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IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

1442
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ITEM No 114

IA/346(AHM)2021
IA/547(AHM)2021
in
CP(IB) 264 of 2018

Order under Section 7 IBC

IN THE MATTER OF:

Bank of India
V/s
Techno Forge Ltd

.....Applicant

.....Respondent

Order delivered on ..27/09/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

Matter is listed for pronouncement of order.

The order is pronounced vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-2**

**IA 346 of 2021 in
CP (IB) No. 264/7/NCLT/AHM/2018**

In the matter of :

Mrs. Bhavi Shreyans Shah
Resolution Professional of
Techno Forge Limited
Having Registered Office at
C-201, Embassy Apartment
Near Ketav Petrol Pump
Dr.V.S. Road
Ahmedabad

..... Applicant

Appearance: Mr. Kiran Shah, FCA, for the Applicant/RP.
Mr. Arjun Sheth, Advocate, for Suspended Management.

**IA 547 of 2021 in
CP (IB) No. 264/7/NCLT/AHM/2018**

Vikram Ashok Kapasi
Having Address
B/4, Nand Society
Nr. AIMS Oxygen
Old Padra Road
Vadodara


..... Applicant

Versus

Bhavi S. Shah
Resolution Professional
of Techno Forge Ltd.
Having Office at
C 201, Embassy Apartment
Nr. Ketav Petrol Pump
Dr.V.S. Road
Ahmedabad

..... Respondent

Appearance: Mr. Arjun Sheth, Advocate, for Applicant.
Mr. Kiran Shah, FCA, for RP.



Order Reserved on : 20.09.2021
Order Pronounced on : 27.09.2021

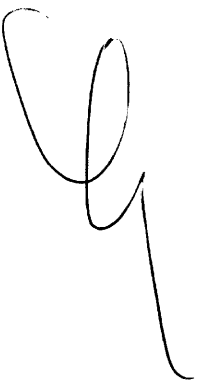
**Coram: Madan Bhalchandra Gosavi, Member (Judicial)
Virendra Kumar Gupta, Member (Technical)**

ORDER

[Per se: Virendra Kumar Gupta, Member (T)]

- 1) IA 346 of 2021 filed under Section 33 read with Section 34 of the IB Code, 2016 for passing an order of initiation of Liquidation process in the case of the Corporate Debtor, viz., Techno Forge Limited.

- 2) The facts, in brief, are that the aforementioned Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) by this Adjudicating Authority vide order dated 02.07.2020. The applicant was appointed as Interim Resolution Professional (IRP) who made public announcement as per Section 15 of the IB Code, 2016. The Applicant was also appointed as Resolution Professional (RP) and she conducted CIRP as per the provisions of IB Code, 2016 read with CIRP Regulations 2016. Various meetings of CoC were held. Form-G was published on 30.08.2020 and only one Resolution Applicant showed interest who submitted



Resolution Plan which was required to be revised by the Committee of Creditors (CoC) in its 3rd meetings held on 25.11.2020. However, revised plan was rejected by the CoC for the reasons that it was neither feasible nor viable. Thereafter, CoC passed Resolution seeking extension of CIRP period beyond 180 days which was granted. Thereafter, fresh Form-G was published. One Resolution Plan was received which was again required to be revised/modified. In the sixth meeting of CoC held on 03.03.2021, some modifications were sought from the Resolution Applicant. In the seventh meeting of CoC held on 20.03.2021, discussions were made on the revised resolution plan particularly on the aspect of term and value of the resolution plan. **It is stated by the applicants that in the 8th meeting held on 25.03.2021, CoC decided to keep the resolution plan as well as resolution for liquidation for e-voting till 30.03.2021.** The resolution applicants submitted the addendum on 27.03.2021 revising the major financial terms of the resolution plan and in this background one of the Financial Creditors, viz., Bank of India having substantial voting power, requested the CoC members vide e-mail dated 30.03.2021 sought further time to consider the resolution plan so amended. The voting period was extended up to 30.04.2021 on account of eruption of Covid-19 pandemic. An application for extension / exclusion was filed which was disposed

of by the Adjudicating Authority with a direction to file appropriate application. It is also mentioned that, in the meanwhile, the CoC approved resolution for Liquidation of the Corporate Debtor by 100% vote and proposed the applicant to act as Liquidator of the Corporate Debtor company.

IA 547 of 2021

- 3) Proposed Resolution Applicant has filed an IA 547 of 2021 opposing the Liquidation resolution passed by the CoC and for dismissal of the application, i.e. IA 346 of 2021, filed for liquidation of the Corporate Debtor company.

- 4) In this IA, it has been claimed by the applicant that the Corporate Debtor is a registered MSME and to this effect, the applicant has filed various undertakings and affidavits as required under CIRP Regulations, 2016. It has also been claimed that the applicant has revised the Resolution Plan as required by the CoC from time to time and also made further amendments vide addendum dated 27.03.2021. It has also been claimed that the last date for passing of resolutions by e-voting was extended up to 30.04.2021 and in spite of that addendum dated 27.03.2021, the proposed resolution plan was not put for consideration before the CoC and the Corporate Debtor is being pushed into Liquidation. It has also

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been claimed that the resolution applicant has further improved its resolution plan by addendum dated 26.07.2021.

