

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH**

I.A. No. 58/2018

In

C.P.(IB) No. 20/GB/2017

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

In the matter of:

SREI Infrastructure Finance Pvt. Ltd.	... Financial Creditor
-Versus-	
Assam Company India Ltd.	... Corporate Debtor
- and -	
C. A. Kannan Tiruvengadam (on behalf of Assam Company India Ltd. -CD)	... Applicant / Resolution Professional

Order Delivered on 20th September, 2018

Coram:

Hon'ble Mr. Justice P K Saikia, Member (J)

ORDER

Heard Mr. Kaushik Goswami, Ms. Jayantika Ganguly, Mr. Arinjoy Sandilya, Ms. Mayuri Kakoty learned counsel for the applicant/resolution professional. Also heard the Resolution Professional, Mr. Kannan Tiruvengadam, learned CA.

2. One of the Financial Creditors of Assam Company India Limited (the "**Corporate Debtor**") filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short "**IBC 2016**") seeking initiation of corporate insolvency resolution process (in short "**CIRP**") against the Corporate Debtor. By an order dated 26th October, 2017, this Adjudicating Authority admitted the company petition, same being C.P.(IB) No.20/GB/2017, against the Corporate Debtor, declared moratorium in terms of section 14 of the IBC 2016 and was also pleased to appoint Mr. Vinod Kumar Kothari as the interim resolution professional ("**IRP**" in short). Further, by another order dated 12th January, 2018, this Adjudicating Authority appointed the applicant herein, as the Resolution Professional (hereinafter

referred to as "RP") of the Corporate Debtor and since then the applicant has been discharging the functions of a resolution professional with respect to the Corporate Debtor.

2. The Resolution Professional published an advertisement dated April 11, 2018 for "Expression of Interest Submission of Resolution Plan for Assam Company India Limited", whereby prospective Resolution Applicants would be able to submit their Expression of Interest (EOI) to participate in the Corporate Insolvency Resolution Process. The last date of submission of EOI was fixed on April 26, 2018 at 6 P.M., extendable at the sole discretion of the Resolution Professional. Further, it was also made clear under Clause 5 of the said advertisement that all the EOIs received, would be reviewed by the Resolution Professional and shortlisted bidders would be allowed to share the Evaluation Matrix along with Information Memorandum of the Company prepared as per provisions of the IBC, 2016 after signing of an undertaking of confidentiality. Furthermore, under Clause 7 of the Note appended to the said Advertisement for Expression of Interest, it was stated that the EOIs of only those interested parties, who met the eligibility criteria specified in Annexure 'A', would be considered and those which did not meet the criteria, would be rejected. The Resolution Professional received nine EOIs up to this date of April 26, 2018.

3. Subsequently, one James Warren Tea Limited, which had not submitted an EOI earlier, was also allowed by the Hon'ble NCLAT to submit its EOI vide order dated May 31, 2018 passed in Company Appeal (AT) (Insolvency) No. 274 of 2018.

4. Pursuant to the receipt of the EOIs, the Resolution Professional issued the request for resolution plan ("RFRP") on May 31, 2018 to the PRAs and fixed the last date for submission of resolution plan on June 21, 2018. In the meantime, the Resolution Professional received communication from seven additional parties, offering to take part in the CIRP of the Corporate Debtor and the COC in its 9th meeting held on June 25, 2018, decided by a vote of 100% to allow the parties who have communicated their interest to allow them to submit their resolution plan and also extended the last date of submission of resolution plan till June 27, 2018.

5. Thereafter, four resolution plans were submitted by the following resolution applicants:

1. BRS VENTURES INVESTMENT LIMITED
2. DHUNSERI PETROCHEM LIMITED
3. JAMES WARREN TEA LIMITED
4. SURAKSHA ASSET RECONSTRUCTION LIMITED

6. After scrutinizing the resolution plans submitted by the resolution applicants, the Resolution Professional submitted all the resolution plans except the plan submitted by James Warren Tea Limited to the COC in its 10th meeting held on July 16, 2018 and the COC received the same for evaluation of the resolution plans. The resolution plan of James Warren Tea Limited was submitted by the Resolution Professional to the COC in its 11th meeting held on July 19, 2018, after the NCLAT permitted the Resolution Professional to do so vide its order dated 18th July, 2018.

