

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO:II

136

SPECIAL BENCH(Video Conference)

CORAM: HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL
HON'BLE VEERA BRAHMA RAO AREKAPUDI-MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 12.08.2021 AT 12:30 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Miscellaneous Application/2/2021 in CP(IB) No.698/10/HDB/2018
NAME OF THE COMPANY	U Foam Pvt Ltd
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	10 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Order is pronounced. Resolution Plan is approved vide separate order.

-sdl-

MEMBER
(TECHNICAL)

Karim

-sdl-

MEMBER
(JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No.2/2021
In CP(IB) No.698/10/HDB/2018
Under Section 30(6) of the IB Code, 2016
Read with Regulation 39(4) of the IBBI

**In the matter of:-
M/s. U-FOAM PRIVATE LIMITED**

Mr. J. Manivannan
Resolution Professional
For U-Foam Private Limited
Plot No.53B, 8/330, Vishalakshi Nagar,
Fourth Cross Street, Santhosapuram,
Chennai – 600073, India.

...Applicant/RP

Date of order: 12.08.2021

**Coram: Madan B. Gosavi, Member Judicial.
Veera Brahma Rao Arekapudi, Member Technical.**

Parties/Counsel(s) present:

For the Applicant: Mr. J. Manivannan, RP

[Per Bench]

ORDER

1. This IA No.2/2021 is filed by Resolution Professional U/s 30(6) of the IB Code, 2016, seeking following prayers:
 - a) That this Adjudicating Authority may be pleased to pass an order approving the resolution plan submitted by the Resolution Applicants in respect of the Corporate Debtor under Section 31(1) of the Code and declare that the same be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.
 - b) Pass an order directing that, pending disposal of the present application by this Tribunal, the Resolution Professional shall continue to conduct its role as Resolution Professional of the Corporate Debtor and during such period shall have all powers, duties and protections as available to him as a Resolution Professional under the Code and regulations thereunder.

- c) Pass an order directing that the moratorium declared under Section 14 of the Code shall continue until such date that the Resolution Applicants acquire control of the Corporate Debtor in accordance with the Resolution Plan.
 - d) Pass an order directing the Resolution Applicants to implement the Resolution Plan in the manner set out under the resolution plan.
 - e) Pass an order approving the constitution and appointment of monitoring committee ("MC") from the date of approval of resolution plan by this Tribunal until the date on which the Resolution Applicants acquire control of the Corporate Debtor i.e., closing date under the Resolution Plan, and during such period extend protection to the MC (including extension of the protection of the moratorium against any suit, legal proceedings and investigations or have any liability with respect to anything which is done or intended to be done or omitted in good faith and in compliance with the Code, CIR Regulations or any other applicable law) to enable it to monitor the Corporate Debtor as going concern.
 - f) Pass an appropriate order in relation to the grant of concessions, reliefs and dispensations sought in terms of the resolution plan.
 - g) Pass an order directing all stakeholders to cooperate with the Resolution Applicants and the MC to keep the Corporate Debtor as a going concern and to implement the Resolution Plan in the manner approved by this Tribunal.
2. Brief facts as stated by the Applicant are as under:-
- a. The Applicant is the Resolution Professional in respect of M/s. U-Foam Private Limited (Corporate Debtor) having been appointed as Interim Resolution Professional by this Adjudicating Authority vide order dated 26.12.2018 and was thereafter appointed as Resolution Professional at second CoC meeting held on 18.03.2019. That based on the claims received a Committee of Creditors (hereinafter referred to as "CoC") was constituted on 14.01.2019, which comprised of the Sole Financial Creditor namely Indian Overseas Bank.]
 - b. That three potential resolution applicants have expressed their interest to submit the resolution plan for the Corporate Debtor namely Mr. Jagannath Sarangapani jointly with Badrinath M Sarangapani, MSMB Promoters of the Corporate Debtor (2) Phoenix ARC Private Limited and (3) Somani Ispat Private Limited.

