

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT NO. II, SPECIAL BENCH**

**\*\*\* \*\***

*IA No. 3690 of 2019 in  
CP (IB) No. 1799/MB/2018*

**In the matter of an Application under Section 30 (6) of the  
Insolvency and Bankruptcy Code, 2016  
&  
In the matter of Sejal Glass Limited**

**Mr. Prashant Jain**

Resolution Professional

For Sejal Glass Limited

Registration No. IBBI/IPA-001/IP-P0136/2018-2019/12131.

... **Applicant**

**In the matter:-**

**Edelweiss Asset Reconstruction Co. Ltd.**

... **Financial Creditor**

**vs.**

**Sejal Glass Limited**

... **Corporate Debtor**

**Date of Order: 26.03.2021**

**CORAM:**

**Hon'ble Janab Mohammed Ajmal  
Member (Judicial)**

**Hon'ble Ravikumar Duraisamy  
Member (Technical)**

**Appearance:**

For the Applicant: Ms. Rubina Khan, Advocate

***Per: Janab Mohammed Ajmal, Hon'ble Member (Judicial)***

**ORDER**

The Resolution Professional (in short, the RP) of Sejal Glass Limited (the CD) seeks approval of the Resolution Plan (in short, the Plan) in this Application under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (in short, the Code) read with Regulation 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (in short, the Regulations).

2. The brief facts leading to the Application are as under.
  - i) This Authority vide its order dated 13.02.2019 directed initiation of Corporate Insolvency Resolution Process (CIRP) of the CD and appointed Mr. Rajendra Kumar Girdhar as the Interim Resolution Professional (IRP). The Committee of Creditors (CoC) in its second meeting held on 27.03.2019, resolved to appoint Mr. Prashant Jain, the present Applicant as the Resolution Professional (RP).
  - ii) The IRP engaged two registered valuers under Regulation 27 of the Regulations, to determine the fair and liquidation value of the CD in accordance with Regulation 35 of the Regulations. The CoC approved the process and evaluation criteria for evaluating a Plan in accordance with requirements of the Code. The notice seeking Expression of Interest (EoI) was published on 17.05.2019 in the Business Standard, all India Edition, in Navshakti Mumbai Edition and in Jandesh, Silvassa Edition. In response, two (2) Prospective Resolution Applicants (PRAs) furnished EoIs. Last date for submission of Plan was 18.07.2019. The Applicant received request to extend the last date for submission of the Plan. Accordingly, the Applicant sought approval from the CoC and extended

the time line for submission of the Plan till 05.08.2019. On submission of the Plans the CoC evaluated them.

iii) The term of the CIRP (180 days) was due to expire on 12.08.2019. The CoC in its sixth meeting on 07.08.2019 with majority of 77.04% voting share authorised the RP to seek extension of the period of CIRP by 90 days. This Authority by an order dated 26.08.2019 in IA No. 2755 of 2019 extended the period of CIRP by 90 days up to 10.10.2019. The seventh meeting of the CoC held on 16.08.2019 discussed the Plan submitted by Dilesh Roadlines Private Limited and requested them to enhance the bid value as the amount offered was much less than the liquidation value of the CD.

iv) The CoC decided to seek fresh EoI on 16.09.2019 and received two EoIs from (i) Dilesh Roadlines Private Limited jointly with Mr. Surji D. Chheda & Ms. Chhaya S. Chheda; and (ii) Marshal Vinimay Private Limited jointly with Mr. Aashish Karia. The Applicant made necessary observations and asked for the required modifications. The Applicant submitted that the financial offer made by the RAs were not satisfactory and requested them to revise their financial offer. The RAs submitted their revised Resolution Plans and the Applicant after examining both the plans, allotted scores to the Plans of the RAs. The CoC once again requested the RAs to improve upon their financial offer. The RAs however were not interested to revise their plans. Based on the scores allotted to each RA as per the evaluation matrix, Dilesh Roadlines Private Limited jointly with Mr. Surji D. Chheda & Ms. Chhaya S. Chheda were declared as the highest bidder. The RA once again presented the Resolution Plan before the CoC and the CoC negotiated

the Plan. The RA informed the CoC that the Plan cannot be further improved. The Applicant made certain observations and the same were modified by the RA. The Plan submitted by RA namely Dilish Roadlines Private Limited jointly with Mr. Surji D. Chheda & Ms. Chhaya S. Chheda was placed before the CoC in its 12<sup>th</sup> meeting on 06.11.2019. The CoC considered the same and with 73.15% voting in favour, approved the Plan.

v) The Applicant submitted that the Compliance Certificate in Form-H under Regulation 39(4) of the Regulations showing the compliances of the Plan as mandatorily required under the Code and Regulations and that the Plan had been approved by the CoC.

