

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

IA No. 4474/2020
IN
C.P. IB 1481/PB/2018

IN THE MATTER OF:

CORPORATION BANK

...FINANCIAL CREDITOR

VS.

M/S. INDOSOLAR LIMITED

...CORPORATE DEBTOR

AND

In the Matter of:

Gulshan Gaba

(Resolution Professional)

M/s. Indosolar Limited
C-12, Friends Colony (East),
New Delhi-110065

...APPLICANT/RESOLUTION PROFESSIONAL

UNDER SECTION 30 (6) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER RESERVED ON: 07.04.2022

ORDER DELIVERED ON: 21.04.2022

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

FOR THE RESOLUTION PROFESSIONAL:

Mr. P. Nagesh, Sr. Adv. with Ms. Prachi Johri, Mr.
Abhishek Gupta, Mr. Akshay Sharma, Mr. Lakshya
Sachdeva, Advs.

FOR THE RESOLUTION APPLICANT:

Mr. Pranaya Goyal, Ms. Apoorva Kaushik, Advs.

FOR THE COMMITTEE OF CREDITORS

Mr. Ankur Mittal, Ms. Meera Murali, Ms. Aishwarya
Pandey, Ms. Itisha Gulati, Advs.

AKS

ORDER

PER SH. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (TECHNICAL)

1. This application (**IA-4474/2020**) has been filed under Section 30(6) and 31 of the Insolvency & Bankruptcy Code, 2016, (the Code) on behalf of the Resolution Professional (RP) i.e. Mr. Gulshan Gaba of **M/s INDOSOLAR LIMITED**, seeking approval of the Resolution Plan as approved by COC.
2. The facts mentioned in the application in brief are as follow:
 - The Corporate Debtor i.e. M/s INDOSOLAR LIMITED is having its registered office located at C-12, Friends Colony (East), New Delhi-110065. It was incorporated on 08.04.2005 with CIN no. CINL1801DL2005PLC134879. It is public limited Company and is registered with Registrar of Companies, NCT of Delhi & Haryana. Its authorized capital is Rs. 1,000 crore and its paid up Capital is about Rs. 579 crore, as per MCA data (pg. 42, Annexure P3 of the petition C.P. IB 1481/PB/2020. The Corporate Debtor is engaged in the business of manufacturing high efficiency premium solar cell and modules. The manufacturing plant of the company is situated at 3C/1, Ecotech-II, Udyog Vihar, Greater Noida, Gautam Budh Nagar 201306, Uttar Pradesh. The Equity Shares of the Company are listed at Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). The manufacturing operations of the company are closed since May 2018 and almost all the employees stopped reporting to work since September 2018.
 - The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor i.e. **M/s INDOSOLAR LIMITED** vide order dated **12.04.2019** passed by this Adjudicating Authority, admitting the application under Section

7 of the Code filed by the sole Financial Creditor i.e. **CORPORATION BANK** (hereinafter referred as "FC") whereby Applicant was appointed as Interim Resolution Professional. Subsequently the IRP was further approved to be appointed as the Resolution Professional (RP) by this Adjudicating Authority vide its order dated 04.07.2019. The CIRP period commenced from 12.04.2019. Copy of the moratorium order dated **12.04.2019** is placed on record **Annexure R-1**.

- Thereafter the Applicant carried out a public announcement of initiation of CIRP and invitation of claims on **18.04.2019**. After collation of claims and determination of the financial position of the Corporate Debtor, a Committee of Creditors (CoC) was duly constituted by the Applicant. The first meeting of CoC was held on **15.05.2019**. The first meeting of CoC consisting of the following Financial Creditors :

S. No.	Name of Financial Creditors	Claims Admitted	Voting Rights (%)
1	Bank of Baroda	259,18,78,035/-	12.12
2	Corporation Bank	395,76,48,548/-	18.51
3	ARCL	499,74,13,039/-	23.38
4	Union Bank of India	983,22,09,352/-	45.99

The CoC in its first meeting approved the publication of Form-G for inviting Expression of Interest on 03.07.2019 along with Information Memorandum (IM), Eligibility Criteria, Evaluation Matrix and Request for Resolution Plans with last date for submission of Resolution Plan fixed for 02.09.2019 which was subsequently extended till 06.01.2020.

- After the public announcement of initiation of CIRP, the RP received 8 claims of which were 4 received from Financial Creditors totaling about Rs. 2138 crore,

total claim of Employees plus Workmen is Rs. 2.57 crore and total claim of other Operational Creditors is Rs. 43.63 crore.

- In the second CoC meeting held on 26.06.2019, the following persons were appointed as valuers:

S. No.	Name of the Valuer	Assets
1	Pranab Kumar Chakrabarty	Financial Assets
2	Naveen Singal	Financial Assets
3	Deepal Bansal	Land and Building
4	Vivek Jagtap	Land and Building
5	Debasish Ghosh	Plant and Machinery
6	Varun Sharma	Plant and Machinery

M/s. K.G. Somani and Co was appointed as the Transaction and Forensic Auditor.