-sd/-

-sd/-

- c. That RP had received only one resolution plan from the existing Promoters of the Company as on 24.05.2019. The said resolution plan was found compliant with the requirements of the Code and the CIRP Regulations.
- d. The COC has held extensive negotiations and consultations with the MSME Promoters/Resolution Applicants, to improve and clarify its resolution plan. However, the Promoters Resolution Applicants reiterated that the plan proposed by them cannot be revised in line with discussion had with COC and requested the COC to consider their plan for the benefit of all stakeholders of the Corporate Debtor.
- e. That the voting for approval of resolution plan submitted by MSME Promoters Resolution Applicant was conducted on 24.06.2019 wherein the Sole COC member voted against the Plan.
- f. That since no resolution plan was approved by COC within the maximum period of 180 days permitted for completion of the Corporate Insolvency Resolution process u/s 12 of the Code, the COC decided to liquidate the Corporate Debtor and authorized the Resolution Professional to file an Application to liquidate the Corporate Debtor. In this backdrop, the application bearing IA No.631 of 2019 was filed by the Resolution Professional for liquidation of the Corporate Debtor.
- g. That the decision of CoC for liquidation of the Corporate Debtor has been challenged by the (i) MSME Promoters Resolution Applicant as well as (ii) Employees and Workers of the Corporate Debtor vide respective miscellaneous applicants.
- h. That during the course of various hearings held in respect of liquidation application, the MSME promoters Resolution Applicants have submitted that the commercial decision arrived at by the CoC for 'liquidation' of the Corporate Debtor is not a sound decision being unsupported by any credible information. That as opposed to Liquidation value, MSME Promoter's resolution plan is a better offer for revival of the Corporate Debtor and if approved shall be beneficial to all the stakeholders. Furthermore; they have stated that liquidation of the Corporate Debtor would gravely prejudice the livelihood of the employees of the Corporate Debtor and suffocates the object of the Code i.e. maximization of value of the assets of the Corporate Debtor and they have been willing to increase the resolution amount in order to safeguard the corporate debtor from liquidation.

-scb-

-scb-

- i. The Adjudicating Authority allowed the members of the COC and the prospective MSME Resolution Applicant from time to time in order to arrive at a mutual solution for the best interest of the corporate debtor in view of the Corporate Debtor being MSME Sector and Going Concern. After persistent efforts and various discussion and negotiations between the COC and the MSME Promoters Resolution Applicants, finally the revised resolution plan which was submitted on 16.12.2020 by the MSME Promoters.
- j. The revised resolution plan submitted by the MSME Promoters Resolution Applicant was placed before the sole COC member for consideration in 6th meeting of COC held on 30.12.2020. The sole COC member after considering viability and feasibility of the Resolution plan, approved the same with 100% voting rights on 27.01.2021.
- k. That the Resolution Plan submitted by the MSME Promoters Resolution Applicant meets all the requirements of the Code and CIRP Regulations and does not contravene any of the provisions of Law.
- l. The Resolution Plan submitted by the Resolution Applicant complies with all the mandatory conditions and does not contravene any provisions. In view of the same, a copy of the Compliance Certificate in Form H under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- m. That the Resolution Applicant has agreed and undertaken to furnish the performance guarantee of Rs.1,87,00,000/- before approving the Resolution Plan by the Hon'ble Adjudicating Authority as approved by the COC and stated in the RFRP in the form of a Bank guarantee.
- n. The Resolution Applicants viz. Mr. Jagannah Sarangapani and Mr. Badrinath M. Sarangapani are the promoters, members and directors of the Corporate Debtor. They have been managing the affairs of the Corporate Debtor since the year 1991-92.
- o. The Corporate Debtor is a registered MSME Company and hence the provisions of Section 29A of the Code are not applicable and the Promoters of the Corporate Debtor are eligible to submit the Resolution Plan for revival of the Corporate Debtor. The Resolution Applicants therefore declare that they are eligible to submit this Resolution Plan. An affidavit for the same as required u/s. 30(1) of the code is enclosed with the Resolution plan.
- p. That the amounts claimed by various stakeholders and the payment schedule as per the approved Resolution Plan is as follows:

- i. The claim of the Sole Financial Creditor and the amounts proposed to be paid under the Resolution plan:

Sr. No.	Name of the Financial Creditor	Amount claimed (in Rs.)	Amount admitted (in Rs.)	Amounts proposed to be paid under the plan	% of amount Paid in the Resolution plan
1	IOB	40,58,84,000	40,58,84,000	18,70,00,000	46%
	Total	40,58,84,000	40,58,84,000	18,70,00,000	46%

- ii. Claims submitted by the Employees and the Workmen and the amount proposed to be paid to them are as follows:

Sr. No.	Category of the dues	Amount claimed (in Rs.)	Amount admitted (in Rs.)	Amounts proposed to be paid under the plan	% of amount Paid in the Resolution plan
1	Employees who have left from the services of the Corporate Debtor	NIL	1,36,26,201	68,13,000	50%
2	Salary dues to Employees who continue to be employed by the Corporate Debtor	NIL	5,73,95,097	1,43,49,000	25%
3	Gratuity payments due In respect of Employees who continue to be Employed by the Corporate Debtor	NIL	63,59,176	63,59,176	100%

- iii. Total claims of the unsecured Financial Creditors and the amounts proposed to be paid as per the approved Resolution plan:

Sr. No.	Category of the dues	Amount claimed (in Rs.)	Amount admitted (in Rs.)	Amounts proposed to be paid under the plan	% of amount Paid in the Resolution plan
1	Unsecured Financial Creditor	NIL	NIL	NIL Rs.15,81,00,198/- (Unclaimed and Unverified) All are related parties except for the claim lodged by NSIC for Rs.96,19,845/-, which is already part of amount claimed by the Secured Financial Creditor.	50%

-sd/-

-sd/-

iv. Total claims of the statutory dues and the amount proposed to be paid to the statutory authority are as follows:

Sr. No.	Category of the Statutory dues	Amount claimed (in Rs.)	Amount admitted (in Rs.)	Amounts proposed to be paid under the plan	% of amount Paid in the Resolution plan
1	Prior to CIRP	5,22,05,318	5,22,05,318	23,97,000	4.59%
2	During CIRP	1,45,27,814.04	1,45,27,814.04	1,00,35,000	69.07%
	Total	6,67,33,132.04	6,67,33,132.04	1,24,32,000	

v. Total claims of the Operational Creditors and the amount proposed to be paid to the Operational Creditors other than the Directors and employees are as follows:

Sr. No.	Name of the Operational Creditor	Amount claimed (in Rs.)	Amount admitted (in Rs.)	Amounts proposed to be paid under the plan	% of amount Paid in the Resolution plan
	Total Operational Creditors	1,02,99,633	1,02,99,633	10,29,963	10%

vi. The timelines for the payment of the abovementioned debts of the Corporate Debtor are as follows:

Payment Date(s)	Proposed Amount (Rs.in Lacs)
Upfront Payment within 15 days of approval of the Plan	211.00
Payment after 15 days of approval and within 90 days of approval of the Plan	374.00
Payment after 90 days of approval and within 120 days of approval of the Plan	374.00
Payment after 120 days of approval and within 180 days of approval of the Plan	467.50
Payment after 180 days of approval and within 270 days of approval of the Plan	467.50
Payment within 730 days of approval of the Plan	409.83
Provision for contingencies	70.00
Total	2373.83

-Sdlr-

3. Heard counsel for the Resolution Professional/Applicant and perused the Resolution Plan and other documents submitted along with Application.
4. Section 30(2) of the Code as amended w.e.f. 06.08.2019 enjoins upon the resolution professional to examine each resolution plan received by him to confirm that such plan –
 - 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;
 - b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-
 - i. the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
 - ii. 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 in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the Corporate Debtor.
 - c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
 - d) the implementation and supervision of the resolution plan;
 - e) does not contravene any of the provisions of the law for the time being in force
 - f) Conforms to such other requirements as may be specified by the Board.
5. Section 30(4) of the Code as it stands at present after the amendment reads as follows: -

