

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

IA No. 246/2020

IN

CP.NO(IB) 395/ALD/2018

*(under Section 30 (6) of Insolvency and
Bankruptcy Code, 2016) (r/w Regulation
39(4) of Insolvency and Bankruptcy Board
of India (Insolvency Resolution Process
for Corporate Persons) Regulation, 2016)*

IN THE MATTER OF:
UNION OF INDIA

.....Financial Creditor

v/s

N.S PAPERS LIMITED

.....Corporate Debtor

IN THE MATTER OF:

MR. PANKAJ MAHAJAN
(Resolution Professional)

.....Applicant

ORDER DELIVERED ON :23.02.2021

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Resolution Professional: Mr. Sumit Shukla, AdvAlongwith
Mr. Sanjeev Panda, Adv

For the Suspended Management : Mr. Anil Kumar, PCS

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

ORDER

1. The instant application is filed under Section 30 (6) & 31(1) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (CIRP Regulations) for seeking approval of Adjudicating Authority, under Section 31 of the IBC, of the resolution plan submitted by the successful resolution applicant i.e " **Genus Paper & Board Limited**".

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2. The Corporate Insolvency Resolution Process ("CIR Process") of the corporate debtor was initiated vide order of this tribunal dated 09.07.2019 upon admission of an application filed by the financial creditor under Section 7 of the Code and Mr. Pankaj Mahajan was appointed as the IRP who was later confirmed as RP during 1st COC meeting held on 09.08.2019.
3. It is stated by the Ld. Counsel for the applicant that in the present matter there were two COC Members i.e PNB having 77.66% voting share and Union Bank of India having 22.34% voting share and the CoC was constituted on 02.08.2019. It is further submitted that Form-G (Invitation for expression of interest) was published by the RP and the criteria was net worth of Rs.15 Crores/ turnover of 100 crores/Positive PAT in the three financial year. RP has evaluated the three EOI's received in response to Form-G and issued a provisional list of prospective resolution applicant on the basis of such evaluation and scrutiny. After complying with the objection raised by the Applicants, RP issued a final list on 29.10.2019 and only one applicant emerged as eligible Resolution Applicant namely M/s Genus Paper and Boards Limited.
4. It is further stated that the request for extension of time for submission of Resolution Plan by 30 days to 17th December, 2019 was received from the PRA i.e M/s Genus Papers and Board Ltd., however it was decided in the meeting that only three days extension will be granted by the COC upto 21st November, 2019, but the PRA express its inability to adhere to the timeline and the CoC decided that in case of non-submission of the plan by PRA, the meeting of COC will be condoned on the very next date for deciding the future course of action.

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5. Further, the revised invitation for EOI was proposed to be issued and the RP prepared the revised the EOI and request for Resolution Plans again, to which COC members agreed with necessary inputs of IP entity which were approved by the COC in its 6th meeting. RP further informed the COC that it shall require extension of CIRP period beyond 180 days and sought permission for filing application before the Tribunal for the same to which this Tribunal vide order dated 07.01.2020, allowed the extension of CIRP period by 90 days beyond 180 days.
6. Then the revised Form G was published by the RP on 23.11.2019 and RP evaluated the four EOI's received in response to Form- G and issued a provisional list of prospective resolution applicants on the basis of the evaluation. The information memorandum, request for resolution plan and evaluation matrix was shared with four prospective resolution applicants as per the timelines of form G and in the 8th CoC meeting, the Resolution Plan submitted by two Resolution Applicants namely Genus Paper and Boards Ltd. and Gulsan Polyols Ltd. were opened in front of the representatives. The said plans were put to process so that the higher bidder is identified. The CoC on the basis of evaluation declared M/s Genus paper and Boards Ltd. as H1 bidder and M/s Gulsan Polyols Ltd. as H2 bidder and accordingly, the representative of H2 bidder was invited for discussions and negotiations as the first opportunity is being offered to him to improve upon the plan.
7. After understanding the views of the representative i.e Mr. Rajeev Gupta, CFO of M/s Gulsan Polyols Ltd ,RP informed the representative about certain observations in the Plan and also about the Plan value being much less than the expectations of the members thus he was requested to modify certain terms of the plan and to enhance the value. Similary, the representative of the highest bidder namely Genus Paper and Boards Ltd.

