IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI

MA/515/2018 in CP/689/IB/2017 filed by the Resolution Professional viz., Mr. Ravindra Beleyur under Section 30(6) of the Insolvency and Bankruptcy Code, 2016.

In the matter of **M/s. Merchem Limited**

Mr. Ravindra Beleyur & Anr

... *(i) Resolution Professional*
(ii) Operational Creditor

Vs.

M/s. Merchem Limited

... *Corporate Debtor*

Order delivered on 23rd January, 2019

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For RP	:	*Mr. T. Ravichandran and Ms. D. Elavarasi, Counsel*
For Operational Creditor	:	*Mr.Rohan Rajesekaran, Counsel*
For Resolution Applicant	:	*Mr. Shankarnaryanan, Sr. Counsel*

ORDER

Per: CH.MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. The Miscellaneous Application No.515/2018 has been filed in CP/689/IB/CB/2017 on 28.09.2018 by the Resolution Professional viz., Mr. Ravindra Beleyur, under

Section 30 (6) of the Insolvency and Bankruptcy Code, 2016, (in short 'I&B Code, 2016'). The prayer made by the Resolution Professional *inter alia* is to seek an order for approval of the Resolution Plan submitted by M/s. Acme Chem Ltd., under Section 30(6) of the I&B Code, 2016 for the Corporate Debtor and its implementation and pass such other or orders which are deemed appropriate in the light of the concessions and directions sought by the Resolution Applicant more fully set out in paragraph 11 of the Application.

2. Initially, CP/689/(IB)/CB/2017 was filed under Section 9 of I&B Code, 2016 read with Rule 6 of the Insolvency Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Pradeep M.R (in short, 'Operational Creditor') against M/s. Merchem Limited (in short, 'Corporate Debtor'). CP/689/(IB)/CB/2017 has been admitted on 15.01.2018, and CIR Process was initiated against the Corporate Debtor, Moratorium was

declared and the Interim Resolution Professional was appointed.

3. The Interim Resolution Professional took over the management and affairs of the Corporate Debtor and caused public announcement on 19.01.2018 under Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016, for filing the claims by the creditors. After verification of the claims received, the Interim Resolution Professional constituted Committee of Creditors (CoC).

4. In the 2nd Meeting of the CoC held on 16.03.2018, the CoC has unanimously decided to replace the Interim Resolution Professional and the Applicant viz., Mr. Ravindra Beleyur was recommended to act as the Resolution Professional to manage the operations of the Corporate Debtor till conclusion of CIR Process after obtaining the consent in writing in Form -2. The

appointment of the Resolution Professional was also approved by this Adjudicating Authority vide Order dated 03.04.2018.

5. The Resolution Professional after obtaining all the necessary documents, records and registers of the Corporate Debtor from the erstwhile IRP, convened CoC Meetings on different dates wherein various significant issues such as appointment of Valuers, obtaining due diligence report, extension of moratorium and publication of "Expression of Interest" ('EoI') were discussed and decided by the members of the CoC. The duration of CIR Process was extended by this Authority under Section 12 of I&B Code, 2016 for a further period of 90 days from 13.07.2018 beyond 180 days vide order dated 11.07.2018 on MA/219/2018 filed by the Resolution Professional.

6. As per Section 25 (2) (h) of I&B Code, 2016, the Resolution Professional has invited 'EoI' calling for the 'Resolution Plan' for the Corporate Debtor from the

prospective Resolution Applicants. Pursuant to the publication for invitation of 'EoI', the Resolution Professional received two Resolution Plans from the proposed Resolution Applicants viz., M/s. Acme Chem Ltd. and M/s. Nitrex Chemicals India Limited. The Resolution Professional has placed the 'Plans' submitted by the Resolution Applicants before the CoC for deliberations. The CoC, after deliberations and discussions, asked the Resolution Applicants to raise their offers on or before 04.09.2018. After much deliberation and on the basis of the evaluation matrix and other parameters fixed, the CoC unanimously resolved to accept the Resolution Plan submitted by M/s. Acme Chem Limited and the Resolution Plan submitted by M/s. Nitrex Chemicals India Limited was rejected. The Resolution Applicant viz., M/s. Acme Chem Limited also satisfied the conditions stipulated under Section 30(2) and is not barred under Section 29(A) of the I&B Code, 2016 read with Regulations 38 and 39 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as amended from time to time, by giving an affidavit to that effect. In short, the Resolution Plan submitted by M/s. Acme Chem Limited, was unanimously approved by the CoC in its meeting held on 12.09.2018 and the Resolution passed by the CoC is extracted below:-

