

(2023) 01 NCLT CK 0019

In the National Company Law Tribunal

Case No : IA 716/MB-IV/2021 In CP (IB) No.4549/MB-IV/2018

Mr. Raj Kumar Dad Vs Srithik Ispat Private Limited ?

Date of Decision : 11-01-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 8, 9, 12, 14, 21(2), 29A, 30(1), 30(2), 31, 33, 43, 45, 50, 66
Central Sales Tax Act, 1956 — Section 17(3)
Goa Tax on Entry Goods Act, 2000 — Section 19(2)(i)
Gujarat Value Added Tax Act, 2003 — Section 48
Goa Value Added Tax Act, 2005 — Section 48
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 — Regulation 35A, 36B(4A), 38(1A), 38(1B), 38(2), 39(4), 39B, 39C, 39D
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020 — Regulation 40C

Citation : (2023) 01 NCLT CK 0019

Hon'ble Judges : Kishore Vemulapalli, Member (J); Manoj Kumar Dubey Member (T)

Bench : Division Bench

Advocate : Ajinkya Kurudkar, Rohit Gupta

Final Decision : Disposed Of

Judgement

Kishore Vemulapalli, Member (Judicial)

1. This is an application being IA No. 716/MB-IV/2021 filed by Mr. Raj Kumar Dad, the Applicant, under Section 31 of IBC, 2016 (the Code), for approval of the Resolution Plan filed by Girija Agarwal for an amount of Rs. 8.7 crores, for the Corporate Debtor Srithik Ispat Private Limited (hereinafter called as the "Corporate Debtor") and approved by 100% CoC members.

2. The brief submissions on behalf of the Applicant is as under:

a) This Tribunal vide its order dated 30.09.2019 admitted the Petition filed by the Financial Creditor under section 9 and 8 of the Code against the Corporate Debtor and the Applicant was appointed as an IRP in the matter.

b) Pursuant to the appointment of the Applicant as an Interim Resolution Professional (hereinafter referred as IRP), the Applicant was confirmed and appointed as an Resolution Professional (hereinafter referred as RP) by the members of Committee of Creditors (hereinafter referred as CoC), the Applicant has since then carried out its duties in accordance with the provisions and rules as envisaged under the Code with respect to the Corporate Insolvency Resolution Process (hereinafter referred as CIRP) of the Corporate Debtor.

c) The Applicant has conducted the meetings of the CoC in the past on eight occasions. Following is the list of the dates on which the said CoC meetings were conducted:

Sr. No.

Particulars

Date

1.

1st CoC Meeting

24/10/2019

2.

2nd CoC Meeting

2/12/2019

3.

3rd CoC Meeting

17/01/2020

4.

4th CoC Meeting

3/03/2020

5.

5th CoC Meeting

27/04/2020

6.

6th CoC Meeting

27/07/2020

7.

7th CoC Meeting

21/08/2020

8.

8th CoC Meeting

26/02/2021

d) The Applicant states that the Form G inviting Expression of Interest (hereinafter referred as EoI) was published on 20.01.2020 consequent to which the RP received a Resolution Plan submitted on 11.03.2020 and the same was rejected by the CoC following which in the 7th CoC Meeting which held on 21.08.2020, the members of CoC passed a Resolution to file an Application seeking the directions of this Tribunal to liquidate the Assets of the Corporate Debtor. In view of the above, the RP filed an Application bearing IA 241 of 2021 on 09.10.2020 for Liquidation of the Corporate Debtor.

e) However, the RP received a revised Resolution Plan which was submitted to the RP on 23.02.2021 following which the 'Final Plan' was arrived at which was submitted on 25.02.2021. The said Final Plan was placed before the members of the CoC for their approval. The members of the CoC after deliberations during its 8th CoC meeting conducted on 26.02.2021 arrived at a conclusion to approve the said Final Plan. The Final Plan submitted by Mrs. Girija Agarwal was approved by the CoC members vide E-voting conducted till 06.03.2021.

f) The Resolution Plan submitted by the Resolution Applicant (hereinafter referred as RA) is for a total amount of Rs.8,70,00,000/- (Rupees eight crore seventy lakh only). The RA has proposed the following broad steps to revive the unit of the Corporate Debtor, they are as follows:

- i. Reductions in Debt of the Company;
- ii. Extinguishment of various operational and statutory liabilities;
- iii. Reliefs from the Contingent liabilities;
- iv. Reliefs from the ongoing cases against the company and ratification of the various non-compliances;
- v. Obtaining necessary approvals from pollution control board, electricity board and others statutory departments for restarting the unit Better raw material resourcing and Necessary working capital to be raised at low cost of funds.

g) The RA has further arranged the proposed resolution consideration from family and friends with an option to provide equity share against the unsecured loan. Total consideration is proposed to be paid as upfront payment in the revised Resolution Plan by the RA.

h) The Applicant further says that there are no dues to be paid to the workers as

wages or salaries. The statutory dues towards labour, including the dues towards the Provident Fund Department being more than 2 years old are covered under Operational Creditors (Statutory Creditors). Hence no amount is to be paid towards the same. The RA also proposes to pay full amount for any accepted claim by the RP before the Final Order date within 90 days from the date of the Order.

i) The RP says that there is one Secured Financial Creditor and the total claim of Secured Financial Creditor as accepted by the RP is Rs.3263.64 lakh.

j) The RA under the proposed plan shall make a payment of Rs.820/- lakh to the Secured Financial Creditor as their full and final settlement of claims of SFCs amount of Rs.3263.64 lakh at the time the beginning of the CIRP.

k) The Applicant further says that no changes are proposed in the Equity Shareholding of the Corporate Debtor and there are no amounts which are due to be paid to the statutory creditors except the one mentioned above.

l) The Applicant further states that as per the provisions of the Code, the period of CIRP was supposed to end on 28.03.2020. The Applicant states that, on 25.03.2020, the 'Government of India' imposed a nationwide Lockdown on account of COVID-19 pandemic vide its notification. The Applicant further states that the above-mentioned period of lockdown was extended by the Government of India till 31.05.2020. The Applicant states that in addition to the said notifications issued by the Government of India, the State Government of Maharashtra was pleased to issue additional notifications from time to time to extend the lockdown period within the State of Maharashtra, which currently is up to 31.12.2020.

m) The Applicant states that to give effect to the same, Regulation 40C was introduced by the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020 as and by way of an amendment that came into force on 29.03.2020 which states the following:

40C. Special provision relating to time-line

Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.

n) The Applicant further states that the Hon'ble NCLAT, vide its Suo Motto order passed dated 30.03.2020 was pleased to pass the following order:

(1) That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for

'Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where 'Corporate Insolvency Resolution Process' has been initiated and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal.

(2) It is further ordered that any interim order/ stay order passed by this Appellate Tribunal in anyone or the other Appeal under Insolvency and Bankruptcy Code, 2016 shall continue till next date of hearing, which may be notified later.

o) The Applicant states that the Applicant has so far performed his duties as the RP and discharged his functions as under the provisions of the Code. It is further submitted that a detailed closure report with respect to the CIRP of the Corporate Debtor prepared on behalf of the Applicant has set out details of the entire functions and activities performed by the RP since the commencement of the CIRP till the filing of this Applications.

p) That the present Application is made on behalf of the Applicant in the most bonafide manner and in the interest of Justice. Since 180 days for the conclusion of CIRP was 28.03.2020, the same is given under the compliance certificate under Form H as per Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

q) The CoC member in the 4th CoC meeting decided to file an Application for Extension of the CIRP period as the time period of 180 days for completion of the CIRP was approaching.

r) The Applicant has submitted the brief overview of the Resolution Plan as under:

CONSTITUTION OF THE COC:

Sr. No.

Name of the COC Member

Voting %

1.

CFM Assets Reconstruction

Private Limited

100%

Total

100

FAIR VALUE AND LIQUIDATION VALUE:

i. Average fair value is Rs. 11,62,29,995/-

ii. Average liquidation value is Rs. 8,03,01,371/-

AMOUNT UNDER THE RESOLUTION PLAN:

Amount envisaged under the Resolution Plan is Rs. 8.7 crores payable as per the given below schedule:

Sr. No

Particulars of Claim

Type of Claim

Admitted Amount

(INR)

Settlement Amount

(INR)

%

1.

