NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

PRESENT: HON'BLE SHRI K. ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 28.11.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA NO. 190/2018 in CP(IB) NO. 148/10/HDB/2017
NAME OF THE COMPANY	AGP Steels Pvt Ltd
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	10 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

B. Naga Bhushan RP 9849995678 nagabhushan@gmail.com bnagabhushan@yahoo.com

ORDER

Order pronounce in open court. Resolution plan approved. IA 190/2018 is disposed vide separate order.

MEMBER JUDICIAL

Rk

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA NO.190/2018
IN
CP(IB) No.148/10/HDB/2017

In the matter of AGP Steels Private Limited

AGP Steels Private Limited,
#203, Second floor,
Amarchand Sharma Complex,
Sardar Patel Road, Secunderabad- 500 003,
Telangana.

...Corporate Debtor

And

B.Naga Bhushan
(Resolution Professional for AGP Steels Private Limited)

...Applicant

Date of Order: .11.2018

Parties/Counsel present:

For Applicant: B.Naga Bhushan, RP

Per: K. Anantha Padmanabha Swamy, Member Judicial

ORDER

1. That the instant Application is being filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016('IBC') read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("Regulations") by the

Resolution Professional (RP) seeking acceptance of the Resolution plan, which has been approved by the Committee of Creditors representing 100% share of the Committee of Creditors voting in favour of the resolution, by the Hon'ble NCLT, Hyderabad and seeking directions for completion of Insolvency Resolution Process of the Corporate Debtor.

2. After the Corporate Insolvency Resolution Process was initiated, after several rounds of discussions, the financial creditor has agreed for a hair cut in the amount payable as a part of resolution process. The Financial Creditor has offered to accept the loan outstanding at Rs.265.70 lacs as against Rs.287.47 lacs which includes unapplied interest of Rs.63.56 lacs as on the commencement of Corporate Insolvency Resolution Process (21.09.2017.). The Financial Creditor has relented for waiver of interest plus bank charges amounting in all to Rs.42.05 lacs. The financial creditor has agreed for the amount of Rs.265.70 lacs provided the same is paid as under:

- 5% of Rs.265.70 lacs i.e. Rs.13,28,500/- to be paid upfront.
- Rs.86,71,500/- within one month from the date of the letter offer of the bank.
- Balance to be paid in nine months i.e., before 03.12.2018. In case the payment is made within three months, no interest on the outstanding amount shall be levied and in case the corporate debtor fails to pay the amount within three months form the date of sanction given by the Financial creditor, interest at base rate shall

be levied from the time of sanction of the proposal on the balance outstanding.

- On payment of Rs.100 lacs as aforesaid (Rs.13,28,500 +Rs.86,71,500), the financial creditor has agreed to release one of the personal properties of the promoter situated at S.No.8/A, Yellampet village, standing in the name of Mrs. Meenakshi Patil and which was offered as collateral security while availing the credit limit from the Bank.

3. To honour the commitment, the Corporate Debtor has paid on 04.04.2018 an amount of Rs.13,28,500/- raised from internal accruals. And is ready with the balance payment of Rs.86,71,500/- and proposes to pay the same on approval of the resolution plan and seek release of the property (S.No.8/A, Yellampet Village, standing in the name of Mrs. Meenakshi Patil). The amount of Rs.86,71,500/- is sought to be mobilized by the promoters from out of the sale proceeds of one of the personal properties. On payment of these two amounts, the balance payable to the finaical creditor would be Rs.165.70 lacs.

4. It is submitted that Mr. Prasanna Khadre, resident of Bhalki, Karnataka, aged about 36 years, an entrepreneur with varied interests. He is the proprietor of M/s. Sri Guru Industries, a firm which is engaged in the business of manufacture and trading of sugar and his firm has done a turnover of Rs.123 lacs during the year 2016-17. He is also the proprietor of M/s. Prathmesh Trading Company, which is engaged in the business of manufacture and trading of sugar. The firm has done a

turnover of Rs.666 lacs during the financial year 2016-17. The firm has done a turnover of Rs.18 crores during 2017-18. As noted from the income tax returns filed with the Department, he is in the practice of making investments and has adequate income generation also. He is also an agriculturist owing about 50 acres of cultivable land and has adequate source of revenue generation. He has come forward to invest and run the Corporate Debtor as a going concern. The fact that Corporate Debtor could achieve a turnover of Rs.700 lacs during the Financial Year 2017-18 as against Rs.238 lacs achieved during the immediate previous year has given the much needed comfort and confidence to the prospective investor in terms of the marketing ability of the Corporate Debtor. After ascertaining the financial soundness and also the ability of Mr. Prasanna Khandre to raise the money at the appropriate time, the Resolution Professional felt that Mr. Prasanna Khandre is the appropriate entity whose offer for investment into the Corporate Debtor can be considered. Accordingly, the proposal was put before the Committee of Creditor in the meeting held on 28.05.2018 wherein the Financial Creditors have unanimously accepted the resolution plan proposed by Mr. Prasanna Khandre, who shall be the resolution applicant.

