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IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No 1
IA/461(AHM)2021
in
CP(IB) 186 of 2020

Order under Section 30(6) of IBC

IN THE MATTER OF:

Mr. Chirag Rajendrakumar Shah,
RP of Khushiya Industries Pvt. Ltd.
V/s
Central Bank of India & Ors.

.....Applicant

.....Respondent

Order delivered on 14/10/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :
For the Respondent :

ORDER

The matter is fixed for pronouncement of order.

The order is pronounced in the open court vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Abhishek



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-II**

**IA 461/NCLT/AHM/2021
In
CP (IB) 186/NCLT/AHM/2020**

[An application under Section 30(6) & 31 of IBC, 2016 r.w. Regulation 39(4) of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 r.w. Rule 11 of NCLT Rules]

**Mr. Chirag Rajendrakumar Shah,
Resolution Professional of Khushiya Industries Pvt. Ltd.**

Having office at:

208, Ratnaraj Spring, Opp. HDFC Bank House,
Besides Navnirman Co-op Bank,
Navrangpura, Ahmedabad-380009.

.....Applicant

Versus

1. **Central Bank of India,
Mid Corporate Finance Branch,
1st Floor, Central Bank Building,
Lal Darwaja, Ahmedabad-380001.**

2. **Mr. Karan Rajendra Arya,
802, Saffron Building, Ambavadi,
Ahmedabad-380015.**

**Mr. Dalpatram Thakkar Gopaljibhai,
17, Chahat Bunglows, B/h Diamonds Society,
Deesa-385535.**

4. **Mr. Mehulkumar Thakkar Dalpatram,
17, Chahat Bunglows, B/h Diamonds Society,
Deesa-385535.**



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5. **Commissioner of Sales Tax,
Government of Gujarat,
The Sales Tax Officer(3),
Unit-35, Deesa, Mamlatdar Compound,
Nr. Sai Baba Bagicha,
Deesa-385535, Banaskantha.**
6. **Income Tax Department,
IT-Office, Udyog Bhawan,
Sector-11, Gandhinagar.**

....Respondents

**Order reserved on : 04.10.2021
Order pronounced On: 14.10.2021**

**Coram: MADAN B. GOSAVI, MEMBER (J)
VIRENDRA KUMAR GUPTA, MEMBER (T)**

Appearance:

For the Applicant : Advocate, Mr. Pratik Thakkar.

Suspended Management : Advocate, Mr. Harmish Shah.

ORDER

[PER: VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. This application is filed by Resolution Professional under Section 30(6) & 31 of IBC, 2016 r.w. Regulation 39(4) of the IBBI (Insolvency Resolution Process of Corporate Persons)

Regulations, 2016 r.w. Rule 11 of NCLT Rules (hereinafter referred to as "**IBC, 2016**") for approval of Resolution Plan of the Corporate Debtor.

2. The facts, in brief, are that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (in short "**CIRP**") by order of this Adjudicating Authority on 28.09.2020. Mr. Chirag Rajendrakumar Shah was appointed as Interim Resolution Professional (in short "**IRP**") who collated the claims and constituted the Committee of Creditors (in short "**COC**") consisting sole Secured Financial Creditor i.e. Central Bank of India, having voting share of 100%. COC in its 2nd meeting held on 05.12.2020 resolved to confirm the IRP as Resolution Professional. An auditor was also appointed. EOI was published on 07.12.2020. Thereafter, in 3rd COC meeting dated 22.01.2021 COC resolved to publish the EOI once again and liquidate the stock lying at the factory premises of the Corporate Debtor to Jilani Agro. As per resolution so passed by the COC, Form G was published on 25.01.2021.



In the 4th meeting of COC held on 22.03.2021, RP informed the COC that four EOIs were received from prospective Resolution Applicants, however, out of four only one i.e. Mr. Karan Arya (Respondent No. 2) submitted the resolution plan. In the meantime, negotiations took place between RP/COC and representative of Mr. Karan Arya with respect to revise the Resolution Plan. The COC also appointed transactional auditor for conducting transaction audit of the Corporate Debtor. Extension of 90 days beyond 180 days was granted by this Adjudicating Authority on 13.04.2021. COC in its 7th meeting held on 29.06.2021 unanimously (by 100% votes) resolved to approve the revised resolution plan submitted by Mr. Karan Arya.

