

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 1283/I&BP/NCLT/MAH/2017

MA No. 1352 of 2018

Under **Section 30(6)** of the IBC,
2016

Mr. Sundaresh Bhat
Resolution Professional

... Applicant

And

In the matter of
Axis Bank Limited

... Financial Creditor

v/s

BSR Diagnostic Limited

... Corporate Debtor

Order Dated 22.01.2019

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Applicant: Mr. Sidhartha Srivastava, Advocate a/w Ms.
Nisha Kaba, Advocate a/w Ms. Nidhi Pathania,
Advocate i/b Link Legal India Law Services.
Mr. Sundaresh Bhat, Resolution Professional

For the Respondent: Ms. Divya Dimple B, Advocate i/b AKR Advisors
LLP
Mr. Ashish Pyasi, Advocate a/w Mr. Umang
Thakar, Advocate i/b Dhir & Dhir Associates for
Promoters
Mr. K. Thaker, Advocate and Mr. Avik Sarkar,
Advocate

Per V.P. Singh, Member (Judicial)

ORDER

1. The present application being **M.A. 1352/2018** is filed by the Resolution Professional (**RP**) under section 60(5)(c) read with section 30(6) of Insolvency and Bankruptcy Code, 2016 (**IBC**) for seeking approval of this Tribunal to the final/revised Resolution Plan dated 05.11.2018 submitted by Tri-county Premier Hearing Services Inc, Resolution Applicant (**RA**).
2. The C.P. (I.B.) No. 1283/I&BP/NCLT/MAH/2017 was filed by Axis Bank Limited under section 7 of IBC for initiation of Corporate

Insolvency Resolution Process (**CIRP**) against BSR Diagnostic Limited, Corporate Debtor. The Petition was admitted by this Tribunal vide order dated 29.09.2017. The Committee of Creditors (CoC) confirmed the appointment of the Interim Resolution Professional Mr. Sundaresh Bhat as Resolution Professional (**RP**) in their meeting held on 03.11.2017. The 180 days' period for CIRP was further extended by this Tribunal for another 90 days (w.e.f. 29.03.2018) vide an order dated 12.03.2018.

3. The RP Published advertisement inviting Expression of Interest (**EOI**) on 07.12.2017 and a subsequent addendum for extension of last date for submission of EOI on 22.12.2017. The RP received EOI from six entities of which three filed their resolution plan. In the 6th CoC meeting, held on 22.06.2018, only Resolution Plan of Tri-county Premier Hearing Services Inc, dated 21.06.2018, was voted and the rest two plans were rejected by the CoC. The resolution plan of the RA was voted upon and 51.47% voted in favour whereas 48.53% voted against the resolution plan in the 6th CoC meeting. As per the result of the e-voting held on 25.06.2018, the resolution plan of RA was rejected due to lack of requisite majority in favour.
4. Eventually the RP, on 27.06.2018, filed M.A. No. 649/2018 under section 33(1) of IBC seeking liquidation of the Corporate Debtor since no resolution plan could be approved. The RA on 19.07.2018 filed application being MA 736/2018 challenging the decision of CoC rejecting its resolution plan and opposing the liquidation application filed by the RP. The suspended Promotor/Director of the Corporate Debtor also filed application on 19.07.2018 being MA 737/2018 opposing the liquidation application filed by the RP.
5. Eventually, State Bank of India, one of the Financial Creditor having 47.28% voting share in CoC, on 12.10.2018, with the leave

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
M.A. 1352/2018 in CP 1283/2017**

of this Tribunal filed an affidavit dated 04.09.2018, stating that it had voted against the resolution plan dated 21.06.2018 submitted by the RA during the e-voting held on 25.06.2018. It is further stated in the said Affidavit that since the RA, vide its letter dated 23.08.2018, has increased its offer to Secured Creditors from ₹38,00,00,000/- to 45,00,00,000/- and the increased amount of ₹7,00,00,000/- will be payable over two annual instalments along with interest at 8% p.a., it is willing to accept the revised/final resolution plan dated 23.08.2018. Therefore, this bench vide its order dated 12.10.2018, directed the final resolution plan revised vide letter dated 23.08.2018 to be put for consideration of the CoC.

6. The final resolution plan submitted by the RA, dated 05.11.2018, was considered by CoC in the Eight meeting held on 12.11.2018 where the RP informed that the plan complies with the requirements of section 30(2) of IBC. The said final resolution plan was approved with 99.4758% in the Eight meeting of CoC.
7. In these circumstances, the RP on approval of the CoC, on 14.11.2018 filed MA 1352/2018 for approval of the final resolution plan dated 05.11.2018 and MA 1351/2018 for withdrawal of the MA 649/2018 filed by it for liquidation of the Corporate Debtor.
8. It is pertinent to note the following submission of RP as salient features of the resolution plan:

Sr No	Stakeholder	Amount Admitted (₹crore)	Proposed in Plan (₹crore)	Remarks/Sources of funds		
1.	Secured Financial Creditor	106.26	45	Payment Methodology:		
				Upfront Cash Payment	₹12 Cr	within 60 Days from the date of order of Hon'ble NCLT
				Tranche 1	₹26 Cr	by 31.03.2019 without any interest.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

