

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

M.A. No. 3439 /2019

In

CP No. 1973/ 2018

Under section 30(6) of IBC, 2016

Mr. Nagalingam Muthiah

Resolution Professional

...Applicant

In the matter of

The Yashwant Co-Operative Bank Ltd.

&

The Chikhli Urban Co-Operative Bank Ltd

... Financial Creditors

Vs.

Simrut Foods & Hospitality Private Ltd.

... Corporate Debtor

Order delivered on: 13.11.2019

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble Shyam Babu Gautam, Member (T)

For the Applicant: Mr. S Raghunath, PCA

Per: Shyam Babu Gautam

Per: Bhaskara Pantula Mohan

ORDER

1. This is an Application filed by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016, read with Regulation 39(4) of the IBBI (Insolvency Resolution Process of Corporate Person) Regulations 2016, seeking approval of the Resolution Plan, as approved by the Committee of Creditors (CoC) in its 12th meeting held on 17.10.2019 with 100 % voting in favour of the Resolution Plan submitted by the Resolution Applicant.
2. The Corporate Debtor, Simrut Foods & Hospitality Private Ltd. was put under Insolvency Resolution Process by an order of this Tribunal dated

03.09.2019. Pursuant to the said order, Mr. Mr. Nagalingam Muthiah (hereinafter "Applicant"), having Registration No. IBBI/IPA-001/IP-P00774/2017-18/11347 was appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The said IRP issued Public Announcement inviting the claim from creditors on 21.09.2019.

3. Thereafter, the CoC appointed Applicant as the Resolution Professional, on their first meeting held on 17 October 2018 vide a unanimous resolution.
4. Subsequently, the RP appointed two Registered Valuers for valuating the assets of the Corporate Debtor namely Mr. Harshad Deshpande and M/s Kakode and Associates. The Applicant further submits that on 09.02.2019, the RP published Expression of Interest (EOI) in newspaper for inviting prospective bids from Applicants. Thereafter, average liquidation value of assets of the corporate debtor has been determined to be Rs. 1,19,785/-.
5. The Resolution Professional filed Miscellaneous Application No. 1327/2018 under Section 19(2) of IBC 2016 seeking directions of the Hon'ble Bench to the Promoter-Directors to cooperate with the RP in producing documents and records for conducting CIRP process and preparation of the Information Memorandum. RP had filed amended M.A. 1178/2019 under section 19(2) of IBC 2016 as per direction of the Hon'ble NCLT, which has been withdrawn as infructuous.
6. The Applicant further submits that the fourth CoC meeting was held on 08.03.2019, where the CoC members with 100% voting rights approved for filing an application for extension of the Corporate Insolvency Resolution Process (CIRP) by a period of 90 days. Subsequently, an application was allowed by this Bench on 14.03.2019.
7. The 6th meeting of the COC was held on 31.05.2019 during which it was informed to the COC that he has received One EOI, which was examined by the COC and accepted. After which COC authorized the Resolution Professional to issue the Information Memorandum and Request for Resolution Plan to the prospective applicant.
8. At the 7th COC meeting held on 11.06.2019, the COC examined the resolution plan submitted jointly by Mr. Eknath Walke and Mr. Goraksh Dalimbkar and deferred a decision on the said resolution plan.

However, during the 8th COC meeting held on 13.07.2019, the COC approved the said resolution plan unanimously.

9. During this one Sanidhya Industries LLP had filed an Application being MA No. 694/2019 before this Tribunal seeking directions against the Resolution Professional to consider the resolution plan of Sanidhya. Vide its order dated 11.09.2019, this tribunal directed the RP to examine the same and file the plan approved by the CoC.
10. Pursuant to the above, the Applicant received Resolution Plan from Sanidhya Industries LLP, the prospective Resolution Applicant and the same was discussed during the 9th CoC meeting held on 13.09.2019.
11. The CoC also considered letter dated 12th September 2019 from Mr. Eknath Walke and Mr. Goraksh Dalimbkar, another Resolution Applicant who had submitted their resolution plan earlier, requesting for a change in the schedule of payment of the upfront payment of Rs. 55,10,000/- as stated in their resolution plan which was approved by the CoC at its 8th meeting.
12. However, when Mr. Eknath Walke was called to attend the 10th COC meeting held on 21st September 2019, he failed to appear the meeting and also failed to tender the 1st instalment of their revised payment schedule. Therefore, in the same meeting, Sanidhya's resolution plan was discussed and unanimously approved by the COC.
13. Post the CoC approval, it was informed to the Applicant by the CoC that some changes were required to be made to the approved Resolution Plan based on their discussions with Sanidhya. Since the amended resolution plan was required to be approved by the CoC, the Applicant was requested to convene one more CoC meeting.
14. On 12.10.2019, the Amended the amended resolution plan submitted by Sanidhya was considered. The COC deferred its decision to approve the resolution plan till Monday, 14th October, 2019 and the resolution plan was finally approved by the COC vide their communication dated 14th October, 2019. A copy of the 11th COC meeting, along with the approval email and voting sheet of COC members and the approved Resolution Plan.
15. The proposed break up of payments to the Secured Financial Creditors under this Plan is as below:

