

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 288/2019 & 458/2019 In
CP No.158/IBC/NCLT/MB/MAH/2017**

Under Section 31, 31(2), 60(5)(c), respectively of
the Insolvency and Bankruptcy Code, 2016

In the matter of

Panama Petrochem Ltd.

...Operational Creditor

V/s

Aryavart Chemcials Private Limited

....Corporate Debtor

Date of hearing : 11.03.2019

Date of Pronouncement : 15.04.2019

Coram :

Hon'ble M.K. Shrawat, Member (J)

For the Applicant :

Adv. Manoj Kumar Mishra, for RP.

Adv. Jitendra B. Mishra, for Customs Department.

Adv. Amit Kakri, for Resolution Applicant

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

ORDER

1. The Corporate Insolvency Resolution Process of Aryavart Chemcials Private Limited (the **Corporate Debtor**) commenced vide order dated 19.03.2018, pursuant to 'Admission' of Section 9 application (CP 158/I&BP/NCLT/MB/2017) filed by an 'Operational Creditor' Panama Petrochem Ltd. Vide that order one Mr. Jitender Kumar Rambaran Yadav was appointed as the IRP and the CoC confirmed him as the RP in its meeting dated 15.05.2018.
2. **MA 458/2019** is filed by the Resolution Professional.
 - 2.1 The RP seeks approval of withdrawal of Resolution Plan filed by Mr. Ajay Nair. It is stated that the CoC in its meeting dated 25.10.2018 approved the resolution Plan

put by Mr. Ajay Nair. Thereafter, on 31.01.2019 Mr. Ajay Nair has informed that due to unforeseen circumstances the Resolution Plan, although approved by Committee of Creditors, had to be withdrawn because of backing out of his associate Investor M/s. Vivog Commercial Limited. A correspondence in this regard from Vivog Commercial Limited (Mr. Sikhar Mundra) is on record. Although vide a letter of 24.10.2018 Mr. Sikhar Mundra has communicated that M/s. Vivog Commercial Limited had given an Undertaking not to encash HDFC Bank Limited Fixed Deposits of Rs. 5,55,71,960/-, but thereafter on 10.01.2019 it was communicated that as an Investor not interested to invest in Corporate Debtor Aryavart Chemicals. As a consequence now the Resolution Professional is seeking permission for Withdrawal of the Resolution Plan of Mr. Ajay Nair.

2.2 On hearing the submissions and specially the reporting of the Resolution Professional that there were certain developments in respect of the submission of Resolution Plan by another contender, a permission be granted for Withdrawal of Resolution Plan submitted by Mr. Ajay Nair. It is not a welcoming situation, however, on careful reading of Section 31(1) titled as “**Approval of Resolution Plan**”, a Proviso is inserted with effect from 6th June 2018 which prescribes that before passing an Order for Approval of Resolution Plan under this sub-section the Adjudicating Authority shall satisfy that the Resolution Plan has provisions for its effective implementation. If a Resolution Applicant is not interested to pursue its plan, naturally cannot be implemented effectively.

2.3 This Bench is of the view that such practice of Withdrawal of an already Approved Resolution Plan must not be encouraged but considering the totality of the circumstances i.e. (i) Another Resolution Plan is now approved by Committee of Creditors, (ii) The joint investor of Mr. Ajay Nair had backed out from investment, (iii) The Committee of Creditors has compared the said two Resolution Plans, it is hereby held that there is no difficulty in accepting the prayer of Withdrawal of the Resolution Plan of one Mr. Ajay Nair. The Withdrawal is permitted and **M.A. is allowed.**

3. **MA 288 of 2019:**This MA is filed by Commissioner of Customs, Raigad, Maharashtra praying for setting aside the order dated 20.10.2018 passed by the IRP admitting a partial claim of ₹ 21,57,809/- filed by the Applicant for its dues to the Corporate Debtor amounting to ₹ 43,88,165/-. The Applicant submits that the

Corporate Debtor has violated the norms of Advance Authorisation Scheme, wherein the material other than as prescribed in Conditional Sheet is exported. Hence, the importer (Corporate Debtor herein) is required to pay 100% Custom

Duty Foregone with Interest and the same amounts to ₹ 43,188,165/-. The claim of ₹ 43,88,165/- was lodged with IRP pursuant to admission of insolvency petition. The IRP informed the Applicant that as per the records of the Corporate Debtor, the Corporate Debtor has not met the export obligation of the particular product but similar products were exported and CVD component is refundable. The IRP vide email dated 20.10.2018 admitted claim of ₹ 21,57,809/-. The Applicant further informed the IRP that since the export obligation has not been fulfilled, question of refund of CVD does not arise.

3.1 In the decision of NCLT, Chandigarh Bench, in the case of “**State Bank of India V. MOR Farms Pvt. Ltd.**” dated 15.06.2018 in CA Nos. 71/2018 & 171/2018 in CP(IB)-51/Chd/Hry/2017, the Resolution Applicant sought exemption of Government liabilities and statutory dues and it was observed that the same should be restricted to those Government liabilities which are ascertained and crystallised as on the date when the CIRP commenced. Further, on commencement of CIRP, due to pronouncement of moratorium if any tax is levied, the same can be considered for waiver. In my view, in order to revive a company from insolvency, if the Government liabilities and statutory dues can be waived off, similarly the dues of Custom Department can also be considered for the amount for the liability stood finalised , hence acceptable to the R.P., such decision be not intervened. Here, only a partial claim has been allowed by IRP and is crystallised to the extent of what is admitted by IRP. At his juncture it is also worth to place on record that a Resolution Plan of M/s. Osian India (Proprietor Mr. Sandeep Mehta) is under consideration by this Bench, wherein this aspect of statutory dues of the Customs Department have been considered by making a provision, therefore, the view taken by the R.P. is not required to be disturbed. Therefore, this Miscellaneous Application No. 288 of 2019 is hereby **Dismissed**.

4. Both the Miscellaneous Applications (**MA 288 of 2019 & MA 458 of 2019**) disposed of accordingly.

Dated : 15.04.2019

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