5. The following are the salient features of the resolution plan submitted by Mr. Prasanna Khandre the resolution applicant, which is agreed to by the Financial Creditor representing 1005 share of the Committee of the Creditors and also the Corporate Debtor in the meeting held on 28.05.2018.

i. Mr. Prasanna Khandre shall be infusing an amount of Rs.25 lacs into the Corporate Debtor. Out of this, shares would be allotted to the tune of Rs.10 lacs within two months and the balance of Rs.15 lacs would be retained in the business on a long term basis.

ii. By virtue of the investment of Rs.25 lacs, Mr. Prasanna Khandre seeks to have a say in the management and functioning of the company, which is agreed to by the Corporate Debtor also. Considering the impressive performance of the company during 2017-18 and also sensing the potential for the business activity, rich experience of the promoters of the Corporate Debtor in the related line of activity, the investor has agreed to give a free hand to the existing promoters of the Corporate Debtor in running the company on successful lines. The old management could not run the company on healthy lines which is due to

   a. Lower levels of turnover resulting in lower profitability.
   b. Due to working capital crunch.
   c. High financial cost on the larger component of debt and also
   d. Domestic disturbances

iii. At present, the Corporate Debtor is not having any working capital limit and is able to fill the gap in the working capital cycle with the available internal accruals. Even without any working capital financial assistance from the bank, the Corporate Debtor could achieve a turnover of Rs.700 lacs for the year 2017-18 and with adequate working capital support, the turnover levels are expected to go up substantially.

iv. In view of the above, it is proposed to utilize the amount Rs.25 lacs sought to be infused by investor purely for the working capital needs of the company. With the increase in the turnover levels, profitability levels are also expected to go up and it is proposed to approach the banks at the appropriate time seeking credit limits for working capital.

v. The Resolution Applicant for retention of the amount of infusion of Rs.25 lacs into the company for a minimum period of three years and also seeks to infuse further amounts depending need and requirement.

6. The Corporate Debtor has indicated the sources for repayment of the outstanding balance which in the opinion of the Resolution Professional are considered realistic and are found to be reasonable by the Committee of Creditors also. The promoters of the Corporate Debtor are confident of releasing the required money from the family settlements/partitions. The Company was hitherto managed by two brothers and their mother. Recently one of the brothers had an untimely death. The family settlement/partition is in the way and the proceeds are sought to be used by the main promoter for liquidating the bank outstanding. It shall be the responsibility of the Corporate Debtor to clear the balance outstanding of Rs.265.70 lacs within the time frame given provided by

the financial creditor. The Resolution Applicant shall coordinate and ensure compliance of the same.

7. Once the loan outstanding is reduced, there is expected to be improvement in the financials due to lesser interest burden on the Corporate Debtor. Coupled with this, the infusion by the investor to the tune of Rs.25 lacs to fill the working capital gap is expected to help the company in attaining higher levels of turnover with improved profit margin.

8. With the reduction in the financial cost, availability of adequate funds for working capital and the existing marketing base, the Company is expected to touch a turnover of Rs.13 crores during 2018-19 and Rs.16 crores during 2019-20. The Company is expected to break even at a turnover of Rs.877.71 lacs during 2018-19. As against this, the company is expected to do a turnover of Rs.1318 lacs, which shows the comfort level for the company.

9. Approval of the Resolution plan by the Financial Creditor (CoC) is in confirming with the Regulation 39 of IBC.

10. The Resolution Applicant undertakes to pay the Resolution Process cost which comprises of the fees to be paid to the Insolvency Resolution Professional to the tune of Rs.16 lacs (@ Rs.2 lacs per month for eight months), from out of the cash flows of the Corporate Debtor, as soon as the Resolution Plan is approved by the Adjudicating Authority which is in line with the provisions of Sec.30(2) of IBC. The projected financial

were placed before the Committee of Creditors and the same were found to be reasonable by the Committee of Creditors.

