

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

IA Nos. 703/2020, 772/2020 & 773/2020

In

**CP (IB) No.114/Chd/Pb/2017
(Admitted)**

**Under Section 30(6), 31 &
60(5) of the Insolvency &
Bankruptcy Code, 2016**

In the matter of:-

State Bank of India

....Financial Creditor

Versus

SEL Manufacturing Company Limited

....Corporate Debtor

And in the matter of:

IA No.703/2020

Mr. Navneet Kumar Gupta, Resolution Professional
for SEL Manufacturing Company Limited

....Applicant

Versus

1. Consortium of ARR ESS Industries Private Limited
And Leading Edge Commercial FZE

2. Committee of Creditors of
SEL Manufacturing Company Limited

.... Respondents

IA No.772/2020

V D Traders

.... Applicant/Operational Creditor

Versus

1. M/s SEL Manufacturing Company Ltd.

2. The Successful Resolution Applicant-
Consortium of ARR ESS Industries Private Limited
And Leading Edge Commercial FZE

3. Committee of Creditors through State Bank of India

4. The Ex-Promoters of M/s SEL Manufacturing Company Ltd.

.... Respondents

IA No.773/2020

K S Hans Trading Company

.... Applicant/Operational Creditor

Versus

1. The Successful Resolution Applicant-
Consortium of ARR ESS Industries Private Limited
And Leading Edge Commercial FZE
2. Resolution Professional of M/s SEL Manufacturing Company Ltd.
3. Committee of Creditors through State Bank of India
4. The Ex-Promoters of M/s SEL Manufacturing Company Ltd.

.... Respondents

Order delivered on: 10.02.2021

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)**

Present through Video Conferencing:

- For the Resolution Professional:
 1. Mr. Sumesh Dhawan, Advocate
 2. Mr. Dushyant Manocha, Advocate
 3. Ms. Anannya Ghosh, Advocate
 4. Ms. Vatsala Kak, Advocate
 5. Ms. Geetika Sharma, Advocate
- For the Resolution Applicant:
 1. Mr. Amit Singh Chadha, Senior Advocate
 2. Ms. Shruti Munjal, Advocate
- For the Committee of Creditors:
 1. Ms. Misha, Advocate
 2. Ms. Ritika Rai, Advocate
 3. Mr. Anoop Rawat, Advocate
 4. Mr. Siddhant Kant, Advocate
 5. Ms. Moulshree Shukla, Advocate
 6. Mr. Zeeshan Khan, Advocate
 7. Ms. Shivangi Kumar, Advocate
 8. Mr. Nitin Kaushal, Advocate
- For Applicant in IA No.772/2020:
 1. Mr. Puneet Bali, Senior Advocate
 2. Mr. Vihav Jain, Advocate
- For Applicant in IA No.773/2020: Ms. Twisha Issar, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

IA No.703/2020

The State Bank of India, a financial creditor of the respondent SEL Manufacturing Company Limited, (the corporate debtor) filed CP (IB) No. 114/Chd/Pb/2017 under Section 7 of the Code before this Adjudicating Authority seeking initiation of CIRP against the said corporate debtor. This Adjudicating Authority vide its order dated 11.04.2018 admitted the said CP (IB) No. 114/Chd/Pb/2017 and declared moratorium.

2. The corporate debtor SEL Manufacturing Company Limited aggrieved with the said order dated 11.04.2018 filed CWP No. 9131 of 2018 before the Hon'ble High Court of Punjab and Haryana, and after hearing the said CWP, orders were reserved on 25.04.2018. As there was no stay, in the said CWP, the Adjudicating Authority appointed the applicant as the Interim Resolution Professional (IRP) vide order dated 25.04.2018. On 01.05.2018, the Hon'ble High Court of Punjab and Haryana disposed of the CWP No. 9131 of 2018 by directing the corporate debtor to avail the alternate remedy of appeal under Section 61 of the Code and also directed the IRP i.e. the applicant, not to take over the management of the corporate debtor till 15.05.2018. SLP(C) No. 11903 – 11904 of 2018 filed by the corporate debtor before the Hon'ble Supreme Court against the order dated 01.05.2018 of the Hon'ble High Court of Punjab and Haryana, was dismissed, on 11.05.2018, however the Hon'ble Supreme Court extended the direction to not take over the management of the corporate debtor, issued by the Hon'ble High Court of Punjab and Haryana by another week. On 21.05.2018, the Company Appeal

(AT) (Insolvency) No. 226 & 227 of 2018 filed before the Hon'ble NCLAT challenging the order of admission of the CP dated 11.04.2018 and appointment of the IRP dated 25.04.2018 came up for hearing and the stay on the IRP from taking over the operations of the corporate debtor was discontinued.

