IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A No. 391 of 2019 and
CP(IB) No.68/BB/2018
U/s 30(6) of the IBC, 2016
R/w Regulations 39(4) of IBBI(CIRP) Regulations, 2016

In the matter of:
Shri RadhakrishnanDharmarajan
Resolution Professional for M/s.Scotts Garments Limited
481-B, IV Phase, Peenya
Bangalore- 560 058 - Applicant/
Resolution Professional

Versus

1.State Bank of India
Streessed Assets Management Branch,
2nd Floor, Office Complex Building,
LHO Campus,
#65, St.Mark's Road
Bengaluru 560 001
Represented by the Assistant General
Manager and CLO, Mr.Vineet Vaish

2.IDBI Bank,
NPA Management Group,
IDBI House, 58, 2nd Floor
Mission Road,
Bangalore 560 027
Represented by the Deputy General - Respondents/
Dissent Financial Creditors

Date of Order : 16th September,2019

Coram:
1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Applicant/ Resolution Professional	:	Shri T.Ravichandran
For SBI & IDBI	:	Shri P.K.Shrikara & Ms.Lavanya B Annanth

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A No. 391 of 2019 in C.P(IB)No.68/BB/2018 is filed by Radhakrishnan Dharmarajan ('Applicant/Resolution Professional) for M/s.Scotts Garments Limited **(Corporate Debtor)** U/s 30(6) of IBC 2016(Code for short) and Regulation 39(4) of the IBBI(CIRP)Regulations , 2016 by inter alia seeking to approve the Resolution Plan for Scotts Garments Ltd (Modified), which was approved by Committee of Creditor(COC) in its 13th meeting held on 24th July, 2019 at Canara Bank Prime Corporate Branch, No. 25, M.G.Road, Bagalor with all consequential reliefs incidental thereto.

2. Brief facts of the case, which are relevant to the issue in question, are as follows:
   1) The Main Company Petition bearing C.P(IB) No.68/BB/2018 is filed by M/s. Saravana Distributors (Operational Creditor) U/s 9 of Code, R/w Rule 6 of I&B(AAA) Rules, 2016, by inter alia seeking to initiate CIRP against M/s Scotts Garments Ltd, the Corporate Debtor. Accordingly, the case was admitted on 13th August, 2018,

by initiating CIRP in respect of Corporate Debtor, by appointing IRP Shri N.Siva Kumar as Interim Resolution Professional (IRP), imposing moratorium etc. Subsequently, by an order dated 05.03.2019, the Adjudicating Authority appointed Shri. Radhakrishnan Dharmarajan as Resolution Professional, consequent to decision of CoC in the 4thCoC held on 23rd January, 2019.

2) In pursuance to the initiation of CIRP, Public Announcement was made on 16.09.2018. The first COC of Corporate Debtor was held on 12th October, 2018, wherein it is inter alia constituted CoC consisting of Canara Bank with 75.01 % share, SBI with 18.17 % share and IDBI with 6.82 % share. However, the claims of Financial Creditors are tentatively fixed subject to further scrutiny. During second COC held on 17th November, 2018, it is inter alia mentioned about Revised Claims of Financial Creditors in respect of Canara Bank and SBI and Operational Creditors. Since no viable Resolution Plan was received, the period of CIRP period was extended for further period of 90 days with effect from 12.02.2019 to 12.05.2019

3) Therefore, the CoC during the meeting held on 15.03.2019, decided to extend the timelines for submitting EOI and also directed the Resolution Professional to relax the evaluation criteria for submitting of Resolution plan, and accordingly the Resolution Professional has extended the date for submission of EOI to 08.04.2019. Therefore, the Resolution Professional received an EOI from one of the

prospective Resolution Applicant on 04.04.2019 and the prospective Resolution Applicant had requested additional time for submitting the Resolution Plan.

4) Since, the extended time of CIRP was too going to be completed on 12.05.2019, the CoC in the meeting held on 10.04.2019 has decided to seek exclusion of 75 days, from the statutory period, for the reasons stated therein. Accordingly, the RP filed IA No. 232 of 2019 by seeking exclusion of 75 days from 12.05.2019 until 27.07.2019.And the IA was disposed of by an order dated 17th May, 2019 by granting exclusions of time and thus period of CIRP is available upto 27.07.2019.

