THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI

I.A. 6111/2022
IN
Company Petition No. (IB) – 725/(ND)/2020

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016.

IN THE MATTER OF:

ICICI BANK LTD.

.... FINANCIAL CREDITOR

VERSUS

DEHRADUN HIGHWAYS PROJECT LIMITED

..... CORPORATE DEBTOR

AND IN THE MATTER OF-

MR. ANIL KOHLI

RESOLUTION PROFESSIONAL OF

DEHRADUN HIGHWAYS PROJECT LIMITED

.... APPLICANT

Order Pronounced on: 20.04.2023

CORAM:

SHRI. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

For the Applicant: Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Sajal Jain, Advs

ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER (TECHNICAL)

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 on behalf of the Resolution Professional of Dehradun Highways Project Limited seeking appropriate directions.

The applicant in the present application has prayed for the following reliefs: -

a) *Allow the present Application.*
b) *Grant permission to the Applicant being the Resolution Professional of M/s Dehradun Highways Project Ltd to enter/sign settlement agreement with National Highway Authority of India on behalf of the Corporate Debtor in accordance with the order dated 02.08.2018 passed by the Hon'ble High Court of Delhi in W.P (C) 6279 of 2018 and as resolved by the Committee of Creditors ('CoC') in its 16th meeting convened on 14.11.2022.*
c) *Pass such other or further order/ order(s) as may be deemed fit and proper in the facts and circumstanced of the instant case.*

2. Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows: -

i. That, the Resolution Professional/ Applicant by way of the Application bearing I.A. No. 6111 of 2022 is seeking appropriate directions for entering into settlement with

National Highway Authority of India (“NHAI”) on behalf of the Corporate Debtor in accordance with the order dated 02.08.2018 & 10.08.2018 passed by the Hon’ble High Court of Delhi in W.P (C) 6279 of 2018 as resolved by the Committee of Creditors (“CoC”) in its 16th meeting convened on 14.11.2022.

ii. That, the Corporate Debtor entered into Concessionaire agreement dated 24.02.2010 with NHAI for the project of construction of four laning of Haridwar- Dehradun Highway Section. In lieu of the same, the Corporate Debtor availed Rupee Term Loan facility through a Common Loan Agreement dated 08.12.2011, which loans were availed from a consortium of lenders. It is pertinent to note that the substitution agreement was also entered into between the parties on 07.12.2010 to secure the lenders, wherein the lenders were provided the right of substitution of the Corporate Debtor in the event NHAI intends to terminate the contract with the Corporate Debtor.

iii. That the NHAI on 25.05.2018 issued a Notice to the Corporate Debtor terminating the Concessionaire Agreement. The Bank of India (one of the lenders) in response to the same filed a writ petition W.P. (C) 6270/2018 before Hon’ble High Court of Delhi. During the pendency of the writ petition, Corporate Debtor on 22.06.2018 made the proposal for settlement of the dispute. Thereafter, the writ petition came to be listed on 02.08.2018, wherein, the Hon’ble High Court recorded that the NHAI is willing to pay an amount equivalent to work done which has been assessed at Rs. 306.62 Crores.

iv. Thereafter a meeting was also held on 31. 08. 2018 between representatives of Bank of India, Union Bank of India, ICICI Bank and NHAI’s Members, wherein it was discussed that the lenders are in-principle agreeable to accept the offer from NHAI subject to approval from their competent authorities and that NHAI will provide the draft of the settlement agreement.

v. It is further submitted that in the meantime, the Hon'ble NCLT, New Delhi ("Adjudicating Authority") vide order dated 18.09.2020 passed the CIRP admission order against Corporate Debtor. The Applicant in 9th CoC meeting dated 12.04.2022 informed members about proceedings initiated by Bank of India in W.P (C) No. 6279 of 2018 before the Hon'ble Delhi High Court, wherein settlement talks were going on and NHAI has offered an amount of Rs. 306.62 Crores.

vi. That since no viable Resolution Plan was received, the Applicant convened the 16th CoC meeting on 14.11.2022, wherein, the CoC members passed the resolution for liquidation of the Corporate Debtor and also approved the filing of captioned application with 88.4% voting in respect of seeking directions to enter into settlement with NHAI. Accordingly, pursuant to the discussions, the following resolution was passed:

> "***RESOLVED THAT*** *the lenders are willing to settle the claims for receivables of Corporate Debtor with NHAI at an amount of Rs. 306.62 crores offered by NHAI and recorded in order of High Court dated 02.08.2018.*
>
> ***RESOLVED FURTHER THAT*** *the CoC hereby direct and authorise Resolution Professional to file an application seeking permission from Hon'ble NCLT for signing the settlement agreement and to do all other act/deed if any required to enter into settlement agreement."*

vii. Also, the applicant submitted that the settlement amount once received shall form part of the assets of the Corporate Debtor.

