IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

IA/4574/2020
In
(IB)-1395(PB)/2019

Under Section 30(6) of the IBC, 2016 r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

In the matter of

Axis Bank Limited

---Financial Creditor

Vs.

SVIIT Software Private Limited

---Corporate Debtor

And

In the matter of

Mahender Kumar Khandelwal

---Applicant/Resolution Professional for SVIIT Software Private Limited

And

Mr. Parmjit Gandhi

---Resolution Applicant

Order delivered on: 31.05.2021

Coram:

B. S.V. PRAKASH KUMAR, ACTING PRESIDENT
HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

For the Applicant: Mr. Karan Grover, Adv.
For the RP : Mr. Ritin Rai, Sr. Adv.
Ms. Gunjan Mathur & Mr. Raunak Singh Rahangdale, Advs.
For the CoC : Ms. Aditi Mittal, Mr. Aditya Narayan Mahajan & Mr. Siddhant Tripathi, Advs.

<u>O R D E R</u>

Order Pronounced on: 31.05.2021

It is an application filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 (“**the Code**”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of the Resolution Plan by this Bench based on the approval already given by the Committee of Creditors **(“CoC”)** in its 11th Meeting held on 13.10.2020 with requisite majority of 100% u/s 30(4) of the Code.

2. Looking at the application moved by the Resolution Professional, it appears that Axis Bank/Financial Creditor has filed the petition u/s 7 of the Code against the Corporate Debtor, which this Bench admitted on 25.07.2019 by initiating Corporate Insolvency Resolution Process **(“CIRP”)** by appointing Mr. Mahender Kumar Khandelwal, as Interim Resolution Professional who was subsequently confirmed as the Resolution Professional in 1st CoC meeting held on 30.08.2019.

3. Thereafter, the Resolution Professional in terms of the timelines stipulated under the Code, made Public Announcement

u/s 13 of the Code and over a period of time issued Form G for expression of Interest. In the meantime, the initial time period of 180 days of CIRP having come to end on 21.01.2020 and the Applicant, based on the Resolution passed in 4th CoC meeting held on 09.01.2020, filed an Application u/s 12(2) of the Code, over which, this Tribunal vide its order dated 21.01.2020, extended CIRP for a further period of 90 days till 20.04.2020. Thereafter, in view of the global pandemic outbreak of Covid– 19 and consequential lockdowns, the Hon'ble NCLAT by taking *suo motu* cognizance of the said situation, by its order dated 30.03.2020, extended the period of CIRP by excluding the lockdown period and as such CIRP was automatically extended further.

4. During 2nd CoC meeting held on 27.09.2019, CoC passed a resolution by fixing minimum eligibility criteria for inviting Expression of Interest **("EoI")** and thereafter, the Applicant made paper advertisement in Business Standard (English & Hindi ed.), Jaihind Gujarati and Financial Express on 07.10.2019, by fixing the last date for EoI as 22.10.2019. However, to ensure larger

participation of the prospective Resolution Applicants, the last date for submission of EoI was extended time to time from 08.11.2019, 22.11.2019, 27.11.2019, 13.01.2020 and finally till 15.02.2020.

5. As on the last date for the submission of EoI, the Resolution Professional received nine EoI's and based upon the evaluation made, eight were identified and qualified as the prospective Resolution Applications for participating in the Resolution Plan process of the Corporate Debtor. In 7th CoC meeting held on 15.06.2020, the Resolution Professional has informed CoC that he has received Resolution Plan from two Resolution Applicants viz. (1) **Consortium of Minicon Insulated Wires LLP, Elita Capital Advisors LLP, Sahney Kirkwood Private Limited ("Consortium of MES")** and (2) **Sunrise Industries.** It was further apprised that Sunrise Industries withdrawn the resolution plan filed by them and Consortium of MES failed to submit bid bond up to the extended time granted in the 7th CoC meeting held on 17.06.2020. Further with the approval of CoC, the Applicant issued a fresh

Form G on 26.06.2020. Further, the Applicant received Resolution Plan from four Resolution Applicants. In the 10th meeting of CoC held on 19.11.2020, the Applicant apprised the members that resolution plans from the following prospective resolution applicants were received on 18.11.2020 after multiple rounds of negotiation: (1) **Mr. Parmjit Gandhi** (2) **Dr. Fresh Assets Limited** (3) **Consortium of Sahney Kirkwood Private Limited, Minicon Insulted Wires LLP and Elita Capital Advisors LLP, ("Consortium of Minicon")** and (4) **Consortium of Prithvi Raj Batra, Shyamrup Roy Choudhary, Pramod Aggarwal and Ajay Gupta ("Consortium of PSPA").**

6. In 11th CoC meeting held on 13.10.2020, Mr. Parmjit Gandhi was declared as the highest bidder by the CoC and after seeking some clarification sought by the CoC, the Successful Resolution Applicant viz., Mr. Parmjit Gandhi submitted the final Resolution Plan to the Applicant on 12.10.2020.

