

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

**CA No. 293/2018, IA Nos. 7/2020,
62/2020, 222/2020, 225/2020 & 237/2020
In
CP (IB) No. 42/Chd/Hry/2017
(Admitted Matter)**

In the matter of:-

Corporation Bank		...Financial Creditor
	Versus	
M/s Amtek Auto Limited		...Corporate Debtor

And in the matter of CA No. 293/2018:-

Kind Special Steels (India) Pvt. Ltd.		...Applicant
	Versus	
Amtek Auto Limited		...Respondent

And in the matter of IA No. 7/2020:-

M/s Neha Associates		...Applicant
	Versus	
Mr. Dinkar T. Venkatasubramanian		...Respondent

And in the matter of IA No. 62/2020:-

Vistra ITCL (India) Limited		...Applicant
	Versus	
Mr. Dinkar T. Venkatasubramanian & Others		...Respondents

And in the matter of IA No. 222/2020:-

Corporation Bank		...Applicant
	Versus	
Mr. Dinkar T. Venkatasubramanian		...Respondent

And in the matter of IA No. 225/2020:-

Mr. Dinkar T. Venkatasubramanian		...Applicant
	Versus	
Deccan Value Investors L.P. & Ors.		...Respondents

And in the matter of IA No. 237/2020:-

Vistra ITCL (India) Pvt. Ltd.		...Applicant
	Versus	
Dinkar T. Venkatasubramanian and Others		...Respondents

Order delivered on 09.07.2020

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

Present through Video Conferencing:

- For the Resolution Professional : 1. Mr. Sumant Batra, Advocate
2. Mr. Sanjay Bhatt, Advocate
3. Ms. Niharika Sharma, Advocate
4. Mr. Dinkar T. Subramanian, Resolution Professional
- For the Committee of Creditors : 1. Ms. Misha, Advocate
2. Mr. Nitin Kaushal, Advocate
3. Mr. Siddhant Kant, Advocate
- For the Applicant in CA No. : Mr. Ish Puneet Singh, Advocate
293/2018
- For the Applicant in IA No. 7/2020 : Mr. Gursher Bhandal, Advocate
- For the Applicant in IA No. : 1. Mr. Alok Kumar, Advocate
222/2020 2. Mr. Abhayveer Sharma, Advocate
- For the Applicant-Vistra ITCL : 1. Mr. Gopal Jain, Senior Advocate
(India) Ltd. in IA No. 62/2020, 2. Ms. Anindita Roy Chowdhary, Advocate
3. Ms. Vatsala Rai, Advocate
4. Bharat Makkar, Advocate
5. Mr. Rohit Chandel, Advocate
- For the Resolution Applicant(s)- : 1. Mr. Chetan Mittal, Senior Advocate
DVI- in IA No.225/2020, IA 2. Mr. Vikram Nankani, Senior
No.62/2020 and IA No.237/2020 Advocate
3. Mr. Chanakya Keswani, Advocate
4. Mr. Himanshu Gupta, Advocate
- For the Applicant-Vistra ITCL : 1. Mr. Sudhir Makkar, Senior Advocate
(India) Ltd. in IA No. 237/2020 2. Ms. Anindita Roy Chowdhary, Advocate
3. Ms. Vatsala Rai, Advocate
4. Mr. Saurabh Gautam, Advocate
5. Mr. Rohit Chandel, Advocate

VIII. **IA No.225/2020**

1. This IA has been filed on 15.06.2020 by the Resolution Professional of the Corporate Debtor- Amtek Auto Limited, for approval of the resolution plan submitted by Deccan Value Investors L.P. and DVI PE (Mauritius) Ltd. (in short 'DVI'), under Section 30(6) read with Section 31 and Section 60(5) of the Code, read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking the following reliefs:-

- a. *Pass and order approving the DVI Final Resolution Plan dated 17.01.2020 together with DVI Plan Addendum dated 07.02.2020 of the Successful Resolution Applicant in respect of the corporate debtor under Section 31(1) and declare that the same shall be binding on the corporate debtor and its employees, members, all creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owned, guarantors and other stakeholders in the CIRP of the Corporate Debtor;*
- b. *Pass directions for grant of reliefs as sought under Section 9, Part V by the Successful Resolution Applicant in the Final Resolution Plan dated 17.01.2020 together with DVI Plan Addendum dated 07.02.2020 if deemed appropriate;*
- c. *Pass such other order/orders as it may deem fit and proper in the facts and circumstances of the case.*

2. Having heard the learned counsels for the Resolution Professional, learned counsel for the Committee of Creditors and the Resolution Applicant, we find that it would be first necessary to ascertain whether the requirements of the Code and Regulations made thereunder, have been complied with or not.

