

Through Videoconference

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

*** *** ***

MA No. 1057/MB/2018
in
C.P. (IB) No. 1197/MB/2017

(An Application under Section 30(6) read with Section 31 of the
Insolvency and Bankruptcy Code, 2016)

V. V. Anand, Resolution Professional
for Konkan Minerals Private Limited
B - 2101, Great Eastern Gardens,
LBS Marg, Kanjur Marg (W),
Mumbai – 400 078

... ***Applicant***

In the matter of

Konkan Minerals Private Limited,
No. 118, Bethora Industrial Estate,
Bethora, Ponda, Goa.

... ***Corporate Debtor***

Date of Order: 19.05.2021

CORAM:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)
Shri V. Nallasenapathy, Hon'ble Member (Technical)

Appearance:

For the Applicant: Mr. Devarajan Raman, PCS.

Per: V. Nallasenapathy, Member (Technical)

ORDER

This is an Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the Code) by the Resolution Professional of the

Corporate Debtor seeking approval of the Resolution Plan submitted by the Resolution Applicant viz. Mr. Gururaj S R, who is the erstwhile Director of the Corporate Debtor.

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

- a) Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 16.08.2017 upon admission of a Petition under Section 10 of the Code and the Applicant was appointed as the Interim Resolution Professional (IRP).
- b) The IRP published a public announcement on 16.09.2017 inviting claims from the creditors of the Corporate Debtor. After receipt of the claims the IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor on 10.10.2017. The IRP conducted the 1st meeting of the CoC on 16.10.2017. The CoC resolved to appoint the Applicant as the Resolution Professional (RP) of the Corporate Debtor and the same was confirmed by this Bench.
- c) Since there was no response for the Form-G issued by the RP on 22.11.2017 another Form-G was issued on 04.06.2018, inviting Expressions of Interest (EOI) from Prospective Resolution Applicants (PRAs). The last date for submission of Resolution Plan was 29.08.2018.
- d) The CIRP period for the Corporate Debtor was extended by 90 days by this Tribunal *vide* order dated 02.08.2018.
- e) It is submitted by the Applicant that post introduction of section 240A in the Code on 06.06.2018, he received Resolution Plan from a PRA, Mr. Gururaj S R (erstwhile Director of the Corporate Debtor) on 20.08.2018.

f) After due verification of the eligibility of the PRA in terms of Section 29A of the Code, the CoC in its 9th meeting held on 10.09.2018 discussed the Resolution Plan and approved it with voting share of 97.98% in favour and 2.02% against.

3. The salient features of the Resolution Plan are as under:

a) **SUCCESSFUL RESOLUTION APPLICANT (SRA):**

The Resolution Plan is submitted by the Corporate Debtor itself i.e. Konkan Minerals Private Limited. The Corporate Debtor is a small enterprise as per MSME Development Act, 2006. The SRA is accordingly eligible under section 240A of the Code and the bar under section 29A is not applicable.

b) **TERM OF RESOLUTION PLAN:**

The term of the Resolution Plan is 5 (five) years from this date.

c) **FINANCIAL TERMS AND SOURCES OF FUNDS:**

The pay-out proposed as per the Resolution Plan and the means of funding as per clause 9 and clause 11 of the Resolution Plan are as under:

(Amounts in INR Lakhs)

Financial Terms			Source of Funds	
Particulars	Admitted Amount	Amount as per Resolution Plan	Source of finance	Amount
CIRP costs	-	22.44	Allotment of further equity	60.00
Workmen's Dues	1.25	1.25	Internal Accruals	279.50
Employee Dues	7.75	7.75		
Operational Creditors other than Workmen and	11.74+1.95 (Electricity Department)	2.94		

Employees				
Repayment to Union Bank – FC	323.85	275.00		
Repayment to Toyota Financial Services – FC	6.60	5.50		
Start-up expenses		11.65		
Working Capital Initial Provision		20		
Total		346.53	Total	339.50

There is a gap of INR 7.03 Lakhs between the pay-out proposed and the source of finance. However, the SRA also proposes to infuse INR 10 lakhs in Year 1 in the form of unsecured loans which will be redeemed in Year 3.

