IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH AT HYDERABAD

I.A. No. 264 of 2019

IN

C.P (I.B).NO.37/9/HDB/2018

U/s 30(6) & 31 of IBC, 2016
R/w Regulations 39 (4) of IBBI (IRPCP) &
Rule 11 of NCLT Rules 2016

In the matter of

Harindera Cargo Carriers Pvt Ltd

VERSUS

Aster Building Solutions Private Limited

Mrs. Padmasri Appana
Resolution Professional
M/s Aster Building Solutions Private Limited
Flat No.301, B-lock, Vishnu Residency,
Gandhi Nagar, Hyderabad-500080

...Applicant/
Resolution Professional

AND

1. Committee of Creditors
M/s Aster Building Solutions Private Limited

...Members of
Committee of Creditors

2. YAP Trading Pvt. Ltd and
Pollent Ecosmart Buildsys Pvt Ltd
No.28, 2nd floor, AMG building,
lawyer Jagannathan street, Alandur,
Chennai - 600016

...Resolution Applicant
in Consortium

3. SRINIVASA PRASAD ALAPATI
P No B-176, Sainikpuri, 3rd Avenue,
6th Link Lane, opposite 5th avenue bakery,
sainikpuri, kapra, Hyderabad-500094

4. SRINIVASA RAO ATLURI
H.No. 1-19-71/C-37/101-102,
Rukmnipuri, near Spencers
A S Rao Nagar, Kapra, Hyderabad-500062
Members of suspended board of directors of
M/s Aster Building Solutions Private Limited ...Respondent Nos. 3 & 4

Date of order: 04.06.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / Counsels present:

For the Applicant: Shri V.K. Sajith, Advocate & Mrs. Padmasri Appana, Resolution Professional in person

Per: Shri Ratakonda Murali, Member (Judicial)

Heard on: 03.04.2019, 13.05.2019 & 15.05.2019

ORDER

CASE IN BRIEF:

1. This is an Application filed under section 30(6) and 31 of Insolvency and Bankruptcy Code, 2016 R/w Regulations 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons), R/w Rule 11 of NCLT rules, 2016 by Resolution Professional, seeking directions to approve the resolution plan.

Averments in the Application in brief

2.1 The Corporate Debtor is a Private Limited Company registered under the Companies Act, 1956 bearing CIN No. U45400TG2008PTC059204 incorporated on 16.05.2008 having its registered office at Plot No.141/1, Phase-II, IDA, Cherlapally Hyderabad TG 500051.

2.2 This Tribunal vide orders passed in CP (IB) No. 37/9/HDB/2018 dated 23.03.2018 admitted the Petition filed under Section 9 of Insolvency & Bankruptcy Code, 2016 by M/s Harindera Cargo Carriers Pvt. Ltd and Corporate Insolvency Resolution Process started against the Corporate Debtor on 10.07.2018. The Applicant was appointed as Interim Resolution Professional who was later confirmed as Resolution Professional. 270 days period of CIRP ended on 05.04.2019.

2.3 The IRP constituted 1st CoC meeting on 04.08.2018 comprising of two Financial Creditors i.e. IDBI Bank Ltd and Axis Bank Limited, wherein she was confirmed as Resolution Professional. In all 10 CoC meetings were conducted by the RP.

2.4 The Resolution Professional issued Invitation calling for Express of Interest on 12.11.2018 and the last date for submission of Resolution plans was 26.01.2019. The Resolution Professional is stated to have received three resolution plans in response to the Expression of Interest published in Newspapers from M/s. Pennar Engineered Building Systems Limited, M/s. YAP Trading Private Ltd., jointly with M/s. Pollent Ecosmart Buildsys Private Ltd and M/s Baroda Hi-Tech Alloys Private Limited.

2.5 The resolution plans received by the Resolution Professional were placed before the CoC in the 05th CoC Meeting held on 29.01.2019. Subsequently after preparing the Evaluation Matrix and duly verifying the compliance under section 29A of IBC, 2016 the Resolution Professional placed the resolution plans submitted by M/s. Pennar Engineered Building Systems Limited, M/s. YAP Trading Private Ltd., jointly with M/s. Pollent Ecosmart Buildsys Pvt. Ltd. along with the liquidation value and fair value of the corporate Debtor were placed before CoC at its 07th CoC Meeting held on 08.02.2019. The CoC deliberated upon with the Resolution Applicant M/s. YAP Trading Private Ltd., jointly with M/s. Pollent Ecosmart Buildsys Private Ltd for further improvements in Terms of financial payments.

2.6 The Resolution Professional avers in the 10th Meeting of CoC held on 29.03.2019, the Resolution Plan of M/s YAP Trading Private Limited jointly with M/s Pollent Ecosmart Buildsys Private Ltd was put for voting for approval and the same was approved by the members of COC with 100% voting. The CoC comprised of two Banks i.e. IDBI Bank Limited and Axis Bank Ltd.

2.7 The Applicant/ Resolution Professional further avers that the Resolution Plan which is approved by the CoC confirms to the requirement specified U/s 30(2) of IBC, 2016 and the Resolution Plan is approved by CoC.

a) Provides for payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

b) Provides for the payment 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) Provides for the implementation and supervision of the resolution plan; and

e) Does not contravene any of the provisions of the law for the time being in force.

