

IN THE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

COURT NO. 1

ITEM Nos.203 & 204

IA/190(MP)2021 & IA/165(MP)2022 in CP(IB) 9 of 2020

Proceedings under Section 30(6),30(1) IBC,2016

IN THE MATTER OF:

IA/190(MP)2021

Naveen Kumar Sood RP of Ujaas Energy Ltd

.....Applicant

IA/165(MP)2022

Satec Envir Engineering (India) Pvt Ltd

.....Applicant

V/s

Ujaas Energy Ltd & Ors

.....Respondents

Order delivered on 06/01/2023

Coram:

Dr. 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 order.

The order is pronounced in open Court vide separate sheet.

Sd/-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

Bray Mohan

Sd/-

**DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

IA/190(MP)2021 & IA/165(MP)2022

**In
CP (IB) 9 of 2020**

IA/190(MP)2021

(An application under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 for approval of resolution plan)

Through:

Naveen Kumar Sood
Resolution Professional of
Ujaas Energy Limited
D-501, Shehnai Residency
A.B. Road, Opp. Amarvilas Hotel
Indore-452011

**Applicant/
Resolution Professional**

IN THE MATTER OF:

Naveen Kumar Sood
Resolution Professional of
Ujaas Energy Limited
D-501, Shehnai Residency
A.B. Road, Opp. Amarvilas Hotel
Indore-452011

**Applicant/
Resolution Professional**

Versus

M/s Ujaas Energy Limited
Survey No.211/1
Opp. Sector-C & Metalman
Sanwer Road, Industrial Area
Indore (MP)-452015

Corporate Debtor

AND

IA/165(MP)2022

(An application under Section 60 of the Insolvency & Bankruptcy Code, 2016 objecting the approval of resolution plan)

Satec Envir Engineering (India) Private Limited

102, 1st Floor, C-Wing
Waterford Building,
C.D. Burfiwala Marg
Juhu lane
Andheri Mumbai-400058

Applicant

Versus

Ujaas Energy Limited & Ors.

Survey No.211/1
Opp. Sector-C & Metalman
Sanwer Road, Industrial Area
Indore (MP)-452015

Respondent

Deepak Chandak

Proprietor of M/s Harshal Enterprises
Gram Aranya, A.B. road
Biaora, Rajgarh
Madhya Pradesh-465674

Committee of Creditors

Through its RP Mr. Naveen Khandelwal
206, Navneet Plaza
5/2, Old Palasia
Indore-452018

In the Matter of CP(IB) 9 of 2020:

(An application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016)

Mr. Deepak Chandak

Proprietor of M/s Harshal Enterprises

Operational Creditor

Versus

M/s Ujaas Energy Limited

Corporate Debtor

Order Reserved on: 24/11/2022

Order Pronounced on: 06/01/2023

Coram: Dr.Madan B. Gosavi, Member (J)

Kaushalendra Kumar Singh, Member (T)

Appearance:

For the Applicant:

Ld. Sr. Counsel Mr. Saurabh Soparkar a.w.

Ld. Counsel Mr. Rohit Dubey (IA 190 of 2021)

Ld Counsel Ms. Mily Ghoshal (IA 165 of 2022)

For the Respondent:

Ld. Counsel Mr. Nipun Singhvi (IA 190 of 2021)

ORDER

1. This application IA/190(MP)2021 is filed under Section 30(6) read with Section 31 of Insolvency & Bankruptcy Code, 2016 (**Code**) by Mr. Naveen Kumar Sood- Resolution Professional of the corporate debtor- Ujaas Energy Limited for approval of the Resolution Plan submitted by consortium of SVA Family Welfare Trust and M&B Switchgears.

Whereas, IA/165(MP)2022 is filed by the operational creditor- Satec Envir Engineering (India) Private Limited through its director Mr.Amarprakash Agarwal under section 60 of the Code objecting the

resolution plan submitted by the consortium of SVA Family Welfare Trust and M&B Switchgears being the related party of the corporate debtor.

2. The following are the submissions made by the applicant/ resolution professional in the present application:

(i) The Corporate Debtor was admitted in the Corporate Insolvency Resolution Process (**CIRP**) on 17.09.2020. Mr. Navin Khandelwal was appointed as Interim Resolution Professional (**IRP**). On 21.09.2020 the IRP made public announcement of CIRP of the Corporate Debtor and called upon its creditors to submit claims with requisite proof. The IRP formed the CoC consisting of the following financial creditors having voting percentage right as stated below:

Sr.	Name of Financial Creditor	Secured/ Unsecured	% Voting Share
(i)	Union Bank of India	Secured	27.06
(ii)	State Bank of India	Secured	35.74
(iii)	Indian Overseas Bank	Secured	15.53
(iv)	Axis Bank Limited	Secured	15.70
(v)	Bank of Baroda	Secured	5.83
(vi)	RBL Bank Limited	Secured	0.05
(vii)	Swastika Fin-Mart Private Limited	Unsecured	0.33

(ii) The RP published Form-G on 03.12.2020 in widely circulated English as well as local language newspapers. In response thereto, he received four resolution plans, one of them was plan of resolution applicant- consortium of SVA Family Welfare Trust and M&B Switchgears.

