

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

**IA Nos. 218/2020 & 385/2020
In
CP (IB) No.116/Chd/Hry/2017
(Admitted)**

**Under Section 30(6), 31 &
60(5) of the Insolvency &
Bankruptcy Code, 2016**

In the matter of:-

State Bank of India

....Financial Creditor

Versus

Castex Technologies Ltd.

....Corporate Debtor

And in the matter of:

CA No.218/2020

**Mr. Dinkar T. Venkatasubramanian, Resolution Professional
For Castex Technologies**

**Address: EY Restructuring LLP,
Golf view Corporate B, Sector 42,
Gurugram, Haryana - 12202**

....Applicant

Versus

**1. Deccan Value Investors L.P & DVI Pe Mauritius
Limited Through its Authorised Representative
Address: 850 New Burton Road, Suite-
201, Dover, Delaware – 19904, USA**

**2. Committee of Creditors Lead
by State Bank of India Castex
Technologies Limited
12th Floor, Jawahar Vyapar Bhawan,
1, Tolstoy Road, HC Mathur Lane,
New Delhi – 110001**

**3. Mr. Arvind Dham, Suspended Director/Promoter
For Castex Technologies Ltd.
Lower Shopping Complex (LSC)
Pamposh Enclave, Greater
Kailash 1, Delhi – 110048**

....Respondents

IA No.385/2020

Deccan Value Investors L.P & DVI Pe Mauritius Limited

Through its Authorised Representative

Address: 850 New Burton Road, Suite-201,

Dover, Delaware – 19904, USA

....Applicant

Versus

**1. Mr. Dinkar T. Venkatasubramanian, Resolution
Professional For Castex Technologies**

**Address: EY Restructuring LLP,
Golf view Corporate B, Sector 42,
Gurugram, Haryana – 12202**

**2. Committee of Creditors Lead
by State Bank of India Castex
Technologies Limited**

**12th Floor, Jawahar Vyapar Bhawan, 1,
Tolstoy Road, HC Mathur Lane,
New Delhi – 110001**

....Respondents

Order delivered on: 15.12.2020

Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)

HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)

Present through Video Conferencing:

**For the Resolution Professional: 1. Mr. Sumant Batra, Advocate
2. Ms. Niharika Sharma, Advocate**

**For the DVI-Resolution Applicant: 1. Mr. Vikram Nankani, Senior Advocate
2. Mr. Himanshu Gupta, Advocate
3. Mr. Chanakya Keswani, Advocate**

**For the Committee of Creditors: 1. Mr. Ritin Rai, Senior
Advocate 2. Ms. Ritika Rai,
Advocate**

For Ex-Directors: Ms. Salina Chalana, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

IA No. 218/2020

The State Bank of India, a Financial Creditor, filed CP No.116 of 2017 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short the 'Code') read with Rule 4 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules 2016 (in short the '2016 Rules') for initiating the Insolvency Resolution Process against Castex Technologies Limited (in short the 'Corporate Debtor'/'CTL'). This Adjudicating Authority, vide order dated 20.12.2017 admitted the CP (IB) No.116 of 2017 and accordingly Corporate Insolvency Resolution Process was initiated against the Corporate Debtor/CTL. The Committee of Creditors in its meeting held on 01.02.2018 approved the Resolution Plan of Liberty House Group (for short 'LHG'). The applicant filed an application bearing No. 364/2018 for approval of the resolution plan of LHG before this adjudicating authority. However, during the pendency of the said IA, due to default committed by LHG in complying with certain conditions of the plan, the SBI (on behalf of COC) filed an application bearing CA NO. 592/2018 for withdrawal of the IA No. 364/2018 and for exclusion of the CIRP period from 18.05.2018 to the date of passing an order in the CA No. 592/2018 and for calling fresh EOI in respect of the Corporate Debtor. This Adjudicating Authority vide its common order dated 15.03.2019, allowed the CA No. 592/2018 and permitted to withdraw the CA No. 364/2018.

2. Aggrieved by the said order dated 15.03.2019, LHG filed an appeal before the Hon'ble NCLAT in CA (AT) (Insolvency) No.637 of 2019 (LHG Pte Ltd. vs Dinkar T. Venkatasubramanian & Anr.) and the said appeal is still pending.

3. In pursuance of the order dt.15.03.2019, it is submitted that the Applicant invited fresh EOI from the prospective resolution applicants (PRAs) and followed the due procedure provided under the Code, however even after repeated EOIs no resolution plans were received and hence for the said reason SBI filed IA No. 3057/2019 before the Hon'ble NCLAT seeking 90 days extension and the same was granted till 31.01.2020 by order dt.11.12.2019 for completion of the CIRP of the corporate debtor.

4. The applicant therefore issued fresh EOI for the prospective applicants with the last date for submission of resolution plan as 31.12.2019. The Applicant received resolution plans from four PRAs on

31.12.2019 which were presented and discussed by the RP in the 31st meeting of the COC on 02.01.2020. The plan submitted by Deccan Value Investors LP and DVI PE (Mauritius) Limited (for short DVI) was declared H1 and the same were thoroughly negotiated and analyzed by the COC in the 32nd, 33rd, 34th and 35th meetings.

5. It is stated that meanwhile, the Hon'ble appellate authority vide order dated 03.02.2020 allowed further extension of time granted vide order dt.11.12.2019 passed in IA No.3057/2020. The RP conducted e voting of the plan submitted by DVI along with the addendums but the same was approved by only 63.51% votes.

6. It is submitted that the Appellate Authority vide order dt.26.02.2020 granted further extension of time of CIRP to meet the intent and

object of the code (Annexure A-9) and pursuant thereto, the Applicant convened the 37th meeting of the COC on 27.02.2020, wherein detailed discussions and deliberations regarding the final resolution plan dated 17.01.2020 along with addendums were held between the CoC and DVI and thereafter e-voting was conducted on 16.03.2020.

7. The Final resolution plan dated 17.01.2020 read with First Addendum dated 07.02.2020, Second Addendum dated 18.02.2020 and Third Addendum dated 09.03.2020 was approved by CoC by majority voting of 71.77% on 16.03.2020 by way of e-voting (Annexure A-10). The same was intimated to the Hon'ble Appellate Authority, which vide order dated 05.06.2020 permitted the applicant to file an application before this Adjudicating Authority.

8. In pursuance thereof, the Resolution Professional filed the present CA No.218/2020 under Section 30(6) and Section 31(1) and Section 60(5) of the Code, read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for approval of the Resolution Plan of DVI before this Adjudicating Authority.

9. On the other hand, the Resolution Applicant-DVI filed IA No. 385/2020 under Section 60(5) of the IBC, 2016 seeking to declare that the Resolution Plan dated 17.01.2020 read with its Addendums dated 07.02.2020, dated 18.02.2020 and dated 09.03.2020 stands terminated and has ceased to be valid in view of Clause 8.7(i) of the Resolution Plan and to dismiss the IA No. 218/2020 filed by the R.P. seeking approval of the plan and to return the PBG dated 17.01.2020.

10. Having heard the learned counsels for the Resolution Professional, learned counsel for the Committee of Creditors and the Resolution Applicant, we find that it would be first necessary to ascertain whether the requirements of the Code and Regulations made thereunder, have been complied with or not.

11. In view of the mandatory requirements of Section 30(2) of the Code, and the peculiar facts of this case, we examine the resolution plan of DVI dated 17.01.2020 along with its First Addendum dated 07.02.2020, Second Addendum dated 18.02.2020 and Third Addendum dated 09.03.2020 as approved by the Committee of Creditors.

12. The Resolution plan approved by the Committee of Creditors must provide for payment of insolvency resolution process cost in a manner specified by the Board in priority to the payment of other debts of the corporate debtor. With the present application i.e. IA No.218/2020, the RP has placed on record a copy of the Committee of Creditors approved resolution plan dated 17.01.2020 along with its addendums dated 07.02.2020, 18.02.2020 & 09.03.2020 of the resolution applicant- Deccan Value Investors LP and DVI PE (Mauritius) Limited, vide Spl.

Diary No.155 dated 22.06.2020. In Part 4- Financial Proposal, the resolution applicant has identified the specific sources of funds that would be used for payment of the insolvency resolution process cost in priority to the payment of other debts of the corporate debtor.

13. The resolution plan must provide for payments of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of liquidation of the corporate debtor under Section 53 or the amount that would have been paid to such creditors, if the amount to be

distributed under the resolution plan had been distributed in accordance with the order of priority under Section 53(1) whichever is higher. The Resolution Professional in Form H, filed vide Spl. Diary No.155 dated 22.06.2020, certified that in Part 2 Clause 3.2 under the heading 'Treatment of Operational Creditors' read with Part 5 (separated Part IV) Clause 1.4 'Allocation of Funds', the resolution applicant has provided the payment to the operational creditors in terms of Section 30(2)(b) of the Code. As regards, dissenting financial creditors, it is stated in Form 'H' that the Plan provides for the payment to the financial creditors, who did not vote in favour of the resolution plan, at Clause 1.6 of Part IV of the Plan, in terms of Section 30(2) of the Code.

14. The resolution plan must provide for the management of the affairs of the corporate debtor after its approval. There is specific provision made for the management and control of the company after the approval of the resolution plan. A detailed mechanism regarding the management and control is discussed in Part 2 Clause 3.6 under the heading 'Management and Control of the Corporate Debtor'. It is stated therein that from the NCLT approval date, an implementation and monitoring committee comprising of five

(5) persons of which one will be Mr. Dinkar T. Venkatasubramanian, three will be nominated by the key lenders, and one will be a nominee of the resolution applicants, will be constituted and the said committee shall continue to function until the effective date and shall stand dissolved upon acquisition of the corporate debtor by the resolution applicants.

15. Section 30(2) (d) of the Code envisages that it must provide for implementation and supervision of the resolution plan. Part 2 Clause 3.5 and 3.7 of the resolution plan provides for a detailed mechanism for effective implementation of the resolution plan.

16. Section 30(2)(e) of the Code requires that the resolution plan does not contravene any of the provisions of the law for the time being in force. In Form H filed as Annexure P-1 to the additional affidavit filed vide Diary No.63/4 dated 28.07.2020 submitted by the RP as per the requirement of Regulation 39(4) of the CIRP Regulations, he has certified that the resolution plan did not contravene any of the provisions of the law for the time being in force and is in compliance with the provisions of the Code and the CIRP Regulations.

17. The resolution applicants confirmed that they are not disqualified under Section 29A of the Code to submit a resolution plan or under any other law applicable, which further shows that the resolution plan conforms to the provisions of the law for the time being in force and did not contravene any such provision. The RP in the Form H referred above, has certified the same.

18. The Resolution Plan should conform to all such requirements which may be specified by the IBBI. A statement to this effect has been made by the RP in the Form H referred above.

19. The Resolution Professional through his affidavit bearing Diary No.63/4 dated 28.07.2020, while drawing our attention to Step V to Step VIII of Clause 21.1.1 of the request for resolution plan dated 12.12.2019, approved by the Committee of Creditors, stated that as per the said Clause under the RFRP, LOI was required to be issued, stating that the resolution applicant has been selected as the successful resolution applicant. Accordingly, the Resolution Professional, vide his e-mail dated 11.06.2020, informed the Committee of Creditors of his intent to file the application under Section 30(6) of the Code to comply with the orders of the Hon'ble Supreme