7. After submission of the final Resolution Plan by the successful Resolution Applicant, the same was put to vote in 11th

CoC meeting held on 13.10.2020, wherein it was approved with 100% affirmative vote in terms of Section 30(4) of the Code. The said factum of approval of the Resolution Plan was communicated to the Resolution Applicant by way of letter of intent dated 16.10.2020. Thereafter, in compliance of the Code, and as discussed in 11th CoC meeting, the Resolution Applicant has deposited ₹5 Crore by way of Cheque as Performance Bank Guarantee to the Corporate Debtor on 19.10.2020.

8. As regards the Resolution Plan, from Form – H filed by the Resolution Professional, it is evident that Fair Value is ₹568,740,516 and the Liquidation Value is ₹401,403,363. It is also observed that admitted claim value against the debtor company is more than the liquidation value of the company.

9. The summary of payments to be made by the Successful Resolution Applicant is as under:

Description	**Admitted Claim Amount by RP (in INR)**	**Amount to be paid as per Resolution Plan (in INR)**
CIRP Costs	-	To be confirmed & certified by RP as on NCLT approval date.
Claims of Operational Creditors	Rs. 81,07,000/-	**20%** of the admitted claims of the OCs or **Rs. 15,00,000/-,** whichever is lesser
Liquidation Value to priority Workmen Dues	-	Determined as per the Code
Secured Financial Creditors	Rs. 59,23,12,000/-	**Rs. 35,15,00,000/- (Rupees Thirty-Five Crores and Fifteen Lakhs)**
Unsecured Financial Creditors	Rs. 11,73,34,000/-	**10%** of aggregate claims of the Unsecured Financial Creditors or **Rs. 5,00,000/- (Rupees Five Lakhs),** whichever is lesser.
Wages and unpaid dues of employees and workmen other than priority workmen dues	-	**NIL**
Amount due to Government or Governmental Authorities including NOIDA	-	**NIL**
Remaining Debts and Dues	-	**NIL**
Shareholders and other persons	-	**NIL**
Need Based Working Capital	**Rs. 70,000,000/- (Rupees Seven Crores Only)**	
Total amount provided under the Plan for Creditors	**Rs. 42,35,00,000/- (Rupees Forty-Two Crores and Thirty-Five Lakhs)**	

10. In so far as the payments to be made to the Financial Creditors, it is seen that Axis Bank is the sole Secured Financial Creditor of the Corporate Debtor and the total claim amount of the Axis Bank for a sum of ₹59,23,12,000/- which was admitted by the Resolution Professional shall be settled in full by payment of ₹35,15,00,000/- by Resolution Applicant within 60 days from NCLT approval date. is shown as to be paid in full by the Resolution Applicant within 60 days. In so far as the Unsecured Financial Creditors who are all related parties of the Corporate Debtor, as against their total verified claims of ₹11,73,34,000 the Resolution Applicant has proposed to pay a sum of ₹5Lakh or 10% of total verified claim of the unsecured financial creditors, whichever is lesser, to be paid by Resolution Applicant within 60 days from the NCLT approval date.

11. In so far as payments to the Operational Creditor is concerned, it is seen that the Resolution Professional has admitted the claims of the Operational Creditor to the extent of ₹81,07,000 and the Resolution Applicant has proposed to settle in full by

payment of an amount equivalent to 20% of the total verified claim of the Operational Creditors or ₹15,00,000/- to the Operational Creditor within 60 days from the NCLT Approval Date.

12. As per the Resolution Plan, the Resolution Applicant has proposed not to pay any amount to the Shareholders and other persons. Further mentioned that the existing shareholders, whether equity or preference, shall not be paid any amount for the cancellation and reduction of their share capital and any claims in relation thereto shall stand extinguished without any payment or recourse.

