NATIONAL COMPANY LAW TRIBUNAL, BENCH-V, NEW DELHI

(IB) 814(ND)/2019; **IA 4588**/ND/2020 Item 208 Dt 07.01.2021

IN THE MATTER OF

Om Logistics Limited

.....OPERATIONAL CREDITOR

VERSUS

NTL Electronics India Limited ...... CORPORATE DEBTOR

AND

IN THE MATTER OF:

Pooja Bahry, Resolution Professional,
NTL Electronics India Ltd, 59/27, Prabhat Road,
New Rohtak Road,
N Delhi, 110005 .... RESOLUTION PROFESSIONAL

AND

Onkar Nath Agarwal and Saroj Agarwal ..RESOLUTION APPLICANT

SECTION: **30(6)** of IBC, 2016

Order delivered on:28.01.2021

CORAM:
MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)
MR. K.K. VOHRA, MEMBER (TECHNICAL)

PRESENT:

For the Resolution Professional: Ms. Pooja Bahry, Applicant
Ms. Pooja Mahajan, Adv.
Mr. Yakesh Anand, Sonam Anand
Mr. Akashay Thakur, advs

For the Resolution Applicants: Mr. Satwinder Singh and
Mr. Allan Messay, Advs

ORDER

PER K.K. VOHRA, MEMBER (T)

1. The present petition has been filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016, (the Code) on behalf of the Resolution Professional (RP), seeking approval of the Resolution Plan.
2. The facts mentioned in the application in brief are as follow:

   i. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor (CD), NTL Electronics India Limited, vide order dated 27.08.2019 passed by this Adjudicating Authority (AA), admitting the application under Section 9 of the Code filed by the Operational Creditor (OC) whereby Ms. Preeti Jaiswal was appointed as Interim Resolution Professional.

   ii. The Applicant carried out a public announcement on initiation of CIRP on 16.09.2019. After collation of claims and determination of the financial position of the CD, a Committee of Creditors (CoC) was duly constituted by the Applicant. The first meeting was held on 30.10.2019 (Page 4 of application), whereas the CoC appointed the Applicant as Resolution Professional (RP) for the CD.

   iii. During the third meeting of CoC held on 13.01.2020, a decision to invite Expression of Interest (EOI) was taken. EOI was published in prescribed Form G on 15.01.2020 in newspapers. Accordingly, 6 EOIs were received (Pg 8). In the meantime, 'the period for completion of CIRP was extended for further 90 days ending on 22.05.2020 vide order dated 18.02.2020 passed by this Bench.

The last date for submission of Resolution Plan as per Form G was fixed as 05.04.2020 (Pg 8).

iv. Due to Covid-19 pandemic, the government announced a nationwide lockdown. Thereafter, Regulation 40C was inserted in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016) (CIRP Regulations) w.e.f. 29.03.2020 extending the time limit for completing CIRP. In view of the above and for protection of interest of stakeholders, the period for completion of CIRP was finally extended for further 60 days after July 29, 2020 vide order dated 07.08.2020 passed by this Bench.

v. The date of submission of the Resolution Plan was extended till 06.07.2020. However, since no Resolution Plan was received till the last date, the CoC in its 13th meeting held on 20.07.2020 decided to republish the Form-G. Thereafter, the RP received (Pg 13) Plans from following two Resolution Applicants (RA):

- Suncare Formulations Private Limited
- Mr. Onkar Nath Agarwal and Mrs. Saroj Agarwal

vi. In the nineteenth meeting of CoC on 21.09.2020 (Pg 352), the RP placed both the Resolution Plans and after evaluation, the CoC with 100% voting (voting held from 23.09.2020 to 25.09.2020) (result at Pg 372), approved the Resolution Plan submitted by Mr. Onkar Nath Agarwal and Mrs. Saroj Agarwal (RA).

vii. It is further stated that the RA is not ineligible under Section 29A of the Code in terms of Section 240A of the Code. An undertaking in this regard is at Pg 343. Thereafter the RA deposited performance security of Rs 2 crore in terms of Regulation 36B (4A) of the CIRP. The copy of Performance guarantee is at Pg 347.

viii. As per RP, the Average Fair value is Rs 26,77,27,063 and the Average Liquidation value of CD is Rs 18,74,27,058 (page 26). The amount proposed in the Resolution Plan is Rs 22 Crores (page 110), higher than the Liquidation Value. The creditworthiness and financial capability of RA is mentioned in clause 4 of the Resolution Plan (Pg 93). Sources of funds have been attached at Pg 685. RA has investment of Rs. 47.31 crores as on 15.09.2020, certified by a Chartered Accountant (Pg 686).