Court in the Amtek case and by the Hon'ble NCLAT in the Castex case, aimed to file the application on 15.06.2020 before 02:00 PM and called upon the Committee of Creditors to let him know, if the Committee of Creditors had any reservations on filing the said application without the executed LOI and submission of balance Performance Bank Guarantee, but no reply or objection to the filing of the application under Section 30(6) was received from the Committee of Creditors and accordingly, he filed the instant IA No. 218/2020 under Section 30(6) of the Code. The Resolution Professional vide his affidavit bearing Diary No. 63/4 dated 28.07.2020, categorically submitted that the payment of full performance Bank Guarantee is not a condition precedent either for filing of an application under Section 30(6) of the Code or for approval of the resolution plan by the Adjudicating Authority under Section 31(1) of the Code. He further submitted that keeping in view the peculiar circumstances of the case, this Adjudicating Authority may not reject/return the plan on the ground of non-payment of balance performance bank guarantee. With regard to the submission of the Performance Bank Guarantee by the resolution applicant is concerned, the learned counsel for the Committee of Creditors, while drawing our attention to Clause 12 of the RFRP submits that the successful Resolution Applicant was bound to submit the Performance Bank Guarantee and the same was not in any way linked to the issuance of the LOI in any manner whatsoever. It is further submitted that since the successful Resolution Applicant has failed to submit the balance 50% Performance Bank Guarantee, this Adjudicating Authority while approving the plan, may direct the resolution applicant to submit the same within a specific time. The learned senior counsel appearing for the successful Resolution Applicant submits that issuance of LOI was a pre-condition for submission of Performance Bank

Guarantee. It is further submitted by learned counsel for the Resolution Professional as well as Committee of Creditors that the approval of the plan and various clauses and conditions therein by the Committee of Creditors is well within its realm of commercial wisdom and hence, this Adjudicating Authority once satisfied that the plan fulfills the requirements under Section 30(2) of the Code, is required to approve the plan. A perusal of the various clauses of the RFRP and the provisions of the Code i.e. Section 31 read with Section 30(2)(f) and Regulation 36B (4A) read with 39(4) of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016, clearly mandates that after declaring a party as a successful resolution applicant, the Committee of Creditors was required to issue the LOI and that the successful Resolution Applicant was required to execute the same and is required to submit the full Performance Bank Guarantee before the Resolution Professional files an application under Section 30(6) read with Section 31(1) of the Code. However, in view of the peculiar circumstances of the case and keeping in view the interest of the corporate debtor and other stake holders and the object of the Code, instead of returning the plan to the Committee of Creditors on the ground of non-furnishing of the full Performance Bank Guarantee by the Resolution Applicant, we direct the Resolution Applicant to submit the balance Performance Bank Guarantee within 15 days from the date of receipt of a certified copy of this order.

20. With regard to the compliance of the second proviso to Section 31(4) i.e. obtaining the approval of the Competition Commission of India, the Resolution Professional in Form 'H' stated that the approval of the Competition Commission of India was not obtained by the Resolution Applicant

before the approval of the Plan by the Committee of Creditors and the same would be required to be obtained by the Resolution Applicant in the manner as may be directed by the Adjudicating Authority.

21. With regard to the compliance under Regulation 35A, it is stated that CA No.17/2019, filed under Section 43 and 45 of the Code, is pending before this Adjudicating Authority and the same is to be continued even after approval of the Resolution Plan.

22. Further, the resolution plan fulfils all the requirements of Regulation 38 and 39 of the CIRP Regulations. A perusal of Regulation 38 would clearly show that by virtue of mandatory contents of resolution plan as discussed in the preceding paragraphs in relation to Section 30 and Section 31 of the Code, the requirement of Regulation 38 also stands fulfilled. Even the requirement of Regulation 39 has been satisfied, as the RP has submitted that the resolution plan of Resolution applicant, as approved by the Committee of Creditors, to this Tribunal along with the compliance certificate in Form H, as per the requirements of Regulation 39(4) of the CIRP Regulations meets all the requirements of the Code and the CIRP Regulations and that the resolution plan has been duly approved by the Committee of Creditors.

