

**In The National Company Law Tribunal
Kolkata Bench
Kolkata**

Coram: Shri Vijai Pratap Singh, Hon'ble Member
(Judicial)

&

Shri Jinan K.R. Hon'ble Member (Judicial)

C.P. No. 150/IB/KB/2017

In the matter of :

An application for initiation of corporate insolvency resolution process by the Operational Creditor under Section 8 and 9 of the Insolvency and Bankruptcy Code, 2016;

In the matter of :

**Parker Hannifin India Pvt. Ltd.
Plot No.EL-27, MIDC,
TIC Industrial Area, Mahape,
Navi Mumbai 400 709; APPLICATIONT/OPERATIONAL CREDITOR**

AND

In the matter of :

**Prowess International Pvt. Limited
A-18, 6th Phase Industrial Area
Adityapur, Jamshedpur 832 108 ... CORPORATE DEBTOR**

Counsels on Record :

Shri Akash Sharma, Pr. C.S.	}	For the Corporate
	}	Debtor
Shri Arun Gupta, FCA	}	
Shri Sanjay Chatterjee, Advocate	}	

Date of pronouncement of the Order: 17.10.2017

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ORDER

The Operational Creditor Parker Hannifin India Private Limited had filed a petition under Section 9 of the Insolvency and Bankruptcy Code 2016 which was admitted by our order dated 20th April 2017, and Shri Arun Kumar Gupta was appointed as Insolvency Resolution Professional which was confirmed by the Committee of Creditors. He has filed his Progress Report (7th Report) on 16th of October, 2017 wherein he has stated that as a Resolution Professional he has received only one claim from Financial Creditor, Punjab National Bank (PNB), and no other claim from any financial credit has been received. The account with the Punjab National Bank is a standard account, and the Bank has not recalled its dues. Only two other claims from operational creditors (Parker Hannifin India Pvt. Ltd. And Poonam Enterprise) had been received, and both have been settled to the satisfaction of the claimants. No other claim from any other Operational Creditor had been accepted. As per the Regulations, a creditor, who failed to

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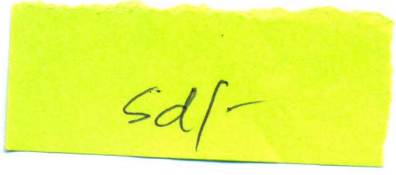
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submit proof of claim within the time stipulated in the public announcement, may submit such evidence to the interim resolution professional or the resolution professional, as the case may be, till the approval of a resolution plan by the committee.

It is also in the Progress Report that the Committee of Creditors was constituted regarding Section 21 of the Insolvency and Bankruptcy Code, 2016 and Punjab National Bank had 100% share of the vote.

In the 4th meeting of the Committee of Creditor held on 12.10.2017 the participants ratified that the agenda of the 4th meeting was as follows:

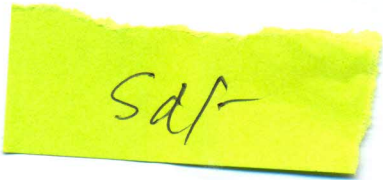
1. Presentation of the latest list of Creditors.
2. The CEO of the Corporate Debtor – Prowess International Private Limited Mr Prakash Kumar to give a brief overview of the business and operations of the Company.

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3. Approve the Vote on Resolution Plan submitted by Mr Prakash Kumar, Promoter of the Corporate Debtor – Prowess International Private Limited.

The Resolution Plan presented by Shri Prakash Kumar who was CEO of the Corporate Debtor included documents to show the financial and operational strength of the Corporate Debtor like list of confirmed orders worth Rs.29.47 crores and its future cash flow projection for the next 6 months which showed that the Corporate Debtor would be cash positive every month end.

It is also stated in the minutes of the Committee on Creditors that the matter was discussed in detail and it was concluded that the Corporate Debtor is in a good financial position and did not face the risk of insolvency shortly. The Committee also did not see while observing its performance regularly through the banking operations, that the corporate debtor faced any challenge otherwise on the operational front. The Committee concluded that the information, explanations and documents



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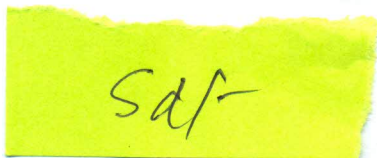
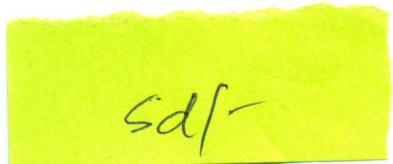


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presented by the Corporate Debtor could be considered as a Resolution Plan for Insolvency under Insolvency and Bankruptcy Code 2016.

