

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

M.A. No. 285 of 2019

In CP No. 486/I&BP/NCLT/MAH/2018

Under section 30(6) of IBC, 2016

In the matter of

BMSS Steel Industries Pvt. Ltd.

366, S.V.P Road, Prarthana Samaj,
near Reliance Harkishandas Hospital,
Mumbai - 400 004

.... Operational Creditor

Vs

Shrid Metal Technologies Pvt. Ltd.

Plot No. 05, Gat No. 349 & 357,
Pirangut, Taluka Mulshi, Pune - 412
115

....Corporate Debtor

M.A. No. 285 of 2019

Mr. V. S. Rao Nagulapati

Resolution Professional

H-41, Mahindra Park, L.B.S. Marg,
Ghatkopar (w), Mumbai - 400 086

....Applicant

Order delivered on: 26.07.2019

Coram:

Hon'ble Shri. Bhaskara Pantula Mohan, Member (J)

Hon'ble Shri. V. Nallasenapathy, Member (T)

For the Applicant: Mr. S. Raghunath, Chartered Accountant a/w Ms. Amrita
Kharkar, Advocate.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This is an application filed by the Resolution Professional (RP) under Section 31 of the Insolvency and Bankruptcy Code, 2016 (Code) for approval of Resolution Plan.

2. The Corporate Debtor was put under Corporate Insolvency Resolution Process (CIRP) by an order of the Adjudicating Authority dated 16.04.2018. Consequently, Mr. V.S. Rao Nagulapati was appointed as Interim Resolution

Professional (IRP) who was confirmed as Resolution Professional (RP) by the Committee of Creditors (CoC) in the first meeting held on 18.05.2018. The applicant submits that the CIRP was conducted in compliance to the terms of the Code and the relevant Rules and Regulations. The RP submits that advertisements inviting claims from the creditors were issued, valuers were appointed, advertisement inviting Expression of Interest (EOI) was published in two newspapers, Information Memorandum was prepared, two Expression of Interests (EOI) were received, the CIRP was extended by 90 days and two Resolution Plan was received, one from Wather Investment and Trading Co. Pvt. Ltd. and another from Pradeep Metals Ltd.. The Resolution Plan was evaluated by the RP on the basis of evaluation matrix as approved by the CoC and the results were placed before the COC.

3. It is submitted that the COC in the meeting held on 31.12.2018 rejected the Resolution plan submitted by the Pradeep Metals Ltd. in view of the fact that the Resolution Plan was for Rs. 1.92 crores whereas the liquidation value of the Corporate Debtor was Rs. 4.32 crores and the decision was informed to the said Resolution Applicant. The other Resolution Applicant M/s. Wather Investment and Trading Co. Pvt. Ltd. by a letter dated 30.12.2018 proposed certain amendments to their plan submitted earlier and the copies of the amendments were circulated to COC members and after discussion the COC suggested some more amendments to the Resolution Applicant and the meeting was adjourned to 03.01.2019. In the COC meeting held on 03.01.2019, the amendments were discussed and the Resolution Plan was unanimously approved by the COC and the followings are the payments envisaged in the Resolution plan;

(Rupees in lakhs)

Payee	Amount Claimed	Admitted Liability as per IM	Liability proposed by Resolution Applicant	Propose of Pay out by RA by Cash	Continuing Liability	% of Claim Admitted Liability as per IM
CIRP Cost		43.13	43.13	43.13	-	100.00%
Workmen dues of 24 months as per IM	3.06	7.04	7.04		7.04	100.00/-
Employees dues of 24 months as	25.33	33.18	19.54		19.54	58.91%

