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IN THE NATIONAL COMPANY LAW TRIBUNAL

BENCH III  
NEW DELHI

CA.16/C-III/ND/2019

And

CA.358/C-III/ND/2019

In

CP.No.(IB)29(ND) of 2018

Application on behalf of the Resolution Applicant under  
Section 60(5) of the Insolvency and Bankruptcy Code,2016  
for wrongful rejection of its resolution plan .

IN THE MATTER OF:

Woolways (India) Limited  
Through Resolution Professional  
Sajeve Bhushan Deora,  
606, New Delhi House,  
27, Barakhamba Road,  
New Delhi-110001.

....Applicant/ Resolution Professional

Vs.

Standard Chartered Bank,  
DLF Building No.7,  
Tower A, Sector 24,25,25A,  
DLF Cyber City,  
Gurgaon-122002.

State Bank of India  
Stressed Asset Management Branch,  
Zonal Office Building,  
Ground Floor,  
Fountain Chowk,Civil Lines,  
Ludhiana.

Deutsche Bank,  
ECE House,  
28 KG Marg,

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Standard Chartered Bank vs. Woolways (India) Limited

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New Delhi-110001.

Magma Fincorp Limited,  
F-4, 1<sup>st</sup> Floor,  
Okhla Industrial Area, Phase-I,  
New Delhi-110020

.....Committee of Creditors/Respondents

**CORAM:**

**R.VARADHARAJAN,**  
Hon'ble Member (Judicial)

**K.K.Vohra**  
Hon'ble Member(Technical)

For Applicant/ Corporate Debtor: Mr.Shubham Bhalla, Ms.  
Poonam Rai, Mr. Yajur  
Bhalla Advocates

For Resolution professional: Mr. Sajeve Bhushan Deora

**ORDER DELIVERED ON: 23.09.2019**

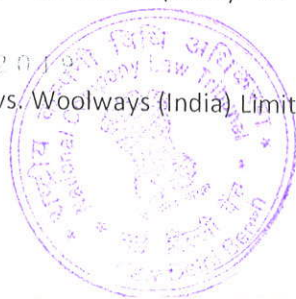
## **ORDER**

This Application in C.A.No.16/2019 has been moved by the Resolution Professional (RP) of the Corporate Debtor (CD) seeking for the liquidation of the CD. The brief facts as averred in the Application are to the following effect.

- (i) Corporate Insolvency Resolution Process (CIRP) based on the Petition moved by the Standard Chartered Bank (SCB) in the capacity as the Financial Creditor (FC)

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*(Handwritten signature)*

was admitted by this Tribunal on 10.5.2018 and the IRP namely, the present RP was appointed and the Petition was admitted. Subsequently, the RP was also confirmed by the Committee of Creditors (CoC) in its meeting held on 8.6.2018. Thereafter, the IRP/RP had caused to publish public announcement to be made in terms of Insolvency and Bankruptcy Code, 2016 (IBC,2016) read with attendant regulations which was published in the newspapers Pioneer, New Delhi both Hindi and English editions on 13.05.2018, in Rozana Spokesman (Ludhiana edition in Punjabi) on 14.05.2018, in The Economic Times (Chandigarh edition) on 15.05.2018 and in Jagbani (Jalandhar edition) again on 15.05.2018 inviting the claims from the creditors of the CD to be submitted by 24.05.2018.

- (ii) Pursuant to the publication, claims seems to have been received from State Bank of India, SCB, Deutsche Bank and Magma Fincorp Limited in the capacity of FCs. The CoC was constituted with the Petitioner in the main CP and SBI which it is stated was also reported to this Tribunal by IRP on 1.6.2018. Subsequently, Deutsche Bank was also included and thereafter Magma Fincorp Limited and the Financial Creditors with their voting share/percentage as on the date of the filing of this Application stood as follows:

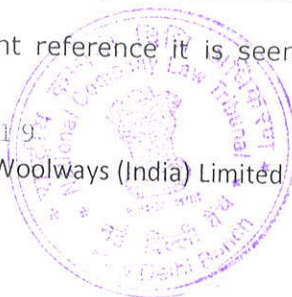


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Name of the FC	Voting Percentage
SBI	56.97
SCB	41.83
Deutsche Bank	0.67
Magma Fincorp Ltd.	0.53