3. According to the Scheme of the Code, a Resolution Applicant is required to submit a resolution plan through the RP prepared on the basis of information memorandum. The information memorandum is a document envisaged under Section 29 of the Code and it is required to contain such relevant information

as may be specified by IBBI. Accordingly, in Regulation 36 of the CIRP Regulations, details have been provided with regard to the contents of information memorandum. On the submission of the resolution Plan, the Resolution Professional is under mandatory obligation to examine each resolution plan received by him under Section 30(2) of the Code and he is to confirm that each resolution plan provides for all items listed under Section 30(2)(a) to (f) of the Code. If the aforesaid conditions, as envisaged by Section 30(2) are fulfilled then such a resolution plan is to be presented to the Committee OF Creditors. The Committee of Creditors may then approve a resolution plan by a vote of not less than 66% of voting share of the Committee of Creditors after considering its feasibility and viability along with other requirements, as may be specified by the Board. Under Section 30(6) of the Code, the RP is obliged to submit a resolution plan as approved by the Committee of Creditors to the adjudicating authority.

4. As per the requirement of Section 29 of the Code read with Regulation 36 of the CIRP Regulations, an information memorandum prepared and a certification regarding the same was furnished by the Resolution Professional to the Committee of Creditors as well as before this Tribunal. When the resolution plan as approved by Committee of Creditors is placed before the adjudicating authority then it is to record its satisfaction as per the requirement of Section 31(1) of the Code as to whether the conditions as referred in sub-section (2) of Section 30 have been fulfilled. On its satisfaction, the Adjudicating Authority, is to approve the resolution plan which is to be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders, involved in the resolution plan. As per the proviso to

Section 31(2) of the Code, the Adjudicating Authority before passing an order for approval of the Plan, shall satisfy that the plan has provisions for its effective implementation. As per Section 31(3) of the Code, a further provision has been made that after the approval of a resolution plan the moratorium order passed under Section 14 of the Code would cease to have effect and the RP is under obligation to forward the whole record relating to the conduct of the CIRP and the resolution plan to the IBBI to be recorded in its database. The conclusion of the aforesaid discussion is that Adjudicating Authority must be satisfied that the resolution plan conforms to the requirements provided in Section 30(2) of the Code and also has provisions for its effective implementation.

5. Keeping in view the above referred mandatory requirements of Section 30(2) of the Code, and the peculiar facts of this case and the various orders passed by the Hon'ble Supreme Court in Civil Appeal No.6707/2019, we examine the resolution plan dated 17.01.2020 along with its addendum dated 07.02.2020 of the DVI and as approved by the Committee of Creditors.
6. The Resolution plan approved by the Committee of Creditors must provide for payment of insolvency resolution process cost in a manner specified by the Board in priority to the payment of other debts of the corporate debtor. With the present application i.e. IA No.225/2020, the RP has placed on record a copy of the Committee of Creditors approved resolution plan dated 17.01.2020 along with its addendum dated 07.02.2020 of the resolution applicant- Deccan Value Investors LP and DVI PE (Mauritius) Limited, filed vide Spl. Diary No.107A dated 15.06.2020. In Part 4- Financial Proposal, the resolution applicant has identified the specific sources of funds that would be

used for payment of the insolvency resolution process cost in priority to the payment of other debts of the corporate debtor.

7. The resolution plan must provide for payments 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 liquidation of the corporate debtor under Section 53 or 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 under Section 53(1) whichever is higher. The Resolution Professional in Form H, filed vide Spl. Diary No.181 dated 25.06.2020, certified that in Part 2 Clause 3.2 under the heading 'Treatment of Operational Creditors' read with Part 5 Clause 1.4 'Allocation of Funds', the resolution applicant has provided the payment to the operational creditors in terms of Section 30(2)(b) of the Code. As regards, dissenting financial creditors, it is stated in Form 'H' that the Plan provides for the payment to the financial creditors, who did not vote in favour of the resolution plan, at Clause 1.6 of Part IV of the Plan, in terms of Section 30(2) of the Code.
8. The resolution plan must provide for the management of the affairs of the corporate debtor after its approval. There is specific provision made for the management and control of the company after the approval of the resolution plan. A detailed mechanism regarding the management and control is discussed in Part 2 Clause 3.6 under the heading 'Management and Control of the Corporate Debtor'. It is stated therein that from the NCLT approval date, an implementation and monitoring committee comprising of 5 persons of

which one will be Mr. Dinkar T. Venkatasubramanian, three will be nominated by the key lenders, and one will be a nominee of the resolution applicants, to be constituted and the said committee shall continue to function until the effective date and shall stand dissolved upon acquisition of the corporate debtor by the resolution applicants.

