

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI**

MA/936/2019 filed in CP/507/IB/2017
under Section 30(6) of the Insolvency and
Bankruptcy Code, 2016 r/w Regulation
39(4) of Insolvency and Bankruptcy
Board of India (Insolvency Resolution
Process for Corporate Persons)
Regulations, 2016

In the matter of **M/s. Diamond Engineering (Chennai) Private Limited**

V. Mahesh
Resolution Professional

-Vs-

Applicant

M/s. Shah Brothers Ispat Private Limited

... Operational Creditor

Order delivered on 30th of September, 2019

CORAM

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

Resolution Professional/Applicant: Mr. V. Mahesh,
For Resolution Applicants : Mr. T.K. Bhaskar,
Shwetha Vasudhevan,
Mayan Jain, Counsels
For CoC (SBI) : Mr. R. Sugumaran, Counsel

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. The Resolution Professional has filed the instant
Application under Section 30(6) read with Regulation 39(4)



of Insolvency and Bankruptcy Board of India, (Insolvency Resolution Process for Corporate Person) Regulation, 2016 in CP/507(IB)/2017 for seeking the approval of '**Resolution Plan**' under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (in short, I&B Code, 2016) in the matter of **M/s. Diamond Engineering (Chennai) Private Limited** (hereinafter referred to as Corporate Debtor).

2. Mr. V. Mahesh is the Resolution Professional for M/s. Diamond Engineering (Chennai) Private Limited, who has submitted the Resolution Plan duly approved by the Committee of Creditors (CoC), which is accompanied by the Compliance Certificate in the prescribed Form-H.

3. It reveals from the record that on 06.06.2017, CP/507/IB/2017 filed by the Operational Creditor viz., M/s. Shah Brothers Ispat Private Limited, was admitted and Corporate Insolvency Resolution Process (CIR Process) was initiated against the Corporate Debtor viz., M/s. Diamond Engineering (Chennai) Private Limited.



4. It is submitted by the Resolution Professional that the Corporate Debtor had invited bids for obtaining Resolution Plans from the interested parties. The bids were submitted, considered and even "*in principle*" sanction was accorded by the CoC to the Resolution Plans, at various instances. None of these Resolution Plans could be drawn up to the final stage. In the meantime, some amendments have been made in the I&B Code, 2016, pertaining to the Promoters and MSMEs. This Bench vide Order dated 09.11.2018 passed in MA/531/2018 held that the Corporate Debtor is MSME and permitted the Promoters to file Resolution Plan, which was submitted to the CoC. The Plan was examined, considered and deliberated by the CoC on several occasions, however, it was rejected by the CoC for various reasons as clearly recorded in the Minutes of the CoC Meetings. The Corporate Debtor was recommended for Liquidation by the CoC a few times; however, the CoC was requested to reconsider the Plan, in the light of the viability of the Resolution Plan. The Resolution Applicants were directed to identify the resourceful Financial Sponsor for



consideration of the Plan; the Financial Sponsor having been identified and the Resolution Plan was finally considered, discussed and approved by the CoC in its Meeting held on 17.05.2019, "in principle" basis and while doing so, suggested some changes, in the Plan and the same were carried out by the Resolution Applicants.

5. In continuation to the "in-principle" Approval, several discussions, deliberations and interactions took place between the Resolution Applicants, Financial Sponsor (FS) and State Bank of India i.e., the lead member of the CoC with Voting Share of 78% (roughly). Finally, the approval was granted by the CoC in its meeting held on 16.08.2019. The other Financial Creditors have already given their final approval in respect of the Resolution Plan, except SBI Global Factor, which has communicated its final approval on 28.08.2019. In short, the Resolution Plan has been approved by the CoC with 100% voting share.

6. The Resolution Professional has stated that the Resolution Plan submitted by the Promoters of the



Corporate Debtor and supported by the Financial Sponsor, viz., Anacap Financial Partners LLP, UK is exhaustive and provides for settlement of dues to Financial Creditors, Operational Creditors and payment of statutory dues to various Regulatory Authorities. It is further stated that the Resolution Plan is in accordance with the amended provisions of Section 30(2)(b) of the I&B Code, 2016 r/w Regulation 38 of IBBI (IRPCP) Regulations, 2016 and the Plan is not in violation of any of the existing provisions of Law.