7. Upon completion of the evaluation of the resolution plans, the COC in its 12th meeting held on 30th July, 2018 declared BRS Ventures Investment Limited ("**BRS**" or "**Successful Resolution Applicant**") to be the highest bidder (H1) and subsequently the COC/Resolution Professional held negotiations in terms of the RFRP with the H1 bidder, namely BRS, and pursuant to the same, BRS submitted its revised resolution plan on 5th August, 2018 ("**Final Resolution Plan**"). The Final Resolution Plan was approved by the COC by a vote of 100% taken in 13th COC meeting held on 10th August, 2018, as prescribed under Section 30 (4) of the IBC 2016. It is now for consideration by this Adjudicating Authority.

8. The relevant provisions of the IBC 2016 are as follows: -

30. Submission of resolution plan.

(1) A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution 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 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 a liquidation of the corporate debtor under section 53;

(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) confirms to such other requirements as may be specified by the Board.

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan,

such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

(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:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section:

Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

31. Approval of resolution plan.

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1), -

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.

9. Pursuant to the jurisdiction conferred upon this Adjudicating Authority by Section 31 of the IBC 2016, as set out above, I have examined the Final Resolution Plan and I find that the mandatory requirements have been dealt with in the Final Resolution Plan as follows: -

- (a) Clause 3 of Chapter VIII of the Final Resolution Plan comprehensively provides for dealing with the interest of all stakeholders of the Corporate Debtor, including financial creditors and operational creditors, of the Corporate Debtor.
- (b) The terms and implementation schedule of the Final Resolution Plan are provided under Clause 1 of Chapter XI and 1 of Chapter XII of the Final Resolution Plan.
- (c) The Final Resolution Plan provides for payment of the insolvency resolution process costs in priority over other payments under Clause 3 of Chapter VIII and Clause 5 of Chapter VIII;
- (d) The Final Resolution Plan also provides for payment of the Corporate Debtor's workmen dues as on the insolvency commencement date i.e. 2nd in priority out of the source disclosed in Clause 3 of Chapter VIII of the Final Resolution Plan;
- (e) As per the Final Resolution Plan, since as per the Successful Resolution Applicant the liquidation value of the Corporate Debtor is significantly lower than the total admitted debt of financial creditors of the Corporate Debtor, the liquidation value is not sufficient to cover the debt of the financial creditors of the Corporate Debtor in full. Therefore, the liquidation value that is due to the operational creditors (other than workmen) or to the other creditors or stakeholders of the Corporate Debtor (including dues to employees [other than Workmen], government dues, taxes and other creditors and stakeholders) is NIL and therefore, they will not be entitled to receive any payment. (Clause 3 of Chapter VIII);
- (f) The management and control of the business of the Corporate Debtor, post the approval of the Final Resolution Plan by this Hon'ble Tribunal is specified to be conducted in terms of Clause 1, Clause 2 and Clause 3 of Chapter X;

- (g) Furthermore, the means for implementation and supervision of the Resolution Plan are specified under Clause 3 and Clause 4 of Chapter XI of the Final Resolution Plan. A declaration is also made under Clause 10 of Chapter XIV that the Final Resolution Plan is not in contravention of provisions of any applicable law;
- (h) The Final Resolution Plan provides for upfront cash payment to the financial creditors of INR 600 crore;
- (i) The Closing Date for the purposes of the Final Resolution Plan is the date on which Resolution Applicants acquire control of the Corporate Debtor in accordance with the provisions of applicable laws, subject to approval of the same by this Hon'ble Tribunal.
- (j) Clause 4.1 of Chapter XI of the Final Resolution Plan provides that from the date of approval of the Final Resolution Plan by this Hon'ble Tribunal until the Closing Date, a Monitoring Committee ("MC") will be constituted which (i) will supervise the implementation of the Final Resolution Plan, (ii) may decide to appoint advisors, legal and technical consultants as may be required and (iii) manage and control the operations of Corporate Debtor;
- (k) Clause 4.2 of Chapter XI provides that the MC shall comprise of such persons as the COC may decide;
- (l) Clause (c) of Chapter IV of the final resolution plan contains some vital amenities to be provided such as quality healthcare facilities for the employees and their families, by setting up multiplicity hospitals at all locations within two to five years, creation of educational infrastructure by building educational facilities within a period of over five years and ensuring better living standards of the employees by building adequate housing facilities within a period of two years.

