

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Before Shri Madan B. Gosavi, Hon'ble Member (J)

CP(IB) No. 596/KB/2017 along with
CA(IB) Nos.808, 811, 472, 562/KB/2018 and CA(IB) No.898/KB/2018

In the matter of:

Section 7 of the Insolvency & Bankruptcy Code, 2016 read with
Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating
Authority) Rules, 2016;

-And-

In the matter of:

Citi Bank N.A., a body corporate having its registered office at
399, Park Avenue, New York, 10043 and its branch office at
Kanak Building, 41, Chowringhee Road, Kolkata- 700 071 within
the aforesaid jurisdiction;

.. Applicant/ Financial Creditor

-Versus-

In the matter of:

Cosmic Ferro Alloys Limited,
having CIN No.U27104WB2003PLC096622, a company
Incorporated under the Companies Act, 1956 and having
its registered office at Sikkim Commerce House, 4/1, Middleton
Street, 4th floor, P.S. Shakespeare Sarani, Kolkata- 700 006,
Within the aforesaid jurisdiction;

... Corporate Debtor

Counsel appeared:

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| 1. Mr. Sabasachi Chowdhury, Sr. Advocate |] |
| 2. Miss Santa Ramchand, Advocate |] For the Respondent |
| 3. Miss Iti Dutta, Advocate |] Lalwani Ferro Alloys Ltd. |
| 4. Mrs. Priti Jain, Advocate |] |

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| 1. Mr. Prasanta Naskar |] Applicant, Vijay Birla |
| 1. Mrs.Manju Bhuteria, Advocate |] For the Financial Creditor |
| 2. Mr. Rishav Banerjee, Advocate |] |
| 3. Mr. Varun Kedia, Advocate |] |
| 4. Mr. Kumardeep Majumder, Advocate |] |
| 1. Mr. Susanta Datta, Advocate |] For DVC |
| 2. Mr. Pradyut Kr. Das, Advocate |] |
| 1. Mr. R.K.Maiti, Advocate |] For the Central Excise |
| 2. Ms. Sanjukta Gupta, Advocate |] Department |
| 1. Mr. Kuldip Mallik, Advocate |] Jindal Stainless Ltd. |
| 2. Mr. Niladri Kanra, Advocate |] Jindal Stainless (Hisar) Ltd. |
| 1. Mr. Joy Saha, Sr. Advocate |] |
| 2. Mr. Siddhartha Dutta, Advocate |] For the R.P. |
| 3. Ms. Suhani Dwivedi, Advocate |] |
| 4. Mr. Anish N. Nanavaty, R.P. | |

Date of Pronouncement of Order: 11.10.2018

ORDER

The City Bank N.A. - Financial Creditor has initiated Corporate Insolvency Resolution Process (in short, CIRP) of the Corporate Debtor- M/s.Cosmic Ferrow Alloys Ltd. under section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code, 2016), as the Corporate Debtor was unable to pay debt of Rs.13,09,53,425/- towards loan granted and disbursed.

2. This Adjudicating Authority vide order dated 16.01.2018 admitted the CIRP against the Corporate Debtor. Mr. Anish Niranjnan Nanavaty was appointed as IRP. On 20.01.2018, IRP made public announcement to CIRP of the Corporate Debtor and called upon from the creditors of the Corporate Debtor to

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file their claims with proof. IRP formed the Committee of Creditors (in short, CoC). In meeting dated 14.02.2018, the CoC confirmed the appointment of IRP as an RP by 100% voting share.

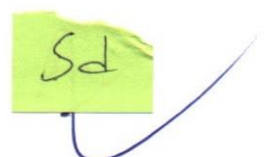
3. Thereafter, the RP published notice in English as well as vernacular newspaper having wide circulation calling upon the prospective resolution applicants to submit Expression of Interest (in short, EoI) and the plan for resolution of insolvency of the Corporate Debtor. The RP held meetings of CoC from time to time and filed on record total 08 progress reports. RP has declared 28th May, 2018 as the last date for submission of resolution plan.

4. It appears from record that Resolution Professional received three resolution plans, (1) Lalwani Ferro Alloys Ltd. and (2) Maithan Alloys Limited and (3) Consortium of United Tradeco FZC and OVC Exports Pvt. Ltd. All of them are found to be eligible to submit plans in view of section 29A of the I&B Code, 2016.

