NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

CA 371/C-II/ND/2018

(IB)-334(ND)/2017

In the matter of

Vinay Talwar
Resolution Professional

......Operational Creditor

VERSUS

M/s. Applied Electro Magnetics Pvt. Ltd.
Redg Office:- M-120, First Floor,
Greater Kailash-II, New Delhi-48

.........Corporate Debtor

AND IN THE MATTER OF:

Resolution Plan submitted by

SM Milkose Limited

SECTION: 30(6) and 31 of IBC, 2016

Order delivered on 2nd April, 2019

Present:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)
DR. V. K. SUBBURAJ, HON'BLE MEMBER (T)

Present: Mr. Himanshu Vij, Advocate for RP

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The present application has been filed under Sections 30(6) and Section 31 of the Insolvency and Bankruptcy Code 2016, read with regulation 39(4) of the IBBI (Insolvency Regulation Process for Corporate

Persons) Regulation 2016 for sanction of the Resolution Plan which has been accepted by the Committee of Creditors on 21.07.2018.

2. Briefly adverting to the facts of the case, a petition filed by an Operational Creditor, Mr. Nitin Gupta, was admitted by this adjudicating authority vide its order dated 26.10.2017, initiating the Corporate Insolvency Resolution Process of the Corporate Debtor viz. Applied Electro Magnetics Pvt. Ltd. (hereinafter referred to as AEM) under Section 9 of the Code. Mr. Naveen Kumar Jain was appointed as the Interim Resolution Professional by the Adjudicating Authority who took charge on 18.11.2017. Compliances, as required under the Code were made by him. After convening the first COC on 22.12.2017, the decision to name the Resolution Professional was taken and the application under Section 22(3) of the Code was filed before this Bench for due confirmation.

3. As part of the Committee of Creditors, the Bank of India, a Financial Creditor, constituting 90% of the entire claim, proposed the name of Mr. Vinay Talwar as the Resolution Professional. He was confirmed by this Bench vide order dated 29th January 2018, and has taken steps for considering the resolution plan for a possible turnaround of the business of the Corporate Debtor. Expression of Interest were invited vide publication in the daily newspapers "The Hindu" and "The Rajdhani". In response to the said advertisement, the Resolution Professional received only one proposal namely, from M/s. S. M. Milkose Ltd., who was also one of the Financial

Creditors of the Corporate Debtor. Due diligence was carried out and after verifying the financial credentials of the Resolution Applicant, the plan submitted by the aforenamed Resolution Applicant was tabled before the Committee of Creditors. It was revised and finally approved unanimously by the COC in its meeting convened on 21st July, 2018. The said plan has been annexed to this application and is supported by an affidavit deposing that the Resolution Applicant is not disqualified under the provision of Section 29A. The resolution professional has also verified that all requirements and procedural aspects mandated in the Resolution Process have been adhered to. It is further submitted that the Resolution Plan as approved by the COC meets the requirements of sub-section (2) of Section 30 and all other regulations as mandated under the Code.

4. A brief overview of the plan and its salient features are :-

(1) The Corporate Debtor is engaged in designing and manufacturing of customised solutions for a broad range of electronic/IT applications in the field of data and digital voice communication.

(2) The resolution applicant, SM Milkose Ltd., is a public ltd. company engaged in the manufacture of Ghee and Skimmed Milk powder. It has a consolidated turnover of approx. Rs. 70.68 crores and its net worth is Rs. 18.31 crore as per its audited balance sheet as on 31st March, 2017. The group is headed by Mr. Sharad Maheshwari who has almost 4 decades of active business experience. Under his patronage, the group companies have diversified from Cold Storage

to Hydro power projects, Renewal Energy Sector including windmills, and construction of commercial complexes etc. The Resolution Applicant submits that it has an experienced and proficient management team and is confident of investing in necessary human resources and infusing financial capital to revive the operation of the Corporate Debtor. The Resolution Applicant wishes to acquire AEM which is already in the electronics and communications domain to go into production of Smart Energy Meters.