9. Section 30(2) (d) of the Code envisages that it must provide for implementation and supervision of the resolution plan. Part 2 Clause 3.5 and 3.7 of the resolution plan provides for a detailed mechanism for effective implementation of the resolution plan.
10. Section 30(2)(e) of the Code requires that the resolution plan does not contravene any of the provisions of the law for the time being in force. In Form H filed as Annexure P-1 to the additional affidavit filed vide Spl. Diary No.181 dated 25.06.2020 submitted by the RP as per the requirement of Regulation 39(4) of the CIRP Regulations, he has certified that the resolution plan did not contravene any of the provision of the law for the time being in force and is in compliance with the provisions of the Code and the CIRP Regulations.
11. The resolution applicants confirmed that they are not disqualified under Section 29A of the Code to submit a resolution plan or under any other law applicable which further shows that the resolution plan conforms to the provisions of the law for the time being in force and did not contravene any such provision. The RP in the Form H referred above, has certified the same.
12. The Resolution Plan should conform to all such requirements which may be specified by the IBBI. A statement to this effect has been made by the RP in the Form H referred above.

13. However, before we record our satisfaction to the resolution plan, it is necessary to examine some of the issues, which were cropped up during the hearing of the IA.

Ace Complex Land:

- (a) (i) Clause 2.5.2 which is part of 'Indicative Timeline of Events for Implementation of Proposed Resolution Plan', of the Resolution Plan dated 17.01.2020 read with addendum dated 07.02.2020, at Page Nos.130 and 131 of the Resolution Plan filed vide Spl. Diary No. 107A dated 15.06.2020, reads as under:-

"Changes in 2.5 on Timeline of Events for Implementation of Resolution Plan:

Sub-section 2.5.2 shall stand replaced in the clause set out below:-

unless waived (where permissible under Applicable Law) by ~~the Resolution Applicants, the consumption and completion (including the Acquisition of the Corporate Debtor by the Resolution Applicants in terms of sub-section 5.1 and disbursement of Upfront Cash Infusion for settlement of dues of the Corporate Debtor~~ (Acquisition as a Going Concern) of this Resolution Plan and any other action set out in sub-section 5.1 and 5.2 (Acquisition as a Going Concern) of the Resolution Plan is are contingent on the following conditions having been fulfilled in a form and manner satisfactory to the Resolution Applicants ("Effective Date Conditions Precedent"):

- (a) Occurrence of ~~Final~~ NCLT Approval Date;*
- (b) Receipt of a copy of the order of the ~~relevant adjudicating authority~~ NCLT approving this Resolution Plan; and*
- (c) Execution of a long term lease (subsisting for 20 years or more) for the ACE Complex Land and Acceptable Terms."*

- (a) (ii) The definition of the relevant terms mentioned at Page 67 of the resolution plan read as under:-

"Acceptable Terms

Shall mean term relating to the lease of ACE Complex Land and shall be suitable protective terms acceptable to the

Resolution Applicants including: (i) confirmation of the validity and subsistence of the lease arrangement by way of prior written consent of Vistra ITCL (India) Limited acting as the security trustee on behalf of KKR India Financial Services Limited and L&T Finance Limited in a form and substance acceptable to the Resolution Applicants; (ii) no right of termination accruing to the lessor as long as lease rentals are paid; and (iii) right of first refusal accruing to the Resolution Applicants, in case of sale of ACE Complex Land.

ACE Complex Land Shall mean 21.11 acres of land located at village Malpura, Industrial Area, Sectyor 9/10, Dharuhera, District Rewari, Haryana.”