(iii) The Adjudicating Authority vide order dated 28.01.2021 approved the replacement of the IRP and appointed Mr.Naveen

Kumar Sood as Resolution Professional (**RP**) in place of Mr.Navin Khandelwal.

(iv) The plans were discussed in several meetings and thereafter, two final plans- consortium of SVA Family Welfare Trust and M&B Switchgears and Manikaran Power Limited were put to vote in the 18th CoC meeting dated 09.08.2021.

The resolution plan submitted by consortium of SVA Family Welfare Trust and M&B Switchgears was approved by the COC with 78.04% votes on 30.08.2021. The same plan has been submitted before the Adjudicating Authority for approval under Section 30(6) of the IBC, 2016. The liquidation value and fair value of the Corporate Debtor is reported at Rs.43,08,09,000/- and Rs.56,64,44,300/- respectively.

(v) The resolution applicant- consortium of SVA Family Welfare Trust and M&B Switchgears has proposed to pay a sum of Rs.74,81,75,744/-. The details are as follows:

Stakeholder	Admitted claims (Rs.)	Total payment (Rs.)
CIRP Cost		Actual amount to be provided
Secured Financial Creditors	1,44,08,72,636	68,81,75,744/-
Unsecured Financial Creditor- Swastika Fin-Mart Private Limited	50,00,000	50,00,000 equity shares of face value Re.1/-
Operational Creditors (Employees & workmen)	10,54,306	10,54,306
Operational Creditors (Others)	4,06,64,313	10,00,000
Working Capital	-	5,77,35,694
Other than operational and financial creditors	86,10,777	2,10,000
Total	1,49,62,02,032	74,81,75,744/-

(vi) The resolution applicant has proposed the relatively higher amount in view of the understanding that all the secured creditors would agree to the proposal of the resolution applicant for extinguishment of their right on personal guarantee.

3. The Bank of Baroda being the member of CoC with 5.83% voting share submitted that the said resolution plan seeks extinguishment of liability of personal guarantors of the corporate debtor and the resolution applicant has proposed a sum of Rs.2,49,42,613/- along with extinguishment of personal guarantee on the loan given by them (Bank of Baroda). The other lender banks i.e Union Bank of India, State Bank of India, Axis Bank Limited and RBL Bank Limited have agreed to the proposal of the resolution applicant made in the resolution plan to extinguish the personal guarantee, however, the Bank of Baroda has objected the same.

Further, the Bank of Baroda has also filed applications under section 95 of the Code against the personal guarantors before the Adjudicating Authority and the same are pending. It is also submitted that the MSME certificate placed on record by the resolution professional reflects the date of registration as 10.03.2021, whereas, the corporate debtor was admitted into CIRP on 17.09.2020 i.e. prior to the MSME registration, therefore, the resolution applicant is ineligible under section 29A to submit the resolution plan.

4. In response to the objections of Bank of Baroda the Resolution Professional through its Affidavit dated 18.01.2022 replied that the liquidation value of the corporate debtor is Rs.43,08,09,000/- and the payment proposed to the financial creditors in the plan is Rs.68,81,75,744/-. Out of the said proposed payment Rs.45,00,00,000/- is towards the value of the corporate debtor and balance Rs.23,81,75,744/- is towards the release of personal

guarantees. The CoC has approved the said plan after taking into account the payment proposed towards the release of personal guarantee and therefore, the said relief is in compliance with the laws.

Further the corporate debtor holds an MSME Udyog Aadhar dated 26.05.2016 and subsequently obtained MSME Udyam Registration on 10.03.2021 since MSME notification dated 26.06.2020 required the existing enterprises registered under EM-Part-II or UAM to register again on Udyam Registration Portal and therefore the corporate debtor having Udyog Aadhar and subsequently Udyam is MSME registered prior to the date of initiation of CIRP. The corporate debtor being an MSME is eligible to submit the resolution plan under section 29A r.w. section 240A of the Code.

