

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

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

**Company Petition (IB) No.173/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:**

Berger Paints India Limited, a public limited company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at Berger House, 129, Park Street, Kolkata- 700 017.

... **Applicant**

-Versus-

Precision Engineers & Fabricators Private Limited, a private Limited company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 166B, S. P. Mukherjee Road, Mertin Links, Suite No.3D, Kolkata- 700026

... **Corporate Debtor**

**Counsels appeared:**

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|----------------------------------|---|-------------------|
| 1. Mr. Aniruddha Roy, Advocate   | ] |                   |
| 2. Mr. S.M.Gupta, FCS –R.P.      | ] | R.P. and his team |
| 3. Mr. Wrishik Ganguly, Advocate | ] |                   |
| 4. Mr. K. Ananda Rao, FCS        | ] |                   |
|                                  |   |                   |
| 1. Mr. Anirban Roy, Advocate     | ] | For R1            |
| 2. Mr. Rajesh Upadhyay, Advocate | ] |                   |

1. Ms. Ishani Sengupta ] Advocate ] For L&T Finance Ltd., Financial Creditor

1. Mr. R.C.Prusti, Advocate ] For Union Bank of India  
2. Ms. Manini Kabi. Advocate ] Financial Creditors

Date of Pronouncing the Order: 01.02.2018

### ORDER

This is a case in which Berger Paints India Ltd., Operational Creditor has filed for initiating Corporate Insolvency Resolution Process (in short "CIRP") against Precision Engineers & Fabricators Private Ltd., Corporate Debtor under section 9 of Insolvency & Bankruptcy Code, 2016. The application was allowed vide order dated 04.04.2017 and Mr. S.M. Gupta was appointed as the Interim Resolution Professional on 11.04.2017. Thereafter as per order dated 16.08.2017, appointment of I.R.P. was reconfirmed as the Resolution Professional.

Mr. S. M. Gupta has succeeded in his attempt to have a revival plan for the Corporate Debtor, and that resolution plan was got it approved by the CoC after a long deliberation and discussion by the CoC. It is that Plan submitted before this Adjudicating Authority on 30.01.2018, i.e. on the date of expiry of 270 days of the resolution process. It is that Resolution Plan came up for consideration before me for its approval under section 31(1) of the I.& B. Code. As per section 31(1) of the Code, the Adjudicating Authority, if satisfied that the Resolution Plan as approved by the CoC 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.

Sd

Heard the Ld. Resolution Professional, Ld. Counsel for the Resolution Professional and Ld. Counsel on both sides. Perused the report and Resolution Plan.

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. The Resolution Plan submitted by the Resolution Professional provides certification as required under the Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

A perusal of the Progress Report, it is understood that the Resolution Professional had convened altogether 17 meetings of CoC and only one Resolution Plan came up for consideration before the Resolution Professional. That Resolution was subjected to elaborate discussions and revision of the Plan and finally at the meeting held on 29.01.2018, the Resolution Plan has been approved unanimously by 100% votes. The Resolution Plan submitted to the CoC being approved by the CoC with a 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 Plan submitted before him for consideration of the CoC as provided under sub-section (2) of section 30, the Resolution 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 of the code.

Sd

On a careful scrutiny of the Resolution Plan, it is also understood that it provides the Corporate Debtor with a financially viable and sustainable capital structure and comprehensively deals with all stakeholders claims. The Ld. Resolution Professional in his progress report also certified that the Resolution Plan provides the following arrangements.

- a) Provides for the payment of insolvency resolution process costs, as defined in Section 5(13) of the Insolvency and Bankruptcy Code, 2016 and in a manner specified by the Board, in priority to the repayment of other debt of the Corporate Debtor,
- b) Provides for the repayment of the debts of operational creditors in a manner as specified by the Board. It is not less than the amount to be paid to the operational creditors 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) Provides for 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) The contents of the resolution plan meet all the requirements of the Insolvency and Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as amended.
- g) Conforms to the requirements as specified by the Board vide the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as amended.

The above certification of the Resolution Professional clubbed with a reading of 9<sup>th</sup> progress report of Resolution Professional, I am also satisfied

Sd

that the Resolution Plan 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.

The Resolution Applicant in the instant case is one Mr. Gurdeep Sing Sahni, a Promoter Director and Shareholder of Precision Engineers and Fabricators Pvt. Ltd., who is holding 447502 number of shares of the said company. The resolution applicant / promoter-shareholder preferred an appeal before the Hon'ble NCLAT challenging the directions given to the Resolution Professional to give the proportionate voting right to one of the financial creditors, L&T Finance Ltd. by this Adjudicating Authority. Vide order dated 01.12.2017, the Hon'ble NCLAT, dismissed the appeal observing that the Resolution Professional has to consider the Resolution Applicant's qualification in regards submission of Resolution Plan as per section 29(A) of the Code inserted by the Notification dated 23.11.2017.

The Ld. Resolution Professional submits that the Resolution Applicant in the instant case even if a promoter and a shareholder of the Corporate Debtor, he is not a defaulter come under the purview of section 29(A) and that question was considered by him and CoC and therefore, his plan has been considered by the CoC and after due deliberations and discussions approved the plan in the CoC meeting held on 29.01.2018. He further submits that an affidavit of the resolution applicant declaring that the applicant is not a defaulter as per section 29(A) and as per the explanation provided under section 29(A) of the Amended Code is annexed with the resolution plan at page no.56. In view of the above said factors and considering the affidavit of the applicant, and since the Resolution Professional certified that the acceptance of the plan does not contravene any of the provisions of the law

Sd

for the time being in force, it appears to me that the resolution plan is 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.
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, S.M.Gupta 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.

  
(Jinan K.R.)  
Member (J)

Signed on this, the 1<sup>st</sup> day of February, 2018