IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

MA/1394/2019 in CP/666/IB/2018
(Filed under Sec. 30 and 31 of the IBC, 2016)

IN THE MATTER OF:

M/s. Mynah Industries Limited
Rep. by Sisir Kumar Appikatla
Resolution Professional ... *Applicant*

Present:

For RP	:	*B. Aparna, Counsel* *A. Sisir Kumar Appikatla, RP*
For Committee of Creditors	:	*Sooraj, Branch Manager, Dhanlaxmi Bank* *IVK Hakravarthi, Chief Manager, Bank of Baroda* *Jithin Rajagopalan, Deputy Manager, SBI*

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

Order Pronounced on 28th February 2020

ORDER

***Per:* ANIL KUMAR B, MEMBER (TECHNICAL)**

1. The MA/1394/2019 is moved by the Resolution Professional of the Corporate Debtor viz., A. Sisir Kumar Appikatla under Section 30 and 31 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 read with Regulation 39 of

the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'Regulation') seeking the approval of the Resolution Plan submitted by the successful Resolution Applicant viz., **Bodugu Sudhakar**

2. From the averments made in the Application read with Form-H Compliance Certificate as filed by the Resolution Professional, it is seen that an Application was filed by an Operational Creditor viz. Chennai Textile Chemicals Private Limited vide CP/666/IB/2018 against the Corporate Debtor and this Authority vide its order dated 26.02.2019, initiated Corporate Insolvency Resolution Process (CIR Process) against the Corporate Debtor and the Applicant here was appointed as the Interim Resolution Professional (IRP).

3. Consequent to the same, the IRP caused a public announcement under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016, on 03.03.2019 and received claims from the creditors and after verification of the claims received, the IRP constituted Committee of Creditors (CoCs) on 21.03.2019.

4. It is evident from Form H that the 1st meeting of the CoC was held on 27.03.2019 and the Applicant herein was appointed as Resolution Professional. Further, in the said 1st meeting, the CoC took note of list of Creditors and voting share prepared by the Interim Resolution Professional, which are as follows;

S. No.	Name of Creditor	Amount Admitted (Rs.)	Voting Share (%)
1	SBI (Stressed Assets Management Branch)	98,14,01,238.00	56.31
2	Vijaya Bank	50,20,06,222.27	28.80
3	Dhanlaxmi Bank	25,95,88,026.45	14.89
	TOTAL	**174,29,95,486.72**	**100**

5. In the 2nd Meeting of the CoC, held on 09.05.2019, the Eligibility criteria for issue of Expression of Interest in Form – G was discussed and upon deliberations being made, it was resolved that the minimum eligible turnover either individually or in consortium was fixed at 10 Crore as per last or last 3 years average (or) the minimum required net worth either individually or in consortium is Rs. 5 Crore (or) in case of an ARC, minimum Assets under Management (AUM) on hand must be 50 Crore.

6. It is also evident on perusal of the Form H that the "Expression of Interests" (in short, "EOI") was issued on 12.05.2019 and in response to the same, the Resolution Professional received EOI from two prospective Resolution Applicants, out of which one Resolution Applicant finally submitted the Resolution Plan on 10.07.2019 and the Resolution Professional with the directions of the CoC was in the process of negotiations of improvisation of the Resolution Plans. As the same was in process, the Resolution Professional has filed an MA/907/2019 seeking extension of CIRP period beyond 180 days and this Tribunal vide its order dated 27.08.2019 extended the CIRP period for a further 90 days with effect from 26.08.2019. The Resolution Applicant, who is a third party, has submitted the Resolution Plan along with an Affidavit stating that he is eligible under Section 29A of IBC, 2016 to the Resolution Professional.

7. The Resolution Professional stated that he has examined the Resolution Plan and confirmed that the conditions laid down under the provisions of Section 30(2) are accomplished. The CoC, in its 7th meeting held on 18.11.2019, approved the Resolution Plan with 85.11% voting rights in favour and the relevant minutes of the 7th meeting of the CoC held on 18.11.2019 is extracted hereunder;

"RESOLVED THAT, as per Regulation 30(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the resolution plan submitted by Mr. Bodgu Sudhakar has been approved as the voting in favour of the resolution is more than 66% as specified."

RESOLVED FURTHER THAT, the RP was authorized to move an application before the Honourable NCLT for getting Approval."

8. After the successful passing of the Resolution Plan before the CoC on 18.11.2019, the Resolution Professional filed the Resolution Plan with this Adjudicating Authority on 22.11.2019.