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section

11. The Resolution Applicants are the promoter of the Corporate Debtor and Corporate Debtor being MSME, the ineligibility as per Section 29A of the IB Code, 2016 shall not be applicable.
12. The Plan also provides for keeping the Company as a going concern and operate in its normal course of business upon implementation of Resolution Plan. There is no objection filed by any other person in this regard.
13. Copy of Form-H (Compliance Certificate) filed by the RP along with the Plan has been perused and considered. The RP *inter-alia* has certified as under:
 - I. The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
 - II. The Resolution Applicant, Mr. Jagannath Sarangapni jointly with Badrinath M Saranpani, MSME Promoter of the Corporate Debtor has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.
 - III. The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of CoC after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
 - IV. The Resolution Plan was approved by the Sole CoC members by voting conducted through poll sheet on 27.01.2021.
14. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and Regulations thereunder.
15. The Resolution Applicant has also submitted Bank Guarantee to the tune of Rs. 1,87,00,000/- issued by IDFC First Bank.
16. It is also evident that the Resolution Plan placed before this Adjudicating Authority, was approved by the Committee of Creditors in its 6th meeting dated 30.12.2020 with 100% votes cast in favour of Approval of Resolution Plan.

- Sd/-

- Sd/-

17. In **K Sashidhar Vs. Indian Overseas Bank & Others**, decided on 05.02.2019 in Civil Appeal No.10673/2018 with CA Nos.10719/2018, 10971/ 2018 and SLP(C) No.29181/2018, the Hon'ble Supreme Court, noticing the provisions of section 30(4), held that if the CoC had approved the resolution plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the resolution professional to submit the same to the adjudicating authority (NCLT). On receipt of such a proposal, the adjudicating authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less.
18. In the said judgment, in para 35, the Hon'ble Supreme Court held that the discretion of the adjudicating authority is circumscribed by Section 31 and is limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2) when the resolution plan does not conform to the stated requirements.
19. In the recent judgement in Essar Steel (Civil Appeal No.8766-67 of 2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority will not have power to modify the Resolution Plan as approved by the CoC in their Commercial Wisdom. In para 42 of the said judgment, Hon'ble Apex Court has observed as under:

Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Shashidhar (supra).

20. In view of the discussions in the foregoing paragraphs, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. Hence, this Adjudicating Authority is satisfied that the Resolution Plan is in accordance with Law. Therefore, the 'Resolution Plan' annexed with Application bearing IA No. 02 of

-sd/-

-sd/-

2021 filed in CP (IB) No. 698/10/HDB/2018 is hereby approved, which forms part of this Order and which shall be 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 owed, guarantors and other stakeholders involved in the resolution plan.

21. However, the Resolution Plan approved shall not construe any waiver to any statutory obligations/liabilities arising out of the approved Resolution Plan and same shall be dealt in accordance with the appropriate Authorities as per relevant Laws. We are of the considered view that if any waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities. The same view has also been held by Hon'ble Principal Bench, NCLT in the case of *Parveen Bansal Vs. Amit Spinning Industries Ltd.* in CA No.360 (PB) 2018 in CP No (IB) 131 (PB)/ 2017.
22. Accordingly, the MoA and AoA shall be amended and filed with the RoC for information and record as prescribed. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution Applicant shall pursuant to the Resolution Plan approved under Sub-Section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for in such law.
23. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.
24. This Adjudicating Authority hereby directs for formation of Monitoring committee consisting of one of the representative from the Secured Financial Creditor, RP and one representative of the Resolution Applicant. The RP to supervise the implementation of the Resolution plan and file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.
25. The order of moratorium passed by this Adjudicating Authority under Section 14 of the I&B Code, 2016 shall cease to have effect from the date of passing of this Order.
26. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI along with

- sdt -

- sdt -

Copy of this Order, so that the Board may record the same on its database.

27. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
28. Accordingly, this Application bearing IA No. 02 of 2021 hereby stands disposed of and pending Applications bearing IA No.s 376, 377, 567, 631, 707 & 828/2019 & IA No.220/2020 and pending Applications if any, shall stand closed.

-sdl-

VEERA BRAHMA RAO AREKAPUDI
MEMBER TECHNICAL

-sdl-

MADAN B. GOSAVI
MEMBER JUDICIAL