3. The applicant has annexed the Form-H wherein the Fair Value and Liquidation Value are shown as Rs. 13,62,59,795/- and Rs. 8,48,14,443/- respectively.



4. It is submitted that the successful Resolution Applicant has provided performance security of an amount of 5% of the Resolution Plan being Rs. 44.15 Lakh.

- 6
5. The Successful Resolution Applicant has also filed an affidavit clarifying his eligibility to submit a resolution plan under Section 29A of IBC, 2016.
 6. It is submitted that the successful Resolution Applicant has already deposited the Earnest Money Deposit amounting to Rs. 25,00,000/- and the said amount was deposited into the bank account of the Corporate Debtor.
 7. Learned Counsel for the Applicant appeared and narrated the above facts. He drew our attention to the Resolution Plan in detail. Based upon the contents of the Plan, it was submitted that Resolution Plan approved by COC complies with all the requirements of Section 30(2) of IBC, 2016 and r.w. relevant regulations made there-under.
 8. The amount provided for the stakeholders under the Resolution Plan is as under:



Sr. No	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan#	Amount provided to the Amount Claimed

						d (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21	N.A.	N.A.	N.A.	N.A.
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	(i) N.A	(i) N.A	(i) N.A	(i) N.A
		(ii) who voted in favour of the resolution plan	(ii) 3408.71	(ii) 3408.71	(ii) 861.00	(ii) 25.26%
		Total [(a)+(b)]	3408.71	3408.71	861.00	25.26%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution plan	(i) NIL	(i) NIL	(i) NIL	(i) NIL
		(ii) who voted in favour of the resolution plan	(ii) NIL	(ii) NIL	(ii) NIL	(ii) NIL
		Total[(a)+(b)]	NIL	NIL	NIL	NIL
3	Operational Creditors	(a) Related party of the Corporate Debtor	N.A.	N.A.	N.A.	N.A.
		(b) Other than (a) above:				
		(i) Government of Gujarat (Commissioner of State Tax), Unit-35, Deesa	988.68	988.68	0.99	0.10%
		(ii) Workmen	No claim was received from workers.	No claim was received from workers.	N.A	N.A
		(iii) Employees	No claim was received	No claim was received	N.A	N.A



			from employees.	from workers.		
		(iv) Other Operational Creditors (who supplied goods or provided services)	584.16	584.16	0.58	0.10%
		Total[(a)+(b)]	1572.84	1572.84	1.57	0.10%
4	Other debts and dues		NIL	NIL	NIL	NIL
	Grand Total		4981.55	4981.55	862.57	25.36%

9. We have considered the submissions and perused the material available on record. It is noted that COC in its 7th meeting held on 29.06.2021 with 100% voting right approved the resolution plan submitted by Resolution Applicant. It is also noted that Resolution Applicant is not a related party of the Corporate Debtor. Resolution Applicant has also filed an affidavit dated 05.02.2021 regarding his eligibility to submit a resolution plan under Section 29A of IBC, 2016. Resolution Applicant has provided performance security of an amount of 5% of the Resolution Plan being Rs. 44.15 Lakh. We have also perused the contents of the resolution plan and all documents/compliances certificates as required under Section 30(2) of IBC, 2016 r.w. Regulations 36 to 39 of CIRP Regulations, 2016 which have



been placed on record. The Resolution Plan complies with all these provisions of IBC, 2016. The total admitted claims of all stakeholders stand at Rs. 49,81,55,000/- and Resolution Applicant has committed for payment to them at Rs. 8,62,57,000/- which amounts to 17.31% of total outstanding debt. The resolution plan also contains provisions for its effective implementation. The monitoring committee and supervisory committee as mentioned in the resolution plan shall be formed for effective implementation of the resolution plan. We as Adjudicating Authority are satisfied that the resolution plan so approved can be successfully implemented.