The Resolution Professional confirmed that he had not received any other Resolution Plan from any other resolution applicant. It is further stated in the report that the Committee noted that interests of stakeholders, including financial creditors and operational creditors, of the corporate debtor, have been safeguarded. No default or sacrifice (reduced payment) is expected in settling any dues of any creditor whose payable amount is acknowledged as debts in the books of audited accounts.

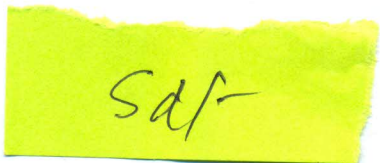
Since all claims from operational creditors have been settled, other operational creditors who have not claimed but are still acknowledged as debts in the books of accounts (as per audited accounts), would continue to be paid in the usual course of business without default. The repayment of the debts

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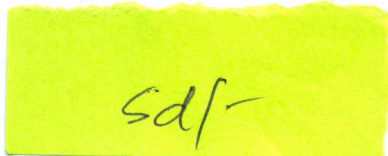
of operational creditors, in full, is not less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor.

The Committee further stated that the current management and Board of Director would continue to manage the business of the Corporate Debtor. The current management and Board of Director would implement this resolution plan within the next 12 months and continue to manage the business of the Corporate Debtor.

The Committee decided that Punjab National Bank would implement and supervise the resolution plan for the next 12 months. Punjab National Bank would be expected to monitor the progress of the Resolution Plan with the help of progress reports to be filed by the Corporate Debtor regularly. The Corporate Debtor was required to submit report which would include the Balance Sheet, Profit & Loss Account, Cash Flow Projection for the next 6 months, status of order book, list of creditors, list of significant payments over Rs. 1 lakh, changes




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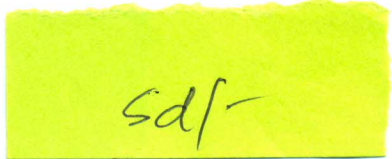
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in leasehold properties, changes in the list of present bank accounts, new finance raised, guarantees in favour of the corporate debtor, new security interest created over its assets, change in shareholding, changes in its organisation structure, changes in its capital structure, changes in its constitutional documents, appointment or changes in terms of contract of its Auditors, verification of securities statement, certificate of statutory compliances, transactions with related parties, details of material litigations, acquisition of fixed assets, any material decision taken by the Board of Directors, and other information as required by Punjab National Bank.

The Committee noted that all Insolvency Resolution Process Costs including charges of the Resolution Professional would be cleared not beyond 15.10.2017. These costs have been considered in the cash flow projection plan and will be paid in a manner specified by the Board in priority to the repayment of other debts of the Corporate Debtor.



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The Resolution Professional confirmed to the Committee that this resolution plan does not contravene any of the provisions of the Insolvency and Bankruptcy Code, 2016 for the time being in force or the order of the Hon'ble NCLAT, Delhi of 18.8.17.

The Resolution Professional certified that the contents of the resolution plan meet all the requirements of the Insolvency and Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as amended.

The Committee and the Corporate Debtor agreed that the order for approval of the Resolution Plan by the Hon'ble NCLT, Kolkata shall be binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.

Based on the information and explanations available and the order of the Hon'ble NCLAT, Delhi of 18.8.17, the Committee decided that the Resolution Plan as produced by the Promoter Resolution Applicant Mr Prakash Kumar be taken on record as

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approved under Section 30 (4) of the Insolvency and Bankruptcy Code, 2016 and it was :

'RESOLVED to approve the Resolution Plan as submitted by the Promoter Mrs Prakash Kumar without any modification in respect of the Corporate Debtor – Prowess International Private Limited.'

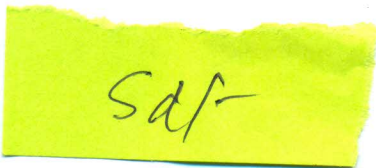
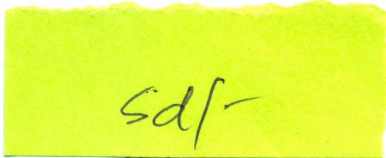
'ALSO RESOLVED to recommend to the Hon'ble NCLT, Kolkata to close the Corporate Insolvency Resolution Process in respect of the Corporate Debtor – Prowess International Private Limited.'

The Committee authorised the Resolution Professional to present the decision of the Committee before the Hon'ble NCLT, Kolkata to approve the resolution plan and also the closure of the corporate insolvency resolution process in respect of the Corporate Debtor – Prowess International Private Limited.

