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14.11.2022

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IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1

ITEM No.141

IA/267(AHM)2022 in C.P.(IB)/133(AHM)2021

Order under Section 30 r.w 31(1) IBC,2016

IN THE MATTER OF:

Amrish Gandhi RP of Bacon Vanijya Pvt Ltd .....**Applicant**
V/s
COC of Bacon Vanijya Pvt Ltd .....**Respondent**

Order delivered on..02/11/2022

Coram:
Dr.Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:
For the Applicant :
For the Respondent :

ORDER

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

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B GOSAVI
MEMBER (JUDICIAL)

NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
COURT-1

IA No. 267 of 2022

In

CP (IB) No. 133 of 2021

[An application under section 30(6) of the Insolvency and Bankruptcy Code, 2016]

Amrish Gandhi
Resolution Professional of
Bacon Vanijya Pvt. Ltd.
Having his address at:
Shivalik Abaise – 504,
Opp. Shell Petrol Pump,
Nr. Anandnagar Bus Stand,
Satellite, Ahmedabad - 380015

....Applicant

Versus

Committee of Creditors of
Bacon Vanijya Pvt. Ltd.
(Through: Triplewheels and Drive Pvt Ltd.)
Having its address at:
9th floor Shitiratna Complex,
Off C G Road, nr. Panchvati Circle,
Ahmedabad – 380006

....Respondent

In the matter of:

CP (IB) No. 133 of 2021

[An application under section 7 of the Insolvency and Bankruptcy Code, 2016]

NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

O3 Developers Pvt. Ltd.,
Having registered address at:
909, Shitiratna Complex,
Off C G Road, nr. Panchvati Cross Road,
Ellisbridge, Ahmedabad - 380006

...Applicant / Financial Creditor

Versus

Bacon Vanijya Pvt. Ltd.
Having registered address at:
Godown 09, SG Road,
PO Kankrol, Himatnagar,
Sabarkantha – 383001

... Respondent/Corporate Debtor

Order pronounced on 02.11.2022

Coram: Dr. MADAN B. GOSAVI, MEMBER (J)
KAUSHALENDRA KUMAR SINGH, MEMBER (T)

Appearance:
Learned Counsel Mr. Nandish Chudgar appeared for the Resolution Professional

Learned Counsel Ms. Dhruvi Trivedi appeared on behalf of Ms. Maithili Mehta for the Income Tax Department

ORDER

1. This application under section 30(6) of the Insolvency and Bankruptcy Code, 2016 **(IBC, 2016)** is filed by Mr. Amrish Gandhi Resolution Professional **(RP)** of the Corporate Debtor – Bacon Vanijya Pvt. Ltd. for approval of the resolution plan submitted by Karni Tradepack Private Limited.

2. The following are the submissions made by the applicant/ resolution professional in the present application:

(i) On 20.09.2021, the Corporate Debtor was admitted in the Corporate Insolvency Resolution Process **(CIRP)**. Mr. Amrish Gandhi was appointed as the Interim Resolution Professional **(IRP)**. On 24.09.2021 the IRP made a public announcement of the CIRP of the Corporate Debtor and called upon its creditors to submit claims with requisite proofs in "Financial Express" Ahmedabad English edition and "Sandesh" Sabarkantha Gujarati edition. He collated the claims. The IRP formed the Committee of Creditors **(CoC)** consisting of the following Financial Creditors having voting percentage right stated below:

(a) O3 Developers Private Limited having 22.75% voting share

(b) Tripwheels and Drive Private Limited having 77.06% voting share

(c) Sutanuti Enterprises Private Limited having 0.18% voting share

(ii) In the first CoC meeting held on 22.10.2021, the CoC resolved to appoint IRP as RP of the Corporate Debtor.

(iii) In the third CoC meeting held 05.12.2021, the CoC finalized the process for initiation of Expression of Interest **(EoI)** and evaluation matrix. On 06.12.2021, the RP published Form-G in widely circulated "Business Standard" Ahmedabad edition and "Sandesh" Sabarkantha edition to submit Expression of Interests/resolution plans on the basis of the information

memorandum of the assets and liabilities of the Corporate Debtor. 9 entities made inquiries for EoI, however, 2 of the prospective Resolution Applicants namely Karni Tradepack Private Limited and Dr. Arvind Life Science Pvt. Ltd. submitted the EoI with Rs. 50,000/- as Earnest Money Deposit.