> ***"RESOLVED*** *that, the Resolution Plan submitted by Acme Chem Limited for acquisition of Merchem Limited for a total consideration of Rs.115.2520 crores be and is hereby approved since it is above the Liquidation Value and rating of the plan stood at "73" which is better than "52/54" in respect of Nitrex Chemical India Limited as per the Evaluation Matrix as approved by the CoC for the Resolution Process".*
>
> *"RESOLED FURTHER THAT, OUT OF THE TOTAL CONSIDERATION, Acme Chem Limited will be paying Rs.109.822 crores towards Financial Creditors, Rs.3.78 crores towards CIRP expenses, Rs.1.40 crores towards Workmen dues, Rs.3.55 lakhs towards Employee dues, Rs.7 lakhs towards Operational Creditors dues, Rs.12 lakhs towards statutory dues and Rs.1.78 lakhs to the Preference Shareholders and Rs.0.67 lakhs to the Equity and Preference Shareholders for transferring/waiving all their rights of all the equity and preference shares in favour of Acme Chem Limited."*
>
> *"RESOLVED FURTHER that the Resolution Professional is authorised to approach the Adjudicating Authority along with specific requests*

made by the successful Resolution Applicant in respect of the Resolution Plan submitted by Acme Chem Limited while making an application in respect of approval of the Resolution Plan by the Adjudicating Authority as long as they are not against law of the land-.................................".

"Resolved that all the secured Financial Creditors of Merchem Limited reserve their rights to exercise all options available under the law of the land to recover the balance dues from Merchem Limited from the personal/corporate guarantees/collateral provided by the existing promoter director/directors/relatives of directors/associates of Merchem Limited."

7. Accordingly, the Resolution Professional has filed the present Application and submitted that under paragraphs 7.2 B and 8 of the Resolution Plan, the Resolution Applicant had sought the following reliefs and concessions from the Adjudicating Authority and the Government Authorities which are noted as follows:-

"7.2 On and from the Effective Date

A. All existing directors of the Company shall be deemed to have resigned and vacated their office, and the board of directors of the Company shall be re-constituted by the Resolution Applicant. All powers of the board of directors of the Company shall be restored, and *the reconstituted board of directors shall be entitled to exercise all powers of a board of directors under the applicable laws.*

B. All existing employees of the Company shall be deemed to have resigned and new employees shall be appointed by the Resolution Applicant.

C. ....

D. ....

8. OTHHER TERMS AND CONDITIONS

8.1 The Resolution Applicant seeks the following reliefs and concessions from the NCLT and from the other relevant government authorities.

A. Exemption from compliance of reduction of share capital and preferential allotment guidelines.

B. Exemption from Government of Kerala/Kerala State Pollution Control Board for cost sharing of NCEF Project/Kuzhikandam Thodu Remediation amounting to Rs.141 Lakhs.

C. To pass requisite order for renewal of licenses, permits, clearances and approvals referred to in Annexure- VI.

NATIONAL COMPANY LAW TRIBUNAL CHENNAI BENCH

D. To permit disposal of effluent which might have been lapsed due to non-operation in the plant.

E. Waiver by the State Government of Gujarat / Gujarat Industrial Development Corporation from compliance with the conditions for drawal of water from prevailing source for a period of two years commencing from the Effective Date.

F. Approvals from Environment and Forest, Central Pollution Control Board, State Pollution Control Board, Water Authorities and other government authorities for regularization and waiver of any non-compliances pertaining to environment, water and forests.