11. Apart from the financial Creditor, there were only few operational creditors and statutory dues, which the Corporate Debtor is paying in the normal course of business operations from the operational cash flows.

12. The reduction in the outstanding balances clearly indicates the intention and also the ability of the Corporate Debtor to honour financial commitments. All the above outstanding are in the normal and regular course of business activity and the Corporate Debtor has got every intention of honouring the same which can be noted from the reduction in the outstanding balance.

13. The Corporate Debtor has got every intention of running the business. The turnover for the financial year 2017-18 was Rs.700 lacs. This is as against Rs.238 lacs done during the financial year 2016-17. This turnover, the Corporate Debtor could achieve without any working capital assistance from the bank. The higher levels of turnover achieved during the current year amply demonstrate the ability of the Corporate Debtor to run the unit on successful lines.

14. The Resolution Applicant has indicated the sources for repayment of the outstanding balance which in the opinion of the Resolution Professional are considered realistic and are found to be reasonable by the Committee of Creditors also thereby complying the provisions of Regulation 38 of the IBC.

15. Following is the Resolution passed by the Committee of Creditors at the meeting held on 28.05.2018 with 100% majority.

Resolved that the Resolution Plan submitted by Mr. Prasanna Khandre for completing the Corporate Insolvency Resolution Process be accepted with 100% majority of the Financial Creditors and that as per the applicable provisions of IBC 2016, the Resolution Professional be and hereby instructed to take all such steps as are necessary to submit the approved resolution plan to the Hon'ble NCLT Bench and seek the approval of the Hon'ble NCLT Bench for completing the Corporate Insolvency Resolution Process.

RESULT: The member of Committee of Creditors (CoC) representing 100% of the voting share in the CoC resolved to approve/pass unanimously the resolution plan with 100% votes of the voting rights of the Financial Creditor, who is the sole member of the CoC.

16. It is submitted that the Insolvency Resolution Professional has followed all extant provisions of IBC in respect of the Corporate Insolvency Resolution Process and that the Resolution is in accordance with the provisions of the Law and hence seeks approval from the Adjudicating Authority. The Resolution Plan provides for

- Payment of Insolvency Resolution Process costs as specified under sec 30(2) (a) of IBC.
- Provides for repayment of debts of Operational Creditors as specified under Sec 30(2)(b) of IBC.

- Provides for the management of affairs of the Corporate Debtor by the existing management after the approval of the Resolution Plan as specified under sec.30(2)(c)of IBC.
- The implementation and supervision of the Resolution Plan shall be done by the Insolvency Resolution Professional and also the Committee of Creditors as specified under Sec 30(2)(d) of IBC.
- And that the Resolution Plan does not contravene any of the provisions of the Law for the time being in force as specified under Sec 30(2)(e) of IBC.
- And that the Resolution Plan confirms to such other requirements as may be specified by the Board.

17. The Resolution Applicant confirmed that he does not suffer from any of the disqualifications stated in Sec 29A of IBC.

18. That the Resolution Professional confirms that the Resolution Plan meets all the requirements of the Code and Regulations and that the Resolution Plan is approved by the CoC with 100% voting in favour.

19. That in view of the facts and circumstances mentioned herein above and since the provisions of the IBC are duly complied with the Applicant herein is seeking approval of the Resolution Plan and also seeking directions for completion of the Corporate Insolvency Resolution Process of the Corporate Debtor Under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 Read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. In view of the above, the Resolution Plan submitted by the Resolution Applicant, Mr. Prasanna Khandre which was recommended by the COC vide meeting dated 28.05.2018 stands approved.

21. The Resolution Applicants are directed to adhere to the provisions of Section 53 of the IBC 2016. Further Resolution Professional is directed to act as monitoring agent and report this Tribunal regarding the Proper implementation of the Resolution Plan.

22. The Tribunal further observes that as per Section 14 of the IBC, 2016, the moratorium shall cease to have effect from the date of approval of the Resolution Plan.

23. As per Section 31(3)(b), the Resolution Professional is directed to forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the IBBI to be recorded on its database.

24. The Resolution Plan stands approved and the Resolution Process is to be concluded as per the terms of approved Resolution Plan.

25. With the above directions, the Application IA No.190/2018 in CP(IB)No.148/10/HDB/2017 stands disposed off.

K. Anantha Padmanabha Swamy
Member Judicial