BEFORE THE ADJUDICATING AUTHORITY
IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.151 IA No. 680(AHM)2021 and

ITEM No.152 IA No. 183(AHM)2022 in

CP(IB) No.295 of 2019

Orders under Section 30(6) & 60(5) r.w Rule 11 of NCLT, 2016

IN THE MATTER OF:

IA No. 680(AHM)2021

Ravindra Kumar Goyal RP of Polycoat India Pvt Ltd **.....Applicant**

V/s

Jatin Prakash Gupta & Ors **.....Respondent**

AND

Orders under Section 60(5) IBC, 2016

IN THE MATTER OF:

IA No. 183(AHM)2022

Sansar Texturisers Pvt. Ltd. **.....Applicant**

V/s

Ravindra Kumar Goyal RP of Polycoat India Pvt Ltd **.....Respondent**

Order delivered on ..23/08/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in open Court vide separate sheet.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

MADAN B GOSAVI
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1

IA 680(AHM)2021

AND
IA 183(AHM)2022

IN

CP (IB) No. 295/7/NCLT/AHM/2019

IA No. 680(AHM)/2021

[An application under Section 30(6), 31 and 60(5) of the IBC]

Mr. Ravindra Kumar Goyal,

RP of M/s. Polycoat India Pvt. Ltd.

Having office at:

Eden-I, 807, Godrej Garden City,

SG Highway, Ahmedabad-380059 …Applicant/RP

Versus

1. Jatin Prakash Gupta

   Having Office at:

   103, 1st Floor, Trividh Chmbers,
   Opp. Mandarwaja Fire Station,
   Near Rushabh Petrol Pump,
   Ring Road, Surat-395002

2. Gaurav Shree Prakash Gupta

   Having Office at:

   103, 1st Floor, Trividh Chambers,
   Opp. Mandarwaja Fire Station,
   Near Rushabh Petrol Pump,
   Ring Road, Surat-395002

3. Punjab National Bank

   Having Office at:
   Circle Sastra Centre Surat,
   1st Floor Meghani Tower
   Cinema Road Surat-395003

4. Sansar Texturisers Pvt. Ltd.

   Having Office at:
   901-902, A-Block, ICC Building,
   Ring Road, Surat-395002

5. Akashganga Processor Private Limited

   Having Office at:
   402/2, GIDC, Pandesara,
   Surat-394221 …Respondents

Appearance: Resolution Professional-Mr. Ravindra Kumar Goyal, Mr. Ravi Pahwa, Advocate for the Resolution Applicant, Mr. Nipun Singhvi, Advocate for the Respondent.

IA No. 183(AHM)2022

[An application under Section 60(5) of the IBC]

Sansar Texturisers Pvt. Ltd.
(Member of CoC)

...Applicant

Versus

Ravindra Kumar Goyal
RP of Polycoat India Pvt. Ltd.

…Respondent

Appearance: Mr. Nipun Singhvi, Advocate for the Applicant, Mr. Ravi Pahwa, Advocate for the Resolution Applicant.

In the matter of:

M/s. Sansar Texturisers Pvt. Ltd.
901-902, A-Block, ICC Building,
Ring Road, Surat-395002 .. Financial Creditor

Versus

M/s. Polycoat India Pvt. Ltd.
103, 1st Floor, Trividh Chambers,
Opp. Mandarwaja Fire Station,
Near Rushabh Petrol Pump,
Ring Road, Surat-395002 ...Corporate Debtor

Order Pronounced on : 23.08.2022.

Coram: Madan Bhalchandra Gosavi, Member (Judicial)
Kaushalendra Kumar Singh, Member (Technical)

ORDER

1. IA 680 of 2021 is filed by the Resolution Professional of the Corporate Debtor-M/s. Polycoat India Pvt. Ltd. under Section 30(6) of IBC for approval of the resolution plan submitted by M/s. Akashganga Processor Private Limited.

2. IA 183 of 2022 is filed by one of the dissenting financial creditor-M/s. Sansar Texturisers Pvt. Ltd. of the Corporate Debtor opposing the RP's application for approval of the resolution plan.