3. In CA No. 223 of 2018 filed in CP (IB) No. 114/Chd/Pb/2017 by the IRP the period, during which the appointment of IRP was stayed by the Hon'ble High Court and by the Hon'ble Supreme Court was excluded by order dated 14.06.2018 of this Tribunal.

4. At this stage, a co-director of the corporate debtor filed CWP No. 15685 of 2018 before the Hon'ble High Court of Punjab and Haryana titled as Dhiraj Saluja vs. Union of India challenging the constitutionality of Section 35AB of the Banking Regulation Act and while issuing notices therein an ex parte order directing to keep the CIRP, initiated in respect of the corporate debtor, in abeyance was passed vide order dated 22.06.2018. The said CWP was transferred to the Hon'ble Supreme Court of India and finally the said transferred case T.P. (C) 16 of 2019 was dismissed as withdrawn, on 06.09.2019 and consequently the interim order of keeping the CIRP in abeyance has ceased to have any effect w.e.f. the said date. Accordingly, the IRP had taken over the management of the corporate debtor again, on 09.09.2019.

5. In view of the above, though the CIRP was initiated on 11.04.2018, when the CP was admitted, the maximum time limit prescribed for completion of CIRP under Section 12 of the Code had expired, in the meanwhile. Hence, the RP filed CA No. 773/2019, *inter alia*, seeking exclusion of the period from 22.06.2018 to 06.09.2019. The said CA was disposed of by holding that the

RP can proceed with the CIRP, within a period of 90 days w.e.f. 16.08.2019, in terms of the third proviso to Section 12 of the Code. On an appeal preferred by the RP, in CA No. 1062 of 2019, the Hon'ble NCLAT vide its order dated 13.11.2019 while allowing the appeal granted exclusion of 90 days period from the date of issuance of the certified copy of the said order and the relevant portion of the said order reads as under:-

“For the reason aforesaid instead of granting the total period of exclusion we allow 90 days period of exclusion for completion of the resolution process. 90 days period will be counted from the date of issuance of the certified copy of this order. Out of 90 days, 60 days’ time is allowed to the ‘Resolution Professional’ and Committee of Creditors, who may call for the fresh plan or revised plan from eligible ‘Resolution Applicant’ and will consider the same and pass appropriate order and will place the matter before the Adjudicating Authority. The Adjudicating Authority is allowed approximately 10 days’ time to pass final order. Total process is to be completed within 70 days. Rest 20 days will be for determination, if any, issue raised by any one or other party. The appeal is allowed with aforesaid observations and directions.”

6. Accordingly and in view of the above referred order of the Hon'ble NCLAT, the RP re-issued an invitation for submission of resolution plans on 16.11.2019 (Annexure A-20) along with RFRP dated 15.11.2019 inviting interested parties to submit resolution plans for the corporate debtor by 09.12.2019 on the basis of the discussions and approval of the COC at its 4th meeting held on 15.11.2019. In pursuance thereto, two resolution plans were received from two prospective resolution applicants namely (i). Consortium of ARR ESS Industries Private Limited and Leading Edge Commercial FZE; and (ii). Consortium of Howitzer FZE Money Compusoft Private Limited which were analyzed in the 5th meeting of the COC held on 19.12.2019. The COC in its 7th and 8th meetings held on 21.01.2020 and 17.02.2020 had extensive negotiations and finally declared the resolution plan dated 19.08.2020 of the Consortium of ARR ESS Industries Private Limited

and Leading Edge Commercial FZE (**Successful Resolution Applicant**) as the highest evaluated resolution plan. The Hon'ble NCLAT in IA No. 151 of 2020 by order dated 10.01.2020 modified its order dated 13.11.2019 in CA No. 1062 of 2019 to the extent of allowing total exclusion period of 150 days and thereafter, the Hon'ble NCLAT through its various orders passed in the said appeal extended the time of CIRP period from time to time.