- 5) In this background, the Ld. Counsel appeared and argued vehemently and submitted that the resolution applicant only has put a resolution plan to resolve the debt of the Corporate Debtor and liquidation, being an exception, is to be resorted at last. It has also been claimed that the promoters of the Corporate Debtor have worked very hard even during the CIRP to improve the financial conditions of the Corporate Debtor and have got a number of employees because the Corporate Debtor is a going concern. In this background, the Ld. Counsel pleaded that CoC may be directed to reconsider the last offer of the resolution plan as amended on 26.07.2021
- 6) Ld. Counsel appearing for the RP, however, pleaded for Liquidation of the Corporate Debtor as per the Resolution of CoC.
- 7) We have considered the submissions made by both the sides and material on record. It is noted that two Form-Gs had been published and only the applicant in IA 547 of 2021 has submitted the Resolution Plan which have been revised / modified from time to time and as late as 26.07.2021. One of the Financial Creditors,

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being CoC member, has also desired for consideration of the revised offers though order of resolution for liquidation of the Corporate Debtor has been passed by 100% voting.

- 8) From the facts narrated herein before, it is evident that the resolutions were proposed but e-voting thereon was extended up to 30.04.2021 due to pandemic situation prevailing in the country. It is also noted that in the application filed for liquidation no reasons have been given as to why the latest offer dated 27.03.2021 of the resolution applicant was not liable to be considered. It is also noted that there appears to be some disconnects among the members of CoC due to pandemic situation. The Hon'ble Supreme Court in the case of **Committee of Creditors of Essar Steel Limited Vs. Satish Kumar Gupta & Ors.** has held that the commercial wisdom of CoC cannot be challenged but in exceptional cases limited judicial intervention can happen. The relevant findings of the Hon'ble Supreme Court in this regard are as under:


46. *This is the reason why Regulation 38(1A) speaks of a resolution plan including a statement as to how it has dealt with the interests of all stakeholders, including operational creditors of the corporate debtor. Regulation 38(1) also states that the amount due to operational creditors under a resolution plan shall be given priority in payment over financial creditors. If nothing is to be paid to operational creditors, the minimum, being liquidation value - which in most cases would amount to nil after secured creditors have*

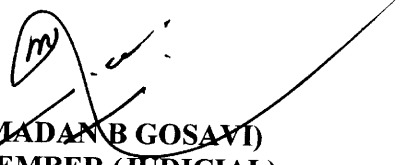
been paid - would certainly not balance the interest of all stakeholders or maximise the value of assets of a corporate debtor if it becomes impossible to continue running its business as a going concern. Thus, it is clear that when the Committee of Creditors exercises its commercial wisdom to arrive at a business decision to revive the corporate debtor, it must necessarily take into account these key features of the Code before it arrives at a commercial decision to pay off the dues of financial and operational creditors. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub- class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.

- 9) Though the above observations pertain to considerations which need to be kept in mind while approving the Resolution Plan. However, the principle is that objects of the IB Code need to be taken into consideration. Hence, in a case, where the option for approval of Resolution Plan and Liquidation of the Corporate Debtor are pleaded then in our opinion, in that situation, resolution should be given priority over Liquidation. It would be more so in case of MSME and the Corporate Debtor, being a going concern. It is also noted that the preamble to IBC, 2016 also talks of resolution and not liquidation. It has been held in a number of judicial decisions that liquidation is the last resort. In the present case, the Corporate Debtor is an MSME and the Suspended Management appears to be keen to run the unit as a going concern and because of this they have revised their offer from time to time as desired by the CoC.
- 10) In the case of **Essar Steel** (supra), the Hon'ble Supreme Court while holding that the time line should be maintained, being one of the prime objectives of the IB Code, 2016, also observed that in a specific case where the Corporate Debtor could be put into back on its feet some relaxation in the time lines can be given. In the present case, as stated earlier, the Corporate Debtor is a going concern and can be revived and continued as a going concern as

well. Hence, though more than 330 days have passed which include exceptional circumstances due to Covid-19 pandemic, we are of view that an opportunity may be given for revival of the Corporate Debtor through a Resolution Plan. However, considering the factor of time lines are also one of the prime considerations and key object of IB Code, 2016, we direct the applicant to submit their final proposal within 15 days from the date of this order to CoC who shall take a final call on the resolution plan so submitted within 15 days thereafter. If no resolution works-out, then the CoC may again recommend for liquidation of the Corporate Debtor and direct RP to complete the procedural formalities by filing necessary additional affidavit in IA 346 of 2021 before this Adjudicating Authority within seven days thereafter this Adjudicating Authority may pass an appropriate order therein.

- 11) In the result, IA 547 of 2021 is allowed and disposed of as per the terms indicated above.
- 12) IA 346 of 2021 is kept pending and be listed for further consideration on 15.11.2021


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)