- (iii) The First meeting of the CoC was held on 8.6.2018 which was attended by FCs and some of the Directors of the CD whose powers stood suspended in view of the initiation of the CIRP against the CD.
- (iv) It is stated in the application that during the pendency of the CIRP that 15 reports in all have been filed by the IRP/RP bringing to the notice of this Tribunal about the happenings in relation to the CIRP. For the sake of brevity, the said details are not repeated apart from stating that the first report seems to have been filed on 1.6.2018 and the last of the reports namely, 15<sup>th</sup> report as per the Application filed on 24.12.2018 along with this Application itself seeking for the liquidation of the CD.
- (v) In paragraph 8 of the Application the significant matters which arose during the CIRP period attended as well as issues which have been discovered have been stated and from the said paragraph it will be seen that the production in the factory of the CD had come to a stand still during the first week of September, 2018. A consistent reference it is seen has also been made in

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relation to the non cooperation of the CD in the CIRP process by the persons in the management or the personnel of the CD who were not even forth coming to deal with store owners operations of the CD and the store owners being answerable to the CD were making irrational demands. Further, since the stores were being operated at a loss and that there have been instances of missing goods in the case of stores and with a view to save the cost during the CIRP, the RP was forced to vacate these premises.

- (vi) It is also highlighted in the Application that a sum of Rs.50.87 crores is outstanding, which is required to be received by the CD from overseas debtors after giving rebates, discounts recognized to the extent of Rs.10.33 crores and the said rebates, discounts seem to have been made unilaterally as no documents/ record were produced by the CD. No concerted efforts seem to have also been made to recover the outstanding amounts due to the CD. Further, in the Application it is also brought to the notice of this Tribunal that a sum of Rs.84.95 lakhs is outstanding to be received for a long time from shareholders of the CD as calls-in-arrears. Despite repeated enquiries in relation to these calls-in-arrears and the details of the shareholders were not provided by the Board of the CD. The Application also highlights that the equity shares of the CD were listed in Bombay Stock Exchange (BSE). However, the shares of the company seem to have

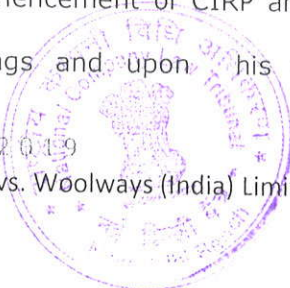


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been delisted by BSE vide notice dated 9.5.2018 in view of the CD having been non-complaint in the matters of filings with BSE presumably, a deliberate action on the part of the CD. However, it is also stated by RP in the Application that an appeal has been filed before the Securities Appellate Tribunal (SAT).

(vii) In view of the resignation of the Statutory Auditors of the Company namely, Mr.S.Gaur & Associates, Chartered Accountants, the CoC had appointed Datta Singla & Co., Chartered Accountants to audit the books of account for the financial year ended March 31, 2018. However, due to incomplete books of account of the CD which are available for the year ended 31.03.2017, statutory audit for the financial year ended March 31, 2018 could not be completed and despite seeking for information from MD of the CD one Mr. Rakesh Nayar (Powers Suspended), the information was not provided or otherwise provided only in a piecemeal/incomplete manner and in the circumstances a default has been committed on the part of the CD in relation to non-compliance in filing of tax return as well as in relation to filing of annual accounts and annual returns with the RoC.

(viii) The Forensic Auditor was duly appointed in the 5<sup>th</sup> CoC meeting held on 12.10.2018 with a view to go through the transactions in a period of two years prior to commencement of CIRP and based on the preliminary findings and upon his discussions with CoC on



29.10.2018, the scope of the forensic audit was enlarged from 1.4.2014 to 1.4.2018. Advance intimation of the visit of forensic auditor was given to the Management of CD including Mr. Rakesh Nayar, MD(Powers Suspended) who did not meet the forensic auditors during their stay in Ludhiana apart for a chance meeting in the branch office of the Bank of the CD. Despite repeated requests since there has been no cooperation on the part of the said individual namely, Mr. Rakesh Nayar, MD(Powers Suspended), there is a cause for suspicion about his activities vis-à-vis the CD. The discussions as took place in the CoC meeting in relation to various financial omissions and commissions have been detailed at page No.22 of the Application more particularly at paragraph Nos. 18(a) and 18(b).