7. Accordingly, in view of the extension of the period of CIRP by the Hon'ble NCLAT from time to time, finally the COC in its 16th meeting held on 29.08.2020 approved the resolution plan along with its addendum by 50.15% of the voting share; however the Hon'ble NCLAT vide order dated 18.09.2020 granted additional time to COC to deliberate upon the plan and directed to re-conduct the voting. As per the revised voting, the resolution plan submitted by the Successful Resolution Applicant was approved by COC by a majority of 96.90% voting share. Accordingly, a letter of intent dated 08.10.2020 (Annexure A-43) was issued to the Successful Resolution Applicant and the same was unconditionally accepted.

8. Having heard the learned counsels for the Resolution Professional, learned counsel for the Committee of Creditors and the Resolution Applicant, we find that it would be first necessary to ascertain whether the requirements of the Code and Regulations made thereunder, have been complied with or not.

9. In view of the mandatory requirements of Section 30(2) of the Code, and the peculiar facts of this case, we examine the resolution plan of the "Consortium of ARR ESS Industries Private Limited & Leading Edge Commercial FZE" dated 19.08.2020 along with its Addendum dated 30.09.2020 as approved by the Committee of Creditors.

10. As per Section 30(2)(a) the Resolution plan approved by the Committee of Creditors must provide for payment of insolvency resolution process cost in a manner specified by the Board in priority to the payment of other debts of the corporate debtor. With the present application i.e. IA No.703/2020, the RP has placed on record a copy of the Committee of Creditors approved resolution plan dated 19.08.2020 along with its addendum dated 30.09.2020, of the successful resolution applicant vide Diary No.1594/1 dated 23.11.2020. In clause 5.4(a)(i) - Financial Proposal, the resolution applicant has identified the specific sources of funds that would be used for payment of the insolvency resolution process cost in priority to the payment of other debts of the corporate debtor.

11. As per Section 30(2)(b) the resolution plan must provide for payments of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of liquidation of the corporate debtor under Section 53 or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority under Section 53(1) whichever is higher. The Resolution Professional in Form H (Annexure A-47) filed vide Diary No.01594 dated 27.10.2020, certified that in Clause 5.4 (c) under the heading 'Operational Creditors', the resolution applicant has provided the payment to the operational creditors in terms of Section 30(2)(b) of the Code. As regards, dissenting financial creditors, it is stated in Form 'H' that the Plan provides for the payment to the financial creditors, who did not vote in favour of the resolution plan, at Clause 5.4(e) B(xvi) of the Plan, in terms of Section 30(2) of the Code.

12. As per Section 30(2)(c) the resolution plan must provide for the management of the affairs of the corporate debtor after its approval. There is specific provision made for the management and control of the company after the approval of the resolution plan. A detailed mechanism regarding the management and control is discussed in Clause 11 under the heading 'mechanism regarding Management and Control of the Business of the Corporate Debtor'. It is stated therein that from the NCLT approval date, a monitoring committee comprising of four (4) persons, out of which three will be three representatives of the Financial Creditors and one will be observer representative of the resolution applicant, will be constituted and the said committee shall continue to function until the effective date and shall stand dissolved upon acquisition of the corporate debtor by the resolution applicants.

13. Section 30(2) (d) of the Code envisages that it must provide for implementation and supervision of the resolution plan. Clause 12 read with Schedule 1 of the resolution plan provides for a detailed mechanism for effective implementation of the resolution plan.

14. Section 30(2)(e) of the Code requires that the resolution plan does not contravene any of the provisions of the law for the time being in force. In Form H filed as Annexure A-47 of the application filed vide Diary No.01594 dated 27.10.2020 submitted by the RP as per the requirement of Regulation 39(4) of the CIRP Regulations, he has certified that the resolution plan did not contravene any of the provisions of the law for the time being in force and is in compliance with the provisions of the Code and the CIRP Regulations.

15. The successful resolution applicants confirmed by way of their respective affidavits (Annexure A-45) that they are not disqualified under

Section 29A of the Code to submit a resolution plan or under any other law applicable, which further shows that the resolution plan conforms to the provisions of the law for the time being in force and did not contravene any such provision. The RP in the Form H referred above, has certified the same.

16. The Resolution Plan should conform to all such requirements which may be specified by the IBBI. A statement to this effect has been made by the RP in the Form H referred above.

