

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – II

IA/1785/2022 In C.P.(IB)/3484(MB)2019

(Under Section 30(6) r/w Section 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.)

**Sanjay Kumar Lalit, Resolution Professional for
M/s. Apollo Soyuz Electricals Private Limited**

.....Applicant

In the matter of

Indiabulls Consumer Finance Limited

.....Financial Creditor

Vs

Apollo Soyuz Electricals Private Limited

.....Corporate Debtor

Order delivered on: 13.04.2023

CORAM:

**SHRI SHYAM BABU GAUTAM SHRI KULDIP KUMAR KAREER
HON'BLE MEMBER (T) HON'BLE MEMBER (J)**

Appearances:

For the Resolution Applicant : Adv. Rishi Singhal

For the Resolution Professional: Mr. Sanjay Kumar Lalit, *In Person*

ORDER**Per- Coram**

It is an application 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 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 7th Meeting with requisite majority of 98.01% u/s 30(4) of the Code.

2. Looking at the application moved by the Resolution Professional, it reveals that Indiabulls Consumer Private Limited/Financial Creditor has filed the petition u/s 7 of the Code against the Corporate Debtor, which this Bench admitted on 12.07.2021 by initiating Corporate Insolvency Resolution Process (“**CIRP**”) and appointing Mr. Sanjay Kumar Lalit, as Interim Resolution Professional who was subsequently confirmed as the Resolution Professional in 1st CoC meeting held on 03.09.2021. Thereafter, the Resolution Professional/Applicant appointed two registered valuers namely (1) M/s Pravin Kulkarni, Kapil Maheshwari, Mangesh Shinde and (2) M/s Kedar Arvind Chikodi & CA Jainam Hitesh as per Regulation 27 of the CIRP Regulations to determine valuation of Plant and Machinery, land and buildings and Securities and Financial Assets of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulations, the same was approved by the CoC in its 2nd meeting.

Simultaneously, M/s. Suman Kumar Jha & Associates Chartered Accountant was appointed for the Transaction Audit of CD for the accounting period w.e.f. 01.04.2017 till 11.07.2021.

The Applicant issued invitation for Expression of Interest (**“EoI”**), as approved by the CoC. Further, the Resolution Professional received two (2) EoI’s pursuant to Form G from (i) Kundan Care Products Limited and (ii) Sunrise Industries. The Applicant received the resolution plans from Sunrise Industries & Kundan Care Products Ltd. on 03.01.2022 & 04.01.2022 respectively. The CoC discussed both the resolution plans submitted and requested the RA’s to revise their Resolution Plan. Meanwhile, this Tribunal allowed the exclusion of CIRP period from 08.04.2022 to 07.06.2022, further, from 08.06.2022 to 07.07.2022 on 22.04.2022 and 10.06.2022 respectively, on the applications made by the present applicant.

3. Further, both the RAs submitted their revised Resolution Plans on 31.05.2022/01.06.2022. The Applicant received the “Resolution Plan-Compliance Check-Report on fair and equitable treatment of all the stakeholders under IBC by Ezy Laws LLP, Law Firm. The Applicant further obtained Report from Ezy Laws LLP, Law Firm & CS Varsha Thanvi on eligibility of Resolution Applicant under Section 29A of the IBC, 2016, Resolution Plan compliance certificate and evaluation matrix. In 7th CoC meeting, E-voting was held for the revised Resolution Plan received from Sunrise Industries and Kundan Care Products Ltd., through e-voting portal of Eibcvoting.com. Further, the members of the CoC

approved the final offer cum Resolution Plan dated 30.04.2022 which was received after making some amendments on 01.06.2022 from Sunrise Industries, a Partnership Firm having its Address at J-23, RBI Enclave, Paschim Vihar, New Delhi-110063, with 98.01% voting shares. The Resolution Applicant had submitted the Resolution Plan of Rs. 6.2620 Crores.

