IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH, CHENNAI

MA/355/2019
in
CP/632/IB/2017

Under Section 30(6) of Insolvency & Bankruptcy Code, 2016

In the matter of **M/s. AML Steel and Power Limited**

Shri. Santanu T Ray, RP
For M/s. AML Steel and Power Limited

...Applicant

In the matter of

M/s. Edelweiss Asset Reconstruction Company Limited
.... Financial Creditor

Vs.

M/s. AML Steel and Power Limited
.... Corporate Debtor

Order delivered on27.06.2019

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B.S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Applicant : *Shri Anant Merathia, Advocate*

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Order Pronounced on 27.06.2019

It is an MA filed by RP, for the approval of Resolution Plan under section 30(6) of the code, 2016 r/w Regulation 39(4) of the IBBI(

Insolvency Resolution Process of Corporate Persons) Regulations, 2016 for seeking approval of Resolution Plan by Adjudicating Authority as approved by the Committee of Creditors. In this Application ,the Applicant prays as follows:

a) *that this Hon'ble Tribunal be pleased to approve the resolution plan submitted by DD International Private Ltd. jointly with Alex Tradecom Private Limited for the Corporate Debtor as has been approved by the CoC pursuant to its meeting held on 1st March, 2019 in accordance with Section 30(6) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016;*

b) *that this Hon'ble Tribunal be pleased to declare the order of moratorium dated 12.03.2019 shall cease to have effect in accordance with Section 31 (3) of the Code after approval of the Resolution Plan;*

c) *that this Hon'ble Tribunal be pleased to direct that the shares held by the all existing shareholders be reduced to nil and fresh shares be issued to the Resolution Applicants the M/s. DD Interenational Private Limited & M/s. Alex Tradecom Private Limited as per the details mentioned in Resolution Plan;*

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d) that this Hon'ble Tribunal be pleased to declare that the approved resolution plan is binding on the corporate debtor, its employees, resolution applicants, members/shareholders, creditors, guarantors and other stakeholders involved in the resolution plan;

e) for such other order or relief(s) as this Hon'ble Adjudicating Authority may deem fit and proper in facts and circumstances of the present case;

2. The Tribunal vide its order dated 12.03.2018 admitted the application initiating Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor and declared moratorium under Section 14 of the Code and appointed Mr. Santanu T. Ray as the Interim Resolution Professional (IRP).

3. The Committee of Creditors (CoC) constituted by IRP at its first meeting held on 19.04.2018, resolved to recommend the appointment of the Applicant herein as the Resolution Professional vide order copy dated 21.03.2018. The Tribunal vide its order dated 11.12.2018 excluded the unutilized CIRP period of 90 days from the total period of Corporate Insolvency Resolution Process with effect from 07.12.2018.

4. Due to non-cooperation of Promoters and District authorities, as decided in the 12th Meeting of the CoC, the last date of submission of Expression of Interest (EOI) was extended and the last date of acceptance of resolution was fixed on 31.12.2018. A print publication was made for Expression of Interest (EOI) in the newspaper, "Business Standard" (English daily). Pursuant to such publication, 04 (four) EOIs were received.

5. In the 13th COC meeting held on 02.01.2019, the applicant placed before the Members, the Resolution Plans, received in sealed envelopes, submitted by four resolution applicants, namely, (i) Sanjay Agarwal jointly with JFC Finance (India) Limited; (2) D.D. International Private Limited; (3) Gopal Sponge and Power Private Limited; and (4) Ajay Agarwal jointly with Ashok Agarwal (Promoters of the Company). The Resolution Plan of Mr. Ajay Agarwal was found ineligible due to technical reasons and he was disqualified under the provisions of Section 29-A of the I&BC Code.

6. At the 14th Meeting of the CoC held on 06.02.2019, while discussing the resolution plans submitted by all the three prospective resolution applicants, the CoC decided to cancel the Bidding Process under the present Corporate Insolvency Resolution Process initiated by the Committee of Creditors and all the Resolution Plans duly submitted by the prospective resolution applicants be returned to them along with their Demand Draft for Earnest Money Deposit with immediate effect. After approving the Bid Evaluation Matrix, Bidding Process Document and Form-G, the CoC resolved to re-issue and also directed the Resolution Professional that the advertisement for Expression of Interest for submission of resolution plan be published in newspapers. The last date for submission of EOI was fixed on 11.02.2019 and for Resolution Plan it was 20.02.2019. Accordingly, Expression of Interest for invitation for submission of resolution plan till 20.02.2019 was published in "Financial Express" and "Business Standard" – All India Editions.

