BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

MA 496/2018
in
CP No. 1288/IBC/NCLT/MB/MAH/2017

Under Section 31 (1) of the Insolvency and Bankruptcy Code, 2016

In the matter of

Mr. Jitesh Gupta
..... Applicant
(Resolution Professional)

In

Mr. Abdullabhai Abdul Kader
..... Financial Creditor

v.

M/s. Mohan Aromatics Private Limited
..... Corporate Debtor
(Respondent)

Order pronounced on : 25.07.2018

<u>Coram :</u>
Hon'ble M.K. Shrawat, Member (J)

<u>For the Applicant :</u>
1) Mr. Ajay Panicker, Advocate a/w. Mr. Amit Kakri, Advocate i/b. Ajay Law Associates – Advocates for Applicant/Resolution Professional.
2) Mr. Jitesh Gupta – Applicant/Resolution Professional in-Person.
3) Mr. Sumit Khandelwal – Resolution Applicant in-Person.

Per: M. K. Shrawat, Member (J)

<u>ORDER ON RESOLUTION-PLAN</u>

1. In this case, the Petition/Application U/s. 7 of the Insolvency and Bankruptcy Code, 2016 (**The Code**) filed by the Financial Creditor viz. 'Mr. Abdullabhai Abdul Kader' (hereinafter as **Unsecured Financial Creditor**) against 'M/s. Mohan Aromatics Private Limited' (hereinafter as **Corporate Debtor**) was Admitted vide an order dated 18.10.2017 by this Bench wherein 'Mr. Jitesh Gupta (IBBI/IPA-002/IP-N00144/2017-18/10380)' was appointed as Interim Resolution Professional (**IRP**).

2. The Unsecured Financial Creditor had filed the Petition/Application U/s. 7 of The Code claiming the amount of ₹ 8,82,83,295/- which includes the Principal amount of ₹ 4,34,79,673/- and ₹ 4,48,03,622/- as an amount of Interest thereon.

3. The Corporate Debtor is an industrial aromatic manufacturer and trading in aromatic chemical fragrances for cosmetics, candles, hair care products, detergents, soaps, incense sticks etc. The Corporate Debtor was incorporated on 05.11.1993. Since incorporation there are three shareholders of the Corporate Debtor namely, 'Mr. Mahesh Khandelwal, Ms. Sarla Khandelwal, and Mr. Sumit Khandelwal' holding 41.66 %, 41.67 % and 16.67 % of shares respectively.

4. After the Admission of the Petition/Application U/s. 7 of The Code the appointed IRP had published a Public Notice to that effect inviting in two local newspapers i.e. The Free Press Journal (English) and Navshakti (Marathi) on 30.11.2017 after receipt of the Certified Copy of the Order. Vide this Public Notice the Learned IRP had invited claims from the Creditors of the Corporate Debtor.

5. Pursuant to above notice the IRP has received only two claims, one by Secured Financial Creditor namely 'Bassein Catholic Co-Operative Bank Limited (hereinafter as **Secured Financial Creditor**)' and second by the Unsecured Financial Creditor for an amount of ₹ 1,82,25,000/- and ₹ 8,82,83,000/- respectively. The IRP has stated that, beside these two claims no other claims were received by him neither within the period mentioned in the notice for calling of claims against the Corporate Debtor nor during the whole CIRP period.

6. Consequently the IRP has formulated the 'Committee of Creditors' (hereinafter as **CoC**) consisting of the abovementioned two Creditors and thereafter the First Meeting of the CoC has been convened on 23.12.2017. In the said meeting the IRP has been appointed as Resolution Professional (hereinafter as **RP**).

7. From the commencement of the CIRP in total there were 5 meetings of the CoC conducted during the period of Dec. 2017 to May. 2018.

8. The Learned RP has appointed two Registered Valuers, namely, 'M/s. Crest Capital Advisors' and 'M/s. Ajay Gupta & Co.' to do the Valuation of assets of the Corporate Debtor. The Average Liquidation Value of the Assets is stated to be ₹ 3,75,33,893/-.

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9. The Learned RP has appointed M/s. Ernst and Young as Forensic Auditor on 19.01.2018. Findings made by the Forensic Auditor were discussed in the 4th Meeting of the CoC held on 13.03.2018.

10. The RP has published a notice inviting 'Expression of Interest' (hereinafter as **EoI**) in two newspapers viz. Business Standard (English) and Apla Mahanagar (Marathi) on 11.04.2018 and the last date to submit EoI and Resolution Plan was 30.04.2018. Pursuant to the said Notice 'Mr. Sumit Khandelwal (hereinafter as **Resolution Applicant / RA**)' a Director of the Corporate Debtor has proposed and submitted a Resolution Plan to the RP.