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5. Further, the revised invitation for EOI was proposed to be issued and the RP prepared the revised the EOI and request for Resolution Plans again, to which COC members agreed with necessary inputs of IP entity which were approved by the COC in its 6th meeting. RP further informed the COC that it shall require extension of CIRP period beyond 180 days and sought permission for filing application before the Tribunal for the same to which this Tribunal vide order dated 07.01.2020, allowed the extension of CIRP period by 90 days beyond 180 days.
6. Then the revised Form G was published by the RP on 23.11.2019 and RP evaluated the four EOI's received in response to Form- G and issued a provisional list of prospective resolution applicants on the basis of the evaluation. The information memorandum, request for resolution plan and evaluation matrix was shared with four prospective resolution applicants as per the timelines of form G and in the 8th CoC meeting, the Resolution Plan submitted by two Resolution Applicants namely Genus Paper and Boards Ltd. and Gulsan Polyols Ltd. were opened in front of the representatives. The said plans were put to process so that the higher bidder is identified. The CoC on the basis of evaluation declared M/s Genus paper and Boards Ltd. as H1 bidder and M/s Gulsan Polyols Ltd. as H2 bidder and accordingly, the representative of H2 bidder was invited for discussions and negotiations as the first opportunity is being offered to him to improve upon the plan.
7. After understanding the views of the representative i.e Mr. Rajeev Gupta, CFO of M/s Gulsan Polyols Ltd ,RP informed the representative about certain observations in the Plan and also about the Plan value being much less than the expectations of the members thus he was requested to modify certain terms of the plan and to enhance the value. Similary, the representative of the highest bidder namely Genus Paper and Boards Ltd.

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also assured to review the increase plan value and submit the revised plan.

8. It is submitted that M/s Gulsan Polyols Ltd. did not submit any revised plan and communicated vide email dated 12th March, 2020 that the Plan already submitted by them is final and they are not going for any change. Further M/s Genus Paper Boards Ltd has submitted a revised resolution plan and increase their financial proposal making it to Rs.67 crores as a total resolution amount. It is further stated that that even with the revised Resolution Plan and evaluation matrix, the status of H1 and H2 bidders remained the same and M/s Genus Papers Boards Ltd. being the higher bidder emerged out as the successful Resolution Applicant as the Resolution Applicant finally increased the plan value to 82.10 crores after a series of increases made via mails and addendums and in the third addendum, the Resolution Applicant has also removed the condition regarding adjustment of any liability in future from the total settlement amount which at present is 82.10 crores.
9. It is submitted that the Resolution Plan presented by Resolution Applicant was put to vote before the COC for approval and e-voting was held from 20.08.2020 to 06.09.2020 and the COC in its 15th meeting held on 18.08.2020 approved the plan with 100 % voting share and authorized the RP to file the Resolution Plan as approved by the CoC before this Tribunal. Hence the present application is moved by the RP.
10. It is also stated that as per the directions of the COC, the RP issued the letter of intent dated 06.09.2020 to the successful Resolution Applicant and in terms of RFRP conditions, Resolution applicant has submitted performance bank guarantee of Rs8,21,00,000/- (Rupees Eight Crores

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Twenty One Lakhs Only) which is 10 percent of the bid amount of Rs.82.10 Crores.

11. Accordingly, the Resolution Professional has filed the present application seeking approval of the Resolution Plan in terms of Section 31(1) of the Code and also prayed for exclusion of period of lockdown starting from 25.03.2020 till the final disposal of the application , on account of the ongoing Covid-19 Pandemic.
12. The Learned PCS appearing on behalf of the suspended management stated that he has no objection on approval of the Resolution approved by the members of COC.
13. Heard the Ld. Counsels for the parties and perused the record available.
14. It is observed that the Resolution Professional has examined the Resolution Plan and has found it to be in compliance with Section 30 (2) of the IBC read with Regulation 38 of the CIRP Regulations. In accordance with Regulation 39 (4) of the CIRP Regulations, the RP vide his Affidavit certified that:
 - a) The contents of the Resolution Plan submitted by “ **Genus Paper & Boards Limited**” meet all the requirements of the IBC and the Regulations thereunder; and
 - b) The Resolution Plan submitted by “ **Genus Paper & Boards Limited**” has been approved by the Committee of Creditors by 100% voting share under Section 30.(4) of the IBC in its meeting.
 - c) Further, Resolution Professional has submitted compliance certificate in Form-H as required under Regulation 39(4) of the CIRP regulations, *interalia*, certifying eligibility of Resolution Applicant under Section 29 A of the Code and feasibility & viability of the Resolution resolution.