7. The **salient features** of the Resolution Plan are summarised as follows:-

i. Corporate Insolvency Resolution Process Cost Payable as per the Resolution Plan:

It is submitted that the Corporate Debtor being an operating concern had met most of the CIR Process expenses as and when the same became due and payable. Some of the amounts withheld by the Resolution Professional payable to the Employees are



considered as part of CIR Process Cost and sought to be paid in priority. The Promoters of the Corporate Debtor, being the Resolution Applicants, the salaries payable to them and not paid during the CIR Process period shall be treated as arrears of salary and be paid from the Corporate Debtor based on the Cash Flow post approval of this Plan. The other CIR Process Cost being the fees payable to the Resolution Professional as agreed by the Resolution Applicants shall be met on priority and on mutually agreed basis between the Resolution Professional and the Resolution Applicants.

ii. Claims of the Financial Creditors and settlement thereof:

The Resolution Professional has submitted that a time period of 45 (Forty Five) days would be required from the date of approval of the Resolution Plan by this Authority for making the payments to Financial Creditors as detailed below:-



NAME OF THE COC MEMBER	AMOUNT
<i>State Bank of India</i>	<i>127.37 Crore</i>
<i>AXIS Bank</i>	<i>21.56 Crore</i>
<i>India Factoring</i>	<i>1.00 Crore</i>
<i>SBI Global Factor</i>	<i>6.85 Crore</i>
TOTAL	156.78 Crore

The requirement of the funds is proposed to be financed from the following resources:

To be paid by	Amount
<i>Finance Sponsor</i>	<i>145.00 Crores</i>
<i>Promoters of Corporate Debtor</i>	<i>11.78 Crores</i>
TOTAL	156.78 Crore

It is further stated by the Resolution Professional that the Promoters / Resolution Applicants will pay a sum of Rs.17.63 Crores to the Financial Creditor viz., State Bank of India by way of One Time Settlement (OTS) in addition to the Resolution Plan amount of Rs.127.37 Crores. Upon receipt of full and final consideration, the State Bank of India would initiate adequate steps for releasing all the mortgaged properties (properties of Corporate Debtor as well as personal properties of



the Guarantors) by filing necessary Application before the DRT, Chennai.

iii. Claims of the Operational Creditors and settlement thereof:

The Resolution Professional submits that there are only 5 Operational Creditors, who have filed their claims including the Operational Creditor who triggered the CIR Process. Out of the five, two Operational Creditors have withdrawn their claims and one Operational Creditor has agreed for settlement of its dues vide an agreement entered into between the said Operational Creditor and the Promoters. However, the Resolution Plan as a measure of goodwill provides for payment of 20% of the claim amount over a period of 12-24 months to Operational Creditors. M/s. Carmeuse Lime & Stone has filed MA 461/2018 before this Bench seeking return of their advance paid in 2014-15 to the Corporate Debtor for purchase of specific raw



material. The amount of advance paid has become hopelessly "time barred." However, due to the longstanding relationship of *M/s. Carmeuse Lime & Stone* with the Corporate Debtor, the Promoters of the Corporate Debtor being the Resolution Applicants agree to settle them at 20% of their dues, which is included in the Plan. It would be paid over 12 to 24 months or such amount can be adjusted against the future Orders placed by them with the Corporate Debtor.

iv. Claims of the Statutory Authorities and settlement thereof:

The Resolution Professional has submitted that only EPF Authority had filed their claim; however due to the reason that the Corporate Debtor is viable, feasible and a going concern, it has been provided in the Resolution Plan that the payment of the principal amount due to the statutory authorities (undisputed) would be paid. It is noted that during the CIR Process, the Corporate Debtor has been treated as



'going concern' and the Resolution Professional has made payments to Statutory Authorities viz., IT, EPF, ESIC, GST, and Property Tax, Professional Tax, Factory License fee, etc., to the tune of Rs.15.41 Crore.

However, the statutory dues as per the claims received by the Resolution Professional are classified into two categories: (i) those payable and due before CIR Process, and (ii) those payable during the CIR Process and not paid. The details of the dues and period thereof is given in the tabular form as below:

Particulars	Payable and Due Before the CIRP-in Crores	Payable and Not Paid During the CIRP Up to 24.08.2019- in Crores	Total
<u>EMPLOYEE RELATED</u>	(60 months)	(24 months)	
PF	10.88	7.27	18.15
ESI	0.35	1.97	2.32
TDS	2.42	0.17	2.59
Sub Total (A)	13.65	9.41	23.06
<u>OTHER DUES</u>			
Income Tax	1.00	0.90	1.90
DTCP, Chengalpet	0.87	0.00	0.87
Sub Total (B)	1.87	0.90	2.77
TOTAL	15.52	10.31	25.83



In relation to the above, the Resolution Plan provides that the total statutory due of Rs.25.83 Crores will be paid within a period of 60 months. The statutory dues incurred during CIR Process period i.e. Rs.10.31 Crores shall be paid within 24 months and statutory dues incurred before the CIR Process period i.e. Rs.15.52 Crores shall be paid in the balance 36 months.