11. In the 5th Meeting of the CoC the RP has informed that the plan submitted by the Resolution Applicant is in accordance with the requirements of the **Sec. 30 of The Code** along with the applicable Rules and Regulations of the Code. Accordingly the CoC has discussed the Resolution Plan of the Resolution Applicant in detail and thereafter the said plan was approved by the CoC unanimously. The Resolution to that effect is also passed in the meeting.

12. Thereafter the RP has filed this Miscellaneous Application bearing MA No. 496/2018 **U/s. 31 of The Code** to seek permission of this Bench for the approval of the said Resolution Plan.

13. Background of the Resolution Applicant is considered by the COC. The Resolution Applicant is a 46 years old Indian Individual, R/o 201, Cosmos Apartment, Lokhandwala Complex, 3rd Cross Lane, Andheri (W), Mumbai, Maharashtra – 400053. Further, the Resolution Applicant is a Commerce graduate and has 24 years of entrepreneurial experience in the industry related to the business of the Corporate Debtor. **He is associated with the Corporate Debtor as a Promoter and Director since last 24 years.** The Net Worth of the Resolution Applicant is ₹ 2.5 Crores consisting of Investment in Shares of Private Limited Companies and Partnership Firms. The RP has also brought to the notice that, against the Resolution Applicant there is nothing on record which proves that the criminal cases are pending against him. Also there is nothing on record to evidence that the RA was convicted for any offence during preceding five years. It has also been brought to the notice that, the RA is not disqualified under provisions of the Companies Act, 2013 to act as Director. It has also been brought to the notice that the **RA is not disqualified U/s. 29 A of the Code to submit the Resolution Plan as he is never declared as Willful Defaulter.**

14. The RP has also brought to the notice that the Corporate Debtor is having outstanding dues from one MMK Enterprises amounting to ₹ 1,00,00,000/-. As per the agreed terms of the RA and MMK Enterprises the RA estimates ₹ 2,50,000/- per month from MMK over next 40 months.

15. The Resolution Plan as approved by the CoC and tendered before this Bench for approval provides for the distribution of funds are as follows :

1) Funds available in Bank accounts will be first used to make the payment of all balance of Insolvency Resolution Process Cost.

2) The **Secured Financial Creditor** will be paid full in terms of his claims i.e. ₹ 1,82,25,000/-, will be paid to Basin Catholic Bank, the Secured Financial Creditor. This payment will be done on Monthly Installments of ₹ 60,190/- as per the current terms till loan amounts get completely repaid.

3) The **Unsecured Financial Creditor, namely Mr. Abdullabhai Abdul Kader** will be paid an up-front payment of ₹ 90,00,000/- from the fresh funding of the RA. Further the Unsecured Financial Creditor will be paid ₹ 2,00,00,000/- on monthly installments of ₹ 5,00,000/- per month for next 40 months. This payment of monthly installments will be made by the 15th day of every month and out of the recovery from MMK and funds from Operations.

4) There are no claims from the Operational Creditors hence, no provision for the payment to the Operational Creditors.

16. Further the RP has also brought to the notice that as per the projected Balance Sheets for next three Financial years the Revenue generation of the Corporate Debtor will be ₹ 30,00,000/-, ₹ 42,00,000/- and ₹ 55,00,000/- respectively.

17. As regards to compromise proposed through the Resolution Plan is as follows :

1) The Secured Financial Creditor is getting fully paid hence no compromise to the Secured Financial Creditor.

2) The Unsecured Financial Creditor is getting a haircut of 67% and getting paid an amount of ₹ 2,90,00,000/- against the claim of ₹ 8,82,83,295/-.

3) All the government dues pending before the commencement of the CIRP and known to the Corporate Debtor will be paid however, if the dues are pending and not known to the Corporate Debtor will not be covered in this Resolution Plan.

4) The powers and responsibilities of the Managing Director, Mr. Mohan Khandelwal, will be taken over by the RA during the implementation of the Resolution Plan.

