NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-IV

I.A. 3279/ND/2021

IN

C.P. No. IB 2694/ND/2019

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

Gupshup Technology India Pvt. Ltd. ....Applicant

Vs.

Exclusife Technosoft Pvt. Ltd. ...Corporate Debtor

And

In the Matter of:

Ashok Kriplani, Resolution Professional
Exclusife Technosoft Pvt. Ltd.
R/o, 17/13, Ground Floor,
Old Rajinder Nagar, New Delhi-110060

ORDER DELIVERED ON: 29.10 .2021

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

Per: Sh. DHARMINDER SINGH, MEMBER (JUDICIAL)

1. The present petition has been filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016, (the Code) on behalf of the Resolution Professional (RP), seeking approval of the Resolution Plan.

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2. The facts mentioned in the application in brief are as follow:

i. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor, Exclusife Technosoft Private Limited, vide order dated 01.09.2020 passed by this Adjudicating Authority, admitting the application under Section 9 of the Code filed by the Operational Creditor (OC) whereby applicant was appointed as Interim Resolution Professional.

ii. Thereafter the applicant carried out a public announcement of initiation of CIRP on 04.09.2020. After collation of claims and determination of the financial position of the Corporate Debtor, a Committee of Creditors (CoC) was duly constituted by the Applicant. The first meeting was held on 01.10.2020, whereas the CoC appointed the Applicant as Resolution Professional (RP).

iii. Thereafter, Expression of Interest was published in prescribed Form G on 22.11.2020 in newspapers, but no prospective resolution applicant submitted Expression of Interest (EOI). It is submitted that after third publication of Form-G on 26.02.2021, the applicant received EOIs, from (1), Consortium of ETPL represented by Lead member Mr. Ravindranath Ramaiah (PRA1) and (2) M/s Gofrugal Technologies Private Limited (PRA 2). Thereafter, both the PRAs submitted their Resolution Plans on 08.04.2021.

iv. Meanwhile, since the CIRP period of 180 days was coming to an end this Adjudicating Authority vide order dated 11.03.2021

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extended the CIRP period for 90 days and further extended the period for 60 days vide order dated 10.06.2021.

v. It is submitted that the CoC in the eleventh meeting held on 29.05.2021, with 99.09% voting shares, approved the revised Resolution Plan with addendum, submitted by M/s Gofrugal Technologies Private Limited (FRA 2). The copy of Minutes of 11th Meeting has been placed on record. The copy of revised and approved resolution plan has also been filed alongwith the application.

vi. It is submitted that the successful resolution applicant has submitted an undertaking under Regulation 39(1)(c) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP regulations) that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code. The Applicant has also submitted that the Successful Resolution Applicant has submitted an affidavit of eligibility under section 29A of the Code which is at page no. 114 of the Resolution Plan.

vii. The Applicant has submitted that in compliance of Regulation 27 of CIRP Regulations 2016, two valuers for each class of Asset were appointed to determine the Fair Value and Liquidation Value of the Corporate Debtor in accordance with Regulation 35 of CIRP

Regulations 2016. It is further submitted that since the difference in the valuation of the Plant and Machinery of the Corporate Debtor was more than the acceptable criteria of 10% in two valuations on assumption/condition that there is no Technology License Agreement, the Applicant appointed a third valuer to determine the fair value and liquidation value of the Corporate Debtor's Plant and Machinery on such condition only. The average of the closest two estimates in P&M and one Business Valuation were accordingly considered to determine the Fair value and Liquidation value in accordance with Regulation 35 of CIRP Regulations 2016 which is as under: -

Particular	Amount (Rs.) in Crores
Fair Value(P&M)	2.806
Liquidation Value(P&M)	1.964
Business Valuation	3.0163

viii. Following is the payment plan as per the Resolution Plan:

S. No.	Particulars	Claim Admitted	Proposed amount in Resolution Plan	% of claim admitted	Payment term
1	CIRP Cost	N/a	68,10,000, (Approx)	100%	100% within 60 days