The Resolution Plan also provides for payments towards the claim of Resolution Professional, other CIR Process Cost and dues of the employees under the heading '*Other Payables*', as detailed below:

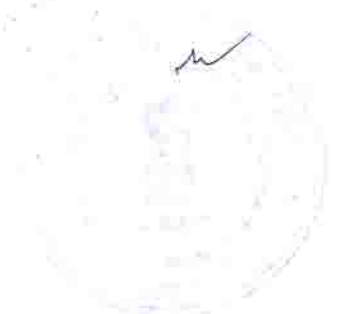
Particulars	Amount in Crores
SBI Trustee Cap	0.01
RP Claims & Other IRP Costs (estimated)	2.00
Settlement to Employees	7.85
TOTAL	9.86

In relation to the above, it is explained in the Resolution Plan that the CIR Process Cost shall be paid in priority and employees' over dues as specified



in the Plan will be paid within a maximum period of 24 months from the date of Approval of the Plan by this Authority.

The Resolution Professional has placed on record that *during the CIR Process*, GST Authorities have unilaterally marked lien on the Bank Account of the Corporate Debtor, maintained with Axis Bank (Account No. 910020029556845, Velachery Branch). The Bank has frozen the account without prior intimation to the Resolution Professional, whereas all amounts due and payable to GST Authorities during the entire CIR Process from July, 2017 to August, 2019 have been fully paid with delay for some of the months, as special account was not opened and cash flow problem was being faced. The Resolution Professional prayed that the superintendent of GST and AXIS Bank, Velachery Branch be directed to release the lien on the Bank Account.



v). Shareholding Pattern of Corporate Debtor post Resolution Plan:

The Resolution Plan provides that after its approval by this Authority, the Financial Sponsor shall hold 76% of Equity, and the Promoters/Present Shareholders of the Corporate Debtor shall hold 24% of the Equity. The value per share shall be suitably reduced. Further, if the Corporate Debtor and the Promoters achieve the projections as contemplated in the Plan, the Financial Sponsor shall transfer their shares to the promoters free of cost in the manner given below:

Shareholding Pattern of	2019-20	2020-21	2021-22	2022-23	2023-24
ANA CAP & their nominees	76%	66%	56%	46%	36%
Present Shareholders	24%	34%	44%	54%	64%
Total Shares	100%	100%	100%	100%	100%



vi) Concessions, Relief and Waiver(s) sought in the Resolution Plan with respect to -Income Tax, EPF & ESIC, and ETCP & GST/VAT/TDS:

The Resolution Professional submits that the Resolution Plan, envisages and seeks waiver, Reliefs, Concessions and exemptions from IT including the benefit of carry forward loss. It is stated that the amount to be received on disposal of immovable properties of Corporate Debtor will directly be transferred for settlement of loan to the Financial Sponsor, which should not be treated as 'Capital Gain' in the hands of the Corporate Debtor. Further, the Resolution Plan provides that EPF & ESIC and Gratuity payable prior to CIR Process commencement date i.e. 06.06.2017 shall be paid over a period of 60 months. Waiver of interest, late payment, penalty and or prosecution/compounding fees in respect of EPF, ESIC and GST and other Applicable Government/Regulatory Authorities is also sought. It is also prayed that on the basis of any statutory



demand there shall *not be any attachment of the properties of Corporate Debtor or Promoters' personal properties, as the same are utilised for the purpose of revival of this unit through this Resolution Plan.*

The Resolution Professional further submits that the hair cut or waiver of amounts in respect of the principal amount, interest payable and accounted in the books of the Corporate Debtor to the Secured Creditors (the difference between the amount due and payable and amount settled) shall be written back (off) from the books of the Corporate Debtor and be adjusted and/or credited to the Capital Reserve or Reserve Capital in accordance with applicable Accounting Standards/Ind-AS and the amount sacrificed or waived off by the Sundry Creditors as per the Plan be adjusted against the WIP, Current Assets which are written off as obsolete, redundant and not having any realisable / commercial value. The balance, if any, shall be utilised to write off the accumulated losses of the Corporate Debtor.



