IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-V

I.A. 5238/ND/2022
IN
C.P. No. IB-51/ND/2021

(Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016))

IN THE MATTER OF:

M/S RELIABLE FINANCE CORPN PRIVATE LIMITED

....Operational Creditor

Vs.

M/S STELLAR INVESTMENTS LIMITED

....Corporate Debtor

AND

IN THE MATTER OF:

MOHD NAZIM KHAN
RESOLUTION PRFOESSIONAL OF
STELLAR INVESTMENTS LIMITED

.... Applicant

ORDER DELIVERED ON:17.02.2023

CORAM:

JUSTICE TELAPROLU RAJANI, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

1. The present application has been filed under Section 30(6) read with Section 31 of the Insolvency & Bankruptcy Code, 2016, (the Code) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') on behalf of the Resolution Professional (RP), seeking approval of the Resolution Plan.

2. The facts as averred by the applicant in the application are stated in brief as follow:
    a) The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor, M/s. Stellar Investments Limited, vide order dated 24.02.2022 passed by this Adjudicating Authority, pursuant to an application filed by M/s. Reliable Finance Corpn Private Limited, under Section 9 of the Code and Mr. Mohd Nazim Khan was appointed as Interim Resolution Professional.
    b) The applicant carried out a public announcement of initiation of CIRP on 27.02.2022. 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 on 17.03.2022. The first meeting was held on 24.03.2022, wherein the appointment of Mohd Nazim Khan was approved as the RP and further confirmed by this Bench vide order dated 06.04.2022.
    c) Thereafter the second meeting of CoC was held on 26.04.2022, wherein the eligibility criteria pursuant to Section 25 (2) of the IBC,2016 along with the Request for Resolution Plan (RFRP) and Evaluation Matrix was discussed. In pursuance thereof, the erstwhile RP proposed the resolutions before the COC and the same has been passed by the COC with 76.42% Voting rights.

d) Subsequently, Expression of Interest was published in prescribed Form G (First) on 30.04.2022 in Pioneer English and Pioneer Hindi edition newspapers. The COC passed the resolution for the same with 76.42% voting rights.

e) In compliance of Regulation 36A(10) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Professional issued the provisional list of Prospective Resolution Applicants as per Form G (First) on 25.05.2022 vide email dated 25.05.2022.

f) In accordance with the Request for Resolution Plan, the Applicant received a Resolution Plan in sealed envelope from one of the PRAs namely Masatya Technologies Private Limited on 29.06.2022 and the RP received an E-mail dated 29.06.2022 from another PRA namely Twinkle Mercantile and Credits Private Limited seeking extension of time limit for submission of Resolution Plan for another 15 days under Regulation 36B(1) of Insolvency and Bankruptcy Code 2016.

g) The applicant in compliance of Regulation 36A(12) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulation, 2016, had issued the final list of Prospective Resolution Applicants on 09.06.2022.

h) Further, in the third meeting of the COC was held on 06.07.2022, wherein the COC members opened the Resolution Plan as submitted by Masatya Technologies Private Limited and considered the same and then, granting the option of seeking the extra days of 15 days for submission of the Resolution plan by Twinkle Mercantile and Credits Private Limited, approved the reissue of Form-G "Invitation for Expression of Interest" (Second Time) pursuant to the provisions of the I B Code, 2016 read with Regulation 36A of CIRP Regulations, 2016 and also approved to extend the CIRP period by 90 days beyond the period of 180 days.

i) Subsequently, Expression of Interest was published in prescribed Form G (Second) on 10.07.2022 in Pioneer English and on

12.07.2022 in Pioneer Hindi edition newspapers. The COC at its 3rd meeting held on 06.07.2022 passed the resolution for the same with 76.42% voting rights.

j) Further, the Applicant had filed an Application having IA-3511/2022 for extension of CIRP period for further 90 days beyond stipulated 180 days as per the provision of Section 12(2) and (3) of IBC, 2016 read with Regulation 40 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 before Hon'ble Tribunal on 21.07.2022 and the same has been allowed vide order dated 26.07.2022 passed by the Hon'ble Tribunal granting the extension of 90 days.

k) The applicant in compliance of Regulation 36A(10) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Professional issued the provisional list of prospective Resolution Applicants as per Form G (Second) on 05.08.2022 vide email dated 05.08.2022.

l) The applicant in compliance of Regulation 36A(12) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulation, 2016, had issued the final list of Prospective Resolution Applicants as per Form G (Second) on 19.08.2022.

m) In accordance with the Request for Resolution Plan, the Applicant received Six Resolution Plans under Regulation 36B(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 from the prospective Resolution Applicants namely, Twinkle Mercantile and Credits Private Limited, Masatya Technologies Private Limited, Yogesh Mittal, SJ Services Private Limited, Shukan Impex Private Limited and Consortium of Sandeep Gupta & Shalini Gupta.

n) In the Fourth Meeting of COC held on 16.09.2022, wherein the COC has opened the sealed Resolution Plans and negotiated with the Resolution Applicants about the terms of the plan on various aspects and provided an opportunity to the Resolution Applicants to submit the modified Resolution Plans as per the discussion.

