

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
ALLAHABAD BENCH**

IA No. 198/2021

IN
COMPANY PETITION NO. (IB) 75/ALD/2019
*(Under Section 31 of the Insolvency and Bankruptcy Code, 2016 for approval
of Resolution Plan)*

IN THE MATTER OF:

ASHOK KUMAR GULLA

RBSA Restructuring Advisors LLP,
2nd Floor, IAPL House, 23, South Patel Nagar,
New Delhi-110008

...Applicant/ Resolution Professional

AND

IN THE MATTER OF

STATE BANK OF INDIA

...Financial Creditor

Versus

M/S FEDDERS ELECTRIC & ENGINEERING LIMITED

...Corporate Debtor

ORDER PRONOUNCED ON :06.10.2021

CORAM:

Hon'ble Dr. Deepti Mukesh, Member, Judicial

Hon'ble Ms. Sumita Purkayastha, Member, Technical

Appearance:

For Applicant : Ms. Gunjan Jadwani, Advocate

ORDER

[Per se: Dr. Deepti Mukesh, Hon'ble Member (J)]

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1. The present Application has been filed by the RP u/s 30(6) and 31 of the IBC, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for

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Corporate Persons) Regulations, 2016 seeking the approval of Resolution Plan submitted by IM+ Capitals Limited (“Successful Resolution Applicant”) in the Corporate Insolvency Resolution Process of Fedders Electric & Engineering Limited (“Corporate Debtor”). The Resolution plan duly approved by CoC with 74.61% voting share has been placed on record.

2. The Company Application bearing C.P. No. IB 75/ALD/2019 was filed by State bank of India/ Financial Creditor under Section 7 of the Code for initiating Corporate Insolvency Resolution Process of M/S Fedders Electric & Engineering Limited / Corporate Debtor. This Tribunal vide order dated 14.08.2019 admitted the application and appointed Mr. Ashok Kumar Gulla as the Interim Resolution Professional (IRP) with necessary directions and to file regular reports of events. The Interim Resolution Professional made a public announcement in Form A as prescribed under Regulation 6 (1) of the Regulations for intimation of commencement of Corporate Insolvency Resolution Process of the Corporate Debtor and for inviting claims from the creditors of the Corporate Debtor along with the proof in the prescribed format.
3. The IRP further collated the claims received and constituted the CoC which comprises of State Bank of India, Punjab National Bank, Axis Bank, Central Bank of India, Karnataka Bank, ICICI Bank, Standard Chartered Bank and Toyota Financial Services Pvt. Ltd. Thereafter in the first meeting of the CoC the appointment of the IRP was confirmed as the Resolution Professional of the Corporate Debtor.
4. It is stated that on 23.12.2020, due to unsuccessful attempts of resolution of the corporate debtor , in the 18th COC meeting it was

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approved that fresh public announcement be made for inviting Expression of Interest (for brevity 'EoI'), from Prospective Resolution Applicants (for brevity 'PRAs'), the eligibility criteria for which invitation of EoI , further the Request for Resolution Plan (for brevity 'RFRP') and evaluation matrix were also discussed and approved by the CoC.

5. It is further stated that on 26.12.2020, the Applicant issued a fresh public advertisement in the prescribed Form-G, calling upon the Prospective Resolution Applicants ("PRAs") to submit their respective Expression of Interest ("EOIs") for the Corporate Debtor, for which 12 EOIs were received which were included in the Provisional List of PRAs issued on 10.01.2021. Out of 12 PRAs, 11 were included in the final list issued on 15.01.2021 and finally only 4 PRAs submitted Resolution Plan till the last date of submission of Resolution Plan i.e on 16.02.2021 and it was received from the following parties:
 - i. IM+ Capitals Limited
 - ii. Rajalakshmi Wind Energy Limited.
 - iii. Atambhu Buildwell Private Limited
 - iv. Shiva Consultants Private Limited.

6. It is further submitted that the Resolution Plans/offers submitted by the PRAs mentioned above were discussed by CoC the representatives of the PRAs in the 23rd Meeting of COC held on 23.02.2021 and they were requested to improve the Resolution Plan and financial offer and make the plans compliant with the provisions of the IBC.

7. Further stated that vide email dated 23.02.2021, Atambhu Buildwell Private Limited informed the RP that they would like to withdraw

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from the process and the representatives of M/s Rajalakshmi Wind Energy Limited participated in the 22nd, 23rd, and 24th meetings of CoC held on 23.02.2021, 09.03.2021 and 12.03.2021 respectively and they also, vide email dated 19.03.2021 subsequently withdrew their Resolution Plan. In its 24th and 25th meetings of COC held on 19.03.2021 and 30.03.2021 respectively, the CoC evaluated and discussed the Resolution Plans submitted by Shiva Consultants Private Limited and IM+ Capitals Limited and carried out negotiations with the Resolution Applicants in an attempt to achieve value maximization.