(ix) Form G inviting Expression of Interest (EoI) stated to have been published on 10.07.2018 in the Pioneer(in Hindi and English), New Delhi editions, Rozana Spokesman (in Punjabi in vernacular)Ludhiana edition, The Economic Times(in English) Chandigarh edition and in Jagbani (in Punjabi), Jalandhar edition.

(x) In relation to statutory records including minutes of the Board of Directors and shareholders, it was represented by Mr. Rakesh Nayar, MD(Powers Suspended) that the same have been lost during transportation in the year 2014 itself and that thereafter no records have been maintained by the CD. However, contrary to the above facts, it is seen that the Practicing Company Secretary

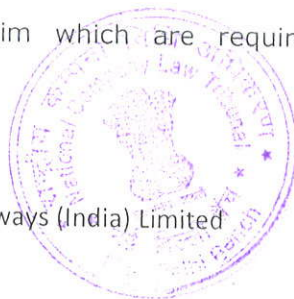
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of the CD has filed a certificate on 24.12.2017 prior to the initiation of the CIRP of the CD that all the registration and records are as per Companies Act, 2013 and are regularly updated, which it is pointed out is contrary to the statement made by Mr. Rakesh Nayar, MD(Powers Suspended).

(xi) The Application also brings to the notice of this Tribunal in relation to the immovable property owned by the CD and the action taken in relation to the demarcation of the property by the concerned Tehsildar. It is also pointed out by the RP in the Application that certain amounts are recoverable from the Customs and Excise Department in view of the orders passed and appeal filed by the CD with Central Excise and Service Tax Appellate Tribunal.

(xii) It is stressed once again by the RP that the cooperation in relation to the matters listed in paragraph 23 of the Application was not extended by the Board of Directors of the CD through Mr. Rakesh Nayar, MD(Powers Suspended).

(xiii) RP also brings out the claims which have been admitted during the CIRP period, including period of extension of 45 days and from the Application it is evident that as against the FCs, a sum of Rs.48,46,52,620/- has been admitted as the claim amount and in relation to Operational Creditors (OCs), a sum of Rs.2,02,83,036/- and the claim which are required as such to be



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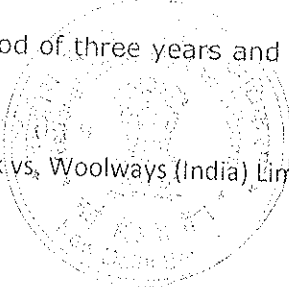
admitted has also been quantified to the following extent:

FCs: Rs.1,73,16,711.00

OCs: Rs.14,55,14,043.74

The break-up of the same is stated to have been given in Annexure-25 and Annexure-26 of the Application. The list of applications which are pending for consideration before this Tribunal on the date of filing of this Application namely, 24.12.2018, is also tabulated at paragraph No.26 of the Application as well as other applications pending before this Tribunal subsequent to the tabulation in the same paragraph.

- (xiv) The efforts made by the RP for achieving a resolution plan for resolving the Insolvency of the CD have also been detailed in paragraph No.27 of the Application. Even though EoIs were received pursuant to the invitation of EoI in Form G by the RP which were dated 10.7.2018 including the one from Mr. Rakesh Nayar, MD (Powers Suspended) who was directed to comply with the essential conditions and to provide statement of financial position of each of the parties/investors. The said Mr. Rakesh Nayar, MD(Powers Suspended) had proposed vide e-mail dated 27.10.2018 a resolution amount of Rs.484 lakhs to be paid over a period of three years and on without interest basis. The



funds required shall be raised from business associates and friends, relatives, the sale of collateral security held by the lenders/FCs. The Members of the CoC in the meeting held on 29.10.2018 felt that the resolution amount offered, as compared to the value of assets belonging to the guarantors and held as collateral security was less than the value which could be realized from the sale of such securities and that the period of 3 years for payment of the resolution amount was too long and in the circumstances sought from the said Mr. Rakesh Nayar, MD (Powers Suspended) as to whether the resolution amount could be improved further as and whether time sought for in relation to payment as contemplated in the Resolution Plan to the FCs could be reduced. However, the same was answered in negative by the said Mr. Rakesh Nayar, MD (Powers Suspended). Since no acceptable resolution plan had been received, the Members of the CoC took a call for extension of the CIRP beyond 180 days from 6.11.2018. In the meanwhile on 30.10.2018, Mr. Rakesh Nayar, MD(Powers Suspended) had sought for reconsideration of the proposals as given by him in relation to upward revision in the proposal.

(xv) In the meanwhile, one STPL had expressed its interest in submitting a resolution plan and that the RP had informed the said STPL that the last date for submission of resolution plan had expired and any



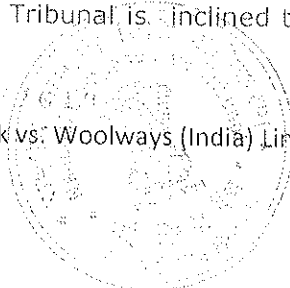
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resolution plan to be submitted by STPL shall be subject to consideration and approval of the CoC.

(xvi) In the meanwhile, the said Mr. Rakesh Nayar, MD(Powers Suspended) had also sought extension of time for the submission of the resolution plan taking into consideration of the above extension of the CIRP period for another 45 days was considered to be adequate and since it was resolved by 99.71% of the voting by Members of the CoC. The extension of 45 days was also sought for in accordance with Section 12(2) of IBC, 2016.

(xvii) In the meanwhile, resolution plan was also received from STPL who had initially expressed interest in submitting the resolution plan and after repeated queries from the said resolution applicant as well as on the part of CoC being exchanged, the final resolution plan submitted by STPL was placed for e-voting by the RP to the CoC from 19.12.2018 to 20.12.2018. However, Members of the CoC declined to approve the final resolution plan as had been submitted by STPL even though a further revision of the resolution plan came about after expiry of 225 days from commencement of the CIRP from STPL and after conclusion of the e-voting, the same was not taken into consideration by the CoC,

(xviii) At the conclusion of the Application, Ld. RP has also expressed his consent to act as the Liquidator in case if this Tribunal is inclined to pass an order of liquidation



of the CD and the consent of the said RP is attached as Annexure 37.

(xix) Subsequent to the filing of the above Application seeking for liquidation from 24.12.2018, an Application has been moved in CA.358/C-III/ND/2019 by the said Shivani Trendz Private Limited (STPL) aggrieved by the rejection of 4<sup>th</sup> resolution plan submitted on 18.12.2018 by the CoC. The preliminary challenge in the above Application seems to be the procedural lapses on the part of RP in placing the 4<sup>th</sup> resolution plan as submitted by STPL before the CoC for its consideration and in relation to the same making certain personal allegations against the RP.

(xx) A reply has also been filed by the RP wherein it is stated that the resolution plan as placed by the Applicant in C.A.No.358/2019 in fact was discussed at the meeting of the CoC held on 18.12.2018 and the same was taken up for e-voting on 19.12.2018 to 20.12.2018 and the same was not approved by 100% voting strength of the Members of the CoC. Prior to the consideration on 18.12.2018 of the resolution plan submitted by STPL is also elaborated and for the sake of brevity, the same is not repeated as the proposal made from time to time by STPL was considered by the CoC in the earlier meetings as well, details of which have also been given in the earlier portion of this order.





