

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.306

IA/36(AHM)2021 in CP(IB) 257 of 2019

Order under Section 30(6) & 31 IBC r.w 39(4) IBBI, 2016

IN THE MATTER OF:

George Samuel RP of Jason Dekor Pvt Ltd

.....Applicant

.....Respondent

Order delivered on: 10/05/2024

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.

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

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CHITRA HANKARE
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT No.2**

**IA 36/NCLT/AHM/2021
IN
CP (IB) 257/NCLT/AHM/2019**

In the matter of:

George Samuel
RP of Jason Dekor Private Limited
Having office at 110 ATIRA-B
Sargasan Circle
Gandhinagar-382 421

.... Applicant

In the matter of:

Indian Overseas Bank

.... Financial Creditor

Versus

Jason Dekor Private Limited

.... Respondent

Order pronounced on 10.05.2024

Coram:

Mrs. Chitra Hankare, Member (Judicial)

Dr. Velamur G Venkata Chalapathy, Member (Technical)

Appearance:

For the Resolution Professional	:	Mr. Arjun Sheth, Adv. a.w Mr. Rajiv Chawla, Adv.
For the Successful Resolution Applicant	:	Mr. Nipun Singhvi, Adv. a.w Ms. Pragati Tiwari, Adv.
For the Indian Overseas Bank/ Committee Creditors	:	Mr. Anip Gandhi, Adv. a.w Mr. Raju Kothari, Adv
For the Suspended Management	:	Mr. Dhruvit Shah, Adv. a.w Mr. Kiran Shah, FCA
RP in person	:	Mr. George Samuel

JUDGEMENT

1. The present application is filed by Mr. George Samuel, Resolution Professional (RP) of the Corporate Debtor-M/s. Jason Dekor Private Limited under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking approval of Resolution Plan submitted by M/s. Jay Overseas Private Limited, Successful Resolution Applicant ('SRA'), which was duly approved by the Committee of Creditors (CoC) with 100% voting.

2. The CIRP was initiated by this tribunal by its order dated 19th December 2019 and Mr. George Samuel was appointed as IRP. After constitution of the CoC, he invited the Expression of Interest (EOI) by inviting resolution plans. Due to Covid situation there was delay, however he initiated the process fresh after lifting of lock down and placed before the COC, 2 EOIs which were deliberated in the 9th CoC meeting, but they were rejected and the CoC passed a resolution for liquidation of the Corporate Debtor. During pendency one of the Resolution Applicant (Jay Overseas Pvt Ltd) filed before this Tribunal an application for consideration of their bid by the CoC which was rejected by this Tribunal. However, it appealed before Hon'ble NCLAT which set aside the order 23.12.2020 and directed the application be placed before CoC. During the 12th CoC meeting held on 28.12.2020 the CoC resolved to approved the revised resolution plan dated 25.12.2020 along with addendum offer dated 28.12.2020 by 100% voting share. The Resolution Plan approved after business standstill due to lock down situation, considerable

deliberations, passing of orders for liquidation and rejections is still to be approved by the Tribunal for the reasons given below in the order.

3. The Resolution Applicant (Jay Overseas Private Limited) having his head office at Ahmedabad after various amendments or modifications to plan got the approval in the 11th meeting held on 28.12.2020. As per Form H (Annex O of the application), the Fair Value of the Assets were at Rs.12.44 crore and liquidation value was Rs 9.51 crore. There was only one financial creditor namely Indian Overseas Bank which gave its assent to the proposal, while there were Operational Creditors who had submitted claim amounting to Rs 56.83 lakh (admitted claim) and the Government (CGST) dues of Rs 33.65 crores(Admitted claim) against which the plan provided NIL value. The Resolution Applicant was directed to provide a performance security within 7 days of approval in the form of a bank guarantee, unconditional and irrevocable, guaranteeing to pay a minimum of 15% of the

NPV of the total commitments as per the Resolution Plan approved by CoC.