| Sr. No. | Name of the Creditor | Amount Admitted | Voting Share | Settlement Amt. | Settlement % |
|---------|-------------------------------------|-----------------|--------------|--------------------|--------------|
| 1 | The Yashwant Coop Bank Limited | 59,33,467 | 8.61% | 49,00,000 | 82.58 |
| 2 | The Chikhli Urban Coop bank Limited | 6,29,47,072 | 91.39% | 5,09,00,000 | 80.86 |
| | | | | 5,58,00,000 | |

16. The Resolution Plan approved by the Committee of Creditors provides for the following payments to the stakeholders:

| Sr no | Particulars | Amount Admitted (INR Cr) | Settlement Value offered (INR Cr.) | Terms of Payment |
|-------|-----------------------------------|--------------------------|--|---|
| 1 | Corporate Insolvency Process Cost | At Actual | At Actual | To Be paid in full within 30 days from the Effective date |
| 2 | Secured Financial Creditors | 6,88,80,539 | Rs.5,58,00,000 /- (Rupees Five Crore Fifty-EightLakh only) inclusive of CIRP cost by an upfront payment. | To Be paid in full within 90 days from the Effective date |
| 3 | Other Financial Creditors | NIL | NIL | NIL |
| 4 | Operational Creditor | | | |
| A | Employee and Workmen | NIL | NIL | NIL |
| B | Other Operational Creditor | NIL | Nil | Nil |
| c | Other Creditors | NIL | NIL | NIL |

| | | | | |
|--|--|--------------|------------------------------------|--|
| | | TOTAL | Rs. 5,58,00,000/- | |
|--|--|--------------|------------------------------------|--|

17. CIRP Cost has been estimated at an amount of Rs.5,58,00,000/ (Rupees Five Crore Fifty-Eight Lakh Only) and in pursuance of the scheme of resolution as envisaged by the Code, the Resolution Plan provides for the payment of the CIRP Costs in priority over payments to any other creditors. Such payment would be made from the fresh funds infused by the Resolution Applicant within 30 days from the Effective Date. The details of the funds proposed to be infused by the Resolution Applicant. We understand that any cost for making application by the Resolution Professional under Sections 43, 45, 50, 66 of the Code, may be treated as part of CIRP costs up to a cap of Rs. 25 lacs duly netted off by any recoveries made in any such cases. Any recoveries pursuant to such applications, over and above Rs. 25 lacs shall be credited directly to the Financial Creditors and the Operational Creditor namely Sanidhya Industries LLP.

18. It is also submitted that, with the payment of the sum of Rs. 5,58,00,000/-, (inclusive of CIRP cost incurred) the Owners of the premises mortgaged as security for the credit facilities availed from Yashwant Co-operative Bank Limited and Chikali Urban Co-operative Bank Limited, and secured Financial Creditors, shall transfer and convey the said properties to the Resolution Applicant free of all encumbrances and third-party rights of whatsoever nature by signing as Confirming Parties in Tripartite Agreements.

For the purposes of clarity, the complete description of the premises to form part of the Tripartite Agreements with the names of their current owners is set out here in below:

| Sr. | Name of the Owner/ Mortgager/ | Description of the Property | Area In (Sq. MT.) approx. |
|-----|----------------------------------|--|--|
| 1 | Mrs. Megha Nitin Naik | Shop no 3 & 4 Shukrawar peth, Taluka- & Havel, Pune District | Shop no 3 is 28.80 Shop No. 4 is 28.80 along with Area of 2.78 below the staircase |

| | | | |
|---|---------------------------|--|---|
| 2 | Mrs. Megha Nitin Naik | Shop no 5 Shukrawar peth, Taluka- & | 28.80 Built up along with garden space of 21.36 |
| 3 | Mrs. Megha Nitin Naik | First Floor Office No. 104 & 105, Shukrawar peth, Taluka- Havel, Pune | Office no 104 & 15 admeasuring 44 |
| 4 | Mrs. Megha Nitin Naik | First Floor Office No. 107 & | 39.61 |
| 5 | Mr Nitin Chandrakant Naik | Third Floor Office No. 301 108, Shukrawar peth, Taluka- Havel, Pune District | 58.064, together with Terrance garden/premises admeasuring about 130.06 |

It is also submitted that the Financial Creditors shall be at liberty to proceed against the properties of the Promoters erstwhile Directors / Guarantors other than those mentioned above to recover their balance.

