

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.301

IA/1394(AHM)2023 in CP(IB) 38 of 2020

**Order under Section 30(6) r.w 31 & 60(5) IBC**

**IN THE MATTER OF:**

SUMEET INDUSTRIES THROUGH ITS RP OF SATYENDRA .....Applicant  
PRASAD KHORANIA

.....Respondent

**Order delivered on: 05/04/2024**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**  
**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

Sd/-  
**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

Sd/-  
**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

**IN THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-2**

**IA No. 1394 of 2023  
in  
C.P. (IB) No. 38 of 2020**

[Application for Approval of Resolution Plan under Section 30(6) r.w. Section 31 and 60(5) of the Insolvency & Bankruptcy Code, 2016]

**IN THE MATTER OF:**

**SUMEET INDUSTRIES LTD.,**

through its Resolution Professional,  
Mr. Satyendra Prasad Khorania,  
having its registered office 402, OK  
Plus, DP Metro, Opp. Metro Pillar  
No.94, New Sangner Road, Jaipur-  
302019

**....Applicant**

**Order pronounced on: 05.04.2024**

**Coram:**

**Mrs. Chitra Hankare, Member (J)**

**Dr. Velamur G Venkata Chalapathy, Member (T)**

**Appearance:**

For the RP : Mr. Amol Vyas, Adv. & Mr. Danish Akhtar, Adv.  
RP in person : Mr. Satyendra Prasad Khorania

**JUDGMENT**

1. This application has been filed by Mr. Satyendra Prasad Khorania, Resolution Professional of M/s. Sumeet Industries Ltd. under section 30(6) read with Section 31 and 60(5) of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **IBC, 2016**) for approval of the Resolution Plan submitted by the M/s Eagle Fashions Private Limited, Eagle Fibers Limited, Eagle Synthetics Private Limited, Padmini Polytex Private Limited, Eagle Sizers & JPB Fibers Jointly as Eagle Group / Successful Resolution Applicant(hereinafter referred to as **“SRA”**) which was approved by Committee of Creditors ("COC") of Sumeet Industries Limited ("Corporate Debtor").
2. The facts, in brief, are that vide order dated 20.12.2022, the Corporate Debtor was admitted into CIRP, in an application

filed by the Financial Creditor, namely, IDBI Bank u/s 7 of the IB Code, triggering moratorium under section 14 of the IB Code and Mr. Kuresh Hatim Khambati was appointed as Interim Resolution Professional (hereinafter referred to as "IRP"), who made a public announcement in Form-A on 28.12.2022.

3. After collating the claims received from the creditors of the Corporate Debtor, the IRP formed the CoC on 18.01.2023 comprised of Six Financial Creditors, namely: Union Bank of India with 4.61% voting share, Bank of Baroda with 60.98 % voting share, IDBI Bank Limited with 25.10 % voting share, Canara Bank with 3.04 % voting share, Central Bank of India with 4.68 % voting share, Oldenburgische Landesbank AG with 1.59 % voting share (with which Bremer Kredibank AG, formerly known as KBC Bank Deutschland AG merged).
4. The 1<sup>st</sup> CoC meeting was held on 24.01.2023 wherein the members of the COC did not confirm the IRP as RP. Further, in the 2nd COC meeting was held on 09.02.2023 in

which COC passed the resolution for the appointment and replacement of IRP from RP Mr. Satyendra Prasad Khorania. It is also decided by the CoC for the appointment of two Registered Valuers to carry out the valuation.

5. The 03<sup>rd</sup> CoC meeting was held on 04.03.2023 wherein the COC approved the resolution for publication of FORM- G along with the eligibility criteria and the same was published on 12.03.2023.
6. The 4<sup>th</sup> CoC meeting was held on 12.04.2023 wherein the CoC approved the resolution for publication of RFRP and Evaluation Matrix. After verification of the EOI in respect of fulfilling eligibility criteria, the RP issued a provisional list of PRAs on 10.04.2023 and shared the Information Memorandum, RPRP, Evaluation Matrix and other related documents with the PRAs on 15.04.2023. Thereafter, the RP issued the final list of PRAs on 19.04.2023.
7. The 5<sup>th</sup> CoC meeting was held on 16.05.2023 wherein some of the PRAs had requested for an extension of the timeline in the submission of the Resolution Plan and the same was

approved by the CoC giving another 30 days. In the same meeting, the RP also informed that the 180 days of the CIRP period were to expire on 18.06.2023 and it will not be possible to conclude the resolution process within the remaining period. Therefore, the CoC resolved to extend the CIRP period by a further 90 days and the same was allowed by this Tribunal vide order dated 26.06.2023.

8. The 6<sup>th</sup> CoC meeting was held on 23.06.2023 wherein the RP informed that there are 5 Resolution Plans have been received from the following PRAs namely:

- Bhilosa Industries Private Limited,
- Bhola Ram Papers & Power Private Limited,
- Chunibhal Haribhai Gajera in Consortium with Laxmi Dia Jewel Private Limited, Nitin Chunilal Gajera & Pradeep Kumar Kabra,
- Eagle Fashions Private Limited, Eagle Fibers Limited, Eagle Synthetics, Private Limited, Padmini Polytex Private Limited, Eagle Sizers & JPB Fibers Jointly as Eagle Group,

- Geelon Industries Private Limited.