4. Subsequent to the filing of this IA and various hearings on various dates, the learned counsel for the Resolution Professional informed the tribunal on 19 12 2022 that issue involved in the resolution plan is with respect of categorization of the VAT Tax Department and has been clarified by the Hon'ble Supreme Court in its judgment which was under review. Further on 23 January 2023, a request was made to defer the matter of hearing the approval of resolution plan. The Resolution Professional sought further adjournments in view of the judgments and was directed vide orders dated 28 April 2023 to submit a revised form H with the approval of CoC within 3 weeks. The Resolution Professional filed an affidavit on 7 June 2023 after taking approval of CoC in its 14th meeting held on 11.5.2023, submitting the revised form H dated 31.5.2023. In the meeting the Resolution Professional informed the CoC that the Resolution Plan does not comply with the provisions of the Rainbow Papers

Judgment as it had not provided for payment of any sum towards the Gujarat VAT liability which was provisionally collated for Rs 23.88 crores thereby making the plan non-compliance with the judgment of Hon'ble Supreme Court, unless suitable modifications are carried out in the plan. The only member of CoC, Indian Overseas Bank conveyed that they had filed a review petition against the order, instead of going for redistribution in the plan, they should wait for the review petition before the Hon'ble Supreme Court. It is further stated by Resolution Professional that the promoters of the Corporate Debtor had provided a copy of the order dated 5.8.2019 passed by the Gujarat VAT Tribunal prior to the commencement of CIRP on 19.12.2019 and that a dispute was raised by way of an appeal and that no conclusion has been reached before the VAT Appellate Authorities.

Further, the Resolution Professional provided a revised distribution chart to the CoC in the event if the provisionally collated claim of RS 23.88 crores of State VAT is admitted as secured creditor at par with the other

secured creditor, IOB. The financial creditor (Sole) advised the Resolution Professional to examine how the appeal process is taken forward so that allocation of the amount provided in the resolution plan can be fairly made between the secured creditor and Gujarat VAT authorities based on the final determination of the amount payable. Accordingly the revised Form- H was approved in the 14th CoC meeting on 11.5.2023 and submitted to this Tribunal. As per the report of the Resolution Professional he had suggested the following ratio of the secured total claims treating both IOB and State of Gujarat as secured creditors thereby considering Rs.26.23 crores (52.346%) for IOB and Rs23.88 crores (47.654%) for Gujarat State Tax by way of a fresh distribution chart to allocate the amount payable in the Resolution Plan by Jay Overseas Pvt Ltd within the Resolution Plan approved to both the creditors (instead of one earlier). The Resolution Professional was also directed to go for an appeal process before the State Tax Authorities of Gujarat. In the 14th meeting of CoC on 28.4.2023 the approval was granted.

The Resolution Professional further stated that he had invited the Resolution Applicant Mr. Ashok Lakhani to have his views also in view of the revised distribution chart in compliance of the Rainbow Paper order and sought his views. The view of the Resolution Applicant was that due to considerable time having been lapsed and deterioration in the condition of the factory matter is sorted at earliest and factory should be made operational without much delay. The Resolution Professional submitted the amended Form H and also stated that the revised compliance report as approved in the CoC meeting (14th) dated 11 May 2023 has taken in to account the re distribution and thereby the Form H was amended which maintained the same resolution plan value as submitted originally while altering the distribution. He also stated that the resolution applicant did not have any objections to the revised distribution chart prepared by the Resolution Professional.

5. The Resolution Professional has further noted in his affidavit that the promoters of the Corporate Debtor had

stated to him and provided a copy of the Gujarat VAT Tribunal order dated 5.8.2019 an order prior to commencement of CIPR on 19.12.2019 and the order stated that subject to the payment of RS 11 lakhs under GVAT Act for accounting years 2014-15, 2015-16 and 2016-17, the VAT Tribunal allowed a stay against recovery proceedings and the order in the first appeal dismissing the appeal in the absence of pre deposit. Further the Resolution Professional could not get any details however, he accepted the claims provisionally and the promoters had stated that Rs 11 lakh had been paid by them and the stay continues which was verified from the balance sheet of the Corporate Debtor for FY 2019-20. IOB also advised the Resolution Professional from the facts that a dispute was already raised by way of an appeal and that the dispute has not reached a conclusion before the VAT appellant authorities and directed the Resolution Professional to state the facts to the Tribunal.