- Initially the RP received 3 Expression of Interest (EoI) out of which the EoI of M/s. Ubiquity Solar INC was held to be ineligible and for rest two Prospective Resolution Applicants, the Resolution Plan placed by Emmvee Photovoltaic Power Private Limited being conditional in nature, the CoC rejected it. The other Applicant, Waaree Energies Limited gave a final Resolution Plan on 06.01.2020 with addendum dated 09.01.2020 and 14.02.2020. The CoC in its 14th meeting held on 14.02.2020 approved the Resolution Plan with 100% voting.
- The CIRP period was extended by this Adjudicating Authority vide order dated 09.10.2019 for 90 days and again vide order dated 09.01.2020 for another 60 days. The application for approval of Resolution Plan was submitted on 11.03.2020. The Resolution Plan value is Rs. 189.793 Crores, break up of which is as follow:

Particular	Amount
Upfront payment toward CIRP cost	0.191
Upfront payment of claims and dues of various creditor other than financial creditors (Workmen, employees dues and accrued bonus Rs. 2.568, Operational Creditor (other than Workmen, Employees) Rs. 1.574 cr. and Statutory dues Rs. 0.25)	4.392 cr
Consideration towards Settlement of claims of financial creditors against the total claim of Rs. 2137.91 crore	90 cr
Fresh Infusion toward CAPEX and WC for stabilizing & Improving operations (towards Working Capital Requirement Rs. 21.00 cr and Towards CAPEX/Renovation Rs. 74.21 cr)	95.210 cr
Total investment proposed by Resolution applicant	189.793 cr

The Resolution Applicant will provide funds from its own internal accruals (Rs. 70 cr.), from sale of its non-current investments (Rs. 73.81 cr.) and by raising debt (Rs. 50 cr.).

- In addition, there is an amount of Rs. 300.00 Crore receivables as subsidy from Government of India, Ministry of Communication and Information Technology of which 90% shall be disbursed amongst the financial creditors as per their voting shares within 30 days from the receipt of the subsidy amount. The remaining 10% shall be kept by the Resolution Applicant. The infusion of funds of Rs. 189.793 crores by the Resolution Applicant will be within 24 months from the effective date. The term of the Resolution Plan is 24 months from the

Effective Date which is the date of approval of the Resolution Plan, within which the payments shall be made to Secured Financial Creditors and the operational creditors, and all other creditors. However, proposed initial infusion towards capex & working capital to run the Corporate Debtor shall be within a period of 01 year from the effective date. To ensure the successful implementation of the Resolution Plan, the CoC shall constitute the Monitoring Committee, which may comprise one representative of the Resolution Applicant, representative of the CoC and a qualified Insolvency Resolution Professional which shall monitor the implementation of the plan after the Effective Date till the closing date. The compliance certificate in Form H has been duly provided indicating the liquidation value as about **Rs. 89 crore** and Average Fair Value to be about **Rs. 168 Crore**.

- Although the amount of Rs. 25 crore of Performance Bank Guarantee (PBG) was required to be submitted within 7 to 10 days, however, copy of the final PBG submitted is not readily available. The RP will make available the same for the record within 7 days. The Resolution Plan also envisages Restructuring of Capital as per which the public share holding (58,100 shareholders) will get reduced from Rs. 160 crore (43%) to Rs. 1.60 crore (3.85%)] by Capital reduction to the extent of 99%. Further the Resolution Applicant proposes to keep the equity shares of the Corporate Debtor listed on all the exchanges. (It is stated in the Information Memorandum that the shareholding of the Company as on 31.12.2018 is 37,20,67,116 shares as submitted with BSE for quarter ending Dec. 2018. Further, 20,70,00,000 nos. of 1% Optionally Convertible Cumulative Redeemable Preference Shares were issued to Union Bank of India (UBI) during Financial Year 2017-18 in terms of OTS. However, UBI has included this amount as debt in its claim as financial creditor due to cancellation of OTS).

- The Waaree Group has submitted that the Resolution Applicant-Waaree Energies Limited was incorporated in December ,1990 and it is a solar power end-to-end solution. It is India's premier multi diverse technology group having its forte in multifarious verticals such as Solar Energy, Industrial Valves, Petroleum Equipment and Process control Instrumentation. As per the Resolution Applicant, the cause of default of the Corporate Debtor were inter alia the technology and the availability of the manufacturing equipments being European centric. In the meanwhile, China invested and expanded its technology and manufacturing equipments availability on a very large scale and at much cheaper prices than the European counterparts. This helped lowering of investment costs for other smaller capacity players and created stress for the Corporate Debtor. Further the Corporate Debtor also faced sales pressure due to the dumping prices of solar cells available from China. The promoters not only have a good understanding of the business but are also keen to set up new manufacturing unit for solar cells which is the most important raw material to make solar modules. Due to the present trade war between US and China, import of cells from China and selling to US has become non-competitive, so the Resolution Applicant to export its modules to US needs to make the Solar cells in India. The existing promoters of Indosolar are finding it difficult to raise funds since it is an NPA whereas the Resolution Applicant has excellent reputation with its lenders and has sufficient resources to purchase the plant.
- 3. We have heard the parties and perused the case records.
- 4. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code. **Section 30 (2) is quoted below: -**

