
(2020) 01 NCLT CK 0066

In the National Company Law Appellate Tribunal

Case No : Company Application No. 275(PB) Of 2018 In Company Petition No. IB-104(PB) Of 2017

Bank Of India

APPELLANT

Vs

Tirupati Infraprojects Pvt. Ltd. And Ors.

RESPONDENT

Date of Decision : 04-01-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 12, 14, 15, 25(2)(h), 29, 29A, 30, 30(2), 30(2)(a), 30(2)(b), 30(2)(c), 30(2)(d), 30(2)(e), 30(2)(f), 30(6), 31, 31(1), 31(3), 31(3)(b), 53, 53(1)

Citation : (2020) 01 NCLT CK 0066

Hon'ble Judges : M.M. Kumar, CJ; Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Abhishek Anand, Tushar Tyagi, Sandeep Mahajan, Aaditya Vijay Kumar, Aneesh Sadhwani, Vaibhav Gaggar, Sanchit Uppal, Puneet Jindal, Raghav Kakkar, Pankaj Bhagat

Final Decision : Disposed Of

Judgement

M.M. Kumar, CJ

1. This order shall dispose of C.A. No. 275(PB)/2018 filed by the Resolution Professional (for brevity 'RP') under Section 30 & 31 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a principal prayer to approve and accept the resolution plan approved by the Committee of Creditors (for brevity 'CoC') submitted by the H1 Resolution Applicant. The resolution plan has been filed by M/s. G.P. Global Energy Pvt. Ltd. (for brevity 'G.P. Global') in the Corporate Insolvency Resolution Process (for brevity 'CIRP') of the Corporate Debtor.

2. Brief facts of the case necessary for disposal of the above mentioned applications may first be noticed. Bank of India filed C.P. No. IB - 104(PB)/2017 against M/s. Tirupati Infraprojects Pvt. Ltd. under Section - 7 of the Code. After

issuance of notice and due consideration of the reply filed by the Corporate Debtor, we admitted the petition on 03.07.2017 (Annexure A-1). As a consequence, the CIRP commenced and moratorium in terms of Section - 14 was imposed. In pursuance of Section - 15 of the Code the IRP made public announcement on 05.07.2017 inviting claims And the IRP received claims from various financial creditors and operational creditors (including workmen, employees and statutory creditors). The IRP/RP have taken up various other processes as enjoined upon them under the Code. The RP has convened 14 meetings of the CoC upto 26.03.2018. 3. It is pertinent to mention that the first expression of interest was floated on 11.09.2017 and the same could not be finalised as some litigation ensued at that stage before this Tribunal. The second expression of interest was floated on 22.12.2017 and the last date for submitting the Resolution Plan was fixed at 19.01.2018. Further the COC in its meeting held on 17.02.2018 decided to float a third expression of interest as the ones received earlier were not found to be feasible and viable as per their commercial wisdom and there was still time available for the CIRP to come to an end. An order to that effect was passed by us on 06.03.2018 and the relevant portion of the same reads as under:

"..... Having heard the learned Counsel for the parties, we are of the view that the basic object of inviting expression of interest is to fetch best price even if it involves floating another expression of interest particularly when the timeline stipulated by Section 12 of the Code providing 270 days is available. It is also now well settled that business decision of the COC shall be readily accepted by all the stakeholders unless they are found against the provisions of the Statutes, Rules or otherwise against public interest.

Keeping in view the aforesaid factors, we allow the COC to float another Expression of interest as per the Schedule given, the criteria shall remain the same....."

4. It is further submitted by the Applicant-RP that as per the provisions of the Code he had prepared the Information Memorandum of the Corporate Debtor and copy of the same is attached with the instant application (Annexure-2). Further as per the provisions of Section 25(2)(h) of the Code the RP invited expression of interest from prospective resolution applicants as per the Process Memorandum dated 07.03.2018 approved by the COC. A copy of the Process Memorandum is placed on record (Annexure A-3).

5. In compliance of the Order dated 06.03.2018 the RP issued an advertisement which was published on 07.03.2018 in the Economic Times inviting prospective resolution applicants to submit their resolution plans in respect of the Corporate Debtor. A copy thereof has been placed on record (Annexure A-6). The RP received expression of interest from 5 prospective resolution plan applicants and all of them were provided access to the updated Information Memorandum and the Process Memorandum. Out of the five expression of interests received, only three prospective resolution plan applicants deposited the earnest money of Rs.

10 crores.

