



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.01
IA-1413/2022
In
(IB)-46(ND)/2021

IN THE MATTER OF

IN THE MATTER OF:

M/s. VA REALCON PRIVATE LIMITED

..... Operational Creditor

Versus

M/s. TRANS GLOBE TEXTILES LIMITED

..... Corporate Debtor

AND IN THE MATTER OF IA-1413/2022:

Under Section 30(6) r/w Section 31 of IBC, 2016 r/w Regulation 39(4) of IBBI (CIRP Regulations), 2016

Mr. NAZIM KHAN

Resolution Professional of M/s. Trans Globe Textiles Limited

..... Applicant/Resolution Professional

Order pronounced on: 07.08.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets.

The **IA-1413/2022** which is for approval of the Resolution Plan is **allowed**.

SD/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

SD/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

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SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the RP : Mr. Nazim Khan in person

For the SRA : Mr. Kartikeya Singh, Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. Brief Facts of the Case

1.1 The present application has been filed by Mr. Nazim Khan, Resolution Professional ("RP") of M/s. Trans Globe Textiles Limited. ("Corporate Debtor") on 15.03.2022 under the provisions of Sections 30(6) read with Section 31 of



the Insolvency & Bankruptcy Code, 2016 (“the Code” or “IBC”) read with Regulation 39(4) of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) for approval of the Resolution Plan in respect of M/s. Trans Globe Textiles Limited. (“Corporate Debtor”) submitted by Respondent/Successful Resolution Applicant (“SRA”) namely M/s. NKS Holdings Private Limited.

1.2 This Adjudicating Authority vide order dated 25.10.2021 was pleased to admit the Company Petition IB-46(ND)/2021 filed by M/s. VA Realcon Private Limited (“Operational Creditor”), for initiating the CIRP under Section 9 of the Code against the Corporate Debtor and declared the moratorium and appointed the Applicant Mr. Nazim Khan as an Interim Resolution Professional. A copy of the admission order dated 25.10.2021 is filed along with the application.

2. Collation of claims by Resolution Professional

2.1 In terms of Section 13 and Section 15 of the Code, the Applicant/RP has submitted that the public announcement was published in two newspapers i.e. Financial Express (English Edition) and Jansatta (Hindi Edition) Delhi Edition on 28.10.2021 to invite the stakeholders for submission of their claims.

2.2 In response to the public announcement (publication of Form-A) made, the applicant constituted the Committee of Creditors (“CoC”). The Applicant also filed report certifying the Constitution of the CoC before this Adjudicating Authority on 12.11.2021. This Adjudicating Authority was pleased to take the same on record.

2.3 The First meeting of the CoC was held on 19.11.2021 wherein in terms of the provisions of Section 22(2) of the Insolvency and Bankruptcy Code, 2016, the CoC approved the appointment of the Interim Resolution Professional as a Resolution Professional along with other matters in First meeting of Committee of Creditors. The appointment of Applicant as Resolution Professional was also confirmed by this Adjudicating Authority



vide order dated 01.12.2021 upon an Application filed by Applicant on behalf of CoC members.

3. Evaluation and Voting

3.1 The Second meeting of the CoC was held on 27.12.2021 wherein the Applicant discussed the eligibility criteria pursuant to Section 25 (2) of the IBC, 2016 along with the Request for Resolution Plan (“RFRP”) and Evaluation Matrix. In pursuance thereof, the Applicant herein proposed the resolutions before the CoC and the same was passed by the CoC unanimously with 100% Voting rights. In the second CoC meeting the Applicant also proposed Form – G “Invitation for Expression of Interest” and the publication in the newspaper thereof. The CoC also passed the resolution for the same unanimously with 100% voting rights.

3.2 The Applicant in terms of Section 25(2)(h) of the Code read with Regulation 36(4) of the CIRP Regulations invited the Expression of Interest (“EoI”) for submissions of the Resolution Plans for the Corporate Debtor and the same were published in the newspaper on 28.12.2021. The last date for submission of EoI was 12.01.2022.