ix. The present application dated 28.09.2020 has been filed under Section 30(6), 31 and 60(5) of the Code seeking approval of this Adjudicating Authority (AA) for Resolution Plan approved by the CoC by 100% favourable voting. CIRP process has been run by the Applicant to maximize the asset value of the CD. The Resolution Plan has been analysed by the CoC before approving the same.

x. Following is the payment Plan (Pg 110):

(Rs Crores)

Particulars	Verified amount	Amount as per Plan	%
CIRP Cost	Estimated by RA	1.90	100
Secured FC	92.96	17.78	19.12
Unsecured FC	6.07	0.60	0.99
Workmen and Employee Dues (other than Gratuity, Provident Fund and ESI contributions)	1.23	0.31	25.2
Gratuity contribution	0.82	0.82	100
Provident Fund and ESI contributions	0.80	0.80	100
Statutory Dues (other than Provident Fund and ES/ contributions)	17.56	0.15	0.85
Operational Creditors (other than Workmen & Employee Dues and Statutory Dues)	51.52	0.18	0.35
Total		22.00	

3. RP has received claims from ESIC, NOIDA and EPF, NOIDA for Rs 25.21 lakh approx (Para 6, Pg 2 of Written Submission dt 3.01.21) not yet considered as intimation was received after filing Resolution Plan for approval with NCLT. These claims have 3 components - employee welfare, statutory dues and small amount. These should be paid as part of CIRP cost. According, it is **directed** that these dues should be paid to ESIC (Rs 17.20 lakh) and EPF (Rs 8.01 lakh) and be included in CIRP cost.
4. Copies of Approved Plan and voting result with minutes have been placed on record. During the last hearing on 07.01.2021, the applicant was allowed to file further written submission, if any, by 11.01.2021. No such further written submission was received till 11.01.2021.
5. It is pertinent to mention here that the Resolution Plan was filed on the last date of CIRP i.e. 28.09.2020. The applicant was asked to explain whether submission of the Resolution Plan on the last date of CIRP is maintainable. In response, the applicant drew attention to Regulation 39 (4) of CIRP Regulations which states that 'the RP shall endeavour to submit the Resolution Plan at least before 15 days maximum period for completion of CIRP.....'. Thus, the filing of Resolution Plan on 28.09.2020 did not violate any legal provision and is maintainable.
6. We have heard the parties and perused the case records.
7. In view of Section 31 of the Code, the AA, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the

requirements as referred under Section 30 (2) of the Code. Section 30 (2) is quoted below: -

"(2) 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 payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) *where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;*

(ii) *where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*

(iii) *where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]*

(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) conforms to such other requirements as may be specified by the Board.

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]"

8. We would also like to refer Regulation 38 of CIRP Regulations and the same are quoted below: -

Regulation 38 - Mandatory contents of the Resolution Plan.

(1) The amount payable under a resolution Plan - (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution Plan, shall be paid in priority over financial creditors who voted in favour of the Plan.].

(1A) A resolution Plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.

(1 B) A resolution Plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution Plan approved by the Adjudicating Authority at any time in the past.

(2) A resolution Plan shall provide:

(a) the term of the Plan and its implementation schedule;

(b) the management and control of the business of the corporate debtor during its term; and

(c) adequate means for supervising its implementation.

(3) A resolution Plan shall demonstrate that –

(a) it addresses the cause of default;

(b) it is feasible and viable;

(c) it has provisions for its effective implementation;

(d) it has provisions for approvals required and the timeline for the same; and

(e) the resolution applicant has the capability to implement the resolution Plan.

9. In view of the aforesaid Regulations, a Resolution Plan is required to contain a statement how it will deal with the interest of all the stakeholders including Financial Creditors and the Operational Creditors and if these are sufficiently provided in the Resolution Plan, the AA may approve the Resolution Plan.

10. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the Resolution Plan in clause 6.1.1.4 (page

110) that the payment of CIRP cost shall be in priority of all the claims. It is pertinent to mention here that in the Resolution Plan, Rs 1.90 crores have been proposed to be paid as CIRP cost; as on 28.09.2020 the CIRP cost was Rs. 1.40 crores as informed during the Virtual Hearing. It is mentioned in the Resolution Plan that in case of any surplus remaining from CIRP cost, the same will be paid to secured creditors.