2.8 The Applicant further avers that, the Resolution Plan complied the following statutory requirements as per the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2019, which have come into effect from 24th January 2019, relating to

1) Sub-section (4) of section 30, to provide a performance security within the time specified and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule;
2) The resolution plan to include a statement giving details, if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past; and
3) Amounts to be provided for the stakeholders under the Resolution Plan as per the Format in Form H, under paragraph 7.

2.9 The Applicant further avers that M/s YAP Trading Private Limited jointly with M/s. Pollent Ecosmart Buildsys Private Ltd / Resolution Applicants, meets all the requirements of the Insolvency & Bankruptcy Code, 2016 and CIRP Regulations and does not contravene any of the provisions of Law and the Resolution Plan submitted by M/s YAP Trading Pvt Ltd jointly with M/s Pollent Ecosmart Buildsys Private Limited was also approved by the CoC with 100% majority. The Resolution

Professional, urged this Tribunal to approve the Resolution Plan submitted by M/s YAP Trading Pvt Ltd jointly with M/s Pollent Ecosmart Buildsys Private ltd u/s 31 of the IBC, 2016.

3. I have seen the Resolution plan submitted by M/s YAP Trading Private Limited jointly with M/s Pollent Ecosmart Buildsys Private ltd. The Resolution Applicants propose to take over the Company M/s Aster Building Solutions Private Limited (Corporate Debtor) as a going concern along with all the Assets (both movable & immovable), lease hold rights held in favour of Corporate Debtor for a total consideration of Rs. 57,00,00,000/- in addition to the actual amount determined for the items of Insolvency Resolution Process Cost and Workmen Employee Cost covered , against the transfer of 100% of total paid up share capital with total voting rights.

4. It is also stated in the Resolution Plan that 1st Instalment of 10% of Total consideration would be paid upon approval of the Resolution Plan by this Tribunal and balance amount would be paid within a period of 10 working days or within a period as approved by CoC, after receipt of approval of Resolution Plan by Adjudicating Authority.

5. The Resolution Applicants propose to infuse funds for implementing the Resolution Plan and payment to various stake holders as follows:-

S.No,	Details of Stake holder	Amount proposed under Resolution Plan in crores
01.	Financial Creditors	56.25
02.	Operational Creditors	0.45
03	Related parties	0.05
04.	Other dues	0.25
	Total	57.00

The Resolution Applicants over and above the amount of Rs. 57 crores, proposed to infuse funds as required for payment of unpaid Insolvency Resolution Process Cost and Workmen Employee cost on actual basis. Further Resolution Applicants have also provided for the infusion of Working Capital for the revival of Company to the tune of Rs. 20 crores.

6. The Resolution Plan would be implemented within a period of 3 months from the Effective Date and the consideration will be paid within 10 working days or within a period as stipulated by CoC from the Effective Date i.e. date of approval of Resolution Plan. Further it is also stated that the implementation of Resolution Plan shall be supervised by a three member Monitoring Committee consisting of Resolution Professional, a nominee of the Resolution Applicants and a nominee of Financial creditors.

7. The Resolution Plan was considered by members of CoC in its 10th meeting held on 29.03.2019. The minutes of the meeting of 10th CoC is shown at pages 97-100 of the Application. The CoC unanimously resolved to submit the Resolution plan to the Adjudicating Authority for approval. It is stated that Resolution plan given by M/s YAP Trading Private Limited jointly with M/s Pollent Ecosmart Buildsys Private ltd meets the requirements of the Code and Regulations. The Resolution Professional has given certificate to the said effect which is shown at page 106-109 of the Application.

8. It is averred as per Regulation 4A of IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2019, a Performance Bank Guarantee bearing No.2002PERG19033002 has been issued by SBM Bank,

Hyderabad for Rs. 8,00,00,000/- which is enclosed at page Nos. 101-103 besides Rs 1,00,00,000/- which has been taken towards Earnest money deposit. Copy of DD bearing No. 013333 dated 25.01.2019 is shown at page No. 103.

9. The Resolution plan was approved by members of CoC with 100% voting share and attendance sheet is shown at page No.100.

10. The Corporate Debtor represented by Resolution Professional is seeking the relief for the approval of the Resolution Plan under Section 31(1) of the Code.

11. The CoC approved the Resolution Plan as per Section 30 (4) of the Code with 100% voting in favour of the Plan. The Resolution Professional also filed a certificate that Resolution Plan is in conformity with the provisions of Section 30 of the Code. The plan meets all the requirements contained in Section 30 of the Code. Therefore, the Resolution Plan is to be approved by the Tribunal in pursuance of Section 31 (1) of the Code.

12. The Resolution Applicant sought certain waivers in the Plan. This Tribunal cannot waive the same. Such power is not vested on the Adjudicating Authority to waive the tax dues. However, it if for the Resolution Applicant to approach the concerned authorities and seek waiver. It is for the concerned Department to consider the request of waiver filed by Resolution Applicant in the light of Resolution Plan which is approved for the Corporate Debtor Company. So with this modification, the Resolution Plan filed by Resolution Applicant is approved.

ORDER

13. In the result, the Resolution plan submitted by M/s YAP Trading Private Limited jointly with M/s Pollent Ecosmart Buildsys Private ltd is approved and that the same shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.

14. The revival plan of the company in accordance with the approved resolution plan shall come into force with immediate effect. The moratorium order passed by this Tribunal under Section 14 shall cease to have effect from today.

15. The resolution professional shall 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.

16. IA 264 of 2019 in CP (IB) No. 37/9/HDB/2018 is disposed of in terms of the above.

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RATAKONDA MURALI
MEMBER (JUDICIAL)

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