However, for better understanding of Clause (c) of Chapter IV of the Resolution Plan, said Clause is reproduced below: -

"c. Socio economic nature of the Investment

The proposed investment in Assam Company India Limited (ACIL) is inspired by the initiatives of the Government of India for the development of North-East states of India.

Bolstering the economic development and investment potential of the region is thus a key aspect of India's Act East policy, which focuses on improved socioeconomic, trade and business engagement with East Asia and the ASEAN states. The Modi government has been keen to link the development of the north-eastern states with a more proactive Act East policy. The north-east region, by way of its location, enjoys key advantage being close to international borders and opens up market access. The north-east region is expected to be the next growth engine for the country and we want to grab this opportunity to be part of the growth story.

*Currently BRSVL group has nearly 40,000 employees globally and the number is growing. BRSVIL has always considered the best interests of employees as they key for the development of the business. **ACIL has over 30,000 employees across the state of Assam. Their continued welfare would be one of the key objectives of the investment.***

The expenditure towards employee benefits will involve healthcare, education and housing. BRSVIL will primarily focus on providing quality healthcare to all employees and their families. For this purpose, healthcare facilities will be set up at all locations which will ensure address the health concerns not only for the employees but also for the residents of Assam. The healthcare facilities will include general clinics and also state of the art multispecialty hospitals which will be set up over a period of two to five years. Besides this BRSVIL will also aim to create an education infrastructure that will enhance the quality of education in the state of

Assam. The educational facilities will be built over a period of over five years. This education ecosystem will also improve the skills of the employees and their families. BRSVIL will also ensure better living standards for its employees by building adequate housing facilities. These facilities will be set up within 2 years improving the quality of life of the employees and their families.

10. The Resolution Professional has certified that the Final Resolution Plan is in conformity with the provisions of the IBC, 2016 and the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, including Section 30(2) of the IBC, 2016 and Regulation 37(1), 38(1), 38(1)(A), 38(2), 38(3) and 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. Upon examination of the Final Resolution Plan, I note that the terms of the Final Resolution Plan appear to be in line with the objects and purpose of the IBC 2016, and provides for insolvency resolution in a time bound manner for maximization of value of assets, and promotes entrepreneurship, availability of credit and balance the interests of all the stakeholders.

12. Therefore, this Adjudicating Authority records its satisfaction for granting approval to the Final Resolution Plan. Further, in light of the benefits listed above, apart from others as provided in the Final Resolution Plan, it would be in the best interest of the company, its employees in particular, public in general, and also in the interest of financial creditors and operational creditors to accept the Final Resolution Plan in question.

13. In light of the above, I hold that the Final Resolution Plan is in conformity with the provisions of Section 30(2) of the IBC, 2016 and I approve the same plan by the following orders: -

- b. The Final Resolution Plan, as submitted by BRS Ventures Investment Limited, which is approved by the committee of creditors, in its meeting held on 10th August, 2018 with 100% vote in terms of section 31(1) of the IBC, is hereby approved.
- c. The approved Final Resolution Plan shall come into force with immediate effect.
- d. The moratorium order passed under Section 14 shall cease to have effect.
- e. All relevant parties in relation to the Final Resolution Plan are to be bound by the terms and conditions mentioned therein in accordance with Section 31(1) of the IBC 2016.
- f. All relevant parties are directed to extend full cooperation to BRS Ventures Investment Limited to carry out the terms and conditions of the Final Resolution Plan. If there is any deviation in implementing the Final Resolution Plan, the concerned parties/entity will be liable for punishment as per Chapter 7 (Offences and Penalties) of the IBC, 2016.
- g. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Final Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.

14. Accordingly, this proceeding, same being C.P.(IB) No. 20/GB/2017, along with connected IAs filed and/or pending, if any, in this context, is disposed of, **in terms of the approval as indicated above.**

Sdf
Adjudicating Authority
National Company Law Tribunal
Guwahati Bench: Guwahati.

Deka

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