IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA

MA/182/KOB/2020
in
IBA/08/KOB/2020

(Under Section 30(6) & 31 of IBC 2016)

Order delivered on: 18th December, 2020

CORAM

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)

Applicant

Vinod Padinhare Veetil, Resolution Professional
Delsea Exports Private Limited
660-1058, First Floor, Veekshanam Road,
Ernakulam North-682018.

In the matter of:

Team Foods represented by its Proprietor
K.A.Ismail Manoj, 23/684,
MC Road, Palluruthy, Kochi-682006.

Appearance: (through video conferencing)

For applicant - Shri Vinod Padinhare Veettil, RP

ORDER

This Miscellaneous Application has been filed by Mr. Vinod Padinhare Veetil, Resolution Professional in the matter of Team Foods V. Delsea Exports Private Limited u/s 30(6) and 31(1) of Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as 'I&B Code'] for approval of the Resolution Plan submitted by the Resolution Applicant M/s. Team Foods which has been approved by the Committee of Creditors of the Debtor Company viz. Delsea Exports Private Limited.

2. The Team Foods (hereinafter referred to as "Operational Creditor") filed an application No. IBA/08/KOB/2020 on 17.01.2020 before this Bench u/s 9 of the Insolvency and Bankruptcy Code (IBC), 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. Delsea Exports Private Limited [hereinafter referred to as "Corporate Debtor"]. The application was admitted by this Tribunal vide Order dated 09.03.2020 and Mr. Vinod Padinhare Veettil (Registration No. IBBI/IPA-002/IP N00203/2017-18/10657) was appointed as the Interim Resolution Professional (IRP). The CIRP period commenced thereafter.

3. The IRP, so appointed had initiated action towards commencement of CIRP as under: -

a. Public announcement of CIRP under Regulation 6 in Form A dated 13.03.2020 was made in two newspapers and invited claims from the financial / operational creditors and workers / employees of the Company in terms of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;
b. Constituted the Committee of Creditors (CoC) on the basis of the claims received by him under Regulation 17(1) with only one Secured Financial Creditor, the Federal Bank Limited;

c. Appointed two valuers to determine the liquidation value of the Corporate Debtor in accordance with Regulation 27 read with Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

4. It is stated that in the first meeting of CoC held on 02.06.2020 the members of CoC resolved to appoint the Interim Resolution Professional as Resolution Professional and the Interim Resolution Professional was appointed as Resolution Professional and communicated the same to this Bench in terms of Section 22(3)(a) of IBC, 2016.

5. In accordance with the provisions of the Insolvency & Bankruptcy Code, the CoC instructed the Resolution Professional to invite Expression of Interests (EoI's) from Prospective Resolution Applicant(s) (PRA's) who would submit Resolution Plans.

6. In accordance with that instructions, the RP published an advertisement in the Financial Express and Deshabhimani dated 15.07.2020 inviting EoI's from interested parties for submitting a Resolution Plan for the Corporate Debtor on or before 08.09.2020 and the same was also uploaded on the website of the IBBI in Form G. The last date of submission of the EOI was on 03.08.2020 and the submission of Resolution plan was on 08.09.2020. The eligibility criteria fixed by the CoC for submission of the Resolution Plan was as under: -

a. Minimum net worth of Rs.3,00,00,000/- as per the last audited accounts, which is not earlier than 31.03.2019.

b. The PRA shall provide a refundable deposit of Rs. 2,00.000/-

c. PRA(s) must be eligible to submit Resolution Plan in accordance with provision of Section 29A of Insolvency and Bankruptcy Code, 2016.

d. Successful PRA, whose resolution plan is approved by COC, shall,

within 7 (seven) days of issuance of the Letter of Intent by the Resolution Professional (on behalf of CoC). furnish an unconditional and irrevocable performance bank guarantee equal to 10% of the total consideration of resolution amount.