In the same meeting, the RP shared a report that the Resolution Plans are in accordance with the Code and relevant Regulations framed thereunder and the terms of RFRP.

9. The 8<sup>th</sup> CoC meeting was held on 28.07.2023 wherein after completion of the Swiss challenge the RP gave chances to all the Resolution Applicants to submit the Resolution Plan which includes the bid quoted in the Swiss Challenge Process.
10. The 9<sup>th</sup> CoC meeting was held on 24.08.2023 wherein the CoC decided to maximisation the value of the Corporate Debtor and to give one more chance to all RAs to submit their improved financial plan.
11. The 10<sup>th</sup> CoC meeting was held on 30.09.2023 wherein the CoC considered all the resolution plans submitted by the Resolution Applicants and directed the RP to put all the

complained Resolution plans for further process in the next COC meeting.

12. The 11<sup>th</sup> COC meeting was held on 21.10.2023 wherein members of the CoC have allotted marks on all the Resolution Plans as per the Evaluation Matrix and given rank to all Resolution Plans. The RP detailed analysis of the Resolution Plans, place on record the evaluation matrix score of all 5 Resolution Applicants and the CoC after detailed discussion and deliberation, all the Five Resolution Plans for E-voting. After applying their respective commercial wisdom, the CoC approved the resolution plan submitted by M/s Eagle Fashions Private Limited, Eagle Fibers Limited, Eagle Synthetics Private Limited, Padmini Polytex Private Limited, Eagle Sizers & JPB Fibers Jointly as Eagle Group for a Resolution Plan amount of Rs. 233,00,00,000/- Plus actual unpaid CIRP Cost (the RA proposed to pay the actual unpaid CIRP cost over & above to resolution plan amount) with 74.90% voting share in its favour. In the same meeting, the RP apprised the members of the COC that the Transaction Auditor has submitted the

final transaction report and found Preferential transactions of Rs. 48.20 crores and for the reversal of the same the RP has already filed an application before this Tribunal which is pending.

13. Under the approval of the Resolution Plan by the COC, the RP issued a Letter of Intent dated 28.11.2023 to the SRA, which was unconditionally accepted by the SRA on the same day.

14. The salient features of the Resolution Plan submitted by the SRA as under: -

- Upfront payment of Rs. 30 crore.
- A balance payment of Rs. 175 crore be paid out of funds arranged from financial institutions and cash accruals generated from CD.
- Optionally convertible redeemable preference shares of Rs. 28 crore.
- CIRP cost as per the actuals.

The Total Resolution Plan amount offered by Eagle Group is Rs. 233 crore excluding actual CIRP Cost.

15. As per the Resolution Plan submitted by Eagle Group. The constitution of the Monitoring Committee is as follows:-
  - a) Resolution Professional
  - b) One representative from RA
  - c) One representative from COC
16. It is also submitted by the RP that the SRA is eligible in terms of Section 29A of the Code. The RP filed the Compliance Certificate in "Form-H" attached with the Application and as per Form-H, the fair value and liquidation value of the Corporate Debtor is Rs. 448.785 crores and Rs.315.756 crores respectively.
17. The RP further submitted that the Resolution Plan has been approved taking into consideration all the stakeholders as well as creditors of the Corporate Debtor equated with the revival of the Corporate Debtor. It is also submitted that the Resolution Plan contained necessary provisions for its effective implementation.
18. The RP filed its written submission and submitted that:

- a. The RP informed the Chunibhai Haribhai Gajera Consortium ('Consortium') regarding the rejection of their Bid vide Email dated 28.11.2023 and on the same day, an LOI was issued to the SRA (Eagle Group).
- b. The credentials of the Resolution Plan submitted by the Consortium have been discussed in detail in various COC meetings more particularly in the 10th COC meeting (which was held in three phases) and the 11th COC meeting so sufficient opportunities have been provided to the consortium to improve his plan. Moreover, the plan of the consortium was put on the vote as HI bidder after that the COC used their commercial wisdom and did not approve the plan of the Consortium.
- c. The objections have been raised by the Consortium about not providing the ROFR to the Consortium for the resolution plan submitted by the Eagle Group. In this regard, the RP submitted that firstly, there was no requirement to provide the ROFR to the resolution plan submitted by the Consortium for the reason that the

Consortium was the H1 Bidder and continued to remain so till the resolution plan was submitted for voting. Secondly, as per the minutes of the 11th Meeting of COC @ page 352, the Consortium was the last person who was permitted to submit the revised resolution plan, which was done by it and thereafter the Consortium further agreed that no further discussion is required with its representative. Thirdly, it has been recorded that the CoC has discussed the resolution plan submitted by the Consortium which was submitted on 21.10.2023. Moreover, the ROFR is envisaged in the Swiss Challenge Method only to maximize the value of the assets in distress and therefore Swiss Challenge Method is only a price discovery mechanism for the benefit of obtaining the real value of the resolution of the Corporate Debtor.

