

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

Before **Shri Jinan K.R., Hon'ble Member (J)**

**Company Petition (IB) No.168/KB/2017**

**In the Matter of:**

Section 30(6) read with section 31(1) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

-And-

**In the Matter of:**

Naresh Kumar & Company Pvt. Ltd., a company incorporated under the Companies Act, 1956, having its Registered Office at 5<sup>th</sup> floor, 9-B, Woods Street, Kolkata- 700 016;

... **Applicant/ Operational Creditor**

-Versus-

**In the Matter of:**

Kalyanpur Cements Limited, a company incorporated under the Companies Act, 1956, having its Registered Office at 2&3, Dr. Rajendra Prasad Sarani (earlier known as 2 & 3 Clive Row, Kolkata- 700 001, West Bengal

... **Corporate Debtor**

**Counsels appeared:**

1. Mr. Surendra Kumar, Advocate for the K.C.L
2. Mr. Divyesh Desai – Resolution Professional
3. Mr. Sanjay Chatterjee, Advocate of I.P.
4. Mr. Arun Gupta, FCA – R.P., D. Desai
5. Mr. Shaunak Mitra, Advocate for the Corporate Debtor

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Date of Pronouncing the Order: 31.01.2018

**ORDER**

This is a case in which Corporate Insolvency Resolution Process (in short ("CIRP")) has been successfully completed by the Resolution Professional, Shri Divyesh N. Desai. The Resolution Professional has got six resolution plans from various resolution applicants including the resolution plan prepared and submitted by Dalmia Cements (Bharat) Ltd. a well-known promoter who is the fourth largest player in the Indian Cement Industry. After discussions of all resolution plans, CoC shortlisted two resolution plans inclusive of the plan submitted by the Dalmia Cements (Bharat) Ltd. According to the Ld. Resolution Professional, both the resolution plans were put to vote and the plan submitted by the Dalmia Cement (Bharat) Ltd. was unanimously approved by the CoC in the CoC meeting held on 22<sup>nd</sup> January, 2018. Upon getting approval of the plan, the Resolution Professional submitted the Plan along with progress report before this Adjudicating Authority on 29<sup>th</sup> January, 2018 for approval. He further submits that the plan meets all the requirements of the I & B, Code and the Regulations and has been approved by the Committee in accordance with section 30(4) of I&B, Code.

Vide Order dated 1<sup>st</sup> May, 2017, this Adjudicating Authority admitted the application for initiation of CIRP filed by the Operational Creditor (Naresh Kumar & Company Pvt. Ltd.) in respect of Corporate Debtor Kalyanpur Cements Ltd. and appointed Mr. Divyesh N. Desai as the Resolution Professional.

On a careful scrutiny of the progress report as well as the Resolution Plan, I am satisfied that the plan submitted by the Resolution Professional

meets all the requirements of the Code and the Regulations. As per section 31(1) of the Code, the Adjudicating Authority, if 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 the Adjudicating Authority has no other go other than to pass an order approving the Resolution Plan.

The 10<sup>th</sup> CoC meeting was seen convened on 22<sup>nd</sup> January, 2018. There was hundred percentage of quorum for the participation of the members in the said meeting convened at the instance of the Resolution Professional. The meeting has been held after due service of notice. Voting share of CoC recorded in the progress report is hundred percentage. It is understood that out of six Resolution Plans, the CoC shortlisted two Resolution Plans and after due deliberations and discussions, both the Resolution Plans were put to vote and CoC finally approved the Resolution Plan of Dalmia Cements (Bharat) Ltd. It is that Resolution Plan came up for consideration for the approval of this Adjudicating Authority. The Resolution Plan of the Resolution Applicant submitted to the CoC being approved by the CoC with voting share as laid down under sub-section (4) of section 30 and since nobody came forward challenging the process initiated by the Resolution Professional in examining the resolution plans submitted before him for the consideration of the CoC as provided under sub-section (2) of section 30 the plan deserves approval as per section 31(1) of the Code.

The Ld. Counsel for the Resolution Professional also submits that the Resolution Plan approved by the CoC conforms all the requirements of sub-section (2) of section 30 of the Code. On a reference to the Resolution Plan, I am also satisfied that the plan submitted by the resolution applicant fulfilled all the requirements (a) to (f) of sub section 2 of section 30 (1) of the code.

Sd

The Ld. Resolution Professional submitted the Resolution Plan approved by the Committee of Creditors with the certification as provided under Regulation 39(4)(a) that the contents of the Resolution Plan meet all the requirements of the Code and the Regulations. The plan provides Corporate Debtor with a financially viable and sustainable capital structure and comprehensively deals with all stakeholders claims. It provides financial plan for settlement of IRP Costs in terms of Section 30(2) (a) of the Code and Regulation 38 (1) (a) of the CIRP Regulations including settlement of all the admitted claims by the Resolution Professional. The plan provides a well-planned provision in order to operate the Corporate Debtor as a going concern safeguarding priority in payment of workmen and employees dues. It also provides provisions for repayment of debts of operational creditors in the manner specified in the plan and provisions for the management of the affairs of the Corporate Debtor. The Resolution Plan in the instant case is also not challenged by any other applicants or any of the parties and is, therefore, liable to be approved upon the following among directions.

### ORDER

The Resolution Plan, which is approved by the CoC with a voting share of hundred 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.

Sd

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.

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

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



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(Jinañ K.R.)  
Member (J)

Signed on this, the 31<sup>st</sup> day of January, 2018