7. In response thereto, only one Expression of Interest (EOI) was received from Team Foods (Operational Creditor) represented by Mr. K.A. Ismail Manoj who expressed his interest for participation and a deposit of Rs. 49 lakhs was also received from the said Resolution Applicant. The Resolution Applicant was the Applicant/Operational Creditor who initiated the CIRP against the Corporate Debtor. The Resolution Applicant, submitted their binding Resolution Plan on 08.09.2020. Resolution Professional has examined the Resolution Plan and found that the Resolution Plan submitted by the Resolution Applicant satisfy the requirements under Section 30(2) and presented the Resolution Plan before the CoC in the 5th meeting of CoC held on 25.09.2020. There were suggestions by CoC on certain clauses of the Resolution Plan and they suggested some changes. The Resolution Applicant agreed for the changes suggested by CoC. Accordingly, the Resolution Applicant revised the Plan which was placed in the 6th CoC meeting held on

09.10.2020. The CoC considered the same and approved the revised Resolution Plan in 7th CoC meeting held on 23.10.2020 in compliance with Section 30(3) of I&B Code with 100% voting rights and M/s. Team Foods represented by Mr. K.A. Ismail Manoj became the Successful Resolution Applicant.

8. Pursuant to the approval of the CoC, Resolution Professional has issued letter of intent on 27.10.2020 to the Resolution Applicant to furnish the performance security required under Regulation 36 B(4A) by way of bank guarantee within 7 days. As an alternative to the bank guarantee, Resolution Applicant has deposited ₹49 lakhs to the account of the Corporate Debtor maintained by Resolution Professional and executed an irrevocable performance guarantee agreement with the Applicant.

9. It is stated that 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. Sub-Section (2) of Section 30 requires the following criteria for approval of the Resolution Plan:

a. provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor. (Section 30(2) (a))
b. Provides for payment to the operational creditor in a manner as prescribed by the Board (Section 30(2) (b)), which shall not be less than:

   (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

   (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

c. provides for management of the corporate debtor after approval of the resolution plan (Section 30(2)(c))
d. the implementation and supervision of the Resolution Plan (Section 30(2)(d))
e. does not contravene any provisions of the law. (Section 30(2)(e))
f. confirms to such other requirements as specified by the Board. Section 30(2) (f))

10 The Resolution Applicant has sought various concessions and exemptions in the Resolution Plan while approving the Resolution Plan by this Tribunal. The CoC observed that the concession sought are not violative of any provisions of the law and all the concession and exemptions sought to the extent as permissible under the Law. The concession sought by the Applicant are as under: -

a. Waiver from the levy of stamp duty and fees by the stamp authorities and Ministry of Corporate Affairs, applicable in relation to this Resolution Plan and its implementation, including issuance and transfer of new Equity Shares as permissible under the IBC code.
b. DELSEA and the Resolution Applicant shall be entitled to terminate, cancel or modify, as it deems appropriate, all existing contracts, which are entered into prior to the insolvency commencement date.
c. Waiver of tax liabilities, including interest, fine, penalty, etc, under the Income Tax Act, 1961 on DELSEA, Resolution Applicant and its shareholders on account of financial restructuring of the accounts of the DELSEA as proposed in the Resolution Plan including but not limited to liabilities under arising due to write back/write off of liabilities in if any in the books of accounts of DELSEA without any impact on brought forward loss / depreciation, pursuant to this Resolution Plan which are permissible under the Income Tax Act.
d. On and after the Effective Date, the Resolution Applicant shall be permitted to draw up the financial statements of DELSEA, for a period ending on the Effective Date (or any date closest to that date as may be practicable) in compliance with applicable accounting standards .and DELSEA

shall be permitted to carry out necessary write off of assets, creation of additional liability or expenses or write back of liability or provision (as the case may be) in the books of accounts of DELSEA as permissible under the prevailing law.

e. All license, permits, statutory order, approvals from Governmental Authorities or any statutory authorities/public utility services, whether lapsed, expired, revoked or terminated for non-compliance, shall be renewed/reinstated subject to the applicable laws, however reasonable time shall be granted to the DELSEA and its new management for such renewal/reinstatement or permission to operate the business of the Corporate Debtor. No license, permits or approvals shall be cancelled, withheld or terminated on account of CIRP of the Corporate Debtor/ noncompliance prior to the Effective Date, change in ownership / change in control of DELSEA.