6. Thereafter the resolution plan received from the three prospective resolution plan applicants were put for deliberation and discussion before the CoC in its 11th meeting held on 14.03.2018 and after a detailed evaluation the resolution plan of G.P. Global Energy Pvt. Ltd. was considered to be the most viable as per the commercial wisdom of the CoC. A copy of the minutes of the said meeting is placed on record (Annexure A-7). Accordingly on the recommendation of the CoC, GP Global was notified as the H1 Resolution Applicant in the CIR Process. Having been determined as the H1 Resolution Applicant, the CoC held extensive negotiations and consultations with the H1 Resolution Applicant to amend its plan. Pursuant to the negotiations, the H1 Resolution Applicant submitted an addendum dated 16.03.2018 and the same is placed on record (Annexure A-9). There were two more addendums dated 19.03.2018 and 23.03.2018 submitted by the H1 Resolution Applicant. The CoC unanimously approved the resolution plan along with the addendum dated 16.03.2018 ("Successful Resolution Plan "- Annexure A-14). A copy of the e-voting receipts of the meeting dated 26.03.2018 is placed on record (Annexure A-16). The aforesaid resolution plan approved by the CoC has now been placed before us for seeking our acceptance and approval in terms of the Code and Regulations framed there under.

7. The RP has further disclosed that in compliance of Regulation 27 read with Regulation 35 of the IBBI(Insolvency Resolution Process for Corporate Persons) Regulations 2016, he appointed registered valuers to ascertain the fair value and liquidation value of the Corporate Debtor.

8. The Resolution Professional has also submitted a certificate confirming that the Resolution Plan meets all the requirements of the I&B Code along with the corresponding regulations (Annexure A-18). Also as per Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 a compliance certificate in FORM - H has been placed on record. It is further submitted by the Resolution Professional that pursuant to the approval of the resolution plan by the CoC a letter of intent dated 27.03.2018 was issued to the resolution plan applicant and the same was accepted with certain riders by the resolution plan applicant (Annexure A-17).

9. Objections were received from the unsuccessful resolution applicant (C.A.-1260(PB)/2019) but the same were withdrawn later on as also recorded in our order dated 10.07.2019. Apprehensions were also raised with respect to the conduct of the successful resolution applicant in the implementation of the resolution plan as in another CIRP the same resolution plan applicant has sought extension for making the payment. Learned counsel for G.P. Global Energy Pvt. Ltd. has assured that the payment of Rs. 232 Crores would be made within 30 days after the approval of the resolution plan by the Adjudicating Authority- NCLT and an affidavit to that effect was filed on 20.09.2019.

10. Having heard the learned counsels for the Resolution Professional and the

Resolution plan applicant we find that it would be first necessary to ascertain whether the requirements of the statute and subordinate legislation have been fulfilled or not.

11. According to the scheme of the Code a resolution applicant is required to submit a resolution plan to the RP prepared on the basis of information memorandum. The information memorandum is a document envisaged under Section 29 and it is required to contain such relevant information as may be specified by the Insolvency and Bankruptcy Board of India. Accordingly, in Regulation 36 of the CIRP Regulations details have been provided with regard to the contents of information memorandum. On the submission of resolution plan the RP is under mandatory obligation to examine each resolution plan received by him under Section 30(2) of the Code and he is to confirm that each resolution plan provides for all items listed under Section 30(2) (a) to (f). If the aforesaid conditions as envisaged by Section 30(2) are fulfilled then such a resolution plan is to be presented to the CoC. The CoC may then approve a resolution plan by a vote of not less than sixty six percent of voting share of the financial creditors, after considering its feasibility and viability along with other requirements as may be specified by Board. Under Section 30(6) the RP is obliged to submit the resolution plan as approved by the CoC to the Adjudicatory Authority.

12. As per the requirement of Section 29 of the Code read with Regulation 36 of the CIRP Regulations an information memorandum prepared and a certification regarding the same was furnished by the RP to the CoC as well as before this Tribunal.

13. When the resolution plan as approved by the CoC is placed before the Adjudicatory Authority-NCLT then it is to record its satisfaction as per the requirement of Section-31(1) of the Code as to whether the conditions as referred to in sub-section 2 of section 30 have been fulfilled. On its satisfaction the Adjudicatory Authority-NCLT is to approve the resolution plan which is to be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. As per section 31(3) of the Code a further provision has been made that after the approval of a resolution plan the moratorium order passed under Section 14 would cease to have effect and the RP is under obligation to forward the whole record relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Insolvency and Bankruptcy Board of India to be recorded on its database. The conclusion of the aforesaid discussion is that Adjudicatory Authority-NCLT must be satisfied that the resolution plan conforms to the requirements given in Section 30(2) of the Code.

14. It is pertinent to notice the mandatory requirements of Section 30(2) of the Code for a resolution plan to fulfil. Firstly, the resolution plan approved by the CoC must provide for payment of insolvency resolution process cost in a manner specified by the Board in priority to the payment of other debts of the corporate debtor. With the application i.e. C.A. No. 275(PB)/2018, the RP has placed on

record a copy of the CoC approved resolution plan (Annexure A-14) of the highest bidder i.e. H1 Resolution Applicant - G.P. Global Energy Pvt. Ltd. Appendix 7- Financial Proposal under the title 'Detail Terms of Resolution Plan' the resolution plan applicant has identified the specific sources of fund that would be used for payment of the insolvency resolution process costs in priority to the payment of other debts of the corporate debtor. Therefore this condition stands satisfied.

