

In the National Company Law Tribunal,
Kolkata Bench, Kolkata

CA (IB) No.109/KB/2018

In

CP (IB) No.37/KB/2017

In the matter of:

An application under Section 30 (6) read with Sec.31 of the Insolvency and Bankruptcy Code, 2016 seeking approval of Resolution Plan.

And

In the matter of:

Mamta Binani

.....Resolution Professional/Applicant

And

Palogix Infrastructure Pvt. Ltd.

.....Corporate Debtor/Respondent

Order Delivered on 12th February 2018

Coram:

Jinan K.R., Member (J)

For the Resolution Professional

: 1. Ms. Mamta Binani, CS
2. Mr. Kanishk Khetan, Advocate

For the Corporator Debtor

: 1. Ms. Manju Bhuteria, Advocate
2. Ms. Smita Mukherjee, Advocate

For Titagarh Logistic
Infrastructure Pvt. Ltd.

: 1. Mr. Anirban Ray, Advocate.
2. Mr. V.V.V. Sartry, Advocate.

Sd

ORDER

Per Jinan K.R., Member (J)

1. This is an application filed by the Resolution Professional (RP) under Sec.30 (6) and Sec.31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the resolution plan.
2. ICICI Bank Ltd./financial creditor has filed the CP No.37/2017 under Sec.7 of the Insolvency & Bankruptcy Code, 2016 for initiating corporate insolvency resolution process in respect of Palogix Infrastructure Pvt. Ltd. It reveals from the record that vide order dated 16/5/2017 application filed by the financial creditor was admitted and Mrs. Mamta Binani, CS, has been appointed as interim resolution professional. Subsequently, upon approval of the Committee of Creditors (CoC) Mrs. Mamta Binani was re-appointed as the RP.
3. In an endeavor to find out a promoter for taking over the company under resolution process, RP has convened and conducted 11 meetings of the CoC and submitted two resolution plan for consideration of the CoC.
4. Godavari Commodities Ltd. and Shri Sanjay Kumar Mishra were the resolution applicants. Both the resolution plan was discussed in the 11th CoC meeting.
5. Ld. Resolution Professional submits that resolution plan of Sanjay Kumar Mishra was approved by the CoC with 100% voting percentages. According to RP none of the members of the CoC absented from voting and the plan submitted to the Adjudicating Authority was voted in affirmative with 100% voting percentage and thereby approved the resolution plan of Sanjay Kumar Mishra.

Sd

6. Period of submission of resolution plan, at the request of the RP had been extended by 180 days and the extended period of submission of plan expired on 9/2/2018. In the meanwhile, Mrs. Mamta Binani, the Resolution Professional in this case had succeeded in getting a resolution plan for the corporate debtor which has been approved by the CoC upon deliberation and discussion. Therefore, the only question to be answered is whether the resolution plan meets the requirements as referred to in sub-section (2) of Sec.30 of the I & B Code?

7. The resolution plan came up for consideration before us for its approval under Sec.31(1) of the I & B Code perfectly meets all the requirements as provided under sub-section (2) of Sec.30 of the I & B Code. As per Sec.31 (1) of the I & B Code the Adjudicating Authority, if satisfied that the resolution plan as approved by the CoC under Sec.30(4) meets the requirement as referred to in sub section (2) of Sec.3, the Adjudicating Authority has no other go other than to pass order approving the resolution plan.

8. On perusal of the progress report as well as the application and the minutes of the CoC, it is pertinent to note the resolution plan under consideration has been approved unanimously by 100% votes.

9. Though no serious challenge regarding the acceptance of the resolution plan brought to our notice, an operational creditor, viz., Palogix Infrastructure Pvt. Ltd. who had submitted its claim to the RP by filing an interim application No.CA (IB) No.450/KB/2017, submitted that its claim was not fully accepted by the RP and a clause is to be made in the resolution plan so as to consider the entire claim of the operational creditor in the resolution plan.

10. Ld. Resolution Professional submits that the corporate creditors' claim up to Rs.4 crore, provision has been made in the resolution plan and that the resolution plan being approved by the CoC, the adjudicating authority is not competent to modify the plan. We find some force in the submission on the side

of the RP and since the resolution plan satisfied all the requirement of the Code inclusive of certification by the RP under Sec.39 (4) of the Code and since the plan confers all the requirement of the sub-section (2) of Sec.30 of the Code, the plan is liable to be approved upon the following amongst directions.

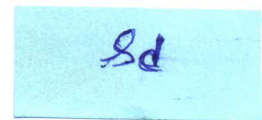
11. The resolution plan, which is approved by the CoC with voting share of 100% is hereby approved under provision of Sec.31 (1) of the Code which would be binding on the corporate debtor, its employees, members, creditors, coordinators and other stake holders involved in the resolution plan.

12. The revival plan of the company in accordance with the approved resolution plan shall come into force with immediate effect. The moratorium order passed under Sec.14 of the Code shall ceased to have vacated.

13. Resolution Professional shall forward all the records relating to the Committee of Creditors Insolvency Resolution Process and the resolution plan to the Insolvency and Bankruptcy Board of India to be recorded for its data base.

14. Before parting with, it appears to me that I have to endorse my appreciation to the work rendered by the Resolution Professional, Mrs. Mamta Binani for finding out a promoter with a resolution plan which has been approved by the CoC with 100% voting share so as to give a rebirth to a dyeing company.

CA (IB) No.109/KB/2018 and CP (IB) No.37/KB/2017 are disposed of in terms of the above.



(Jinan K.R.)
Member (Judicial)

Signed on 12th February 2018.