

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No 301
IA/899(AHM)2022
in
CP(IB) 232 of 2018

Order under Section 31 IBC,2016

IN THE MATTER OF:

Sundresh Bhat RP of JBF Petrochemical Ltd

.....Applicant

.....Respondent

Order delivered on ..13/03/2023

Coram:

Dr. Madan B Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

DR. MADAN B GOSAVI
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT NO. II**

**IA No. 899/AHM/2022
IN
CP (IB) 232/AHM/2018**

Under Section 31 of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF IA No. 899/AHM/2022

**Mr. Sundaresh Bhat
Resolution Professional of
JBF Petrochemical Ltd.**

...Applicant

AND

IN THE MATTER OF CP (IB) 232/AHM/2018

IDBI Bank Limited

...Financial Creditor

Versus

JBF Petrochemicals Limited

...Corporate Debtor

Order Pronounced On: 13/03/2023

Coram:

**DR. MADAN BHALCHANDRA GOSAVI,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

IA No. 899/AHM/2022

Mr. Sundaresh Bhat
Resolution Professional of JBF Petrochemical Ltd.
The Ruby, Level 9,
North West Wing, 29,
Senapati Bapat Marg, Dadar West,
Mumbai - 400 028.

...Applicant

Present:

For the Resolution Professional : Mr. Rashesh Sanjanwala, Sr. Adv.
Mr. Saurabh Soparkar, Sr. Adv.
Mr. Monaal Davawala, Adv.
For the Resolution Applicant : Mr. Kamal Trivedi, Sr. Adv. General a/w.
Mr. Akshat Khare
Mr. Viraj Bairagi, Adv. i/b. Monson Le Experts.
Mr. Samiron Chakroborty, Adv. & Ms. Kritika Angirish, Adv.
i/b. Kochhar & Co.

ORDER

1. This application has been filed by Mr. Sundaresh Bhat, Resolution Professional of the Corporate Debtor JBF Petrochemical Ltd. under Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('Code') for approval of the Resolution Plan submitted by GAIL (India) Ltd. and approved by Committee of Creditors ('CoC').
2. The facts in brief are that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process ('CIRP') by this Adjudicating Authority vide order dated 28.01.2022, in an application filed by the financial creditor IDBI Bank Ltd. under Section 7 of the Code triggering

the moratorium and Mr. Sundaresh Bhat was appointed as Interim Resolution Professional ('IRP'). The IRP made a public announcement in Form-A on 04.02.2022 and collated claims and constituted a Committee of Creditors ('CoC') of following financial creditors:

Sr. No.	Name of Financial Creditor
1.	IDBI Bank
2.	Union Bank of India
3.	Bank of Baroda
4.	RAK Branch
5.	Export-Import Bank of India
6.	Indian Overseas Bank

3. Thereafter, CoC in its first meeting held on 04.03.2022 resolved to appoint Applicant herein Mr. Sundaresh Bhat as Resolution Professional (IRP). It is stated that on 18.04.2022 the Applicant issued Form G inviting Expression of Interest ("EoI") for submission of a resolution plan for the Corporate Debtor. The last date for submission of EoI was May 3,2022, and the last date for submission of resolution plan was 17.06.2022. Pursuant thereto 11 EoIs from various bidders were received.

4. It is stated that on request of the prospective resolution applicants, the CoC in its 8th meeting held on 24.06.2022 resolved to extend the period of submission of resolution plan to 08.08.2022. In the said meeting the CoC has also passed a resolution for extension of CIRP period by 90 days and filing of the application under Section 12(2) of the Code. In view thereof, the Applicant Resolution Professional has filed an application and on 07.07.2022 following order was passed:

“Application is filed under Section 12 (2) of IBC, 2016 seeking extension of CIRP period by further 90 days as per the proviso and Section 12. Learned Counsel further states that the order was passed on 28.01.2022, and the copy was received on 02.02.2022, hence,

these five days may be excluded from calculating CIRP period. The CoC approved the extension of the CIRP period, in its 8th meeting dated 24.01.2022, and passed the resolution with the 99.13% voting share. The copy of the resolution and the voting results are annexed. Considering the submission made, we allow this application; thereby extend the CIRP period by further 90 days, and additional exclusion of five days which was spent in receiving the copy by IRP. CIRP period to be extended by total 95 days.”

5. It is submitted that the CoC in its 12th meeting resolved to extend the time for submission of resolution plan to 30.08.2022. In the 13th CoC meeting held on 01.09.2022, the Applicant informed the CoC that three resolution plans were received from following prospective resolution applicants:
 - (i) Consortium of Indian Oil Corporation Limited and ONGC Limited ("IOCL – ONGC Consortium)
 - (ii) MPCPI Private Limited ("MCPI")
 - (iii) GAIL (India) Limited.