f. All -non-compliances, breaches and defaults by DELSEA for the period prior to the Effective Date shall be deemed to be waived and no action will be taken against DELSEA for any breach, non-compliance, default committed prior to the effective date and no fine, interest, penalty or assessment shall be made and levied in relation to the said period , by any authority under Income Tax Act, Sales Tax Act, Customs Act, Central Excise & Customs Act, GST , FEMA, PF Act, RBI Act, ESI, Factory Act, Electricity department, Fire department, Pollution Department, Industries, Labor Department or any other department created by a Statute.

g. The Resolution Plan shall be binding on all creditors of DELSEA, irrespective of whether they filed claim or not and all legal proceedings against DELSEA in relation to claims by any creditors including all criminal proceedings, proceedings under Section 138 of the Negotiable Instruments Act, 1881 and proceedings under SARFAESI and RDDBFI, from the Effective Date shall stand terminated.

h. From the Effective Date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, in connection with DELSEA or affairs of DELSEA (including those initiated by Governmental and Statutory Authorities), pending or threatened, present or future in relation to any period prior to the Effective Date, or arising on account of implementation of this Resolution Plan shall stand withdrawn and dismissed, and all liabilities and obligations therefore, whether or not set out in the balance sheets of DELSEA or the profit and loss account statements of DELSEA will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to DELSEA or the Resolution Applicant..

i. Except to the extent of payments to be made to the Financial Creditors, Operational Creditors, Employees, Workmen and Other creditors including overnment/Statutory Authorities under the Resolution Plan, the Resolution Applicant and DELSEA shall have no liability towards any creditors with respect to any claims (as defined under the Code) relating in any manner to the period prior to the Effective Date.

j. Neither the Resolution Applicant nor DELSEA, nor their respective directors, officers and employees appointed as on or after the Effective Date shall be liable, prosecuted or made accountable for any violations, liabilities, penalties, interests on statutory payments and/ or fines with respect to or pursuant to any order of any Governmental Authority or on account of non-compliance of Applicable Laws by DELSEA for the default, breach or offence committed by DELSEA, its management or officers prior to the Effective Date.

11. The Resolution Plan submitted by the Resolution Applicant M/s. Team Foods represented by its proprietor K.A. Ismail Manoj is enclosed in its entirety for further reference, which is self-explanatory.

FINDINGS: -

12. This Tribunal heard the submissions made by the learned Resolution Professional, who appeared in person through video conferencing and had meticulously gone through the Resolution Plan submitted by M/s. Team Foods which satisfies the threshold approval by 60% voting right of the CoC as per rules. As per the CoC, the plan stands the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the Resolution Professional and the Resolution Applicant for making the Plan effective after approval by this Bench.

13. Further, in case of non-compliance of this order or withdrawal of Resolution Plan by the Resolution Applicant, the CoC shall forfeit the EMD amount of Rs.49 lakhs deposited by the Resolution Applicant.

14. It is ordered that the Resolution Plan 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 shall cease to have any effect henceforth. Thus, this Bench hereby discharges the RP from the duties of Resolution Professional and 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.

15. 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.

16. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

17. The Resolution Professional is further directed to handover all records, premises/factories/documents to Resolution Applicant to finalise further line of action required for starting their operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through

Resolution Professional to finalise further line of action required for starting the operation.

18. Given the above observations, this Tribunal **approves the Resolution plan submitted by M/s. Team Foods through its Proprietor Mr. K.A. Ismail Manoj**, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the Resolution Plan.Since the CoC stated that the concession sought by the Resolution Applicant as narrated above, are not violative of any provisions of the law and all of them are permissible under law, this Tribunal also approves the concession sought by the Resolution Applicant in the Resolution Plan which are as under:-

a. Waiver from the levy of stamp duty and fees by the stamp authorities and Ministry of Corporate Affairs, applicable in relation to this Resolution Plan and its implementation, including issuance and transfer of new Equity Shares as permissible under the IBC code.

b. DELSEA and the Resolution Applicant shall be entitled to terminate, cancel or modify, as it deems appropriate, all existing contracts, which are entered into prior to the insolvency commencement date.

