

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH- IV

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

IA/2941/ND/2021

IN

IB/1789/ND/2019

IN THE MATTER OF:

Canara Bank

...Financial Creditor

Versus

M/s Gopalsons Steels Pvt. Ltd.

...Corporate Debtor

AND IN THE MATTER OF:

Kanti Mohan Rustagi

...Resolution Professional

Coram:

SHRI. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 06.06.2022

ORDER

PER: SHRI DHARMINDER SINGH, MEMBER (JUDICIAL)

The present petition has been filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016, (the Code) on behalf of the Resolution Professional (RP), seeking approval of the Resolution Plan.

2. The facts mentioned in the Application in brief as follow:

- i. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor, M/s Gopalsons Steels Pvt. Ltd., vide order dated 20.01.2020 passed by this Adjudicating Authority, admitting the application under

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Section 9 of the Code filed by the Operational Creditor (OC) whereby the applicant was appointed as Interim Resolution Professional.

- ii. Thereafter, the first meeting was held on 17.02.2020 wherein the Applicant was confirmed as the Resolution Professional. The invitation for Expression of Interest (EOI) was first published in the Form-G on 14.07.2020 in Business Standard, English and Hindi (All over India) and In the Hindu, Tamil (In Chennai) and later own from Omega Bright Steels Pvt. Ltd. EOI was received on 28.07.2020. The provisional list was issued on 03.08.2020 where the name of OBSPL as Prospective Resolution Applicant (PRA) was stated. Further, Request for Resolution Plan (RFRP), Information Memorandum (IM) AND Evaluation Matrix (EM) was issued on 08.08.2021 to the PRA.
- iii. During the fifth CoC meeting it was held on 20.08.2020 proposing a Fresh From-G and the same was published on 04.09.2020. And in response to the same another EOI was received from Maktech Auto Pvt. Ltd. Henceforth, the provisional list was issued on 09.10.2020 with two PRAs. Subsequently Maktech Auto Pvt. Ltd. Withdrew from EOI. Meanwhile, in the 7th CoC meeting it was decided that the Form G to be re-published, accordingly the same was re-published on 29.12.2020.
- iv. Susequently, 9th CoC meeting was held on 20.02.2021 wherein the resolution plan submitted by OBSPL was unanimously rejected by the CoC. The CoC further passed a resolution for liquidation of the Corporate Debtor. Accordingly, the RP filed an application bearing IA. 1501/ND/2021 for liquidation of the Corporate Debtor.
- v. In the meantime, Omega Bright Pvt. Ltd. (Resolution Applicant) filed an Application bearing IA.NO. 1803/ND/2021 seeking directions to be issued to CoC for consideration of their resolution plan. The said application was allowed by the Adjudicating Authority vide order dated 16.04.2021 and directions were issued to CoC to open the plan of the proposed Resolution Applicant in the next meeting.
- vi. Further, in 10th CoC meeting the Resolution Plan submitted by OBSPL was opened and after various rounds of negotiations between the Resolution Applicant and the CoC the Resolution Plan dated 06.06.2021 was approved in the 13th CoC meeting held on 29.06.2021 by a 99.84% vote in its favour.

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- vii. It is submitted by the Applicant that the Successful Resolution Applicant has submitted an affidavit of eligibility under Section 29A of the Code.
- viii. Following is the payment plan as per the Resolution Plan:

Particulars	Upfront (Within 15 days from the Effective Date) (INR in Crore)	(Within 45 days from the Effective Date) (INR in Crore)	(Within 60 days from the Effective Date)	Total (INR in Crore)
CIRP Cost	0.90	-	-	0.90
Workmen & Employee	0.10	-	-	0.10
Financial Creditors	-	10.58	-	10.58
Operational Creditors (other than workmen and employees)	0.11	-	-	0.10
Additional Funds to meet contingent funds	0.01	-	-	0.01
Monitoring committee professional fee	0.00			0.00
Statutory Dues	-	-	-	-
Working Capital	-	-	2.50	2.50
Total	01.12	10.58	2.50	14.20

- xi. It is submitted that the applicant issued Letter of Intent ('LOI') to the successful Resolution Applicant on 02.07.2021 and the same was signed and shared with the Resolution Professional by the Resolution Applicant dated 09.07.2021.

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Furthermore, an amount of Rs. 5 Crore was deposited in the account of the Corporate Debtor dated 09.07.2021.

