

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-V**

IA. No. 1124/2023

In

CP(IB)No. 3434/MB/C-V/2019

Application filed under section 30(6), r/w Section 31(1) of the Insolvency & Bankruptcy Code,2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

Filed by

**Mr. Satish Kumar Gupta,
Resolution Professional**

...Applicant

Versus

**Committee of Creditors of
Mercator Petroleum Limited**

...Respondents

In the matter of

Halliburton Offshore Services Inc.

...Operational Creditor

Versus

Mercator Petroleum Limited

...Corporate Debtor

Order Pronounced on: - 02.11.2023

Coram:

Anuradha Bhatia

Member (Technical)

Kuldip Kumar Kareer

Member (Judicial)

Appearances :-

For the Resolution Professional : Adv. Dhruvad Vaghani & Adv. Ajiz M.K.
i/b LEX Aeterna Practices

ORDER

Per: Kuldip Kumar Kareer, Member Judicial

1. The present Interlocutory application is filed by **Mr. Satish Kumar Gupta** the Applicant, Resolution Professional of **Mercator Petroleum Limited**, the Corporate Debtor seeking approval of the resolution plan under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (Code) read with National Company Law Tribunal Rules, 2016 submitted by Indian Oil Corporation Limited. The Plan was duly approved by 100% of the Committee of Creditors (CoC) in its 20th meeting held on 07.02.2023.
2. The Applicant submits that the Operational Creditor, Halliburton Offshore Services Inc, initiated the Corporate Insolvency Resolution process (CIRP) against the Corporate Debtor under Section 9 of the Code on 31.08.2020 and Mr. Pinkush Jaiswal was appointed as the Interim Resolution Professional (IRP). Pursuant to the said admission order, the Committee of Creditors (CoC) was constituted on 01.12.2021.
3. Pursuant to the initiation of the CIRP, the IRP issued public announcement dated 09.09.2020 thereby informing the initiation of the CIRP of the Corporate Debtor and inviting for claims from the creditors of the Corporate Debtor. The IRP constituted the Committee of Creditors (CoC) and filed a report certifying the constitution of the CoC.

4. In first CoC meeting convened on 05.10.2020, the members of the CoC deferred voting on the appointment of IRP as the Resolution Professional. Accordingly, the IRP continued to perform its duties and on 14.11.2020 published Form G in the newspapers inviting Expression of Interest (EoI) for submission of Resolution Plans. The last date for submission of EoI was 05.12.2020 and was extended to 20.12.2020 and later to 05.01.2021.
5. Pursuant to the publication of the Form G, the IRP received 8 EoI's of which 7 were shortlisted. Thereafter, the IRP issued Information Memorandum, the Request for Resolution Plan (RFRP) and Evaluation Matrix to the PRAs for the purpose of preparation and submission of the Resolution Plans.
6. In the 5th CoC meeting held on 05.04.2022, the members of the CoC confirmed the appointment of IRP as the RP. After the reconstitution of the CoC, due to stay on the CIRP, the erstwhile RP issued fresh EoI invitation on 15.04.2022 followed by issuance of RFRP to the eligible PRAs on 21.05.2022. The last date for submission of the resolution plan was 20.06.2022.
7. As the period 180 days of the CIRP was expiring on 27.02.2021, the erstwhile RP filed an Application seeking exclusion on account of the status quo order dated 08.02.2021 till 23.03.2022. Also an extension of 90 days period was sought by the erstwhile RP and accordingly this Tribunal vide its order dated 05.05.2022 extended the period of CIRP by 90 days.

8. In the 11th CoC meeting held on 11.07.2022 and 12.07.2022, the members of the CoC resolved to replace the RP with the Applicant herein to act as the RP of the Corporate Debtor. In the 12th CoC meeting held on 21.07.2022, the resolution plans received by the erstwhile RP were opened.
9. In the 17th CoC meeting held on 10.11.2022, six PRAs who had submitted their Resolution Plan were put for discussion and deliberation. Further, in the 18th CoC meeting held on 05.12.2022, the CoC negotiated the Resolution Plans with the PRAs and the last date to submit the final Resolution Plan was extended to 04.02.2023.
10. The Applicant submits that the CoC in its 20th CoC meeting held on 07.02.2023 deliberated on the final Resolution Plans submitted by the PRA's and further approved the Resolution Plan of the Successful Resolution Applicant (SRA) i.e. Indian Oil Corporation Limited with 100% majority.

Brief background of the Resolution Applicant

11. The Successful Resolution Applicant is one of the largest commercial enterprise and the country's flagship integrated and diversified energy major. Indian Oils philosophy is embedded in the principles of strong customer connect, quality consciousness and transparency, where energy is tapped responsibly and delivered to the consumers most affordably.
12. The Resolution Applicant is listed among the world's largest corporates in Fortune's prestigious 'Global 500' listing. The Resolution Applicant's business interests encompass the entire hydrocarbon value chain from

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exploration and production of oil, gas, refining, pipeline transportation and marketing to natural gas, petrochemicals.