11. We have seen that for statutory dues (other than EPF and ESI) Rs. 0.15 crores have been proposed to be paid as against the verified amount of Rs. 17.56 crores. During the hearing on 07.01.2021, the Bench was informed that the applicant has received an assessment order for payment of Rs. 5.00 crores approx from IT Department (part of 17.56 crores). The attention of the applicant was drawn to low allocation for statutory dues. The applicant responded that the proposed amount does not contravene any provision of law, as the liquidation value of the company is around 18 crores which is far less than the secured debt (92 crores, Pg 110) of the CD and in case of liquidation the IT Department will not get anything in terms of Sec 53 of the Code.

12. As regards compliance of clause (b) of Section 30 (2) of the Code, the RP has certified in Form H that clause 6.1.1.4 of the Resolution Plan (page 30) provides for the payment of the debts of operational creditors which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the CD under Section 53.

13. In terms of Section 30 (2)(c), management of the affairs and control of the business of the CD has been provided in clause 12 (at Pg 146).

14. The next requirement envisaged by Section 30 (2)(d) is that it must provide for the implementation and supervision of the Resolution Plan. In this regard, clause 12.1.3 read with Schedule 1 of Resolution Plan provide for the Monitoring Committee (page 146 and 161). This Committee shall consist of two representatives of FC and two representatives of RA and shall appoint monitoring agents to manage day to day affairs till effective date (the date on which all actions under Schedule 1 are complete which shall, in any case, not be later than 60 calendar days after approval of Resolution Plan).

15. Other conditions in terms of Section 30 (2) (e) (f) of the Code provide to ensure that the Resolution Plan does not contravene any of the provisions of the law and conforms to such other requirements as may be specified by the Board. In this regard declaration has been provided at clause 14 of the Resolution Plan (page 150).

16. In response to the query for compliance for Regulation 38(3)(a) of CIRP Regulations, the applicant drew our attention to clause 5.1 (Pg 100). The RA has identified reasons for default which include higher amount of overdues with customers and unplanned expansion resulting in a cash crunch. The RA proposes to undertake production in all sections in a gradual manner and intensify collections; working capital will attract special attention.

17. The Resolution Plan also contains that the RA intends to retain the present employees of CD (Pg 85). It is submitted that as per Section 30(2)(b) read with Section 53 of the Code, workmen dues for the last

12 months preceding the liquidation commencement date are to be treated pari passu with secured creditors. Further, claims of the employees rank below secured creditors under Section 53 of the Code. In the present case, the SRA proposes to settle 25.2% of the verified amount in respect of employees and workmen, while claims of secured creditors are being settled at 19.12% (Para 2 above).

18. Ld. Counsel appearing for the Resolution Applicant submitted that the Resolution Plan is as per the provisions contained in the Code and so, the same may be approved. In terms of Regulation 39(4) of the CIRP Regulations, the RP has filed compliance certificate in Form-H which is annexed as Annexure-1 at page 25. It has been submitted in the application and in Form H duly certified by RP (Pg 35) that the final Resolution Plan meets the requirements as laid down in various clauses of Section 30 (2) of the Code.

19. As a sequel to aforesaid discussions, we are satisfied that all the requirements of Section 30 (2) are fulfilled. In respect of compliances regarding CIRP Regulations especially Regulations 38 and 39, the RP has certified in Form-H and explained in details (Pg 25-35) that the Resolution Plan has complied with all the required Regulations.

20. For the reasons discussed above, in our considered view, the Resolution Plan fulfils the requirement as referred in Section 30 (2) of the Code and there are sufficient provisions in the Plan for its effective implementation as required under the proviso of Section 31 (1) of the Code. The Resolution Plan has been approved by CoC with 100% favourable voting. Many judgements of Hon'ble Supreme Court and NCLAT have treated the commercial wisdom of CoC as final. Therefore,

in our considered view, there is no impediment in giving approval to the Resolution Plan.

21. Accordingly, we hereby **approve the Resolution Plan**, which was earlier approved by the CoC by the majority vote of 100% subject to direction in Para 3 above.

22. It is clarified that Section 30 (2) (f) of the Code mandates that the Resolution Plan should not be against any provisions of the existing law. The Resolution applicant therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein.

23. It is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.

24. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code.

25. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.

26. Let the copy of the order be served to the parties.

-Sd/-

(K. K. VOHRA)
Member (T)

-Sd/-

(ABNI RANJAN KUMAR SINHA)
Member (J)