

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, (BENCH IV)**

**IA/4670 /(ND)/2020
IN
C.P (IB)-2029/(ND)/2019**

[Under Section 30(6), Section 31(1) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India for approval of Resolution Plan]

IN THE MATTER OF:

**ANKIT KUMAR AGARWAL
(RESOLUTION PROFESSIONAL)
FOR MASS METALS PRIVATE LIMITED**

.... APPLICANT

And

In the matter of:

SONIA FORGING PVT. LTD.

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

MASS METALS PVT. LTD.

...RESPONDENT/ CORPORATE DEBTOR

ORDER PRONOUNCED ON: 21.02.2022

Coram:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

IA/4670 /(ND)/2020 IN C.P (IB)-2029/(ND)/2019
Sonia Forgings Pvt. Ltd. Vs. M/s Mass Metals Pvt. Ltd.

Mr. ANKIT KUMAR AGARWAL

(RESOLUTION PROFESSIONAL)

For M/s Mass Metals Private Limited (Under CIRP)

Having Office At:

E-302, Tower E, Sector 78,

Noida, Uttar Pradesh - 201307

...APPLICANT

Present:

For Applicant /RP - Ms. Honey Satpal, Ms. Pratiksha Sharma,
Mr. Samriddh Sharma, Advs.

For the Ex- Director - Mr. Abhishek Anand, Mr. Pathik
Chaudhary, Advs.

For Respondent - Mr. Ribhu Garg, Adv.

ORDER

Per-Dr. Deepti Mukesh, Member (Judicial)

1. The present application has been filed by the Resolution Professional, Mr. Ankit Kumar Agarwal under Section 30 (6) and Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (hereafter referred to as 'Code') read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereafter referred to as 'Regulations') for submission and seeking approval of the Resolution Plan of the Consortium of Rajesh Grover (Promoter of the Corporate Debtor) & Vishnu Gopal Gupta (Collectively hereinafter referred to as the 'Successful Resolution Applicant'). The Resolution Plan was duly approved in the eleventh meeting of committee of creditors (CoC) held on 02.09.2020, with 79.48% of voting share. The minutes of the said meeting along with the voting result has been annexed.
2. An application bearing C.P. No. IB-2029/(ND)/2019 was filed by Sonia Forging Company Pvt. Ltd. /Operational Creditor under Section 9 of the Code for initiating Corporate Insolvency Resolution Process against M/s Mass Metals Pvt. Ltd./ Corporate Debtor. This Bench vide order dated 07.11.2019 admitted the Section 9 application and appointed Mr. Vishnu Dutt the Interim Resolution Professional (IRP).
3. The applicant made a public announcement in Form-A on 09.11.2019 as prescribed under Regulation 6 (1) of the Regulations published in Financial Express (English) and Jansatta (Hindi) both at Delhi NCR location, intimating the commencement of Corporate Insolvency Resolution Process of the Corporate Debtor and for calling the creditors to submit their claims along with the proof in the prescribed format.
4. The applicant states that the IRP in terms of Section 18 read with Section 21 constituted the CoC, comprising of sole financial creditor of the Corporate Debtor and convened the first meeting of CoC on 07.12.2019. Pursuant to public announcement the IRP received claims of 7 Operational Creditors amounting to Rs. 180,137,002/- and One Financial Creditor being the City Union Bank amounting to Rs. 151,224,352 Out of which claim of financial creditor amounting to Rs. 151, 224,352/- was admitted and nothing was admitted from the claims received from the Operational creditors.

Thereafter the CoC resolved to replace the IRP and appoint a new resolution Professional in terms of Section 22(3)(b) of the code. Accordingly, the COC filed an application before this Hon'ble Tribunal seeking replacement of IRP. The Hon'ble NCLT vide order dated 19.12.2020 replacing the IRP, Mr. Vikaram Dutt, appointed Mr. Ankit Kumar Aggarwal as the RP. A copy of order is annexed.

5. The applicant took over the charge as Resolution Professional on 7th Jan 2020 and vide email dated 09.01.2020 informed the promoters of the corporate Debtor about his appointment and requested to provide data along with provisional Balance Sheet of Mass Metals Pvt. Ltd. for the year 2019 up to 07.11.2019.
6. The 2nd COC meeting was conducted on 20.01.2020, wherein the applicant informed the COC that since the Balance Sheet for the FY 2018-19 is pending and the statement till insolvency has not been received, the claims cannot be verified and are still under verification. The applicant further apprised the COC that a total of 8 claims has been received. The applicant also requested the promoter to provide details of machinery sold and whether the No objection certificate was obtained before selling out the machineries. The copy of minutes of the meeting is annexed.
7. Thereafter the applicant received claim from Standard Chartered Bank and hence the COC was re-constituted. The Third COC meeting was held on 09.03.2020, wherein the applicant apprised on the reconstitution of COC. Thereafter the registered valuers were proposed to be appointed to determine the fair liquidation value and fair of the corporate debtor in terms of Regulation 35 of CIRP Regulations. The members of COC deliberated on the upon the draft the EOI for inviting Prospective Resolution Applicants for submission of Resolution Plan.
8. The applicant invited EOI in Form G for submission of Resolution Plans for Corporate Debtor and the same were published in Business Standard (English) and Business Standard (Hindi) on 13.02.2020 with the last date of submission of expression of interest as 28.03.2020. Thereafter the CoC further extended the last date of receipt of Form-G till 11.05.2020.
9. The applicant states that the CIRP commenced on 07.11.2019. However, due to Covid -19 pandemic, the government of India with effect from 25th March 2020