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15. Sub-section 2 of Section 30 of the Code reads as under;

"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 repayment of other debts of the Corporate debtor;*
- b) Provides for the repayment of the 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 section 53;*
- 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) Confirms to such other requirement as may be specified by the Board."*

Further, Regulation 38 & 39 of CIRP Regulations specify certain mandatory contents of the resolution plan.

16. The resolution plan approved by the Committee of Creditors meets the requirements laid down in various Clauses of Section 29 A and Sec 30 (2) as per the compliance table below:

Section	Requirement	Compliance (yes/no)
Section 29 A	The resolution applicant is eligible to submit resolution plan as per final list of resolution professional or order, if any, of the Adjudicating Authority	Yes
Section 30	(1)The resolution Applicant has submitted an affidavit stating that he is eligible	Yes
	(2) The resolution professional shall examine each resolution plan received by him to confirm that each	

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	resolution plan only one resolution plan received in the Insolvency resolution process of the CD)	
a)	Provides for payment of IRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Yes
b)	Provides for repayment of debts of operational creditors (OCs) in such manner as may be specified by the Board, which shall not be less than the amount payable to them in the event of liquidation u/s 53.	Yes
c)	Provides for the payment to the financial creditors who did not vote in favour of the Resolution Plan	Yes
d)	Provides for management of the affair of the CD after approval of the resolution plan.	Yes
e)	Implementation and Supervision of resolution plan	Yes
f)	Plan does not contravene any of the provisions of the law for the time being in force.	Yes
Sec 30(4)	Whether the Resolution Plan (a) Is feasible and viable, according to the COC? (b) Has been approved by the COC with 66% voting Share?	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the COC	Yes

17. The following table shows that the requirements of Regulation 35 A, Regulation 38 & Regulation 39(2), Regulation 39(4) CIRP Regulation are met by the approved plan:

Reference of relevant Regulations	Requirement	Compliance (yes/no)
38(1)	The resolution plan identifies specific sources of funds that will be used to pay the insolvency Resolution process	Yes
38 (1A)	Plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of Corporate Debtor.	Yes
38 (1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of	NO

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	any Resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation.	
38(2) (a)	Plan shall provide the term of the Plan and its implementation schedule.	Yes
38 (2) (b)	Plan shall provide for the management and control of the business of CD during its term.	Yes
38 (2) (c)	Plan shall provide for adequate means for supervising its implementation.	Yes
38 (3)	A resolution plan shall demonstrate that (a) The term of the plan and its implementation schedule (b) It is feasible and viable (c) It has provisions for its effective implementation (d) It has provisions for approval required and the timelines for the same (e) The resolution applicant has the capability to implement the resolution plan	Yes
39(2)	The RP has filed applications in respect of transaction observed, found or determined by him	Yes

18. Regulation 36B(4A) of the CIRP Regulations requires that the Resolution Applicant shall provide a performance security. Resolution Professional has certified that the Resolution Applicant has submitted performance bank guarantee of Rs 8,21,00,000/- (Rupees Eight Crores Twenty One Lakhs Only) which is 10 percent of the bid amount of Rs.82.10 Crores which is on record.

19. The resolution plan is for the amount of Rs. 82.10 crores, in order to successfully implement the plan and to improve the operation of the Corporate Debtor, the Resolution Applicant estimates that it will be required to infuse by way of equity or debt into or arrange for the corporate debtor, an amount of Rs. 82,10,00,000/- and further of upto Rs. 1,000,000,000/- is proposed to be infused in the corporate Debtor by way

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of equity or debt as may be deemed appropriate by the Resolution Applicant, for necessary capital expenditure, working capital, capital requirement and general corporate purposes.