19. Herein, it is important to place reliance on Section 30 and Section 31 of the Code which provides as below:

“(1) A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.

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

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty six percent of voting share of the financial creditors.

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority”

Section 31 of the Code provides as below:

“(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),— (a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and (b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.”

20. It is also necessary to refer the provisions of Regulation 38 and 39 of CIRP Regulations to come to a conclusion that requirements of the Regulations are fulfilled and the same reads as below:

“Regulation 38 - Mandatory contents of the resolution plan:

(1) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.

(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.

(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.”

“Regulation 39 - Approval of resolution plan:

(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with

(a) an affidavit stating that it is eligible under section 29A to submit resolution plans;

(c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.

(1A) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.

(2) [The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him:-

(a) preferential transactions under section 43;

(b) undervalued transactions under section 45;

(c) extortionate credit transactions under section 50; and

(d) fraudulent transactions under section 66,

(3) The committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit: Provided that the committee shall record the reasons for approving or rejecting a resolution plan.]

(4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule.

(7) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.

(8) A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.

(9) No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.

(10) A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan."

21. As discussed supra by virtue of mandatory contents of resolution plan, the same is in accordance with Section 30 and 31 of the Code, and also complies with the requirement of the Regulations 38 and 39 of CIRP Regulations.
22. The management and control of Corporate Debtor shall be handed over to the Board of Directors of Resolution Applicant for proper running and operation of the plant of the Corporate Debtor subject to approval of Committee of Creditors and Adjudicating Authorities. Further the existing technical team of the other plants of the Resolution Applicant shall be involved for smooth overhauling, as well as restarting of the commercial operations of the plant. Further, Resolution Applicant shall do necessary compliance with MCA and other concerned and applicable authorities as per Applicable laws.
23. On and from Effective Date (herein Effective Date shall be the date on which this Resolution Plan is approved by this Tribunal), the Resolution Applicant shall take over the management control of the Company, including its business activities. While the implementation of the Resolution Plan and settlement of the creditors (as accepted herein the resolution plan) shall happen in parallel, the Resolution Applicant shall take over the as of the Effective Date. The Corporate Debtor shall continue to be given unfettered access to all its assets, on the same terms

and in the same manner as were in existence prior to the Insolvency Commencement Date.

24. The resolution applicant has sought certain reliefs and concessions in the resolution plan. The Applicant has sought a relief that in accordance with Section 238 of the Code, any action undertaken pursuant to the Resolution Plan by the Resolution Applicant will not require compliance with requirements under any other laws. The bench is not inclined to accept this prayer of the Resolution Applicant since there cannot be a blanket exemption provided contrary to any provisions of the law.
25. The Resolution Applicant has sought a restrain and prohibition of all adverse actions against the Corporate Debtor until the implementation of the Resolution Plan is full. We are not inclined to allow this prayer of the Resolution Applicant since we cannot provide a complete exemption of this type as sort by the Resolution Applicant against the Corporate Debtor.
26. It is directed that Mrs. Megha Nitin Naik and Mr. Nitin Chandrakant Naik, the owners of the premises as mentioned above and the Corporate Debtor, shall enter into Tripartite Agreements (with the Financial Creditors), for transfer of the premises (as mentioned in paragraph 18 of this Order) to the Resolution Applicant in compliance with the decision of CoC.
27. On perusal of the resolution plan, this Bench being satisfied with the repayment schedule to the creditors and the approval of resolution plan by the CoC with 100% voting, and seeing that the resolution plan has necessary provisions for its effective implementation, approves the resolution plan.
28. The Resolution Applicant in its resolution plan, has dealt with, interests of all stakeholders of the Corporate Debtor, including the Financial Creditors, the Operational Creditors and the CIRP cost.
29. The Resolution Applicant, on taking control of the Corporate Debtor, shall ensure compliance under all applicable law for the time being in force.
30. Given the above observations, we hereby approve the resolution plan, which shall be binding on the Corporate Debtor and its employees,

members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the resolution plan.

31. In view of the approval of the Resolution Plan as sought by the RP, this Bench hereby discharges the RP from duties of the RP by submitting all the records maintained by him to the Insolvency and Bankruptcy Board of India as provided under the Insolvency and Bankruptcy Code, 2016 and the regulations thereunder.

32. Accordingly, this MA No: 3439/2019 is hereby allowed by vacating the moratorium already granted at the time of admission of Company Petition No: 1973/2018.

Sd/-
Shyam Babu Gautam
Member (Technical)

Sd/-
Bhaskara Pantula Mohan
Member (Judicial)

(PT)