- d. It has been further contended that the RP cannot analyze the commercial wisdom of CoC and cannot refuse to provide the reason for approval of the resolution plan of SRA. In this regard, it is submitted

that the RP has put the resolution plan of Consortium as H1 Bidder and it is only the CoC which has approved the resolution plan of Eagle Group. Moreover, there is no legal provision which binds the RP to provide the reasons for not approving the resolution plan of the Consortium or for providing the Evaluation Matrix.

19. The RP relied upon the following judgments in support of its submissions:-

- (1) (2022) 6 SCC 172 titling "Ngaitlang Dhar Vs Panna Pragati Infrastructure Pvt. Ltd. & Another" - Relevant Para 24 to 33.
- (2) (2023) SCC Online NCLAT 44 titling "Jindal Stainless Ltd. Vs Shailendra Ajmera" - Relevant Para 21, 23, 24, 26 to 30.
- (3) (2024) ibclaw.in 89 NCLAT titling "Rajesh Kumar Damani v. CoC of Pami Metals Pvt. Ltd. and Ors." - Relevant Para 13 to 17.

20. We have heard the learned counsel for the applicant/RP and perused the material available on record. It is noted that :

- a) The RP filed the Compliance Certificate in "Form-H" attached with the Application and as per Form-H, the fair value and liquidation value of the Corporate Debtor is Rs. 448.785 crores and Rs.315.756 crores respectively. This is far higher than the Resolution Plan Value.
- b) There has been a Swiss Challenge Method followed to select the highest bidder, however, a pending IA filed by one of the Resolution Applicants reveals that the present applicant has been approved at a later stage after declaring the Highest 1 Bidder i.e. M/s C H Gajera. While his plan was rejected at a later stage merits of this application, particularly when it was far lower than the Fair Value and Liquidation Value were not assessed by the CoC. The COC did not approve an RFRP with a floor price keeping in mind the realizable value as per valuation as the bid price where far lower than the estimated fair and liquidation values. Even if there was a Swiss auction the realization through the plans submitted is

considered to be way far from the probable realization of the assets of the entity.

- c) The RP has not submitted a copy of the RFRP and the Information Memorandum to further verify the facts and it is also observed that the original applicant's financial creditor for initiating the CIRP had dissented from the approval of the Resolution Plan and the reasons for dissent, if any have not been recorded.
- d) An opportunity to submit a revised bid was not given to the H1 Bidder, but it is stated to have been a conditional Resolution Plan regarding non - the inclusion of the CIRP cost in the Plan itself. Similarly, from the documents submitted it is not clear whether the Successful Resolution Applicant has had any dealings with the CD in the past as the eligibility criteria under Sec 29 A has not been submitted (copy) to this tribunal. The Resolution Professional has however submitted an affidavit of compliance.
- e) The RP has not submitted a copy of the two valuations done. When the Resolution Plans were far below the

liquidation value/fair value the COC even though had in its commercial wisdom approved the plan with a 74.90% majority and not considered to revalue the assets or increase the floor price for bidding. This raises the question as to whether the proper process for selling the assets of the CD as a going concern through the Resolution Process has been undertaken. However, since a challenging method was undertaken and the bidding process was closed between the H1 bidder (initial) who was subsequently rejected after deliberations due to non - non-compliance with certain conditions and the next successful bidder, the process complies and seems to have gone through the process of due diligence and no merit of rejection is applied.

- f) While the Adjudicating Authority has limited jurisdiction to review the commercial wisdom of CoC the judgments in this regard give limited scope to this Tribunal to intervene and reject the application as it complies with Sec 30(2) of the IBC. The judgments passed in the matter of the Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta and Ors. and in the matter of Maharashtra Seamless

Steel Ltd vs. Padmanabhan Venkatesh & Others in Civil Appeal No.4242 of 2019 held that the Resolution Plans need not match up to liquidation value of the CD.

- g) It is also observed that the Customs and State Tax Department filed their claim i.e. 55.20 crores ( approx) but the RP admitted nil amount and did not give any reason for the same at Schedule - 4 ( List of Statutory Dues) of the Resolution Plan. Further, observed that in the Resolution Plan, the Resolution Applicant paid a nil amount regarding the statutory dues which is against the provision of Section 30(2) of the IB Code, 2016.
- h) The valuation report /summary of the valuation is also not provided by the RP to this Tribunal and it is also observed that as per Regulation 39(4) of the IBBI (CIRP) Regulations, 2016, the copy of the receipt of performance security required under sub-regulation (4A) of Regulation 36B of the IBBI (CIRP) Regulations, 2016 not attached with the Compliance certificate.
- i) The copy of the minutes of the meeting of the 8<sup>th</sup> CoC meeting that was held on 28.07.2023 is also not attached to

the application wherein the process of the Swiss challenge was carried out.

- j) The RP has not made the Operational Creditor – Statutory Authorities who were not paid in terms of Section 30(2)(b) of IBC Code, 2016.
- k) It is observed that the Resolution Plan as approved by the CoC does not confirmed to the requirements of Section 30 of the IBC.

21. Hence, we pass the following orders:

**ORDER**

Application is rejected.

Sd/-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

Sd/-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**