declared a nationwide lockdown. The Insolvency and Bankruptcy Board of India vide notification dated 29.03.2020 inserted Regulation 40C, which prescribes relaxations with respect to the CIRP timelines under the IBC and the rules/regulations framed there under, in view of the difficulties being faced due to the outbreak of the COVID-19 pandemic. The said regulation is reproduced below:

"40C. Special provision relating to time-line: Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, 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."

Further the Hon'ble NCLAT vide its order dated 30.03.2020 in Suo moto Company Appeal (AT) (Insolvency) No.1 of 2020, ordered that the period of lockdown shall be excluded for the purpose of counting the period for 'Resolution Process under Section 12 of the Insolvency and Bankruptcy code, 2016', in all case where CIRP has been initiated and is pending before any bench.

Accordingly, the lockdown period of 68 days was excluded while counting the CIRP period of 180 days and the revised CIRP period was expiring on 14.07.2020. Further, on an application filed by the applicant the period of CIRP was further extended for 30 days till 13.08.2020 vide order dated 05.08.2020 and once again the period was extended vide order dated 31.08.2020.

10. It is submitted that the corporate debtor is a MSME unit and hence its directors are eligible for exemption under Section 240A of the Code and therefore the Resolution Plan filed by the Consortium consisting of one of the ex-directors of the Corporate Debtor is valid. The applicant issued list of 2 Prospective Resolution Applicants to the CoC vide email dated 29.05.2020.
11. In the 11th CoC meeting held on 02.09.2020 final revised resolution plan of Rajesh Grover (Promoter of the Corporate Debtor) & Vishnu Gopal Gupta was approved through e-voting held on 08.09.2020 by the members of the CoC with 79.48% voting share.
12. The applicant in terms of Regulation 39(4) of the regulations has filed Compliance certificate in Form H and the same is annexed with the application. In Form H the applicant stated that the performance security has also been provided by the Successful resolution Applicant.

13. The applicant further stated the following:

- a) The liquidation value of the corporate debtor as determined by two registered valuers is Rs. 48,73,678/-, whereas, the Resolution Applicant is offering a total payment of Rs. 580 lacs which is above the average liquidation value. The payment plan as provided by the Resolution Applicant under the resolution plan has been annexed.
- b) Regulation 38 of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016, has been complied with.
- c) The parameters for approval of resolution plan are set out in the IBC, 2016 read with IBBI (CIRP) Regulations, 2016. Which are briefly set forth herein below:

Section/Regulation	Compliance made
Section 30(2)(a)	CIRP cost will be paid in priority over payments to any other creditors on closing date, in accordance with the IBC.
Section 30(2)(b) read with Regulation 38 of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	The Resolution Plan para 6.6, 6.7.3 provides for payment of operational creditors.
Section 30(2)(c)	Para 6.1-1 and 6.7.3 provides for payment to financial creditors/dissenting financial creditors.
Section 30(2)(d)	The implementation of the resolution plan shall be supervised by the monitoring committee, from the effective date till the closing date. The committee shall consist of resolution Professional, one representative of financial creditors and one representative of Resolution Applicant.
Section 30(2)(e) & (f)	The proposed resolution plan provided by resolution applicant does not contravene any of the provisions of law for the time being in force. The Resolution applicant further confirms that the

	information submitted is complete, strictly as per the requirement stipulated in the Request for resolution plans (RFRP), IBC Code and the CIRP regulations.
Section 30(4) of the IBC, 2016	Resolution Plan is approved by 79.48%
Regulation 39 of CIRP Regulations	An affidavit provided by the resolution applicants confirming compliance of Section 29A of the code. The information and records provided in resolution plan is true and correct, discovery of false information and record at any time will render the applicant ineligible to continue in the CIRP, forfeit any refundable deposit, and attract penal action.

14. In view of the above discussion that the resolution plan, as approved by the CoC, is in accordance with the sub-section 2 of Section 30 read with Section 31 of the Code and as the Resolution Applicant is not disqualified under Section 29A of the Code; we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.
15. The monitoring committee is directed to file compliance report on regular basis. It is hereby declared that the Resolution Plan is binding on the corporate debtor, members, workmen and employees as well as creditors and other stakeholders in general.
16. It is also declared that the moratorium order passed by this bench under Section 14 of the Code shall cease to have effect.
17. The Resolution Professional shall forward all records relating to the CIRP process and the resolution plan to IBBI to be recorded in its data base in terms of Section-31(3)(b) of the Code.
18. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
19. I.A. No. 517/2021 is allowed and disposed off accordingly.

20. Let the copy of the order be served to the parties.

- Sd -

SUMITA PURKAYASTHA
MEMBER (TECHNICAL)

- Sd -

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)