9. The Resolution Professional has filed Form – H compliance and from that it is evident that the Fair Value if Rs.14,65,05,000/- and the Liquidation Value Rs.9,07,98,500/-

10. It is also brought forth that in relation to the CoC at the time of approval of the Resolution Plan, the following members constituted it viz.:-

Sl. No	Name of Creditor	Ascent (%)	Dissent (%)
1.	SBI	56.31	-
2.	Vijaya Bank	28.80	-
3.	Dhanlaxmi Bank	-	14.89
	TOTAL VOTING	**85.11**	**14.89**

11. The pattern of voting in relation to the Resolution Plan has also been disclosed as evident from the above table extracted from Form-H.

12. Pursuant to the Regulation 35A of the IBBI (IRP for Corporate Persons) Regulations, 2016, it is disclosed in Form-H that the Resolution Professional has not filed any application for the transactions of the nature covered under Sections 43, 45, 50 or 66 of I&B Code, 2016.

13. Form H Compliance Certificate as issued by the Resolution Professional in terms of I&B Code, 2016 read with the attendant Regulations discloses that the Resolution Plan complies with all the provisions of the I&B Code, 2016, the CIRP Regulations and does not contravene any of the provisions of the law for the time being in force.

14. It is also brought forth that an Affidavit as required to be submitted by the Resolution Applicant has also been duly submitted in relation to the eligibility taking into consideration Section 29A of the I&B Code, 2016. It is affirmed in terms of the table as given above that the Resolution Plan has been approved by the CoC with

85.11% of voting share of Financial Creditors, as submitted by the Resolution Applicant. The Amount proposed to be paid towards the CIRP of the Corporate Debtor is set out below;

S. No.	Particulars	Rs. (In Crores)
1	CIRP Cost	0.50
2	Financial Creditors Secured	9.30
3	Workmen Employee admitted claim	0.00
4	Operational / Other Creditors	0.55
	Total Payment to Stakeholders	**10.35**

15. The division of the above amount provided for the various stakeholders under the Resolution Plan is shown below;

S. No.	Category of Stakeholders	Amount Claimed	Amount Admitted	Amount provided under the Resolution Plan
A	**CIRP Cost**	-	-	**0.50**
B	**Financial Creditors**			
1	SBI (Stressed Assets management Branch)	98.14	98.14	5.00
2	M/s. Vijaya Bank	50.20	50.20	0.50
3	M/s. Dhanalaxmi Bank	25.95	25.95	3.80
	Total	174.29	174.29	**9.30**
C	**Workmen / Employees**			
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D	**Operational / Other Creditors**			
1.	M/s. Chennai Textile Chemicals Private Limited	0.91	0.91	**0.10**
2	Income Tax Department (Assistant Commissioner of income Tax)	37.73	37.73	**0.45**
	Total	**38.65**	**38.64**	**0.55**
	Total Claims	**212.93**	**212.93**	**10.35**

16. The Source of Fund and the proposed timeline for completion of the funding by the Successful Resolution Applicant is tabulated hereunder;

Source of Fund	**Equity (in Rs. Crores)**	**Unsecured Loan / inter corporate deposit / other loan**	**Bank Borrowing**	**Utilization**
Within **1 month** from the Approved Period	3.05			Payment made towards CIRP Cost, operational Creditors and part payment towards Financial Creditor.
Within **17 months** from the Approved period	7.30			Balance payments to the Financial Creditor

17. Proposed timelines for completion of the funding by the Successful Resolution Applicant:-

Particulars	**Time From Approved Date**
Upfront Cash Payment (Initial / Down Payment) Rs. 3.05 Crores	Within one month
Payment for the Insolvency Resolution Process Cost	Within one month
Payment to the Operational Creditors	Within one month
Initial payment to Financial Creditor	Within one month
Balance Payment to Financial / Creditors Rs. 7.30 Crores	Within 18 months