5) A total of 13 COC meetings were held to conclude the CIRP of the Corporate Debtor. The Resolution Applicant (RA) namely Lenin Art Private Limited has presented its Resolution Plan to the Resolution Professional and the same was placed before the CoC meeting held on 28.06.2019, and the CoC wanted the RA to improve its plan. Accordingly, Lenin Art Private Limited, who is qualified Resolution Applicant, has revised and submitted a Resolution Plan for Scotts Garments Ltd(Modified) by inter alia offering Rs. 223.41 Crores to revive the Company and to save the jobs of workmen, who at one time, were around 16,000, and gradually reduced to 4000 workmen, before the Company slipped into CIRP. The Resolution Plan inter alia envisages sale of the Corporate Debtor's processing unit/other non-core assets in some of the non-

core areas as identified, such as Tamilnadu and commercial premises in Mumbai. The Plan proposed to pay off the Creditors over a 32 months period as a maximum time and addresses all the stake holders.

6) The Resolution Plan in question was duly considered by the CoC their meetings held on 28.06.2019, 22.07.2019 and 24.07.2019. And finally Resolution Plan for Scotts Garments Ltd(Modified) placed before thirteenth Meeting (13) of COC held on 24.07.2019 for voting and the same was approved by the COC with 75.4% (Canara Bank) and the other two remaining dissenting Financial Creditors, namely SBI and IDBI, have voted against the plan with their voting power of 25.4%. The Resolution Plan approved, provides for overall resolution plan of Rs.223.42 Crores, Key Segments of the Plan are mentioned below:

- Plan provides for payment of CIRP cost in full as per Section 30(2)a
- Provides for Payment of Operational Creditors in line with Section 30(2) b, the plan proposes to pay Rs.5.94 Crores to the OC (based on the claims received of Rs.59.43 Crores against Rs.59.43 Crores of Trade payables) and this amount will be paid within thirty days from the date of receiving the approval from this Adjudicating Authority.
- Provides for Management for affairs of the Company Section 30(2)c

- Provides for Supervision of the Plan and comply with Section 30(2)c
- Provides for resolution of Workmen dues and employees
- Provides for resolution for other stakeholders.

7) The Financial Creditors made a total claim of Rs.567.04 Crores and plan proposed to pay Rs.160 Crores to the Financial Creditors (approximately 28%). With payment of Rs.130.93 Crores to Canara Bank and Rs.21.18 Crores to State Bank of India and Rs.7.89 Crores to IDBI. And Rs.5.94 Crores is proposed for Operational Creditors being 10% of the total claim of Rs.59.43 and the proposal is much higher than what they would have got in liquidation and under liquidation, they would get NIL. The Plan proposes to pay Rs.10 Crores to Workman and Employees as against their claim amount of 17.59 Crores. The Resolution Applicant has provided for nearly 57% of the claim admitted to this class, realizing that the livelihood of so many workers and employees are affected and to ensure that a reasonable justice is done to them and not struck with the 24 months proposed under Section 53 of the IBC Act, being a payment under liquidation. The Plan proposed to pay of Rs.11.69 Crores to PF against the principal dues as per the books of Rs.23.38 Crores being reasonably more than adequate considering that the PF is a right to living of the workers and employees and the RA is seeking of waiver of the balance payable as well as the interest, penal and

other damages levied by the various PF authorities of the Company. The RA has tried to do maximum justice to the right to earn and pension aspect of the workers and employees, however he is unable to meet all the liabilities to the defunct Corporate Debtor, though ideally its intent was to ensure that maximum justice to be provided to the Employees/Workman earnings.

8) The Resolution Professional has also filed Compliance Certificate dated 31.07.2019 in Form-H, as per Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by inter alia certifying that the Resolution plan in question has complies with all extant provisions of Code and Regulations made there under and does not contravene any of the provisions of the law for the time being in force and also filed an Affidavit as per Section 30(1) of the Code by confirming that Resolution Applicant is eligible under Section 29A of the Code.

3. The Application is opposed by SBI and IDBI, Applicants of IA No. 412 of 2019, by inter alia contending as follows:

1) As per the Resolution Plan submitted by the Resolution Applicant, which was placed before the CoC on 24.07.2019, i.e. the 12th Meeting of CoC, the original Resolution Plan provided for payment of Rs.176.92 Crores (i.e. Rs.160.00 Crores towards principal plus Rs.16.92 Crores towards interest) to the Financial Creditors as against their total

amount of Rs.567,04,00,000/-The Revised Resolution plan, the payment that was to be made towards the principal of the loan given by the Applicant No.1 was reduced from Rs.28,66,00,000/- to Rs.21,18,00,000/- and in respect of Applicant No.2 it was reduced from 10,68,00,000/- to Rs.7,89,00,000/- was made without any discussion or basis. Neither the Resolution Applicant nor the Resolution Professional has placed nay material on record to show the basis on which the admitted and secured claim/voting share is to be revised.