o) In the Fifth Meeting of COC held on 11.10.2022, all Six Modified Resolution Plans of Resolution Applicants were placed before the COC Members upon receipt of the response on the observations/ queries along with the due diligence report prepared by the Resolution Applicants. The COC considered the Resolution Plans, conducted the financial due diligence and checked the feasibility and viability of the Resolution Plan and then the COC members submitted the evaluation matrix and thereafter, approved the Resolution Plan of Yogesh Mittal being H1 with 100% voting rights unanimously out of the six resolution plans.

p) It is submitted that the successful resolution applicant has submitted an undertaking under regulation 39(1)(c) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP regulations) that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the resolution process, invalid forfeit any refundable deposit, and attract penal action under the Code.

3. In view of the 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: -

"(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.]"

4. Further, as per Regulation 38 of the CIRP Regulations, a Resolution Plan is required to contain a statement how it will deal with the interest of all the stakeholders including Financial Creditors and the Operational Creditors and if these are sufficiently provided for in the Resolution Plan, the Adjudicating Authority may approve the Resolution Plan.

5. We have heard the parties and perused the case records. Ld. Counsel appearing for the Resolution Applicant submitted that the Resolution Plan is as per the provisions contained in the Code and so, the same may be approved. From the averments made in the Application as well as in Form-H as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the applicant has issued a certificate and it is not necessary for this Tribunal to go into the same. However, this Tribunal must examine the Resolution Plan vis-à-vis with the mandatory compliances under the Code. The compliance made under is captured hereunder.

6. The total consideration under the Resolution Plan payable to various stakeholders as provided under Clause 4.2 (Consideration) of the Resolution Plan is reproduced herein below:-

4.2 CONSIDERATION

The total consideration under the Plan payable to various stakeholders more specifically detailed in Chapter VI as under:

S No	Particulars	Basis	Amount (Rs.)
i.	Corporate Insolvency Resolution Process Cost	Actual	10,00,000 or Actual Amount whichever is higher
ii.	Secured Financial Creditors, Unrelated, Having Voting Right	Not Applicable	Nil
iii.	Unsecured Financial Creditors, Unrelated, Having Voting Right	Not Applicable	Nil
v.	Operational Creditors other than workmen and employees having Voting Right	1,05,77,144 i.e. 100% of Claim Admitted Amount	1,05,77,144
vi.	Workmen Dues	Not Applicable	Nil
vii.	Employees	Not Applicable	Nil
viii.	Government Dues i.e. Income Tax Department	32,64,429 i.e. 100% of Claim Admitted Amount	32,64,429
ix.	Others	Not Applicable	Nil
x.	Contingency	Not Applicable	Nil
		Total	**INR 1,48,41,573**

7. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the Resolution Plan in clause 6.2.1 which provides that the CIRP costs shall be paid in priority to payments to financial creditors, operational creditors and other creditors contemplated in this Resolution Plan.

8. As regards compliance of clause (b) of Section 30(2) of the Code, it is seen that the creditors (including government) are proposed to be paid Rs. 1,38,41,573/- out of total outstanding debt (including government dues) amounting to Rs. 1,38,41,573/- which constitutes 100% of the total debt (including government dues).

9. As regards compliance of clause (c) of Section 30(2) of the Code, it is seen that the manner of the management of the affairs and control of the business of the Corporate Debtor has been provided in Clause 5.1 to 5.8 of the Resolution Plan.

10. As regards compliance of clause (d) of Section 30(2) of the Code, it is seen that clause 4.9 of the Resolution Plan provides for the supervising and monitoring of the implementation of the resolution plan.

11. As regards compliance of clause (e) and clause (f) of Section 30 (2) of the Code, the successful resolution applicant has submitted declaration under Section 30(2)(e) and Section 30(2)(f) of the Code affirming that the Resolution Plan does not contravene any of the provisions of the law and conforms to such other requirements as may be specified by the Board.

12. As per Regulations 39(4) of the of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP regulations), the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid down in various clauses of Section 30 (2) of the Code.

13. In 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 detail that the Resolution Plan has complied with all the required Regulations.

14. 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 unanimously approved by CoC.

15. Hon'ble Supreme Court of India in the matter of ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019*** has observed as follows:

> "38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is

deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants."

16. As to the relief and concessions sought in the resolution plan more specifically set out in Clause 4.11 (Reliefs and Concessions) of the Resolution Plan, taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019,** we direct the Successful Resolution Applicant to file requisite application before the concerned forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws.

17. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.

18. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which has been approved by the CoC i.e., by 100% voting.

19. Resultantly, the present IA No. 5238/ND/2022 is hereby allowed with the following directions:
    i. 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.

ii. 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.

iii. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code.

iv. 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.

v. The Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.

Let the copy of the order be served to the parties.

Sd/-	**Sd/-**
RAHUL BHATNAGAR	**JUSTICE TELAPROLU RAJANI**
MEMBER (T)	**MEMBER (J)**