<u>Through Videoconference</u>

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

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IA No. 1048 of 2020
in
C. P. (IB) No. 2045/MB/2018

Application under Section 30(6) r/w Section 31 of IBC, 2016

Vijendra Kumar Jain,
Resolution Professional for
Shree Vindhya Paper Mills Limited,
1507-B, One BKC, Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051 … Applicant

In the matter of

Stressed Assets Stabilization Fund
5th Floor, IDBI Tower, WTC Complex,
Cuffe Parade, Mumbai – 400 005 … Financial Creditor

V/s

Shree Vindhya Paper Mills Limited
Bapat Chowk, Amravati,
Maharashtra-444601 … Corporate Debtor

Date of Order: 02.02.2021

<u>CORAM</u>:
Hon'ble Janab Mohammed Ajmal, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

Appearance:

For the RP:	Adv. Shikha Bhura a/w Adv. Naman Gadhia i/b TAP Legal
For CoC:	None Present

For Resolution Applicants: Mr. Sailesh Jalan

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This is an Application filed by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the Code), seeking approval of the Resolution Plan submitted by Constantia Corporate Shared Services Private Limited and Alfa Buildhome Private Limited (Collectively referred to as Resolution Applicants).

2. The facts leading to the Application are as under.

   i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was ordered by this Bench on 07.06.2019 and the Applicant was appointed as the Interim Resolution Professional (IRP). The Committee of Creditors (CoC) in its first meeting held on 09.07.2019 confirmed the Applicant as the Resolution Professional (RP).

   ii. The Applicant published a public Announcement on 11.06.2019 inviting claims from the creditors of the Corporate Debtor and after verification of the claims received, constituted the Committee of Creditors (CoC). The following Financial Creditors constituted the Committee of Creditors:

Name of Financial Creditor	Voting Share (%)
SASF	27.20
IFCI	20.80
Unit Trust India	19.64
New India Assurance	3.41
GIC	1.86
LIC	8.95
United India Assurance	1.26

BOI	7.31
Corporation Bank	5.48
Invent Asset	2.87
Arcil	0.95
ICICI Bank	0.26
Total	100

iii. This Tribunal by an order dated 03.12.2019 extended the CIRP period by 90 days up to 03.03.2020 and the Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

3. The Applicant has appointed two sets of registered valuers i.e. Mr. Harsh Khadilkar and Mr. Harshad Deshpande as per Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the Regulations) to determine 'fair value' and 'liquidation value' of the Corporate Debtor in accordance with Regulation 35 of the Regulations. The Liquidation Value of the corporate debtor is ₹4,11,93,547/- and Fair Market Value is ₹5,88,47,924/- as arrived at by the registered valuers.

4. The Applicant published Form-G on 20.09.2019 and 08.10.2019 inviting Expression of Interest (EOI) from Prospective Resolution Applicants (PRAs) for submission of Resolution Plan for the Corporate Debtor. Accordingly, EOIs were received from two PRAs.

5. It is submitted that M/s. Alfa Buildhome Private Limited and Constantia Corporate Shared Services Private Limited, jointly submitted one Resolution Plan for the Corporate Debtor. The CoC considered the said Resolution Plan in the 5th CoC meeting held on 20.11.2019. After due verification of the eligibility of the Resolution Applicants in terms of Section 29A of the Code, the revised and final Resolution Plan was

considered by the CoC in the 6th CoC meeting held on 01.02.2020 and the CoC approved the Resolution Plan of the Resolution Applicant with voting share of 92.46%.

The manner of voting by the CoC is as below:

Sr. No	Name of Financial Creditor	Voting Share (%)	Voted Assent (%)	Voted Dissent (%)	Abstained (%)
1	SASF	27.20	27.20	-	-
2	IFCI	20.80	20.80	-	-
3	Unit Trust of India	19.64	19.64	-	-
4	New India Assurance	3.41	-	-	3.41
5	GIC	1.86	1.86	-	-
6	LIC	8.95	8.95	-	-
7	United India Assurance	1.26	-	-	1.26
8	BOI	7.31	7.31	-	-
9	Corporation Bank	5.48	5.48	-	-
10	Invent Asset	2.87	-	2.87	-
11	Arcil	0.95	0.95	-	-
12	ICICI Bank	0.26	0.26	-	-
	Total	100	92.46	2.87	4.67

6. **<u>Salient features of the Resolution Plan:</u>**

a. RESOLUTION APPLICANT:

The Resolution Applicant Alfa Buildhome Private Limited is a company limited by shares, incorporated on 05.10.2005 and Constantia Corporate Shared Services Private Limited is a company limited by shares, incorporated on 01.06.2007 under the Companies Act 1956. The Resolution Applicant companies are engaged in real estate business.

b. TERM OF RESOLUTION PLAN:

The date of commencement of the implementation of the Resolution Plan is termed as “Closing Date/Effective Date”. As per the Resolution Plan, the obligations of the Resolution Applicants to implement the Resolution Plan shall be from the closing date i.e., the date of approval of this Resolution Plan u/s 31(1) of the Code by this Tribunal or the Hon'ble National Company Law Appellate Tribunal (NCLAT) or the Hon'ble Supreme Court.

c. FINANCIAL TERMS:

A. *Stakeholders whose claims admitted by RP:*

Sr. No.	Particulars	Amount Due	Payment Proposed
1	CIRP Cost	34,52,906/-	34,52,906/-
2	Operational Creditors (Statutory Dues)	1,83,81,847/-	1,83,818/-
3	Operational Creditors (Suppliers- M/S Rajlakshmi Chemical Industries)	81,79,685/-	81,797/-
4	Financial Creditors	18,16,17,47,662/-	11,03,24,869/-
	Sub Total	18,19,17,62,100/-	11,40,43,390/-