23. In respect of the reliefs and concessions as set-forth in Section 9-Prayer of the resolution plan dated 17.01.2020 along with its Addendums dated 07.02.2020, dated 18.02.2020 and dated 09.03.2020, it is not possible for us to issue any direction except to say that the resolution applicant may take appropriate steps in accordance with law, in respect of the said reliefs and concessions. It is needless to say that the public authorities/government authorities/any other party would duly consider the requests/applications of the resolution applicant in accordance with law. We

make it clear that we are not expressing any opinion on the claim concerning reliefs and concessions nor any part of this order shall be understood in that spirit. Moreover, these reliefs and concessions/prayers are also not condition precedent for the acceptance of resolution plan. It would not be any impediment for us to accept the resolution plan.

IA No. 385 of 2020

24. The Resolution Applicant-DVI has filed this IA seeking to declare that the resolution plan, read with its three addendums, stands terminated and has ceased to be valid in view of Clause 8.7(i) read with Clause 5.1 of the Resolution Plan.

25. The said Clauses 8.7(i) and 5.1 of the resolution plan read as under:-

“8.7 Termination and Consequences

This Resolution Plan shall terminate forthwith in the following cases, unless otherwise agreed to in writing by the Resolution Applicants:

- (i) Effective Date not having occurred on or prior to the Long Stop Date, other than if any act or omission of the Resolution Applicants results in the Effective Date not having occurred on or prior to the Long Stop Date; or
- (ii) if another resolution plan is approved by the COC, provided that, at the option of the Resolution Applicants, if for any reason such resolution plan is rejected or cancelled or it is decided by the COC to reconsider the Resolution Plan, the Resolution Applicants may, at their option, agree to the Resolution Plan being once again considered in the CIRP process; or
- (iii) upon the occurrence of any Force Majeure Event on or before the Effective Date
- (iv) If on and from the NCLT Approval “Date till the Effective Date, the protection under Section 32A of the IBC does not apply to the Resolution Applicants and/or Corporate Debtor (including the property and Assets of the Corporate Debtor

If the Resolution Plan is terminated in the manner set out herein, it shall stand revoked, cancelled and be of no effect and null and void. In such a case, the existing facilities of the Creditors (as mentioned hereof), the rights and remedies of the Creditors under their respective existing financing documents would continue as if they had not been waived, amended, modified,

superseded or replaced by the Resolution Plan and the Creditors shall be entitled to enforce such rights and remedies under the existing financing documents, as if the same had not been waived and/or modified pursuant to this Resolution Plan and the other relevant documents executed thereof.”

“SECTION 5:-ACQUISITION AS A GOING CONCERN

5.1 On the date identified by the Resolution Applicants which shall be 30 (thirty) days from the date of NCLT Approval Date or such earlier date after the NCLT Approval Date as may be notified in writing to the erstwhile COC by the Resolution Applicants (“Effective Date”), the Resolution Applicants and/or their affiliates including DVI FPI, shall subscribe to equity shares, debt, or quasi debt, and/or convertible instruments of the Corporate Debtor such that they will hold 90% (ninety per cent) of the share capital of the Corporate Debtor and acquire control of the Corporate Debtor (“Acquisition”) as a going concern in accordance with Applicable Law and the Corporate Debtor will make payment of amounts payable to the Creditors as set out in this Resolution Plan.”

26. The relevant words are defined in the plan under the heading definitions, abbreviations and interpretation as under:-

Effective Date	Has the meaning ascribed to the term in sub-section 5.1 (Acquisition as a Going Concern), Part II of the Resolution Plan.)
Final Approval Date	The Final Approval Date shall mean the later of the date on which: (a) the period to prefer an appeal against the NCLT order, or any appellate authority’s order, approving the Resolution Plan expires as per Applicable Law, and/or no application for appeal against such order has been made; or (b) any stay that is granted by any adjudicating authority on the approval or implementation of the Resolution Plan, or any adverse order by an adjudicating authority that may affect the implementation of the Resolution Plan, is vacated or otherwise ceases to have effect.
Force Majeure Event	Any of the following events or combination of such events or circumstances as are beyond the control of the Corporate Debtor and the Resolution Applicants, as the case may be, and which cannot: (i) by the exercise of reasonable diligence, or (ii) despite the adoption of reasonable precautions and/or alternative measures be prevented, or caused to be prevented, and which materially and adversely affects the going concern status of the Corporate Debtor, including: (a) acts of

