

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT - I, MUMBAI BENCH

*** **

IA No. 126 of 2021
in
CP (IB) No. 3641/MB/2018

(An Application under Section 30(6) read with Section 31 of the Insolvency and
Bankruptcy Code, 2016)

Deepak M. Panpaliya
Resolution Professional for
Trans-Fab Power India Pvt Ltd ... *Applicant*

In the matter of
Amod Stampings Private Limited ... Operational Creditor
V/s
Trans-Fab Power India Private Limited ... Corporate Debtor

Date of Order: 25.03.2021

CORAM:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)
Shri V. Nallasenapathy, Hon'ble Member (Technical)

Appearance:

For Resolution Professional : Mr. Saahil Memon i/b Link Legal India Law
Services

Per: V. Nallasenapathy, Member (Technical)

ORDER

This is an Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the Code) by the Resolution Professional seeking approval of the Resolution Plan submitted by the Successful Resolution Applicants namely Mr. Rajabhau B. Shinde and Mrs. Prathiba R. Shinde.

2. The facts leading to the Application are as under:
- i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated upon admission of a Petition under Section 9 by this Bench by order dated 30.08.2019 and Mr. Laxman Digambar Pawar was appointed as Interim Resolution Professional (IRP). In the first meeting of the Committee of Creditors (CoC) held on 31.10.2019, the IRP was replaced with the Applicant as the Resolution Professional (RP) of the Corporate Debtor. This Tribunal by order dated 05.02.2020 confirmed the appointment of the Applicant as such.
 - ii. The Applicant filed MA No. 668 of 2020 for extension of CIRP period and for exclusion of 90 days from the CIRP period towards delay in confirmation of the appointment of Applicant as RP by this Tribunal. MA 668/2020 was allowed by this Tribunal *vide* order dated 26.02.2020 extending the period till 24.08.2020.
 - iii. On 25.02.2020 the Applicant made an advertisement inviting expression of interests (EOIs) from prospective resolution applicants (PRAs). Pursuant thereto, the Applicant received EOIs from two persons and both of them were identified as qualified prospective applicants for participating in the Resolution Plan process of the Corporate Debtor. Therefore, the Applicant suggested the CoC to make another attempt at inviting EOI. Accordingly, on 19.03.2020 the Applicant again made an advertisement inviting EOIs. The Applicant shared with the CoC a provisional list of PRAs on 09.04.2020 and final list of eligible PRAs on 16.04.2020.
 - iv. In 7th meeting of the CoC held on 23.04.2020, the CoC resolved to extend the time limit for submission of the Resolution Plan, in view of the lockdown announced in the entire country from 24.03.2020 due to Covid-19 pandemic, till 20.06.2020. In 8th meeting of the CoC held on 19.06.2020, the CoC, considering the difficulties faced by the PRAs due

to the pandemic, again extended the last date for submission of Resolution Plan till 11.07.2020.

- v. In response to the invitation for EOIs, the Applicant had received two EOIs but joint Resolution Applicants, Mr. Rajabhau B. Shinde and Mrs. Prathiba R. Shinde, submitted the Resolution Plan dated 11.07.2020. In the 9th meeting of the CoC held on 06.08.2020, the Applicant and the CoC discussed the only Resolution Plan received. The CoC negotiated with the Resolution Applicants with regard to the pay-out to secured creditor. The Resolution Applicants agreed to increase the pay-out from Rs. 10 Crore to Rs. 10.5 Crore out of the overall plan outlay of Rs. 15 Crore. The CoC also requested the Resolution Applicants to provide source of fund document for obtaining internal sanction. The Resolution Applicants obtained the source of fund document on 26.11.2020 and the same was favourably considered by the CoC.
- vi. In 12th meeting of the CoC held on 27.11.2020, the Resolution Applicant informed that he had deposited part of the amount towards performance security and will arrange for the remaining funds within 7 days. Accordingly, the final Resolution Plan submitted by the Resolution Applicants was put up before the CoC for voting. The CoC in the same meeting unanimously (100% voting share) approved the Resolution Plan.
- vii. Subsequently, the Applicant issued a letter of intent to the Resolution Applicants dated 30.11.2020.