vi) The following is the summary of the payment schedule as per the Resolution Plan:

(INR in crores)

| <b>Sr. No.</b> | <b>Particulars</b>            | <b>Resolution Debt (Rs in Crores)</b> | <b>Final Resolution Amount</b> | <b>Upfront payment within 30 days</b> |
|----------------|-------------------------------|---------------------------------------|--------------------------------|---------------------------------------|
| 1              | CIRP Costs                    | 1.00                                  | 1.00 Crore                     | 1.00 Crore                            |
| 2.             | Secured Financial Creditors   | 65.79                                 | 25.90 Crores                   | 6.09 Crores                           |
| 3.             | Unsecured Financial Creditors | 50.33                                 | 1.26 Crores                    | 1.26 Crores                           |
| 4              | Employees/Workmen             | 0.82                                  | 1.25 Lakhs                     | 1.25 Lakhs                            |
| 5.             | Operational Creditors         | 7.26                                  | 0.15 Lakhs                     | 0.14 Lakhs                            |

|    |                       |              |                         |                         |
|----|-----------------------|--------------|-------------------------|-------------------------|
| 6. | Statutory Liabilities | 25.50        | 0.51 Lakhs              | 0.51<br>Lakhs           |
|    | <b>Total</b>          | <b>150.7</b> | <b>30.07<br/>Crores</b> | <b>10.25<br/>Crores</b> |

vii) It is also submitted by the Applicant that the RA has proposed to raise funds by way of sale of the Non-Core Assets of the CD at about Rs. 12 Crores from which Rs. 6 Crores to be paid within 9 months from the date of the approval of the Resolution Plan and another Rs. 6 Crores within 15 months from the date of the approval of the Resolution Plan. An amount of Rs. 7.81 Crores shall be infused/raised within 21 months from the date of approval of the Resolution Plan towards the balance payment to the Secured Financial Creditors. A further amount of Rs. 5 Crores would be infused/raised towards the working Capital of the CD.

viii) This Bench had sought query for sources of funds of the Resolution Applicant to be infused in the Corporate Debtor especially in respect of stated Rs. 7.81 Crores as above. The Counsel for the Applicant filed an Additional Affidavit dated 08.01.2021 clarifying the query. On perusal of the Audited Financial Statement as on 31.03.2020 the net worth of the Resolution Applicant Dilesh Roadlines Private Limited is Rs. 56 crores and non-current investments of Rs. 19.44 crores (market value of which is Rs. 125 crores). Further as per the provisional Financial Statement as on 30.09.2020 the net worth of the Resolution Applicant has increased to Rs. 168 crores as the Resolution Applicant had encashed its non-core assets at market value and Non-current investments are worth Rs. 113 crores. The clarification is acceptable.

3. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.
  
4. Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such 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 - For the purpose of this section –

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and

(ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

- 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.

5. Section 30 (4) of the Code reads as follows:

“(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, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.”

6. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.
  
7. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
  - a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
  - b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
  - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
  - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
  - e) The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code.

8. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through two registered valuers. The Liquidation value is Rs. 28.57 Crore and the Resolution Plan offers more than the average liquidation value.
9. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations. The Plan also provides for keeping the Company as a going concern and operate in its normal course of business upon implementation of Resolution Plan. No objection has been filed by any other person in this regard.
10. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of the Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.

Upon perusal of the approved Resolution plan, the Bench has observed that out of Rs.150.70 crores of total Debt amount to various creditors, stakeholders the SRA proposed to pay Rs 30.07 crores as the Final Resolution Amount i.e. approx. 20% of the total Resolution debt amount. Even out of this Rs 12 crores will be generated through sale of assets of Non-Core Business of the CD thereby the SRA will bring in only Rs 18 crores i.e 12% of the total outstanding Resolution Debt amount or approx. 60% of the Resolution Plan value. In case the SRA could not realise, monetise the said amount of Rs 12 crores, how the shortfall will

be met, alternate funding mechanism (time frame within which period the said amount will be paid) etc, are not provided in the CoC approved plan. However, the CoC after exercising its commercial wisdom approved the Resolution plan with requisite majority. The Resolution Plan has been approved by the CoC in the 12<sup>th</sup> meeting held on 09.11.2019 with 73.15% votes.

11. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No. 10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
12. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the

Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

*“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

13. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

### **ORDER**

The Application IA No. 3690 of 2019 in CP 1799 of 2019 be and the same is allowed. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

- i. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State

Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.
- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.

- vi. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

**Sd/-  
JANAB MOHAMMED AJMAL  
MEMBER JUDICIAL**

**Sd/-  
RAVUKUMAR DURAISAMY  
MEMBER TECHNICAL**

**Date: 26.03.2021**