



IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.146

IA/428(AHM)2021 in CP(IB) 175 of 2018

Proceedings under Section 30 IBC,2016

IN THE MATTER OF:

Prawincharan P dawry RP of Swastic Cercon Ltd
V/s
COC of Swastic Ceracon Ltd & Ors

.....Applicant

.....Respondent

Order delivered on ..20/06/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**MADAN B GOSAVI
MEMBER (JUDICIAL)**



**EFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
AHMEDABAD BENCH
COURT-I**

**IA/428(AHM)2021
in
CP(IB) 175 of 2018**

[An application under Section 9 of the Insolvency and Bankruptcy Code, 2016]

**In the matter of:
M/s. True Value Paper Co.**

....Operational Creditor

Versus

Swastik Ceracon Limited

....Corporate Debtor

[An application under Section 30 of the Insolvency and Bankruptcy Code, 2016]

**In the matter between:
Mr. Prawincharan P. Dwary,
Resolution Professional of
M/s. Swastik Ceracon Limited (in CIRP),
Having office at:
407, Akchhat Tower, Pakwan Cross Road,
S.G. Highway, Bodakdev,
Ahmedabad – 380015, Gujarat**

.....Applicant

Versus

- 1. Committee of Creditors of
M/s. Swastik Ceracon Limited (in CIRP)**
 - (a) Bank of Baroda (Erstwhile Dena Bank)**
Corporate Business Branch, 2nd Floor,
Dena Laxmi Building, 188-A, Ashram Road,
Navrangpura, Ahmedabad
 - (b) State Bank of India**
Stresses Assets Management Branch,
2nd Floor, Paramsiddhi Complex,



Opp. V.S. Hospital, Near Ellisbridge,
Ahmedabad – 380006

(c) Indain Overseas Bank,

ARM Branch, G. Floor,
Sharad Shopping Center,
Chinubhai Tower, Ashram Road,
Ahmedabad – 380009

(d) Religare Finvest Ltd.

2nd, Floor, Rajlok Building, 24,
Nehru Place, New Delhi – 110019

(e) Mehsana Urban Co. Op. Bank,

Main Branch, Urban Bank Road,
Mehsana – 384001

(f) Edelweiss Retail Finance Ltd,

Edelweiss House, Off C.S.T. Road,
Kalina, Mumbai – 400070

(g) Pegasus Assets Reconstruction Pvt. Ltd.

55-56, 5th Floor, Free Press House,
Nariman Point, Mumbai – 400021

(h) Reliance Commercial Finance Limited,

Reliance Centre, 6th Floor, South Wing,
Opp. Western Express Highway,
Santacruz (East), Mumbai – 400055

2. Ajita Sil-Chem Pvt. Ltd.,

[Successful Resolution applicant]
Registered Office at,
1323, Paliyad Village, Kalol Road,
Kalol, Gujarat – 382735

**3. Suspended Management of
M/s. Swastik Ceracon Ltd. (in CIRP)**

(a) Mr. Girishkumar Patel

21, Sharnam-7, Opp- Chandan Party Plot,
RamdevNagar, Satellite, Ahmedabad,
Gujarat – 380015

(b) Mr. Jigarkumar Patel

AT & Post-Nava Revastal, Idar, Savarkantha
Nava Revas, Gujarat – 383450

(c) Mr. Pankaj Patel

8, Rudravanbunglows, Near Someshwar Park,
Gulab Tower, Thaltej, Ahmedabad,
Gujarat-380054

....Respondents



Order Reserved on: 30.05.2022
Order pronounced on: 20.06.2022

Coram: MADAN B. GOSAVI (MEMBER JUDICIAL)
KAUSHALENDRA KUMAR SINGH (MEMBER TECHNICAL)

Appearance:

For the RP: Mr. Pratik Thakkar, Mr. Hemang
M Shah, Advocates

For the Resolution Applicant: Mr. Tirth Nayak, Advocate

For the Respondent: Mr. Rasesh Parikh, for R-2 & 3,
Mr. Parth Shah, Advocates

For the CoC: Mr. Jaimin Dave, Advocate

ORDER

[Per: MADAN. B. GOSAVI, MEMBER (J)]

1. This application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) is filed by Mr. Prawinchandran P. Dwary -Resolution Professional of the Corporate Debtor – M/s. Swastik Ceracon Limited for approval of the resolution plan submitted by M/s. Ajita Sil-Chem Pvt. Ltd.

