NATIONAL COMPANY LAW TRIBUNAL, BENCH-V, NEW DELHI

(IB) 848 (ND)/2019; **IA 3786**/ND/2020

IN THE MATTER OF

INTERNATIONAL ASSET RECONSTRUCTION
COMPANY PRIVATE LIMITED
709, 7th floor, Ansal Bhawan, 16,
K.G. Marg, N Delhi-01 .....FINANCIAL CREDITOR

VERSUS

SWASTIC AQUA LIMITED
Plot F- 64/37, GF, L/P Village
Katwaria Sarai, N Delhi-16 ...... CORPORATE DEBTOR

AND

IN THE MATTER OF:
Pooja Bahry
Resolution Professional, Swastic Aqua Ltd,
59/27, Prabhat Road, New Rohtak Road
N Delhi, 110005 ....RESOLUTION PROFESSIONAL

AND

VRINDA SARAWGI & BINOD SARAWGI
.....RESOLUTION APPLICANT

SECTION: **30(6)** of IBC, 2016

Order delivered on:24.11.2020

CORAM:
MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)
MR. K.K. VOHRA, MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Abhishek Anand, Mr. Kunal Godhwani, Advs.
Ms. Pooja Bahry, Resolution Professional
For the Respondent: Ms. Vrinda, Resolution Applicant

ORDER

PER K.K. VOHRA, MEMBER (T)

1. The present petition has been filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016, (the Code) on behalf of the Resolution Professional (RP), seeking approval of Resolution Plan.
2. The facts mentioned in the application in brief are as follow:
   i. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor (CD), Swastic Aqua Limited, vide order dated 09.12.2019 passed by this Adjudicating Authority (AA), admitting the application under Section 7 of the Code filed by the Financial Creditor (FC) wherein the Applicant was appointed as Interim Resolution Professional (IRP).

   ii. The Applicant carried out public announcement on initiation of CIRP on 11.12.19. After collation of claims and determination of the financial position of the CD, a Committee of Creditors (CoC) was duly constituted by the Applicant with a sole FC.

   iii. During the first meeting held on 07.01.2020 (Page 61 of Application), CoC appointed the Applicant as the Resolution Professional (RP) for the CD.

   iv. During the third meeting of CoC held on 11.02.20, a decision to invite Expression of Interest (EOI) was taken. EOI was published in prescribed Form G on 19.02.20 in newspapers.

The last date for submission of EOI as per Form G was fixed as 05.03.2020 (Pg 79-84 of application). Accordingly, 5 EOIs (Pg 6), including EOI from the finally approved Resolution Applicant, were received. Evaluation criteria for Resolution Applicants is given on Page 6 of application.

v. Meanwhile due to Covid-19 pandemic, the government announced nationwide lockdown. Thereafter Regulation 40C was inserted in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016) (CIRP Regulations) w.e.f. 29.03.2020 extending time limit for completing CIRP.

vi. In the fourth meeting held on 13.03.2020, the CoC approved evaluation matrix and finalised Potential Resolution Applicants (PRA). RP then issued the Request for the plan to three PRAs, who had submitted their EOIs upon signing of confidentiality undertaking and asked them to submit resolution plans. The last date for submission of resolution plans was fixed for 20.04.2020 which was further extended till 15.06.2020 (Pg 11) and then till 05.07.2020 (Pg 111 and 128).

vii. Thereafter, the RP received (Pg 12) Plans from following two Resolution Applicants (RA), out of the three PRAs:

- Panchajanya Food Products Private Limited and Mr. Bhagwan Naidu.
- Mr. Binod Sarawgi and Mrs. Vrinda Sarawgi (shareholders/directors/promoters of CD).

viii. In the tenth meeting of CoC on 07.08.20 (Pg 191), the RP placed both the revised resolution plans and after evaluation, the CoC with 100% voting (Pg 200), approved the resolution plan dated 27.06.20 (read with addendum dated 04.08.20) submitted by Mr. Binod Sarawgi and Mrs. Vrinda Sarawgi (RA). Among other things, this Plan (submitted by the applicant in this case) was considered superior on account of upfront cash recovery to creditors as well as turnaround capabilities of the PRA (Pg 197).

ix. The RP also placed addendum made for the protection of interests of ex-employees, duly approved by CoC in 11th meeting held on 10.10.2020. The signed minutes of 11th meeting along with the addendum have been placed on record vide additional affidavit dated 17.10.2020 (Pg 10) in compliance of order dated 14.10.2020.

x. It is further stated that since the CD is a registered Micro, Small and Medium Enterprise (MSME), the RA is not ineligible under Section 29A of the Code in terms of Section 240A of the Code. An undertaking in this regard is at page 360.