“30(2). The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

- (i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;*
- (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*
- (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]*

(c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;

(d) The implementation and supervision of the Resolution Plan;

(e) does not contravene any of the provisions of the law for the time being in force

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

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under

the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

5. Further, as per Regulation 38 of the CIRP Regulations, a Resolution Plan is required to contain a statement as to how it has dealt with the interests of all the stakeholders including Financial Creditors and the Operational Creditors and if these are sufficiently provided in the Resolution Plan, the Adjudicating Authority may approve the Resolution Plan.
6. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a proposal in the Resolution Plan at page no. 62 of 95 (pg. 777 of Vol-4) that provides that the 100% CIRP cost will be paid.
7. As regards compliance of Clause (b) of Section 30(2) of the Code, which provides for the payment of the debts of operational creditors which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the Corporate Debtor under Section 53. The Resolution plan has provision for the payment to Operational Creditors (**Clause 8.6 of Chapter VIII at pgs. 53, 54 of the Resolution Plan.**)
8. In terms of Section 30(2)(c), management of the affairs and control of the business of the Corporate Debtor shall vest with the Resolution Applicant and this has been provided at Chapter XI at pgs. 82 to 84 of the Resolution Plan.
9. The next requirement envisaged by Section 30 (2)(d) is that it must provide for the implementation and supervision of the Resolution Plan. In this regard, relevant entry are given at page no. 1350 (Form H) of the Resolution Plan. **Pgs. 80, 81, Chapter X** of the Resolution Plan provides for the formation of the Monitoring Committee which says that CoC has ratified and approved the formation of the Monitoring Committee for Initial 1 year upon approval of Resolution plan. Monitoring Committee will comprise of one representative of CoC, one of the

Resolution Applicant and a qualified Insolvency Professional to monitor the implementation of Resolution Plan. The fee payable to the qualified Insolvency Professional shall be decided and be borne by the Resolution Applicant.

10. Ld. Counsel appearing for the RP submitted that the Resolution Plan is as per the provisions contained in the Code and so, the same may be approved. In terms of Regulation 39(4) of the CIRP Regulations, the Resolution Professional has filed compliance certificate in Form-H which is at pgs. 1342 to 1353. It has been submitted in the application and in Form H duly certified by Resolution Professional that the final Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016 and does not contravene any of the provisions of the law for time being in force. The term of the Resolution Plan is twenty four (24) months.
11. As a sequel to aforesaid discussions, we are satisfied that all the requirements of Section 30(2) are fulfilled. In respect of compliances regarding CIRP Regulations especially Regulations 38 and 39, the Resolution Professional has certified in Form-H and explained in details that the Resolution Plan has complied with all the required Regulations.
12. For the reasons discussed above, in our considered view, the Resolution Plan fulfils the requirement as referred in Section 30(2) of the Code and there are sufficient provisions in the Plan for its effective implementation as required under the proviso of Section 31(1) of the Code. The Resolution Plan has been approved by CoC with 100% voting. We find that the public shareholding has got reduced by 99%. Normally, this would have required approval of the shareholders in an EGM of the Corporate Debtor. However, as per Explanation to Section 30 (2) of IBC, 2016, if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions

under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan.

13. Accordingly, we hereby **approve the Resolution Plan**, which was earlier approved by the CoC by the majority vote of 100%.
14. It is clarified that Section 30(2)(f) of the Code mandates that the Resolution Plan should not be against any provisions of the existing law. The Resolution applicant, therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein. As regards the reliefs and concessions sought in the Resolution Plan, same will be provided only as per law.
15. On perusal of the documents for Resolution Plan Form H Compliance Certificate Annexure R-26, item 15 which provides the details of Sec 66 or avoidance application filed/pending, any preferential transaction u/s 43, undervalued transaction u/s 45, extortionate credit transactions u/s 50, fraudulent transaction u/s 66, the Resolution Professional has submitted that it is not applicable in this case. In case there are any avoidance transaction application(s) u/s 43, 47, 50 or 66 of the IBC, 2016 pending before the Adjudicating Authority and if the orders in favour of Applicant therein are passed, the same shall go to the benefit of the Financial Creditors and Operational Creditors, as may be decided by CoC.
16. It is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.
17. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded on its database in terms of Section 31(3)(b) of the Code.

18. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.
19. Let the copy of the order be served to the parties.



(RAMALINGAM SUDHAKAR)
PRESIDENT



(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)