Under the Settlement Agreement as approved by the lenders and NHAI, one of the requirements by NHAI is that prior permission of this Hon'ble Adjudicating Authority will be sought by the Applicant/Resolution Professional before signing the settlement agreement. The salient features of the settlement agreement as agreed upon between the parties are as follows:

- **Obligations of the Concessionaire & Senior Lender –** Withdrawal of cases and notices for claims, release of plant and machinery, release of money within agreed time frame, fulfilment of any divestment requirement, providing indemnification by concessionaire from any third party, providing no objection from Senior Lenders; as agreed in terms of the Settlement Agreement.
- **Terms of Settlement –** The amount of Rs. 306.62 crores for full and final settlement shall be made by NHAI to lead lender i.e., Bank of India within 30 days of order/permission from Hon'ble Adjudicating Authority.
- **Governing Law and Jurisdiction –** The Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the Courts at Delhi shall have exclusive jurisdiction over matters arising out or in relation to Settlement Agreement.
- **Mode of Payment-** The payment of Rs. 306.62 crores would be routed through designated account with Bank of India with respect to this settlement where NHAI shall deposit the Settlement Amount.

viii. In view of the above facts and circumstances, the Applicant preferred the captioned application on behalf of the Corporate Debtor in accordance with the order dated 02.08.2016 passed by the Hon'ble High Court of Delhi in W.P (C) No. 6270 of 2018 and as resolved by the CoC in its 16th meeting convened on 14.11.2022.

3. We have gone through documents on record filed by the applicant and arguments advanced by counsel of the Resolution Professional.

4. In the present case, the Applicant being the Resolution Professional of M/s Dehradun Highways Project Ltd is seeking to enter/sign settlement agreement with National Highway Authority of India on behalf of the Corporate Debtor.

5. It is noted that the 16th CoC meeting was convened by the applicant and, the following resolution was passed with **88.4%** vote share:

> "***RESOLVED THAT*** *the lenders are willing to settle the claims for receivables of Corporate Debtor with NHAI at an amount of Rs. 306.62 crores offered by NHAI and recorded in order of High Court dated 02.08.2018.*
>
> ***RESOLVED FURTHER THAT*** *the CoC hereby direct and authorise Resolution Professional to file an application seeking permission from Hon'ble NCLT for signing the settlement agreement and to do all other act/deed if any required to enter into settlement agreement."*

6. It is noted by this Adjudicating Authority that provisions of Section 23 and Section 25 of the IB Code, 2016 clearly direct the Resolution Professional as to the manner of conducting the CIRP and managing the operations of the Corporate Debtor as well as the duties casted upon the Resolution Professional of the Corporate Debtor. Both these Sections are therefore, extracted for ready reference:

Section 23: Resolution Professional to conduct corporate insolvency resolution process

(1) Subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.

[Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority.]

(2) The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.

(3) In case of any appointment of a resolution professional under sub-section (4) of section 22, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.

Section 25: Duties of resolution professional

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: —

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

(c) raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;

(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.].

(i) present all resolution plans at the meetings of the committee of creditors;

(j) file application for avoidance of transactions in accordance with Chapter III, if any; and

(k) such other actions as may be specified by the Board.

7. Thus, the Resolution Professional is duty bound not only to take immediate control of all assets of Corporate Debtor but he is empowered to exercise all the right on behalf of the Corporate Debtor in respect of judicial, quasi-judicial or arbitration proceedings. The Resolution Professional is also empowered to raise interim finance subject to approval of the CoC.

8. We have noted that in the instant case the Hon'ble Delhi High Court has given option to parties to amicably settle the matter. Subsequently, it is observed that lenders are willing to settle the claims for receivables of Corporate Debtor with NHAI for an amount of Rs. 306.62 crores.

9. Further, it is observed that the Applicant convened the 16th CoC meeting on 14.11.2022, wherein the CoC members passed the resolution for liquidation of the Corporate Debtor and also approved the filing of above-captioned application with 88.4% voting in respect of seeking directions to enter into settlement with NHAI. It is well settled principle as observed in ***Civil Appeal No. 10673 of 2018*** in the matter of ***K. Sashidhar V. Indian Overseas Bank and Others*** judgment dated February 5th, 2019 that the commercial wisdom of CoC has been given paramount status without any judicial intervention, and should not be interfered with and is supreme. The same principle has been reiterated by Hon'ble Supreme Court time and again in subsequent judgments.

10. We are of the view that, the Resolution Professional being an Officer appointed under the Code and having the powers and duties as referred to above, he is supposed to consider the rationality of the claim from his perspective and at his end and to work within the framework of I & B Code. The Resolution Professional is directed to exercise due diligence

and the law laid down under Section 23, Section 25 and Section 28 of IB Code should be kept in mind, and the Resolution Professional is directed to take such action which is just and proper according to the facts and circumstances of the case. Therefore, we are of the considered view that it is within the scope of the power and duties of the Resolution Professional to decide to enter into the proposed settlement agreement if necessary for managing the operations of the Corporate Debtor and in due discharge of his duties. Hence, no specific approval from Adjudicating Authority is required in this regard.

11. In view of the aforesaid observation, the I.A No. 6111 of 2022 stands disposed off, so as to enable Resolution Professional to act in just and proper manner.

Let copy of the order be served to the parties.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

Sd/-
(SHRI. P.S.N. PRASAD)
MEMBER (JUDICIAL)