- (xxi) RP seems to rely on the decision of Hon'ble Supreme Court, as rendered in the case of K.Sashidhar vs. Indian Overseas Bank & Ors. (Civil Appeal No.10673 of 2018) that the commercial or business decision of the Financial Creditors taken collectively cannot be challenged. It is also highlighted by RP that what was required of him as the RP including placing the resolution plan upon scrutiny before the CoC has been done by him and in the circumstances, there cannot be any grievance on the part of Applicant in CA.358/C-III/ND/2019 to the resolution plan rejected by CoC, in relation to his conduct.
- (xxii) A rejoinder to the reply has also been filed by the Applicant to CA.358/C-III/ND/2019 and finally it has been sought by the Applicant that the Application filed in CA.358/C-III/ND/2019 is required to be allowed.
- (xxiii) The Application for liquidation as filed by RP on the one hand and the Application as filed by failed resolution plan in CA.358/C-III/ND/2019 have been considered by this Tribunal and the submissions of the respective parties were heard in this regard. As rightly pointed out by Ld. RP who was present in person and made his submissions, in the matter of K.Sashidhar vs. Indian Overseas Bank & Ors. (Civil Appeal No.10673 of 2018) where it has been categorically held that any resolution is required to meet the prescribed voting strength of the Members of the CoC be it 75% earlier or subsequently that is presently of 66%.

(xxiv) From the records as made available before this Tribunal, it is clearly seen that the resolution plan which has been placed for e-voting by RP before the CoC in the window between 19.12.2018 and 20.12.2018 is nowhere close to the prescribed percentage of 66% for approval of the resolution plan. On the other hand the resolution plan as filed in CA.358/C-III/ND/2019 had been rejected by overwhelming majority of more than 99%. Taking into consideration the commercial aspects and viability of the resolution plan and in the circumstances, we are not in a position to interfere with the process as prescribed under the provisions of IBC,2016 and the decisions of the CoC taken on the basis of commercial considerations and interest since the period for the completion of the RP has already expired and the resolution plan as submitted by the resolution Applicant also stands rejected, the Application as filed by the RP seeking for the liquidation of the CD in CA.16/C-III/ND/2019 stands allowed and CA.358/C-III/ND/2019 stands dismissed however without cost.

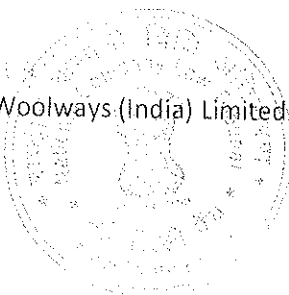
(xxv) Taking into consideration the consent expressed by the RP Shri Sajeve Bhushan Deora to act as the Liquidator in relation to the liquidation process of the CD, which was also confirmed during the course of oral submissions, Shri Sajeve Bhushan Deora is appointed as the Liquidator of the CD to carry forward the process of liquidation of the CD to its logical finality. All the



Applications as filed by the RP based on the investigation done by him inter alia under Sections 43,45,60 and 66 as the case may be shall survive and thereby continue to be prosecuted by the Liquidator appointed by this Tribunal. As a consequence of the order of liquidation the following directions are also issued:

Shri Sajeve Bhushan Deora is hereby appointed as the Liquidator in view of his consent having been furnished to act as such to carry forward the liquidation of the CD henceforth. The Liquidator appointed shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as enjoined upon him.

- a. The Liquidator appointed herein shall issue the public announcement that the CD is in liquidation. In relation to officers/employees and workers of the CD, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
- b. The Liquidator shall investigate the financial affairs of the CD particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences.
- c. The registry is directed to communicate this order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In



relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation

- e. The order of Moratorium passed under Section 14 of the IBC, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the IBC, 2016 shall commence;
- f. The liquidator is directed to proceed with the process of liquidation in a manner laid down in chapter III of Part II of the Insolvency and Bankruptcy Code, 2016
- g. The liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and prosecute or file its response for disposal of any pending Company Applications during the process of liquidation.
- h. The liquidator shall submit a Preliminary report to this Tribunal within seventy-five days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- i. Copy of this order be furnished to the Members of CoC by the Liquidator.
- j. The above application is disposed of in the aforesaid terms.

sd-  
(K.K.VOHRA)  
MEMBER(Technical)

U.D.Mehta  
23.09.2019



sd-  
(R.VARADHARAJAN)  
MEMBER(Judicial)

23/09/2019  
सहायक पंजीयक  
ASSISTANT REGISTRAR  
राष्ट्रीय कम्पनी विधि अधिकरण  
NATIONAL COMPANY LAW TRIBUNAL  
C.G.O. COMPLEX, NEW DELHI-110003

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Standard Chartered Bank vs. Woolways (India) Limited