

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 32
IA 901 of 2020 in CP(IB) 343 of 2018

Order under Section 30(6) IBC

IN THE MATTER OF:

Rajat Mukherjee RP of Shaifali Steels Ltd
V/s
Committee of Creditors of Shaifaili Steel Ltd

.....Applicant

.....Respondent

Order delivered on ..13/12/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the IRP/RP :
For the Respondent :

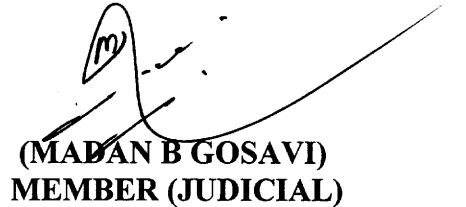
ORDER

The case is fixed for pronouncement of order.

The order is pronounced in the open court, vide separate sheet.



**(AJAI DAS MEHROTRA)
MEMBER (TECHNICAL)**



**(MADAN B GOSAVI)
MEMBER (JUDICIAL)**

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

IA 901 of 2020 in
CP (IB) No. 343/9/NCLT/AHM/2018

[Application under Section 30(6) of the IB Code, 2016]

In the matter of :

Mr. Rajat Mukherjee
(RP of Shaifali Steels Limited)

..... Applicant

Versus

Committee of Creditors of
Shaifali Steels Limited & Ors.

..... Respondents.

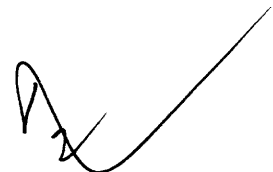
MEMO OF PARTIES

Mr. Rajat Mukherjee
RP of Corporate Debtor
Having its Co-ordination point: 708
Scarlet Gateway, River Antilla
Corporate Road, Satellite
Ahmedabad-380 015

..... Applicant

Versus

- 1) Suspended Board of Directors of
Shaifali Steel Limited
Through Kuldipsinh Bhavarsinh
Rathod..... Performa Respondent
Block-1563, Sola-Kalol Road
Santej, Gandhinagar-382 721
- 2) Members of Committee of
Creditors
 - (a) Invent Assets Securitization
& Reconstruction Pvt. Ltd.
(Invent)
Invent/1516/S61 Trust
Bakhtavar, Suit B



Ground Floor
Backbay Reclamation
229, Nariman Point
Mumbai-400 021

(b) Union Bank of India
Ashram Road Branch
C U Shah Chambers
Nr. Gujarat Vidhyapith
Ashram Road
Ahmedabad-380 014
Gujarat

3) Mr. Pratik Shah
Proprietor of Caxchem Chemical
Corporation
Shalyavan Appt., Ground Floor
Mahalaxmi Cross Road
Paldi, Ahmedabad
Gujarat-380 007

..... Respondents.

Order Reserved on : 06.12.2021
Order Pronounced on : 13.12.2021

**Coram: Madan Bhalchandra Gosavi, Member (Judicial)
Ajai Das Mehrotra, Member (Technical)**

Appearance:

Mr. Navin Pahwa, Sr. Advocate, for the Applicant/RP.
Mr. Rajat Mukherjee, RP.
Mr. Harmish K. Shah, Advocate, for the Respondent.
Mr. Hiten Parikh, PCA, for the Successful Resolution Applicant.

ORDER

[Per: Madan Bhalchandra Gosavi, Member (Judicial)]

1. This application is filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (IB Code) by Mr. Rajat Mukherjee,



Resolution Professional (RP) of the Corporate Debtor, viz., M/s. Shaifali Steels Ltd., seeking approval of the Resolution Plan submitted by M/s. Caxchem Chemical Corporation, the Resolution Applicant. The Resolution Plan has been approved by the Committee of Creditors (CoC) by 100% votes.