6. It is submitted that CoC in its 14th and 15th meetings held on 07.09.2022 and 13.09.2022 respectively discussed the resolution plans and requested the Resolution Applicants to substantially improve their financial proposals and cure the defects. Till the last date, i.e. 22.09.2022, the revised resolution plan were received only from Consortium of Indian Oil Corporation Limited and ONGC Limited ("IOCL – ONGC Consortium) and GAIL (India) Limited. It is stated that as MCPI did not submit a revised resolution plan, the resolution plan submitted by them on 27.08.2022 was considered by the CoC as the final resolution plan of MPCPI.

7. It is stated that the Applicant in 17th CoC meeting held on 27.09.2022 placed before the CoC the compliant resolution plans received from the

GAIL (India) Limited and IOCL - ONGC Consortium and decided to vote on the revised resolution plans. It is stated that the CoC further decided that the distribution to the creditors shall be carried out as per the Code and as specified under the approved resolution plan. The CoC had approved the resolution plan submitted by GAIL (India) Limited with 100% voting share.

8. The Applicant has annexed the copy of letter of intent dated 16.10.2022 duly acknowledged by successful resolution applicant ('SRA') GAIL (India) Ltd. It is stated that the SRA had submitted a performance bank guarantee of 10% of the total resolution plan amount i.e. Rs. 210,10,00,000/- on 18.10.2022.
9. It is noted from Form-H annexed with the Application that the applicant had appointed two separate valuers. As per Form-H the average Fair Value and Liquidation Value of the Corporate Debtor are Rs. 2719,00,58,329/- and Rs. 1616,63,24,416/-, respectively. The present Resolution Plan offers total amount of Rs. 2101,00,00,000/- including CIRP cost of Rs. 21,75,04,971/-.
10. An affidavit dated 25.08.2022 from one Mr. Mahesh Vishwanathan Iyer authorized representative of the Successful Resolution Applicant, i.e., GAIL (India) Ltd. declaring the eligibility of the Resolution Applicants under Section 29A of the Code is placed on record.
11. It is submitted by the Applicant that the resolution plan complies with provisions of the Code and all the requisite Regulations.
12. The amount provided for the stakeholders under the Resolution Plan is as under:

Sr. No.	Category of Shareholder*	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	NA	NA	NA	NA
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	NA 4684,02,11,014	NA 4662,31,86,154	NA 2015,49,95,000	NA 43.23%
		Total [(a)+(b)]	46,84,02,11,014	46,62,31,86,154	20,15,49,95,000	43.23%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above: (i) who did not vote in favour of the resolution plan (ii) who voted in favour of the resolution plan	NA 1329,49,46,526	NA 252,83,92,723	NA 1441,34,387	NA 5.70%
		Total [(a)+(b)]	13,29,49,46,526	252,83,92,723	1441,34,387	5.70%

3	Operational Creditors	(a) Related party of the Corporate Debtor	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i) Government	7,34,84,18,664	5,68,000	32,380	5.70%
		(ii) Workmen	3,86,09,944	2,88,98,018	2,88,98,018	100%
		(iii) Employees	7,97,63,518	6,33,36,217	6,33,36,217	100%
		(iv) Others	11,58,36,87,806	7,03,60,45,172	40,10,99,027	5.70%
		Total[(a)+(b)]	19,05,04,79,932	7,12,88,47,407	49,33,65,642	6.92%
4	Other debts and dues		NA	NA	NA	NA
	Grand Total	[1+2+3]	79,18,56,37,472	56,28,04,26,285	20,79,24,95,029	

13. The implementation timeline as provided in the resolution plan is reproduced below:

Activity Schedule / Implementation Plan		
Sr No.	Activity	Timeline (days)
1.	Issuance of Letter of Intent by the CoC.	A
2.	Payment of the Performance Security	A+3 Business Days
3.	Approval by NCLT ('Effective Date')	E
4.	Notice on the Company's Website of the Approved NCLT order.	E+3
5.	Appointment of a Monitoring Committee.	E+3
6.	Intimation to the CoC, IBBI, RBI, MCA, Tax authorities and various other statutory authorities (as applicable).	E+15
7.	Intimation to all the Creditors, existing shareholders and other stakeholders of the Company.	E+15
8.	Infusion of Total Resolution Plan Amount by the Resolution Applicant	E+80
9.	Cancellation of existing Equity Shares as proposed under the Plan ('capital reduction') and allotment of Shares of the Company to	E+80

