

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CORAM: 1. Shri Jinan K.R., Hon'ble Member(J)

**I.A.(IB) No.600/KB/2020
in
CP (IB) No. 503/KB/2018**

IN THE MATTER OF

An application under section 7 of the Insolvency and Bankruptcy Code, 2016;

-And-

IN THE MATTER OF

An application under Section 30(6) And Section 31, Section 60(5) of the Insolvency and Bankruptcy Code, 2016 along with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

-And-

IN THE MATTER OF

Siddha Domicile Company Private Limited & Ors., a Non Banking Financial Company registered with Reserve Bank of India, having office at 12 Park Lane Kolkata-700016.

.....Financial Creditor

Versus

Ashika Commercial Private Limited, having its Registered Office at 1 Garstin Place, Orbit 4 C, Kolkata- 700 001, West Bengal.

Corporate Identity Number : U74140WB1987PTC043404

....Corporate Debtor

-And-

In the matter of:

Rajesh Kumar Agrawal, the Resolution Professional of Ashika Commercial Pvt. Ltd having its office at Room No-301, 3rd Floor, 1, Ganesh Chandra Avenue, Kolkata – 700 013.

....Resolution Professional/ Applicant

Counsels appeared through Video Conference

For the Applicant (Resolution Professional)

- (i) Mr. Rajesh Kumar Agarwal, RP
- (ii) Mr. Rahul Auddy, Advocate
- (iii) Mr. Subodh Agarwal, Financial Advisor of RP

Date of hearing : 12th August 2020

Date of pronouncement of Order : 12th August 2020

ORDER

Per Shri Jinan K.R., Member (Judicial)

1. Mr. Rajesh Kumar Agrawal, the Resolution Professional of Ashika Commercial Pvt. Ltd (Corporate Debtor) filed this application being I.A.(IB)No.600/KB/2020 in CP(IB)No.503/KB/2018 under Section 30(6), 31 and 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short "IBC, 2016") read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 read with Rule 11 of National Company Tribunal Rules, 2016 for approval of the resolution plan.

2. The applicant has prayed for an urgent hearing of the case through video conference, since the work of the Tribunal is disrupted due to the Covid 19 pandemic and nationwide lockdown. Having satisfied with the urgency trying to set up, the matter is listed for hearing today (12.08.2020) by video conferencing.

3. Heard Ld. Counsel Mr. Rahul Auddy for the Resolution Professional. Perused records.

4. Brief facts:

5. Corporate Debtor M/s. Ashika Commercial Private Limited was admitted in the Corporate Insolvency Resolution Process (in short "CIRP") vide order dated 22nd August, 2019 as the Corporate Debtor committed default in paying financial debt of Rs. 71,30,560/- (Rupees Seventy-One Lakh Thirty Thousand Five Hundred and Sixty Only). Mr. Manish Jain was appointed the Interim Resolution Professional (in short "IRP") who made public announcement of CIRP of the Corporate Debtor on 27.08.2019 and constituted Committee of Creditors (in short "CoC"). The CoC in its first meeting dated 20.09.2019 replaced the IRP with new Resolution Professional (RP) Mr. Rajesh Kumar Agarwal.

6. The RP Mr. Rajesh Kumar Agarwal published the Invitation for EOI on 30th November, 2019. On 16th December, 2019 the RP received 4 (Four) EOIs from the Resolution Applicants namely,

(i) Mr. Sanwarmal Jain,

(ii) M/s Jekay International Track Pvt Ltd,

(iii) M/s JBM Industries Ltd. and

(iv) M/s Swapno Marketing Pvt Ltd.

7. The RP invited the said 4 prospective resolution applicants to submit the resolution plan in accordance with the Request for Resolution Plan (RFRP) as was issued to them on 18th December, 2019. The last date for submission of the Resolution Plan was 16th January, 2020 which got extended till 30th January, 2020. 2 (Two) Resolution Plans were received by the RP on 30th January, 2020. The Resolution Plans were discussed with the members of the CoC. In the 7th CoC meeting held on 5th March, 2020, the COC declared the H1 bidder to Mr. Sanwarmal Jain and H2 bidder to M/s Jeykay International Track Pvt Ltd. Outbidding was held thereafter and at the end of the process i.e. after the fourth round, Mr. Sanwarmal Jain was declared as Potential Successful Resolution Applicant being ultimately H1. In the 8th CoC meeting held on 12th March, 2020, the resolution plan of Mr.

Sanwarmal Jain was put to Vote before the members of the CoC and the resolution plan was passed with 100% value of Votes. Hence, this application is filed by the RP for approval of the resolution plan by this Adjudicating Authority.

8. The Compliance certificate in Form H as per the Regulation of the CIRP has been compiled for the approval of Resolution Plan. Form H is annexed as Annexure- N to the application.

9. The COC considered the plan based on the compliance of law rules and regulations confirmed by RP and in particular compliance of Sec 30(2) of the IBC, 2016 and also due diligence done for Sec 29A.

10. On and after the approval of Resolution Plan, Letter of Intent was issued to Mr. Sanwarmal Jain, Potential Successful Resolution Applicant on 12th March, 2020 and the Resolution Applicant gave performance Bank guarantee (PBG) in the form of two cheques drawn as follows: (i) cheque no. 880605 dt 13.3.2020 drawn on Axis Bank for Rs. 2,40,00,000 and (ii) cheque no. 981634 dt 13.3.2020 drawn on Axis Bank for Rs. 60,00,000. The same has been deposited in the bank account of the corporate debtor. A copy of letter of Intent and copy of letter received with the PBG amount is annexed as Annexure- O to the application.

11. The salient features of the Resolution Plan submitted by the successful resolution applicant, Mr. Sanwarmal Jain are as follows:

Financial Proposal

Financial Proposal				
Resolution Debt-A	Total	Upfront-	Tranch 1- *	Tranch 2 (*)
CIRP cost	0.50	0.50	-	-
Operational creditor	6.14	6.14	-	-
Secured Financial Creditor	14.70	7.70	7.00	
Unsecured Financial Creditor	24.54	2.69	4.45	17.4
Total Resolution debt - A	45.88	17.03	11.45	17.40
Other -B				
Working Capital	3.42	1.50	1.24	0.68
Other Requirement	0.57	0.57	-	-
Interest**	1.13	-	0.21	0.92
Total others-B	5.12	2.07	1.45	1.60
Total (A) + (B)	51.00	19.10	12.90	19.00

*Tranche 1- The above-mentioned amount shall be brought in within 4 months from the completion of the period of 30 days from the date of the NCLT Order.

Tranche 2- The above-mentioned amount shall be brought in within 8 months from the completion of the period of 30 days from the date of NCLT Order.

**The amount totalling to Rs. 1.13 crores i.e. Rs. 0.21 crores under Tranche 1 and Rs. 0.92 crores in Tranche 2 corresponds to the interest amount for loans refunded under the respective tranches.

12. CIRP COST: The CIRP cost would be paid within 30 days of receipt of the NCLT order from the trench of the upfront infusion.

13. Working Capital

A total sum of Rs.3.42 crores for meeting working capital requirements of the Corporate Debtor. The same shall be deployed upfront to the extent of Rs.1.50 cr and Rs.1.24cr in Tranche 1 i.e. within 4 months from the completion of the period of 30 days from the NCLT Order and Rs.0.68 crore in Tranche 2 i.e. within 8 months from the completion of the period of 30 days from the NCLT Order.

14. Source of Funds

Particulars	Amount (In Crores)
Upfront Equity Infusion	Rs. 6.00
<u>Unsecured Loan from NBFC's</u>	
Spenco Business Pvt Ltd	Rs. 6.00
Anjula Steels Pvt Ltd	Rs. 9.00
Pritex Fiscal Services Pvt Ltd	Rs. 11.00
Secured Loan from Bank	Rs. 19.00
Total Source of fund	Rs. 51.00

LIST OF CREDITORS OF CORPORATE DEBTOR

List of Financial Creditors		
SI No	Name of Financial Creditor	Amount Accepted
1	Abhiyan Merchants Pvt Ltd (Assigned from Axis Bank)	14,69,94,368
2	Amit Commotrade Pvt Ltd	20,34,192
3	Choicest Enterprises Ltd	1,20,40,658
4	Computer point Ltd	5,86,32,767
5	GRD Finance Pvt Ltd	2,80,57,808
6	CBS Wires Pvt Ltd	25,42,740
7	Linton Merchants Pvt Ltd	25,42,740
8	Magnum Tradecom Pvt Ltd	25,42,740
9	Om Vincom Pvt Ltd	1,55,87,671
10	Realsunrise Marketing Pvt Ltd	1,44,93,644
11	Ritesh Enclave Pvt Ltd	83,13,425