3. We heard RP in person, learned counsel Mr. Nipun Singhvi for the dissenting financial creditor and learned counsel Mr. Ravi Pahwa

for Resolution Applicant. We have gone through the materials placed on record. The following are the admitted facts:

(i) M/s. Polycoat India Pvt. Ltd.-Corporate Debtor was admitted in CIRP by order dated 02.12.2020. Mr. Gordhan Godhani, having Registration No. IBBI/IPA-001/IP-P01201/2018-2019/11921 was appointed as an IRP. The IRP made public announcement of CIRP of the Corporate Debtor. He called upon the creditors of the Corporate Debtor to submit their claims with the proof.

(ii) The Applicant-Financial Creditor/ M/s. Sansar Texturisers Pvt. Ltd. filed IA No. 914 of 2020 with request to appoint a new IRP as fee structure of earlier IRP was not acceptable. Hence, Mr. Kailash T. Shah was appointed as an IRP, having Registration No. IBBI/IPA-001/IP-P00267/2017-18/10511. Later on, he was also replaced by Mr. Ravindra Kumar Goyal as an IRP having Registration No. IBBI/IPA-001/IP-P-02019/2020-2021/13098.

(iii) The IRP has received claims from six Financial Creditors and four Operational Creditors. The Financial Creditors are Punjab National Bank, M/s. Sansar Texturisers Pvt. Ltd., Sunil Textile, Anamika Syntex Pvt. Ltd., Gupta Tex Prints Pvt. Ltd., Sharp Synthetics Pvt. Ltd..

The Operational Creditors are State Tax (Government of Gujarat), Central Excise (Government of India), Gujarat Industrial Development Corporation and Surat Municipal Corporation.

(iv) The IRP constituted CoC which consists of Punjab National Bank having 99.84% voting shares and Sansar Texturisers Pvt. Ltd. having 0.16% voting shares. Other four Financial Creditors were not made members of the CoC as they are related party of the Corporate Debtor.

4. It is not in dispute that the CoC in its meeting dated 06.08.2021 approved the resolution plan submitted by M/s. Akashganga Processor Pvt. Ltd. with 99.84% voting share. M/s. Sansar Texturisers Pvt. Ltd. was not called for the meeting hence it has filed IA 183 of 2022 as a dissenting financial creditor.

5. Since the resolution plan is approved by the CoC with requisite majority as stated under Section 30(4) of IBC, 2016, we need not go in commercial viability of the resolution plan. We restrict ourselves to see whether the resolution plan is in compliance with the provisions of Section 30(2) of IBC r.w. Regulation 38 IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Section 30(2) *is reproduced as under:*

The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) 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 in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.

Whereas Regulation 38 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation,2016 states mandatory contents of the resolution plan in following manner:

(1) The amount payable under a resolution plan-

(a) to the operational creditors shall be paid in priority over financial creditors; and

(b) to the financial creditors, who have a right to vote under sub-section (2) of Section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.

(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.

(IB) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement

or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]

(2) A resolution plan shall provide:

a) the term of the plan and its implementation schedule;

b) the management and control of the business of the corporate debtor during its term; and

c) adequate means for supervising its implementation.

(3) A resolution plan shall demonstrate that-

a) it addresses the cause of default;

b) it is feasible and viable;

c) it has provisions for its effective implementation;

d) it has provisions for approvals required and the timeline for the same; and

e) the resolution applicant has the capability to implement the resolution plan.

6. Keeping before our sight of the above provisions of law relating to approval/rejection of the resolution plan, we examine the resolution plan submitted for our approval under Section 31 of the IBC. In para 8.2(II) of the plan, the provision to meet CIRP cost is made of Rs. 15.04 lakhs. We hold that provisions of Section 30(2)(a) of the IBC are complied with. Out of four Operational Creditors only two are paid in full i.e Gujarat Industrial Development Corporation, Surat Municipal Corporation, for remaining two Operational Creditors i.e State Tax,

(Government of Gujarat), Central Excise, (Government of India), no provision is made in the plan to pay their dues.

7. Punjab National Bank is a Financial Creditor who has approved the resolution plan, its admitted claim was Rs. 111,29,36,166/-, out of that the Resolution Applicant proposed to pay the sum of Rs. 7,52,00,000/- (at para 8.3 of the plan).