2. Since the Resolution Plan has been approved by CoC, by the requisite majority of votes, we need not go into the commercial viability of the plan except the effect that whether the plan is implementable.
3. On 20.10.2021, we have heard the Resolution Professional (RP), Ld. Sr. Counsel for the RP and Ld. Counsel for the CoC. We have also had an opportunity to heard the Ld. Counsel for the successful Resolution Applicant.
4. Upon perusal of the Resolution Plan, we found that the Resolution Applicant had made a statement in the Resolution Plan that he would be raising funds to pay the dues of all the creditors and Corporate Insolvency Resolution Process (CIRP) cost, by way of sale of his Bungalow. However, we were of the view that unless the Resolution Applicant produces on record a concrete proposal of raising funds by producing the agreement of sale of his Bungalow and by showing that the consideration amount is being really received by him, it was difficult to consider the plan. Hence, we called upon the CoC to look into that aspect in view of Section 30(2) and (4) of the IB Code. We also called upon the RP to confirm the fact that whether the Income Tax dues are paid.
5. In response to our queries, the RP filed an affidavit dated 25.11.2021 stating therein that the queries raised by this

Adjudicating Authority were placed before the CoC in an additional meeting dated 15.11.2021 and 22.11.2021. The Resolution Applicant, Mr. Pratik Shah, being proprietor of M/s. Caxchem Chemical Corporation, was called upon to submit the requisite proof of the fund and payment of taxes. The Resolution Applicant gave details showing that the taxes are paid by them for the assessment years 2018-2019 till 2020-2021. He also produced on record the agreement to sale of his Bungalow for a sum of Rs.361 lacs. In short, the evidence is brought on record to show that the Resolution Applicant has the requisite funds to implement the Resolution Plan.

6. Now this takes us to consider whether the Resolution Plan complies with the provisions of Section 30(2) of the IB Code and Regulations made thereunder. As noted earlier, we are not entering into the decisions of the CoC relating to the commercial viability of the Resolution Plan. With this, we proceed to examine the Resolution Plan in the light of the provisions of Section 30(2) of IB Code.

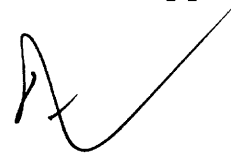
7. Section 30(2) requires the following amongst other conditions the plan must comply to

(a) the plan must provide for the payment of Corporate Insolvency Resolution Process cost in priority to the payment of other debts;

(b) the plan must provide for the payment of debt of the Operational Creditors and also to the Financial Creditor who do not vote in favour of the resolution plan, to the extent not less than the amount to be paid in the case of liquidation of the Corporate Debtor under Section 53(1) of the IB Code;



- (c) the plan provides the mechanism for the management of the affairs of the Corporate Debtor, after the approval of the plan and during the implementation of the plan;
 - (d) it must provide mechanism for the effective implementation and supervision of the resolution plan;
 - (e) the plan does not contravene any provisions of law for the time being in force; and
 - (f) the plan confirms other requirement as specified by the Board.
8. Keeping before our side, the above requirement of law, we have examined the Resolution Plan. We noted that in para-3.10 of the Resolution Plan, it is stated that the CIRP cost is paid in entirety and the Resolution Applicant undertakes to pay future CIRP cost from own funds. In view of this, we hold that the provisions of Section 30(2) (a) are complied with.
9. In the plan, an amount of Rs.2.16 crores is ear-marked for payment of dues of the CoC and the amount is more than 10% of the liquidation value of the Corporate Debtor, in case, the Corporate Debtor gets liquidated. It complies the provisions of Section 30(2) (b) of the IB Code. There are no dissenting Financial Creditors in this case.
10. In Chapter-IV of the Resolution Plan, provided for management of the affairs and control of the business of the Corporate Debtor, it is suggested that re-constituted Board of Directors of the Corporate Debtor along with some key managerial persons and the monitoring committee would look into the affairs of the Corporate Debtor pending the implementation of the approved



plan. We hold that the provisions of Section 30(2) (c) are complied with thereby.

