

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-III**

**C.A. – 108/(ND)/2019
In C.P. No. IB-137/(ND)/2018**

In the matter of:

UTTAM STRIPS LTD.
39, Okhla Industrial Area,
Phase III
New Delhi – 110020.

...Corporate Debtor

AND

C.A. – 108/(ND)/2018

In the matter of:

SANJAY GUPTA
Resolution Professional,
Uttam Strips Ltd.,
IBBI/IPA-003/IP-N00047/2017-18/10354.

...Resolution Professional

Order Delivered on:06.06.2019

CORAM:

MS. INA MALHOTRA, MEMBER(JUDICIAL)

DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)

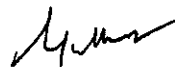
PRESENT – Prachi Johri, Moulshree Shukla, Jasveen Kaur, K. Datta, Advocates
for the Resolution Professional



ORDER

Per Dr. V. K. Subburaj (Member Technical)

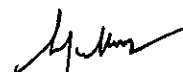
1. This Tribunal vide order dated 09.04.2018 admitted the application filed under Section 9 of the Code by Power2sme Pvt. Ltd. against the corporate debtor Uttam Strips Ltd. ("CD") and ordered the corporate insolvency resolution process ("CIRP") of the CD.
2. The resolution professional, Mr. Sanjay Gupta ("RP") has submitted the progress reports from time to time and the meetings of the CoC were held as prescribed under the Code. The present resolution professional was appointed in the 1st meeting of the CoC held on 15.05.2018 and the appointment was confirmed by the Tribunal. The RP prepared the Information Memorandum and published the Expression of Interest. In the 12th CoC meeting held on 26.12.2018 the resolution plan submitted by the resolution applicant Jyoti Strips Ltd. ("RA") was approved by the CoC with 100% votes in favour of the resolution plan.
3. The CD is involved in the manufacturing of steel and steel products. The probable reason for insolvency of the CD was that during the period 2008 to 2012 the CD went for strategic expansion and the installed capacity increased from 75,000 MTPA (FY 2008-09) to 2,50,000 MTPA (FY 2012-13) and ventured into production of home furnishing products for the



export market but the CD was unable to recover the receivables which led to defaults with the lenders.

4. According to the resolution plan, the RA is an ISO 9001:2015 company, incorporated in 2007, engaged in trading, cutting and slitting of flat steel products. The RA has an established presence in Ludhiana, Jaipur, Faridabad, Delhi and Raipur, with a strong product range, in-house transportation and service centers. The proposal of restructuring the operations according to the resolution plan is as follows:

- i. Raw Material Sourcing – The RA will leverage its expertise in procurement, network and scale and also endeavor to obtain better pricing terms for key raw materials. The RA is involved in trading activities in the same business with ready access to adequate raw material sources which will help the CD to procure material at competitive prices.
- ii. Operations and Maintenance – The RA has requisite experience in operating and maintaining steel service centers and therefore, the RA will be leveraging its technical and operational experience coupled with new technical experts in the industry to help ramp up the operations of the CD.



- iii. Expected Sales Volume – The RA proposes to ramp up the operational capacities and achieve economies of scale within a reasonable time of completing the acquisition.
- iv. Future Sale Agreements – The RA plans to continue with the existing sales arrangements of the CD, however, the RA would review the sales arrangements as and when required post-Closing Date and implement the necessary changes.
- v. The RA plans to achieve saleable steel capacity of 90,000 TPA of CRCA. The RA proposes to infuse approximately Rs.5 Crores for revamping of the existing facilities and improving the safety, environmental and other operating norms. A year on year maintenance capital expenditure is also proposed.

5. The financial proposal made by the RA is as follows:

- i. First, the actual CIRP cost up to Rs.3.75 crores plus any taxes thereon, as certified by the RP and CoC will be paid. Any amount payable towards CIRP cost over and above Rs.3.75 crores plus taxes shall be reduced from the amount to be paid to financial creditors.
- ii. Second, liquidation value payable to workmen for period of 24 months preceding CIRP commencement date or 20% of the admitted claims (Rs. 1.28 crores) towards employee and workmen, whichever is higher, before Closing Date i.e. 30 days from Effective Date (date



of receipt of certified copy of the order of this Tribunal approving the resolution plan) will be paid.