12	RiteshNirman Pvt Ltd	1,40,28,904
13	Salasar Financial Advisory Services Ltd	2,96,16,575
14	Shree Balaji Mercantiles Pvt Ltd	51,95,890
15	Siddha Domicile Co Pvt Ltd	18,50,560
16	Sidh Advisory Pvt Ltd	20,34,192
17	SwarnpushpaVanijya Pvt Ltd	1,04,70,137
18	Venus Financial Consultants Private Limited	2,07,83,562
19	Vritika Consultants Pvt Ltd	40,68,384
20	VSG Leasing and Finance Company Ltd	1,05,10,247
	TOTAL	39,23,41,204

List of Operational Creditors

SI No	Name of the Creditors	Amount Accepted
1	Kontinental Steel Korporation	4,61,38,489
2	Royal Infraconstru Ltd	47,55,175
3	Q- Solutions	18,79,454
4	Employee State Insurance Corp	28,074
5	Aglow Engineers	1,32,069
6	Prabhat Enterprises	5,68,814
7	Opcommerce Online P Ltd	5,18,216
8	S R Enterprise	22,31,512
9	SalasarCarbonics Pvt Ltd	10,84,424
10	System Engineers Cutting & Welding Pvt Ltd	4,60,340
11	Supertech Industrial Solutions	11,58,784
12	S S Auto Agencies	2,52,186
13	Jalan Welding & Hardware Store	3,66,662
14	Amit Roadlines	8,01,000
15	N B Mercantile Co Pvt Ltd	4,17,720
Workmen & Employees		
16	Sanjay Kr Choudhury on behalf of Workmen and Employees	6,33,199
	TOTAL	6,14,26,118

15. A reference to the above referred Plan, it is understood that the assets of the Corporate Debtor are going to rest in a safer hand who is engaged in the very same kind of business as the Corporate Debtor. The RP Mr. Rajesh Kumar Agarwal deserves special appreciation for finding a resolution applicant whose plan has been approved by the CoC by 100% vote share even in these difficult times of pandemic due to COVID-19. All the provisions of mandatory requirements are seen complied by the resolution applicant as per

From H submitted by the RP. It provides provision for the payment of insolvency resolution process, payment of the debts of operational creditors, management of the affairs of the Corporate Debtor, and provides provision for implementation and supervision of the resolution plan. It also provides terms of the plan and its implementation schedule. So it is a feasible and viable plan. This is a case in which the CoC has judiciously distributed the financial bids to the stakeholders according to their full entitlements. There is nothing in the plan, so as to disapprove it. The CoC has very well deliberated with the two plans and decided the viability, feasibility and financial matrix of each plan and approved one with 100% vote shares of the members of the CoC.

16. The Ld.Counsel for the RP also submitted that the Resolution Plan, if implemented would be in the best interest of the Corporate Debtor and would result in maximization of the value of assets of the corporate Debtor and would provide a revival from its financial crises. This CP was admitted on 22.08.2019. upon expiry of 180 days the period of CIRP was extended to 18.05.2020. In the meanwhile lockdown was imposed due to Covid-19 pandemic with effect from 25.03.2020 and continues till date. However, as per notification dated 29th March, 2020 the period of lockdown imposed by the Central Government in the wake of COVID- 19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process and thereby approval of the Plan by the CoC is within the period of 270 days. No waiver or extinguishments in contravention of the provisions of the Code or in violation of existing laws seen not brought out. Since, CoC has approved the said resolution plan with 100% voting share, and since I am satisfied that the resolution plan confirm to the requirement referred to Section 31(1) and that plan provides provision for its effective implementation and the plan balanced the interest of the all the stakeholders, this application is fit to be allowed by approving the resolution plan submitted by Mr. Sanwarmal Jain and pass the following orders.

ORDERS

(i) Resolution Plan of Ashika Commercial Private Limited, which is approved by CoC with 100% voting shares, is hereby approved under provisions of sub-section(1) of Section 31 of the Insolvency and Bankruptcy Code, 2016, which shall be binding on the Corporate Debtor, M/s Ashika Commercial Pvt. Ltd. its employees, members, creditors, guarantors, the Central Government, any State Government or any local authority and other stakeholders involved in the Resolution Plan.

ii) The Resolution Plan shall come into force from the date of pronouncement of this order.

iii) The moratorium order passed under Section 14 shall cease to have effect.

(iv) 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 in its database

(v) IA(IB)No.600/KB/2020 in C.P. (IB)No. 503/KB/2018 is allowed and disposed of. C.P.(IB)No. 503/KB/2018 is disposed of as the resolution plan for the Corporate Debtor is approved.

(vi) Registry hereby directed to communicate the order to all the Applicants, Respondents and to the Resolution Applicant through email and free copy.

(viii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Jinan K.R.)

Member (Judicial)

Signed this on 12th day of August 2020.