Salient features of the approved Resolution Plan

13. The Successful Resolution Applicant i.e. Indian Oil Corporation Limited, based on the relevant information provided with regard to the amount claimed, amount admitted and other liabilities of the Corporate Debtor proposes to provide a sum of Rs. 140,29,33,974/- (Rupees One Hundred and Forty Crores and Twenty Nine Lakhs Thirty Three Thousand and Nine Hundred Seventy Four Only) as the total Resolution Plan amount as under:

(Amount in Rs. Lakh)

Sr. No	Category of Creditor	Sub- Category of Creditor	Amount of Claim	Amount Admitted	Amount Provided in the Plan	Amount Provided to the Amount Claimed
1.	Secured Financial Creditors	who voted in favour	38,044.53	29,190.05	13,489.00	35.45%
		Total	38,044.53	29,190.05	13,489.00	35.45%
2.	Unsecured Financial Creditors	a. Creditors not having a right to vote under sub-section (2) of section 21	25,086.94	11,817.95	0	0

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		Total a+b	25,086.94	11,817.95	0	N/A
3.	Operational Creditors	a. Related Party of Corporate Debtor		N/A	N/A	
		b. other than a above				
		(i)Government	6,023.92	3,984.52	198.34	4.98%
		(ii)Workmen	0	0	0	0
		(iii) Employees	0.79	0.79	0.79	100%
		(iv) Farmers	380.75	182.20	182.20	100%
		(iv) Operational Creditors other than i and iv above	3,825.31	3,183.43	159.99	4.99%
		Total a+b	10,230.77	7,350.94	540.33	N/A
4	Other debts and dues	None	Nil	Nil	Nil	Nil
		Grand Total	73,362.26	48,358.94	14,029.33	19.12%

A. Payment of the CIRP cost

The CIRP cost will be Rs. 8,70,00,000/- and the same shall be funded by the Resolution Applicant. However, if the unpaid CIRP cost is more than Rs. 8,70,00,000/-, then the excess amount towards unpaid CIRP costs shall be paid by the Resolution Applicant and the said excess amount so paid shall be adjusted against upfront Secured Financial Creditors payment. The unpaid CIRP cost which shall be payable in priority to the repayment of other Debts of the Corporate Debtor.

Monitoring Committee for Supervision and Implementation of the Plan

- I. Further, for the supervision of the Resolution Plan, a Monitoring Committee shall be formed comprising of one nominee on behalf of the Designated Lender, the Resolution Professional and one nominee of Resolution Applicant.

- II. The Applicant further submits that the Resolution Plan submitted is in compliance **with Section 30 (2) of the Code and Regulation 38 (A) of the CIRP Regulations**. The RP has provided a compliance certificate in “**FORM H**” as mandated under the Code for seeking approval of the Resolution Plan from this Bench.

OBSERVATIONS OF THE ADJUDICATING AUTHORITY

14. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.

15. As referred to the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law for the time being in force appears to have been contravened.

16. Section 30 (4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.

17. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.

18. On perusal, of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified u/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
19. The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code. In terms of Regulation 27 of the Regulations, Liquidation value and Fair Value was ascertained through two registered valuers. The average of two valuation of Fair value is Rs. 414.60 Crores and Liquidation value is Rs. 310.96 Crores.
20. The RP has complied with the requirements of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.
21. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal, the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of The Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.

22. The Resolution Plan has been approved by the CoC in the with 100% votes in terms of Section 30(4) of the Code.

23. In *K Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No.10673/2018 decided on 05.02.2019)* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percentage 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 Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex 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.

24. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) 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 has 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

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*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).”*

25. In view of the discussions and the law thus settled, we are of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) 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. We are thus inclined to allow the Application in the following terms.

ORDER

- (i) **The Application IA No. 1124 of 2023 in CP 3434 of 2019 be and the same is allowed. The Resolution Plan submitted by Indian Oil Corporation Limited 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) Further, no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.
- (iii) The Resolution Applicant (RA) shall obtain necessary permissions/ approvals for implementation of the Plan. The renewable/extension/ approvals shall be considered by the respective authorities in accordance and upon compliance with the procedure/formalities stipulated by the authorities.
- (iv) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. Further, any application for renewal or extension or restoration of any license or approval or connection from any authority shall be subject to payment of prescribed fee and/or deposit(s) and adherence to the procedure stipulated by such authority, however such authority shall not refuse/deny approval/extension/restoration merely on ground of previous defaults/noncompliance of the Corporate Debtor.
- (v) This Tribunal will not deter such authorities to deal with any of the issues arising after giving effect to the Resolution Plan.
- (vi) Further, the pending avoidance Applications under section 43, 66 of the Code filed by the Interim Resolution Professional/Resolution Professional shall remain with the CoC and pursued by CoC as

contained in Clause 3.7.1 of the Resolution Plan. Any proceeds accruing to the Company in terms of any order in such applications shall be utilized for distribution among the members of the CoC (excluding any member against whom such order has been passed). The cost towards pursuing these applications will be solely borne by the members of the CoC.

- (vii) As regards the other reliefs and concessions as sought for which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP as stipulated under Section 32A of the Code, is granted to the Resolution Applicants. With regard to other concessions and reliefs, most of them shall stand subsumed in the reliefs granted above.
- (viii) The exemptions, if any, sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- (ix) Further, in terms of the Judgment of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited, (Civil Appeal No. 8129 of 2019 decided on 13.04.2021)* the Hon'ble Apex Court on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which are not a part of the Resolution Plan.

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“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan; (ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect; (iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the

(x) In view of the above judgement, the applicant is entitled to waivers/concessions/reliefs as expressly provided under the Code and under any other law for the time being in force.

(xi) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), for information and record. The 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

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may be prescribed.

- (xii) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (xiii) 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.
- (xiv) The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

ANURADHA BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)