6. Further the performance Bank Guarantee at 15% of NPV of plan amounting to Rs 137.25 lakhs provided by the

Resolution Applicant was valid till 9.5.2023 and was expiring. Hence the request was made to Standard Chartered Bank for renewing the Bank Guarantee for further periods was sought and copy also sent to the Resolution Applicant. Various emails were sent by Resolution Professional on dates 22.5.2023 and 2.6.2023 seeking extension as otherwise the plan cannot be considered to be compliant with the provisions of law unless it is renewed. The Financial Creditor, IOB also wrote letter to the Bank Guarantee issuing bank seeking extension as per provision in the Performance Guarantee. However, neither the successful Resolution Applicant nor Standard Chartered Bank extended the Bank Guarantee.

7. The Successful Resolution Applicant in compliance of order dated 13 July 2023 (directing the SRA to extend the Bank Guarantee) appeared before this Tribunal on 12 July 2023 and filed an affidavit on 6 August 2023 along with compilation of judgments on the post effect of Rainbow Papers judgment on the CD. This was approved by the board resolution dated 5 August 2023. He submitted that

the resolution plan does not have any provisions for payment of any sum towards the Gujarat VAT liability and hence does not comply with the Hon'ble Supreme Court judgment passed in State Tax Officer V Rainbow Papers Limited wherein the view taken was that state is secured creditor under the GVAT. The view changes the priority of government dues under Sec 53 of the Code. Further the resolution plan as per the revised distribution chart along with the revised form H submitted on 7.6.2023 after deliberations in the 14th CoC meeting is conditional and is uncertain as IOB had directed the RP to wait till the review of the Supreme Court judgment. Further he stated that the revised plan altering the financial outlay should be placed before CoC for voting in view of the amendment needed to be carried out in the Resolution Plan. Further the Adjudicating Authority also cannot modify the plan once approved by CoC. Also the RP had not made the Resolution Applicant a party to the plan approval application sought from this Tribunal.

8. In this regard he had also relied on certain Judgments passed by:
- a) *Hon'ble NCLT Bengaluru Bench in case of Balady Shekar Shetty RP for Avvas Infotech P Ltd in IA 42 of 2022 in CP IB 168/BB/2020;*
 - b) *Order passed by Hon'ble Supreme Court in M K Rajagopalan vs Dr Periasamy Palani Gounder & Anr in Civil Appeal Nos. 1682-1683 of 2022.*
 - c) *Order passed by Hon'ble NCLAT in Dr Ravi Shankar Vedam v Tiffins Barytes Asbestos and Paints Ltd in TA (AT) 134/2021 (CA)(AT)(INS) 653/2019.*
9. This Tribunal had vide its order dated 4 July 2023 on the desire of the sole CoC member to keep the hearing of the plan deferred till the review by Hon'ble Supreme Court in case of Rainbow papers ltd directed that the SRA be served a notice and the reply be filed by SRA or CoC to be filed within 3 days of service of notice.
10. The Irrevocable Bank Guarantee issued by the Standard Chartered Bank to Indian Overseas Bank, ARC Ahmedabad unequivocally, irrevocably and

unconditionally undertakes to pay Indian Overseas Bank (Sole COC member) forthwith on demand in writing from any amount not exceeding Rs1,37,25,000 being 15% of the Resolution Plan value of Rs 915 lakhs which includes the CIRP cost estimated (Rs 40 lakhs) till the approval of the Resolution Plan by the Hon'ble NCLT. This bank guarantee has also been issued bank guarantee stating that it shall continue to be enforceable till all the dues of the SRA in relation to the resolution plan and / or under or by virtue of the RFRP have been fully paid and its claim satisfied or discharged or till the beneficiary certifies that the resolution plan has been effected and that the terms and conditions of the RFRP have been fully and properly carried out by the said SRA (Para 6 of page 4). In Para IV, (page 5/6 of bank guarantee), it states that "In case beneficiary request for extension/renewal of this bank guarantee for a further period as required by them in the event we shall renew or extend the same for a period as requested by the beneficiary". This bank guarantee was not continued by the SRA and the Standard Chartered

