAHABAD BENCH

CA No. 247/2019

IN

CP.NO(IB) 239/ALD/2018,

(under Section 30 (6) of Insolvency and Bankruptcy Code, 2016) (r/w Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016)

IN THE MATTER OF:

M/s K.B Tradexim Pvt. Ltd

.................Operational Creditor

v/s

Hwashin Industries Private Limited

.............Corporate Debtor

IN THE MATTER OF:

MR. DEVENDRA SINGH
(Resolution Professional)

............Applicant

ORDER RESERVED ON :07.01.2020
ORDER DELIVERED ON : 22.01.2020

CORAM:
Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Resolution Professional: Mr. Zain Abbas, Adv

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

ORDER

1. The instant application is filed under Section 30 (6) & 31(1) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (CIRP Regulations) for seeking approval of Adjudicating Authority, under Section 31 of the IBC, of the resolution plan submitted by the successful resolution applicant i.e ***" M/S K.B. Polychem India Limited".***

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2. The Corporate Insolvency Resolution Process ("CIR Process) of the corporate debtor was initiated vide order of this tribunal dated 10.01.2019 upon admission of an application filed by the Corporate Debtor under Section 9 of the Code and Mr. Devendra Singh was appointed as the IRP, Thereafter, the CoC of the Corporate Debtor at the meeting held on 09.02.2019 resolved to appoint him as Resolution Professional which was confirmed by this Adjudicating Authority.

3. In the second meeting of CoC held on 05.03.2019, the copy of IM was circulated and shared with the members of COC who have furnished the Confidentiality Undertaking in terms of Section 29(2) of IBC,2016 and the members of CoC approved the eligibility criteria for the Prospective Resolution Applicants(PRA) for submission of EOI but till the fourth meeting held on 04.05.2019 no EOI was received. Further on 5th COC meeting held 11.06.2019, the RP informed the members that only one EOI has been received from sole PRA i.e M/S K.B. Polychem India Limited and upon verification of the documents submitted it was found eligible to participate in Resolution Process of the Corporate Debtor and the members of COC discussed and decided to proceed with the EOI submitted by M/S K.B. Polychem India Limited and further RP also apprised the members of COC about the schedule of the Resolution Plan process.

4. In accordance with the provisions of the Code, the statutorily prescribed period of one-hundred and eighty (180) days from the insolvency commencement date was expiring on 09.07.2019, accordingly, upon an application filed by the Resolution Professional under Section 12 of the Code, the said period of the CIR Process Period was extended by this Hon'ble Tribunal by another 90 days *vide* its order dated 02.07.2019. Accordingly, the CIR process of the Corporate Debtor was due to expire on 07.10.2019.

5. Further RP issued and circulated provisional list on 20.06.2019 to the members of COC and PRA vide email dated 20.06.2019 and after receipt of

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confidentiality undertaking, IM, Evaluation Matrix and request for Resolution Plan(RFRP)were shared with the PRA on 25.06.2019. It was communicated to the PRA that the last date of submission of the resolution plan is 25.07.2019 and the final list was circulated on 05.07.2019.

6. Further stated that M/S K.B.Polychem India Ltd. submitted their resolution plan on 20.07.2019 along with EMD amount of Rs. 5 lakh which was remitted to the account of the corporate debtor through RTGS and the resolution plan was examined thoroughly and found that resolution applicant has duly complied with all the mandatory requirements in the plan and the detailed report of compliance under Sec 29A along with compliance status of mandatory requirements was placed before the members in the COC.

7. Applicant further stated that it was resolved by COC with 91.16% voting in favour of resolution plan and resolution plan accordingly stand approved by COC under Section 30(4) of IBC,2016. Further, Resolution Professional issued the Letter of Intent on 30.07.2019 to the successful Resolution Applicant, and filed the Resolution Plan before this Adjudicating Authority for approval in terms of Section 30(6) of the Code. The Successful Resolution Applicant has also unconditionally agreed and accepted the letter of intent and remitted the performance deposit amount equivalent to 25% of the Resolution bid amount in terms of RFRP within three days through RTGS.

8. Accordingly, the Resolution Professional has filed the present application seeking approval of the Resolution Plan in terms of Section 31(1) of the Code.