8. OBSERVATIONS / APPROVAL:

i. Since the Corporate Debtor is an MSME, the Promoters themselves are eligible to submit the Resolution Plan. In support of their contention duly sworn in Affidavit(s) has been submitted before this Adjudicating Authority.

ii. It is noted that in addition to the Resolution Plan 'One Time Settlement' (OTS) is offered to State Bank of India (SBI) whose percentage of stake in the total voting power is 78%. The pattern of payment for the OTS is described below:

Sl. No	Schedule of Payment	Rupees in Crores
1	10% of offer value along with submission of OTS proposal	1.76
2	40% of the Offer Value within one month from the date of sanction order	7.05
3	Balance 50% of the offer value to be paid within 6 months from the sanction order	8.81
	TOTAL	17.63



iii. It is further noted that a sum of Rs.1.76 Crore, being 10% of the OTS has been paid by the Resolution Applicants to the SBI.

iv. The Resolution Applicants have sought directions from this Authority to State Bank of India, to issue 'No Objection Certificate' for effecting sale of the properties and to consequently release the charge on the properties *as and when the amounts are paid as per the OTS* and to simultaneously release the original documents of the properties so as to enable the transfer for an encumbrance free title to third party buyers. Accordingly, these prayers are granted.

v. The Resolution Plan in general contains projected cash flow statement for a period of six years with an average year to year growth of 10% in the range of 7% to 12%. It also takes into account the payment projections to various stakeholders for the period of six years indicating the pattern of payment to various stakeholders. The Projection by and large



also includes 5 years projected sales and profits on financial year basis as well as projected balance sheet and a proposal for working capital limit.

vi. It is also noted that the resolution Plan makes the provision for monitoring the implementation of the Resolution Plan through 'Interim Monetary Committee' which will consist of Representative of Financial Sponsor, Nominee of Financial Creditor, the Resolution Professional and one of the Promoters.

vii. It is noted that the Resolution Plan submitted by the Resolution Applicants *inter alia* seeks extinguishment of claims, penalties, avail concessions, dispensations and reliefs from statutory authorities including carry forward and set off of business losses under the provisions of the Income Tax Act and treatment of capital reserve arising out of capital reductions and writing down the value of the current assets out of the amount sought to be reduced from current liabilities.



viii. All the Reliefs and Concessions as prayed for in the Resolution Plan by the Resolution Applicants fall within the parameters of I&B Code, 2016, and other applicable laws. Therefore, such Reliefs and Concessions including but not limited to carry forward and set off of business losses under the Income Tax Act and accounting treatment pertaining to capital reduction into capital reserve are hereby granted to the Resolution Applicants which shall include the reduction of capital as may be decided by the Board and approved by the shareholders in their meeting by passing '*Special Resolution*'. The minutes containing the amount of reduction of capital along with amended MoA and AoA shall be filed with the concerned RoC, as prescribed. Further, the concerned GST Authorities are directed to withdraw/cancel the lien over the Account No. 910020029556845 and the *Axis Bank Velacherry will defreeze the account*, within a week's time on receiving the certified copy of this Order.



9. Thus, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The provisions of Clauses (c) and (h) of Section 29A of I&B Code, 2016 are not applicable to the Resolution Applicants, as the Corporate Debtor is already declared as an MSME. The Resolution Professional has also certified that the "Resolution Plan" approved by the CoCs does not contravene any of the provisions of the law for the time being in force.

10. The Resolution Professional has also filed Compliance Certificate in **Form H** as required under *Regulation 39(4)* of IBBI (Insolvency Process for Corporate persons) Regulations, 2016.

11. In view of the above, the 'Resolution Plan' annexed with MA/936/2019 filed in CP/507/IB/2017 is hereby approved, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, other



stakeholders including statutory authorities involved in the Resolution Plan and the Resolution Applicants.

12. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution Applicants shall pursuant to the Resolution Plan approved under Sub-section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approval as may be required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan by this authority or within such period as provided for in such law.

13. The Resolution Applicants or the Monitoring Committee, as the case may be, are at liberty to approach this Authority for seeking appropriate directions for effective implementation of the Resolution Plan.

14. The order of moratorium dated 06.06.2017 passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this Order.



15. The Resolution Professional shall forward all record relating to the conduct of the CIR Process and the 'Resolution Plan' to the IBBI, so that the Board may record the same on its data-base.

16. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.

17. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicants.

18. The Order is pronounced in the open court.

-SD-

ANIL KUMAR B
MEMBER (TECHNICAL)

-SD-

CH. MOHD. SHARIEF TARIQ
MEMBER (JUDICIAL)

ATHISTAMANI



Certified to be True Copy

[Handwritten Signature]
9/2/18

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