G. The State Government to treat the recommencement of operations of Corporate Debtor as "commencement of operations as a new unit" and consequently on and from the date of such commencement, grant the Corporate Debtor the entire fiscal incentives as granted to other units in the area to be able to effectively compete with other units in the region.

H. NCLT to recommend full support to be extended by the water, electricity and other relevant authorities for effective revival of the Corporate Debtor.

I. Allow setting off of brought forward losses and unabsorbed depreciation for computation of Taxable Profits as permitted under Section79 of the Income Tax Act, 1961, for a period of 8 years.

J. Provide a reasonable opportunity of being heard to the Jurisdictional Principal Commissioner or Commissioner of Income Tax which is a condition for allowing set-off of losses and unabsorbed depreciation under Section-79 of the Income Tax Act, 1961.

K. Allow setting off of losses and unabsorbed depreciation for the purpose of computation of book profit as permitted under Section 115JB of the Income Tax Act, 1961.

L. Exemption from any tax liability arising due to implementation of the Resolution Plan.

M. Exemption from any stamp duty liability arising due to implementation of the Resolution Plan.

N. Approval for increase in authorized share capital of the Corporate Debtor.

O. To release all encumbrances, charges, security interests etc., created on the assets of the Corporate Debtor on the Effective Date.

P. To settle all legal proceedings and other contingent liabilities, irrevocably and unconditionally other than those explicitly covered in the Resolution Plan, no other person shall be eligible to receive any amount from the Corporate Debtor, either on account of unverified claims, legal proceedings, etc.

Q. Revocation of all power of attorneys provided to any person by the Corporate Debtor as on the Effective Date.

R. Terminate without liability all outstanding negotiable instruments issued by Corporate Debtor or any other person on behalf of Corporate Debtor.

S. Extinguish all liabilities in relation of corporate guarantees, indemnities, etc., provided by the Corporate Debtor as on the Effective Date.

T. The manufacturing facility of ML (Corporate Debtor) at Edayar is adjacent to the manufacturing facility of Merchem India Pvt. Ltd (MIPL), which is a group company of Corporate Debtor and has provided its Corporate Guarantee to the Lenders of Corporate Debtor. The manufacturing facility of MIPL has all along been utilized by Corporate Debtor and continuance of this facility is essential for Corporate Debtor to carry on its manufacturing activities at Edayar. Significantly, common Effluent Treatment Plant for both plants (Corporate Debtor's and MIPL) is within the premises of Corporate Debtor and thus, both Corporate Debtor and MIPL are interdependent for their manufacturing operations and its availability needs to continue. The present arrangement between Corporate Debtor and MIPL for the manufacturing facility need to continue as a part of the Resolution Plan, and accordingly the Resolution Plan tendered herein is subject to and conditional upon the existing arrangement continuing perennially.

U. Exemption from levy of any duty, charges, fee or by whatsoever name called arising due to *change in ownership structure of the Corporate Debtor.*

8.2. All the amounts will be paid after proper reconciliation and without prejudice to legal remedies available to the Corporate Debtor.

8.3. All claims, rights of promoter / promoter group against the Corporate Debtor, unless covered in the Resolution Plan, shall stand irrevocably and unconditionally extinguished.

8.4. All claims of government authorities, in relation of all taxes, liabilities, penalties etc., for period pertaining prior to Effective Date shall stand fully extinguished.

8.5. All outstanding negotiable instruments issued by Corporate Debtor or any other person on behalf of Corporate Debtor shall stand terminated and no liability shall arise on the same.

8.6. All liabilities in relation of corporate guarantees, indemnities, etc., provided by the Corporate Debtor as on the Effective Date shall stand extinguished.