	<p>God, comprising fire, drought, flood, earthquake, epidemics and other natural disasters; (b) explosions or accidents, and terrorist attacks; (c) declaration of war and/or (d) any event or circumstance analogous to the foregoing. It is clarified that at (ii) the phrase 'materially and adversely affects the going concern' shall mean a material adverse effect on the assets and/or on the business of the Corporate Debtor: (a) having an adverse impact in respect of the revenue of the Corporate Debtor, and/or (b) being the amount required to restore the assets and/or business, provided that whether collectively or individually the amount of such material adverse effect is INR 150 crore or more. It is further clarified that, to the extent that any amounts are recovered from subsisting insurance policies obtained by the Corporate Debtor, such amounts shall be reduced for the purposes of the aforesaid determination.</p>
Long Stop Date	6 (six) months from January 17, 2020.
NCLT Approval Date	The date on which the NCLT approves the Resolution Plan.

27. The learned senior counsel appearing for the Resolution Applicant-DVI submits that the application filed in IA No. 218/2020 seeking approval of the resolution plan is infructuous as the resolution plan stands terminated by efflux of time on 17.07.2020 in view of the above referred clauses. It is submitted that the resolution plan was submitted to the COC on 17.01.2020 read with the addendums dated 07.02.2020, 18.02.2020 and 9. 03.2020 and the COC approved the resolution plan dated 17.01.2020 on 16.03.2020 and though the Long Stop Date is 17.07.2020, the IA for approval of this Adjudicating Authority was filed only on 22.06.2020 and the Plan has not been approved by this Tribunal till date.

28. It is to be seen that the Resolution Applicant submitted its plan in pursuance of a fresh Expression of Interest issued in terms of a common order of this Adjudicating Authority in CA Nos. 592/2018 and 364/2018 dated 15.03.2019. The Resolution Professional was permitted to file the IA No.

218/2020, by the Hon'ble NCLAT vide order dated 05.06.2020 in CA No. 637/2019 inspite of the pendency of the said appeal, filed against the common order dated 15.03.2019. Therefore, it is clear that the submission of the plan by the Resolution Applicant and filing of the IA No. 218/2020 by the Resolution Professional seeking approval of the plan were under peculiar circumstances of this case and under the supervision of the Hon'ble NCLAT. Hence, the contention of the Resolution Applicant that since the Long Stop Date was on 17.07.2020 and non-approval of the plan by this Adjudicating Authority before the said date made the plan infructuous and the same was terminated by efflux of time is untenable, unsustainable and impermissible. In view of the same, the various other submissions and citations referred by both sides on this aspect need not be gone into.

29. As a sequel to the above, we pass the following orders:-
- a. The Resolution Plan, as approved by the Committee of Creditors and submitted by Deccan Value Investors LP and DVI PE Mauritius Limited-Resolution Applicants, is approved and the same is binding on the Corporate Debtor and 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, such as authorities to whom statutory dues are owned, guarantors and the other stakeholders involved in the Resolution Plan.
 - b. The Resolution Applicant shall furnish the balance Performance Bank Guarantee within 15 days from the date of receipt of a certified copy of this order.

- c. The Resolution Applicant shall submit the application seeking approval of the Competition Commission of India within 15 days from the date of receipt of certified copy of this order and the same shall be considered in accordance with the law.
- d. The moratorium order passed by the Adjudicating Authority under Section 14 shall cease to have effect.
- e. The RP shall forward all records relating to the CIRP and the resolution plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code.

30. Accordingly, IA No. 218/2020 is disposed of and IA No. 385/2020 is dismissed.

(Raghu Nayyar)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

December 15th, 2020
YP