	the RA and its nominees (to meet the minimum shareholders requirement) along with all requisite filings.	
10.	Payment of CIRP Costs at actuals up to the Effective Date.	E+81
11.	Settlement of claims of Operational Creditors along with issuance of NOC>	E+82
12.	Settlement of claims of Employees and workmen along with issuance of NOC.	E+82
13.	Payment of Liquidation Value to Dissenting Financial Creditors along with issuance of NOC.	E+82
14.	Appointment of the nominees of the RA as the directors of the Board and resignation of the current directors on the Board of directors of the Company.	E+83
15.	Management of Company (i) Appointment of a CEO, CFO, COO and other key management personnel of the Company as determined by the Resolution Applicant; and (ii) Appointment of statutory auditors.	E+83
16.	Settlement of claims of Assenting Financial Creditors along with issuance of NOC (in accordance with Clauses 4.1, 4.5.7 and	E+83
17.	Handover of all security documents by lender (agent) to the Resolution Applicant.	E+83
18.	Execution of material agreements giving effect to the Resolution Plan, if required.	E+86

14. It is to be noted that for getting the approval of the Adjudicating Authority, the resolution plan should adhere to the following requirements as per Section 30(2) of the Code read with CIRP Regulations:

- (i) It should provide for the payment of insolvency resolution process costs in priority to the repayment of other debts of the corporate debtor.

[Section 30(2)(a)]

- (ii) The repayment of the debts of operational creditors and dissenting financial creditors should not be less than the amount to be paid to such respective creditors in the event of liquidation of the corporate debtor under Section 53 of the Code. Moreover, the payment to the operational creditor is to be made in priority over

the financial creditor; and the payment to dissenting financial creditor is to be made in priority to the consenting financial creditors.

[Section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b)];

- (iii) Provides for the management of the affairs of the corporate debtor after approval of the resolution plan.

[Section 30(2)(c) read with CIRP Regulation 38(2)(b)];

- (iv) The implementation and supervision of the resolution plan.

[Section 30(2)(d) read with CIRP Regulation 38(2)(c)];

- (v) It does not contravene any of the provisions of the law for the time being in force.

[Section 30(2)(e)];

- (vi) It conforms to such other requirements as may be specified by the Board.

[Section 30(2)(f)]

Such other requirements of the resolution plan as detailed in IBBI (Resolution Process for Corporate Persons) Regulations, 2016 which are not covered above, are as under:

- (a) The resolution plan should include statement as to how it has dealt with the interests of all stakeholders including financial creditors and operational creditors of the corporate debtor.

[CIRP Regulation 38 (1A)]

- (b) The resolution plan should include a statement giving details as to whether the resolution applicant or any of its related parties has at any time failed to implement or caused to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority.

[CIRP Regulation 38 (1B)]

- (c) The resolution plan should contain the term of the plan and its implementation schedule.

[CIRP Regulation 38(2)(a)]

- (d) The resolution plan should also demonstrate that it addresses the cause of default; is feasible and viable; has provisions for its effective implementation; has provisions for approvals required and timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan.

[CIRP Regulation 38(3)]

15. In view of the above provisions of the Code, 2016, the resolution plan submitted before us has been examined as follows:

- (i) The provision towards CIRP costs is made for Rs. 21,75,04,971/- to be paid in priority to the payment of other debts of the Corporate Debtor and hence, the provision for payment towards CIRP cost has been made. Thereby, Section 30(2)(a) has been complied with.
- (ii) It is stated in clause 4.2 of the plan that the Liquidation value is not sufficient to cover the debt of the Financial Creditors of the Corporate Debtor in full. Accordingly, disbursement to Operational Creditors on liquidation will be NIL. However, the Resolution plan proposes a one-time cash settlement of Rs. 40,11,31,407 towards all Admitted Claims of Operational Creditors and the Statutory Creditors.

Further clause 4.5.7. of the plan provides that payment due to Dissenting Financial Creditors, if any, shall be made at least I (one) day prior to disbursement of Upfront Cash to Financial Creditors

who vote in favour of the Resolution Plan. However, it is noted that there is no dissenting financial creditor.

Thus, the provisions of Section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b) are complied with.