5. The total admitted operational debt (government dues) amounts to Rs.89,58,79,886/- out of which only Rs.9,72,799/- was proposed to such creditors under the resolution plan. Therefore, the successful resolution applicant filed an affidavit dated 23.11.2022 proposing additional Rs.74,01,086/- to MP VAT, Gujarat VAT and PF departments to be paid in proportion to their respective admitted debts in view of the judgment of Hon'ble Supreme Court in State Tax Officer v/s Rainbow papers Limited. It has also been submitted that if in case of review, amendment in the said judgement (within 36 months from the date of approval of the resolution plan), the payment to MP VAT, Gujarat VAT and PF departments are not required to be made at par with other secured financial creditors, then in such a case the resolution applicant should be refunded with the said amount of Rs. 74,01,086/-.

6. The application IA/165(MP)2022 is filed by the operational creditor Satec Envir Engineering (India) Private Limited objecting the

approval of the resolution plan submitted by consortium of SVA Family Welfare Trust and M&B Switchgears. The corporate debtor was admitted into CIRP on an application by one of the operational creditor i.e. Deepak Chandak Proprietor of M/s Harshal Enterprises for an amount of Rs.18,67,000/-. The Annual Report of the corporate debtor for the financial year 2020-21 depicts that the assets of the corporate debtor are more than its liabilities and that the corporate debtor is in a position to pay off the liabilities however the CIRP has been initiated by the original operational creditor at the instance of the corporate debtor so as to discharge itself from the liabilities. The resolution plan submitted by the corporate debtor does not even include the debt of the original operational creditor which was admitted by the RP. Therefore, the said resolution plan should be rejected.

7. We have heard the learned counsels for the RP, Bank of Baroda and learned counsel for the Operational Creditor and have perused the material available on record. It is noted that the corporate debtor was admitted into CIRP by the Adjudicating Authority vide order dated 17.09.2020. Subsequently, the resolution plan submitted by consortium of SVA Family Welfare Trust and M&B Switchgears is approved by the COC with 78.04% votes. The said resolution plan is submitted by the related party, however, the corporate debtor being MSME, would not be ineligible under section 29A as according to Section 240A of the Code, provisions of Section 29A (c) to (h) would not apply though the resolution applicant is a related party.

8. It is also noted that the total amount proposed by the resolution applicant in the plan is Rs.74,81,75,744/-, wherein the amount proposed towards the payment of the financial creditors is Rs.68,81,75,744/-. Further out of Rs.68,81,75,744/- amount

towards the value of the corporate debtor is Rs.45,00,00,000/- and balance Rs.23,81,75,744/- is towards the release of personal guarantees.

Subsequently, by way of an Affidavit dated 23.11.2022 the resolution applicant has proposed to pay Rs.74,01,086/- to the operational creditor (government dues) in addition to the amount proposed in the resolution plan of Rs.9,72,799/- to such creditors.

9. It is noted that one of the operational creditor- Satec Envir Engineering (India) Private Limited has filed an application objecting the resolution plan contending that the corporate debtor is in a position to pay off the liabilities, and in order to discharge itself from its liabilities CIRP was initiated. However, we find that the operational creditor has no locus to file such an application at this stage and therefore IA 165 of 2022 filed by the operational creditor is rejected and disposed of.

10. Further, no specific amount with regards to CIRP cost has been proposed in the plan however there is an undertaking by the resolution applicant to pay the entire unpaid CIRP cost in priority to other payments. Be that as it may we are not going in details of the plan since the said resolution plan contains a relief to extinguish the personal guarantee given to the lenders on the borrowings of the corporate debtor but the same is objected by Bank of Baroda. This Adjudicating Authority vide its order dated 04.08.2022 released the matter for clarification with respect to the said relief in the plan, however the resolution applicant wish to proceed without amending such reliefs and therefore, such conditional plan without the consent of all the secured financial creditors is not in accordance with the provisions of the Code.

11. In our considered opinion the CoC can take any commercial decision relating to insolvency of the corporate debtor only, the CoC cannot extinguish right of the particular secured creditor to proceed against the personal guarantor of the corporate debtor under the garb of its commercial wisdom. Such provision in the resolution plan is not only prejudicial to the right of such secured creditor but also against the provisions of law. Hence we cannot approve such resolution plan as it contravenes the provision of section 30(2)(e) of the Code.

12. In view of the above, we are of the considered opinion that such resolution plan can not be approved and deserves to be rejected as the CoC by majority votes can not enforce its decision for extinguishment of the right of the dissenting creditor to proceed against the personal guarantor. It is also noted that the Bank of Baroda has already filed an application against the personal guarantors which is pending before the Adjudicating Authority.

13. Accordingly, IA 190 of 2021 is rejected and disposed of. A copy of this order be served to the Resolution Professional and the corporate debtor and the operational creditor (IA 165 of 2022) within 7 days from the date of the order.

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Kaushalendra Kumar Singh
Member (Technical)

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Dr. Madan B. Gosavi
Member (Judicial)

Swati