c. Waiver of tax liabilities, including interest, fine, penalty, etc, under the Income Tax Act, 1961 on DELSEA, Resolution Applicant and its shareholders on account of financial restructuring of the accounts of the DELSEA as proposed in the Resolution Plan including but not limited to liabilities under arising due to write back/write off of liabilities in if any in the books of accounts of DELSEA without any impact on brought forward loss / depreciation, pursuant to this Resolution Plan which are permissible under the Income Tax Act.

d. On and after the Effective Date, the Resolution Applicant shall be permitted to draw up the financial statements of DELSEA, for a period ending on the Effective Date (or any date closest to that date as may be practicable) in compliance with applicable accounting standards .and DELSEA shall be permitted to carry out necessary write off of assets, creation of additional liability or expenses or write back of liability or provision (as the case may be) in the books of accounts of DELSEA as permissible under the prevailing law.

e. All license, permits, statutory order, approvals from Governmental Authorities or any statutory authorities/public utility services, whether lapsed, expired, revoked or terminated for non-compliance, shall be renewed/reinstated subject to the applicable laws, however reasonable time shall be granted to the DELSEA and its new management for such renewal/reinstatement or permission to operate the business of the Corporate Debtor. No license, permits or approvals shall be cancelled, withheld or terminated on account of CIRP of the Corporate Debtor/ noncompliance prior to the Effective Date, change in ownership / change in control of DELSEA.

f. All -non-compliances, breaches and defaults by DELSEA for the period prior to the Effective Date shall be deemed to be waived and no action will be taken against DELSEA for any breach, non-compliance, default committed prior to the effective date and no fine, interest, penalty or assessment shall be made and levied in relation to the said period , by any authority under Income Tax Act, Sales Tax Act, Customs Act, Central Excise & Customs Act, GST , FEMA, PF Act, RBI Act, ESI, Factory Act, Electricity department, Fire department, Pollution Department, Industries, Labor Department or any other department created by a Statute.

g. The Resolution Plan shall be binding on all creditors of DELSEA, irrespective of whether they filed claim or not and all legal proceedings against DELSEA in relation to claims by any creditors including all criminal proceedings, proceedings under Section 138 of the Negotiable Instruments Act, 1881 and proceedings under SARFAESI and RDDBFI, from the Effective Date shall stand terminated.

h. From the Effective Date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, in connection with DELSEA or affairs of DELSEA (including those initiated by Governmental and Statutory Authorities), pending or threatened, present or future in relation to any period prior to the Effective Date, or arising on account of implementation of this Resolution Plan shall stand withdrawn and dismissed, and all liabilities and obligations therefore, whether or not set out in the balance sheets of DELSEA or the profit and loss account statements of DELSEA will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to DELSEA or the Resolution Applicant..

i. Except to the extent of payments to be made to the Financial Creditors, Operational Creditors, Employees, Workmen and Other creditors including Government/Statutory Authorities under the Resolution Plan, the Resolution Applicant and DELSEA shall have no liability towards any creditors with respect to any claims (as defined under the Code) relating in any manner to the period prior to the Effective Date.

j. Neither the Resolution Applicant nor DELSEA, nor their respective directors, officers and employees appointed as on or after the Effective Date shall be liable, prosecuted or made accountable for any violations, liabilities, penalties, interests on statutory payments and/ or fines with respect to or pursuant to any order of any Governmental Authority or on account of non-compliance of Applicable Laws by DELSEA for the default, breach or offence committed by DELSEA, its management or officers prior to the Effective Date.

19. Accordingly, **MA No: 182/KOB/2020 is allowed** by vacating the moratorium already granted at the time of admission of IBA/08/KOB/2020, under Section 31(1) of I&B Code.

Dated this the 18th day of December 2020

Sd/-
(Ashok Kumar Borah)
Member (Judicial)

21.12.20 Radhakrishna Pillai VP

265/20 18/12/20
MA/182/KOB/2020 in IBA/8/KOB/2020
M/s. Vinod Padinchare Veetil
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