NATIONAL COMPANY LAW TRIBUNAL
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per IM						
Financial Creditor- Union Bank of India - Cash Credit & Bill Limit	519.02	519.02	519.02	69.10	449.92	100.00%
Financial Creditor- Union Bank of India - BG Invoked	263.91	252.00	217.69	217.69		86.38%
Financial Creditor - Union Bank of India-BG invoked	27.62	27.62	27.62		27.62	100.00%
Financial Creditors Union Bank India- Overdue Interest on C	-	-	50.00	50.00	-	100%
Financial Creditors - 1 % Debenture Holders	6.55	6.55	1.58	-	1.58	24.12%
Financial Creditors - 9 % Debenture Holders	396.86	396.86	93.61	-	93.61	23.59%
Financial Creditors - Inter Corporate Deposits	426.99	424.58	405.00	-	405.00	95.39%
Financial Creditors - Subhash Kulkarni- Loan	78.98	61.70	19.60	-	19.60	31.77%
Financial	102.31	102.31	-	-		0.00%

Creditors - Shreya kulkarni & Shriyash Kulkarni- Loan						
Operational Creditors - Key Suppliers	264.72	194.38	91.19	-	97.19	50.00%
Operational Creditors - Others	941.83	756.92	-	-	-	0.00%
Other Creditors	816.55	682.10	-	-	-	0.00%
Total	3,873.72	3,472.23	1559.33	379.92	1,179.41	

4. The resolution plan also provides for the monitoring agency to over see the implementation of resolution plan.

5. Section 30 of the Code provides as below:

"(1) A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan— (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor; (b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53; (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan; (d) the implementation and supervision of the resolution plan; (e) does not contravene any of the provisions of the law for the time being in force; (f) conforms to such other requirements as may be specified by the Board.

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty six percent of voting share of the financial creditors.

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority"

6. Section 31 of the Code provides as below:

"(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),— (a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and (b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database."

7. It is also necessary to refer the provisions of Regulation 38 and 39 of CIRP Regulations to come to a conclusion that requirements of the Regulations are fulfilled and the same reads as below:

"Regulation 38 - Mandatory contents of the resolution plan:

(1) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.

(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.

(2) A resolution plan shall provide:

(a) the term of the plan and its implementation schedule;
(b) the management and control of the business of the corporate debtor during its term; and

(c) adequate means for supervising its implementation.

(3) A resolution plan shall demonstrate that –

(a) it addresses the cause of default;
(b) it is feasible and viable;
(c) it has provisions for its effective implementation;
(d) it has provisions for approvals required and the timeline for the same; and
(e) the resolution applicant has the capability to implement the resolution plan."

"Regulation 39 - Approval of resolution plan:

(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with

(a) an affidavit stating that it is eligible under section 29A to submit resolution plans;

(c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.

(1A) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.

(2) [The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him:-

(a) preferential transactions under section 43;
(b) undervalued transactions under section 45;
(c) extortionate credit transactions under section 50; and
(d) fraudulent transactions under section 66,

(3) The committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit: Provided that the committee shall record the reasons for approving or rejecting a resolution plan.]

(4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule.

(7) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.

(8) A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.

(9) No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.

(10) A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan."

8. As discussed supra by virtue of mandatory contents of resolution plan, the same is in accordance with Section 30 and 31 of the Code, and also complies with the requirement of the Regulations 38 and 39 of CIRP Regulations.

9. The RP has enclosed a certificate at page 74 of the application stating that, the resolution plan of the Resolution Applicant provides for and is compliant of provisions of the Code and Regulations.

10. The Hon'ble Supreme Court in the case of "K. Sashidhar vs. Indian Overseas Bank" (2019 SCC OnLine SC 257) at para 49 of the Judgement held as below:

"49. The argument, though attractive at the first blush, but if accepted, would require us to re-write the provisions of the I&B Code. It would also result in doing violence to the legislative intent of having consciously not stipulated that as a ground - to challenge the commercial wisdom of the minority (dissenting) financial creditors. Concededly, the process of resolution plan is necessitated in respect of

corporate debtors in whom their financial creditors have lost hope of recovery and who have turned into non-performer or a chronic defaulter. The fact that the concerned corporate debtor was still able to carry on its business activities does not obligate the financial creditors to postpone the recovery of the debt due or to prolong their losses indefinitely. Be that as it may, the scope of enquiry and the grounds on which the decision of "approval" of the resolution plan by the CoC can be interfered with by the adjudicating authority (NCLT), has been set out in Section 31(1) read with Section 30(2) and by the appellate tribunal (NCLAT) under Section 32 read with Section 61(3) of the I&B Code. No corresponding provision has been envisaged by the legislature to empower the resolution professional, the adjudicating authority (NCLT) or for that matter the appellate authority (NCLAT), to reverse the "commercial decision" of the CoC much less of the dissenting financial creditors for not supporting the proposed resolution plan. Whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority."

11. When the provision of law and the law laid down by the Hon'ble Supreme Court is applied to the case on hand, this Resolution Plan approved by the COC with the required majority satisfies all the criteria required for approval of Resolution Plan and accordingly the Resolution Plan is approved.

12. The Applicant herein has sought for some more reliefs which are as below:-

- a. Carry forward of the business losses and unabsorbed depreciation of the Corporate Debtor.
- b. Relief from payment of statutory dues including interest and penalty thereon save and except to the extent provided in this resolution plan.
- c. Relief from payment of lease rental and other obligations under the agreement dated 19.01.2012, with the lessor save and except to the extent provided in this resolution plan. Further, the resolution applicant to use the factory premises for a reasonable period of time to facilitate relocation of plant, machinery and other production facilities to another location.

- d. The erstwhile promoters and/or their related parties shall not, for a period of 5 years from the date of approval of this plan by the Adjudicating Authority:
- i. Carry on or engage in, directly or indirectly, whether through partnership or as a shareholders, joint venture partner, collaborator, consultant or agent in any other manner whatsoever, whether for profit or otherwise any business which competes with the whole or any part of the business of the Corporate Debtor or any other activity in relation to the business carried on by the Corporate Debtor.
 - ii. Attempt in any manner to solicit from any client/customer, business of the type carried on by the Corporate Debtor or to persuade any person which is a client/customer (present or future) of the Corporate Debtor and /or any of its shareholders to cease doing business or to reduce the amount of business which any such client/customer has done customarily or might propose doing with the Corporate Debtor whether or not the relationship between the Corporate Debtor and such client/customer was originally established in whole or in part through his efforts; or
 - iii. Employ or attempt to employ or assist any one else to employ any person who is in the employment of the Corporate Debtor or was in the employment of the Corporate Debtor at any time during the preceding 12 months.
- e. No claim other than that committed under this resolution plan shall be entertained under any circumstances and the resolution applicant shall not be liable for any claim whatsoever beyond what is contemplated under this plan.

13. In respect of the reliefs sought by the Resolution Applicant as stated above, this Bench is of the view that the Resolution Applicant has to act in accordance with the existing law of the land and no special concessions can be given by this Bench. As far as the lease of the factory premises is concerned, the Resolution Applicant can utilize the same for a further period of 3 months from the date of approval of this resolution plan. It is made clear that the Resolution Applicant is only liable to make payments to the creditors included in the Resolution Plan and not otherwise.

14. Accordingly, this MA No: 285 of 2019 for approval of Resolution Plan is hereby allowed by vacating the moratorium already granted at the time of admission of Company Petition No: 486/2018.

15. In view of the approval of the Resolution Plan as sought by the Insolvency Resolution Professional, this bench hereby discharges the Insolvency Resolution Professional from duties of the Insolvency Resolution Process by submitting all the records maintained by him before the Insolvency and Bankruptcy Board of India as provided under the Insolvency and Bankruptcy Code, 2016 and the regulations thereunder.

SD/-
V. Nallasenapathy
Member (Technical)

SD/-
Bhaskara Pantula Mohan
Member (Judicial)