The pay-out proposed for different categories of creditors are as follows:

- a. CIRP costs: Full payment of CIRP costs of INR 22.44 Lakhs as on 01.03.2021 is proposed to be paid.
- b. Financial Creditors:

Category of stakeholder	Amount admitted	Amount provided under the Plan	%	Time period
Dissenting secured FC (Note 1)	5.50	5.50	100%	1 Year
Assenting secured FC (Note 2)	323.84	275.00	84.90%	5 Years
Dissenting unsecured FC	NA	NA	NA	-
Assenting unsecured FC	NA	NA	NA	-

- c. Employees Dues: Full payment towards employees' dues of INR 7.75 Lakhs outstanding is proposed to be paid within 1 month from this date.

- d. Workmen Dues: Full payment towards workmen's dues of INR 1.25 Lakhs outstanding as on 31st March 2017 is proposed to be paid within 1 month from this date.
 - e. Liquidation value: The liquidation value of the Corporate Debtor arrived at by the RP is INR 158.89 Lakhs.
 - f. Operational Creditors (OCs): Though the liquidation value due to the Operational Creditors is Nil, the Resolution Plan envisages payment of INR 2.94 Lakhs to the OCs other than workmen and employees.
 - g. Statutory dues: No payment is proposed towards any statutory dues.
- d) **REDUCTION OF SHARE CAPITAL:**
The Resolution Plan proposes to de-rate the face value of equity from INR 100 per share to INR 10 per share. With this the paid-up share capital of the Corporate Debtor would get reduced from INR 1 Crore to INR 10 Lakhs.
- e) **MANAGEMENT OF THE CORPORATE DEBTOR:**
The operations of the Corporate Debtor post approval of the Resolution Plan by this Authority will be managed by Mr. Baddi, a Science Graduate, who is with the Company from 2011 and has more than 20 years' experience in alloy making. Further assistance will be provided by Mr. Chandrashekar, who is with the Company for more than 10 years and has more than 20 years of experience in the Sector.
- f) **IMPLEMENTATION, SUPERVISION OF THE RESOLUTION PLAN AND DAY-TO-DAY MANAGEMENT TEAM:**
The Resolution Plan proposes that the powers of the Board of Directors will get reinstated upon the approval of the Plan. The Board would appoint a Monitoring Committee for implementation and supervision of the Resolution Plan comprising of whole-time director and Independent director. It is submitted that the unit will have able guidance from Mr.

C. Suresh Kumar who is in the Steel and Ferro Alloys Sector from more than 4 decades and was associated with the Company from 2005 to 2010.

g) **COMPLIANCE OF MANDATORY CONTENTS OF RESOLUTION PLAN UNDER THE CODE AND THE REGULATIONS:**

It is submitted that the Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 and 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate person) Regulations, 2016 (the Regulations) and has submitted his Form H under Regulation 39(4). It is submitted that the Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the SRA, the Corporate Debtor is exempted from Section 29A of the Code as the Corporate Debtor is a MSME. Therefore, it is eligible to submit a Resolution Plan under Section 240A of the Code. Accordingly, the Resolution Applicant has submitted an Affidavit dated 31.07.2018 confirming his eligibility to submit a Resolution Plan U/s 29A of the Code.

4. The Applicant submits that the Resolution Plan meets the requirements of Section 30(2) of the Code in the following manner:
 - a. The Plan provides for the priority payment of CIRP costs in full as per clause 9 thereof and as per clause 1(c) of note submitted by the RP to the CoC (Annexure I to the Application) [Section 30(2)(a)].
 - b. Provides for the payment of the debts of the operational creditors and of the dissenting financial creditors as per clause 9 thereof. [Section 30(2)(b)].

