

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-III

C.A. - 786/(ND)/2019
In C.P. No. IB-1107/(ND)/2018

In the matter of:

EXIT 10 MARKETING PVT. LTD.
Wz-303, 2ND Floor,
Palam Village, Near Jaat Chaupal,
New Delhi - 110045.

...Corporate Debtor

AND

C.A. - 786/(ND)/2019

In the matter of:

KAPIL DEV TANEJA
Resolution Professional,
Exit 10 Marketing Pvt. Ltd.,
56-C/BB, Janakpuri,
New Delhi - 110058.

...Resolution Professional

Order Delivered on: 20.11.2019

CORAM:

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

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

PRESENT - Milan Singh Negi, Advocate for the Resolution Professional
Sumit Nagpal, Advocate for Resolution Applicant
Avantika Shukla, PCS for Corporate Debtor



ORDER

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

1. This Tribunal vide order dated 14.09.2018 admitted the application filed under Section 9 of the Code by Mr. Sandeep Vij, sole proprietor of Top Trade, against the corporate debtor Exit 10 Marketing Pvt. Ltd. ("CD") and ordered the corporate insolvency resolution process ("CIRP") of the CD.
2. The resolution professional, Mr. Kapil Dev Taneja ("RP"), appointed as the interim resolution professional by the Tribunal, has submitted the progress reports from time to time and the meetings of the CoC were held as prescribed under the Code. The RP prepared the Information Memorandum and published the Expression of Interest. In the 8th CoC meeting held on 06.06.2019 the resolution plan submitted by the resolution applicant WoW E-Carts Pvt. Ltd. ("RA") was approved by the CoC with 100% votes in favor of the resolution plan.
3. The CD is an online e-commerce company which owns and operates a web portal in the name of www.overcart.com and has tie-ups/user agreements with third party platform owners for using such third party platforms for listing products. It offers an online marketplace for over-stock, unboxed and refurbished products through its web portal. The probable reason for insolvency of the CD was that during the period 2008 to 2012 the CD went



for strategic expansion and the installed capacity increased from 75,000 MTPA (FY 2008-09) to 2,50,000 MTPA (FY 2012-13) and ventured into production of home furnishing products for the export market but the CD was unable to recover the receivables which led to defaults with the lenders.

4. According to the resolution plan, the proposal to revive the CD consists of the following broad steps:

- i. Reduction in debt of the company and extinguishment of various operational and statutory liabilities.
- ii. Relief from the contingent liabilities, reliefs from the ongoing cases against the company and ratification of the various non-compliances.
- iii. Offloading of the unproductive assets of the Respondent.

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

- i. A total amount of Rs.15,00,000/- has been proposed to be invested in the CD for resolution, out of which first, the actual CIRP shall be paid within 30 days from the date of the order approving the resolution plan is passed by this Tribunal and Rs.5,57,794/- will be distributed amongst the operational creditors. No definite timeline has been stated regarding this payment to the operational creditors



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 5(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 operational creditors in the event of a liquidation of the CD under section 53. Regulation 38(1) - amount due to the operational creditors under a resolution plan shall be given	Payment of claims of operational creditors have been provided for as stated in para 5(i) above.



priority in payment over financial creditors.	
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.	Interests of stakeholders have been dealt with as shown in para 5 above.
S.30(2)(c) - provides for the management of the affairs of the CD after approval of the resolution plan	The management of the CD has been provided for as stated in para 7 above.
S.30(2)(d) - The implementation and supervision of the resolution plan	The implementation and supervision of the plan has been provided for as stated in para 6 above.
Regulation 38(3): (a) addresses the cause of default; (b) feasible and viable; (c) has provisions for its effective implementation;	Provided for as stated in paras 4-7 above.



<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>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 requirements as may be specified by the Board</p>	<p>CoC has approved the resolution plan by a vote of 100%.</p>

9. The RA has requested this Tribunal for one specific relief i.e. the RA should not be held liable/responsible for the result of a legal proceedings pending between the CD and its landlord before the District and Sessions Judge,

Patiala House Court, New Delhi for recovery of rent. This relief is granted to the RA.

10. A perusal of the entire resolution plan along with the additional information filed pursuant to this Tribunal's order dated 01.10.2019 shows that the RA has failed to submit a timeline for the various actions it is supposed to undertake according to the resolution plan. Such a stipulation is mandatory according to the Code. Thus, a tentative schedule is being prescribed by us as a guideline for implementation of the plan:

- i. The cancellation of the shares of the CD and the issue of shares to RA to be completed within 45 days from the date of his order.
- ii. The payment to the operational creditors to be made within 45 days from the date of this order.
- iii. The new board of directors to be constituted within 60 days from the date of this order.
- iv. The monitoring committee will cease to exist only after all the payments have under the resolution plan has been made, shares have been issued to the RA and the new board of directors has been constituted.

11. 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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(Dr. V.K. SUBBURAJ)

MEMBER (TECHNICAL)

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(Dr. P.S.N. PRASAD)

MEMBER (JUDICIAL)

Note: In terms of Rule 151 of NCLT Rules, 2016 and in view of Hon'ble Member (Judicial) sitting at the Jaipur Bench at NCLT, Rajasthan this order is being pronounced on behalf of Bench – VI by Hon'ble Member (Technical) Dr. V. K. Subburaj.