

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,
KOLKATA**

**I.A. (IB) No. 601/KB/2020
In
C.P. (IB) No. 1635/KB/ 2018**

In the matter of:

An application under Section 30(6) and Section 31, Section 60(5) of the Insolvency and Bankruptcy Code, 2016 along with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

And

In the matter of:

Suraj Fabrics Industries Limited, having its registered office at Elegant Towers, 224A, A. J.C. Bose Road, Kolkata – 700 017

... Corporate Debtor

And

In the matter of:

Santosh Choraria, the Resolution Professional of Suraj Fabrics Industries Limited, appointed vide order dated 1st July, 2019 passed by this Hon'ble Tribunal and having his office at Room 222, P-41 Princep Street, 2nd Floor, Kolkata-700072

... Applicant

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

Counsel on Record :

1. Mr. Rishav Banerjee, **Advocate**]
2. Mr. Rahul Auddy, **Advocate**] **For Resolution Professional**
3. Mr. Santosh Choraria] **R.P. himself**

1. Mr. G.P. Madaan, **Advocate**]
2. Mr. Pankaj Khetan] **AR of Resolution Applicant in person**

Date of hearing : 12/08/2020

Order delivered on : 12/08/2020

ORDER

Per Shri Jinan K.R., Member (Judicial):

1. Mr. Santosh Choraria, the Resolution Professional file this application praying for approval of resolution plan of Suraj Fabrics Industries Limited (Corporate Debtor) under Section 30(6), Section 31, Section 60(5) of the Insolvency and Bankruptcy Code, 2016 along with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for the reason that the Resolution Plan of M/s. Sponge Sales India Private Limited, was approved by CoC with 100% voting shares.

2. The Applicant has prayed for urgent hearing of the case through video conference, since the work of the Tribunal was disrupted due to the Covid 19 pandemic and nationwide lockdown and continuing till dates. Having satisfied

with the urgency set up, the matter is listed for hearing today (12.08.2020) by Video Conferencing.

3. Brief facts:

4. The Company petition was admitted vide order dated 1st July, 2019 by ordering CIRP as against the Corporate Debtor M/s. Suraj Fabrics Industries Limited and Mr. Santosh Choraria was appointed as IRP. The CoC was constituted on 24.07.2019 which held 11 (Eleven) meetings. The IRP had caused public notice on 10th September, 2019 in terms of Section 13 of the Code read with Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016 in newspapers local and English in Kolkata and in Himachal Pradesh and Chandigarh. The CoC in the 4th meeting held on 25th September, 2019 approved the Evaluation Matrix (EM) and Request for Resolution Plan (RFRP) documents. The RP in the 5th CoC meeting held on 03rd October, 2019 was permitted by the CoC to proceed with the publication of the Revised Invitation of Expression of Interest (EoI) in Revised Form G and the same was published on 05th October, 2019.

5. The RP received 5 (Five) EOIs from Prospective Resolution Applicants within 25th October, 2019. In accordance with eligibility criteria approved by CoC, only 2 (Two) of the applicants were eligible. Thereafter 2 (Two) Resolution Plans were received by the RP. The Resolution Plans were discussed at length by the members of the CoC and the Resolution Applicant in the 8th CoC meeting held on 24th January, 2020. The Resolution Applicants were asked to modify the plans to the extent they were not in compliance with the Code and Regulations. In the 10th CoC meeting held on 12th March, 2020, the CoC

after evaluating the resolution plan declared Sponge Sales India Private Limited as the H1 Resolution Applicant and the consortium of Shri Sai Balaji Pharmatech Pvt Ltd and SLV Packaging(Consortium) as H2 Resolution Applicant. The last being held on 20.03.2020 wherein the resolution plan submitted by M/s. Sponge Sales (India) Private Limited was placed before the committee for approval and being found feasible and viable voted by the CoC with 100% voting in favour of the resolution plan . It is submitted that the resolution applicant had the capability to implement the resolution plan and the applicant was not ineligible to submit a resolution plan under Section 29A of the Code, the plan provides specific source of funds to pay insolvency resolution process costs payable in priority to payment of other debts; liquidation value due to operational creditors and that the resolution plan balancing the interest of all stakeholders of the Corporate Debtors and that the plan did not contravene any of the provisions of law and therefore, the resolution plan deserve approval. 180 days of CIRP period expired on 27.12.2019. 90 days extension granted by this Tribunal, i.e. the 270 days of the CIRP period expired on 26.03.2020.