9. Heard the Ld. Counsel for the Applicant and perused the record available.

10. The Resolution Professional has examined the Resolution Plan and has found it to be in compliance with Section 30 (2) of the IBC read with

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Regulation 38 of the CIRP Regulations. In accordance with Regulation 39 (4) of the CIRP Regulations, the RP vide his Affidavit certified that:

a) The contents of the Resolution Plan submitted by ***"M/s K.B. Polychem India Limited"*** meet all the requirements of the IBC and the Regulations thereunder; and

b) The Resolution Plan submitted by ***"M/s K.B. Polychem India Limited"*** has been approved by the Committee of Creditors by 91.16% voting share under Section 30 (4) of the IBC in its meeting.

c) Further, Resolution Professional has submitted compliance certificate in Form –H as required under Regulation 39(4) of the CIRP regulations, *interalia*, certifying eligibility of Resolution Applicant under Section 29 A of the Code and feasibility & viability of the Resolution resolution.

11. Sub-section 2 of Section 30 of the Code reads as under;

"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 repayment of other debts of the Corporate debtor;

b) Provides for the repayment 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;

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 requirement as may be specified by the Board."

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Further, Regulation 38 & 39 of CIRP Regulations specify certain mandatory contents of the resolution plan.

12. The resolution plan approved by the Committee of Creditors meets the requirements laid down in various Clauses of Section 30 (2) as per the compliance table below:

Sub-clause 2 of section 30	Requirement	Compliance (yes/no)
	(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan ®only one resolution plan received in the Insolvency resolution process of the CD)	
a)	Provides for payment of IRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Yes
b)	Provides for repayment of debts of operational creditors (OCs) in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53.	Yes
c)	Provides for management of the affair of the CD after approval of the resolution plan.	Yes
d)	Implementation and Supervision of resolution plan	Yes
e)	Plan does not contravene any of the provisions of the law for the time being in force.	Yes

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f)	Confirms to such other requirements as may be specified by the Board.	Yes

13. The following table shows that the requirements of Regulation 38 CIRP Regulation are met by the approved plan:

Reference of relevant Regulations	**Requirement**	**Compliance (yes/no)**
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors(there is no financial creditor in the corporate debtor)	Yes
38 (1A)	Plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of Corporate Debtor.	Yes
38(2) (a)	Plan shall provide the term of the Plan and its implementation schedule.	Yes
38 (2) (b)	Plan shall provide for the management and control of the business of CD during its term.	Yes
38 (2) (c)	Plan shall provide for adequate means for supervising its implementation.	Yes
38 (3)	A resolution plan shall demonstrate that (a) The term of the plan and its implementation schedule (b) It is feasible and viable (c) It has provisions for its effective implementation	Yes

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	(d) It has provisions for approval required and the timelines for the same (e) The resolution applicant has the capability to implement the resolution plan	

14. The resolution plan is for the amount of Rs.45 lakh which will be mobilized from the own sources of the Resolution applicant. the amount of 45 lakh is proposed for making the payment of unpaid CIRP cost in full and out of the total resolution plan amount of Rs. 45 lakh shall be paid to the operational creditor in equal proportion against the admitted claim of Rs.11.60 lakhs within 60 days from the date of approval of resolution plan being approved by this adjudicating authority.

15. Further besides the amount of 45 lakhs, the resolution applicant proposes to infuse further fund of Rs. 60 lakhs in form unsecured interest free loan for meeting he requirement of the working capital and improvement, upgradation and renovation of the plant as detailed in the financial projections submitted by him from own sources after 60 days from the effective date and the entire resolution plan amount of Rs.105 lakh shall be brought in by the Resolution applicant from its own sources.

16. The time limit for completion CIRP is going has expired on 07.10.2019 but as the COC has approved the resolution plan on 26.07.2019,therefore the resolution plan stand approved by COC within the stipulated time limit of 270 days, as requires under Sec 12(1) of the IBC,2016.

17. In view of the above discussion, the Resolution Plan submitted by ***"M/s K.B. Polychem (India) Limited"*** is found in conformity of Section 30 (2) of the Code and the same is approved.

18. It is directed that the resolution plan so approved shall be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. With the approval of the resolution plan, the moratorium order passed by this Tribunal under

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Section 14 of the Code shall ceases to have effect. The Resolution Professional is directed to forward all the record relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.

19. Accordingly, the resolution plan is hereby **approved** and CA 247/2019 is **disposed of.**

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JUSTICE RAJESH DAYAL KHARE
MEMBER (J)

Date: 22.01.2020

Swati Gupta
(LRA)