

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA 240 of 2020 in IA 352 of 2019 C.P.(I.B) No. 162/NCLT/AHM/2018

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 22.07.2020**

Name of the Company: Fitcast Founders & Engineers Pvt Ltd
V/s
Shri Rajat Mukherjee RP For Shaifali Rolls
Ltd & Ors

Section : Section 60(5) IB Code, 2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.


2.

ORDER
(Through Video Conferencing)

Ms. Natasha D. Shah, Learned Lawyer, appeared on behalf of the Applicant.

Mr. Raju Kothari, Learned Lawyer, appeared on behalf of Respondents 2(a), (b),(c), (e), (f) and (g).

The order is pronounced in the open court, vide separate sheet.


MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 22nd day of July, 2020

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**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

**IA 240 of 2020
In IA 352/2019 in
C.P.(IB) No. 162/NCLT/AHM/2018**

In the matter of:

M/s Fincast Founders and Engineers Pvt. Ltd.,
Consortium Resolution Applicant of Shaifali Rolls Ltd.,
Plot No. 314, Vatva GIDC Estate,
Vatva, Ahmedabad-382445

Applicant

Versus

1. Shri Rajat Mukherjee,
Resolution Professional of Shaifali Rolls Ltd.,
HO-302, Daga Complex-II,
103/5, B.K. Street, Uttarpara,
Hooghly, West Bengal.
Branch Office at- 1:708, Scarlet Gateway,
Ahmedabad-380015
Branch Office-2: Office No. 30, 2nd Floor,
Lawyer Chamber, Picket Road,
Marine Lines, Mumbai-400002
2. Members of Committee of Creditors,
 - a. Invent ARC Pvt. Ltd.,
Trust: Invent/1516/S31,
107, Jolly Market, Chamber No. 2,
225, Nariman Point, Mumbai-400021
 - b. Bank of India,
ARM Branch,
6th Floor, BOI Building,
Bhadra, Ahmedabad.
 - c. Corporation bank,
Corporate Banking Branch,
1st Floor, Rangoli Complex,
Opp. V.S. Hospital, Ashram Road,
Ahmedabad, Gujarat.
 - d. Edleweiss Asset Reconstruction Company Ltd.
Edleweiss Asset Reconstruction in its capacity of
EARC Trust, SC 35,
Edelweiss House, Off. CST Road,
Kalina, Mumbai-400098

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- e. Invent ARC Pvt. Ltd.
Trust: Invent/1516/S58,
107, Jolly Market, Chamber No. 2,
225, Nariman Point, Mumbai-400021
- f. Omkara Asset Reconstruction Pvt. Ltd.
C/515, Kanakia Zillon,
Junction of LBS Road and CST Road,
BKC Annexe, Near Equinox,
Kurla (West), Mumbai-400070
- g. Invent ARC Pvt. Ltd.,
Trust: Invent/1515/S61,
107, Jolly Market, Chamber No.2,
225, Nariman Point, Mumbai-400021
- h. Union Bank of India,
Ashram Road Branch,
C.U. Shah Chamber,
Near Gujarat Vidhyapeeth,
Ashram Road, Ahmedabad-380014.
3. Omkara Asset Reconstruction Pvt. Ltd.
Consortium Resolution Applicant of Shaifali Rolls Ltd.,
9, M.P. Nagar, First Street,
Kongu Nagar Extension, Tirpur,
Coimbatore, Tamil Nadu-641607 : Respondents

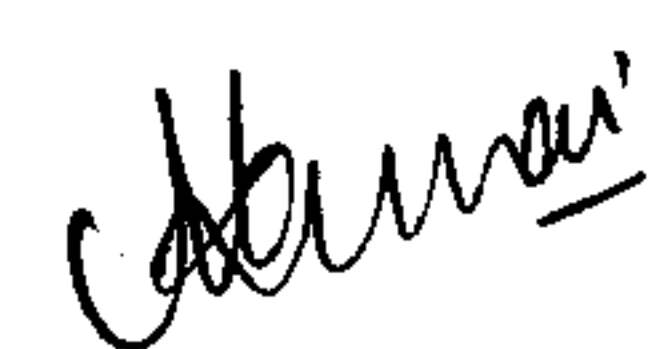
Order delivered on 22nd July, 2020

Appearance: Advocate, Ms. Natasha Dhruman Shah for the Applicant.
Advocate, Mr. Vishal Dave with Advocate, Mr. Nipun Singhvi for the erstwhile
RP. Advocate, Mr. Harmish K Shah for the Respondent No. 3. Advocate, Mr.
Raju Kothari with Advocate Mr. Anip Gandhi for the Respondent No. 2 (a), (b),
(c), (e), (f), (g).