(iv) On 25.02.2022, the RP received resolution plan from Karni Tradepack Private Limited while no resolution plan was received from Dr. Arvind Life Science Pvt. Ltd. until the last date for submission of Resolution Plan i.e. 28.02.2022.

(v) In the sixth CoC meeting held on 15.03.2022, the CoC discussed and negotiated the resolution plan of said prospective Resolution Applicant. Thereafter, the CoC approved the said resolution plan of Karni Tradepack Private Limited with 100% votes. Accordingly, the RP had filed an application, bearing no. IA No. 267 of 2022 for approval of the resolution plan.

(vi) The Resolution Applicant- Karni Tradepack Private Limited has proposed to pay a sum of Rs.13,00,000/- against the total admitted claim of Rs. 5,45,00,000/-. The total haircut under the proposed plan is 97.62%. The details are as follows:

Sr	Category of Stakeholder	Sub-category of Stakeholder	Amount admitted	Amount provided under the plan	Amount provided to the amount claimed (%)

	Secured Financial Creditors	a) Creditors not having a right to vote under sub section (2) of section 21	NIL	NIL	NIL
		b) Other than (a) above : (i) who did not vote in favour of the Resolution Plan (ii) who voted in favour of the Resolution Plan	NIL	NIL	NIL
		Total (a+b)	NIL	NIL	NIL
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub section (2) of section 21 (b) Others than (a) above : (i) who did not vote in favour of the Resolution Plan ii) who voted in favour of the Resolution Plan	NIL NIL 5,45,00,000	NIL NIL 13,00,000	NIL NIL 2.38%
		Total (a+b)	5,45,00,000	13,00,000	2.38%
3.	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL
		(b) Other than (a) above (i) Government (ii) Workmen (iii) Employees	NIL	NIL	NIL

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		Total (a+b)	NIL	NIL	NIL
4.	Other debts and dues		NIL	NIL	NIL
	Grand Total		5,45,00,000	13,00,000	2.38%

3. We have heard the learned counsel for the Applicant and perused the material available on record. The plan amount is more than the liquidation value of the assets of the Corporate Debtor. The liquidation value and the fair value of the Corporate Debtor are reported at Rs. 5,25,084.5/- and Rs. 5,50,534.5/- respectively. The Resolution Applicant of Karni Tradepack Private Limited has proposed to pay a sum of Rs. 13,00,000/- within 2 months from the effective date against full and final payment for all the liabilities of a Corporate Debtor.

4. The resolution plan should adhere to the following requirements:

(i) It should provide for the payment of insolvency resolution process costs in priority to the repayment of other debts of the corporate debtor.

[Section 30(2)(a)]

(ii) The repayment of the debts of operational creditors and dissenting financial creditors should not be less than the amount to be paid to such respective creditors in the event of liquidation of the corporate debtor under section 53 of the Code. Moreover, the payment to the operational creditor is to be made in priority over the financial creditor; and the payment to dissenting financial creditor is to be made in priority to the consenting financial creditors.

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[Section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b)];

(iii) Provides for the management of the affairs of the corporate debtor after approval of the resolution plan.

[Section 30(2)(c) read with CIRP Regulation 38(2)(b)];

(iv) The implementation and supervision of the resolution plan.

[Section 30(2)(d) read with CIRP Regulation 38(2)(c)];

(v) It does not contravene any of the provisions of the law for the time being in force.

[Section 30(2)(e)];

(vi) It conforms to such other requirements as may be specified by the Board.

[Section 30(2)(f)]

Such other requirements of the resolution plan as detailed in IBBI (Resolution Process for Corporate Persons) Regulations, 2016 which are not covered above, are as under:

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

[CIRP Regulation 38 (1A)]

(b) The resolution plan should include a statement giving details as to whether the resolution applicant or any of its related parties has at any time failed to

implement or caused to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority.

[CIRP Regulation 38 (1B)]

(c) The resolution plan should contain the term of the plan and its implementation schedule.

[CIRP Regulation 38(2)(a)]

(d) The resolution plan should also demonstrate that it addresses the cause of default; is feasible and viable; has provisions for its effective implementation; has provisions for approvals required and timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan.