11. In para-4.3 of the plan, it is stated that the re-constituted Board of Directors shall be principally responsible for the effective implementation of the plan and we hold that it complies with the provisions of Section 30(2) (d) of the IB Code.
12. At Annexure-P, the Resolution Professional gives compliance certificate in Form-H wherein it is stated that the Resolution Plan does not contravene any provisions of Law. Upon our examination of the Resolution Plan, we too found that the plan does not contravene any provisions of law for the time being in force as provided in Section 30(2), (e) of the IB Code. Regulation 38 of the IBBI (Insolvency Resolution Process for the Corporate Persons) Regulations, 2016, states mandatory contents of the Resolution Plan. Out of the others Regulation 38(2) states that plan must contain its terms and implementation schedule.
13. In para-3.2 of the Resolution Plan, the Resolution Applicant states that the term of the plan is six (6) months from the date of approval by this Adjudicating Authority and implementation schedule is also given. We hold that the plan complies with other requirement specified by IBBI and Section 30(2) (f) of the IB Code.
14. In the Resolution Plan, Chapter-IX is about concession and relief sought by the Resolution Applicant. We cannot grant that in entirety. Suffice to say that the relief and concession as claimed under the plan are subject to the provisions of law relating to those concessions and reliefs and the Resolution Applicant has to approach the concerned authorities under those laws to get such

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reliefs and concessions. Further, we make it clear that the past dues, i.e. prior to CIRP, payable by the Corporate Debtor would stand extinguished upon the approval of the Resolution Plan. As far as future dues of the Corporate Debtor are concerned, the Resolution Applicant has to approach the concerned authorities for concession / reliefs, if any.


15. The Corporate Debtor is MSME and the Resolution Applicant is though the related party of the Corporate Debtor, is not disqualified under Section 29A of the IB Code, in view of Section 240A of the IB Code, such affidavit is filed on record.
16. Since the Resolution Plan is in conformity with the provisions of law, we approved the same with following directions / order;

ORDER

- i) The **Resolution Plan** of **M/s. Caxchem Chemical Corporation** for the Corporate Debtor, viz., **M/s. Shaifali Steels Limited**, as approved by the Committee of Creditors (CoC) with 100% voting is hereby approved and shall be binding upon the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders including Government Authorities / Institutions, involved in the present Resolution Plan.
- ii) The approved Resolution Plan shall come into force with immediate effect.
- iii) The moratorium order passed, under Section 14 of the I & B Code, shall cease to have effect.



- iv) The monitoring committee shall be constituted as per the resolution of CoC by giving representation to its all financial creditors/members and Resolution Professional, so as to facilitate and monitor the progress in implementation of the Resolution Plan by the Resolution Applicant.
- v) The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the Resolution Applicant for proper running operations of the business of the Corporate Debtor.
- vi) The resolution plan is approved with such observation that the resolution applicant shall follow the provisions of Section 31(4) of the Insolvency and Bankruptcy Code, 2016 to obtain necessary approval required under any law for the time being in force within the period of one year from the date of approval of the resolution plan by this Adjudicating Authority under sub-section 1 of Section 31 of the I & B Code.
- vii) On the effective date, all claims of the suspended management, erstwhile directors and erstwhile shareholders shall stand permanently extinguished.
- viii) The RP shall complete the accounting entries to give effect to the resolution plan in the Books of Account as per the applicable Accounting Standards and provisions of the Companies Act, 2013.
- ix) Personal Guarantors, if any, shall not stand released or extinguished and the financial creditors shall be at liberty



to deal with such personal guarantee as per the applicable law.

- x) 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 on its database.
 - xi) The RP shall stand discharged from his duties with effect from the date of this Order.
 - xii) The Resolution Applicant shall file a copy of this order with Registrar of Companies, Gujarat.
17. With the aforesaid directions, IA No. 901 of 2020 along with CP (IB) No. 343/9/NCLT/AHM/2018 stands disposed of.
18. Registry is directed to serve certified copy of this order, if applied for, to all concerned parties upon compliance with all requisite formalities.



**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



**MADAN B GOSAVI
MEMBER (JUDICIAL)**