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

ORDER

- 1) The instant application is filed under section 60 (5) of the IB Code r.w.
Rule 11 of the NCLT Rules, 2016 seeking appropriate direction in
Resolution Plan dated 25.05.2019, with following prayer:



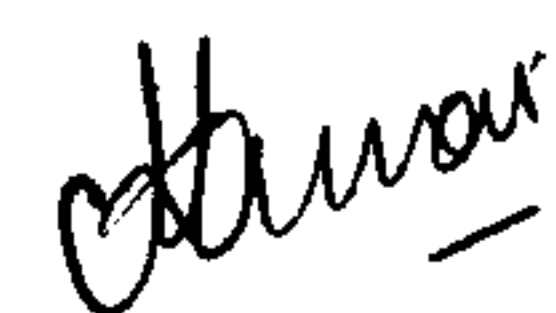
- a. to enable the applicant to comply with the implementation of the Resolution Plan approved by this Hon'ble Adjudicating Authority vide order dated 20.11.2019 passed in I.A. No. 352/2019 in C.P. (I.B.) No. 162/NCLT/AHM/2018.*
- b. to relax the schedule timeline for the payment.*
- c. and also to exclude the period of lockdown to conclude the Resolution Plan, apart from other prayers*

- 2) The fact of the case is that the Respondent No. 3 in Consortium submitted a Resolution Plan for the revival of the Corporate Debtor, which said plan was approved on 20.11.2019 in IA 352/2019 by this Adjudicating Authority and the Resolution Applicant is required to comply with monthly activities and has to submit cash flow statement and stock audit to the Monitoring Committee duly appointed by this Adjudicating Authority.
- 3) That, till February, 2020, the Resolution Applicant has duly submitted Audit Reports and Cash Flow Statement to Monitoring Committee. Pending full implementation of the approved Resolution Plan, meanwhile, Government of India declared nationwide lockdown from 25.03.2020 due to spread of Novel Corona Virus-19, which is time to time extended till 31.05.2020 vide various executive order (s).
- 4) That, due to such sudden lockdown Company had to close its operations for the safety of its workers. Consequent upon which, total work got delayed, however, the Applicant as on 30.04.2020 already made payment of Rs. 6,77,84,150/- and the same has been certified by Chartered Accountant (Copy annexed as Annexure-G Colly). As per Resolution

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Plan the Applicant is required to pay Rs. 2,25,00,000/- lakh to Financial Creditor by T+180 days i.e. 20.05.2020 from the date of approval.

- 5) The Applicant further submitted that there was/is lockdown, however, the Applicant is paying all fixed wages, such as, salary to workers, payments of contractors, security etc. apart from power bill, caused adverse impact on Cash Flow, as there is no definite cash flow due to lockdown.
- 6) That, Applicant on number of occasion, by way of E-mail on 01.04.2020, 22.04.2020 and 04.05.2020, informed the Respondent about the difficulties faced by the Resolution Applicant in fulfilling its compliances as per Resolution Plan, so approved by the Adjudicating Authority, due to lockdown. The Applicant also requested the Chairman of Monitoring Committee for relaxation in execution of Resolution Plan by way of proposed letter dated 16.05.2020 considering the prevailing situation of COVID-19 and its consequential effects. The Applicant circulated the letter dated 18.05.2020 among the Members of COC and for calling of meeting on 19.05.2020, however, the said meeting is cancelled.
- 7) That, the Resolution Applicant vide its proposal letter dated 16.05.2020 proposed the following grounds for relaxation in view of the pandemic COVID-19, which is as follows:
 - a. The Resolution Applicant has to comply with certain timelines by 20.05.2020. Considering the lockdown and suspension of business from 24.03.2020 till the opening of lockdown in the State till it achieves normalcy, the Resolution Applicant requests to revise the



timelines for Four months from the date of opening of lockdown
i.e. T+Four Months where T is the opening of Lockdown.