3. The ex-directors have raised the objection against the proposed Resolution Plan stating that the one-time settlement/resolution plan of the ex-management has not been considered by the CoC nor by the resolution professional.
4. We have heard the parties, perused the case records. It is to be mentioned that ex-management was offering good plan by depositing Rs. 13 Crore but to verify their bonafied intention they were directed to deposit Rs. 5 crore amount to Bank or Bank Guarantee with the same amount along with the Resolution Plan but they failed to perform the same. Hence, the intent of ex-management is just to prolong the matter on one pretext to another. Now again, the respondent is coming with the same offer and seeking 180 days to pay the amount. Taking into consideration, the previous conduct of the respondent/ex-management the matter cannot be stretched any more that too when already bank guarantee of Rs. 5 Crore has been given by Successful Resolution Applicant (SRA) and have plan of merely 45 days. Thus the offer given by the ex-management stands declined. Except that there is no other concrete objection qua the resolution plan submitted by the SRA.
5. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan, is approved by the CoC under Section 30(4) of the Code whether it meets the requirements as referred under Section 30 (2) of the Code. Section 30 (2) is quoted below:-

“(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 payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board 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, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.— For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.— For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

(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.

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Explanation- For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.”

6. Further, as per Regulation 38 of the CIRP Regulation, a Resolution Plan is required to contain a statement how it will deal with the interest of all the stakeholders including the Financial Creditors and the Operational Creditors and if these are sufficiently provided in the Resolution Plan, the Adjudicating Authority may approve the Resolution Plan.
7. In respect of the compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the Resolution Plan in clause 8.17 at page no. 356 which provided that the CIRP cost will be paid within 15 days of the effective date of the plan.
8. As regards compliance of Clause (b) of Section 30(2) of the Code, the Applicant has certified in Form-H of the Resolution Plan provides for the payment of the debts of the operational creditors 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.
9. In terms of Section 30(2) in case of any financial creditors dissents and does not approve the Resolution Plan, the dissenting secured financial creditors shall be paid in accordance with the Applicable law.
10. In terms of Section 30(2)(c), management of the affairs and control of the business of the Corporate Debtor has been provided in (Chapter XI at the page number 369) of the Resolution Plan.
11. The next requirement envisaged by Section (2)(d) for the implementation and supervision of the resolution plan. In this regard, (chapter X and clause 4 at page 365) of the resolution plan provides for the same.
12. Other conditions in terms of Section 30(2)(e)(f) of the Code provide to endure that the Resolution Plan does not contravene any of the provisions of the law and conform to such other requirements as may be specified by the Board.
13. Ld. Counsel appearing for the Resolution Applicant submitted that the Resolution Plan is as per the provisions contained in the code and so, the same may be approved. In terms of Regulation 39(4) of the CIRP Regulation, the Resolution Professional has filed compliance certificate in Form-H, which is annexed as Annexure 20 at page 401. Form-H, is duly certified by

Resolution Professional stating that the final Resolution Plan meets the requirements as laid down in various clauses of Section 30(2) of the Code.

14. As a sequel to aforesaid discussions, we are satisfied that all the requirement of Section 30(2) are fulfilled. In respect of compliances regarding CIRP Regulations especially Regulations 38 and 39, the Resolution Professional has certified in Form-H and explained in details that the Resolution Plan has complied with all the required Regulations.
15. For the reasons discussed above, in our considered view, the Resolution Plan fulfils the requirement as referred in Section 30(2) of the Code and there are sufficient provisions in the Plan for its effective implementation as required under the provisions of Section 31(1) of the Code. The Resolution Plan has been approved by CoC with the 99.84% favourable voting.
16. Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors, Civil Appeal No. 8766-67 of 2019**, vid its judgement dated 15.11.2019 has observed as follows:

“This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which to finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”

Thus, when the resolution plan has been thoroughly discussed between the members of CoC and they approve the same by given majority after determining the pro-cons, and there is no violation of the provisions of the code and the successful resolution applicant qualified the eligibility, then the wisdom of the committee of creditors, of course, prevails.

17. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby approve the Resolution Plan. In sequel of the aforesaid detailed discussion, we are hereby approving the present Resolution Plan submitted by the Successful Resolution Applicant OBSPL, with the following directions:

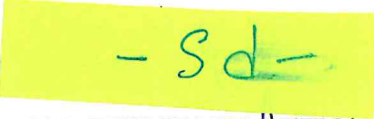
- i. The Resolution Applicant therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein and the same should not be against any provisions of the exiting law.
- ii. The moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.

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- iii. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code.
- iv. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- v. The Approved Resolution Plan shall be part of this order.

Let the Copy of the order be served to the parties.

File be consigned to records.


(SUMITA PURKAYASTHA)
MEMBER (T)


(DHARMINDER SINGH)
MEMBER (J)