3.3 Further, pursuant to Regulation 36A (10) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the Resolution Professional issued the provisional list of prospective Resolution Applicants on 14.01.2022, which is as follows:

S.NO.	Prospective Resolution Applicants
1.	NKS Holdings Private Limited
2.	Shanti G.D. Ispat & Power Limited

The Applicant herein submitted that during the course of scrutiny, one prospective Resolution Applicant i.e., M/s. Shanti G.D. Ispat & Power Limited has not completed the requisite set of documents and payment of Earnest Money.



3.4 In pursuance of the Regulation 36B(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the Applicant issued the documents i.e. Request for Resolution Plan and Evaluation Matrix along with the Information Memorandum on 19.01.2022. In accordance with the Request for Resolution Plan, the Applicant received only one Resolution Plan under Regulation 36B(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 from the prospective Resolution Applicants namely: -

A) NKS Holdings Private Limited,

3.5 The third meeting of the CoC was held on 10.03.2022, wherein the Resolution Plan of M/s. NKS Holdings Private Limited was placed before COC members, accordingly, the following Resolution was put to vote and the e-voting facility was also given to the CoC members who were Absent in the third COC meeting and passed with 98.34% voting rights unanimously as under:

***“RESOLVED THAT** pursuant to Section 30(3) of the Insolvency and Bankruptcy Code, 2016 (IBC) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the resolution plan of NKS Holdings Private Limited be and is hereby approved by the COC.*

***RESOLVED FURTHER THAT** pursuant to the provisions of Section 30(6) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the Resolution Professional be and is hereby authorized to submit the Resolution Plan as approved by the Committee of Creditors to the Hon’ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto in connection with.”*

3.6 The details of members of the Coc and their voting percentage share are as follows:



S.No.	Name of the Creditor	Voting Share(%)	Voted for Resolution Plan
1.	VA Realcon Private Limited	90.29	Approved
2.	Solomon Holdings Pvt Limited	3.08	Approved
3.	DHSL Textiles (India) Limited	4.97	Approved
4.	Big Share Services Private Limited	0.51	Abstained
5.	Central Depository Services (India) Limited	0.17	Abstained
6.	National Securities Depository Limited	0.98	Abstained
	TOTAL	100	

4. Valuation of the Corporate Debtor

4.1 In terms of Regulation 27 of CIRP Regulations, the Applicant has submitted the fair and liquidation value of the Corporate Debtor is as follows:

FAIR VALUE	Rs. 46,858
LIQUIDATION VALUE	Rs. 46,858

5. Details of Resolution Plan/ Payment Schedule

The Resolution Applicant has to the extent possible, taken into account the interests of all stakeholders of the Corporate Debtor in the following manner:

5.1 The Applicant submitted that, Resolution Plan includes a statement under Regulation 38 (1A) of the CIRP Regulations, 2016 wherein it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder – As per Chapter 7 Clause 7.4 of Resolution Plan. The amounts provided for stakeholders under the Resolution Plan is as under: -

S No	Category of Stakeholders*	Sub-Category of Stakeholders	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Claimed %
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1.	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	NA	NA	NA	NA
		Total [(a)+(b)]	NA	NA	NA	NA
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	NA	NA	NA	NA
		Total [(a)+(b)]	NA	NA	NA	NA
3.	Operational Creditors	(a) Related Party of Corporate Debtor	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i) Government	NA	NA	NA	NA
		(ii) Workmen	NA	NA	NA	NA
		(iii) Employees	NA	NA	NA	NA
		(iv) Others	1,25,86,809.51	1,25,86,809.51	5,00,000	3.97%
		Total [(a)+(b)]	1,25,86,809.51	1,25,86,809.51	5,00,000	3.97%
4.	Other Debts and dues (related party)	NA	NA	NA	NA	
Grand Total			1,25,86,809.51	1,25,86,809.51	5,00,000	3.97%



5.2 The Resolution Plan size is Rs. 1,25,86,809/- (Rupees One Crore Twenty Five Lakh Eighty Six Thousand Eight Hundred and Nine Only). The Resolution Plan defines **“Effective Date”** which means the date on which this Resolution Plan is approved by this Adjudicating Authority under Section 31 of the Code.

6. Compliance of the Resolution Plan with various provisions:

6.1 The Compliance of the Resolution Plan is as under: -

Section of the Code/ Regulation No	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/ No)
Section 25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the Corporate Debtor?	Clause – 3.3	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit Resolution Plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Clause – 7.7	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Clause – 7.7	Yes
Section 30(2)	Whether the Resolution Plan- a.) Provides for the payment of insolvency resolution process costs?	Clause – 6.2.1	Yes
	b.) Provides for the payment to the Operational Creditors?	Clause – 6.6	Yes
	c.) Provides for the payment to the financial creditors who did not vote in favour of the Resolution Plan?	N.A.	N.A.
	d.) Provides for the management of the	Clause – 5.1 to 5.8	Yes



	affairs of the Corporate Debtor?		
	e.) Provides for the implementation and supervision of the resolution plan?	Clause – 4.22	Yes
	f.) Contravenes any of the provisions of the law for the time being in force?	Annexure VII	Yes
Section 30(4)	Whether the Resolution Plan a.) Is feasible and viable, according to the CoC?	COC voted for and approved after considering Plan.	Yes
	b.) has been approved by the CoC with 66% voting share?	Voted and approved with 98.34%	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Yes	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation of the Board?	No transaction of the nature covered under sections 43,45,50 or 66 of IB code.	Yes
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause – 6.6	No
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause – 6.1	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	Clause – 7.14	Yes
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-	Not Applicable	Yes



	implementation?		
Regulation 38(2)	Whether the Resolution Plan provides: a.) The term of the plan and its implementation schedule?	Clause – 4.23	Yes
	b.) For the management and control of the business of the corporate debtor during its term?	Chapter – 5	Yes
	c.) Adequate means for supervising its implementation?	Clause – 4.22	Yes
Regulation 38(3)	Whether the resolution plan demonstrates that – a.) It addresses the cause of default?	Clause – 7.11	Yes
	b.) It is feasible and viable?	Clause – 7.12	Yes
	c.) It has provisions for its effective implementation?	Clause – 7.13	Yes
	d.) It has provisions for approvals required and the timeline for the same?	Clause – 7.16	Yes
	e.) The resolution applicant has the capability to implement the resolution plan?	Clause – 7.14	Yes
Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No transaction of the nature covered U/s 43,45,50,66 of IB code.	NA
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Rs. 2,50,000 as per clause 1.8.3 of RFRF.	Yes



The Applicant/RP submits that the Successful Resolution Applicant is not disqualified under Section 29A of the Code to submit the Resolution Plan, as required by Regulation 39(1)(a) of the CIRP Regulations. A separate undertaking has also been submitted along with the EoI by the Successful Resolution Applicant, as mandated in terms of Regulation 39(1)(c) of the CIRP Regulations. The Applicant/RP has filed a Compliance Certificate in the prescribed Form, i.e., **Form-H** as per the amended Resolution Plan in compliance with Regulation 39(4) of the CIRP Regulations.

7. Details of proceedings by/against the Company/RP

7.1 The payment to creditors as envisaged under the Resolution Plan under all nature of cases filed by creditors against the Corporate Debtor, shall be made only after the withdrawal of pending litigation/ cases/proceedings against the Corporate Debtor. All the ongoing cases against the Corporate Debtor including but not limited to mentioned, shall be considered as settled without any payment. All investigations against the Corporate Debtor by any agency shall be stopped forever and cases to proceed any further without any liability on the Corporate Debtor/Resolution Applicant and no action shall be initiated against the Corporate Debtor/Resolution Applicant. All the ongoing arbitration proceedings against Corporate Debtor, known or unknown, or award, decree or execution of such decree as passed, such shall be considered as withdrawn. As per Information Memorandum and further information shared, there are undermentioned cases pending on behalf of the Corporate Debtor against the other parties. It is proposed that the Successful Resolution Applicant shall pursue legal/recovery proceedings against other parties and the entire amount recovered, if any shall belong to Corporate Debtor only and nothing will distribute.

8. Details on Management and Implementation as per the Resolution Plan

The Resolution Plan also provides details of management and control implementation and supervision of the Resolution Plan. The same is already set out in clause 5 at page 209 of the Resolution Plan.

9. Declarations and Undertakings



9.1 The Applicant has also placed on record declaration under 29 and 29 (A) of IBC and Regulation 36 (4) of CIRP Regulations.

9.2 The declaration to the effect that the Resolution plan is not in contravention of the provisions of the applicable laws is also placed on record.

9.3 Undertaking / Declaration of Resolution applicant for non-withdrawal of the Resolution Plan in case any relief and concession not granted by the Hon'ble NCLT is also annexed in the instant Application.

9.4 The Compliance Certificate in prescribed FORM H along with proof of payment of Rs. 2,50,000 towards performance security submitted by the Resolution Applicant was filed before this Adjudicating Authority within time limit.

9.5 IA-1413/ND/2022 for approval of the Resolution Plan was listed on 07.04.2022 wherein it was directed by this Adjudicating Authority to comply with the provisions of Section 79(2)(c) of the Income Tax Act, 1961 and to serve a notice to the Income Tax Department quantifying the amount of carry forward of losses claimed by way of Resolution Plan and in compliance of the said order, an additional affidavit was submitted by the Applicant on 29.04.2022. The matter was then listed on 10.05.2022 but there was no representation from the side of the Income Tax Department. The Income Tax Department has failed to file reply despite several opportunities, it is therefore presumed that the department has no objection to the Resolution Plan

10. Analysis & Findings

10.1 On hearing the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC in its 3rd meeting dated 10.03.2022 with 98.34% voting share. As per the CoC, the Plan meets the requirement of being a viable and feasible and for revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.

10.2 At this juncture, we rely upon the Judgement passed by the Hon'ble

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Supreme Court in the matter of “**Vallal RCK versus M/s Siva Industries and Holdings Limited and Others, Civil Appeal Nos. 1811-1812 of 2022**”

whereby the Hon’ble Apex Court has answered the question as to whether ‘**the adjudicating authority (NCLT) or the appellate authority (NCLAT) can sit in an appeal over the commercial wisdom of the Committee of Creditors (“CoC”) or not**’. We rely upon the following paragraphs:

“21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring the completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that Financial Creditors are fully informed about the viability of the Corporate Debtor and the feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed Resolution Plan and assessment made by their team of experts.”

A reference in this respect could be made to the judgments of this Court in the cases of “**K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.**

27. This Court has, time and again, emphasized the need or minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:**

.....



“95. However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC”

10.3 In light of the above-quoted judgements, it is clear that the **“Commercial wisdom of CoC”** is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC. The Resolution Plan of M/s. NKS Holdings Private Limited (Resolution Applicant) has been voted by the CoC unanimously in its 3rd (third) meeting dated 10.03.2022 with 98.34% voting share, this Adjudicating Authority cannot interfere in the same.

10.4 On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

10.5 The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly as per law. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to

do the same within one year as prescribed under section 31(4) of the Code.



10.6 In case of non-compliance of this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD amount of Rs. 5,00,000/- (Rupees Five Lakhs Only) already paid by the Resolution Applicant as well as the Performance Guarantee of Rs.10,00,000/- (Rupees Ten Lakhs Only).

10.7 The present application has been filed with bonafide means, in the interest of justice and to advance the objectives of the Code.

11. Orders

11.1 The **IA-1413/2022** which is for approval of the Resolution Plan is **allowed** and the Resolution Plan of Rs. 1,25,86,809/- (Rupees One Crore Twenty Five Lakh Eighty Six Thousand eight Hundred and nine only) is hereby **approved**. **The Resolution Plan shall form part of this Order.** Accordingly, **IA-1413/2022** stands disposed. The main Company Petition, i.e., **IB-46(ND)/2021** stands **disposed of** accordingly.

11.2 The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Corporate Debtor Company shall come into force with immediate effect.

11.3 The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.

11.4 The RP shall submit the records collected during the commencement of the proceedings to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

11.5 Liberty is hereby granted for moving appropriate application(s) if required in connection with the implementation of this Resolution Plan.

11.6 Copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.

11.7 The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined

upon him for implementation of the approved Resolution Plan.



11.8 The Resolution Professional is further directed to hand over all records, premises/factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalise the further course of action required for starting operations of the Corporate Debtor.

11.9 The Registry is hereby directed to send copies of the order forthwith to the IBBI, all the parties and their Ld. Counsel for information and for taking necessary steps.

11.10 File be consigned to the record.

No order as to costs.

SD/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**