B. *Stakeholders whose claims not submitted but acknowledged by RA:*

Sr. No.	Particulars	Amount Due	Payment Proposed
1	Operational Creditors (Workmen and Employees)	2,00,00,000/-	2,00,000/-
2	Operation Creditor (Other Charges)	6,56,61,014/-	7,56,610/-
	Sub Total	8,56,61,014/-	9,56,610/-
	Total (A+B)	18,27,74,23,114/-	11,50,00,000/-

Apart from the settlement of Resolution Debt and CIRP cost aggregating to Rs. 11.50 Crore, an amount of Rs. 20.78 Crore is going to be infused for setting up the new cement depot. Therefore, the total contribution as per the Resolution Plan is Rs. 32.28 Crore.

d. PAYMENT SCHEDULE:

The amount to be infused under the Resolution Plan is Rs.32,28,00,000/- (Rupees Thirty-Two Crore Twenty Eight lakh only). The details of Source of Funds of Resolution Applicant are set out in the following table

Sr. No.	Time Period	Amount	Amount
1.	Total Consideration towards settlement of Resolution Debt + CIRP Cost: i. Corporate Debtor will issue 3,50,000 equity shares of Rs.10/- each (Within 10 days of the Effective Date)	35,00,000/-	
	ii. Corporate Debtor will issue 1,11,50,000 equity shares of Rs.10/- each (Within 45 days of the Effective Date)	11,15,00,000/-	11,50,00,000/-
2.	Fresh Infusion Towards CAPEX (within 12 Months from the Effective Date)		20,78,00,000/-
	Total		32,28,00,000/-

e. MANAGEMENT AND CONTROL:

The Management and Control of the business of the Corporate Debtor shall be with the Resolution Applicants and the management appointed by the Resolution Applicants.

f. SUPERVISION OF THE RESOLUTION PLAN:

A Monitoring Committee is proposed to be constituted comprising of one representative of the RA, one representative of the CoC and the Resolution Professional, which shall monitor the implementation of the Plan after the effective date until the closing date.

g. COMPLIANCE OF MANDATORY CONTENTS OF RESOLUTION PLAN UNDER THE CODE AND CIRP REGULATIONS:

The Applicant submits that he has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 and 39 of the CIRP Regulations and has submitted his Form H under Regulation 39(4). The Applicant submits that the plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the Resolution Applicant is not hit by the provisions of Section 29A of the Code.

h. PERFORMANCE SECURITY:

The Resolution Professional has confirmed that the Resolution Applicants have provided a Bank Guarantee dated 25.02.2020 for ₹1,00,00,000/- (Rupees One Crore Only) issued by State Bank of India. Copy of the same has been submitted in proof separately.

7. The Applicant submits that the Resolution Plan meets the requirement of Section 30(2) of the Code in the following manner:

A. Plan provides for the payment of CIRP cost in full and in priority from the fund to be infused by the Resolution Applicant [Section 30(2)(a)].

B. Proposes to pay the Operational Creditors of the Corporate Debtor as stated above in Para 6(c) [Section 30(2)(b)].

C. It is submitted that One Financial Creditor i.e. Invent ARC having 2.87% of voting share in the CoC abstained from voting and the said Creditor is treated as dissenting Financial Creditor and payment is provided to the dissenting Financial Creditor as per Regulation 38(1)(b) and the same will be paid in priority to the other financial creditors.

D. It is submitted that the Management of the affairs of the Corporate Debtor after approval of the Resolution Plan is with the Resolution Applicant [Section 30(2)(c)]. The Plan also provides for implementation and supervision of the Resolution Plan as stated above [Section 30(2)(d)]. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force [Section 30(2)(e)]. The Resolution Plan is in compliance of the Regulation 38 [Section 30(2)(f)] in following manner:

a) the payment to operational creditor will be made in priority over financial creditor (Regulation 38(1)(a)).

b) Payment to dissenting financial creditor will be paid in priority over the other financial creditors (Regulation 38(1)(b)).

c) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A)).

8. The Resolution Applicants on the persuasion of this Bench agreed to increase the payment from Rs.2,00,000/- to Rs.10,00,000/- against the actual liability with respect to workmen & employees. Accordingly, the Representative of Resolution Applicants, during the hearing, agreed to increase the amount payable to workmen & employees to Rs.10,00,000 (from Rs. 2,00,000).

9. The Resolution Applicant has sought certain reliefs, concessions, waivers. We however are not inclined to grant such concessions or waivers. The Resolution Applicant needs to approach the authorities concerned for permits, if required (such as licenses, renewal of license, electricity connection etc.), and same will be considered by the authorities in accordance with law.

10. On the basis of the above discussion the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of

any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

ORDER

a. The Application be and the same is allowed. The Resolution Plan submitted by Constantia Corporate Shared Services Private Limited and Alfa Buildhome Private Limited annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

b. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.

c. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

d. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in Paras supra.

e. The moratorium under Section 14 of the Code shall cease to have effect from this date.

f. The Applicant shall supervise the implementation of the Resolution Plan and shall file Status Report of its implementation before this Authority periodical status report, preferably every quarter.

g. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.

h. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicants for necessary compliance.

Sd/-	Sd/-
V. Nallasenapathy	Janab Mohammed Ajmal
Member (Technical)	Member (Judicial)