2) As per Regulation 14 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 the Resolution Professional is permitted to revise the amounts of the claims only if there is any additional information has become available to him. However, no such information has been provided to the CoC. The Applicant raised an objection regarding the above stated change in the Revised Resolution Plan. As recorded in the Minutes of the Proceedings of the 13th Meeting of the CoC, the Applicant submitted the Revised Resolution Plan envisages additional payments to Canara Bank for having first charge on the term loan. The Applicants submitted that their objections to the Resolution Professional by stating that there cannot be preferential treatment within its secured creditors as it goes against the scheme of the IBC and the Regulations that have been framed under the IBC.

3) They have relied upon the observation of the Resolution Professional passed on 28.07.2019 ("Impugned Order") which reads as under:

"RP, informed that, he is in concurrent with the views raised by the representatives of SBI and IDBI that there should be no preferential treatment on resolution payment within the same class of Financial Creditors, however he is not rejecting the plan due to the following reasons:

- *That today 24/07 being the last date for conducting a CoC and if the plan that is put in place is rejected, then this will put the Company into liquidation and life hood of the employees (16,000 at some point of time) is put on the blocks.*
- *That there are no Code and Regulations violations under the IBC in terms of compliance with Section 30(2), Regulation 38 or 39 and the distribution of proceeds within the Financial Creditors is a commercial decision, best left for the CoC to decide, rather than the RP to intervene and reject, thus RP recorded his stand that, though he is no personally in agreement with the differentials in allocation proposed within the same class of Financial Creditors, he is leaving the decision to the CoC to decide and thus he is not rejecting the plan and allowing the revised plan to be put for voting.*

4) They have contended that there is absolutely no basis or formula, has been provided in the Revised Resolution Plan to show as to how they have arrived as the reduced amount to be paid to them. Therefore, they have contended reduction of their voting share from 17.9% to 13.23% and from 6.7% to 4.93% are arbitrary and illegal and thus the impugned Resolution plan cannot be accepted, and it is liable to be set aside.

4. Heard Shri T.Ravichandran, learned Counsel for Resolution Professional, Shri P.K.Shrikara with Ms.Lavanya B, learned Counsel for State Bank of India and Shri Manik B.T, learned Counsel for Canara Bank. We have carefully perused the pleading of all the parties and extant provision of the Code, the Rules made there under and the law on the issue.

5. Regulations 37, 38 & 39 of IBBI (CIRP) Regulations, 2016 deals with requirements for approving Resolution plan and they are extracted below:

<u>Regulation 37 which reads as under :</u>

(1) A resolution plan may provide for the measures required for implementing it, 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; and*

j) *obtaining necessary approvals from the Central and State Governments and other authorities.*

Regulations 38 deals with Mandatory contents of the resolution plan which reads as under *. (1) A resolution plan shall identify specific sources of funds that will be used to pay the --*

(a) Insolvency resolution process costs and provides that the insolvency resolution process costs will be paid in priority to any other creditor;

(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

(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan. 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.

Regulation 39 deals with Approval of Resolution Plan: *which reads as under:*

(1) A resolution applicant shall endeavour to submit a resolution plan prepared in accordance with the Code and these Regulations to the resolution professional, thirty days before expiry of the maximum period permitted under section 12 for the completion of the corporate insolvency resolution process.

(2) The resolution professional shall present all resolution plans that meet the requirements of the Code and these Regulations to the committee for its consideration.

(3) The committee may approve any resolution plan with such modifications as it deems fit.

(4) The resolution professional shall submit the resolution plan approved by the committee to the Adjudicating Authority with the certification that:

(a) the contents of the resolution plan meet all the requirements of the Code and the Regulations; and

(b) the resolution plan has been approved by the committee.

(5) 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. 2 Inserted by Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016."

6. In the light of above statutory requirements, it is necessary to examine whether the Resolution plan in question has fulfilled the above conditions, in order to approve the same by the Adjudicating Authority.