4. As regards the Resolution Plan, from Form – H filed by the Resolution Professional, it is evident that average Fair Value is Rs. 10,36,68,600/- and the Liquidation Value is Rs. 7,29,10,154/-. It is also observed that admitted claim value against the debtor company is more than the liquidation value of the company.

Further, it is evident that the total consideration amount under the Resolution Plan will be INR 6.2620 Crores, out of which the Secured Financial Creditors shall receive INR 5,95,00,000/- and Unsecured Financial Creditors shall receive INR 2,00,000/-; Unrelated Employees shall receive INR 34,66,814/- and Operational Creditors shall receive INR 4,20,000/-. Further, the amount of INR 20,00,000/- is proposed for the CIRP cost. Payment outlay is as under:

CIRP Costs	Rs. 20,00,000/-	100%
Secured Financial Creditors	Rs. 5,95,00,000/-	25.73%
Unsecured Financial Creditors	Rs. 2,00,000/-	2.62%
Operational Creditors (Excluding Workmen & Employee Dues and Govt. Dues)	Rs. 10,000/-	0.102%

Operational Creditors (Govt. Dues)	Rs. 2,00,000/-	0.059%
Operational Creditors (Workmen)	Rs. 2,00,000/-	1.30%
Operational Creditors (Employees)	Rs. 10,000/-	1.415%
Contingencies	Rs. 5,00,000/-	
Total	Rs. 6,26,20,000/-	

5. Sunrise Industries has submitted a performance bank guarantee of INR 93,93,000/- equivalent to 15% of Resolution Plan Value. Further, the Applicant submits that the Applicant has preferred an Interlocutory Application under Section 43 and 45 of the Code in respect of the Preferential and Undervalued transactions before this Tribunal vide IA/151/2020 and the same is pending before this Bench. As contained in Para 8 of the Resolution Plan, any amount realized on account of the transactions covered Sections 43, 45, 49, 50, 66 of I&B Code, 2016 regarding which application have been filed with this Tribunal will be distributed amongst the financial creditors on pro rate basis. Moreover, this Bench hereby directs that all expenses related to the said recovery shall be borne by the Financial Creditors and the Successful Resolution Applicant will pursue the abovementioned application till it is disposed of.

However, recoveries on any other account of the Corporate Debtor including the ones from Debtors, loans and advances, assets, awards, civil and criminal cases filed by the Corporate

Debtor in courts will be routed to the account of Corporate Debtor and will be used in the business of the Corporate Debtor.

6. 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 resolution process cost in the manner specified by the Board	Clause 6.6 provides Rs. 20 Lacs, in total, towards CIRP cost. In case of additional CIRP cost arises, the same will be paid from the amount proposed for payments to secured financial creditors and the amount proposed for payment to secured financial creditors will be reduced accordingly. In case the outstanding CIRP Cost is lower than the Rs. 20 Lacs, the remaining amount will be used to pay to the secured financial creditors.
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 than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Clause 6.7.4 provides an amount of Rs. 4,20,000/- in total for the Operational Creditors.