- c. Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan as per clause 8 thereof [Section 30(2)(c)].
 - d. Provides for the implementation and supervision of the Resolution Plan as per clause 8 and 15 thereof [Section 30(2)(d)].
 - e. As per clause 1(i) of the note submitted by RP to the CoC (Annexure I to the Application), the Resolution Plan does not contravene any provisions of the law for the time being in force [Section 30(2)(e)].
5. The Resolution Plan is in compliance of Regulation 38 of the Regulations in terms of Section 30(2)(f) of the Code as under:
- a. Provides for payment to Operational Creditors in priority over Financial Creditors (Regulation 38(1)(a)).
 - b. Provides for payment due to the dissenting Financial Creditors in priority over assenting 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, as per clause 14 thereof keeping in view the objectives of the Code (Regulation 38(1A)) Resolution Plan.
 - d. Declaration by the Resolution Applicant as per clause 2.9(iii) thereof that neither the Resolution Applicant nor any of his related parties has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38(1B)) .
 - e. Provides for term and implementation schedule, management and control of the Corporate Debtor and adequate means for supervising its implementation as per clause 8 and 15 thereof (Regulation 38(2)).
 - f. The Resolution Plan also addresses the cause of default, feasibility and viability, as per clause 8 and 15 thereof as required under Regulation 38(3) of the Regulations.

6. The SRA has sought certain reliefs and concessions in the Resolution Plan. It is submitted that the electricity connection has been disconnected by the Goa Electricity Board (GEB) due to non-payment of dues of INR 1.95 Lakhs. The GEB has collected minimum demand charges during the closure period which as per the Sick Industrial Policy of the Central Government needs to be refunded. Further, Sick Industrial Policy envisages waiver of interest and penalties during the closure period. With these waivers put in place an amount of approx. INR 20 Lakhs is to be refunded by GEB and RA proposes to use this INR 20 Lakhs as security deposit for reconnection of power connection.

7. The SRA has further sought certain reliefs and concessions as under:
 - a. The Resolution Applicant has sought directions to provide relief allowable to a sick company as per Gazette Notification dated 17/11/2016 of Government of Goa for rehabilitation of the company i.e. to provide reimbursement of VAT, GST and other taxes on a quarterly basis. The SRA has further sought directions to provide supply of power as per Gazette Notification dated 17/11/2016 of the Government of Goa with the following concessions:
 - i. No demand charges for a period of 5 years from the date of reconnection.
 - ii. Power to be supplied at basic cost with no duties and taxes for a period of 5 years.
 - iii. To exempt from payment of minimum demand charges and delayed payment charges, if any, during the non-operational period from April, 2015 till the date of disconnection.
 - iv. To grant exemption from furnishing / providing bank guarantees.
 - v. To reconnect the water supply and charge basic cost of the unit supply.

- vi. To waive all interest and other charges, penalties/damages levied during the closure period from April, 2015 till date.
- b. The SRA has sought directions with regard to Employee State Insurance, to accept the payment of principal dues outstanding as on date of restart of operations, that is INR 0.88 Lakhs due up to July, 2018 within three months from resumption of operations without interest. Further, to waive penalties, damages etc. on the liability of the company as on the date of sanction of the Resolution Plan. Further the SRA has sought directions with regard to Employee Provident Fund, to waive damages and interest, and also to accept in full settlement the payment of only the principal dues of Provident Fund due of INR 1.21 Lakh to be paid within three months from the date of approval of this Resolution Plan.
- c. The SRA has sought reliefs from the Central Government, to exempt the Company from penal provisions of Income Tax Act, Companies Act, Central Excise Tax Act, Service Tax Act, Central Sales Tax and any other law. Further, to provide any other relief allowable to the sick company as per the policy of the Central Government for the rehabilitation.
- d. The SRA has sought reliefs from Central Board of Direct Taxes, to consider exemption/grant of relief to the company from the provisions of Sections 28, 41(1), 45, 72 (3), 43-B, 79, 80 read with 139, 115JB and the provisions of Chapter XVII of the Income Tax Act and other applicable provisions of the Income tax Act for delayed/non-payment of TDS, delay and non-filing of income tax returns stipulated u/s. 139 and other omissions/lapses. Further, to consider waiver of penalty/damages, interest, if any charged on the income tax arrears for the past years.
- e. The SRA has sought relief regarding transfer of lease hold rights in respect of land measuring 2679.50 square metres owned by Goa Industrial Development Corporation (GIDC). The Unit was acquired by