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7. At the 15th Meeting of the CoC held on 21.02.2019, all the Resolution Plans received in physical form as well as electronic form were placed before CoC by the RP and the same were opened/downloaded.

8. At the 16th CoC meeting held on 26.02.2019, the resolution plans submitted by four resolution applicants, namely, (i) M/s. D.D. International Private Limited jointly with M/s. Alex Tradecom Private Limited (ii) M/s. Gopal Sponge and Power Limited (iii) M/s. Transform Steels Private Limited and (iv) M/s. Orissa Metaliks Private Limited were placed before CoC and bidding process to find out the successful resolution applicant was carried out. The CoC members stated to all the resolution applicants that the amendments were needed to be made in their resolution plans if the resolution plan is to be considered by the CoC and also incorporating all the changes mutually agreed between the Members and the CoC and Resolution Applicants.

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9. At the 17th CoC meeting held on 01.03.2019, the Revised Resolution Plan submitted by the successful Resolution Applicant M/s. D.D. International Private Limited was placed before the Members and the same was adopted and approved with 100% voting share voting in favour. The Resolution Professional was authorized to issue Letter of Intent confirming the approval of Revised Resolution Plan of M/s. D.D. International Private Limited. The resolution plan submitted by the above resolution applicant provides for the following:

"Resolution Applicant offer a total payment of ₹43,62,86,338 (Rupees Forty Three Crores Sixty Two Lakhs Eighty Six Thousand Three Hundred and Thirty Eight) to be paid to the secured financial creditors. Out of the said amount of ₹43,62,86,338, the Resolution Applicant has deposited Earnest Money Deposit of ₹4,34,00,000 as was mandated in the Bid Process Document. The Resolution Applicant shall pay a sum of ₹3,00,00,000 within 3 days from the date of approval of the plan by the CoC and on issuance of LOI as Performance Security in the name of the Corporate Debtor – AML Steel and Power Limited. The remaining amount of ₹36,28,86,338 (Thirty Six Crores Twenty Eight Lakhs Eighty Six Thousand Three Hundred and Thirty Eight) shall be paid at a stroke within a period

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not exceeding 30 days from the date of approval of the Revised Resolution Plan by the Adjudicating Authority. Following is the payment schedule of Financial Creditors:-

S.No.	Instalment	Date	Amount
1.	EMD Amount	On Acceptance of Resolution Plan	₹4,34,00,000
2.	Performance Security	Within 3 days from the date of declaration of RA as a successful RA and on issuance of LOI	₹3,00,00,000
3.	Final Payment	Within 30 days from the date of approval of Revised Resolution Plan by the Adjudicating Authority	₹36,28,86,338

(i) Although there is no authenticated claim filed and confirmed by the RP nor any details of any Operational Creditors was available on record, the Resolution Applicant further propose to offer a sum of ₹48,23,662(Forty Eight Lakhs Twenty Three Thousand Six Hundred and Sixty Two) being the 6% of the total value of the operational creditors of ₹8,04,11,037, for any claim to be raised by any of the operational creditor in future. If there arises no claim from the operational creditors within 12 months from the date of approval of plan by the adjudicating authority, in that event, the said sum of ₹48,23,662 shall be written off from the books of the Corporate Debtor;

(ii) The corporate Debtor is in default of filing income tax return, audited balance sheet and annual return since the financial year 2016-2017. The

Resolution Applicant requests the RP to file statutory return of the corporate debtor for the financial year 2016-2017 and 2017-2018. The provisional balance sheet as on 31.03.2019 should be prepared by the RP. A 100% waiver is sought for by the RA for the penalty/interest on penalty if there be any, imposed by the income tax department and also 100% waiver for charges/penalty for delay in filing returns with RoC of the competent jurisdiction of corporate debtor. In this connection, the Corporate Debtor has to approach the Income Tax authorities for any relief on this count;

(iii) Any recoveries made from proceedings filed under Section 43 to 66 of the I&BC, 2016 filed with the NCLT shall go to the secured financial creditors. Resolution Applicant shall not intervene in such proceedings and no cost incurred to pursue such litigation shall be borne by the Resolution Applicant.