CIRP Costs

Actuals

15,00,000

15,00,000

100%

2.

Financial Creditors not having a right to vote under sub section (2) of Section 21

Secured

1,29,90,874

NIL

3.

Financial Creditors

Secured

32,63,64,000

8,20,00,000

25%

4.

Operational Creditors-

Government

Secured

10,44,83,597

7,00,000

0.66%

5.

Operational Creditors – Other than Government, Employees and Workmen

Secured

4,17,00,000

1,50,000

0.35%

6.

Statutory Dues (GIDC Electricity Dues and Cost of License regularization)

NIL

(Expected Compliance cost to restart the
operations)

31,50,000

7.

Working Capital and

Maintenance Capex

NIL

10,00,000

GRAND TOTAL

8,70,00,000

17.92 %

TREATMENT OF CIRP COSTS:

CIRP costs to be paid in priority to any other creditor. Amount of Rs. 15,00,000/-
(Rupees Twenty Lakhs Only) is estimated to be the CIRP cost and shall be paid in

full from the realization of the Secured Financial Creditors of this plan.

TREATMENT OF SECURED FINANCIAL CREDITORS:

Sr. No.

Particulars of

Claim

Admitted Amount

(INR)

Settlement Amount

(INR)

%

1.

Secured Financial

Creditors

32,63,64,000

8,20,00,000

25%

Resolution Applicant proposes to pay the said amount to the secured Financial Creditor in order to settle the personal guarantee obligation towards the secured financial creditor.

The Resolution Applicant proposes to pay in the following schedule to the Secured Financial Creditor:

- a. Rs. 15,00,000 as EMD with resolution plan in Escrow account.
- b. Rs. 25,00,000 upfront payment with resolution plan within 30 days of approval of COC as performance guarantee in form of FDR for the said plan.
- c. c. Rs. 7,55,00,000 upfront payment within 90 days of order from Hon'ble NCLT (including the fees of the Resolution Professional and CIRP cost).
- d. Rs. 25,00,000 to be paid within 90 days of approval of Hon'ble NCLT of the resolution plan for release of Personal Guarantees and Corporate Guarantees.

TREATMENT OF OPERATIONAL CREDITORS:

Operational Creditors (Unrelated Parties including Statutory Authorities)

Admitted Amount

Total payment within 30 days

%

Commercial Tax including any other department claim

Rs.10,44,83,597

Rs.7,00,000

0.66%

GIDC (House tax & Lease rentals)

NIL

Rs.10,50,000

0.00%

Electricity Dues

NIL

Rs. 16,00,000

0.00%

Other Duties and Taxes and Licences regularization

NIL

Rs. 5,00,000

0.00%

Swastik Coal Corporation Private

Limited

Rs.4,17,00,000

Rs.1,50,000

0.35%

TOTAL

Rs.40,00,000

TREATMENT OF EQUITY SHAREHOLDERS:

The Resolution Applicant proposes no changes in the Equity Shareholding of the Corporate Debtor.

s) Following are the details of the Resolution Applicant:

Brief Profile:

Promoter is Mrs. Girija Agarwal of the company which is registered as Micro

Small and Medium Enterprises. The Director has hands-on skills and experience to operate the said plant at the present operating levels.

Sector expertise and strength to Turnaround Sick Companies

The Key reason to turn the unit into a Sick Company was unviability of the operation due to increase in operating cost of the Company which involve transportation of RM from outside state. The burden to pay up incremental finance costs without attaining the optimal operational capacity further deteriorated the Company's condition.