6. The Ld. Counsel for RP, Mr. Rishav Banerjee takes me to the resolution plan and highlighted some of the salient features of the Resolution Plan are as follows:

A. FINANCIAL PROPOSAL:

(Rs. In lakhs)

<u>Resolution Debt-A</u>	<u>Total</u>	<u>Tranche 1*-</u>	<u>Tranche2- **</u>	<u>Tranche3***</u>
CIRP cost (Estimated)	46.20	46.20	0.00	0.00
Employees	6.73	6.73	0.00	0.00
Operational creditor	24.74	24.74	0.00	0.00
Secured Financial Creditor	975.33	174.33	250.00	551.00
Unsecured Financial Creditor	0.00	0.00	0.00	0.00
Total	1053.00	252.00	250.00	551.00

**Tranche 2- The above-mentioned amount shall be paid upfront within 15-30 days from the date of the approval of the plan by NCLT.

***Tranche 3- The above-mentioned amount shall be paid within 31 to 60 days from the date of the approval of the plan by NCLT

B. CIRP COST:

The entire CIRP cost would be paid within 15 days from the date of the approval of the plan by NCLT. In case event that the final IRP costs as on the effective date, exceeds or decreases than that of the estimated 46.2 lakhs, the amounts payable to the Financial Creditors under this resolution plan shall be adjusted accordingly.

7. The Ld. Counsel for the Resolution Professional further submits that in compliance of Regulation 39(4), a Certificate in Form H of the Schedule as laid down in Regulation 39(4) of the Insolvency and Bankruptcy Board of India (insolvency Resolution Process for Corporate Persons) Regulations, 2016 has been annexed along with the resolution plan. The affidavit under Section 29A of the Resolution Applicant has also been submitted along with the resolution plan. With regard to Regulation 38, it was discussed that the plan addressed the interests of all stakeholders, provided for payment to Operational Creditors in priority over Financial Creditors, addressed the causes of default, was feasible and viable, had provisions for its effective implementation and the resolution applicant had the capacity and experience to revive the operations of the Corporate Debtor in accordance with the timeline stated in the plan. Therefore, the resolution professional has meted out all the requirements to be meted out under section 31(1) of the Code.

8. Ld. Counsel also submits that the Company was not in operation since 2013. The Liquidation value approved by the CoC is Rs. 7.84 crores. The resolution applicant herein has offered Rs. 10.53 crores which include 8.18% to secured Financial Creditors and 0.06% to Operational Creditors and the employees will be paid in full i.e. 6.73 lakh.

9. Having heard the Ld. Counsel and on perusal of the Plan, it is understood that the assets of the Corporate Debtor are going to rest in a safer hand. The RP Mr. Santosh Choraria deserves special appreciation for finding a resolution applicant whose plan has been approved by the CoC by 100% vote share

even in these difficult times of pandemic due to COVID-19. All the provisions of mandatory requirements are seen complied by the resolution applicant as per Form H submitted by the RP. It provides provision for the payment of insolvency resolution process, payment of the debts of operational creditors, management of the affairs of the Corporate Debtor, and provides provision for implementation and supervision of the resolution plan. It also provides terms of the plan and its implementation schedule. So it is a feasible and viable plan. A judicious distribution of the financial bids by the CoC to the stakeholders according to their entitlements can be inferred from the plan under consideration. No waiver or extinguishments in contravention of the provisions of the Code or in violation of existing laws seen not brought out and therefore, there is nothing in the plan, so as to disapprove it. This CP was admitted on 01.07.2019. upon expiry of 180 days the period of CIRP was extended to 26.03.2020. In the meanwhile lockdown was imposed due to Covid-19 pandemic with effect from 25.03.2020 and continues till date. However, as per notification dated 29th March, 2020 the period of lockdown imposed by the Central Government in the wake of COVID- 19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process and thereby approval of the Plan by the CoC is within the period of 270 days. The CoC has very well deliberated with the two plans and decided the viability, feasibility and financial matrix of each plan and approved one with 100% vote shares of the members of the CoC. Accordingly, I hereby approve the resolution plan of M/s. Sponge Sales (India) Private Limited upon the following directions:-

(i) Resolution Plan of Suraj Fabrics Industries Limited, which is approved by CoC with 100% voting shares is hereby approved under provisions of sub section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 which shall be binding on the Corporate Debtor M/s. Suraj Fabrics Industries Limited, its employees, members, creditors, guarantors, the Central Government, any State Government or any local authority and other stakeholders involved in the Resolution Plan.

(ii) The Resolution Plan shall come into force from the date of pronouncement of this order.

(iii) The moratorium order passed under Section 14 shall cease to have effect.

(iv) The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

(v) The I.A. (IB) No. 601/KB/2020 is allowed. C.P.(IB) No.1635/KB/2018 is disposed of.

(vi) There is no order as to costs.

(vii) The Registry is directed to communicate the order to the Applicants, Respondents, to the Resolution Applicant and to IBBI, through e-mail and free copy is to be given if applied for.

(viii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Jinan K.R.)

Member (J)

Signed this on 12th day of August 2020.

Vc.