8.7. Any action, with regard to the assets/claims/rights etc as mentioned in the Balance Sheet as well as off balance sheet items of the Corporate Debtor as on the Effective Date shall be the *assets/claims/rights of the Resolution Applicant and shall be dealt with at its sole discretion.*

8.8. To give consent to shift of registered office of the Company from the State of Kerala to West Bengal.

8.9. Permit amendment of the constitutional documents of the Corporate Debtor.

8.10. To provide direction to the relevant authorities/agencies for (a) exemption from levy of penalty, if any, imposed by such relevant authority/agencies on the Company, for non-compliance or delay in disposal of the effluent and hazardous wastes such as Process Residue, ETP/TEE Sludge/Used Oil etc., which got accumulated due to negligence/non-operation/non-compliances in relation to the Kochi and Panoli Units of the Company (b) a one-time permission to the Company after handover of the operations of the Company to the Resolution Applicant, to dispose off such waste materials such as Process Residue, ETP/TEE Sludge/Used Oil etc., in its Kochi and Panoli Units which might have been generated during the regime of old management."

8. After hearing the Counsels for the Resolution Professional and CoCs in detail and perusal of the

pleadings and the Resolution Plan submitted by the Resolution Applicant viz., Merchem Limited, this Authority vide Order dated 13.12.2018 sought explanation in relation to the Resolution Plan on the following issues :-

- *Non-recording of the reasons pertaining to the viability and feasibility of the Resolution Plan by the CoC;*

- *Absence of observations of the CoC in relation to the concession/exemption sought by the Resolution Applicant, which are not legally tenable as they are beyond the scope and power of the Adjudicating Authority;*

- *Absence of the clarity on the arrangement between Corporate Debtor and MIPL for the manufacturing facility that needs to be continued for successful implementation of Resolution Plan;*

- *Abrupt decision taken to reduce the eligibility threshold for all the Resolution Applicants from average turnover of Rs.200 Crores to Rs.160 Crores;*

- *Lack of uniformity for reduction of debt due to various creditors including unsecured creditors and operational creditors in the plan approved by the CoC;*

Accordingly, the Resolution Plan was remanded to the CoC for its fresh consideration and was given two weeks time to clarify the issues raised by this Authority and the Resolution Professional was also directed to file status report within two working days thereafter.

9. The Resolution Professional on 04.01.2019 has filed a Supplementary Affidavit to place on record certain subsequent developments in the case after the Order passed by this Authority on 13.12.2018 and also filed a

revised compliance certificate in the form of status report, which is taken on record.

10. It is averred in the Supplementary Affidavit that subsequent to the Order of this Authority, the CoC in its Meeting held on 27.12.2018, after due deliberations, came to the conclusion that the decision of the reduction of turnover from Rs.200 Crores to Rs.160 Croes was not done abruptly, it was to allow more participation and healthy competition, the same was communicated to all the PRAs well before hand and there was no objection from anybody including M/s. Nitrex Chemicals India Limited to this proposal.

11. It is further stated that the CoC after coming to a conclusion that both the Resolution Plans are feasible and viable and thought it fit to evaluate both the Plans afresh using the approved evaluation matrix communicated to all PRAs much before the last date for submission of the Resolution Plans. It is further averred

that the CoC satisfied about the viability and feasibility of the Resolution Plan being approved and it has also satisfied about the Resolution Applicant viz., Acme Chem Ltd., being able to implement the Resolution Plan, even if this Authority may not grant some specific concessions/exemptions mentioned in the~~ir~~ Resolution Plan.

12. It is further stated in Supplementary Affidavit that even if the owners of Grove Limited and Merchem India Pvt. Ltd., do not renew/continue the office/plant facilities to the Corporate Debtor, CoC has satisfied itself that such non renewal/non continuance of the agreements could affect Acme Chem's Resolution Plan to some extent but it would not make the Resolution Plan submitted by them unviable or infeasible by any means.

13. In relation to the employees of the Corporate Debtor, it has been stated that a provision has already been made for payment of the wages and gratuities to

employees of the Corporate Debtor, and in relation to the re-employment of the employees, it has been submitted that the Resolution Applicant, on start of the operations of the Corporate Debtor, will make an assessment with regard to the requirement of the employees and will give priority to engage those who have been working with the Corporate Debtor on fresh terms and conditions.