Strength to turnaround the Company:

- Promoter Experience
- Intensified Sponge Iron Demand
- Change in Price scenario. Increase in Steel prices.
- Better government policies for Steel sector
- Expected change in regulatory framework
- Investment of addition working capital at low interest rates
- Reduced financial burden
- Incremental synergy from ancillary production unit

Financial Tie Up

The revised Resolution Plan proposes financial consideration as upfront payment in place of staggered payment over five year as proposed in previous plan. The RA has arranged the proposed resolution consideration from family and friends with an option to provide equity share against the unsecured loan, again reducing the interest burden.

t) Hence, the Applicant prays as follows:

i. To exclude the period of 183 days from the CIRP period owing to the Lockdown declared by the Government of India, State Government of Maharashtra, the Suo moto order passed by the Hon'ble NCLAT dated 30.03.2020 and the notification issued by the IBBI dated 29.03.2020.

ii. Therefore, to grant an additional period of 183 or such number of days including the Lockdown period continued to be imposed in the State of Maharashtra, to the CIRP period on account of it being excluded from the CIRP period so far.

iii. To allow the Applicant to withdraw the Liquidation Application being IA No. 241 of 2021 filed under section 33 on 09.10.2020 before this Tribunal.

iv. Pass an order ratifying the 8th meeting of the CoC held on 26.02.2021 and

the resolution passed therein; and

v. Pass an order and approve the Resolution Plan proposed by the Resolution Applicant which has is been approved by the CoC and which shall be binding on the Corporate Debtor and its employees, members, including the Central Government, any State Government or any local authority.

vi. Pass any further or other order which this Tribunal deems fit and appropriate in the interest of Justice.

3. The Applicant has filed its Additional Affidavit as submits as under:

a) during the pendency of the present Resolution Plan before this Hon'ble Tribunal, the Hon'ble Apex Court in the matter of Sales Tax Officer v/s. Rainbow Papers Ltd. (CA 1661-2020) (hereinafter referred to as 'Rainbow Papers') decided the issue with respect to priority of charge and payout to the Sales Tax Department of Gujarat. It is in these circumstances the present Affidavit is filed to place on record that there is no impact of the said judgment in the present case and the values assigned in the resolution plan will not undergo any change as far as the present case is concerned.

b) As far as the judgment is concerned, it will not have any retrospective effect on the matters which are already sanctioned. However, without prejudice to the same, there is no impact in the present case for the reasons set out herein below:

i. In the present case, the Commercial Tax Department through the Commissioner of Commercial Tax had filed its claim vide a letter dated May 5, 2020.

ii. In the said letter, the claim is made in respect of following dues:

a) VAT dues;

b) CST dues; and

c) Entry Tax dues.

iii. As far as VAT dues are concerned, the claim is for Rs.5.91 crores along with interest penalty aggregating to Rs.7.55 crores.

iv. As far as CST dues is concerned, the claim is for Rs.1.61 crores along with interest penalty aggregating to Rs.1.83 crores.

v. As far as Entry Tax dues is concerned, the claim is for Rs.73.24 lakhs along with interest penalty aggregating to Rs.1.04 crores.

vi. As per the letter issued by the concerned Commissioner, these dues are to be recovered as per the provisions of:

a) Goa Value Added Act, 2005

b) Central Sales Tax Act, 1956

c) Goa Tax on Entry of Goods Act, 2000.

vii. The Hon'ble Apex Court in the case of Rainbow Papers (supra) was taking into consideration Section 48 of Gujarat Value Added Tax Act, 2003 (hereinafter referred to as "GVAT Act"). In the case of Rainbow Papers, the Hon'ble Apex Court has held that Section 48 of GVAT Act creates a priority first charge on the assets of the dealer and accordingly the department will have to be considered as a secured creditor. Therefore, the department will be entitled to the liquidation value treating it as a secured creditor and not as an operational creditor.

viii. In order to consider this, Section 48 of the Gujarat Value Added Tax Act is reproduced herein below first:

"48. Tax to be first charge on property. — Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person on account of tax, interest or penalty for which he is liable to pay to the Government shall be a first charge on the property of such dealer, or as the case maybe, such person."

ix. Section 66 of the Goa Value Added Tax Act:

"66. (1)] Every dealer, who is liable to pay tax shall send a declaration in such form, within such period and to such authority as may be prescribed, stating therein the particulars of the Bank accounts operated by him in connection with his business and shall within the period prescribed, intimate to the authority the changes in the particulars in the declaration.

(2) If the dealer fails to intimate to the authority the changes in the particulars in the declaration referred to sub-section (1), the Commissioner may, after giving an opportunity of being heard to such dealer, by order in writing, impose a penalty of a sum not exceeding rupees ten thousand."