8. M/s. Sansar Texturisers Pvt. Ltd./Dissenting Financial Creditor has been offered only 1% of its debt, its claim was Rs. 18,01,219/- out of which sum of Rs. 18,012/- is proposed to be paid.

9. Section 53 of IBC states the manner in which the payment is to be made to the stakeholders of the Corporate Debtor.

Section 53 of IBC is reproduced as under:

(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—

(a) the insolvency resolution process costs and the liquidation costs paid in full;

(b)the following debts which shall rank equally between and among the following :—

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) following dues shall rank equally between and among the following:—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section

(1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation-For the purpose of this section—

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(ii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.

10. In this case while submitting the resolution plan, it appears to us that the Resolution Applicant has decided to pay total sum of Rs. 8 Crore to all stakeholders of the Corporate Debtor (at para 8.1 of the plan). If CIRP cost of Rs. 15.04 lakhs is kept aside then approximately a sum of Rs.7,85,00,000/- remains as balance to make payment of other stakeholders. Out of that the Resolution Applicant proposed to pay Punjab National Bank-Secured Financial Creditor a sum of Rs. 7,52,00,000/- i.e more than 95% leaving balance of Rs. 33,00,000/- approximately for payment of other stakeholders. Out of that the Resolution Applicant proposed to pay sum of Rs. 32,78,102/- to two Operational Creditors of the Corporate Debtor i.e G.I.D.C and Surat Municipal Corporation leaving meager amount of Rs. 18,012/- for

payment of Unsecured Financial Creditors i.e M/s. Sansar Texturisers Pvt. Ltd.

11. On going through the proposal of payment of dues in the resolution plan, we hold that Resolution Applicant has changed entire payment pattern ignoring the list of priority of payments as stated under Section 53 of IBC.

12. At this stage, it is pertinent to see the objection of Unsecured Financial Creditor i.e M/s. Sansar Texturisers Pvt. Ltd. who has filed IA 183 of 2022. It has alleged that the RP did not give notice to attend 6th and 7th meetings of CoC in which the resolution plan was discussed and approved. The RP in his reply pointed out that notice of 6th CoC meeting dated 25.06.2021 was sent to this Financial Creditor by e-mail. That e-mail is produced on record at page 101 with the reply. He also produced on record the letter from this Financial Creditor accepting the invitation to attend the meeting and appointing one of its representatives. That letter is also produced on record at page no. 103. In view of this evidence, we hold that the RP has served the notice of 6th CoC meeting on this Financial Creditor but there is absolutely no evidence on record to indicate that the RP has sent this Financial Creditor notice of 7th meeting of CoC in which the resolution plan was approved. It is the duty of the RP under Section 24(3) of the IBC to give notice of the CoC meeting to each CoC member.

13. For want of notice, the Financial Creditor could not attend the meeting and had lost opportunity to oppose the resolution plan by recording its objections against the resolution plan.

14. It is seen from the materials on record that there are four Operational Creditors of the Corporate Debtor. The Resolution Applicant proposed to pay dues of only two of them. There is no reason assigned in the resolution plan as to why other two Operational Creditors were not paid anything. We hold that such resolution plan cannot be approved. It is in breach of two provisions of law i.e sequence of priority in payment of the dues to the stakeholders as stated under Section 53 of IBC and also it does not comply mandatory requirement under Regulation 38 and more particularly Regulation 38(1)A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation,2016, which states that " *A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor."* As it does not effectively deal with the interests of all stakeholders of the company, we hold that this resolution plan does not comply with Sections 30(2)(e) and Section 30(2)(f) of IBC, hence, we cannot approve such plan. Accordingly, we proceed to pass the following orders:

ORDER

I. The Resolution plan of M/s. Akashganga Processor Pvt. Ltd. for the Corporate Debtor-M/s. Polycoat India Pvt. Ltd. submitted for our approval is rejected for the reason that it does not comply with the provision of Section 30(2)(e) & Section 30(2)(f) of the IBC.

II. Both applications stand disposed of.

III. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD- -SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

MADAN B GOSAVI
MEMBER (JUDICIAL)

SAPNA