- (a) (iii) The Ace Complex Land referred above, which is owned by Gateway Impex Private Limited, was leased to the corporate debtor under 4 unregistered lease deeds, all dated 16.03.2016 and were expired on 31.03.2019 i.e. during the period of CIRP. The resolution plan was submitted by the DVI to the Committee of Creditors on 17.01.2020. Gateway Impex Pvt. Ltd., the owner of the ACE Complex Land executed a registered lease deed on 28.01.2020 in favour of the corporate debtor for a period of 20 years, with effect from 01.04.2019. The resolution applicant issued the addendum to the resolution plan on 07.02.2020. The Committee of Creditors approved the resolution plan dated 17.01.2020 read with addendum dated 07.02.2020 on 07.02.2020. Therefore, though Clause 2.5.2 of the Resolution Plan read with addendum makes it contingent on the “*execution of a long term lease (subsisting for 20 years or more) for the ACE complex land with applicable terms*” and the definition of ‘Acceptable Terms’ requires the prior written consent of a

third party namely, Vistra ITCL (India) Ltd. acting as a security trustee on behalf of KKR India Financial Services Limited and L&T Finance Limited, the said requirement becomes infructuous as Gateway Impex Private Limited the owner of ACE Complex Land had already executed the required lease deed for 20 years in favour of the corporate debtor even before the Committee of Creditors approved the resolution plan. Hence, we need not go into the issue that whether this adjudicating authority can compel Vistra ITCL (India) Ltd. to act in a particular manner with regard to ACE Complex land, on which it is claiming certain mortgage rights. However, it is made clear that we have not expressed any opinion on the validity or otherwise of the lease deed dated 28.01.2020.

(b) (i) **Letter of Intent (LOI) and Performance Bank Guarantee (PBG)**

In the instant case, admittedly no LOI was ever issued to the successful resolution applicant i.e. DVI and also admittedly, the successful resolution applicant-DVI submitted the part Performance Bank Guarantee only i.e. for ₹150 Crores as against the requirement of ₹300 Crores. The Resolution Professional through his affidavit bearing Spl. Diary No.247 dated 02.07.2020, while drawing our attention to Step V to Step VIII of Clause 21.1.1 of the request for resolution plan dated 13.12.2019, approved by the Committee of Creditors, stated that as per the said Clause under the RFRP, LOI was required to be issued, stating that the resolution applicant has been selected as the successful resolution applicant and accordingly, the Resolution Professional, vide his e-mail dated 11.06.2020, informed the Committee of Creditors of his

intent to file the application under Section 30(6) of the Code to comply with the order dated 08.06.2020 passed by the Hon'ble Supreme Court and called upon the Committee of Creditors to let him know by 12 noon on 12.08.2020, if the Committee of Creditors had any reservations on filing the said application without the executed LOI and submission of balance Performance Bank Guarantee, but no reply or objection to the filing of the application under Section 30(6) was received from the Committee of Creditors and accordingly, he filed the instant IA 225/2020 under Section 30(6) of the Code.

(b) (ii) The Resolution Professional vide his affidavit bearing Spl. Diary No.181 dated 25.06.2020, categorically submitted that the payment of full performance Bank Guarantee is not a condition precedent either for filing of an application under Section 30(6) of the Code or for approval of the resolution plan by the Adjudicating Authority under Section 31(1) of the Code. He further submitted that in view of the time limit of 15 days fixed by the Hon'ble Supreme Court in its order dated 08.06.2020 and keeping in view the peculiar circumstances of the case, this Adjudicating Authority may not reject/return the plan on the ground of non-issuance of LOI and non-payment of balance performance bank guarantee.

(b) (iii) The learned counsel for the Committee of Creditors while drawing our attention to Step VI of RFRP, submits that Committee of Creditors has filed IA No.48906/2020 in Civil Appeal No.6707/2019, before the Hon'ble Supreme Court, seeking approval of resolution plan on account of the special process having been undertaken under the

inherent powers of the Hon'ble Supreme Court and since the Hon'ble Supreme Court relegated the matter i.e. matter of considering approval of the resolution plan to this Tribunal and directed to dispose it of within 15 days, the issuance of the LOI and the underlying purpose thereto in terms of the RFRP became nugatory and was no more required to be followed prior to the filing of the application for approval of the plan.

(b) (iv) With regard to the submission of the Performance Bank Guarantee by the resolution applicant is concerned, the learned counsel for the Committee of Creditors, while drawing our attention to Clause 12 of the RFRP submits that the successful Resolution Applicant was bound to submit the Performance Bank Guarantee after the hearing before the Hon'ble Supreme Court and the same was not in any way linked to the issuance of the LOI in any manner whatsoever. It is further submitted that since the successful Resolution Applicant has failed to submit the balance 50% Performance Bank Guarantee, this Adjudicating Authority while approving the plan, may direct the resolution applicant to submit the same within a specific time.

(b) (v) The learned senior counsel appearing for the successful Resolution Applicant submits that issuance of LOI was a pre-condition for submission of Performance Bank Guarantee.