This provision is distinct from Section 48 of GVAT Act. GVAT Act creates a priority, similarly this Act also creates a priority. However, under the Goa Act, this priority is subject to provisions under the Central Act. In such a case, the provisions of any other Central Act will prevail. The Central Act, being Insolvency and Bankruptcy Code, 2016, creates priority in favor of secured creditors and workers. The dues of Goa Value Added Tax will be subservient to the secured creditors and workers. Therefore, the treatment given in the present case to the Value Added Tax demand is concerned is appropriate and in accordance with law.

x. Even in case of liquidation, the VAT dues will be subservient to the dues of secured creditors and workers as the section itself says that it is subject to provisions of Central Act. Accordingly, the plan is in compliance and in accordance with law.

xi. The next provision which falls for consideration is of Central Sales Tax Act, Section 17(3), in fact the provision in this act provides that the other priority in case of liquidation are the other creditors having priority to be paid first. There is

no other provision which the Deponent came across which creates priority for Central sales tax dues. The relevant part of Section 17(3) is reproduced herein below:

"17. Company in liquidation. —

(3) The liquidator shall not part with any of the assets of the company or the properties in his hands until he has been notified by the appropriate authority under sub-section (2) and on being so notified, shall set aside an amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands:

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties in compliance with any order of a court or for the purpose of the payment of the tax payable by the company under this Act or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the appropriate authority reasonable."

xii. In View of the above, there is no priority created for Central Sales Tax Act like Gujarat Act and therefore the treatment given to the CST dues is in accordance with law and the plan is in conformity with law.

xiii. The third claim is of Entry Tax. This is governed as stated hereinabove by Goa Tax on Entry Goods Act, 2000. The provision for priority in the said Act is Section 19(2) (i). The same is reproduced herein below for reference:

"19. Payment and recovery of tax. —

(2) If default is made in making payment in accordance with sub-section (1), —
(i) the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the property of the person or persons liable to pay tax under this Act; ..."

xiv. It is submitted that though a charge is created under 19(2)(i) but no first charge is created. Therefore, even this claim will not stand, and the plan is in conformity and the payment allocated is in accordance with the judgment of Hon'ble Supreme Court.

xv. The judgment in the case of Rainbow Papers will not be applicable to the present facts and circumstances as the provisions under the three Acts which relates to this Corporate Debtor do not have any provision which is pari materia to Section 48 of the Gujarat Act and therefore there is no such priority which is created.

4. The Applicant submitted that the Compliance Certificate in Form - H under Regulation 39(4) of the Regulations showing the compliances of the Plan as mandatorily required under the Code and Regulations and that the Plan had been approved by the CoC which is produced as hereunder:

FORM H

COMPLIANCE CERTIFICATE

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

I, Mr. Raj Kumar Dad, an insolvency professional enrolled with Indian Institute of Insolvency Professionals of ICAI and registered with the Board with registration number IBBI/IPA-001/IP-P00537/2017-2018/10962, am the resolution professional for the corporate insolvency resolution process (CIRP) of M/s Srithik Ispat Private Limited.

2. The details of the CIRP are as under:

Sr.

No.

Particulars

Description

1

Name of the CD

M/s Srithik Ispat Private
Limited.

2

Date of Initiation of CIRP

30/09/2019

3

Date of Appointment of IRP

2/10/2019

4

Date of Publication of Public Announcement

5/10/2019

5

Date of Constitution of CoC

18/10/2019

6

Date of First Meeting of CoC

24/10/2019

7

Date of Appointment of RP

24/10/2019

8

Date of Appointment of Registered Valuers

18/11/2019

9

Date of Issue of Invitation for EoI

16/12/2019

10

Date of Final List of Eligible Prospective Resolution Applicants

12/02/2020

11

Date of Invitation of Resolution Plan

8/02/2020

12

Last Date of Submission of Resolution Plan

9/03/2020

13

Date of Approval of Resolution Plan by CoC

6/03/2021

14

Date of Filing of Resolution Plan with Adjudicating Authority

19/03/2021

15

Date of Expiry of 180 days of CIRP

28/03/2020

16

Date of Order extending the period of CIRP

Due to COVID-19, lockdown was imposed on 25th March, 2020 by Government of India and subsequent to that IBBI issued instructions that period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process."