<p>S. 30(2)(c)- provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;</p>	<p>Yes, the Resolution Plan in Clause 9 provides for management of the Corporate Debtor by the Resolution Applicant.</p> <p>The Resolution Applicant proposed Mr. Pawan Kumar Gupta and Mr. Praveen Kumar Gupta as its representatives on the Board of Directors of the ASEPL.</p> <p>The Resolution Applicant will appoint professionals and other experienced persons as key managerial persons and other officers as per the requirement.</p>																				
<p>S.30(2)(d)- Implementation and Supervision of the Resolution Plan</p>	<p>Clause 10 envisages setting up of Monitoring, Supervision and Implementation Committee. The Committee shall be comprising of 3(three) persons:</p> <ul style="list-style-type: none"> • 1(one) Insolvency Professional. • 1(One) representative of CoC. • 1(One) representative of Resolution Applicant. 																				
<p>S. 30(2)(e)- Contravene any of the provisions of the law for the time being in force.</p>	<p>Does not contravene any of the provisions of the law for the time being in force.</p>																				
<p>S. 30(4)- 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</p>	<p>The CoC, in its 7th meeting has approved the Resolution Plan in the following voting pattern;</p> <table border="1" data-bbox="797 1304 1328 1873"> <thead> <tr> <th>S. No</th> <th>Name of Creditor</th> <th>Ascent (%)</th> <th>Dissent (%)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Axis Bank Ltd.</td> <td>96.81</td> <td>-</td> </tr> <tr> <td>2.</td> <td>Kotak Mahindra Bank Ltd.</td> <td>1.20</td> <td>-</td> </tr> <tr> <td>3.</td> <td>Dhani Loans and Services Ltd. (Formerly India Bulls Consumer Finance Ltd.)</td> <td></td> <td>1.99</td> </tr> <tr> <td></td> <td>TOTAL</td> <td>98.01</td> <td>1.99</td> </tr> </tbody> </table>	S. No	Name of Creditor	Ascent (%)	Dissent (%)	1.	Axis Bank Ltd.	96.81	-	2.	Kotak Mahindra Bank Ltd.	1.20	-	3.	Dhani Loans and Services Ltd. (Formerly India Bulls Consumer Finance Ltd.)		1.99		TOTAL	98.01	1.99
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7. 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 the provisions of Section 29A of the Code. Further, the secured financial creditors are free to recover their balance amounts from personal guarantors, and the guarantors will have no right of subrogation against the Corporate Debtor or Resolution Applicant. The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall review operational performance of the Corporate Debtor. The aforesaid committee shall stand automatically dissolved on completion of term of Resolution Plan.
8. The Resolution Plan envisages a total period of 30 days from effective date for all payments as per Resolution Plan. The Payment of CIRP Cost and operational creditors shall precede payment to the financial creditors. The resolution plan envisages 30 days for curing any inadvertent delay for the reason of force majeure and Covid 19 epidemic. The implementation schedule of the Resolution Plan is thus envisaged as under:

Sr. No.	Payment	Amount (Rs. In Lacs)	Implementation Schedule
1.	Payment of outstanding CIRP	20.00	Within 30 days of approval of Resolution Plan by NCLT

2.	Operational Creditors other than claims for workmen and employees & Statutory Government Dues.	0.10	Within 30 days of approval of Resolution Plan by NCLT
3.	Settlement of dues of Operational Creditors being Statutory Authorities Dues.	2.00	Within 30 days of approval of Resolution Plan by NCLT
4.	Settlement and Takeover of Debt of Unsecured Financial Creditors.	2.00	Within 30 days of approval of Resolution Plan by NCLT
5.	Settlement of dues of Operational Creditors being claims for workmen dues.	2.00	Within 30 days of approval of Resolution Plan by NCLT
6.	Settlement of dues of Operational Creditors being claims for Employees dues.	0.10	Within 30 days of approval of Resolution Plan by NCLT
7.	Contingencies	5.00	Within 30 days of approval of Resolution Plan by NCLT
8.	Payment to Financial Creditors	75.00	Deposited with Resolution Professional as Earnest Money Deposit
		225.00	Within 30 days of approval of Resolution Plan by NCLT
		295.00	Within 90 days of approval of Resolution Plan by NCLT
	TOTAL	626.20	

9. As regards to the Reliefs and Concessions stated in Clause 15 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 granted above. The relief which is not expressly granted above, 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. Further in terms of the Judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited***, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan. In view of the same, this plan is hereby **approved**.

10. The Resolution Professional is further directed to handover all records, premises / documents to the 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.

Further, on payment of the entire amount to Financial Creditors, Financial Creditors shall unconditionally release all securities/corporate guarantees provided by the Corporate Debtor/collaterals owned by the Corporate Debtor provided as security against the debt availed. However, the secured financial creditors are free to recover their balance amounts from personal guarantors, and the guarantors will have no right of subrogation against the Corporate Debtor or Resolution Applicant. Accordingly, the Resolution Plan in **IA/1785/2022** is hereby allowed and approved in aforesaid terms.

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**

Arpan, LRA