

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

**C.A. – 34/(ND)/2019
In C.P. No. IB-1089/(ND)/2018**

In the matter of:

ALBUS INDIA LTD.
F. NO. 22, Plot No. 29,
Maitri Apartment, Sector-9,
Rohini, New Delhi 110085

...Corporate Debtor

AND

C.A. – 34/(ND)/2019

In the matter of:

SANDEEP KUMAR BHATT
Resolution Professional,
Albus India Ltd.,
83B, Pocket-4,
Mayur Vihar Phase – 1,
New Delhi – 110091.

...Resolution Professional


Order Delivered on: 05.11.2019

CORAM:

DR. P.S.N. PRASAD, MEMBER(JUDICIAL)

DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)

PRESENT – Prachi Johri, Moulshree Shukla, Jasveen Kaur, K. Datta, Advocates
for the Resolution Professional
Advocates for the Resolution Applicant




ORDER

Per Dr. V. K. Subburaj (Member Technical)

1. This Tribunal vide order dated 02.01.2019 admitted the application filed under Section 7 of the Code by Tuf Metallurgical Pvt. Ltd. against the corporate debtor Albus India Ltd. ("CD") and ordered the corporate insolvency resolution process ("CIRP") of the CD.
2. The resolution professional, Mr. Sandeep Kumar Bhatt ("RP"), was appointed as the interim resolution professional by the Tribunal. He has submitted the progress reports from time to time and the meetings of the Committee of Creditors ("CoC") were held as prescribed under the Code. The RP prepared the published the Expression of Interest on 20.03.2019 in Times of India and Financial Express and on 21.03.2019 on 21.03.2019. The last date for receiving the resolution plan was 20.05.2019 and the RP received only one resolution plan by Tuf Metallurgical Pvt. Ltd. (which is also a member of the CoC) duly completed in all respects by 20.05.2019.
3. According to the present application, the resolution plan submitted by the resolution applicant Tuf ("RA") was placed before the CoC in its third meeting on 10.06.2019 wherein detailed deliberations took place. The CoC negotiated with the RA and asked for further clarifications and modifications in the resolution plan. The revised plan was received on

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01.08.2019, which was presented to the CoC in its 4th meeting on 08.08.2019. The CoC recorded the reasons for approving the resolution plan complying with the provisions of Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") and approved the resolution plan by 100% vote.

4. The CD is a manufacturer of Low Carbon Ferro Chrome. Despite a good market and good margins, the manufacturing process could not be continued due to severe technical failures and the plant was closed in October 2017 and all the staff left by February 2018. The main reason for failure was the conceptual failure in setting up the plant and use of the trial and error method by purchasing/replacing the machines and equipment. By the time the plant was made technically fit, there was no working capital left. To meet the working capital requirements the CD approached the RA and took a loan of Rs.7.05 crores during the last quarter of 2016 and executed several agreements, however, this fund was also lost as the plant never produced the products properly.

5. According to the resolution plan, the RA is engaged in manufacturing and exports of specially products to ensure value additions by the iron, steel etc to match the product quality specification having multitude applications in the steel plants. The RA has an ISO 9001:2015

certification and has a cored wire manufacturing facility located in Domjur Village, West Bengal, India with installed capacity of 5000 MTPA. The proposal of restructuring the operations according to the resolution plan is as follows:

- i. After the assessment of technical experts the capital expenditure of the approximately Rs.4 crores and working capital requirement of Rs.8 crores shall be required for overcoming the technical defects in the plant. The capital expenditure and working capital shall be arranged from lending agencies as well as from own sources of the RA. Given the financial strength and securities available with the RA, there appears no difficulty in arranging funds.
- ii. The plant is expected to be operational in five months after plant is taken over by the RA. The RA is already in the international trade related to Low Carbon Ferro Chrome ("LC FeCr") and has international marketing tie ups. Further, there is only one plant of this type in India and there is high demand for LC FeCr. Thus, making sales with good profit margins will not be a hurdle for the RA.

6. The financial proposal made by the RA is as follows:

- i. First, the actual CIRP cost up to Rs.0.40 crores, as certified by the RP and CoC will be paid.



- ii. Second, workmen/employees will be paid the complete amount due to them i.e. 0.29 crores.
- iii. Third, financial creditors will be paid Rs.5.81 crores against the total dues of Rs.37.61 crores.
- iv. Fourth, the operational creditors will be paid Rs.0.10 crores against the total dues of Rs.2.02 crores.
- v. Lastly, Rs.0.05 crores will be paid for statutory liabilities against the total dues of Rs.0.92 crores.
- vi. The payment of 50% of the proposed amounts will be paid upfront to all the creditors and the remaining 50% will be paid in 12 equal quarterly installments spanning three years, after the approval of the resolution plan by this Tribunal.