15. Secondly the resolution plan must provide for payment of the debts of operational creditors in such a manner as may be specified by the Board which are not to be less than the amount to be paid to the operational creditors under Section-53 in the event of liquidation of the corporate debtor; or the amount that would have been paid to such creditors if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority under Section 53(1), whichever is higher. This provision is not applicable in the instant case as there is no operational creditor and no provision has been made in the resolution plan.

16. The third requirement is that resolution plan must provide for the management of the affairs of the corporate debtor after its approval. There is specific provision made for the management and control of the company after the approval of the resolution plan by the Adjudicating Authority. A detailed mechanism regarding the management & control is discussed in Addendum 3 dated 23.03.2018 with the plan. The resolution applicant has stated in the said addendum that the management of affairs of the corporate debtor would be looked after by Mr. Anil Kohli-RP after the approval of the resolution plan by the Adjudicating Authority-NCLT, till complete payment of Rs. 252 Crores is made by the Resolution Applicant. Therefore, the third condition stands fully complied with.

17. The fourth condition envisaged by Section 30(2) is that it must provide for implementation and supervision of the resolution plan. A reference in that regard has been made to the Addendum-3 dated 26.03.2018. The resolution plan applicant has categorically submitted that Mr. Anil Kohli-RP would supervise the transfer process and day to day working of the corporate debtor.

18. The fifth condition requires the RP to confirm that the resolution plan did not contravene any of the provisions of the law for the time being in force. In FORM-H dated 23.07.2019 submitted by the RP as per the requirements of Regulation 39(4) of the CIRP Regulations he has certified that the resolution plan did not contravene any of the provisions of the law for the time being in force and is in compliance with the provisions of the Code and the CIRP Regulations.

19. The resolution applicant also confirms that the resolution applicant and its connected person are not disqualified under Section 29A of the Code to submit a resolution plan and any other law applicable which further shows that the resolution plan conforms to the provisions of the law for the time being in force and did not contravene any such provision. The RP in the FORM-H submitted by

him has certified the same.

20. The sixth requirement is that it conforms to all such requirements which may be specified by the Insolvency and Bankruptcy Board. The aforesaid statement has been made by the RP in the FORM-H dated 23.07.2019. In view of the above we are satisfied that all the requirements of Section 30(2) are fulfilled and no provision of the law for the time being in force has been contravened. Our satisfaction is fortified by the fact that no objection has been filed by any one except the unsuccessful resolution applicant and the same was withdrawn subsequently.

21. However, it is necessary to refer to the provisions of Regulation 38 & 39 of CIRP Regulations to record a finding that the requirements specified therein are also fulfilled. A perusal of Regulation 38 would clearly show that by virtue of mandatory contents of the resolution plan as discussed in the preceding paras in relation to Section 30 and 31 of the Code, the requirement of Regulation 38 also stands fulfilled. Even the requirement of Regulation 39 has been satisfied as the RP has submitted that the resolution plan of H1 resolution applicant as approved by the CoC to this Tribunal along with the compliance certificate in FORM-H as per the requirements of Regulation 39(4) of the CIRP Regulations meets all the requirements of the Code and the CIRP Regulations and that the resolution plan has been duly approved by the CoC. There is no scope for argument left that shareholder, or parties to joint venture agreement or anyone holding similar document need to accord sanction in view of the provisions of Regulation 39(6) of the CIRP Regulations. Regulation 39 (6) clarifies that the resolution plan as approved by the CoC must take effect notwithstanding the requirement of consent of the members or partners of the Corporate Debtor under the terms of the constitutional documents of the Corporate Debtor, shareholders' agreement, joint venture agreement or other document of a similar nature.

22. In view of the above we accept and approve the CoC approved resolution plan of H1 Resolution Applicant - G.P. Global Energy Pvt. Ltd.

23. In respect of the relief and concession as set forth along with the Addendum dated 23.03.2018, it is not possible for us to issue any directions except to say that the resolution applicant may make a claim before the authorities which shall be considered in accordance with law. In so far as governmental dues like tax etc., these are covered by the expression 'operational creditor'. Moreover, these reliefs and concessions are also not condition precedent for the acceptance of resolution plan or its implementation. It would not be any impediment for us to accept the Resolution Plan.

24. As a sequel to the above discussion we pass the following directions:-

(i) C.A. No. 275(PB)/2019 - The application filed by the Resolution Professional for accepting the resolution plan approved as by the CoC submitted by Resolution Applicant-G.P. Global Energy Pvt. Ltd. is accepted and it is clarified that the relief and concession set forth in Appendix-II must abide by the directions issued in

the preceding paras. The Resolution Applicant-G.P. Global Energy Pvt. Ltd. may file appropriate applications before the Public Authorities/Government Authorities and it is needless to say that their applications would be duly considered in accordance with law. We make it clear that we are not expressing any opinion on the claim concerning reliefs and concession nor any part of this order shall be understood in that spirit.

(ii) The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its data base in terms of Section-31(3)(b) of the Code.

(iii) The approved 'Resolution Plan' shall become effective from the date of passing of this order.

(iv) C.A. No. 275(PB)/2019 stands disposed of in above terms.