- (iii) Clause 10 of the resolution plan provides for the management and control of the business of the corporate debtor after approval of the resolution plan, wherein it is provided that upon Resolution Applicant acquiring control over the Corporate Debtor, the board of directors of the Corporate Debtor shall be reconstituted with adequate representation from the members of the Resolution Applicant, in compliance with the Applicable Laws. The Board shall oversee the revival plan and business of the Corporate Debtor. Thus, the provisions of Section 30(2)(c) read with CIRP Regulation 38(2)(b) have been complied with.
- (iv) Clause 6 and 7 of the resolution plan provides for the formation of Monitoring Committee for supervision and implementation of resolution plan. Thereby, Section 30(2)(d) and Regulation 38(2)(d) of CIRP Regulations, 2016 has been complied with.
- (v) The Resolution Professional has submitted that the plan does not contravene any provisions of the law. We also noted that the plan does not contravene any provisions of the law for the time being in force. Thereby, Section 30(2)(e) of IBC, 2016 has been complied with.
- (vi) The resolution plan also conforms to other IBBI Regulations as given hereunder:
 - (a) The resolution plan contains a statement regarding dealing with the interests of all stakeholders, including financial creditors and operational creditors, of the Corporate Debtor. Thereby,

Regulation 38(1A) of CIRP Regulations, 2016 has been complied with.

- (b) Clause 11.3 of the resolution plan contains a statement that the Resolution Applicant or any of its related parties has not failed to implement or contributed to failure of implementation of any other Resolution Plan approved by the Adjudicating Authority. Thus, statement giving details of such non-implementation is not applicable under Regulation 38(1B) of CIRP Regulations, 2016.
- (c) The term of the resolution plan is for a period of 89 days which shall commence on the date of the approval of the said plan by the Adjudicating Authority. It provides for the implementation schedule for payment to the creditors as envisaged in the resolution plan.

Thereby, Regulation 38(2)(a) of CIRP Regulations, 2016 has been complied with.

- (d) The resolution plan contains the sources of funds; is feasible and viable; has provisions for its effective implementation. Thereby, Regulation 38(3) of CIRP Regulations, 2016 has been complied with.

Para 4.5.9. of part D of the resolution plan provides for pursuing of applications under Section 43, 45, 47, 49, 50 or 66 and how the proceeds shall be utilised.

16. The Applicant has filed an affidavit on 03.12.2022 and submitted that none of the Government Authorities have claimed any security or charge over any assets of the Corporate Debtor nor have they filed their claims as a secured creditor, thus none of the Government Authorities, can be deemed to be / treated as a secured creditor as held by the Hon'ble Supreme Court in the Judgement in the case of Rainbow Papers Ltd.

17. As far as reliefs and concessions claimed by the resolution applicant, the law has been well settled by the Hon'ble Supreme Court in the case of **Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors.** reported in **MANU/SC/0273/2021** in the following words:

“86. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

87. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of IB Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief...”

18. In view of the above, all past claims would stand extinguished. However, as far as various statutory rights vested with the corporate debtor in form of various licenses, leases, and other alike matter, we make it clear that the successful resolution applicant has to approach the concerned statutory authority for those concessions and those authorities will consider the same as per their established procedure.
19. IA No. 660(AHM) 2022 by the resolution professional seeking restoration of “off-take agreement” with MRPL has been separately dealt with through our order dated 09.03.2022.
20. The proviso to Section 31 of the Insolvency and Bankruptcy Code, 2016, states that before passing an order for approval of the resolution plan the Adjudicating Authority, shall satisfy that the resolution plan has

provisions for its effective implementation. We being satisfied approve the resolution plan submitted by GAIL (India) Limited and in addition to the above directions, proceed to pass the following orders:

- (i) Application is allowed.
- (ii) The resolution plan of GAIL (India) Limited for Corporate Debtor i.e. JBF Petrochemical Ltd., stands allowed as per Section 30(6) of the Code.
- (iii) The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- (iv) The order of moratorium dated 28.01.2022 passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of passing of this order.
- (v) The resolution applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 or within such period as provided for in such law, whichever is later, as the case may be;
- (vi) As far as right of Financial Creditors against the personal guarantees / corporate guarantees in connection with loan / debt obtained by Corporate Debtor is concerned, such financial creditors shall be at liberty to pursue their rights independent of approval of Resolution Plan. We further make it clear that there will not be any right of subrogation of such guarantors qua Corporate Debtor.
- (vii) This order is subject to outcome of interlocutory applications regarding claims presently pending before the Adjudicating Authority, such creditors will be entitled to pro rata amount as per

their respective category in accordance with the Resolution Plan.

- (viii) The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).
- (ix) The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.
- (x) Accordingly, IA 899 of 2022 in CP (IB) 232 of 2018 is allowed and stands disposed of in terms of the above directions.
- (xi) Certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

DR. MADAN B GOSAVI
MEMBER (JUDICIAL)

Mansi J./LRA