[CIRP Regulation 38(3)]

5. In view of the above provisions of the Code, 2016, the resolution plan submitted before us has been examined as follows:

(i) The provision towards CIRP costs is made for Rs.5,72,073/- to be paid within 15 days from the date of the approval of the said plan by the Adjudicating Authority, in priority to the repayment of other debts of the corporate debtor and hence, the provision for payment towards CIRP cost has been made. Thereby, section 30(2)(a) has been complied with.

(ii) It is seen from material on record that the amount due to the operational creditors as per Information Memorandum is Nil. There is no claim of Operational

Creditor. Hence, no amount is proposed for payment in this resolution plan.

Further since the resolution plan is approved with 100% votes, there is no dissenting financial creditor and therefore, no provision of payment is required for the same. Thereby, provisions of section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b) is complied with.

(iii) The mechanism for management and control of the affairs of the corporate debtor after approval of the resolution plan has been provided in the resolution plan itself whereby the management and control of the Corporate Debtor shall be handed over to the Board of Directors of the Resolution Applicant for proper running of the plant of the Corporate Debtor. We hold that thereby provisions of Section 30(2)(c) read with CIRP Regulation 38(2)(b) have been complied with.

(iv) The resolution plan contains a provision wherein, the implementation of the said plan will be supervised by the Board of Directors of Resolution Applicant. Thereby, Section 30(2)(d) and Regulation 38(2)(c) of CIRP Regulations, 2016 has been complied with.

(v) The RP has submitted that the plan does not contravene any provisions of the law. We also noted that the plan does not contravene any provisions of the law for the time being in force. Thereby, section 30(2)(e) of IBC, 2016 has been complied with.

(vi) The resolution plan also conforms to other IBBI Regulations as given hereunder:

(a) The resolution plan contains a statement regarding dealing of interests of all stakeholders, including financial creditors and operational creditors, of the Corporate Debtor. Thereby, Regulation 38(1A) of CIRP Regulations, 2016 has been complied with.

(b) The resolution plan contains a statement that the Resolution Applicant or any of its related parties has not failed to implement or contributed to failure of implementation of any other Resolution Plan approved by the Adjudicating Authority. Thus, statement giving details of such non-implementation is not applicable under Regulation 38(1B) of CIRP Regulations, 2016.

(c) The term of the resolution plan is for a period of two months which shall commence on the date of the approval of the said plan by the Adjudicating Authority. It provides for the implementation schedule for payment to the creditors as envisaged in the resolution plan within a period of 2 months.
Thereby, Regulation 38(2)(a) of CIRP Regulations, 2016 has been complied with.

(d) The resolution plan contains the sources of funds; is feasible and viable; has provisions for its effective implementation. Thereby, Regulation 38(3) of CIRP Regulations, 2016 has been complied with.

6. As far as reliefs and concessions claimed by the resolution applicant, the law has been well settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021*** in the following words:

> *86. "The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*
>
> *87. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of IB Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief..."*

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7. In view of the above, all past claims would stand extinguished. However, as far as various statutory rights vested with the corporate debtor in form of various licenses, leases, and other alike matter, we make it clear that the successful resolution applicant has to approach the concerned statutory authority for those concessions and those authorities will consider the same as per their established procedure.

8. The proviso to section 31 of the Insolvency and Bankruptcy Code, 2016, states that before passing an order for approval of the resolution plan the Adjudicating Authority, shall satisfy that the resolution plan has provisions for its effective implementation. We being satisfied approve the resolution plan submitted by Karni Tradepack Private Limited and in addition to the above directions, proceed to pass the following orders:

(i) Application is allowed.

(ii) The resolution plan of Karni Tradepack Private Limited for Corporate Debtor i.e. Bacon Vanijya Pvt. Ltd., stands allowed as per section 30(6) of the IBC, 2016.

(iii) The approved 'Resolution Plan' shall become effective from the date of passing of this order.

(iv) The order of moratorium dated 20.09.2021 passed by this Adjudicating Authority under Section 14 of the Insolvency and Bankruptcy Code, 2016, shall cease to have effect from the date of passing of this order.

(v) The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).

(vi) The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

(vii) Accordingly, IA 267 of 2022 in CP (IB) 133 of 2021 is allowed and stands disposed of in terms of the above

directions.

(viii) Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

Shweta Desai – LRA

Prepared by Vimal Rajapat
Signature
Date 14.11.2022

Certified to be True Copy of the Original
14/11/22
Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad