IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT I, MUMBAI BENCH

MA 422/2019
IN
C.P. 241/30(6)/MB/2018

CORAM: SMT. SUCHITRA KANUPARTHI
MEMBER (J)
SHRI. V. NALLASENAPATHY
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 02.07.2020

NAME OF THE PARTIES: J.M. Financial Asset Reconstruction Company Ltd.

V/s

Maruti Cotex Ltd.

Section 30(6) of the Insolvency and Bankruptcy Code, 2016.

ORDER

2. MA 422/2019 IN CP 241/30(6)/MB/2018

Mr. Rohit Gupta, counsel for resolution applicant present. Ms. Anamika, counsel for resolution professional present.

Mr. Ashish Pyasi, counsel for unsuccessful resolution applicant who filed MA No. 624/2020, objecting the approval of resolution plan, now submits that they have subsequently withdrawn the said application on 09.06.2020.

MA 422/2019 allowed.

Sd/- **Sd/-**

V. NALLASENAPATHY
Member (Technical)

SUCHITRA KANUPARTHI
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT 1, MUMBAI BENCH

MA 422/2019 In C.P. (IB) 241/MB/2018

Under Section 30(6) of the Insolvency and Bankruptcy Code, 2016

Ms. Sujata Chattopadhyay

…Resolution Professional / Applicant

In the matter of:

JM Financial Asset Reconstruction Co Ltd ...Financial Creditor

V/s

Maruti Cotex Limited …Corporate Debtor

Order Delivered on 02.07.2020

Coram:

Hon'ble Member (Judicial) Smt. Suchitra Kanuparthi

Hon'ble Member (Technical)Shri V Nallasenapathy

For the Applicant: Mr. Gaurav Joshi, Senior Counsel a/w Mr, Nirav Parmar, Advocate, i/b Roshab Thackor, Advocate.

For Resolution Applicant : Mr. Ashish Kamat, i/b Vesta Legal.

For CoC : Mr. Rohit Gupta, Advocate, i/b V. Deshpande, Advocate

Per: V. Nallasenapathy, Member(Technical)

ORDER

1. This Miscellaneous Application (MA) No. 422/2020 is filed by Ms. Sujata Chattopadhyay**,** Applicant/ Resolution Professional, under section 30(6) of Insolvency and Bankruptcy Code, 2016 (the Code), seeking approval of the resolution plan by this Adjudicating Authority, as approved by the members of Committee of Creditors (CoC) with

100% voting share, for the resolution of the Corporate Debtor submitted by consortium of Shree Siddhivinayak Cotspin Pvt Ltd, Pradeep Mehta, Kiran Mehta, Rajesh Mehta and Mr. Atual Gantara (SSCPL Consortium).

2. This Adjudicating Authority by an order dated 8.5.2019, in C.P. (IB) 241/MB/2018, admitted a petition against the Corporate Debtor, Maruti Cotex Ltd under section 7 of Code and the applicant herein was appointed as the Interim Resolution professional. The CoC in its first meeting held on 7.6.2019 appointed the applicant as Resolution Professional.

3. Pursuant to the admission order passed by this Bench, the Interim Resolution Professional issued a Public Announcement as required under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016), vide Notice dated 11.5.2019.

4. In the first CoC meeting held on 7.6.2019, the applicant informed the CoC that she had received claims amounting to Rs.574.98 crores from the Financial Creditors and claims amounting to Rs.5.03 crores from the Operational Creditors.

5. On 8.4.2019, in terms of Regulation 27 of the CIRP Regulations, the RP appointed two Registered Valuers, namely B.K. C Advisors Pvt Ltd and GAA Advisory LLP to determine the fair value and liquidation value in accordance with Regulation 35 of the CIRP Regulations.

6. The Resolution Professional invited Expression of Interest (EoI) vide publication of Form G dated 22.7.2019 and the last date for submission of the EoIwas 6.8.2019. Pursuant to the said publication, the RP received nine EOIs and the applicant provided required documents to the Prospective Resolution Applicants (PRAs) . On the request of PRAs the last date for submission of the resolution plan was extended by 15 days to 15.10.2019, in view of the floods in Kolhapur where the factory of the Corporate Debtor is situated. Again on the request of some PRAs the last date for submission of the resolution plan was extended till 30.10.2019.

7. On the application moved by the applicant for extension of CIRP period by further 90 days, this Bench, vide order dated 7.11.2019 extended the CIRP period for the Corporate Debtor by 90 days.

8. It is submitted that two resolution plans were received, one from Shree Siddhivinayak Cotspin Pvt Ltd and other from a consortium comprising of Universal Cottex, Manibhadra Polycot and Starr Oxochem Pvt Ltd.

9. In the 8thCoC meeting held on 11.11.2019, the RP confirmed that both the plans were accompanied with an affidavit stating that the Resolution Applicants were eligible under Section 29A, the Resolution Plans were prepared on the basis of the Information Memorandum and fulfills all the requirements of section 30(2) of the Code.

10. The applicant submits that the Liquidation Value of the assets of the Corporate Debtor as ascertained by the two Valuers, i.e. GAA Advisory LLP and BKC Advisors Pvt Ltd was Rs.84.12 crores and Rs.92.01 crores respectively, with the average Liquidation Value being Rs.88.07 crores.

11. The CoC considered and deliberated on the two resolution plans submitted by the two resolution applicants in the meeting held on 11.11.19 and requested both the resolution applicants to improve the financial offer. Since the improved resolution plans of both the applicants were far less than the liquidation value, the CoC decided to issue a fresh invitation for EoI and accordingly EoI in Form G was published on 27.11.19 wherein the last date for submission of resolution plan was 12.1.2020.

12. In the 12thCoC meeting held on 13.1.2020, the RP informed that the Resolution Plans had been received from the following three Resolution Applicants before the deadline declared for the submission of Resolution Plans:

   1. Consortium formed by Shree Siddhivinayak Cotspin Pvt Ltd, Pradeep Mehta, Kiran Mehta and Rajesh Mehta and Mr. Atul Ganatra (SSCPL Consortium);
   2. Consortium of Universal Cottex, Manibhadra Polycot and Star Oxochem Pvt Ltd;

3. Consortium formed by Suraksha Asset Reconstruction Co Ltd and Manjeet Cotton Pvt Ltd.

13. In the 14th CoC meeting held on 27.1.2020, the CoC approved the resolution plan submitted by SSCPL consortiumwith 100% vote and the following resolution was passed:
"Resolved that the Resolution Plan submitted by the Consortium of Shree Siddhivinayak Cotspin Pvt Ltd, Pradeep Mehta, Kiran Mehta and Rajesh Mehta and Atul Sadashiv Ganatra, which provides for the payment of a total of Rs.77.11 crores, of which Rs.1.00 crore is payable towards CIRP cost, Rs.75.61 crore to the Secured Financial Creditors and Rs.0.50 crore to the Operational Creditors, the entire amount being payable upfront, i.e. within 50 days of the approval of the Resolution Plan by the Adjudicating Authority be and is hereby approved."Copy of the minutes of the 14th CoC meeting and the resolution plan is annexed with the application as Annexure P.

14. The summary of the payments proposed under the plan is as below:

Stakeholders	Amount admitted (Rs.)	As a % of total liability	Amount offered (Rs.)	Amount offered as a % of amount claimed	Timing
CIRP Cost (Provision)	1,00,00,000	0.17	1,00,00,000	100	On 50th day from Effective date
Employees and workmen dues	-	-	-	-	
Secured Financial Creditors	547,92,00,000	91.21	75,61,00,000	13.80	On 50th day from Effective Date
Operational Creditors	54,71,00,000	9.06	50,00,000	0.91	On 50th day from effective date (Priority)
Unsecured Financial Creditors	-	-	-	-	-
Any other contingent liability	-	-	-	-	-

15. It is submitted that the successful Resolution Applicant, SSCPL Consortium,has submitted an affidavit confirming that it is not prevented from submitting the resolution plan as a result of Section 29A of the Code.

16. A certificate, i.e. Form 'H' under Regulation 39(4) of the CIRP Regulations certifying that the resolution plan as approved by the CoC meets all the requirements of the Code and Regulations is also annexed with the application as Annexure Q.

17. The Resolution Plan proposes for appointment of Monitoring Agency for ensuring smooth implementation of the plan.

18. The Resolution Plan addresses the interests of all stakeholders.

19. Section 30 of the Code 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"

20. 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 confirm 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."

21. 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.

(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.

(6) 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.

(7) 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.

(8) 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."

22. 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.

23. The Resolution Applicant has sought certain reliefs and concessions in the resolution plan. This bench is not inclined to allow any of the said reliefs and concessions prayed by the Resolution Applicant. Therefore, the resolution applicant may apply to the relevant regulatory authorities for said reliefs and concessions and the relevant authorities may consider it as per relevant applicable laws.

24. The Resolution Applicant, on taking control of the Corporate Debtor, shall ensure compliance under all applicable laws for the time being in force.It is made clear that the resolution applicant shall takeover the Corporate Debtor with all its assets and liabilities as per terms of the approved Resolution Plan.

25. Given the above observations, we approve the resolution plan with modifications, as mentioned above, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the resolution plan.

26. The resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.

27. The Resolution Plan is approved as per indicated above, under section 31(1) of I&B Code. The MA 422/2020 is accordingly allowed and disposed of.

-Sd-	-Sd-
V. NALLASENAPATHY	SUCHITRA KANUPARTHI
Member (Technical)	Member (Judicial)