8. It is further stated that the representatives of Shiva Consultants Private Limited were called and they even confirmed that they shall be providing a Performance Bank Guarantee (for brevity 'PBG') as per the Request for Resolution Plan (for brevity 'RFRP') . But on 25.03.2021, Shiva Consultants Private Limited informed the Resolution Professional that they shall provide the performance Security of INR 1.00 Crore, if Plan is approved by the CoC till the NCLT approved date and that amount shall be adjusted in the upfront payment amount as mentioned in the Resolution Plan submitted by them.
9. Thereafter 91.10% members in voting share of CoC did not agree to consider the request of Shiva consultants Private Limited with regard to reduction in performance security amount. It was determined that the Resolution Plan submitted by M/s Shiva Consultants Pvt. Ltd does not fulfil the conditions laid down in the RFRP, therefore the same is not eligible to be placed before members of CoC for approval. It was further concluded that only one Resolution Plan would be put up for approval before the CoC through e-voting.

10. Though in view of uncertainty of the approval of the Resolution plan, the CoC in its 24th meeting held on 12.03.2021 has also considered the probability of liquidation and discussed the same. It is further stated that IM+ Capitals Limited submitted the 1st Resolution Plan dated 08.02.2021 in the CIRP of the Corporate Debtor, which was discussed in the 22nd, 23rd and 24th meetings of CoC held on 23.02.2021, 09.03.2021 and 12.03.2021 respectively and after further negotiation with the Members of CoC, the Final Resolution Plan dated 19.03.2021 was submitted. Subsequently, on 03.04.2021, the Resolution Applicant submitted an Addendum to the Resolution Plan dated 19.03.2021 and further emails dated 01.05.2021 and on 08.05.2021 wherein the tenure of the said Resolution Plan was reduced from 180 days to 150 days and the tranches for payment were further modified in three instalments resulting in earlier payments, which are now to be read with the Resolution Plan dated 19.03.2021.
11. Meanwhile on 06.04.2021, the 26th meeting of the CoC was held wherein the members of the CoC expressed their respective difficulties in receiving internal approvals for the Resolution Plan on account of the pandemic Covid 19 and resolved and approved to seek extension of 25 days in the CIRP of the Corporate Debtor in order to complete the e-voting process for approval of the Resolution Plan dated 19.03.2021 submitted by the Successful Resolution Applicant. The said resolution for extension of time was approved by a majority of 83.26% of voting share and the application for extension of CIRP period was allowed by this Tribunal vide order dated 09.06.2021, according to which the last date of completion of the CIRP was 04.07.2021.

12. It is further submitted that on 16.06.2021, the Final Resolution Plan was put up for e-voting by the CoC members. The said e-voting took place from 11am on 16.06.2021 to 6pm on 18.06.2021. The members of the CoC participated in the scheduled e-voting and the same resulted in the approval of the Final Resolution Plan submitted by the Successful Resolution Applicant by 74.61% of the CoC, thereby the proposed Resolution attained the requisite majority as stipulated under Section 30(4) of the IBC. Out of all the CoC members, the Punjab National Bank having 11.73% of voting share, Central Bank of India having 8.96% of voting share, ICICI Bank having 4.70% of voting share and Toyota Financial Services Pvt. Ltd having 0.003% of voting share have dissented to the approval of the plan.
13. It is further stated that on 19.06.2021, the Letter of Intent was issued to the Successful Resolution Applicant, which was executed on 23.06.2021 and in terms of the RFRP, on 23.06.2021, the Successful Resolution Applicant submitted a performance bank guarantee of the amount of INR, 9,65,00,000/- . It is further stated that as far as the valuation is concerned, as discussed with the members of CoC in the 13th meeting of CoC held on 19.08.2021, it is submitted that in terms of the inputs provided by the Registered Valuers, there has been an impact on account of the Covid-19 Pandemic in the Fair Value and Liquidation Value of the Corporate Debtor. Based on the valuation reports submitted in March 2020, the average fair value of the corporate debtor was Rs. 206.68 crores and as per the report of June 2020 considering the Covid-19 impact, the average fair value has been reduced to Rs.175.68 Crores and the average liquidation value of the corporate debtor as per the valuation

reports submitted in March 2020 was Rs.133.05 crores which was also reduced to Rs. 113.09 crores based on the valuation report submitted in June 2020.

