(2021) 06 NCLT CK 0035

In the National Company Law Tribunal

Case No : IA No. 2253/MB/2020 in C.P. (IB) No. 2525/MB/2019

Oriental Bank of Commerce — APPELLANT

Vs

Vivita Limited — RESPONDENT

Date of Decision : 21-06-2021

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 14, 21(2), 29A, 30(2), 30(2)(b), 30(2)(c), 30(2)(d), 30(2)(e), 30(2)(f), 30(6), 30(4), 31
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 36B(4A), 38, 38(1)(a), 38(1)(b), 38(2), 38(3), 39, 39(4)

Citation : (2021) 06 NCLT CK 0035

Hon'ble Judges : Janab Mohammed Ajmal, Member(J);V. Nallasenapathy, Member (T)

Bench : Division Bench

Advocate : Avinash Khanolkar, Prakhar Tandon

Judgement

Sr.

No.",Name of Creditor,"Voting Share

(%)","Voting for Resolution

Plan (Voted for /

Dissented / Abstained)",,

1,Punjab National Bank,42.24,Voted For,,

2,Asset Reconstruction Co. (India) Ltd.,2.02,Dissented,,

3,Edelweiss Asset Reconstruction Co. Ltd.,9.75,Voted For,,

4,The Karnataka Bank Ltd.,9.02,Voted For,,

5,Bank of Bahrain and Kuwait,4.03,Voted For,, 6,Cosmos Co-Op Bank Ltd.,3.95,Dissented,,

7,Apna Sahakari Bank,2.75,Abstained,,

8,State Bank of India,3.82,Voted for,,

9,Central Bank of India,1.71,Voted For,,

10,Saraswat Co-Operative Bank,1.17,Voted For,,

11,Dombivali Nagari Sahakari Bank Ltd,1.01,Abstained,,

12,Bank of Baroda,0.53,Voted For,,

,Total,100,,,

,,,,,

,,"Other than (a) above:

(i) Who did not vote in

favour of the

esolution Plan","243,12,96,563/Â?","215,03,36,834/","1,03,85,155/Â?

,,"(ii) Who voted in

favour of the

Resolution Plan","145,79,61,716/-","145,79,61,716/-","70,41,296/-

Total (a+b),,,"388,92,58,279/-","360,82,98,550/-","1,74,26,450/-

3,"Unsecured

Financial

Creditors

Ot

(i)","Creditors not having a right

to vote under subÂ?section

(2) of Section 21",-,-,-

,,"her than (a) above:

(i) Who did not voted in

favour of the Resolution

Plan","82,87,05,321/Â?","82,84,03,821/Â?","40,00,816/Â?

,,"(ii) Who voted

in favour of the

Resolution Plan","630,44,68,834/-","630,44,68,834/-","3,04,47,734/-

,,Total (a) + (b),"713,31,74,156/-","713,28,72,655/-","3,44,48,550/-

4,"(a) Operationa(lb)

Creditors","Related Party of Corporate

Debtor",,,

,,"(b) Other than (a) above:

(i) Government

(Statutory Dues)",-,-,-

,,"(ii) Workmen

Employees

Suppliers",-,-,-

5,"Other debts and

dues",,,,

,Grand Total,,"11,02,24,32,435/-","10,74,11,71,206/-","5,42,75,000/-

Sr.

No.",Particulars,Amount,,,

1,Amount available at bank account of SRA,"2,42,75,000/-",,,

2,"Unsecured loan from Partners, friends and Relatives","2,00,00,000/-",,,

3,Loans to be availed from financial Institutions,"1,00,00,000/-",,,

the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Honâ??ble Court observed as under:,,,,,

â??Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of",,,,,

Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section",,,,,

61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).â??",,,,,

14. In view of the discussions and the law thus settled, we are satisfied that the Resolution Plan as approved by the CoC under Section 30(4) of the",,,,,

Code meets the requirements of Section 30(2) of the Code and Regulations 37 and 38 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 as provided under Section 31 of,,,,,

the Code. Hence ordered.,,,,,

ORDER,,,,,

Â The Application be and the same is allowed. The Resolution Plan submitted by Consortium of M/s V. Square and M/s Bombay Carrier annexed to,,,,,

the Application is hereby approved. It shall become effective from this date and shall form part of this order.,,,,,

a. Â 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 arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.",,,,,

b. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC),",,,,,

concerned 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.",,,,,

c. As far as the permits held by the Corporate Debtor and the rights and benefits accrued therein, the Corporate Debtor (under the new Management) needs to",,,,,

approach the authorities concerned for renewal and that the same may have to be considered by them favourably, subject to relevant Law and Rules, so that the",,,,,

implementation of Plan becomes smooth.,,,,,

d. With regard to the reliefs and concessions sought by the Resolution Applicant in respect of the Corporate Debtor, the Monitoring Committee or the new",,,,,

Management, as the case maybe may approach the respective authorities and departments for such reliefs. The authorities concerned may favourably consider such",,,,,

applications as deemed proper under law, keeping in view the object of resolution of the Corporate Debtor as envisaged in the Code and various pronouncements of",,,,,

the Honâ??ble Apex Court.,,,,,

e. Henceforth, no erstwhile creditors of the Corporate Debtor can claim anything other than the liabilities taken over by the Resolution Applicant.",,,,,

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

g. The Applicant shall supervise the implementation of the Resolution Plan and shall file Status Report of its implementation before this Authority from time to time,",,,,,

preferably every quarter. His fees for the purpose is fixed at ?. 50,000 (Rupees Fifty Thousand only) to be borne by the resolution Applicant herein.",,,,,

h. 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.,,,,,

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

shall include the Resolution Plan approved herein.,,,,,