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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

IA(IB) No. 805/KB/2020
CP(IB) No. 1221/KB/2018

IN THE MATTER OF:

Application by the Resolution Professional under Section 30(6), read with Section 31 of the Insolvency and Bankruptcy Code, 2016 along with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of Resolution Plan

IN THE MATTER OF:

Mr. Raj Singhania

(Resolution Professional of
VSP Udyog Private Limited)

... Applicant

S Sen & Sons

... Operational Creditor

Versus

M/s. VSP Udyog Private Limited

... Corporate Debtor

**Coram: Shri Madasn B Gosavi, Hon'ble Member (Judicial)
Shri Harish Chander Suri, Hon'ble Member (Technical)**

For the Resolution Professional :

1. Mr. Joy Saha, Sr. Advocate
2. Mr. Rahul Parasarampuria, Pr. CS

Mr. Raj Singhania, RP (in person)

Date of pronouncement of the Order : 20/10/2020

ORDER

Per Shri Harish Chander Suri, Member (Technical)

1. This Company Petition, CP(IB) No. 1221/KB/2018, was admitted vide Order dated 7th August, 2019, by ordering Corporate Insolvency Resolution Process, as against the Corporate Debtor, M/s. VSP Udyog Private Limited, and vide Order of this Tribunal dated 6th November, 2019, Mr. Raj Singhania was appointed as Insolvency Resolution Professional, in replacement of the Interim Resolution Professional.

2. Mr. Raj Singhania, Resolution Professional, filed this Application, praying for approval of the Resolution Plan of M/s. VSP Udyog Private Limited (Corporate Debtor), under Section 30(6), read with Section 31 of the Insolvency and Bankruptcy Code, 2016, along with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. for the reason that the Resolution Plan of M/s. Amit Metaliks Limited, was approved by the Committee of Creditors with 95.35% voting shares.

3. The Committee of Creditors was constituted which held 15 (Fifteen) meetings. The Resolution Professional had caused newspaper publications inviting Expression of Interest, two times i.e. on 19-10-2019 and on 14-12-2019 and finally, received three Resolution Plans, within the prescribed time limit, which were placed for consideration before the COC in its meeting held on 20th March, 2020.

4. During lockdown period, one of the Resolution Applicants, namely, M/s. Amit Metaliks Limited, who had earlier submitted EOI along with three others, upon approval by this Tribunal, after the expiry of the last date for submission of the EOI, showed interest to submit the Resolution Plan, which the RP did not allow. Eventually, this Tribunal, vide Order dated 29th May, 2020, allowed the Resolution Applicant, M/s. Amit Metaliks Limited, to submit their Resolution Plan within three days and the Resolution Applicant, M/s. Amit Metaliks Limited, submitted Resolution Plan on 1st June, 2020. The COC in its meeting held on 29th June, 2020, after considering the

revised offers of the respective Resolution Applicants and assessing the feasibility and viability of the Plans, declared M/s. Amit Metaliks Limited, as the H-1 bidder, determined strictly, in accordance with the Evaluation matrix shared with RFRP. The successful H1 bidder submitted its revised Resolution Plan on 27th July, 2020 with the Resolution Professional, incorporating the changes/modifications suggested by the RP/COC and also revising the financial bids.

5. The said revised Resolution Plan of M/s. Amit Metaliks Limited, was put for voting in the 14th COC meeting held on 31st July, 2020 for approval, which had fulfilled the requirements, as prescribed in Sub-Section 2 of Section 30 of the Insolvency & Bankruptcy Code, 2016. The final Resolution Plan, submitted by M/s. Amit Metaliks Limited, incorporating the amendments proposed by it in the Addendum, was approved by the COC through e-voting on 13th August, 2020, with 95.35% voting share, being found feasible and viable.

6. It is stated that the Resolution Professional has satisfied himself with the contents of the Resolution Plan as contemplated under the Code and its Resolution and has submitted the compliance certificate in Form 'H' as prescribed.

7. It would be seen from Form H, Compliance Certificate, submitted by Mr. Raj Singhania, Chartered Accountant, appointed as RP in the present matter concerning the Resolution process of the Corporate Debtor, M/s. VSP Udyog Private Limited that he has examined the Resolution Plan received from the Resolution Applicant, M/s. Amit Metalic Limited, and the same has been approved by the CoC.

8. It is submitted that the Resolution Applicant had the capability to implement the Resolution Plan and the Applicant was not ineligible to submit a Resolution Plan under Section 29A of the Code, the plan provides specific source of funds to pay Insolvency Resolution Process costs payable in priority to payment of other debts ; liquidation value due to Operational Creditors and that the Resolution Plan balancing the interest of all the stakeholders of the Corporate Debtors and that the Plan did not contravene any of the provisions of law and therefore, the Resolution Plan deserves approval.

9. The CIRP period of 180 days expired on 2nd February, 2020 and extensions were granted by this Tribunal, excluding the days lost during lockdown period.

10. The Ld. Senior Counsel for the RP, took us through the Resolution Plan and highlighted some of the salient features of the Resolution Plan, as follows :

A. FINANCIAL PROPOSAL

(Rs. In Crores)

Resolution Debt - A	Total Admitted Amount (in Cr.)	Payment proposed in the Resolution Plan (in Cr.)	Upfront Payment (in Cr.)	Balance Payment (in Cr)
CIRP cost(Estimated)	1.00(Apx.)	1.00 (Apx.)	1.00(Apx.)	-
Employees, Workmen	4.16	0.60	0.60	
Operational Creditors, including Government dues	950.91	0.24	0.24	
Financial Creditors	339.76	50.90	21.33	29.57
Total	1295.83	52.74	23.17	29.57

The payment of upfront amount shall be made within 30 days of the approval of the Resolution Plan by the Adjudicating Authority. If the RA is unable to disburse the entire amount of Rs. 29.57 Crores of deferred payment to the Financial Creditors within a period of six months from the date of approval of the Resolution Plan, viz., the effective date, the RA shall be liable to pay interest at 8% per annum, on the balance amount due to the Financial Creditors, at the end of sixth month. In any event, the balance amount, together with interest, shall have to be positively paid within a year from the effective date.