14. It is further submitted that the Resolution Professional has verified the contents of the Approved Resolution Plan and has confirmed that the Approved Resolution Plan complies with the requirements envisaged under Regulation 38 of the CIRP Regulations as well as Section 30 of the IBC. Accordingly, the Resolution Professional has filed the present application seeking approval of the Resolution Plan in terms of Section 31(1) of the Code.
15. It is observed that 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 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 “**IM+ Capitals Limited**” meet all the requirements of the IBC and the Regulations thereunder; and
 - b) The Resolution Plan submitted by “**IM+ Capitals Limited**” has been approved by the Committee of Creditors by 74.61% 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.

16. The parameters for the approval of the resolution plan as set out in IBC, 2016 read with IBBI (CIRP) Regulations, 2016 which are briefly set forth herein below:

Section/ Regulation	Compliance
Section 30(1) of IBC,2016	Yes (Annexed as Annexure 2 of the Resolution Plan)
Section 30(2)(a) of IBC,2016 And Regulation 38 (1A) of IBBI (Insolvency Process for Corporate persons) Regulations,2016	Resolution applicant proposes the payment of CIRP cost in priority to payment of other debts. The Resolution Plan provides for the interest of all the stakeholders of the Corporate Debtor.
Section 30(2)(b) of IBC,2016 And Regulation 38 (2) (c) of IBBI (Insolvency Process for Corporate persons) Regulations,2016	The resolution plan proposes to make payment to the financial creditors to the total amounting to Rs. 80,00,00,000/- after deducting unpaid BG commission and payment to dissenting financial creditors and to the operational creditors to maximum sum of Rs. 1,52,00,000 on pro rata basis to their admitted claims

	Monitoring committee will be responsible for supervising implementation of the plan as proposed by resolution applicant.
Section 30(2)(c) of IBC,2016 and Section 30 (2)(d) (e)of IBC,2016	The Financial creditors namely Punjab National Bank, Central Bank of India, ICICI Bank and Toyota Financial Services Pvt. Ltd who did not approve the plan will be paid to the extent of the amount to be paid to such creditors in accordance with Sec 53 (1) of the Code in event of liquidation of the corporate debtor. A committee consisting of One Representative of the Financial creditors, one representative of Successful Resolution Applicant and the Resolution professional shall manage the corporate debtor during the implementation of Resolution Plan.
Section 30(2)(f) of IBC,2016	The Resolution Plan does not contravene any of the provisions of law for the time being in force.

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Section 30(4) of IBC,2016	The members of COC in its 24 th meeting of COC held on 19.03.2021 approved the resolution plan with 74.61% of voting share.
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17. The resolution plan is for the amount of Rs. 96.50 crores, which is to be paid in 150 days from the date of approval of Resolution Plan by this Adjudicating Authority and all the funds shall be sourced by the Resolution applicant through its internal sources which includes the working capital and through its FDR of Rs. 30,50,00,000/- with Yes Bank in the name of the Group Companies and the balance amount will be paid through the internal resources of the company.
18. In view of the above discussion that resolution plan, as approved by the CoC, is found in accordance with the sub-section 2 of Section 30 read with Section 31 of the Code, thus we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.
19. This bench further confirms the Monitoring Agency comprising of One Representative of the Financial creditors, one representative of Successful Resolution Applicant and the Resolution professional as proposed by COC. Appointed persons to act as "Monitoring Agency" to monitor and supervise the implementation of the Resolution plan

as approved herein and execute all required tasks after the order of this bench approving the resolution plan is passed.

20. The Resolution Applicant is allowed to remove and/or substitute the Monitoring Agency with prior approval of this Adjudicating Authority if the Monitoring Agency is unable to satisfactorily perform its responsibilities or breaches terms of its appointment.
21. In view of the above discussion that resolution plan, as approved by the CoC, is found in accordance with the sub-section 2 of Section 30 read with Section 31 of the Code, thus we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.
22. It is hereby declared that the Resolution Plan is binding on the corporate debtor, members, employees of the corporate debtor, creditors of the corporate debtor and other stakeholders involved in the Resolution Plan.
23. It is also 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.
24. The Resolution Professional shall forward all records relating to the CIRP process and the resolution plan to IBBI to be recorded at its database in terms of Section 31 (3)(b) of the Code.

25. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
26. I.A. No.198/2021 is allowed and disposed of accordingly.
27. Let the copy of the order be served to the parties.

—Sd—

(SUMITA PURKAYASTHA)
MEMBER (T)

—Sd—

(DR. DEEPTI MUKESH)
MEMBER (J)

Swati Gupta
(LRA)