Accordingly, the period of Lockdown shall be excluded from the total period of

CIRP.

17

Date of Expiry of Extended Period of CIRP

May 01,2021

18

Fair Value

Rs 11,62,29,995

19

Liquidation value

Rs 8,03,01,371

20

Number of Meetings of CoC held

8

Assuming Exclusion of period of Covid 19 will be sought from NCLT from March 25, 2020 till October 30,2021, thus the expiry of extended period of CIRP will be subject to NCLT approval

3. I have examined the Resolution Plan received from Resolution Applicant Mrs.Girija Agarwal and approved by Committee of Creditors (CoC) of M/s Srithik Ispat Private Limited under Corporate Insolvency Resolution Process.

4. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) the Resolution Applicant Mrs. Girija Agarwal has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) the agenda was proposed to approve or reject the resolution plan tabled in the meeting of the CoC on February 26, 2021 where all the members of the CoC were present. I sought vote of members of the CoC by electronic voting system which was kept open from March 01,2021 and was concluded on March 06,2021 wherein the Resolution Plan was approved with 100% voting.

5. The list of financial creditors of the CD M/s Srithik Ispat Private Limited under Corporate Insolvency Resolution Process being members of the CoC and distribution of voting share among them is as under:

Sr. No

Name of Creditor

Voting Share (%)

Voting for Resolution Plan

(Voted for / Dissented /Abstained)

For

Against

Abstain

1

CFM Assets Reconstruction Private Limited

100%

100%

-

-

Total

100.00

100.00

0.00%

00.00%

%

%

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

Yes, the resolution plan provides a statement declaring that it has dealt with the interests of all stakeholders

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs.)

Sr.

No.

Category of Stakeholder

Sub-Category of Stakeholder

Amount Claimed

Amount Admitted

Amount Provided under the Plan#

Amount Provided to the Amount Claimed

(%)

(1)

(2)

(3)

(4)

(5)

(6)

(7)

1

Secured Financial Creditors

(a) Creditors not having a right to vote under sub-

section (2) of

section 21

1,29,90,874

1,29,90,874

NIL

0.00%

(b) Other than

(a) above:

25.00%

(i) who did not vote in favor of the resolution Plan

NIL

(ii) who voted in favour of the resolution plan

32,63,64,000

32,63,64,000

8,20,00,000

Total (a) + (b) 33,93,54,874

33,93,54,874

8,20,00,000

24.16%

2

Unsecured Financial Creditors

(a) Creditors not having a right to vote under sub-section (2) of section 21

Not Applicable

(b) Other than

(a) above:

(i) who did not vote in favor of the resolution Plan

(ii) who voted in favor of the

resolution plan

Total[(a) +

(b)]

NIL

NIL

NIL

NIL

3

Operational Creditors

(a) Related Party of Corporate

Debtor

NIL

NIL

NIL

NIL

(b) Other than

(a) above: (i) Government

(ii) Workmen (iii)

Employees

(iv) Other than above

10,44,83,597

NIL NIL

4,17,00,000

10,44,83,597

NIL NIL

4,17,00,000

7,00,000

NIL NIL 1,50,000

0.66%

0.35%

Total[(a) +

(b)]

14,61,83,597

14,61,83,597

8,50,000

0.581%

4

Other debts and dues

GIDC

Electricity Dues and Cost of License regularization

NIL

(Expected Compliance cost to re- start the operations)

NIL

(Expected Compliance cost to re- start the operations)

31,50,000

0.00%

5

Amount attributed towards working Capital and Maintenance e Capex

NIL

NIL

10,00,000

0.00%

Grand Total

48,55,38,471

48,55,38,471

8,70,00,000

17.92

*If there are sub-categories in a category, please add rows for each sub-category.

