(2019) 09 NCLT CK 0053

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : (IB) No. 46(PB) Of 2018

Oriental Bank Of Commerce — APPELLANT

Vs

Allied Strips Ltd. And Ors. — RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2019) 09 NCLT CK 0053

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

Bench : Division Bench

Final Decision : Allowed

Judgement

CA-1170(PB)/2019 & CA-1246(PB)/2019

In the aforesaid application arguments were heard on 26.08.2019. However, before the order could be pronounced. CA-1676(PB)/2019 has been filed under Rule 11 of the NCLT Rules with a prayer that order dated 08.08.2019 passed has been substantially complied with and permission has been sought for the Implementation Committee to accept the payment schedule as mentioned at paragraph 13. Accordingly the proposal for rescheduling the payment time line made in paragraph 13 by the successful resolution applicant was considered. The Monitoring Committee in its meeting dated on 29.08.2019 after consulting lenders has rescheduled the payment by noticing various factors the rescheduled find mentioned in the affidavit dated 03.09.2019 which has been filed in the Court today. According to the view-taken by the Monitoring Committee in consultation with the lenders the following decision has been taken:-

"In view of the above, the lenders were of the view that in the best interest of IBC, 2016 (Code), they would not have objection to the revised payment plan of SRA if the same be allowed by the Hon'ble NCLT. Post discussions, the following revisions in the payment plan were noted, as agreed by the SRA, at the meeting and it was decided that a confirmation on the behest of the lenders may be given before Hon'ble NCLT subject to directions of Hon'ble Tribunal.

1. SRA would remit a sum of Rs. 28.50 crores by way of RTGS in the account of corporate debtor maximum by 30th August 2019 out of the balance amount payable of Rs. 225.31 crores.

2. SRA would issue the two post-dated cheques, one dated 7th September 2019 for Rs. 23.00 crores and second for Rs. 173.82 crores dated 29th October 2019 towards the balance amount payable under the approved resolution plan. The cheques are to handover to the Monitoring Professional, Chairman of Monitoring Committee on 29th August, 2019.

3. Interest @ 11% p.a. from the date of approval of resolution plan i.e. 30.05.2019 till the date money is credited to the account of corporate debtor will be paid by the SRA. Financial Creditors shall issue no dues certificate after receipt of balance payment along with interest due.

4. Visits to plant may be allowed to the officials and authorized representatives of the lending bank for processing the sanction to fund SRA. Such visit may be made at the premises/factory of the corporate debtor for the purpose of valuation of the assets of the CD or anything connected to sanctioning of funds.

5. All the cost being incurred, or which may be claimed in future, including but not limited to, salary of the employees, fees of Monitoring Professional etc. Pertaining to be period after the date of approval of resolution plan by the AA vide its order dated 30.05.2019 would be borne by SRA. The same was confirmed by the representative of SRA present at the meeting.

6. The amount paid by the SRA against the revised payment plan i.e. Rs. 28.50 crores and post-dated cheques be refundable in case the payment plan be not allowed/approved by the Hon'ble NCLT.

7. In case of any default on the part of SRA in remitting the amount payable as approved by the Hon'ble NCLT through this revised payment plan, the amount deposited till the date of default shall stand forfeited and he distributed amongst the lenders in their respective proportion of voting shares held in the Committee of Creditors after adjusting the cost as mentioned here-above Concluding on the above revisions in the payment plan of SRA, there were discussions on the mechanism of consideration of the revised payment plan, whereby the lenders agreed that the counsel for CoC/lenders be instructed to submit the no objection on behalf of lenders before Hon'ble NCLT as per the above decisions. The same was taken note by the participants."

It is appropriate to mention that there was miniscule minority of 0.16% represented by Siemens. Even that has been clarified by accepting the aforesaid terms by the Siemens Financial Services Private Limited and with the aforesaid acceptance of the proposal for re-scheduling payment has now been supported by 100% voting share.

It is appropriate to mention that amount of Rs. 28.50 crores by way of RTGS has already been deposited in the account of the corporate debtor out of the balance amount of Rs. 225.31 crores. The second condition has also been complied with as the successful resolution applicant has issued two post-dated cheques dated 07.09.2019 and 29.10.2019 amount for a sum of Rs. 23.00 crores and 173.82 crores respectively. The rest of the terms are to be complied with to the satisfaction of the Monitoring Committee as per the reschedule.

All the other application to be listed on 23.09.2019.