- iii. Third, up to 1% of admitted claims (Rs.0.27 crores) to the operational creditors will be paid before the Closing Date.
- iv. Fourth, payment to financial creditors of Rs.108 crores pro rata to their respective portion of the financial claims, will be made on the Closing Date. For each financial creditor, its respective portion of the Upfront Payment shall be allocated in the following manner: (i) first, towards repayment of all outstanding interest till the Closing Date, whether or not actually accrued; and (ii) second, towards the outstanding principal. Further payment of novation amount of Rs. 1 crore to the financial creditors on pro rata basis will also be made and payment of share acquisition consideration of Rs. 100/- only will be paid.
- v. Fifth, for starting and further improving the operation of the CD, Rs. 5 crores will be infused by the RA by way of equity.

6. The RA proposes the following steps for the implementation of the resolution plan:

- i. Within 15 days from Effective Date, the financial creditors shall invoke the pledge created in their favour over the pledged shares.



The financial creditors are required to allocate nominal amount of Rs. 100/- only as value of such pledged shares.

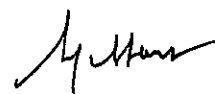
- ii. On or before Closing Date the CD shall undertake a capital reduction whereby all the equity shares of the CD which are held by persons other than the financial creditors shall stand cancelled and extinguished. No consideration shall be payable to any shareholders.
- iii. On or before Closing Date the RA shall infuse the funds for payment of CIRP costs and claims.
- iv. Within 20 days from Effective Date the payment towards the CIRP costs, full and final discharge of employee and workmen dues and full and final discharge of operational creditors shall be made.
- v. On Closing Date the RA shall acquire the pledged equity shares for share acquisition consideration of Rs.100/- and the Upfront Payment of Rs.108 crores shall be made towards full and final discharge of financial creditors. The financial creditors shall transfer the remaining financial debt (total financial claims of financial creditors together with interest accrued on such loans till Closing Date i.e. Rs.558.83 crores together with interest accrued on such loans till Closing Date less payment to financial creditors as Upfront Payment) to the RA for the novation consideration of Rs. 1 crore.



- vi. Within 2 months of Closing Date the RA shall infuse equity towards improving operations of the CD. The RA shall have the right to convert the remaining financial debt into equity.

7. The management and supervision plan proposed by the RA is as follows:

- i. Post Effective Date and Prior to Closing Date – Post Effective Date and until the Closing date, the RP or any other person as approved by the CoC, a representative of the CoC as approved by the CoC and a representative of the RA shall be appointed as the monitoring agency of the CD. The Monitoring Agency shall be accorded with the same roles, responsibilities, powers and protections as provided to the RP under the Code. The Monitoring Agency shall supervise the implementation of the plan and shall act under the supervision of the RA and in accordance with the terms of the Monitoring Agency Agreement. The fees of the Monitoring Agency shall be mutually discussed and finalized and shall be met from the internal accruals of the CD. If internal accruals are not sufficient then the RA shall infuse funds to meet the same.
- ii. On and After Closing Date – On Closing Date, 100% of the issued and paid up equity share capital of the Company shall be held by the RA, and the RA shall acquire control over the CD. On the Closing Date, the suspended Board of Directors of the CD shall be deemed



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to have resigned and the Board of Directors shall be reconstituted by the RA. The reconstituted board shall take control of the CD.

8. The mandatory requirements that the resolution plan has to comply with under the Code and CIRP Regulations and the treatment of such compliances in the plan submitted are as follows:

Condition	Compliance under Resolution Plan
S. 30(1) - resolution applicant submits affidavit stating that he is eligible under Section 29A	The RA has submitted an affidavit stating it is not disqualified under the provisions of Section 29A.
S. 30(2)(a) - provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.	Payment of CIRP costs have been provided for as stated in para 5(i) above.
S.30(2)(b) - provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall	Payment of claims of operational creditors including those of employee and workmen have been