2. On 15.01.2019, the Corporate Debtor was admitted in the Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”). Shri Ravi Kapoor was appointed as Interim Resolution Professional (IRP). On 30.01.2019 the IRP made a public announcement of the CIRP of the Corporate Debtor and called upon its creditors to submit claims with requisite proofs. He collated the claims. On 20.02.2019 the IRP formed the Committee of Creditors (in short “**COC**”) consisting of the following Financial Creditors having voting percentage right stated below:

- i. Bank of Baroda (erstwhile Dena Bank), having 16.05% voting share
- ii. State Bank of India, having 21.65% voting share



- iii. Indian Overseas Bank, having 21.13% voting share
- iv. Pegasus Assets Reconstruction Pvt. Ltd., having 27.72% voting share
- v. The Mehsana Urban Cooperative Bank Ltd., having 9.90% voting share
- vi. Edelweiss Asset Reconstruction Company Ltd., having 2.49% voting share.
- vii. Reliance Commercial Finance Limited, having 1.06% voting share.
- viii. The first COC meeting was held on 02.03.2019 wherein the appointment of IRP was confirmed as the RP. It was approved by this Adjudicating Authority also.

3. On 11.04.2019, the RP published Form-G in widely circulated English as well as in Vernacular newspaper calling upon the prospective resolution applicants to submit Expression of Interests/resolution plans on the basis of the Information Memorandum of the assets and liabilities of the Corporate Debtor. On 02.08.2019, the CIRP period of 90 days was extended by this Adjudicating Authority as per the request of the COC (in IA 457 of 2019).

4. The RP and COC did not receive any plan, worth to be accepted, the COC directed the RP to republish Form-G calling upon the EOI/resolution plan afresh. On 13.07.2019, Form-G was again published.

5. It is seen from the record that RP received resolution plans from three resolution applicants i.e., (i) M/s. Gabon Seramik Pvt. Ltd., (ii) M/s. Thirdeye Tradelink Pvt. Ltd and others, and (iii) M/s. Ajita Sil-Chem Pvt. Ltd. All the plans were discussed and deliberated by the COC. In the 9th meeting of the COC held on 05.02.2020, the COC approved the resolution plan submitted by M/s. Gabon Seramik Pvt.



Ltd. by 90.44% votes. Accordingly, the RP had filed an application, bearing no. IA No. 722 of 2019 for approval of that resolution plan.

6. Unsuccessful resolution applicant-M/s. Thirdeye Tradelink Pvt. Ltd. filed an application, bearing no. IA 97 of 2020 objecting to the approval of the resolution plan of M/s. Gabon Seramik Pvt. Ltd. on the ground that the resolution applicant is a related party of the Corporate Debtor and, hence, is ineligible to submit the resolution plan under Section 29A of the IBC, 2016. This Adjudicating Authority directed the RP to place the objection of the unsuccessful resolution applicant before the COC. The COC considered that application and decided to withdraw IA No. 722 of 2019 which was filed for approval of the resolution plan of M/s. Gabon Seramik Pvt. Ltd. IA No. 722 of 2019 was allowed to be withdrawn and disposed of.

7. This Adjudicating Authority felt that there were chances of resolution of insolvency of the Corporate Debtor. Hence, instead of passing the order of liquidation at once, directed the COC and RP to consider the remaining two resolution plans pending before them including the resolution plan of unsuccessful resolution applicant-M/s. Thirdeye Tradelink Pvt. Ltd. Since some CIRP period was wasted in the above litigation that period stand excluded from the CIRP period. On 05.05.2021, the COC approved the resolution plan of M/s. Ajita Sil-Chem Pvt. Ltd. by the requisite majority. The same resolution is submitted for our approval with this application.

