THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH – I, MUMBAI

MA 243/2018 IN CP (IB)-727/MB/2017

CORAM : SHRI V.P. SINGH, MEMBER (J)
SHRI RAVIKUMAR DURAISAMY, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 21.02.2019

NAME OF THE PARTIES: UNION BANK OF INDIA
v/s
PARAMSHAKTI STEEL LTD.

SECTION 7 OF THE INSOLVENCY & BANKRUPTCY CODE, 2016

ORDER

34. MA 243/2018 IN CP (IB)-727/MB/2017

Resolution Professional in person and Ld. Senior Counsel appearing on behalf of the Resolution Applicant is present.

Resolution professional has filed the affidavit in compliance of our order dated 14.2.2019. While hearing, it has been brought to our notice that in para 44(a), there is certain typographical error. We have checked and found that there are certain typographical errors in Clause 44(a). We have ratified that mistake as under :

The words “will include” will be read as “will not include”.

On 14.2.2019, we have approved the resolution plan with certain modification. The order was further passed that modified resolution plan may be sent to the Resolution Professional for seeking acceptance from the Resolution Applicant.

In compliance with our order, Resolution Professional has filed the acceptance report wherein it is stated that:

“1. Resolution Applicant had filed Affidavit dated 6th December 2018 and 10th December 2018 stating that the Resolution Applicant is agreeable to pay an amount of Rs.10 Cr. to the Union Bank of India as an upfront cash payment. The Resolution Plan is modified to incorporate the upfront payment of Rs.10 cr to Union Bank of India. The amount is reflecting in Chapter Five (Annexure 1) and consequential changes in Transaction structure under Modified Resolution Plan.

2. Resolution Applicant had filed an Affidavit on 10th December 2018 stating that the Resolution Applicant has no objection in assigning the receivables, to the tune of approximately Rs.180 crs. of the Corporate Debtor in favour of Financial Creditors. The Resolution Plan is modified to incorporate the same on page No.37 of the Modified Resolution Plan which reads as under:

The Resolution Applicant has no objection in assigning the receivables, to the tune of approximately Rs.180 crores, of the Corporate Debtor in favour of the Financial Creditors."

3. The Resolution Applicant has modified the Resolution Plan to incorporate amendment Regulation 38(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2018, the dues of the operational creditors of the Corporate Debtor, as provided in the Resolution Plan, will be paid in priority to the Financial Creditors. The Resolution Plan is modified to incorporate the same on page no.24 of the Modified Resolution Plan which reads as under:

"The amount due to the operational creditors under the resolution plan, if any, shall be paid in priority over the financial creditors of the Corporate Debtor."

4. In terms of the Order dated February 14, 2019, the Resolution Applicant has provided the copy of the undertaking which reads as under:

"The Special Purpose Vehicle under the terms of the approved Resolution Plan for implementation of the Resolution Plan in respect of the Corporate Debtor would be a subsidiary of the Resolution Applicant. The persons or the entities constituting the Special Purpose Vehicle for implementation of the Resolution Plan in respect of the Corporate Debtor are not ineligible under the provisions of the Section 29A of the IBC, 2016. The Resolution Applicant will file a further affidavit upon the constitution of the Special Purpose Vehicle."

Given the above, Resolution Professional is not in a position to verify the affidavit stating that Resolution Applicant is eligible under Section 29A of IBC to submit Resolution Plan and therefore, Resolution Professional cannot comment that the Resolution Plan complies with Regulation 39(1) (a).

5. The term of the Resolution Plan as per the original Resolution Plan was valid for a maximum period of 9 months from Resolution Plan submission due date or until the expiry of CIRP period. The term of the Resolution Plan to be extended. Therefore, the Modified Resolution Plan provides for 9 months from the Resolution Plan approval date. The Resolution Plan is modified to incorporate the same on Page No.38 of the Modified Resolution Plan which reads as under:

"Resolution Plan will be valid for a maximum period of 9 months from the Resolution Plan approval date."

Resolution Professional has annexed the undertaking of the Resolution Applicant regarding the acceptance of the modified resolution plan wherein it is stated that "The Special Purpose Vehicle under the terms of the approved Resolution Plan for implementation of the Resolution Plan in respect of the Corporate Debtor would be a subsidiary of the Resolution applicant. The persons or the entities constituting the Special Purpose Vehicle for implementation of the Resolution Plan in respect of the Corporate Debtor are not ineligible under the provisions of the Section 29A of the IBC, 2016. The Resolution Applicant will file a further affidavit upon the constitution of the

Special Purpose Vehicle. Given the order dated 14.2.2019, the validity of the Resolution Plan stands extended for nine months from February 14, 2019, to ensure timely implementation thereof as per Annexure -6 to the Resolution Plan. As per the amended Regulation 38(1) of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2018, the dues of the operational creditors of the Corporate Debtor, as provided in the Resolution Plan, will be paid in priority to the Financial Creditor."

Resolution Applicant has also filed an affidavit of an undertaking for adopting a modified resolution plan.

Given the above, we at this moment accept the modified resolution plan with further direction to form the Monitoring Agency.

Pending the appointment of Monitoring agency by the Resolution Applicant, one representative from each of the Financial Creditors and Resolution Professional will form Monitoring Agency, who will supervise the implementation of the resolution plan.

MA is disposed of accordingly.

Sd/-	Sd/-
RAVIKUMAR DURAISAMY Member (Technical)	V. P. SINGH Member (Judicial)