17. It is stated that the Resolution Professional issued Letter of Intent (LOI) on behalf of the CoC to the Successful Resolution Applicant and the same has been unconditionally and unequivocally accepted by the applicant by way of affidavit attached as Annexure A-43.

18. With regard to compliance of Regulation 39(4) in relation to submission of the Performance Bank Guarantee by the successful resolution applicant is concerned, the resolution applicants have submitted a performance bank guarantee of ₹25 crore in terms of Regulation 36B(4A) (Annexure A-44) of the CIR regulations read with Clause 13.1 of the RFRP and the approved resolution plan.

19. With regard to the compliance of the second proviso to Section 31(4) i.e. obtaining the approval of the Competition Commission of India, it is stated in clause 16.24 of the plan that the transaction contemplated under the Resolution Plan does not require the approval of the Competition Commission of India under the provisions of Competition Commission of India Act, 2022.

20. With regard to the compliance under Regulation 35A, it is stated that IA No. 726/2020, filed under Section 66 of the Code, is pending

before this Adjudicating Authority and the same is to be continued even after approval of the Resolution Plan.

21. Further, the resolution plan fulfills all the requirements of Regulation 38 and 39 of the CIRP Regulations. A perusal of Regulation 38 would clearly show that by virtue of mandatory contents of resolution plan as discussed in the preceding paragraphs in relation to Section 30 and Section 31 of the Code, the requirement of Regulation 38 also stands fulfilled. Even the requirement of Regulation 39 has been satisfied, as the RP has submitted that the resolution plan of Resolution applicant, as approved by the Committee of Creditors, to this Tribunal along with the compliance certificate in Form H, as per the requirements of Regulation 39(4) of the CIRP Regulations meets all the requirements of the Code and the CIRP Regulations and that the resolution plan has been duly approved by the Committee of Creditors.

22. In respect of the reliefs and concessions as set-forth in clause 7 of the resolution plan dated 19.08.2020 along with Addendum dated 30.09.2020, it is not possible for us to issue any direction except to say that the resolution applicant may take appropriate steps in accordance with law, in respect of the said reliefs and concessions. It is needless to say that the public authorities/government authorities/any other party would duly consider the requests/applications of the resolution applicant in accordance with law. We make it clear that we are not expressing any opinion on the claim concerning reliefs and concessions nor any part of this order shall be understood in that spirit. Moreover, these reliefs and concessions/prayers are also not condition precedent for the acceptance of resolution plan. Hence, there would not be any impediment for us to accept the resolution plan.

IA No.772 of 2020

23. This application has been filed by M/s V D Traders, an Operational Creditor ("**Applicant**") of the Corporate Debtor – SEL Manufacturing Company Ltd., seeking impleadment of the applicant in IA No. 703/2020 along with other reliefs.

24. The applicant in this IA mainly sought impleadment in IA No. 703 of 2020, filed by the RP seeking approval of the resolution plan, on the ground that its rights are likely to be affected by the resolution plan approved by the COC, as it may prescribe the scaling down of the amounts to be paid to the operational creditors, including the applicant.

25. In view of our finding that the resolution plan dated 19.08.2020 along with addendum dated 30.09.2020, as approved by the COC satisfies all the requirements of the Code and Regulations made thereunder, no further orders are required in the instant IA No. 772 of 2020 and accordingly, the same is dismissed.

IA No.773 of 2020

26. This application has been filed by M/s K S Hans Trading Company, an Operational Creditor ("**Applicant**") of the Corporate Debtor – SEL Manufacturing Company Ltd., seeking impleadment of the applicant in IA No. 703/2020 along with other reliefs.

27. This IA is similar to IA No. 772/2020 and hence for the same reasons, this IA is also dismissed.

28. As a sequel to the above, we pass the following orders:-

- a. The Resolution Plan, as approved by the Committee of Creditors and submitted by Consortium of ARR ESS Industries Private Limited & Leading Edge Commercial FZE (**Successful Resolution Applicant**) is approved and the same is binding on

the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any Local Authority to whom a debt is due in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and the other stakeholders involved in the Resolution Plan.

- b. The moratorium order passed by the Adjudicating Authority under Section 14 shall cease to have effect.
- c. The RP shall forward all records relating to the CIRP and the resolution plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code.

29. Accordingly, IA No.703/2020 is disposed of and IA Nos.772/2020 & 773/2020 are dismissed.

(Raghu Nayyar)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

February 10th, 2021
YP