13. As per para 8.1 of Resolution Plan, Resolution Applicant has proposed that nothing in this Resolution Plan shall affect the rights of the Corporate Debtor to recover any amounts due to the Corporate Debtor from the third party including any related parties of the Corporate Debtor as defined in Section 5(24) of the Code, and governmental and statutory authorities as described in the Information Memorandum and there shall be no set off any such amounts recoverable by the Corporate Debtor against any

amount paid by the Corporate Debtor or any liability discharged, satisfied or extinguished pursuant to this Resolution Plan, save and except any proceeds received and/or recovered pursuant to any avoidance application filed by the Resolution Professional of the Corporate Debtor under sections 43, 45, 50 or 66 of the Code read with regulation 35A of CIR Regulations in relation to declaring identified transaction entered between the Corporate Debtor and any third party to be void and reversing effect of such transaction thereof, which proceeds shall be appropriated by the Secured Financial Creditors

14. As per the provision of the Code, this Tribunal is duty bound to examine the Resolution Plan as to whether it satisfies the conditions as laid down in Section 30(2) of the Code. A comparison of the mandatory compliance under the Code *vis-à-vis* the same made under the Resolution Plan is tabulated hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	**COMPLIANCE UNDER RESOLUTION PLAN**

S. 30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	The Resolution Professional in Form-H has certified that the Resolution Applicant has submitted an affidavit.
S. 30(2)(a)-Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 7.1 To be confirmed & certified by RP as on NCLT approval date.
S. 30(2)(b)- Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less that the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Clause 7.2 (Table – 2) of the Resolution Plan states that the Operational Creditors shall settle in full by payment of an amount equivalent to 20% of the total verified claim of the Operational Creditors or ₹15,00,000/- to the Operational Creditor within 60 days from the NCLT Approval Date.
Reg. 38(1A)- Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor.	Clause 14 of the Resolution Plan dealt with the interests of all stakeholders, including the financial creditors (both secured and unsecured) and Operational Creditors of the Corporate Debtor in the manner deemed most viable by the Resolution Applicant, in the best interests of the Corporate Debtor.
S. 30(2)(d) -Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Part G of the Resolution Plan deals with the Management and Control of the Corporate Debtor after the approval of the Resolution Plan.
S. 30(2)(e) -Implementation and Supervision of the Resolution Plan	Part H of the Resolution Plan deals with the Implementation of the Resolution Plan in a time bound manner.
S. 30(2)(f) -Does not contravene any of the provisions of the law for the time being in force	Clause 4.6 of the Resolution plan is an Undertaking by the Resolution Applicant wherein it has been stated that the Resolution Plan is not in

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<tr><td></td><td>contravention with the provisions of any Applicable Laws.</td></tr>
<tr><td><u>S. 30(4)</u>- Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board</td><td>The CoC, in its 11th meeting has approved the Resolution Plan in the following voting pattern;
<table>
<tr><th>S. No</th><th>Name of Creditor</th><th>Ascent (%)</th><th>Dissent (%)</th></tr>
<tr><td>1.</td><td>Axis Bank</td><td>100</td><td>-</td></tr>
<tr><td></td><td>TOTAL</td><td>100</td><td>-</td></tr>
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15. A perusal of Form-H as filed by the Resolution Professional also posits the fact that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code and also the Resolution Applicant has filed an Affidavit to the effect that he is eligible to submit the Resolution Plan taking into consideration Section 29A of the Code.

16. The Monitoring Agency shall supervise the implementation of the Resolution Plan and shall be in control of the management and affairs of the Corporate Debtor from the NCLT Approval Date, until the Effective Date.

17. As to the Reliefs and Concessions stated in Clause 16 of the Resolution Plan, the exemption as sought for in relation to the

payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted. As regards the other reliefs and concessions as sought for, which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016 is granted to the Resolution Applicant. With regard to other concessions and reliefs, most of them are subsumed in the reliefs above granted, whichever is beyond the reliefs granted above, they shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted. In view of the same, this plan is hereby **approved**.

18. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises

/ documents through Resolution Professional to finalise the further line of action required for starting of the operation.

19. Accordingly, the Resolution Plan in IA/4574/2020 is hereby approved and the application **disposed of**.

SD/-

(B.S.V PRAKASH KUMAR)
ACTNG. PRESIDENT

SD/-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

31.05.2021
Arpan LRA