18. The proposed Resolution Plan will be implemented as per the following Schedule :

Sr. No.	*Key Implementation Points*	*Time Frame*
1.	*RA taking over the charge of all affairs of the CD*	*Immediate (Max 7 Days)*
2.	*Infusion of fresh funds by the RA*	*Within 10 days*
3.	*Upfront payment to the Unsecured FC*	*Within 14 days*
4.	*Re-structuring of Sales & Marketing Team*	*Within 1 Month*
5.	*Realign Sales and Distribution focus*	*Within 3 Months*
6.	*Monthly payouts to Secured FC*	*Ongoing, as per signed term sheet*
7.	*Monthly payouts of ₹ 5 Lacs to unsecured FC*	*Over next 41 months*
8.	*Recovery of dues from MMK Engineering*	*Over next 40 months*
9.	*Appointment of 3rd Party professional for supervision of the implementation of the R/Plan*	*Within 2 months*

19. The proposed Resolution Plan provides for the Sources of funds over next three years as follows :

1) Funds available in Bank accounts : ₹ 30.00.000/-.
2) Fresh funding by RA : ₹ 90.00.000/-.
3) Recovery of Dues from MMK Enterprises : ₹ 1.00.00.000/-.
4) Funds from Operations (1st year) : ₹ 30.00.000/-.
5) Additional funds from increased operations : ₹ 97.00.000/-.

20. The RP has further elaborated that the Resolution Plan although submitted by one of the Promoter of the Debtor Company but this is the only plan which is viable to settle the outstanding debts. By referring para 13 (supra) it is clarified that the RA is not disqualified U/s. 29 A and the CoC has also approved the plan hence, this Resolution Plan deserves to be approved. Under this Resolution Plan there is a provision for a payment of ₹ 4.72.25.000/- as against the total liability of Secured and Unsecured Financial Creditor is ₹ 10.65.08.295/-. The members of the CoC have accepted this proposal after sacrificing the rest of the Debt amount. In this regard the declaration made by the RA and duly considered by the CoC is as under :

Sr. No.	*Connected Persons*	*Names of the Connected Persons*

1.	*Person(s), if any, who are promoters or in the management or control of the RA*	*Not Applicable*
2	*Person(s), if any, who will be promoters or in management or control of the business the CD during the implementation of the Resolution Plan*	*Sumit Khandelwal, an individual and the RA herein*
3	*Holding company, if any, of the persons named against Point Nos. 1 & 2 above*	*Not Applicable*
4	*Subsidiary company(ies), if any, of the persons named against Point Nos. 1 & 2 above*	*Not Applicable*
5	*Associate company(ies), if any, of the persons named against Point Nos. 1 & 2 above*	*Not Applicable*
6	*Related Party(ies), if any, of the persons named against Point Nos. 1 & 2 above.*	*i] Mr. Mahesh Khandelwal (father)* *ii] Mrs. Sarla Khandelwal (mother)* *iii] Mrs. Prita Khandelwal (wife)*

Findings :

21. In the light of the above detailed narrations and the data submitted, prima facie the proposed Resolution Plan stated to be sanctioned unanimously in a Committee of Creditors meeting held on 08.05.2018 deserves to be approved, subject to the modifications or qualifications elaborated hereunder. **Before I consider the Resolution Plan, at the outset it is appropriate to overcome a legal hurdle introduced due to induction of Sec. 29 A in Insolvency Code operative w.e.f. 23.11.2017. Earlier through an Ordinance dated 23.10.2017 the said Amendment was proposed. Under these circumstances the date of introduction of the Amendment vis-à-vis the date of the filing of the Petition, as also the date of pronouncement of the Judgment through which the said Petition Admitted, are worth consideration. The Petition was filed on 07.08.2017 and the Order U/s. 7 was passed 18.10.2017. Naturally when the Respondent Debtor was declared Insolvent the provisions of Sec. 29 A were not in operation. Whether under these**

1.	*Person(s), if any, who are promoters or in the management or control of the RA*	*Not Applicable*
2	*Person(s), if any, who will be promoters or in management or control of the business the CD during the implementation of the Resolution Plan*	*Sumit Khandelwal, an individual and the RA herein*
3	*Holding company, if any, of the persons named against Point Nos. 1 & 2 above*	*Not Applicable*
4	*Subsidiary company(ies), if any, of the persons named against Point Nos. 1 & 2 above*	*Not Applicable*
5	*Associate company(ies), if any, of the persons named against Point Nos. 1 & 2 above*	*Not Applicable*
6	*Related Party(ies), if any, of the persons named against Point Nos. 1 & 2 above.*	*i] Mr. Mahesh Khandelwal (father)* *ii] Mrs. Sarla Khandelwal (mother)* *iii] Mrs. Prita Khandelwal (wife)*