(3) The liabilities of the Corporate Debtor have been collated and verified by the Resolution Professional as under:-

Particulars		Verified Amount (In INR Lakhs)
1.	Claims	
	Financial creditors claim (Bank of India)	4149.71
	Financial creditors claim (Un Related)	626.56
	Financial creditors claim (Related paties)	419.82
	Operational creditors claim	271.29
	Employees claim	817.00
	Total Claims	**6284.38**
2.	**Statutory liabilities**	
	Excise Duty	53.00
	Service Tax	196.95
	Service Tax (Rentals)	21.95
	Sales Tax	150.50
	TDS	63.41

	Provident fund	78.00
	ESI	00.70
	Total Statutory Liabilities	**564.51**
3.	**Shareholders**	2.00
	Total liabilities	**6850.89**

5. (a) As submitted, the Resolution Plan, as proposed, provides for infusion of working capital requirement of Rs. 5 crores which shall be financed out of the sale proceeds of the assets of the Corporate Debtor. In addition, a sum of Rs. 12.99 crores is proposed to be paid in full and final settlement by the resolution applicant in respect of all past dues and liabilities of the Corporate Debtor. It would be relevant to note that the fair value as well as the Liquidation value of the assets of the company have been assessed at Rs. 9.6 crores and Rs. 6.1 crores respectively.

(b) The Resolution Applicant along with its affiliates shall infuse another 6 crores under the Head Resolution Applicant Commitment. They undertake to make an immediate payment of Rs. 2.4 crores as subscription amount towards allotment of Rs. 60,00,000 equity shares @ price of Rs. 10 each. The first paid up value of Rs. 4 shall be made by the aforesaid payment. The balance amount shall be brought in as and when required and shall be used to make these shares fully paid up or towards subscription of new equity shares in accordance with the plan.

(c) The entire equity of the present shareholders shall be acquired by the nominees of the Resolution Applicant and transferred in their favour by issuance of new share certificates for a consideration of RS. 1,86,129/- for its 18,61,290 shares. The disbursement of the amount of Rs. 12.99 crores shall be as under.

6. A summary of the Corporate Insolvency Plan has been given as 4.1 in the plan which has also been detailed in Schedule 8 (Financial Plan). It is submitted that the Resolution Applicant has, to the extent possible, taken into account the interests of all stakeholders of the Corporate Debtor. For the avoidance of doubt, it has also been clarified that the provisions of Schedule 8 (Financial Plan) shall prevail in case of any inconsistency with Clause 4.1 of the plan for the purpose of any interpretation.

a. **IRP Costs:**

The IRP Costs will be paid in full and in priority to other creditors. It is clarified that in the event the IRP costs increases above the estimated amount of IRP Costs as assumed under Schedule 8 (Financial Plan) and Appendix II of the plan, the Resolution Applicant will be entitled to offset such increase against the other amounts payable under this Plan as set out in Schedule 8 (Financial Plan).

b. **Secured Financial Creditor:**

There is only one Secured Financial Creditor who has been treated as Consenting Secured Financial Creditor. They shall be paid a sum of Rs. 9.00

crores out of their admitted claim (without any interest) set out in Schedule 8 (Financial Plan) towards full and final settlement of their claims.

c. **Workmen and Employees:**

The Workmen and Employees of Corporate Debtor shall be paid the amounts in the manner set out in **Schedule 8** (Financial Plan) towards full and final settlement of their claims.

d. **Unsecured Financial Creditors:**

The Unsecured Financial Creditors will be paid the following amounts depending on whether they vote to approve the plan or not:

- The Consenting Unsecured Financial Creditors shall be paid the UFC Amount in the manner set out in Schedule 8 (Financial Plan) towards full and final settlement of their claims, and
- The Dissenting Unsecured Financial Creditors will be paid the dissenting value due to unsecured financial creditors towards their full and final settlement of their claims.
- Unsecured Financial Creditors related to the promoters will not be paid anything under the Resolution Plan.

e **Operational Creditors:**

The Operational Creditors of the Corporate Debtor shall be paid the the following amounts:

- The Governmental Authorities shall be paid the Statutory Dues

Settlement Amount in the manner set out in Schedule 8 (Financial Plan) towards full and final settlement of their claims; and

- The other Operational Creditors shall be paid amount in the manner set out in Schedule 8 (Financial Plan) towards full and final settlement of their claims.

f **Shareholders and other persons**: The entire issued shares shall be compulsorily transferred to the Resolution Applicant for INR 1,86,129/- @ Rs. 0.10 per share.