5. When CIRP was in progress, period of 180 days got over. Hence, the RP, as per the instruction of the CoC, filed application before this authority to extend the CIRP period for another 90 days. That application was allowed by this authority [CA(IB) No.578/KB/2018]. 7th CoC meeting was held on 30.05.2018. RP put before the CoC all the three resolution plans for consideration of CoC. CoC after due deliberation and consideration approved the plan submitted by M/s. Consortium of United Tradeco FZC and QVC Exports Pvt. Limited by 95.86% of voting share. CoC instructed the RP to submit the same plan for approval of this authority as contemplated under section 31 of the I.&B Code.

6. I have gone through the records. I have perused the Resolution Plan submitted for approval. I heard the Ld. Sr. Counsel, Mr. Joy Saha for the RP.

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7. Section 31 of I&B Code requires that the Adjudicating Authority to approve the plan as approved by the CoC upon being satisfied that the plan meets all the requirements as referred to in sub-section (2) of section 30 of I&B code. Sub-section (2) of section 30 of I&B Code mandates that the resolution plan must provide (a) **insolvency resolution process costs**; (b) **repayment of the debts of operational creditors subject to provision of section 53 of I&B Code**; (c) **provides the mechanism of the management of the affairs of the corporate debtor after the approval of the resolution plan**; (d) **provide mechanism of implementation and supervision of the resolution plan**. The Authority has also to be satisfied with the fact that the **plan does not contravene any provisions of law and it is in conformity with all the requirements of law**.

8. In view of above, I have gone through the Resolution Plan submitted for my approval. In Part-A of the Resolution Plan, I found that the provision is made for payment of insolvency resolution process costs. It appears to be somewhat at higher side because provision of amount of Rs.12.20 crores is made to incur resolution costs, which includes fees of resolution professional amounting to Rs.6.33 crores (page 29). However, since it is approved by the CoC and this authority has no reason to doubt wisdom of CoC, I hold that the provisions of section 30(2)(a) of I&B Code is complied with. The plan also provides that repayment of debts of operational creditor (page 33). In para 2(e) of the plan at page 63 states the modalities suggested for management of the affairs of the Corporate Debtor and it also provides mechanism for effective supervision and implementation of the plan. In view of this, I hold that the provisions of section 30(2)(b) and 30(2)(c) of I&B Code are complied with. One, Mr. Nitesh Kumar sworn an affidavit on behalf of the resolution applicant stating that the resolution

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applicant, Consortium of United Tradeco FZC and QVC Exports Pvt. Limited does not suffer from any disqualification as stated under section 29A of the I&B Code. The plan does not contravene any provisions of law and the same is in conformity with the provisions of I&B code. Resolution Professional has produced the certificate under Regulation 39(4) of the I&B Code in Form H stating that the plan is in conformity with all legal requirements. The Resolution Plan submitted for approval of this Authority complies with all the requirements stated under section 30(2) of the I&B code. Hence, I approve this plan for the Corporate Debtor and I proceed to pass the following order:

ORDER

The Resolution Plan of M/s.Consortium of United Tradeco FZC and QVC Exports Pvt. Limited which is approved by the CoC with 95.86% voting percentage, is hereby approved under provisions of section 31(1) of the Insolvency & Bankruptcy Code, 2016, which will be binding on the Corporate Debtor, its employees, members, creditors, coordinators and other stakeholders involved in the Resolution Plan.

2. The revival plan of the company in accordance with approved Resolution Plan shall come into force with immediate effect.
3. The moratorium order passed under Section 14 shall cease to have effect.
4. 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 on its database.

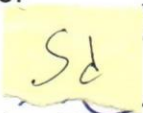
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5. Before parting with, it appears to me that I have to endorse my appreciation to the work rendered by the Resolution Professional, Mr. Anish N. Nanavaty for seeing that the Resolution Plan is approved by the CoC so as to give a rebirth to the dying company.

6. Accordingly, C.P.(I.B.) No.596/KB/2017 along with all the CAs filed and/or pending, if any, in this context is disposed of.

7. Registry is directed to serve copies to all the concerned parties by Speed Post.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


11/10/2018
(Madan B. Gosavi.)
Member(J)

Signed on this the 11th day of October, 2018