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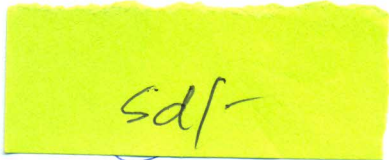
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The above Resolution Plan was considered by the Committee of Creditors and in its meeting passed a resolution to approve the Resolution Plan as submitted by Shri Prakash Kumar without any modification in respect of corporate debtor Prowess International Pvt. Ltd.. The Committee further resolved to close the corporate insolvency process in respect of corporate debtor Prowess International Pvt. Ltd. The Committee further decided that it has further stated in the resolution that the Committee decided that resolution professional to present the decisions of the Committee before NCLT Kolkata to approve the resolution plan and for the closure of the corporate insolvency process in respect of the corporate debtor – Prowess International Pvt. Ltd. On the basis of the Resolution Plan as filed by the Resolution Professional, on page 70 of the Resolution Plan it contains a certificate issued by the Financial Creditor Punjab National Bank who has certified that as per books of accounts the cash credit limit and Bank Guarantees issued on behalf of M/s Prowess International Pvt. Ltd. has been classified as a standard asset in the books of the

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bank, and there is no default in the payment of interest and other charges as on date on Cash Credit Account, and no Bank Guarantee has been invoked.

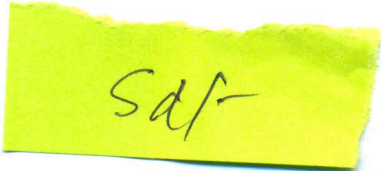

The above certificate shows that the only financial creditor who has 100% shares in the Committee of Creditors has certified that the account of Corporate Debtor M/s Prowess International Pvt. Ltd. has been classified as standard asset in the books of accounts of Bank and there is no default in payment of interest and other charges as on date. It is also on record that Operational Creditor Poonam Enterprises has even sent mail to the resolution professional who is attached with the Resolution Plan wherein it is stated that parties had settled their disputes and Corporate Debtor has agreed to pay Rs.19 lakhs to them. In fact, they have issued two post-dated cheques of equal amounts to be due on 30.9.2017 and 15.10.2017. In this mail it has also stated that the Corporate Debtor has assured that they will make sufficient balance in their accounts to honour the cheques and in the light of amicable settlement between the parties they have no objection if the

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insolvency proceedings are closed. Therefore, it is clear that Operational Creditor Poonam Enterprises has settled the matter with the corporate debtor after taking two post-dated cheques and, therefore, corporate debtors have sent mail to the Resolution Professional that he has no objection if the insolvency proceedings are closed.

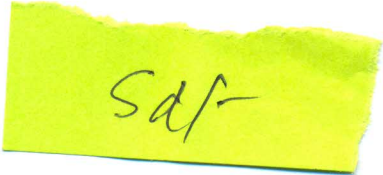
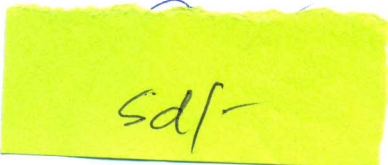
The Operational Creditor who has filed the petition has also sent mail to the corporate debtor which is annexed with the Resolution Plan at page No.71 which shows that operational creditor M/s Parker Hannifin India Pvt. Ltd. had also sent mail on 25.9.17 to the resolution professional that they want to convey that they have no objection if the corporate insolvency resolution process in respect of corporate debtor Poonam International Pvt. Ltd. is closed by the Hon'ble NCLT Kolkata Bench.

The operational creditor Poonam International Pvt. Ltd. and other operational claimants had sent mail to the resolution professional for closing the insolvency proceedings on account with the settlement with the corporate debtor Prowess International Pvt.

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Ltd.. Therefore, the only claim of financial creditor Punjab National Bank was with the resolution professional and Punjab National Bank has certified that as per books of accounts, cash credit limit and Bank Guarantee issued on behalf of the Prowess International Pvt. Ltd. has been classified as "standard" asset in the books of accounts of Bank and there is no default in payment of interest and other charges as on date and no Bank Guarantee has been invoked. Punjab National Bank's share is 100%, and he has certified that the account of corporate debtor Prowess International Pvt. Ltd. is classified as a standard asset in their books of accounts.

The Operational Creditor who has initiated this Insolvency Proceeding has also sent mail to the Corporate Debtor for closing the Insolvency Proceeding. Other operational creditors whose claim was submitted to the resolution professional, i.e. Poonam Enterprises Pvt. Ltd. has also settled the matter with the corporate debtor and accepted the post-dated cheques on account of the settlement of dues to the corporate debtor.

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