

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH- I**

**IA No.956 of 2018
IN
CP (IB) No.1555/MB/C-I/2017**

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the resolution plan under the provisions of Section 31(1) of the code.

IA No. 956 of 2018

In the Application of

Mr. Dinkar Venkatasubramanian

Resolution Professional

...Applicant

Metalyst Forgings Limited

In the matter of

State Bank of India

...Petitioner/Financial Creditor

Versus

Metalyst Forgings Limited

...Corporate Debtor

Order Delivered on :-14.05.2024

Coram:

Hon’ble Member (Judicial) : Justice V.G. Bisht (Retd.)

Hon’ble Member (Technical) : Mr. Prabhat Kumar

Appearances:

For the Applicant : Mr. Gaurav Joshi, Senior Advocate a/w Ms. Shruti Singhi, Advocate i/b Mr. Akash Menon, Advocate

For the Resolution Applicant : Mr. Shyam Kapadia, Advocate a/w Ms. Nikita Mishra, Advocate, i/b Rashmikant and Partners
For the CoC : Ms. Meghna Rajadhyaksha, Advocate a/w Mr. Anoop Rawat, Mr. Saurav Panda, Mr. Rishab Jaisani, Mr. Siddharth Marathe i/b Shardul Amarchand Mangaldas & Co.

ORDER

Per: Justice V.G. Bisht, Member (Judicial)

1. The present Application filed by the Resolution Professional of the Corporate Debtor seeking approval of the Resolution Plan submitted by a consortium of Deccan Value Investors LP and DVI PE (Mauritius) Ltd. (“Resolution Applicants”). The Committee of Creditors (“CoC”) has approved the Resolution Plan submitted by the Resolution Applicants herein by a voting share of 87.57%.
2. Before we proceed to deal with the Application, it is essential to outline a brief history of the facts of the present case. Pursuant to the filing of the present Application, the Resolution Applicants filed an Application bearing No. 1272 of 2018 wherein the Resolution Applicants sought withdrawal of the Resolution Plan on ground misrepresentation of material facts, non-disclosure. This Tribunal vide order dated 27.09.2019 held that the Resolution Plan submitted by the Resolution Applicants was based on Mott MacDonald India (“2016 MM Report) which was misleading and has rendered the entire Resolution Plan un-viable and incapable of being implemented. Accordingly, the Application filed by the Resolution Applicants was allowed and the present Application before us for approval of the plan filed by the Resolution Professional was rejected.

3. Subsequently, the matter was carried in Appeal before the Hon'ble NCLAT, the Appellate Tribunal upheld the order dated 27.09.2019. Further, the matter was assailed before the Hon'ble Supreme Court wherein the order dated 07.02.2020 passed by the Hon'ble NCLAT was set aside. It was held that the aforesaid order was unsustainable in view of the Judgement of the Hon'ble Supreme Court in the matter of *Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited and Another*. The relevant paragraphs of the Judgment of the Hon'ble Supreme Court dated 06.03.2024 is reproduced hereinbelow:

“4. This Court in Ebix Singapore Private Limited (supra), has inter alia held that the resolution applicant cannot withdraw or modify the resolution plan, after the same is approved by the Committee of Creditors. It is immaterial that post approval by the Committee of Creditors, there is consideration under Section 31(1) of the Code by the adjudicating authority for final approval.

15. Resolution plans are not prepared and submitted by lay persons. They are submitted after the financial statements and data are examined by domain and financial experts, who scan, appraise evaluate the material as available for its usefulness, with caution and scepticism. Inadequacies and paltriness of data are accounted and chronicled for valuations and the risk involved. It is rather strange to argue that the superspecialists and financial experts were gullible and misunderstood the details, figures or data. The assumption is that the resolution applicant would submit the revival/resolution plan specifying the monetary amount and other obligations, after in-depth analysis of the fiscal and commercial viability of the corporate debtor. Pointing out the ambiguities or lack of specific details or data, post acceptance of the resolution plan by the Committee of Creditors, should be rejected, except in an egregious case where data and facts are fudged or concealed. Absence or ambiguity of details and particulars should put the parties to

caution, and it is for them to ascertain details, and exercise discretion to submit or not submit resolution plan.

16. Records of corporate debtor, who are in financial distress, may suffer from data asymmetry, debatable or even wrong data. Thus, the provision for transactional audit etc, but this takes time and is not necessary before information memorandum or virtual data room is set up. Financial experts being aware, do tread with caution. Information memorandum is not to be tested applying “the true picture of risk” obligation, albeit as observed by the NCLAT the resolution professional’s obligation to provide information has to be understood on “best effort” basis

17. In view of the aforesaid position, we set aside the impugned judgment dated 07.02.2020 passed by the NCLAT, upholding the order passed by the NCLT, dated 27.09.2019. In other words, we accept the present appeals and it is held that the resolution plan, as submitted by the successful resolution applicants – Deccan Value Investors L.P. and DVI PE (Mauritius) Ltd., is approved.”