7. As detailed supra, the Resolution Professional has conducted CIRP in question strictly in accordance with provisions Code and has taken steps for animation of assets and to see that Corporate Debtor is a going concern rather than to send it for liquidation. He has also Compliance Certificate in Form-H as per Regulation 39(4) of IBBI (IRP for Corporate Persons) Regulations 2016, by inter alia stating that Resolution Plan in question has complied with all the provisions of the I&BC 2016 (Code), the IBBI Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of

the law for the time being in force; it is eligible to submit Resolution under Section 29A of the Code; it has been approved by 75.4% of voting share of Financial Creditors after considering its feasibility and viability and over requirements specified by the CIRP Regulations etc.

8. The Resolution plan in question includes a statement under Regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations there under:

SL no.	Category of Stakeholders	Amount Claimed	Amount admitted	Amount provided under the Plan	Amount provided to the amount claimed (%)
1.	Dissenting secured financial creditors	139.05	139.05	29.07	20.91%
2.	Other secured financial creditor	426.47	426.47	130.93	30.7%
3.	Dissenting Unsecured Financial Creditors	0	0	0	0
4.	Other Unsecured Financial Creditors	1.52	1.52	0	0
5.	Operational Creditors	59.43	59.43	5.94	10%
	Government PF	30.84	23.38	11.69	37.90%
	Government- others	12.43	12.43	0	0
	Workmen	8.93	8.93	6	67%
	Employees	8.66	8.66	4	46.18%

	Other Debts and Dues	0	0	0	0
	Total	687.33	679.87	187.63	27.29%

9. The Resolution plan have offered 10% of the claim admitted for Operational Creditors basing on the assessment of the Liquidation value of the Corporate Debtor even though there is no value left for the Operational Creditors and the amount of Rs.5.94/- Crores will be paid to all Operational Creditors on *pro-rata* basis within 30 days of final sanction of resolution plan from Competent Authority. And Payment towards Statutory Dues – Statutory dues has been considered in two parts. i.e. Payment to Provident Fund (PF) and payment to other statutory bodies. **Clause 5 (F) of the Resolution plan deals with** Management and Control of the business of the Corporate Debtor, which reads as under:

"Management and control of the Corporate Debtor during resolution plan will vest with the Resolution Applicant who by virtue of deep domain expertise of the business will engage high class professionals in the key management positions such as production, marketing and sales, finance, accounts and compliances, and commercial functions, the MD & CEO under the new management would be Mr.Shitanshu BipinVora"

Clause 5 (G) deals with means for supervising implementation of resolution plan, which reads as under:

"The new management will form a committee represented by personnel from all key stakeholders to monitor and control the implementation of the Resolution plan. We propose the following personnel to be part of the supervising Committee:

- *Management of LAPL-*
  Mr.Shitanshu Bipin Vora (MD & CEO)
  Mr.ManishGoenka (Finance Head)
- *Representative/nominee from Financial Creditors – Canara bank (Lead Banker) to identify and nominate.*
- *Resolution Professional of the Corporate Debtor- Mr.Dharmarajan.*

The review mechanism shall be put in place from the date of approval of Resolution Plan from Competent Authority and shall conduct committee meetings on quarterly basis to review the progress of implementation of the Resolution Plan."

10. The Resolution Plan in question also contains time schedule as they proposed to complete all payment commitments within 32 months from date of sanction i.e. by 31st March, 2022, and with condonation upto 30 days (from 1st August, 2019).

11. So far as the dissenting Financial Creditors (SBI and IDBI) are concerned, their concerns are already duly considered during the COC and they are part of COC. And their share of voting as determined earlier is not changed. All Financial Creditors are treated alike as a class except for small term loan outstanding amount in question with Canara Bank, which has first charge on the fixed assets of Corporate Debtor and except this, the Resolution plan follow rights accrues basing

on *pari passu* charge for the other Financial Creditors. And SBI and IDBI, have jointly filed IA No. 412 of 2019, by questioning the Resolution Plan in question on the additional claim of Canara Bank. And this is rejected by separate orders dated 16th September, 2019. It is also to be noted that it is not necessary to accept a Resolution plan initially submitted and it would naturally undergoes various changes till ultimate Resolution plan is submitted to the Resolution Professional and then to COC for consideration. It is also to be mentioned that during First COC held on 12th February, 2018, it has inter alia constituted COC with Canara Bank (75.01%), SBI (18.17%) and IDBI (6.82%). And the perusal of COC, have disclosed that COC have considered revisions of claims of the respective parties and final percentage of members of COC is Canara Bank (75.4 %), SBI (17.9 %) and IDBI (6.7%) Therefore, there is no discrimination among the Financial Creditors as class.