- b. The Resolution Applicant has to discharge certain statutory liabilities by 20.05.2020. The Applicant has already implemented the process but considering the present situation, the response of the statutory authority at present is very limited/restricted and will take considerable time to resume its normalcy and thus, requesting from extension of timelines for Four Months from the date of opening of lockdown in the State of Gujarat.
- c. As per Resolution Plan, the Resolution Applicant is required to make payment of Rs. 225 lakhs to Financial Creditors by T+180 days i.e. by 20.05.2020. Thus, considering the current situation, Resolution Applicant is proposing revised timeline as under:

Payment Schedule	Timelines
First Tranche of Rs. 10 Lakhs	Within 7 days from approval of the revised proposal by Hon'ble National Company Law Tribunal, Ahmedabad Bench.
Second Tranche of Rs. 20 Lakhs	Within 30 days from approval of the revised proposal by Hon'ble National Company Law Tribunal, Ahmedabad Bench.
Third Tranche of Rs. 20 Lakhs	Within 60 days from approval of the revised proposal by Hon'ble National Company law Tribunal, Ahmedabad Bench.
Fourth Tranche of Rs. 175 lakhs	Within 120 days from approval of the revised proposal by Hon'ble National Company Law Tribunal, Ahmedabad Bench.

- d. The Resolution Applicant further request to increase the overall timelines for completion of entire Resolution Plan by Four Months i.e. Extension of Time from 20.11.2020 to 20.03.2021.



e. The Resolution Applicant further request to exclude nationwide lockdown period from the timelines of Resolution Plan caused due to COVID-19 which started from 24.03.2020 and extension till operations reach normalcy which shall be not less than 4 months for the proper and beneficial resolution of the Company.

8) The Invent Assets Securitization and Reconstruction Pvt. Ltd. i.e. Respondent No. 2(a), € and (g) (Lead Bank) and on behalf of Financial Creditors, Shaifali Rolls Ltd. filed affidavit in reply on 07.07.2020 executed on 23.06.2020.

On perusal of the affidavit in reply so filed by Invent Assets Securitization and Reconstruction Pvt. Ltd., it is found that Minutes of Meeting of stakeholder (Page-176) held on 15.06.2020, all the concerned parties made a deliberation and arrived into consensus unanimously and mutually agreed as under:

“After having detailed discussions, deliberations and rigorous negotiations, majority of the Financial Creditors (erstwhile members of Committee of Creditors in Shaifali Rolls Ltd.) and the Successful Resolution Applicant (RA) arrived at consensus and unanimously agreed on the following points:

1. Considering the unprecedented impact of COVID-19, it was unanimously decided that Fixed Deposit to the tune of Rs. 2.55 crores being part of Performance Commitment should be utilised as follows, subject to the approval of National Company Law Tribunal:

- a. Rs. 1.75 crores should be distributed among the Financial Creditors as proposed in the Resolution Plan.*
- b. Rs. 0.80 crores should be kept aside towards payment to be made to Operational Creditors as per the approved Resolution Plan.*

The Financial Creditors (erstwhile COC members of Shaifali Rolls Ltd.) unanimously agreed to accept the payment of Rs. 2.25 crores within a period of 4 months from June 12, 2020 along with interest charged @ 5% on the delayed period. Resolution Applicant shall clear the dues by October 12, 2020 and payments shall be released to the stakeholders after the approval from NCLT.



In view of the above and also due to additional payments payable by RA towards GST dues and Electricity dues, RA proposed to consider the following payment schedule:-

- i. Amount of Rs. 10 Lacs to be paid within 7 days of approval by NCLT*
- ii. Amount of Rs. 20 Lacs to be paid within 30 days of approval by NCLT*
- iii. Amount of Rs. 20 Lacs to be paid within 60 days of approval by NCLT*
- iv. Amount of Rs. 175 Lacs to be paid within 120 days from June 12, 2020 i.e. on or before October 12, 2020.*

The Financial Creditors agreed to the above timelines.