the Company in 2004 from GIDC. The Unit as per records was comprising of 4017 square metres of land, building, plant and machinery and substation. However, the available land was 6696.50 square meters bound by a Single Compound marked as plot no 118A and 118B. Some of the equipments were located in the 4017 square meters handed over and others in 2679.50 which were embedded to the land and which was very essential to store raw materials. In this background, the Company had paid requisite fee for transfer of lease hold rights in respect of 2679.50 sq mtrs way back in 2005 itself. However, GIDC declared the said 118B plot as open space taking into consideration the rules of GIDC which requires 15% as open space. GIDC has recently changed the rules wherein the open space required in a layout is reduced to 7.5% and the said plot can be transferred in the name of the Company. Requisite fee for the said land is paid in 2005. The said 118B is very essential for smooth operations and for the purpose of storing raw materials and part of substation also is located in the said land. In this background, the Resolution Plan envisages that GIDC to transfer the lease hold rights in respect of 2679.50 square meters in favour of the Company.

8. We have heard the Counsels appearing for the Applicant as well as the SRA at length and have perused the Resolution Plan along with relevant documents placed on record. It is beneficial to refer to the observation of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta &Ors.:(2019) SCC OnLine SC 1478* as under:

“67.

A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the

corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove.”

9. In view of the above ruling of the Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. As already indicated the Resolution Plan has been approved by the CoC in its meeting held on 10.09.2018 with 97.98% votes.
10. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (= (2019) 12 SCC 150)*** the Hon’ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon’ble Court observed that the role of the NCLT is ‘no more and no less’. The Hon’ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
11. In **CoC of Essar Steel** (*supra*) the Hon’ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the

Resolution Plan which the CoC in their commercial wisdom have approved.

In para 42 Hon'ble Court observed as under:

“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).”

12. In view of the discussions and the law thus settled, 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 Resolution Applicant is eligible under section 240A of the Code and satisfies the relevant legal requirements. The Plan needs to be approved as provided under Section 31 of the Code. Hence ordered.

ORDER

The Application be and the same is allowed. The Resolution Plan submitted by Mr. Gururaj S. R., erstwhile Director of the Corporate Debtor, annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

- i. 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.
- ii. 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.

- iii. As far as the permits held by the Corporate Debtor and the rights and benefits accrued therein, the Corporate Debtor (under the new Management) needs to approach the authorities concerned for renewal and that the same may have to be considered by them favourably, subject to relevant Law and Rules, so that the implementation of Plan becomes smooth and free of hassles.
- iv. Henceforth, no erstwhile creditors of the Corporate Debtor can claim anything other than the liabilities referred to in Paras supra.
- v. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- vi. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- vii. The reliefs and concessions would abide by the following.
 - a. As far as the reliefs sought from the Commercial Tax department and GEB is concerned, SRA has to apply to the relevant department for necessary reliefs. The Department concerned may consider their application, as far as practicable favourably, in accordance with the law.
 - b. With regard to reconnection of water supply from the Goa Public Works Department (PWD), the SRA has to apply for the same.

PWD shall not insist on payment of pre-CIRP dues while dealing with such application.

- c. As regards reliefs sought under disconnection of electricity, the SRA may apply to GEB for the exemptions as may be necessary and such application may be considered in accordance with the law for the successful implementation of the Resolution Plan.
- d. As regards reliefs sought from the Employee State Insurance (ESI) and Provident Fund (PF) is concerned SRA has to apply to the department concerned. They may be considered in accordance with the law. Concessions if permissible may be granted.
- e. The SRA has sought exemptions for the Company from the penal provisions of Income Tax, Companies Act, Central Excise Act, Service Tax Act, Central Sales Tax and any other law. In respect of these concessions, it is made clear that so long as the dues are concerned, any tax due or penalty imposed have to be treated as Operational debts only and there cannot be any further liability on the SRA No concessions as to penal provisions can be made apart from the above. The SRA has sought exemption from various sections of the Income Tax Act for the Company. SRA has to apply to the Income Tax authorities which may consider their application in accordance with the law. As far as non-payment of TDS collected is concerned, Income Tax department shall not insist on payment of this amount as pre-CIRP dues while dealing with their application.
- f. As far as the relief regarding transfer of lease hold land of GIDC is concerned, the applicant has to apply for transfer of land, which GIDC may consider in accordance with the law.

- viii. 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.
- ix. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant for necessary compliance. The certified copy so granted shall include the Resolution Plan approved herein.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Janab Mohammed Ajmal
Member (Judicial)