B. CIRP COST :

The entire CIRP cost would be paid first, as and when communicated by the RP, post approval of the Resolution Plan, in priority to payment of any other debt of the

Corporate Debtor, out of funds proposed to be introduced by the Resolution Applicant as new Equity Share Capital in the Corporate Debtor, Company. In the event of final IRP costs, as on the effective date, exceeds or decreases than that of the estimated cost of Rs.1.00 Crore, the amounts payable to the Financial Creditors under this Resolution Plan, shall be adjusted, accordingly.

11. The Ld. Counsel for the Resolution Professional further submitted that in compliance of Regulation 39(4), a Certificate in Form H of the Schedule, as laid down in Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, has been annexed along with the Resolution Plan. The affidavit under Section 29A of the Resolution Applicant has also been submitted along with the Resolution Plan. With regard to Regulation 38, it was discussed that the Plan addressed the interests of all the stakeholders, provided for payment to Operational Creditors, in priority over Financial Creditors, addressed the causes of default, was feasible and viable, had provisions for its effective implementation and the Resolution Applicant had the capacity and experience to revive the operations of the Corporate Debtor, in accordance with the timeline stated in the Plan. The Resolution Professional has also certified that he has not found any transaction falling within the purview of Sections 43, 45 or 50 of the Insolvency and Bankruptcy Code and accordingly, there were no requirements of filing any Application with the Adjudicating Authority in that regard and/or to consider the same while approving the Resolution Plan by the Committee of Creditors. Therefore, the Resolution Plan has fulfilled all the requirements to be meted out under Section 31(1) of the Code.

12. It is also stated that the average Fair Value and the Liquidation Value, obtained from the appointed IBBI Registered Valuer, are Rs. 69,24,16,000/- and Rs. 50,85,07,000/-, respectively. The Resolution Applicant, herein, has offered a total Resolution Plan amount of Rs. 52.74 Crores to discharge the liabilities of the Corporate Debtor, which includes 14.98 % to the Secured Financial Creditors and 0.025% to Operational Creditors and the employees will be paid 14.42 %, and further infusion of Rs. 60 Crores towards Working Capital requirement, to revive the Corporate Debtor Company and make its units operational.

13. Having heard the Ld. Senior Counsel and on perusal of the Plan, it is understood that the assets of the Corporate Debtor are going to rest in a safer hand. The RP, Mr. Rajesh Singhanian, deserves special appreciation for finding out a Resolution Applicant, whose Plan has been approved by the Committee of Creditors by 95.35% voting share, even in these difficult times of pandemic, due to COVID-19. All the provisions of mandatory requirements are seen complied with by the Resolution Applicant, as per Form H, submitted by the RP. It makes provision for the payment of the Insolvency Resolution Process, payment of the debts of Operational Creditors, Management of the affairs of the Corporate Debtor, and also provision for implementation and supervision of the Resolution Plan. It also provides terms of the Plan and its implementation schedule. So it is a feasible and viable Plan. A judicious distribution of the financial bids by the COC to the stakeholders according to their entitlements can be inferred from the Plan under consideration. No waiver of extinguishments in contravention of the provisions of the Code or in violation of existing laws seen not brought out and therefore, there is nothing in the Plan, so as to disapprove it. This CP was admitted on 7th August, 2019. However, upon expiry of 180 days, the period of CIRP was extended, excluding the days lost during the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak, not to 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 and thereby, approval of the Plan by the COC within the period of 270 days. The COC has very well deliberated with the Plans received by it and decided the viability, feasibility and financial matrix of each Plan and approved one with 95.35% vote shares of the members of the Committee of Creditors. Accordingly, we hereby approve the Resolution Plan of M/s. Amit Metaliks Limited, upon the following directions :

(i) The Resolution Plan of M/s. Amit Metaliks Limited, which is approved by the Committee of Creditors with 95.35% voting shares, is hereby approved under provisions of sub-section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016, which shall be binding on the Corporate Debtor, M/s.VSP Udyog Private Limited, its employees, members, creditors, guarantors, the Central Government, any State Government or any local authority and other stakeholders involved in the Resolution Plan.

(ii) The Resolution Plan shall come into force from the date of pronouncement of this Order.

(iii) The moratorium Order passed under Section 14, shall cease to have effect.

(iv) The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan, to the Insolvency and Bankruptcy Board of India to be recorded in its database.

(v) The IA(IB) No. 805/KB/2020 is allowed. The Petition, bearing CP(IB) No. 1221/KB/2018, is disposed of.

(vi) There is no order as to costs.

(vii) The Registry is directed to communicate the Order to the Applicants, Respondents, to the Resolution Applicant and to IBBI, through e-mail and free copy is to be given, if applied for.

(viii) The Certified copy of the Order may be issued to all the concerned parties, if applied for, upon compliance with all the requisite formalities.

(Harish Chander Suri)
Member(Technical)

(Madan B Gosavi)
Member(Judicial)

Order dated, the 20th October, 2020

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