<p>not be less than the amount to be paid to the operational creditors in the event of a liquidation of the CD under section 53.</p> <p>Regulation 38(1) – amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.</p>	<p>provided for as stated in para 5(ii) and (iii) above.</p>
<p>Regulation 38(1A) – a resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.</p>	<p>Interests of stakeholders have been dealt with as shown in para 5 above.</p>
<p>S.30(2)(c) – provides for the management of the affairs of the CD after approval of the resolution plan</p>	<p>The management of the CD has been provided for as stated in para 7 above.</p>
<p>S.30(2)(d) – The implementation and supervision of the resolution plan</p>	<p>The implementation and supervision of the plan has been provided for as stated in para 6 above.</p>



<p>Regulation 38(3):</p> <p>(a) addresses the cause of default;</p> <p>(b) feasible and viable;</p> <p>(c) has provisions for its effective implementation;</p> <p>(d) has provisions for approvals required and the timeline for the same;</p> <p>(e) resolution applicant has the capability to implement the resolution plan</p>	<p>Provided for as stated in paras 4-7 above.</p>
<p>S.30(2)(e) - does not contravene any of the provisions of the law for the time being in force</p>	<p>Complied with.</p>
<p>S.30(4) - The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board</p>	<p>CoC has approved the resolution plan by a vote of 100%.</p>



9. The RA has requested this Tribunal for certain specific reliefs as a part of the resolution plan. The Tribunal feels that there is a need to particularly discuss the following reliefs:

- i. Under Section 6.1.3 the RA prays that Section 115JB of the Income Tax Act, 1961 be applied to the CD similarly as it was applied to companies rehabilitated under the Sick Industrial Companies (Special Provisions) Act, 1985 where the such company was not subjected to minimum alternate tax until the net worth becomes positive. The RA prays that the Central Board of Direct Taxes ("CBDT") shall (i) exempt income/gains/profits, if any, arising as a result of giving effect to the plan from being subjected to minimum alternate tax in the hands of Company under the provisions of the Income Tax Act, 1961, (ii) grant an exemption to receive all income without deduction of any tax under the provisions of Chapter XVII-B of the Income Tax Act, 1961 for a period of 10 years from the Closing Date and (iii) waive all liabilities in respect of taxes arising in respect of periods up to the Closing Date, including such liabilities for period up to the Closing Date that may crystallize subsequent to the Closing Date.

Section 115JB of the Income Tax Act, 1961 already provides relief to companies against whom an application for CIRP has been admitted under the Code by allowing the deduction of unabsorbed



depreciation and loss brought forward from the book profit of the company for calculating the minimum alternate tax. Since the legislature in its wisdom has already provided adequate reliefs in the Income Tax Act, 1961, we do not feel it is necessary to provide any further reliefs to the CD under Section 115JB or any other provisions of the said Act.

- ii. The Department of Registration and Stamps of the relevant State (including Rajasthan and Delhi) and the Ministry of Corporate Affairs shall exempt the RA and the Company, from the levy of stamp duty and fees applicable in relation to this plan, documents and its implementation.

The Code and its attendant regulations do not confer power on this Tribunal to exempt the corporate debtor or the resolution applicant from meeting legitimate dues to the government such as stamp duty which arise consequent to the execution of the resolution plan. Thus, the above relief cannot be granted.

- iii. The concerned state revenue/stamp authorities are requested to waive penalties for non-registration and inadequate/non-stamping of the documents executed by the CD.

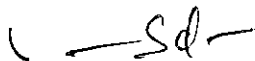


The above relief is also rejected as the Tribunal does not have the power to grant such exemptions.


- iv. The Adjudicating Authority shall grant exemption from income tax for any income/gain/profits, arising as a result of giving effect to the resolution plan in the hands of the RA, the CD under the provisions of the Income Tax Act, 1961.

The above relief sought is also rejected as the Tribunal does not have the power to grant a blanket exemption from income tax for any income or gain that may arise in favor of the RA or the CD.

10. All the reliefs asked for in Section 6 of the resolution plan by the RA, apart from the reliefs discussed in paragraph 9 above, are granted. The resolution plan submitted by the RA seems to be in place and fit to be admitted. Henceforth the moratorium order shall cease to have effect. The resolution professional shall further act upon as prescribed on approval of the resolution plan to forward the records to the concerned authorities and to intimate the closure of the insolvency proceedings.


(Dr. V.K. SUBBURAJ)

MEMBER (TECHNICAL)


(INA MALHOTRA)
MEMBER (JUDICIAL)

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