12. It is also relevant to point out that Fair and Liquidation values of Corporate Debtor are Rs. 255 Crores and Rs.160 Crores respectively, whereas the Resolution Applicant made an offer for Rs. 223.41 Crores. Since the Resolution Applicant is pioneer in manufacturing and sale of linen yarn and it has proposed to manufacture and woven readymade garments from the existing facility with initial utilization levels of around 70% in first year (Operational for 8 months) ramping it with 90% gradually by using 6,600 machines of Corporate Debtor and promised to hire excising talent pool of Corporate Debtor, it will create employment potential.

13. Shri Radhakrishnan Dharmarajan, the Present Resolution Professional has resorted to dual standards contrary the provisions of Code and the Rules made there under and the law in conducting CIRP of Corporate Debtor. It is to be pointed here during 13th COC held on 24.07.2019, he has a taken stand to support the claim of dissenting Financial Creditors, namely, SBI and IDBI, while recommending the Resolution Plan in question to COC for voting. Therefore, SBI/IDBI, while relying on un-tenable stand of Resolution Professional, has filed IA No. 412 of 2019. On the contrary, he has filed a reply that the Resolution Plan in accordance with law. He has also filed Form-H Compliance Certificate dated 31.07.2019, by inter alia certifying the plan in question complies with extant law. It is also to be noted that the instant Application is filed in a casual way and not furnished required details as per law to assist the Adjudicating Authority. Therefore, The Resolution Applicant is also liberty to take suitable and qualified Resolution Professional in the place of present Resolution Professional in supervising Committee for implementation of Resolution Plan as mentioned in the Resolution Plan.

14. It is settled position of law, it is the prerogative of CoC to take a decision basing on Resolution plan(s) placed before them by Resolution Professional and the Adjudicating Authority do not normally have jurisdiction over commercial decisions taken by them unless those decisions are taken by COC, in total violations of substantial provisions of Code and the Rules made there under, and contrary to principles of natural justice in arbitrary manner.

15. In view of the above facts and circumstances of the case and the law on the issue, we are satisfied that the Resolution Plan submitted by Linen Art Private Limited, for M/s.Scotts Garments Ltd (Modified), which was approved by 13th Meetings of Committee of Creditors (COC) held on 24th July, 2019 meets the requirement as referred to in sub-section (2) of Section 30 of the Code and it cannot be rejected as urged by the dissent Financial Creditors. It is approved by the COC with 75.4% in accordance with law. Therefore, we are of the considered opinion that the Resolution Plan in question is a fit to be approved.

16. In the result, by exercising the powers conferred on the Adjudicating Authority under Section 31 of IBC, 2016, I.A No.391 of 2019 as well as main C.P(IB) No.68/BB/2018 are disposed of with the following directions:

(1) It is hereby approved the Resolution Plan submitted by Linen Art Private Limited(Resolution Applicant) for Scotts Garments Ltd (Modified), which was approved by 13th Meetings of Committee of Creditors (COC) held on 24th July, 2019 which was circulated on 28th July, 2019 declaring that the Resolution Plan will be binding on the Corporate Debtor and its employees, members, creditors, guarantors, and other stakeholders involved in the resolution plan.

(2) The moratoriums imposed vide order dated 13th August, 2018 passed in the Company Petition shall cease to have affect from the date of communication of the order.

(3) The Resolution Professional is directed to handover the management control all the assets, documents/records in physical and/ or digital form on an as is where is basis to the Resolution Applicant immediately, and the Resolution Professional will ceased to be Resolution Professional.

(4) The Resolution Professional shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

(5) The Resolution Applicant shall pursuant to the resolution plan approved under sub-section (1) obtain the necessary approval required under any law for the time being in force within a period of the one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later and also shall also obtain the approval of the Competition Commission of India, if it is applicable

(6) Since the Resolution Applicant is reviving the Corporate Debtor by utilizing the existing manufacturing facilities, which includes 6,600 machines of Corporate Debtor, We hereby directed the Resolution Applicant to engage the existing staff/workers of Corporate Debtor, however, subject to their fitness.

(7) The Resolution Applicant is at liberty to replace the existing Resolution Professional for the reasons stated supra with a most suitable and qualified Resolution

Professional to associate with them for supervising implementation of Resolution Plan in question.

(8) The Resolution Applicant is at liberty to file any miscellaneous application seeking for clarification, if any, in the implementation of the terms and conditions to the Resolution Plan.

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Raushan