8. We issued a notice of this application to the Suspended Management of the Corporate Debtor and Income Tax Department but none of them came forward objecting to the resolution plan. Unsuccessful resolution applicant-M/s. Thirdeye Tradelink Pvt. Ltd. again filed an application, bearing no. IA/847(AHM)2021 objecting to the approval of the resolution plan of M/s. Ajita Sil-Chem Pvt. Ltd. on the ground that it is also a related party of the Corporate Debtor. That



application was heard on merit at length and rejected by us vide separate order being passed today itself.

9. The liquidation value and the fair value of the Corporate Debtor are reported at Rs. 58.78 crores and Rs. 118.50 crores respectively. The resolution applicant of M/s. Ajita Sil-Chem Pvt. Ltd. has proposed to pay a sum of Rs. 51 crores within 360 days from the effective date against full and final payment for all the liabilities of a Corporate Debtor.

10. We now take up the resolution plan of M/s. Ajita Sil-Chem Pvt. Ltd. for examining the same in view of provisions of Section 30(2) of the IBC, 2016.

11. Section 30(2)(a) requires that the resolution plan shall provide for the payment of the CIRP costs in priority to the payment of other debts of the Corporate Debtor. Upon going through the plan, we noted that a sum of Rs. 25 Lakh is provided to meet out the expenses towards the CIRP costs. We hold that provisions of Section 30(2)(a) are complied with.

12. As far as the claims of Operational Creditors are concerned, it is stated that considering the liquidation value of the assets of the Corporate Debtor being Rs. 58.78 crores, and considering the claims of Financial Creditors, Secured Creditors etc., the Operational Creditor will not get anything as per Waterfall Mechanism stated under Section 53 of the IBC, 2016. But at the same time, the amount of Rs. 2.44 lakh is kept aside (i.e., 0.10% of the total admitted claim), for paying debts of the Operational Creditor. In view thereof we hold that this complies with provisions of Section 30(2)(b) of the IBC, 2016

13. In Part-K of the resolution plan (at page-86) proposal for management and control of the business of the Corporate Debtor is given. As provided therein, there shall be the Monitoring Committee



consisting of the resolution professional, a representative of the secured financial creditors, one representative of the resolution applicant, and one representative of the de-merged company for Unit No. 3. This committee will manage the affairs of the Corporate Debtor after approval of the resolution plan and pending its implementation. It is further stated in Para-M of the resolution plan that the Monitoring Committee as stated above, shall supervise the implementation schedule of the resolution plan. With this, we hold that the provisions of Section 30(2)(c) and Section 32(2)(d) of the IBC, 2016 are complied with.

14. The RP has certified that the resolution plan does not contravene any provisions of law for the time being in force. On examination of the resolution plan, we also find that the resolution plan does not contravene any provisions of law. We also hold that the resolution plan is in compliance with the provisions stated in Regulations 38 and 39 of the IBBI (CIRP of the Corporate Person) Regulations, 2016, and the interests of all stakeholders are taken care of. The term of the plan is also stated. Hence, we see no reason to reject this resolution plan on any grounds.

15. As far as reliefs and concessions claimed by the resolution applicant, the law has been well settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021*** in the following words:

- I. “The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.



II. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief..."

16. In view of the above, we hold that the resolution applicant cannot be saddled with any previous claim against the Corporate Debtor prior to initiation of its CIRP. For the permits, licenses, leases, or any other statutory right vested in the Corporate Debtor shall remain with the Corporate Debtor and for the continuation of such statutory rights, the resolution applicant has to approach the concerned statutory authorities under relevant laws.

17. With these directions, we approve the resolution plan submitted by M/s. Ajita Sil-Chem Privat Limited and proceed to pass the following orders:

ORDER

- I. Application is allowed.
- II. The resolution plan of M/s. Ajita Sil-Chem Private Limited for Corporate Debtor i.e., M/s. Swastik Ceracon Ltd. stands allowed as per Section 30(6) of the IBC, 2016.
- III. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- IV. The order of moratorium dated 15.01.2019 passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this order.



- V. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).
- VI. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database
- VII. Accordingly, IA/428(AHM)2021 in CP(IB) 175 of 2018 is allowed and stands disposed of in terms of the above directions.
- VIII. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
MADAN B. GOSAVI
MEMBER (JUDICIAL)

Rajeev Kr. Sen/Stenographer