7. For implementation of the resolution plan the RS has proposed that the term of the plan will commence from the Effective Date and last up to six months from the Effective Date, within which period all payments shall be made to all the creditors as contemplated in the resolution plan. The existing directors of the CD shall cease to have any control and shareholding in the CD and all the shares shall be transferred to RA immediately after the approval of the resolution plan by the Tribunal and entire control of the CD shall vest with the RA. The RA shall appoint all the staff, make a capital expenditure of Rs. 4 crores and shall also arrange working capital of Rs. 8 crores to run and manage the plant. The



plant is expected to be operational within five months from the date of approval of the resolution plan by the Tribunal. In order to ensure the smooth implementation of the resolution plan, the RA has identified a core team with strong experience in the relevant industry. The RA will further induct a CEO and a CFO to manage day to day affairs of the CD.

8. The management and supervision plan proposed by the RA is as follows:
- i. On the Effective Date, a committee for monitoring and supervising (“Monitoring Committee”) the implementation of the resolution plan shall be appointed. The Monitoring Committee would consist of one member nominated by the RA, one member nominated by the CoC and one member nominated by the transaction advisor to the RA.
 - ii. The Monitoring Committee shall supervise the resolution plan until expiry of the term of the resolution plan and shall ensure the implementation of the resolution plan.
 - iii. The Monitoring Committee shall ensure that the reconstituted board of directors are appointed and are accountable for the day to day operations. It will ensure that the internal and statutory auditors are appointed and will make the necessary statutory compliances for implementation of the resolution plan.
 - iv. The Monitoring Committee will regularly update the financial creditors about the implementation of the resolution plan, until the proposed payment is made to the financial creditors.

v. Further, post the Effective Date and thereafter, the CD would be managed by the reconstituted board of directors.

9. The mandatory requirements that the resolution plan has to comply with under the Code and CIRP Regulations and the treatment of such compliances in the plan submitted are as follows:

Condition	Compliance under Resolution Plan
S. 30(1) – resolution applicant submits affidavit stating that he is eligible under Section 29A	The RA has submitted an affidavit stating it is not disqualified under the provisions of Section 29A.
S. 30(2)(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.	Payment of CIRP costs have been provided for as stated in para 6(i) above.
S.30(2)(b) - provides for the payment 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	Payment of claims of operational creditors including those of employee and workmen have been provided for as stated in para 6(ii) and (iv) above.

<p>operational creditors in the event of a liquidation of the CD under section 53.</p> <p>Regulation 38(1) – amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.</p>	
<p>Regulation 38(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.</p>	<p>Interests of stakeholders have been dealt with as shown in para 6 above.</p>
<p>S.30(2)(c) – provides for the management of the affairs of the CD after approval of the resolution plan</p>	<p>The management of the CD has been provided for as stated in para 8 above.</p>
<p>S.30(2)(d) – The implementation and supervision of the resolution plan</p>	<p>The implementation and supervision of the plan has been provided for as stated in para 7</p>

	and 8 above.
<p>Regulation 38(3):</p> <p>(a) addresses the cause of default;</p> <p>(b) feasible and viable;</p> <p>(c) has provisions for its effective implementation;</p> <p>(d) has provisions for approvals required and the timeline for the same;</p> <p>(e) resolution applicant has the capability to implement the resolution plan</p>	<p>Provided for as stated in paras 5-8 above.</p>
<p>S.30(2)(e) - does not contravene any of the provisions of the law for the time being in force</p>	<p>Complied with.</p>
<p>S.30(4) - The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other</p>	<p>CoC has approved the resolution plan by a vote of 100%.</p>



requirements as may be specified by the Board	
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10. The RA has requested this Tribunal for certain specific reliefs as a part of the resolution plan. The Tribunal feels that there is a need to particularly discuss the following reliefs:

- i. Under Schedule 4, Point 3(g) the RA has prayed for the following reliefs:

"i. The Resolution Applicants also prays to the NCLT to grant an exemption from the obligation to pay taxes and stamp duty in respect of actions undertaken pursuant to the approval of the Resolution Plan by the NCLT, since such taxes and duties, if required to be paid, will render the Resolution Plan unviable for the Resolution Applicants in monetary terms.