18. From the averments made in the Application as well as in Form-H as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied

with for which the Resolution Professional has issued a Certificate. It is not necessary for this Tribunal to go into the same. This Tribunal is duty bound to examine the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparison vis-à-vis with the Mandatory compliance under the IBC and the Compliance made under the Resolution Plan is captured 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 Affidavit of the Resolution Applicant (RA) is placed on record and the RP in Form H has certified that the RA has submitted an affidavit and the said affidavit is in order.
S. 30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board	Form H has stated Clause 3 & 4 of Summary proposal of the Resolution Applicant. The CIRP Cost is arrived at ₹50 Lakhs as stated in Resolution Plan.
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	Resolution Applicant has stated in Clause VI (2) that the amount available to Operational Creditors in the event of liquidation is NIL and as per the Plan they are being paid Rs.55 Lakhs as against the admitted claim of Rs.38.64 Crores and the said sum is being paid within one month from the Approval date.
Reg. 38(1) - Resolution Plan identifies specific source of funds that will be used to pay the (a) Insolvency Resolution Process cost?	Clause 5 of the Summary Proposal of the Resolution Applicant manifest that the total Amount provided under the Resolution Plan for a sum is Rs.10.35 Crores and the Resolution Application proposes to pay the said sum out of

(b) Liquidation value due to Operational Creditors? (c) Liquidation value due to dissenting financial creditors	the Equity.
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	
S. 30(2)(c) - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Clause 3 of Part VIII of the Resolution Plan deals with the Acquisition and Management Control of the Corporate Debtor after the approval of the Resolution Plan
S. 30(2)(d) - Implementation and Supervision of the Resolution Plan	Clause 5 of Part VIII of the Resolution Plan deals with the Monitoring Committee which is comprising of; (a) a representative or an advisor of the Financial Creditor (other than related party) (b) a representation of the Resolution Applicant (c) Resolution Professional
Reg. 38(2) - Resolution Plan shall provide: a) term of plan and its implementation schedule b) management and control of the business of the Corporate Debtor during its term; c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same; and e) the Resolution applicant has the capability to implement the Resolution Plan.	Part VIII of the Resolution Plan deals with the Term, Implementation Schedule and Monitoring of the Resolution Plan

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<td><u>Reg. 38(3)</u> - Resolution Plan shall demonstrate:
a) it address the cause of default
b) it is feasible and viable
c) it has provisions for effective implementation
d) it has provisions for approval required and the timeline for the same
e) the resolution applicant has the capability to implement the resolution plan</td>
<td>Part V of the Resolution Plan which deals with the Business Plan of the Resolution addresses the operational Viability of the project and its capability to implement the Resolution plan</td>
</tr>
<tr>
<td><u>S. 30(2)(e)</u> - Does not contravene any of the provisions of the law for the time being in force</td>
<td>Clause 10 of Part VIII of the Resolution plan is an Undertaking by the Resolution Applicant wherein it has been stated that the Resolution Plan does not contravene any provisions of the law as required under Sec. 30(2)(e) of IBC, 2016</td>
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<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 7th meeting held on 18.11.2019 has approved the Resolution Plan in the following voting pattern;
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<tr><th>S. No</th><th>Name of Creditor</th><th>Ascent (%)</th><th>Dissent (%)</th></tr>
<tr><td>1.</td><td>SBI</td><td>56.31</td><td>-</td></tr>
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19. In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting on a appeal against the decision of the Committee of Creditors and this Authority is duty bound to follow the much celebrated Judgment of the Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank** *2019 SCC Online SC 257,* wherein in para 19 and 62 it is held as follows;

> "19.......In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).
>
> 62. ....In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the "commercial/business decision" of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count."

20. Further, the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steels –Vs– Satish Kumar**

Gupta & Ors. in *Civil Appeal No. 8766 – 67 of 2019* at para 42 has held as follows;

> 42. ....Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).

21. This Authority has done an extensive analysis of the Resolution Plan and the Resolution Applicant has not sought for any Relief and Concessions in the Resolution Plan. Further, the Liquidation Value of the Corporate Debtor as per Form H filed by the Resolution Professional is arrived at Rs.9,07,98,500/- and the Resolution Plan provides for an amount of Rs. 9.85 Crores payable to all the stakeholders (excluding Rs.0.50 Crores of CIRP costs), which is much more than the Liquidation value.

22. As to the 'Monitoring Committee', is concerned, as stated in the Resolution Plan, the Monitoring Committee shall consist of the following members;

(a) A representative or an advisor of the Financial Creditor (other than related party)

(b) A representation of the Resolution Applicant

(c) Resolution Professional

23. Thus the Resolution Plan, which is annexed with the Application, is hereby **approved** and is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 of IBC, 2016 shall not have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application if required in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Chennai.

24. The Resolution Professional is further directed to handover all records, premises / project sites / 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 / project sites / documents through Resolution Professional to finalise the further line of action required for starting of the operation. Accordingly, the Application stands **allowed**.

-SD-	-SD-
(ANIL KUMAR B)	**(R.VARADHARAJAN)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Raymond