Details of planned capital expenditure in the unit and sources of funding is provided as :

Sl. No.	Particulars	Amount (INR) Crs.
1	<i>Application of funds</i>	
a.	<i>Cost of acquisition against settlement of all past, present and future liabilities (arising out of activities, events prior to the effective date and time) of the corporate Debtor under this Resolution plan</i>	82.10
b.	<i>Expansion capital expenditure</i>	70.00
c.	<i>Soft Cost including interest during construction, Financing cost, Pre- operative Expenses</i>	8.25
d.	<i>Margin money for working capital</i>	16.53
e.	<i>Contingency Provision/ expenses</i>	5.22
	<i>TOTAL</i>	182.10
2.	<i>Sources of Funds</i>	
	<i>Internal accruals (Equity)</i>	47.63
	<i>Assert Reconstruction Company ("ARC")- for convertible debt</i>	7.00
	<i>External Funds- Term Loan from consortium of Banks, as per details provided vide letter dated 5th February 2020</i>	127.47
	<i>Total</i>	182.10

20. Further as per the terms and condition of the resolution plan **"The Schedule of payment of the Resolution Applicant Amount is as follows:**

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<i>Category of claims</i>	<i>Amount admitted(INR Crores)</i>	<i>Amount admitted as contingency(INR Crores)</i>	<i>Claims not admitted(INR crores)</i>	<i>Amount proposed and payable in manner as prescribed under the resolution plan (INR Crores)</i>
<i>CIRP Cost</i>				<i>Unpaid CIRP Cost</i>
<i>Financial Creditors</i>	390.46	Nil	Nil	30.8469 inclusive of unpaid CIRP cost
<i>Operational Creditor(Workmen and Employee)</i>	0.1131	Nil	0.1331	0.1131
<i>Operational Creditor (other than workmen and Employee)</i>	26.96	84.43	7.22	Nil
<i>Workmen and Employee related statutory dues (PF & ESI)</i>			1.14	1.14
<i>Total</i>				82.10

21. The RP as required under regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 certified that the contents of the resolution plan meets with the requirements of the IBC and the regulations thereto and that the resolution plan has been approved by the CoC in the manner prescribed under the IBC.

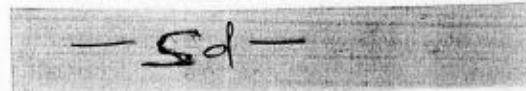
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22. Further it is a well settled proposition of law that the commercial wisdom of COC are not open to judicial review thus the Adjudicating Authority cannot enquire into it. It is however reiterated that the Resolution plan in question meets the requirement specified in Sec 30(2) of the Code and the reasoned commercial decision of COC is neither discriminatory nor perverse.
23. In the facts as stated, this bench is satisfied that the requirements as per the Code and regulations have been complied with. Moreover, the Resolution Plan has been approved by 100% voting share of the members of COC and has been submitted in compliance of Sec 30 of the Code for approval. In view of the aforesaid discussions and as no infirmity have been brought out upon screening of the Resolution plan, this Adjudicating Authority hereby approve the Resolution plan under sub- section (1) of Section 31 of the Code.
24. This bench further directs the RP to act as the Monitoring Agency and thus appointed RP as "Monitoring Agency" to monitor and supervise the implementation of the Resolution plan and the remuneration of the monitoring agency shall be on Rs. 1,50,000/- plus taxes and out of pocket expenses at actual.
25. The Resolution Applicant is allowed to remove and/or substitute the Monitoring Agency with prior approval of this Adjudicating Authority if the Monitoring Agency is unable to satisfactorily perform its responsibilities or breaches terms of its appointment.
26. It is directed that the resolution plan so approved shall be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. With the approval of the resolution plan, the moratorium order passed by this Tribunal under Section 14 of the Code shall cease to have effect. The Resolution Professional is directed to forward all the record relating to the conduct of

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the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.

27. The Resolution applicant has to adhere to all the applicable law for the time being in force. The Resolution Applicant can seek clarifications, if any, from this Tribunal.
28. In view of the above discussion, the Resolution Plan submitted by "**Genus Paper & Board Limited**" is hereby approved and in view of the notification passed by Central government and in terms of Regulation 40C of IBBI (Resolution Process for the Corporate Persons) Regulations 2016, the period of lockdown is hereby excluded.
29. Accordingly, IA No. 246/2020 is **disposed of**.



JUSTICE RAJESH DAYAL KHARE
MEMBER (J)

Date: 23.02.2021

Swati Gupta
(LRA)