NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

MA/253 & 254 /2018

in

CP/552 & 553/ (IB)/2017

Under Section 7 of the IBC, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

Application under Section 31 of Insolvency and Bankruptcy Code, 2016

In the matter of

Shri.R.Venkatakrishnan,
Resolution Professional ...Applicant/RP
V/s

M/s. SMM Steels Re-Rolling Mills Private Limited
And
M/s. Paragon Steels Private Limited

....Corporate Debtor's

Order delivered on: 24.07.2018

CORAM

K. ANANTHA PADMANABHA SWAMY, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Petitioner/Applicant : Shri.R.Venkatakrishnan, RP

COMMON ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

1) The applicant has stated that one of the Resolution Applicant Mrs.Fathima Abdul Khadar acting in concert with Mr.Adbul Kadhar (Steel House, Kalady) has submitted their final resolution plan. The RP has conducted the 14th meeting of COC in relation to both Corporate Debtors viz M/s. SMM Steels Re-Rolling Mills

Private Limited and M/s. Paragon Steels Private Limited on 28.06.2018 to vote on the Resolution Plans submitted. (Page 315 & 478 of Volume 2).The vote on the final resolution plans submitted by the resolution applicant was approved with 100% voting (sole Financial Creditor) in favour of the resolution plan.

2) The Resolution Professional in this case has submitted for approval under Section 31 a resolution plan. The objective of the Resolution Plan includes:

I. The continuing operations of the Corporate Debtors as a going concern.

II. Meeting the obligations of the Corporate Debtors to all the stake holders.

The Resolution Plan received from the Resolution Applicant provides the following.

a. Payment of insolvency resolution process cost in the manner provided for in Regulation 31 and Regulation 34. The same shall be paid in the priority to the repayment of other debts of the Corporate Debtor.

b. Repayment of Debts of Operational Creditors in a manner that it provides for an amount that is higher than the amount that would have otherwise been payable to Operational Creditors under section 53 in the event of Liquidation of the Corporate Debtor. This adheres to the requirements of Regulation 38 providing for the interest of all stake holders including financial creditors and operational creditors.

c. 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 law for the time being in force.

f. The resolution plan conforms to the regulations 38 and 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate persons) Regulation, 2016.

The prayers of the Applicant are as follows:

a. *Pending disposal of this application, the applicant be allowed to continue as Resolution Professional of the Corporate Debtor till final disposal of the Application.*

b. *The adjudicating authority pass such orders as deemed appropriate under section 31 of the Insolvency and Bankruptcy Code, 2016.*
c. *Allow payment of remuneration and expenses, as provided in regulation 34, for the period starting 29th July 2018 till the final disposal of these applications for acting as resolution professional of the corporate debtors at an amount equal to the remuneration paid during the CIRP as part of Corporate Insolvency Resolution Process.*
d. *Any other relief/reliefs in favour of the Applicant/Corporate Debtors as this Hon'ble Tribunal deems fit and appropriate.*

COMMON ORDER

As per the Resolution plan a total of Rs.43,40,00,000/- shall be infused as the equity share capital of the companies to settle the secured financial creditors as summarized below.

Any excess payment after the payment of dues of mentioned stakeholders in the both companies Annexure –E (Page No. 31 & 32) made as a provision shall be paid to the financial creditors.

Disbursement Schedule	Paragon Steels Private Limited	SMM Steels Re-Rolling Mills Private Limited	Total
Within 7 days of approval	2,79,00,000	1,55,00,000	4,34,00,000
Within 7 days of approval	32,00,00,000	-	32,00,00,000
Balance Amount within 30 days approval	7,06,00,000	-	7,06,00,000
Total Bid Amount	**41,85,00,000**	**1,55,00,000**	**43,40,00,000**

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Amount to be received by Financial Creditor (M/s Assets Reconstruction Company (India) Limited):

Paragon Steels Private Limited	SMM Steels Re-Rolling Mills Private Limited	Total
26,07,952	9,94,000	36,01,952
26,81,79,463	5,00,627	26,86,80,900
7,06,00,000	-	7,06,00,000
34,13,87,415	**14,94,627**	**34,28,82,042**

Payment in regard to stock and receivable mentioned in resolution plan

In this case the Resolution Applicant is the same in both the petitions under the IBC, 2016. The RP also the same.

The Resolution Applicant has given a resolution plan which combines the amount to be infused in both Corporate Debtors. The RA proposes to infuse share capital for acquiring both the companies under CIRP by way of equity capital.

The Tribunal further observes that the business of the corporate debtor and M/s. SMM Steel Re-Rolling Mills Private Limited are extremely inter-independent for the following reasons;

The land to the extent of (1acre comprised in 2.11 acres of land allotted to M/s. Paragon Steels Private limited unit 1 subleased to M/s. SMM Steels Re-Rolling Mills Private Limited for erecting

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its plant and office with the approval of District Industries Centre (DIC). A significant part of the production is being sold to the corporate debtors.

The M/s. SMM Steel Re-rolling Mills Private Limited does not have the required infrastructure including the weigh bridge, laboratory and the technical staff and for these facilities, it is dependent upon the M/s. Paragon Steels Private Limited.

As per Rule 37 of the IBBI (Insolvency Resolution Process for corporation) Regulation, 2018

> *"37.Resolution Plan. - A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following:- (a) transfer of all or part of the assets of the corporate debtor to one or more persons; (b) sale of all or part of the assets whether subject to any security interest or not; (c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons; (d) satisfaction or modification of any security interest; (e) curing or waiving of any breach of the terms of any debt due from the corporate debtor; (f) reduction in the amount payable to the creditors; (g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor; (h) amendment of the*

constitutional documents of the corporate debtor; (i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose; (j) change in portfolio of goods or services produced or rendered by the corporate debtor; (k) change in technology used by the corporate debtor; and (l) obtaining necessary approvals from the Central and State Governments and other authorities."

Regarding the prayer made by the RP the Resolution applicant is directed to adhere to the provisions of Section 53 of the IBC 2016 duly following the procedure for "water fall" in relation to the amounts brought in by the Resolution Applicant while bringing in fresh capital as mentioned in the Resolution Plan.

The Tribunal observes that the resolution applicant is bound by Regulation 38(1)(b) which reads as follows;

"(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and"

The Tribunal further observes that the as per Section 14 of the IBC, 2016, the moratorium shall cease to have effect from the date of approval of the resolution plan.

The Resolution Plan stands approved in both the companies and the Resolution Process is to be concluded as per the terms of approved resolution plan.

S. Vijayaraghavan.

(S.VIJAYARAGHAVAN)	(K.ANANTHA PADMANABHA SWAMY)
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

sd/tjs

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G. Jaganathan 25/7/18
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