8. The interests of existing shareholders have been altered by the Resolution

plan as under:

Sl. No

Category

of Share Holder

No. of Shares

held before CIRP

No. of Shares

held after the CIRP

Voting Share

(%) held before CIRP

Voting Share (%)

held after CIRP

1

Equity

Since the resolution plan is proposed by the person holding majority shareholding in the company, no change proposed in the Resolution Plan

2

Preference

9. The compliance of the Resolution Plan is as under:

Section of the Code /Regulation No.

Requirement with respect to Resolution Plan

Clause of Resolution Plan

Compliance (Yes / No)

25(2)(h)

Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?

Clause D

YES

Section 29A

Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?

Section 29A undertaking given by RA at the time of submission of EOI.

Additionally, RA has also submitted MSME

Certificate to be eligible under section 240A

YES

Section 30(1)

Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?

Annexure Da of the main application

YES

Section 30(2)

Whether the Resolution Plan-

(a) provides for the payment of insolvency resolution process costs?

(b) provides for the payment to the operational creditors?

(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?

(d) provides for the management of the affairs of the corporate debtor?

(e) provides for the implementation and supervision of the resolution plan?

(f) contravenes any of the provisions of the law for the time being in force?

Clause E (a) Clause E (d) NIL

NIL

Clause F

No

YES

YES

Not Applicable

Not Applicable Not Applicable Not Applicable

Section 30(4)

Whether the Resolution Plan

(a) is feasible and viable, according to the CoC?

Upfront payment of total Resolution Plan value

YES

(b) has been approved by the CoC with 66% voting share?

Approved with 100% votes

YES

Section 31(1)

Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?

Clause F

YES

Regulation 38 (1)

Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?

Clause E (d)

Yes

Regulation 38(1A)

Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?

Clause E

YES

Regulation 38(1B)

(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.

(ii) If so, whether the Resolution Applicant has submitted the statement giving details

of such non-implementation?

NA

NA

NO

Regulation 38(2)

Whether the Resolution Plan provides:

(a) the term of the plan and its implementation schedule?

(b) for the management and control of the business of the corporate debtor during its term?

(c) adequate means for supervising its implementation?

Clause E

Clause E

Clause F

YES

38(3)

Whether the resolution plan demonstrates that –

(a) it addresses the cause of default?

Clause F

Clause C Clause E

YES

(b) it is feasible and viable?

(c) it has provisions for its effective implementation?

Clause F

(d) it has provisions for approvals required and the timeline for the same?

Clause F

(e) the resolution applicant has the capability to implement the resolution plan?

Clause F

39(2)

Whether the RP has filed applications in respect of transactions observed, found or determined by him?

No

Not Applicable

Regulation 39(4)

Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.

-

The same will be submitted before March 31, 2021

10. The CIRP has been conducted as per the timeline indicated as under:

Section of the Code / Regulation No.

Description of Activity

Latest Timeline under

regulation 40A

Actual Date

Section 16(1)

Commencement of CIRP and Appointment of IRP

T

30-09-2019

Receipt date – 02-10-2019

Regulation 6(1)

Publication of Public Announcement

T+3

5/10/2019

Section 15(1)(c)

/Regulation 12

(1)

Submission of Claims

T+14

16/10/2019

Regulation 13(1)

Verification of Claims

T+21

23/10/2019

Section 26(6A) /

Regulation 15A

Application for Appointment of

Authorised Representative, if necessary

T+23

25/10/2019

Regulation 17(1)

Filing of Report Certifying Constitution of CoC

T+23

25/10/2019

Section 22(1) and

regulation 17(2)

First Meeting of the CoC

T+30

1/11/2019

Regulation 35A

Determination of fraudulent and other transactions

T+115

25/01/2020

Regulation 27

Appointment of two Registered Valuers

T+47

18/11/2019

Regulation 36

(1)

Submission of Information Memorandum to CoC

T+54

25/11/2019

Regulation 36A

Invitation of EoI

T+75

16/12/2019

Publication of Form G

T+75

16/12/2019

Provisional List of Resolution Applicants

T+100

10/01/2020

Final List of Resolution Applicants

T+115

25/01/2020

Regulation 36B

Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants

T+105

15/01/2020

Section 30(6) /

Regulation 39(4)

Submission of CoC approved Resolution Plan

T+165

15/03/2020

Section 31(1)

Approval of Resolution Plan

T=270

1/05/2021

11. The time frame proposed for obtaining relevant approvals is as under:

Sl. No.