3. Salient features of the Resolution Plan are as under:

a. RESOLUTION APPLICANT:

Mr. Rajabhau B. Shinde is the erstwhile director cum promoter of the Corporate Debtor. He founded his own firm named 'Trans Fab Engineering' in 2001 and lead the manufacturing business to new high within few years. In 2006 the firm was registered as private limited

company and renamed as “Trans Fab Power (India) Private Limited” (TPIPL), engaged in manufacturing and distribution of power transformers. The company is registered as MSME and certificate of the same is in force (annexed to the Application).

b. **TERM OF RESOLUTION PLAN:**

The term of the Resolution Plan is 12 months.

c. **MODE OF FINANCE & SCHEDULE:**

The mode of finance and schedule of the Resolution Plan is as under:

(Amount in Lakhs)

Sr. No.	Sources	Proposed		Schedule of Payment			
		Amount	%	90 days	In 6 months	6-12 months	Total
1.	Equity Funds	50	3.33%	25	25		50
2.	Secured Loan	1000	66.67%	200	800		1000
3.	Unsecured Loan/quasi equity	450	30.00%		50	400	450
	Total	1500	100%	225	875	400	1500

The Resolution Applicant has obtained a sanction letter dated 26.11.2020 issued by Market Pulse Global Corporation, for an amount of Rs. 28 Crores to be sanctioned as loan against property in favour of TPIPL. The said sanction letter is considered by the CoC in 12th CoC meeting held on 27.11.2020.

d. **CAPITAL REDUCTION & EQUITY INFUSION:**

The existing share capital of the company will be entirely extinguished and the Resolution Applicant acting as New Promoter of the Corporate Debtor will infuse fresh share capital into the Corporate Debtor to the tune of Rs. 50 Lakhs by subscribing to 5 Lakhs fully paid up equity shares of Rs. 10/- each and the shareholding of the Resolution Applicant

as New Promoter of the Corporate Debtor will be 100% of issued and paid up share capital of the Corporate Debtor.

e. TOTAL RESOLUTION AMOUNT:

The Resolution Applicant proposes to make a total payment of an amount not exceeding Rs. 1500 Lakhs for resolution of the Corporate Debtor. The total resolution amount of Rs. 1500 Lakhs will be funded either in the form of secured loan from other banks or equity/or quasi equity/or unsecured loan from private investors.

f. FINANCIAL TERMS:

The Resolution Plan proposes a payment of Rs. 1500 lakhs to creditors (including CIRP costs), in the following manner:

(Rs. in lakhs)

Sr. No.	Particulars	Claims Admitted	Proposed Amount	Payment in %	Payment Schedule (Within 12 Months)		
					6 Months	12 Months	Total
1.	CIRP (Going Concern cost to extent unpaid) {Note 1}	-	125	100%	125		125.00
2.	Financial Creditors: {Note 2}						
	a. Secured	1914.1	1050	55%	696.69	356.31	1050.00
	b. Unsecured	-	-	-			
	Sub Total 2	1914.1	1050	55%	696.69	356.31	1050.00
3.	Workmen and Employees Dues {Note 3}						
	a. Salary & Wages (claim submitted)	3.09	3.09	100%	3.09		
	b. Salary and Wages (claim not submitted)	-	12.62	100%	12.62		
	c. PF and EPF Dues	-	1.69	100%	1.69		
	Sub Total 3	3.09	17.40	100%	17.40		17.40
4.	Operational Creditors: {Note 4}						
	a. Creditors (other than below “b” to “f”)	752.76	90.33	12%	90.33		
	b. Creditors (Claim not received)	-	36.51	12%	36.51		
	c. DC of Central Tax Div	184.6	22.15	12%	22.15		

	III						
	d. Dept of GST	326.1	39.13	12%	39.13		
	e. TDS	22.04	2.64	12%	2.64		
	f. Income Tax	0	4.75	12%	4.75		
	Sub Total 4	1285.5	195.52	12%	195.52		195.52
5.	Contingent Liabilities	-	12.08	-	12.08		12.08
6.	Working Capital	-	100.00	-	50.00	50.00	100.00
	Total Amount	3202.69	1500.00		1096.69	403.31	1500.00

Note 1 - CIRP Costs:

The CIRP costs as proposed (Rs 125 Lakhs) subject to actual outstanding dues will be fully paid by the RA in priority of all other creditors within first 3 to 6 months.

Note 2 - Financial Creditors:

Payment to Financial creditors will be made in multiple instalments within 6 to 12 months maximum.

Note 3 - Employees and Workmen dues:

The payment for dues of pending Salary, Provident Fund, ESIC, Prof. Tax and others, Employee Society and Gratuity will be made within first 6 months.

Note 4 - Operational Creditors:

Payment to Operational Creditors including creditors, who have not submitted the claim but shown in Information Memorandum, will be made within first 6 months in priority to Financial Creditors.

g. MANAGEMENT & CONTROL OF BUSINESS OF THE CORPORATE DEBTOR:

The Board of Directors of the Corporate Debtor will consist of 2 (two) members, as follows:

- i. Mr. Rajabhau B. Shinde
- ii. Mrs. Pratibha R. Shinde

The Resolution Applicant also proposes to retain all the human resources of the Corporate Debtor and proposes to utilise their talent,

expertise and experience for betterment and efficient utilization of the resources of the Corporate Debtor. Resolution Applicant proposes to retain all the persons from the present Key Managerial Personnel of Corporate Debtor.

h. SUPERVISING RESOLUTION PLAN & ITS IMPLEMENTATION:

The Resolution Applicant proposes a mechanism for supervision and implementation of the Resolution plan. Accordingly, a monitoring committee will be constituted which will comprise of one representative of Bank of India, one representative of Resolution Applicant and one representative of Corporate Debtor. Resolution Professional will be the chairman of the monitoring committee.

i. COMPLIANCE OF MANDATORY CONTENTS OF RESOLUTION PLAN UNDER THE CODE AND CIRP REGULATIONS:

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 and 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (the Regulations) and has submitted Form H under Regulation 39(4). It is submitted that the Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the Resolution Applicant is not ineligible under Section 29A of the Code in view of the fact that one of the Resolution Applicant is the Promoter of the Corporate Debtor which in turn is a MSME.

j. PERFORMANCE SECURITY:

The Applicant submits that the Resolution Applicant has submitted performance security in form of direct deposit with the Bank of India (CoC) for an amount of Rs. 75,00,000/- as required in terms of the Code and the Regulations. Bank of India *vide* its email dated 04.12.2020 has confirmed receipt of the said amount from Resolution Applicant.

4. The Applicant submits that the Resolution Plan meets the requirements of Section 30(2) of the Code in the following manner:
 - a. Plan provides for the priority payment of CIRP costs in full from the fund to be infused by the Resolution Applicant.
 - b. To pay the Operational Creditors of the Corporate Debtor in the manner indicated supra. It is submitted that the Liquidation Value of the Corporate Debtor is Rs. 6,11,64,690/- and Fair Market Value is Rs. 10,54,78,384/-. The estimates of liquidation value made by the Resolution Applicant do not provide full recovery to the Financial Creditors, and there is no amount, as such, available for the Operational creditors out of the liquidation value. However, the Resolution Applicant has provided an amount of Rs. 195.52 Lakhs to all the Operational Creditors (including Operational Creditors who have not submitted their claims in view of the fact that they are going to be future suppliers).
 - c. Plan provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;
 - d. Plan provides for the implementation and supervision of the Resolution Plan;
 - e. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force.

5. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) of the Code as under:
 - a) Payment to Operational Creditor will be made in priority over Financial Creditor (Regulation 38(1)(a)).
 - b) Since the plan has been approved by 100% voting share of the CoC, provision of dissenting financial creditor does not arise. This is in compliance of Regulation 38(1)(b) of the Regulations.

- c) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A)).
 - d) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38(1B)).
 - e) The plan also provides for term and implementation schedule, management and control of the Corporate Debtor and adequate means for supervising its implementation (Regulation 38(2)).
 - f) The Resolution Plan also addresses the cause of default, feasibility and viability, as required under Regulation 38(3).
6. The Resolution Applicant has sought for waivers of liabilities arising under the Companies Act 1956 and 2013 / FEMA / Labour Laws and other statutory dues other than payout proposed in the Resolution Plan at Clause 14.1. It is made clear that the Resolution Applicant is liable to make the payment as per the Resolution Plan to extent of Rs. 15 Crores only. The Resolution Applicant will not be saddled with any other liability of whatsoever nature.
7. The Resolution Applicant has further sought for general reliefs, concessions and dispensation at Clause 14.2 of the plan. The Resolution Applicant needs to approach the authorities concerned for permits, licenses, etc., if required, and same would be considered on merits by the authorities concerned in accordance with law. No direction in that regard can be passed.
8. It is beneficial to refer to the observation of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta &Ors.:(2019) SCC OnLine SC 1478* as under:

“67.

A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the Resolution Plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove.”

9. In view of the above ruling of the Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. As already indicated the Resolution Plan has been approved by the CoC in its meeting held on 27.11.2020 with 100% votes.

10. In ***K.Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon’ble Apex Court held that if the CoC had approved the Resolution Plan with requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon’ble Court observed that the role of the NCLT is ‘no more and no less’. The Hon’ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters

specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

11. In **CoC of Essar Steel** (*supra*) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

*“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (*supra*).”*

12. In view of the discussions and the law thus settled, we are satisfied that the Resolution Plan as approved by the CoC under Section 30(4) of the Code meets the requirements of Section 30(2) of the Code and Regulations 37 to 39 of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved as provided under Section 31 of the Code. Hence ordered.

ORDER

- (i) The Application be and the same is allowed. The Resolution Plan submitted by Mr. Rajabhau B. Shinde and Mrs. Prathiba R. Shinde annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues

arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

- (ii) The Memorandum of Association (MoA) and Articles of Association (AoA) of the Corporate Debtor shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Successful Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- (iii) Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to above.
- (iv) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (v) The Applicant shall supervise the implementation of the Resolution Plan and shall file periodical Status Report of its implementation before this Authority from time to time, preferably every quarter.
- (vi) The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- (vii) The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant respectively, for necessary compliance.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Janab Mohammed Ajmal
Member (Judicial)