7. The aforesaid disbursement of plan has been summarised and tabulated as under:-

	Verified claims		**Proposed settlement**	**Amount before the expiry of 30 days of the Effective Date**	**Amount to be paid within 9 months of the Effective Date**
	Rs. Cr.		**Rs. Cr.**	**Rs. Cr.**	**Rs. Cr.**
IRP Costs (approx.)	-		**0.18**	**0.18**	-
Secured Financial Creditors	41.50		9.00	2.25	6.75
Bank of India	41.50		9.00	2.25	6.75

Unsecured Financial Creditors	**10.46**		**0.50**		**0.50**
Related parties	3.75	0.0%	-		
Others	6.72	7.5%	0.50		0.50
Operational Creditors	**2.71**	7.5%	**0.20**	0.20	-
Employees & Workmen	**8.17**		**1.03**	**0.15**	**0.88**
Priority Dues					
Employees with dues less than 12 Months	1.467	15.0%	0.22	0.11	0.11
Workmen with dues less than 24 Months	0.59	15.0%	0.09	0.04	0.05
Gratuity to Current Employees	1.06	20.0%	0.21	-	0.21
Others	5.05	10.0%	0.51	-	0.51
Statutory Dues	**5.65**		**2.05**		**2.05**
Excise	0.53	15.0%	0.08	-	0.08
Service Tax	1.97	15.0%	0.30	-	0.30
Service Tax (Rentals)	0.22	15.0%	0.03	-	0.03
Sales Tax	1.51	15.0%	0.23	-	0.23
TDS	0.63	100.0%	0.63	-	0.63
Provident Fund	0.78	100.0%	0.78	-	0.78

ESI	0.01	100.0%	0.01	-	0.01
Payment to Shareholders	0.02	100.0%	**0.02**	0.02	-
Total	**68.51**		**12.99**	**2.80**	**10.18**

8. It is submitted that the Resolution Applicant and the Resolution Professional shall ensure the implementation of the plan till the effective date.

Further,

i. The Resolution Professional shall hold all such payments (except for the Operational creditors payments) in trust for the benefit of the respective class of creditors on whose behalf it has received such payments;

ii. The Resolution Professional shall promptly make all distributions to such class of creditors;

iii. The Resolution Professional alone shall be responsible for the allocation and distribution of such amounts to such class of creditors; and

iv. The obligation of the Resolution Applicant shall stand satisfied upon payment of such amounts to the previously notified account of Resolution Professional.

v. In relation to any payments/settlements to be made by the Resolution Applicant directly to any class of creditors as provided for in Schedule 8 (Financial Plan), the Resolution Applicant or the Corporate Debtor, as the case may be, shall make payments within any such class of creditors on the basis of the verified amounts. The obligations of the Corporate Debtor and the Resolution Applicant shall stand satisfied upon payment of such amounts in accordance with Schedule 8(Financial Plan) and the Resolution Applicant shall bear no responsibility for proportionate allocation or distribution of such amounts within such classes of creditors.

9. The time period for payment of statutory dues shall be 9 months from the effective date, while payment to other operational creditors shall be within 30 days from the effective date.

10. The entire share capital is to be transfer to the Resolution Applicant on the effective date for a total consideration of INR 1,86,129/- .

11. The Resolution Plan has been filed by the RP and is duly annexed with form H and an affidavit. It is submitted that after exclusion of certain days as admissible on account of absence of any RP or pendency before the adjudicating authority, the resolution plan has been filed within 270 days of its initiation. The RP has certified that the Resolution Plan has been examined and found to be strictly in compliance of the mandatory provisions of Section 30(2) of the Code.

12. On-going through the plan, and in terms of Section 31 of the Code this Bench is satisfied that the resolution plan as unanimously 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. In view of the same, there is no legal impediment in confirming the same by this Adjudicating Authority. We accordingly endorse and approve the same. The resolution plan shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

We further declare that the moratorium imposed upon the assets of the Corporate Debtor shall cease to have any effect in terms of Section 31 (3) (a) of the Code. Upon payment of the share money of Rs. 186,189/- the Corporate Debtor will transfer its shares to the Resolution applicant/ its nominees by issuance of fresh shares and upon such transfer the Resolution Applicant shall take over the complete management of the Corporate Debtor and shall operate through its own Board of Directors.

While we are not endorsing any specified waivers or extinguishing of claims, the Resolution Applicant shall be entitled to all such waivers as are legally permissible under law.

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(V. K. Subburaj)
Member (T)

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(Ina Malhotra)
Member (J)