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circumstances a question that a Resolution Plan being submitted by a Promoter/Director of the Corporate Debtor is admissible or not, is answered by this Bench in the case of "M/s. Wig Associates Private Limited" (MA 435/2018 in CP 1214/I&BC/NCLT/MB/MAH2017) order dated 04.06.2018 and held that the operation of Sec. 29 A is not Retrospective in nature but applicable Prospectively. Respectfully following this precedent it is hereby affirmed that the CoC as well as the RP have taken a correct decision in approving the Resolution Plan. Considering the financial aspect as well, this is the only Resolution Plan which was worth consideration giving better offer to the Creditors than the expected Liquidated Value of the Corporate Debtor if allowed to be Liquidated.

22. **Sec. 30 (2) of The Code** provides for the following requirements of the Resolution Plan :-

> *"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 repayment of other debts of the corporate debtor;*
>
> *(b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;*
>
> *(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."*

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23. Further, Sec. **31 (1) of The Code** provides that, *If the Adjudicating Authority is* ***satisfied*** *that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.* (**Emphasis supplied**). For purpose of this

Section the Adjudicating Authority shall record its **satisfaction** in writing for approval of the Resolution Plan.

24. That, the Resolution Plan is providing payment of ₹ 4,72,25,000/- against the total claims of Secured and Unsecured Financial Creditors of ₹ 10,65,08,295/-. However, the Secured Financial Creditor is getting fully paid in terms of its claim but the Unsecured Financial Creditor is getting 67 % haircut in terms of his claims.

25. That, as there are no claims by any other Unsecured Creditors the question of payment to the unsecured Creditors does not arise. However, the RA provides for the payment of the government dues to the extent known to the Corporate Debtor before commencement of the CIRP. But for the satisfaction of this Bench it is noteworthy to mention that the RA shall arrange the funds and consequently shall pay all pending government dues, if any. This undertaking is duly taken into consideration.

26. That, as the RA is taking over the charge of the affairs of the Corporate Debtor after approval of the Resolution Plan, the proposed Resolution Plan is meeting with the requirement of management of affairs of the Company as prescribed under the provisions of Sec. 30 (2) (c) of The Code.

27. That, the proposed Resolution Plan provides for the supervision of the *implementation of the Resolution Plan by the 3rd party* (preferably an internal auditor) appointed by the Corporate Debtor. Hence, this Bench hereby records its satisfaction that the proposed Resolution Plan is in conformity of the S. 30 (2) (d).

28. That, the proposed Resolution Plan also in conformity of the S. 30 (2) (e) and S. 30 (2) (f) as there is nothing contradictory to the provisions of Law.

29. Although major part of the proposed Resolution Plan (supra) needs no interference being already examined and sanctioned by the members of Committee of Creditors, only one modification is required since a judicial decision is hereby pronounced that the Statutory dues / Government dues shall be settled with the concerned Government Authorities and to be paid as per the directions / Orders of the said Government Authorities. As a consequence, the offer of non-payment of Government dues which are not known to the Corporate Debtor is **not** hereby approved.

30. The Resolution Applicant or his nominees shall step into the shoes of the Management of the Corporate Debtor by completing legal formalities.

31. The question of supervision and management is left open to the decision or discretion of the incoming management constituted by the Resolution Applicant.

32. The Resolution Plan along with the modifications as suggested hereinabove shall be binding on the Corporate Debtor, Financial Creditors and all other stakeholders of the Corporate Debtor.

33. From the date of this Order, the 'Moratorium' imposed under section 14 of The code shall ceased to have any effect henceforth.

34. The Resolution Professional shall submit the records collected during CIRP to IBBI, New Delhi for their record and also return to Resolution Applicant / New Promoters.

35. That the incoming management shall not be personally responsible for any act, omission, commission and / or offence committed by the outgoing erstwhile management of the Corporate Debtor viz. 'M/s. Mohan Aromatics Private Limited'.

36. Consequence upon the taking over the business and stepping into the shoes of the erstwhile management, the new management of the Corporate Debtor shall be abided by the provisions of the Companies Act, 2013, hence directed to submit a copy of this Order in the Office of the concerned Registrar of Companies having jurisdiction.

37. That the directions embodied and the period of implementation as provided herein above shall be effective from the date of receipt of this Order.

38. Ordered Accordingly. Application for U/s. 31(1) is Allowed.

Dated : 25.07.2018

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)

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Copy Issued "free of cost"
On 25/7/2018
Assistant Registrar
National Company Law Tribunal Mumbai Bench