IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-IV

I.A. 1219/ND/2022

IN

C.P. No. IB-1132/ND/2020

Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

M/S RELIABLE FINANCE CORPN PRIVATE LIMITED

....Operational Creditor

Vs.

M/S DHSL TEXTILES (INDIA) LIMITED.

...Corporate Debtor

AND

IN THE MATTER OF:

MOHD NAZIM KHAN

RESOLUTION PROFESSIONAL OF

DHSL TEXTILES (INDIA) LIMITED

.... Applicant

ORDER DELIVERED ON: 17.08.2022

CORAM:

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

SH. L.N GUPTA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: SH. DHARMINDER SINGH, MEMBER (JUDICIAL)

The present application has been filed under Section 30(6) read with Section 31 of the Insolvency & Bankruptcy Code, 2016, (the Code) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations')_on behalf of the Resolution Professional (RP), seeking approval of the Resolution Plan.

2. The facts as averred by the applicant in the application are stated in brief as follow:

a) The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor, M/s. DHSL Textiles (India) Ltd., vide order dated 04.10.2021 passed by this Adjudicating Authority, pursuant to an application filed by M/s. Reliable Finance Corporation Private Limited, under Section 9 of the Code and Mr. Mohd Nazim Khan was appointed as Interim Resolution Professional.

b) The applicant carried out a public announcement of initiation of CIRP on 06.10.2021. After collation of claims and determination of the financial position of the Corporate Debtor, a Committee of Creditors (CoC) was duly constituted by the Applicant on 22.10.2021. The first meeting was held on 29.10.2021, wherein the appointment of Mohd Nazim Khan was approved as the RP.

c) Thereafter the second meeting of CoC was held on 25.11.2021, wherein the eligibility criteria pursuant to Section 25 (2) of the IBC, 2016 along with the Request for Resolution Plan (RFRP) and Evaluation Matrix was discussed. In pursuance thereof, the erstwhile IRP proposed the resolutions before the COC and the same has been passed by the COC unanimously with 100% Voting rights.

d) Subsequently, Expression of Interest was published in prescribed Form G on 26.11.2021 in Pioneer English and Pioneer Hindi edition newspapers. The COC passed the

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resolution for the same unanimously with 100% voting rights.

e) The applicant in compliance of Regulation 36A(10) of the 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 21.12.2021 vide email dated 21.12.2021.

f) 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, Legend Infoways Private Limited

g) The applicant in compliance of Regulation 36A(12) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, had issued the final list of Prospective Resolution Applicants on 05.01.2022.

h) Further, in third meeting of the COC was held on 07.02.2022, wherein the facts regarding dishonour of cheque and after detailed discussion held between the Applicant and COC members, it was decided by the COC members to allow and enable the sole Resolution Applicant to redeposit the bid amount of INR 1,00,000. Further, it is submitted that the COC members also agreed not to open sealed Resolution Plan till the date of credit of bid amount. Therefore, after getting an opportunity, the sole Resolution Applicant redeposited the bid amount of INR 1,00,000

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(Rupees One Lac only) via NEFT on 16.02.2022 and thereafter, the Applicant opened the seal Resolution Plan and prepared the Due Diligence report.

i) In the fourth meeting of the COC held on 25.02.2022, wherein the Resolution Plan of M/s Legend Infoways Private Limited was placed before COC members, accordingly, the following Resolution was put to vote and passed with 98.61% voting rights.

j) It is submitted that the successful resolution applicant has submitted an undertaking under Regulation 39(1)(c) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP regulations) 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.

3. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code 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 payment of other debts of the corporate debtor;

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(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 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 purpose 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.

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of

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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.]"

4. Further, as per Regulation 38 of the CIRP Regulations, a Resolution Plan is required to contain a statement how it will deal with the interest of all the stakeholders including Financial Creditors and the Operational Creditors and if these are sufficiently provided in the Resolution Plan, the Adjudicating Authority may approve the Resolution Plan.

5. We have heard the parties and perused the case records. 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. From the averments made in the Application as well as in Form-H as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the applicant has issued a certificate and it is not necessary for this Tribunal to go into the same. However, this Tribunal is duty bound to examine the Resolution Plan vis-à-vis with the mandatory compliance under the Code and the compliance made under is captured hereunder.

6. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the Resolution Plan in clause 6.2.1 which provides that the CIRP costs shall be paid in priority to payments to financial creditors, operational creditors and other creditors contemplated in this Resolution Plan.

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7. As regards compliance of clause (b) of Section 30 (2) of the Code, it is seen that operational creditors are proposed to be paid Rs. 68,50,000/- out of total outstanding operational debt amounting Rs. 1,21,51,098.97/- which constitutes 55.13905 % of the total operational debt.

8. As regards compliance of clause (c) of Section 30 (2) of the Code, it is seen that the manner of the management of the affairs and control of the business of the Corporate Debtor has been provided in Clause 5.1 to 5.8 of the Resolution Plan.

9. As regards compliance of clause (d) of Section 30 (2) of the Code, it is seen that clause 4.22 of the Resolution Plan provide for the supervising and monitoring of the implementation of the resolution plan.

10. As regards compliance of clause (e) and clause (f) of Section 30 (2) of the Code, the successful resolution applicant has submitted declaration under Section 30(2)(e) and Section 30(2)(f) of the Code affirming that the Resolution Plan does not contravene any of the provisions of the law and conforms to such other requirements as may be specified by the Board.

11. As per Regulations 39(4) of the of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP regulations), the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid down in various clauses of Section 30 (2) of the Code.

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12. In sequel to aforesaid discussions, we are satisfied that all the requirements 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.

13. 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 proviso of Section 31 (1) of the Code. The Resolution Plan has been unanimously approved by CoC.

14. 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:

> ***"38. 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 is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants."***

15. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which is approved by the CoC i.e., by 98.61% voting.

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16. Resultantly, the present IA No. 1219/ND/2020 is hereby allowed with the following directions:

i. It is clarified that Section 30 (2) (f) of the Code mandates that the Resolution Plan should not be against any provisions of the existing law. 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.

ii. It is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.

iii. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor 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. The Approved Resolution Plan shall be part of this order.

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

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(L.N GUPTA) **(DHARMINDER SINGH)**
MEMBER (T) **MEMBER (J)**