(b) (vi) It is further submitted by learned counsel for the Resolution Professional as well as Committee of Creditors that the approval of the plan and various clauses and conditions therein by the Committee of Creditors is well within its realm of commercial wisdom and hence, this

Adjudicating Authority, once satisfied that the plan fulfills the requirements under Section 30(2) of the Code, requires to approve the plan.

(b) (vii) A perusal of the various clauses of the RFRP and the provisions of the Code i.e. Section 31 read with Section 30(2)(f) and Regulation 36B (4A) read with 39(4) of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016, clearly mandates that after declaring a party as a successful resolution applicant, the Committee of Creditors was required to issue the LOI and that the successful Resolution Applicant was required to execute the same and is required to submit the full Performance Bank Guarantee before the Resolution Professional files an application under Section 30(6) read with Section 31(1) of the Code.

(b) (viii) However, in view of the peculiar circumstances under which the Hon'ble Supreme Court passed various orders in Civil Appeal No.6707/2019 and in various IAs filed therein, and in view of the very limited time left for filing the instant IA No.225/2020 for approval of the resolution plan, and keeping in view the interest of the corporate debtor and other stake holders and the object of the Code, instead of returning the plan to the Committee of Creditors on the ground of non-issuance of LOI by Committee of Creditors and non-furnishing of the full Performance Bank Guarantee by the Resolution Applicant, we direct the Resolution Applicant not to insist for LOI and to submit the balance

Performance Bank Guarantee within 15 days from the date of receipt of a certified copy of this order.

14. With regard to the compliance of the second proviso to Section 31(4) i.e. obtaining the approval of the Competition Commission of India, the Resolution Professional in Form 'H' stated that as the process was being conducted under strict timelines, prescribed by the Hon'ble Supreme Court, approval of the Competition Commission of India was not obtained by the Resolution Applicant before the approval of the Plan by the Committee of Creditors and the same would be required to be obtained by the Resolution Applicant in the manner as may be directed by the Adjudicating Authority.
15. With regard to the compliance under Regulation 35A, it is stated that CA No.297/2018 filed under Section 43 and 45 of the Code and IA No.67/2020, filed under Section 19 of the Code, are pending before this Adjudicating Authority and the same to be continued even after approval of the Resolution Plan.
16. Further, the resolution plan fulfils all the requirements of Regulation 38 and 39 of the CIRP Regulations. A perusal of Regulation 38 would clearly show that by virtue of mandatory contents of resolution plan as discussed in the preceding paragraphs in relation to Section 30 and Section 31 of the Code, the requirement of Regulation 38 also stands fulfilled. Even the requirement of Regulation 39 has been satisfied, as the RP has submitted that the resolution plan of Resolution applicant, as approved by the Committee of Creditors, to this Tribunal along with the compliance certificate in Form H, as per the requirements of Regulation 39(4) of the CIRP Regulations meets all

the requirements of the Code and the CIRP Regulations and that the resolution plan has been duly approved by the Committee of Creditors.

17. In view of the above, we accept and approve the Committee of Creditors approved resolution plan of Resolution Applicant-DVI.

18. In respect of the reliefs and concessions as set-forth in Section 9-Prayer of the resolution plan dated 17.01.2020 along with addendum dated 07.02.2020, it is not possible for us to issue any direction except to say that the resolution applicant may take appropriate steps in accordance with law, in respect of the said reliefs and concessions. It is needless to say that the public authorities/government authorities/any other party would duly consider the requests/applications of the resolution applicant in accordance with law. We make it clear that we are not expressing any opinion on the claim concerning reliefs and concessions nor any part of this order shall be understood in that spirit. Moreover, these reliefs and concessions/prayers are also not condition precedent for the acceptance of resolution plan. It would not be any impediment for us to accept the resolution plan.

19. As sequel to the above, we pass the following orders:-

- a. The Resolution Plan, as approved by the Committee of Creditors and submitted by Deccan Value Investors LP and DVI PE Mauritius Limited- Resolution Applicants, is approved and the same is binding on the Corporate Debtor and its employees, members, creditors, including

the Central Government, any State Government or any Local Authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and the other stakeholders involved in the Resolution Plan.

- b. The Resolution Applicant shall furnish the balance Performance Bank Guarantee within 15 days from the date of receipt of a certified copy of this order.
- c. The Resolution Applicant shall submit the application seeking approval of the Competition Commission of India within 15 days from the date of receipt of certified copy of this order and the same shall be considered in accordance with the law.
- d. The moratorium order passed by the adjudicating authority under Section 14 shall cease to have effect.
- e. The RP shall forward all records relating to the CIRP and the resolution plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code.
- f. Accordingly, CA No.225/2020, is disposed of.