ii. The Department of Registration and Stamps, Government of Delhi, RoC and the MCA are to exempt the Resolution Applicant and the Company, from the levy of any stamp duty and fees applicable in relation to this Plan and its implementation.

iii. Accordingly, upon the Resolution Plan being approved by the NCLT, the actions undertaken pursuant to the implementation of the Resolution Plan shall be deemed to be exempt from any tax obligation under various taxing statutes, including but not limited to



Sections 50B, 50V, 50CA, 56 and 115JB under the Income Tax Act as well as Central Goods and Service Tax Act, 2017 (as amended from time to time) and the provisions of the Indian Stamp Act, 1899 (as amended from time to time) and other laws relating to payment of stamp duty applicable in any state.”

The Code does not confer any power on this Tribunal to grant exemption from taxation. The legislature, in its wisdom, has made two special provisions in the Income Tax Act, 1961 with regard to resolution plans. One provision is found in Section 115JB and the other is found in Section 79 of the IT Act. This Tribunal cannot go beyond the word of the Code and also the IT Act and grant exemptions which cannot be granted under either the Code or the IT Act.

Further, the Code and its attendant regulations do not confer power on this Tribunal to exempt the corporate debtor or the resolution applicant from meeting legitimate dues to the government such as stamp duty which arise consequent to the execution of the resolution plan. The above relief is also rejected as the Tribunal does not have the power to grant such blanket exemptions as are asked for in the paragraph reproduced above from all relevant dues that might arise in execution of the plan.

- ii. Under Schedule 4, Paragraph 2 the RA has prayed for the following relief:

“All the lenders/creditors/interested parties shall undertake all such steps to ensure that the account of the Company is classified as “standard” as per the requisite RBI Guidelines and any other adverse action taken by them under the regulatory regime against the Company and/or any other officer/employee of the Company in relation to the facilities given to the Company (whether or not the same is outstanding as on the date of this Resolution Plan), including but not limited to initiation of proceedings under Section 138, willful defaulter proceedings, any other complaint to any regulator, administrative body, judicial body etc. irrespective of whether there is a notice of the same to the Company or its officials, would stand discharged subject to the requisite RBI Guidelines.”

This relief is granted but only to the extent that it pertains to the CD. It is clarified that any individual liability that may arise in relation to any ex-director or ex-employee of the CD before the execution of the resolution plan will not be affected by this relief.

11. The resolution plan in Paragraph 36.6 states as follows:

“Consequences of Revocation



In the event the Resolution Plan is revoked and/or the restructuring of the Company fails (implementation is not as per the term of this Resolution Plan), the existing facilities of the creditors, the rights and remedies of the creditors under their respective existing financing documents would continue as if they had not been waived, amended, modified, superseded or replaced by the Resolution Plan and the creditors shall be entitled to enforce such rights and remedies under the existing financing documents, as if the same had not been waived and/or modified pursuant to this Resolution Plan and the other relevant documents executed thereof. Provided however, that the obligations of the Company and its co-obligors and the creditors shall be entitled to exercise all rights and remedies conferred on them pursuant to this Resolution Plan.”

12. It is pertinent to note Section 33(3) and (4) of the Code with regard to the paragraph quoted above. The provision is as follows:

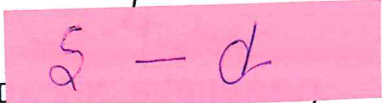
“(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).

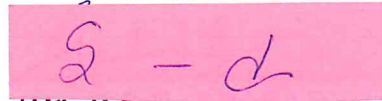
(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the

provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”

13. From a perusal of Section 33 it is apparent that if the resolution plan is not implemented due to a contravention by the CD the effect of such contravention will be liquidation of the CD, the procedure of which has been specified under the Code and in such a case the resolution plan shall not survive for any purposes. The same consequence will follow if the resolution plan is revoked or is not implemented for a reason other than contravention by the CD, as was held by NCLT, Cuttack in *State Bank of India vs. Adhunik Metaliks Ltd.* Thus, Paragraph 36.6 is redundant in light of provisions of the Code and the said paragraph will stand deleted from the resolution plan.

14. All the reliefs asked for in the resolution plan by the RA, apart from the reliefs discussed herein are granted. The resolution plan submitted by the RA seems to be in place and fit to be admitted. Henceforth the moratorium order shall cease to have effect. The resolution professional shall further act upon as prescribed on approval of the resolution plan to forward the records to the concerned authorities and to intimate the closure of the insolvency proceedings.

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MEMBER (JUDICIAL)

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