10. The Resolution Applicant has claimed various reliefs and concessions in the resolution plan. However, during the course of hearing, Resolution Applicant submitted a revised chart of reliefs and concessions which they are seeking and only reliefs and concessions as contained in this revised chart are being considered. We, further, make it clear that reliefs and concessions, as claimed by the Resolution



Applicant, are granted by us in the following manner and to this extent only:

- I. After the payment of the dues to the Secured Financial Creditors, Operational Creditors, as per the resolution plan all the liabilities of the said stakeholders shall stand permanently extinguished after the approval of the resolution plan. We further hold that other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;
- II. On the effective date, all claims of the suspended management, erstwhile directors, and erstwhile shareholders shall stand permanently extinguished;
- III. On the effective date and with effect from the appointed date, all encumbrances, security interest, liens and/or attachments created over the assets of the Corporate Debtor prior to the approval of



resolution plan shall stand permanently extinguished with the consent of concerned creditors and on completion of procedural formalities as provided in Companies Act, 2013;

- IV. For reliefs and concessions sought from the Government/Statutory Authorities, we direct the Resolution Applicant to approach the concerned Authorities who shall decide the issues including restoration of rights under the respective statutes;
- V. The Resolution Applicant shall be entitled to review, revise or terminate any appointments/agreements entered into by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements/MoUs/contracts;
- VI. The RP shall complete the accounting entries to give effect to the resolution plan in the Books of Account as per the applicable Accounting Standards and provisions of the Companies Act, 2013;
- VII. The management of the Corporate Debtor shall be handed over to the Board of Directors as may be



(12)

nominated by the Resolution Applicant for proper running operations of the business of the Corporate Debtor;

VIII. The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution;

IX. The Resolution Applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 or within such period as provided for in such law, whichever is later, as the case may be;



X. All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the resolution plan as regard to the restructuring of capital shall be binding on them. This order shall be treated as evidence of compliances of all formalities as may be

required in this regard under the provisions of the Companies Act, 2013;

- XI. On the effective date and with effect from the appointed date, the entire existing share capital of the Corporate Debtor shall stand extinguished without any payment (including any cancelled value of the said equity shares or preference shares) to shareholders of the Corporate Debtor holding such existing share capital. The Resolution Applicant would be entitled to issue new equity share capital in accordance with the provisions of Companies Act, 2013 r.w. rules and regulations made there-under.

11. Apart from the above observations and directions, it is further directed that:

- I. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- II. The order of moratorium dated 19.02.2020 passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this order.



(14)

III. Resolution Applicant in the Resolution Plan in Annexure-2 para 7 at page 65 has sought following direction which we allow:

All fuel supply agreement entered into by KIPL, shall be assigned to the Company on approval of this Resolution Plan pursuant to operation of Law and without requiring any act or deed either on part of the Applicant/Company.

IV. We further hold that avoidable transactions in the form of preferential or undervalued or extortionate credit and fraudulent transactions, if any, pending on the date of approval of plan shall be pursued by the Resolution Applicant and recovery proceeds, if any, shall be distributed among all stakeholders in terms of provisions of Section 53 of IBC, 2016.

V. All outstanding negotiable instruments issued by Company are on behalf of the Company, demand provisioning notes, post dated cheques and letter of credit shall stand terminated.

VI. All licences, permits etc and government approvals held by the Company, if expired or expiring during the



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implementation of the resolution plan, the Resolution Applicant may approach to the appropriate statutory authorities for the approval or grant, extension of licenses and appropriate authority shall consider the applications of Resolution Applicant/Corporate Debtor for aforesaid purpose as per the applicable provisions of law.

VII. As far as right of Financial Creditors against the personal guarantees/corporate guarantees in connection with the loan/debt obtained by Corporate Debtor is concerned, such guarantors shall be at liberty to pursue their rights independent of approval of resolution plan. We further make it clear that there will not be any right of subrogation of such guarantors qua Corporate Debtor.



VIII. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).

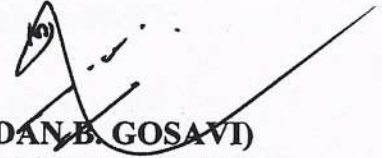
IX. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency

resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

12. Accordingly, IA 461 of 2021 in CP (IB) No. 186 of 2020 is allowed and stands disposed of in terms of the above directions.
13. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.




(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Abhishek

Certified to be True Copy of the Original


Assistant Registrar
NCLT, Ahmedabad Bench
Ahmedabad

26/10/21