14. It is further stated that the CoC verified and confirmed that among the same class of creditors, there is no discrimination in terms of I&B Code, 2016, and therefore, it is in line with the judgement of **Binani Industries Ltd. Vs. Bank of Baroda & Anr.**, the CoC expressed its view that the Resolution Plan provides for repayment of the liability of the Operational Creditors at a value not less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor as per Section 53 of the I&B Code, 2016.

15. The Resolution passed by the CoC in its 10th Meeting held on 28.12.2018 is as follows :-

*"**Resolved that** the resolution plan submitted by Acme Chem Ltd., for acquisition of Merchem Ltd., for a total consideration of Rs.115.2520 crores be and is hereby approved since: -*

- *It is above the liquidation value;*
- *It is considered feasible and viable by CoC even if the Adjudicating Authority does not give any specific reliefs and concessions sought by Acme Chem Ltd; and*
- *The rating of the plan as per the final evaluation matrix approved by the CoC for the resolution process stood at "73" for Acme Chem Ltd., which is better than "58/61" in respect of Nitrex Chemicals India Ltd."*

***Resolved that** out of the total consideration, Acme Chem Ltd., shall be paying Rs.115.002 crores towards:*

- *Likely CIRP expenses Rs.3.78 crores;*
- *Dues towards workmen Rs.1.40 crores and*

- *The remaining towards the dues of secured financial creditors Rs.109.822 crores and Rs.3.55 lakhs towards Employees (other than workmen dues Rs.7 lakhs towards Operational Creditors dues, Rs.12 lakhs towards statutory dues and Rs.1.78 lakhs to the preference Shareholders and Rs.0.67 lakhs to the Equity and Preference Shareholders for transferring/waiving all their rights of all the equity and preference shares in favour of Acme Chem Ltd."*

"Resolved further *that the Resolution Professional is authorized to place the submission made by the successful Resolution Applicant as part of the Resolution Plan already submitted to the Adjudicating Authority, approach the Adjudicating Authority for seeking the approval of the Resolution Plan by making addendum/amendment to the application already made by RP or/and by following any other process as may be deemed fit."*

"Resolved that *all the secured Financial Creditors of Merchem Ltd, reserve their rights to exercise all options available under the law of the land to recover the balance dues from Merchem Ltd* *from the personal/corporate guarantees/collateral provided by the existing promoter director/directors/relatives of directors/associates of Merchem Ltd.*

All CoC members voted in favour of the above Resolution, 3 CoC members having voting power of 92.4% were physically present and voted in the meeting and the remaining member – Axis Bank having a voting share of 7.6% voted via e-voting in favour of the Resolutions."

16. The CoC has considered the Resolution Plan afresh in the light of the objection raised by this Authority. The explanation provided in the Supplementary Affidavit is satisfactory.

17. The 'Resolution Plan' filed with typed set to the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A. Therefore, this Authority in exercise of the powers conferred under Sub-section (1) of Section 31 of

the I&B Code, 2016, approves the 'Resolution Plan' annexed with MA/515/IB/2018 filed in CP/689/IB/2017 by granting concession/exemptions as enumerated under Para 7.2 (A & B), Para 8.1 (A, N, O, P, Q, R, S), Para Nos. 8.3, 8.5, 8.6, 8.7, 8.8 and 8.9 of the Resolution Plan. The Resolution Plan approved shall be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.

18. The Resolution Applicant shall, pursuant to the Resolution Plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority under Sub-section (1) or within such period as provided for in such law, whichever is later.

19. The order of Moratorium dated 15.01.2018 passed by this Adjudicating Authority under Section 14 of the I&B Code, 2016 shall ceased to have effect from the date of passing this Order.

20. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI, so that the Board may record the same on its data-base.

21. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.

22. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.

23. The Order is pronounced in the open Court.

(CH.MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)

P. ATHISTAMANI

23/1/19

ASST. REGISTRAR / ~~DEPUTY REGISTRAR~~
NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH
CORPORATE BHAVAN, 3rd FLOOR,
29, RAJAJI SALAI, CHENNAI - 600 001.

Certified to be True Copy

राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
CHENNAI
CHENNAI BENCH
चेन्नै न्यायपीठ