Nature of Approval

Name of applicable Law

Name of Authority

who will grant Approval

When to be obtained

1

Factories & Boilers License

In

Before restarting the plant after refurbishing the same

2

Goa State Pollution NOC (Air, water)

Goa State Pollution Control Board

3

Electricity reconnection

Electricity Department

4

Labour registration & Contractor License

Migrant Labours workers Act

5

ESIC & EPF

6

DMG clearance

Directorate of Mines, Goa

7

IBM clearance

Nagpur

8

Fire clearance

Fire Department

9

Health Clearance

Health Department, South Goa

10

Permission for Diesel Storage License

Explosives Department, Nagpur

11

Borewell registration

Water resources Department

12

Weighbridge Stamping

Legal Metrology, Curchorem

13

Update Statistic Department

Statistic Department

14

CPCB online portal updation & activation

CPCB, Delhi

12. The Resolution Plan is not subject to any contingency. No Or

The Resolution Plan is subject to the following contingencies

(Elaborate the contingencies):

i.....

ii.....

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non- compliances were observed, please state the details and reasons for the same): Not Applicable

Sl.

No.

Deviation/Non- compliance observed

Section of the Code /

Regulation No. / Circular No.

Reasons

Whether

rectified

or not

Not Applicable

14. The Resolution Plan is being filed 43days before the expiry of the period of

CIRP provided in section 12 of the Code.

14A. Whether the resolution professional has, in accordance with regulation 35A,

a) Applied to Adjudicating Authority on or before the one hundred and thirty-fifth day of the insolvency commencement date: No- as no reportable transactions under sections 43,45,50 or 66 as per the transaction auditor report.

b) Filed form CIRP 8 with the Board on or before the one Hundred and fortieth day of the insolvency commencement date: Yes

15. Provide details of section 66 or avoidance application filed / pending. Not Applicable

Sl.

No.

Type of Transaction

Date of Filing with

Adjudicating Authority

Date of Order of

the Adjudicating

Authority

Brief of

the Order

1

Preferential transactions under section 43

Not Applicable

2

Undervalued transactions under section 45

3

Extortionate credit transactions under section 50

4

Fraudulent transactions under section 66

15A. The committee has approved a plan providing for contribution under regulation 39B as under:

a. Estimated liquidation cost: Rs. 10,69,800

- b. Estimated liquid assets available: NIL
- c. Contributions required to be made: Rs 10,69,800
- d. Financial creditor wise contribution is as under:

Sl. No.

Name of financial creditor

Amount to be contributed (Rs.)

1

CFM Asset Reconstruction Private Limited

10,69,800

Total

10,69,800

15B. The committee has recommended under regulation 39C as under:

- a. Sale of corporate debtor as a going concern: No
- b. Sale of business of corporate debtor as a going concern: No The details of recommendation are available with the resolution professional.

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D. YES

16. I Raj Kumar Dad hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

Raj Kumar Dad

Resolution Professional for Srithik Ispat Private Limited

IP Registration No: IBBI/IPA-001/IP-P00537/2017-2018/10962

Address as registered with the Board: 302 L Wing, Shree Sankeshwar Nagar Society, SV Road Ashok Van Dahisar East, Mumbai City, Maharashtra, 400068

Email id as registered with the Board: rajkdad@gmail.com ...

5. This Bench has Observed that on 07.10.2022, IA 241 of 2021 was listed which was filed by Applicant for liquidation of the Corporate Debtor before filing of the present Application. Subsequently, the CoC in its 8th CoC meeting has approved the Resolution Plan with 100% voting. In view of the above, IA 241 of 2021 was withdrawn by the Applicant.

6. In view of the discussions and the law thus settled, the instant Resolution Plan

meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

ORDER

7. The Application IA No. 716 of 2021 in CP 4549 of 2018 be and the same is allowed. The Resolution Plan submitted by Mrs. Girija Agarwal annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

i. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.

iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.

v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.

vi. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.

vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.