Bank inspite of the pending resolution plan for its approval from the date of its expiry on 23 May 2023. The bank guarantee issuing bank violated renewal of the bank guarantee. The beneficiary and CoC (Sole member IOB) had vide its letter dated 29 May 2023 and 7 July 2023 written to the bank guarantee issuing bank to renew the bank guarantee for another 6 months. RP is also observed to have written emails to the SRA to get the bank guarantee renewed. Further during the hearings on various dates subsequently, the SRA resisted and declined to renew the Bank Guarantee and disobeyed the order delivered by this Tribunal on 7 August 2023 directing the SRA to renew the bank guarantee. Further the Learned Counsel for SRA protests the direction and states that he will file reply on the issue.

11. The CoC made a detailed submission including the steps taken by it to appeal for review the Judgement of Rainbow papers case by Hon'ble Supreme Court. Further it has allowed the RP to amend the Form H provide for contingency if the appeal is turned down by ST

Department under Gujarat VAT and rightly admitted sharing the status as Secured Creditor. It has further relied on the judgment of Hon'ble Supreme Court in *Paschimanchal Vidyut Vitran Nigam Ltd. Vs Raman Ispat P Ltd & Others* on the waterfall mechanism and distribution of assets.

12. It is observed from the various responses, submissions, arguments and minutes of the meetings that even though the State Tax Department was a member of the CoC as operational creditor they did not attend the meeting. Their claim was provisionally admitted as confirmed by the RP. It is immaterial whether the claim was fully admitted and the claim was mentioned as part of RFRP and the SRA provided NIL to the Operational Creditor. The amended Form H was as per directions of this Tribunal as the matter was referred in respect of the judgment in Rainbow Papers and took in to account the scenario that would evolve in case Secured Creditor status is accorded to the State Tax authority. There has been no further claim received by RP or before this Tribunal.

13. The SRA and his Learned Counsel have acted with haste, deliberately scuttled approval of a resolution process. From the records and submissions it is observed that even though this Tribunal had rejected the resolution plan, which was appealed before NCLAT and the Resolution Plan was approved on the orders passed by CoC without delay. Subsequent developments delayed the entire process of CIRP. The SRA has without valid reasons raised frivolous contentions to reject the resolution plan which he had submitted fully aware of the claim submitted and provisionally admitted by RP. Even if 0 value was accorded the claim due to be paid to State Tax was considered in the plan. The question of giving secured status in view of the judgment has been duly approved in 14th CoC meeting. There has been certain objections by the suspended management to the Resolution Plan, procedure followed by RP but do not in any way highlight any dues to be paid to GVAT or that the resolution plan is not fully compliant. There are no valuable objections

raised in the matter other than that the resolution plan may cause damage to them and needs to be rejected.

14. The RP and the CoC appear to have acted diligently in the CIRP process, and member of CoC had given various guidelines to RP to protect the assets and asses the liability on account of ST. Valuation of the property/assets and consideration of an appropriate resolution plan has to be exercised and approved with due diligence by COC and RP which is observed to have been done. The SRA and the Ld. Counsel who has appeared deliberately scuttled the process of timely resolution resulting in loss caused to the COC, erosion of asset value and by disregarding the orders of this Tribunal.
15. The Resolution Plan is otherwise compliant with Sec 30(2) of IBC with the amended Form H proposed as the claim if any to be made as secured creditor by state tax department gets protected as the share that would evolve has been defined in the Form H amended submitted by RP. In view of the same the Resolution Plan is accepted. Further the SRA is directed to pay for the damage caused