<u>PAYMENT OF LIABILITIES OF THE CORPORATE DEBTOR AND WAIVERS THEREIN (page-5 of dates and events)</u>

TOTAL INESTMENT UNDER THE RESOLUTION PLAN							
Sl. No.	Stakeholders	Amount as per Balance Sheet	Amount Claimed	Amount Admitted	Total proposed payment	Repayment Scheduled	% of the claim Amount offered
1.	CIRP Cost	As per actual expenses incurred by the IRP/RP in the CIRP of the corporate debtor					
2.	Financial Creditors	298,96,13,616	395,73,47,538	395,73,47,538	43,62,86,338	Within 30 days from the date of approval of the plan by the	11.02%

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						adjudicating authority	
	Edelweiss ARC Ltd (76.35%)		302,18,09,178	302,18,09,178	33,31,04,619	Within 30 days from the date of approval of the plan by the adjudicating authority	11.02% (89.08% Waiver)
	ARCIL (23.65%)		93,55,38,360	93,55,38,360	10,31,81,719	Within 30 days from the date of approval of the plan by the adjudicating authority	11.02% (89.08% Waiver)
3.	Operational Creditors (Trade Payables under Unaudited financial statement for the year ending 31.03.2018	8,04,11,037.10	NIL	NIL	48,23,662	Within 30 days from the date of approval of the plan by the Adjudica-ting authority against the claim of OC, if any	6% of the claim amount and (94% waiver)
4.	Short Term Provisions	76,56,000	NIL	NIL	NIL	NA	100% waiver
5.	Particulars of debts due to related parties	NIL	NIL (As per Information Memorandum				
6.	Workmen & Employees	NIL	NIL (As per Information Memorandum, the RP has not received any claims from the workers and/or employees of the corporate debtor and it is further mentioned in the Resolution Plan that the corporate debtor has no employee/worker since the date of IM and there are no				

			outstanding dues whatsoever against them.					
7.	Government Dues	NIL						
8.	Supervision of resolution plan	As per actual cost to be incurred + fee to be agreed with the supervisor/committee						
	TOTAL		395,73,47,538	395,73,47,538	44,11,10,000			

10. On 9th February 2019, after consistent pursuance with the local State Administrative Authorities and with the support of the Police Authorities, the RP managed to secure possession of the factory premises of the corporate debtor in Saraikela District, Jharkhand State and thereafter managed to arrange inspection visit for the prospective resolution applicant to the factory premises so that they can assess the value of the corporate debtor before they submit their resolution plan.

11. The representatives of DD International Private Limited visited the factory premises on 19.02.2019 after seeking permission and assessed the value of the corporate debtor. On 28.02.2019, the successful resolution applicant M/s. DD International Private Limited jointly with M/s. Alex Tradecom Private Limited submitted their Revised Resolution Plan after incorporating all the terms mutually

agreed between them and CoC members, to the resolution professional. In the 17th meeting of CoC held on 01.03.2019, the members of CoC, with 100% voting share, unanimously approved the revised resolution plan submitted by M/s.DD International Private Limited jointly with M/s.Alex Tradecom Private Limited and resolved to issue a Letter of Intent to the successful resolution applicant. The CoC also resolved to file an Application before the NCLT, Chennai for approval of Resolution Plan duly submitted by the successful resolution applicant M/s.DD International Private Limited jointly with M/s.Alex Tradecom Private Limited.

12. In view of the above, the resolution plan submitted by the Resolution Applicant M/s.DD International Private Limited (jointly with M/s.Alex Tradecom Private Limited) which was recommended by the CoC pursuant to the meeting held on 01.03.2019 stands approved.

13. The Resolution Professional in consultation with CoC will ensure that the Resolution Plan complies with section 30(2)(e) of the

IBC, 2016 especially regarding compliance with FDI norms and provisions of FEMA and the regulations made thereunder.

14. The Resolution Applicant is directed to adhere to the provisions of Section 53 of the IBC, 2016 duly following the procedure for "water fall" in relation to the amounts brought in by the Resolution Applicant.

15. 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.

16. 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.

With the above directions, the Application **MA/355/2019 in CP/632/(IB)/2017** stands **disposed of.**

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(S. VIJAYARAGHAVAN)
MEMBER (Technical)

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(B.S.V. PRAKASH KUMAR)
MEMBER (Judicial)