xi. The RP, after approval of the resolution plan, issued Letter of Intent dated 07.08.2020 (pg 388) to the RA. Thereafter, the RA submitted unconditional acceptance (page 389) and deposited performance security of Rs 21,97,167 in terms of Regulation 36B (4A) of the CIRP Regulations, besides Rs 10 lakh, paid earlier, the Earnest Money Deposit (EMD) amount (page 22).

xii. As per RP, the Fair value of the CD is Rs 1,42,10,394 and the Liquidation value of CD is Rs 97,50,252 (page 366). Whereas the amount proposed in Resolution Plan is Rs 319.72 lakhs (page 359) which is higher than the Liquidation value. The sources of funds (sale of property) of RA are mentioned in clause 12.1 of the Resolution plan at page 231.

xiii. Therefore, the present application dated 29.08.2020 has been filed under Section 30(6), 31 and 60(5) of the Code seeking approval of this Adjudicating Authority (AA) for Resolution Plan approved by the CoC by 100% favourable voting. The CIRP process has been run by the Applicant to maximize the asset value of the CD. The approved Resolution Plan has been analysed by the CoC before approving the same.

xiv. Following is the payment plan (Pg 19) as of the Resolution Applicant:

Particulars	Amount (Rs lakh)
CIRP Cost	15
Secured FC	300
OC including government dues	4.72
Total	319.72

3. Copies of Approved Plan along with addendum and voting result with minutes have been placed on record. In course of the hearing, no one has opposed the Resolution Plan.

4. We have heard the parties and perused the case records.

5. In view of the Section 31 of the Code, the AA, 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;

(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) confirms 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 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. The provisions contained under Section 30 (2) Code shows that the RP shall examine the Resolution Plan on the points that:

    (i) the plan provides for the payment of insolvency resolution process costs.

    (ii) the plan provides for the payment of debts of operational creditors in the manner specified by the Board.

7. Therefore, at this juncture, we would like to refer Regulation 38 of CIRP Regulations and the same are quoted below: -

Regulation 38 - Mandatory contents of the resolution plan.

(1) The amount payable under a resolution plan –

(a) to the operational creditors shall be paid in priority over financial creditors; and

(b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.

(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.

(IB) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other

resolution plan approved by the Adjudicating Authority at any time in the past.

(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.

8. In view of the aforesaid Regulation, a Resolution Plan is required to contain a statement that how it will deal with the interest of the all stakeholders including Financial Creditor and the Operational Creditors and if these are sufficiently provided in the Resolution Plan then the AA may approve the Resolution Plan, if the AA is satisfied that the Resolution Plan has provisions for effective implementation.

9. 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 6.1 (page 222) that the payment of CIRP cost shall be in priority of all the claims. As regards compliance of clause (b) of Section 30 (2) of the Code, the RP has certified in Form H that clause 6.3.2 of the Resolution Plan (page 223) provides for the payment of the debts of 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 CD under Section 53.

10. In terms of Section 30 (2)(c), the Resolution Plan provides for management of affairs of the CD. The management of the affairs and control of the business of the CD has been provided at clause 20 (at page 242). The details of the experienced persons who will be in management of CD post acquisition of control by RA are given in Schedule 7.

11. The fourth requirement envisaged by Section 30 (2)(d) is that it must provide for the implementation and supervision of the Resolution Plan. In this regard clause 23 and 18.1 of Resolution Plan provide for Monitoring Committee (page 243). This Committee shall consist of a member of CoC and Nominees of RA and shall appoint RP to manage day to day affairs until full handover of assets of CD including business records, tax filings.

12. The fifth and sixth conditions in terms of Section 30 (2) (e) (f) of the Code provide to ensure 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. In this regard statement of compliances has been attached at Schedule 5 of the Resolution Plan (page 249).

13. Learned Counsel appearing for the Resolution Applicant submitted that the Resolution Plan submitted by him 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 Regulations, the RP has filed compliance certificate in Form-H which is annexed as Annexure-A-21 at page 365. It has been submitted in the application and in Form H duly certified

by RP 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 requirements of Section 30 (2) are fulfilled and no provision of the law for the time being in force appears to have been contravened. In respect of compliances regarding CIRP Regulations especially Regulations 38 and 39, it is seen that RP in its Form-H has certified and explained in details, from page 374 to 381 of the application, that the Resolution Plan has complied with the all the required Regulations.

15. For the reasons discussed above, in our considered view, the Resolution Plan fulfilled the requirement as referred in Section 30 (2) and there are sufficient provisions in the plan for its effective implementation as required under the proviso of Section 31 of the Code. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan.

16. Accordingly, we hereby **approve the Resolution Plan**, which was earlier approved by the CoC by the majority vote of 100%.

17. 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.

18. 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.

19. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its data base in terms of Section 31(3)(b) of the Code.

20. 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.

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

Sd/-

(K. K. VOHRA)
Member (T)

Sd/-

(ABNI RANJAN KUMAR SINHA)
Member (J)