The Financial Creditors (erstwhile COC members of Shaifali Rolls Ltd.) and successful Resolution Applicant unanimously agreed to extend the payment of last instalment for a period of 4 months from the scheduled date i.e. November 20, 2020 (4 months' period ending on March 20, 2021), along with interest @ 10% for the delayed period effective from November 20, 2020."(sic)

Thus, when none of the parties are aggrieved and/or prejudice, as such, there is/are no impediment in allowing the instant application.

- 9) Further, the RBI in vogue of the current pandemic COVID-19 Virus, announced "Developmental and Regulatory Policy" in the public interest. The Reserve Bank of India (RBI) announced an extension of the moratorium on loan EMIs by three months, i.e. August 31, 2020 vide statement on Developmental and Regulatory Policies which sets out various developmental and regulatory policy measures to improve the functioning of markets and market participants; measures to support exports and imports; efforts to further ease financial stress caused by Covid-19 disruptions by providing relief on debt servicing and improving access to working capital; and steps to ease financial constraints faced by State Governments.

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- a. *As per the Statement on Developmental and Regulatory Policy of the Central Bank, "On March 27, 2020, the RBI permitted all Commercial Banks (including Regional Rural Banks, small finance banks and Local Area Banks), Co-operative Banks, all-India Financial Institutions, and NBFCs (including housing finance companies and microfinance institutions) (referred to hereafter as "lending institutions") to allow a moratorium of three months on payment of instalments in respect of all term loans outstanding as on March 1, 2020. In view of the extension of the lockdown and continuing disruptions on account of COVID-19, it has been decided to permit lending institutions to extend the moratorium on term loan instalments by another three months, i.e., from June 1, 2020 to August 31, 2020. Accordingly, the repayment schedule and all subsequent due dates, as also the tenor for such loans, may be shifted across the board by another three months."*
- b. *The RBI has further clarified that such treatment will not lead to changes in the terms and conditions of the loan agreements which is same as announced in the previous moratorium period.*
- c. *As per the policy statement, "As the moratorium/deferment is being provided specifically to enable borrowers to tide over COVID-19 disruptions, the same will not be treated as changes in terms and conditions of loan agreements due to financial difficulty of the borrowers and, consequently, will not result in asset classification downgrade. As earlier, the rescheduling of payments on account of the moratorium/deferment will not qualify as a default for the purposes of supervisory reporting and reporting to credit information companies (CICs) by the lending institutions. CICs shall ensure that the actions taken by lending institutions in pursuance of the announcements made today do not adversely impact the credit history of the borrowers. In respect of all accounts for which lending institutions decide to grant moratorium/deferment, and which were standard as on March 1, 2020, the 90-day NPA norm shall also exclude the extended moratorium/deferment period. Consequently, there would be an asset classification standstill for all such accounts during the 5 moratorium/deferment period from March 1, 2020 to August 31, 2020. Thereafter, the normal ageing norms shall apply. NBFCs, which are required to comply with Indian Accounting Standards (IndAS), may follow the guidelines duly approved by their Boards and advisories of the Institute of Chartered Accountants of India (ICAI) in recognition of impairments. Thus, NBFCs have flexibility under the prescribed accounting standards to consider such relief to their borrowers."*



- 10) Under the facts and circumstances as narrated hereinabove in sequel and also in view of RBI Guidelines, the application so filed for relaxation of time frame of payment as well as completion of Resolution Plan as per meeting dated 15.06.2020 deserves to be allowed and said consensus shall be binding to all concerned parties as they have agreed for such proposal of the Resolution Applicant on 15.06.2020 and this order shall form the part of the Resolution Plan approved on 20.11.2019 in IA 325/2019 and shall have immediate effect.
- 11) Accordingly, the instant application is disposed off with the above observations.



Ms. Manorama Kumari
Member (Judicial)

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