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2	Workmen/employees	22,800	22,800	100%	100% within 90 days
3.	Financial Creditors (unsecured related parties)	6,81,18,435	38,000	0.1%	100% within 90 days
4.	Operational Creditors	3,88,63,816	1,55,45,526	40%	100% within 90 days
5.	Government dues	-	-	-	-
6.	Other Creditors	9,00,000	1,00,000	11%	100% within 90 days
7.	Infusion of capital		50,00,000		100% within 90 days
	Total		2,75,16,406/-		

ix. It is submitted that the applicant issued Letter of Intent ('LOI') to the successful Resolution Applicant on 09.06.2021 as the pre-requisite of the Resolution Plan submitted by the Successful Resolution Applicant is satisfied. The Successful Resolution Applicant received and accepted the LOI along with contents. In compliance of sub-regulation (4A) of regulation 36 B of CIRP Regulations, 2016 and Request For Resolution Plan (RFRP) issued thereon, the Successful Resolution Applicant on 03.07.2021 has submitted performance bank guarantee ('PBG') for an amount of Rs. 27,51,641/-equivalent to 10% of the total Resolution Debt under the Resolution Plan. The copy of the LOI issued to Successful Resolution Applicant and the PBG security submitted by Successful Resolution Applicant has been placed on record.

3. We have heard the parties and perused the case records.

4. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code. Section 30 (2) is quoted below: -

> *"(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.*

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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) conforms 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.]"

5. Further, as per Regulation 38 of the CIRP Regulations, a Resolution Plan is required to contain a statement how it will deal with the interest of all the stakeholders including Financial Creditors and the Operational Creditors and if these are sufficiently provided in the Resolution Plan, the Adjudicating Authority may approve the Resolution Plan.

6. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the Resolution Plan in Part B at page no. 127

which provided that the CIRP cost will be paid within 60 days after approval of the plan.

7. As regards compliance of clause (b) of Section 30 (2) of the Code, the applicant has certified in Form H that Part B at page 127 of the Resolution Plan provides for the payment of the debts of operational creditors 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.

8. In terms of Section 30 (2)(c), management of the affairs and control of the business of the Corporate Debtor has been provided in clause 2 part A at page number 122 of the Resolution Plan.

9. The next requirement envisaged by Section 30 (2)(d) is that it must provide for the implementation and supervision of the Resolution Plan. In this regard, clause 2-part A at page 123 r/w relevant note at page 126 of the Resolution Plan provide for the Monitoring Committee.

10. Other conditions in terms of Section 30 (2) (e) (f) 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. In this regard a declaration has been made at Point (i) Part A at page no. 125 read with point f, Part C at page no. 136 of the resolution plan.

11. Ld. Counsel appearing for the Resolution Applicant submitted that the Resolution Plan is as per the provisions contained in the Code and so, the same may be approved. In terms of Regulation 39(4) of the CIRP Regulations, the Resolution Professional has filed compliance

certificate in Form-H which is annexed as Annexure-R at page 276. It has been submitted in the application and in Form H duly certified by Resolution Professional that the final Resolution Plan meets the requirements as laid down in various clauses of Section 30 (2) of the Code.

12. As a sequel to aforesaid discussions, we are satisfied that all the requirements of Section 30 (2) are fulfilled. In respect of compliances regarding CIRP Regulations especially Regulations 38 and 39, the Resolution Professional has certified in Form-H and explained in details that the Resolution Plan has complied with all the required Regulations.

13. For the reasons discussed above, in our considered view, the Resolution Plan fulfils the requirement as referred in Section 30 (2) of the Code and there are sufficient provisions in the Plan for its effective implementation as required under the proviso of Section 31 (1) of the Code. The Resolution Plan has been approved by CoC with 99.09% favourable voting.

14. Hon'ble Supreme Court of India in the matter of ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors.*, Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

"38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best

resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants."

15. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which was earlier approved by the CoC by the majority vote of 99.09%.

16. It is clarified that Section 30 (2) (f) of the Code mandates that the Resolution Plan should not be against any provisions of the 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.

17. 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.

18. 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.

19. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.

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

(SUMITA PURKAYASTHA)
MEMBER (T)

(DHARMINDER SINGH)
MEMBER (J)