4. In view of the aforesaid Judgment passed by the Hon’ble Supreme the Resolution Plan stands approved. Accordingly, the present Application before us for approval of the Resolution Plan stands revived.
5. The CIRP was initiated against the Corporate debtor vide Order dated 15.12.2017. The Applicant herein was appointed as the Interim Resolution Professional (hereinafter referred to as the IRP). Public announcement was made by the IRP on 23.12.2017 in Indian Express, Jansatta, Loksatta and Himachal Times. The First CoC meeting was convened on 12.01.2018.
6. The Resolution Professional invited Expression of Interest (“EOI”) from potential resolution applicants vide advertisement dated 22.01.2018 published in the Economic Times. The Applicant submits that out of 7 Prospective Resolution

Applicants, only three came forward with financial bids namely Liberty House Group, Deccan Value Investors and Bharat Forge Limited.

7. Thereafter, in terms of Regulation 27 of CIRP Regulations, the Applicant appointed two registered valuers, namely TR Chadha &Co LLP and Duff &Phelps India Private Limited to determine the fair value and liquidation value. The Applicant submits that Deccan Value Investors was declared as the H1 bidder. In the interim, an application for extension of CIRP period by 90 days was filed by the Applicant, the said extension was granted by this Tribunal vide order dated 5.06.2018. Thereafter, various discussions ensued amongst the CoC and the Resolution Applicant from the 7th CoC meeting dated 24.05.2018 till 12th CoC meeting dated 08.08.2018. Pursuant to the aforesaid discussions, the Resolution Applicant submitted two addendums to the Plan vide order dated 20.08.2018 and 23.08.2018.
8. The Applicant thereafter conducted the voting on the Final Resolution Plan submitted by the Resolution Applicants on 24.08.2018. The CoC approved the Resolution Plan with a majority vote on 87.57%.
9. The Resolution Professional has offered to infuse a sum of Rupees Sixteen Hundred Crores.

No.	Category	Amount (INR crores)
1.	Upfront cash for reduction of outstanding debt	1,000.00
2.	Cash infusion for working capital	200.00

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3.	One-time maintenance capex and installation of 12,500 tonne press (up to)	400.00
	Aggregate funds to be infused	1,600.00

10. The summary of payments made to different class of creditors is as follow:

Sr. No.	Category	Amount	Treatment	Upfront payment made
1.	Financial Creditors	Rs.3836	Distribution decided by CoC	Page No. 69 of the Application
2.	Operational Creditors (excluding related party claims)	Rs.16.51	Voluntary payment upto Rs.2 Crore within 12 months from the effective date. i.e. 30days from date of NCLT approval	Page No. 57-58 of the Application
3.	Government Dues	0	NIL	
4.	Dues to workmen	Rs.23,372	Any such dues for a period of 24	

	and employees		months prior to 15.12.2017 to be within 30 days from the date of NCLT approval. Remaining amount to be paid within 12 months of effective date.	
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11. The Resolution Plan provides that CIRP costs were paid from the cash flows of the Corporate Debtor. However, if any CIRP costs are payable on the NCLT approval date, in accordance with the Code, the same shall be paid in priority over payments to any other creditors within 30 days from the NCLT approval date.

Section 30(2) of the Code

12. In compliance of Section 30(2) of IBC, 2016, the Resolution Professional has examined the Resolution plan of the Successful Resolution Applicant and confirms that this Resolution Plan:
- a) Provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in the priority to the payment of other debts of the corporate debtor;
 - b) Provides for payment of debts of operational creditor in such manner as may be specified by the board which shall not be less than
 - (i) The amount to be paid to such creditors in the event of liquidation of the corporate debtor under Section 53; or

- (ii) The amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distribute in accordance with sub-section (1) of Section 53 in the event of liquidation of the corporate debtor.
 - c) Provides for management of the affairs of the Corporate Debtor after approval of Resolution Plan;
 - d) The implementation and supervision of Resolution Plan;
 - e) Does not prima facie contravene any of the provisions of the law for time being in force,
 - f) Confirms to such other requirements as may be specified by the Board.
 - g) As per the Affidavit, the Resolution Applicant is not covered under 29A.
13. In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that
- a) The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.
 - b) It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the CD.
 - c) A statement that neither the Resolution Applicants nor any related parties have failed to implement nor have contributed to the failure of implementation of any other Resolution Plan approved by the AA in the past.
 - d) The terms of the plan and its implementation schedule.
 - e) The management and control of the business of the CD during its term.
 - f) Adequate means of Supervising its implementation.

- g) The Resolution Plan Demonstrate that it addresses
- i. The cause of the Default
 - ii. It is feasible and viable
 - iii. Provision for effective implementation
 - iv. Provisions for approvals required and the time lines for the same.
 - v. Capability to Implement the Resolution Plan

14. On perusal of the Resolution Plan, we find that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
- c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
- d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

15. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.

16. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex

Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

17. 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.
18. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order with the following directions:
 - 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 in light of the Judgment of Supreme Court in *Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited*, the relevant para’s of which are extracted herein below:

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- 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.

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- 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.

19. **Accordingly, MA 956 of 2018 is allowed.**

Sd/-

PRABHAT KUMAR
Member (Technical)
14.05.2024
Priyal

Sd/-

JUSTICE V.G. BISHT
Member (Judicial)