for non-renewal of the bank guarantee from 7 May 2023 till date of this order by paying penalty to the member of CoC at the penal rate of 2% over the bank lending rate of CoC Member (IOB) to its Corporate Account rated Grade D. Additionally, the SRA will pay the legal cost of the RP and the Member of CoC from the date of non-extension of Bank Guarantee in all the hearings before this Tribunal. Further Learned Counsel on pressing his adamant stand that the bank guarantee will not be issued is not proper submission, even if the claim is to be received (no claim as on date) and non-compliance to the orders of this Tribunal which has been documented in the order dated 4th August 2023 by this Tribunal is viewed seriously.

16. Hence we pass the following orders.

ORDER

- I. Application is allowed.
- II. The approved 'Resolution Plan' shall become effective from the date of passing of this order.

- III. The order of moratorium passed by this Adjudicating Authority under Section 14 of IBC, 2016 shall cease to have effect from the date of this order.
- IV. The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.
- V. The monitoring committee as proposed in the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan.
- VI. The Resolution Professional, Mr. George Samuel, shall be released from the duties of the Resolution Professional of the Corporate Debtor as per the provisions of the IBC, 2016 and rules/regulations made thereunder from the date of this order.
- VII. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and approved Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

- VIII. As regards various reliefs and concessions which are being sought, we hereby grant the following reliefs and concessions only as against reliefs and concessions claimed by the resolution applicant.
- IX. After the payment of the dues to the creditors, as per the resolution plan, all the liabilities/claims of the said stakeholders shall stand extinguished and other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after approval of the resolution plan.
- X. From the date of this order, all claims against the Corporate Debtor, except those provided in the plan of the Corporate Debtor stand extinguished.
- XI. From the date of this order, all encumbrances on the assets of the Corporate Debtor before the Resolution Plan shall stand extinguished. No reliefs and concessions are granted to guarantee if any issued by the suspended management in an individual capacity to any of the creditors.
- XII. For reliefs and concessions sought from the Government / Statutory Authorities, we direct the resolution applicant to

approach the concerned Authorities. The concerned Authorities are to consider and decide the matter as per applicable provisions of law for effective implementation of the Resolution Plan.

- XIII. As regards reliefs prayed under various provisions of the Income Tax Act, 1961, the Corporate Debtor/ Resolution Applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the resolution applicant in accordance with the provisions of the Income Tax Act, 1961.
- XIV. The Resolution Applicant shall be entitled to review, revise or terminate any appointments / agreements / understanding entered into by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements / MoUs /contracts.
- XV. The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the SRA for the proper running of the operations /business of the Corporate Debtor.

- XVI. The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution.
- XVII. The SRA shall, pursuant to the Resolution Plan approved under Section 31(1) of the Code, obtain necessary approvals 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 vide this order or within such period as provided for in such law, as the case may be.
- XVIII. All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the Resolution Plan as regards the restructuring of capital shall be binding on them. The reliefs sought by way of approval of the Resolution Plan along with merger of the Corporate Debtor with the SRA under Section 230-232 of the Companies Act, 2013 will be filed a separate application after obtaining necessary approvals in this Plan.
- XIX. No approval is given at this stage by way of this order regarding to merger of the Corporate Debtor with SRA and

filed a separate application with Audited Financial Statements of both Companies may be submitted for the approval.

- XX. With respect to the grant of license/ Government approval, if the license or approval is terminated, suspended or revoked, the resolution applicant may approach the concerned Department/ Authorities for such approval/ renewal and Government Authorities may consider the request of the resolution applicant as per applicable provisions of law for effective implementation of the resolution plan.
- XXI. A certified copy of this order be issued to all concerned parties upon compliance of all requisite formalities.
- XXII. Accordingly, IA No. 36 of 2021 in CP (IB) No. 257 of 2019 is disposed of.

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

CHITRA HANKARE
MEMBER (JUDICIAL)