M.A. 1352/2018 in CP 1283/2017

				<table><tr><td>Tranche 2</td><td>₹3 Cr.</td><td>by 31.03.2020 with an interest of 8% p.a. (Interest on reducing balance from April 2019)</td></tr><tr><td>Tranche 3</td><td>₹4 Cr.</td><td>by 31.03.2021 with an interest of 8% p.a. (Interest on reducing balance from April 2019)</td></tr><tr><td>Total</td><td colspan="2">₹45 Cr.</td></tr></table> <p>Sources of funds:</p> <table><tr><td>Equity infusion</td><td>₹19 Cr.</td><td>To be sourced from Resolution Applicants' own funds.</td></tr><tr><td>Long term Loan</td><td>₹2.50 Cr.</td><td>To be sourced from Resolution Applicants' own funds</td></tr><tr><td>NBFC</td><td>₹15 Cr.</td><td>In principle sanction available of ₹35.00 crores from NBFC, Shanky Financial Service Private Limited.</td></tr><tr><td>Internal Accrual</td><td>₹8.50 Cr</td><td>To be sourced from internal accruals.</td></tr><tr><td>Total</td><td colspan="2">₹45 Cr.</td></tr></table>	Tranche 2	₹3 Cr.	by 31.03.2020 with an interest of 8% p.a. (Interest on reducing balance from April 2019)	Tranche 3	₹4 Cr.	by 31.03.2021 with an interest of 8% p.a. (Interest on reducing balance from April 2019)	Total	₹45 Cr.		Equity infusion	₹19 Cr.	To be sourced from Resolution Applicants' own funds.	Long term Loan	₹2.50 Cr.	To be sourced from Resolution Applicants' own funds	NBFC	₹15 Cr.	In principle sanction available of ₹35.00 crores from NBFC, Shanky Financial Service Private Limited.	Internal Accrual	₹8.50 Cr	To be sourced from internal accruals.	Total	₹45 Cr.	
Tranche 2	₹3 Cr.	by 31.03.2020 with an interest of 8% p.a. (Interest on reducing balance from April 2019)																										
Tranche 3	₹4 Cr.	by 31.03.2021 with an interest of 8% p.a. (Interest on reducing balance from April 2019)																										
Total	₹45 Cr.																											
Equity infusion	₹19 Cr.	To be sourced from Resolution Applicants' own funds.																										
Long term Loan	₹2.50 Cr.	To be sourced from Resolution Applicants' own funds																										
NBFC	₹15 Cr.	In principle sanction available of ₹35.00 crores from NBFC, Shanky Financial Service Private Limited.																										
Internal Accrual	₹8.50 Cr	To be sourced from internal accruals.																										
Total	₹45 Cr.																											
2.	Payment to Unsecured Financial	43.80	0.44	The Resolution Applicant proposes to settle the total outstanding claim of the Unsecured Financial Creditors at 1% of the claim amount, being ₹00.44 crore, in the same manner, without any interest, as proposed for financial creditors.																								
3.	Operational Creditor	17.88	1.01	5% of Their outstanding to be paid on or before 31.03.2019.																								
4.	Government Dues	2.95	0.51	To be paid in 5 equal yearly instalments at the last day of every FY. To be paid out of Internal accrual of the company																								
5.	Workmen/ Employees	1.53	1.36	The amounts shall be paid over a period of 3 years starting from 2018-2019 with instalments falling due for payment on the last day of the Financial Year. To be paid out of Internal accruals of the Company.																								

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

M.A. 1352/2018 in CP 1283/2017

6.	Other Debts & Dues			
	Interest on repayment to secured Financial Creditor	NA	0.88	Interest @8% on reducing balance from April 2019.
	Estimated Resurrection Cost	NA	11.00	Infused in the form of either equity or Long-Term loans or combination of the both.
	Payment to related Party	NA	00.00	The Resolution Applicant proposes no payment towards the related party dues.
	Advertisement & Promotions	NA	2.50.	NIL
7.	Payment to existing Shareholder	NA	0.07	It is proposed that on approval of the Resolution plan, the existing Share Capital of the Corporate Debtor will be reduced by 99% i.e. the face value of each equity share of ₹10/- per share shall stand reduced to ₹0.10/- per share. Thereafter 100 equity shares of ₹0.10/- each shall be consolidated to 1 share of ₹10/- each.
8.	CIRP Process Cost	NA	4.25	The amount of funds required for payment of insolvency resolution process cost. Will be further infused by way of equity by the Resolution Applicant, in addition to the funds committed in this proposed Resolution Plan.
Total		172.42	67.02	

9. The Plan proposes the following mode of financing:

Sr.no.	Means of Finance	Amount (₹crore)	Remark
1.	Equity Contribution for Secured FCs	19.00	Equity contribution by Resolution Applicant. The net worth of owner of Tricounty Premier Hearing Services INC is ₹65 crore.
2.	Long Term Loan (interest free)	2.50	To be infused by Resolution Applicant's own funds.
3.	Equity Contribution for Renovation Cost	5.00	₹5.00 crores have been committed to be infused by Resolution Applicant. The net worth of owner of Tricounty Premier Hearing Services INC is ₹65 crore.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
M.A. 1352/2018 in CP 1283/2017**

4.	Unsecured Loan from NBFC	15.00	In principle sanction is available of ₹35.00 Crores from NBFC, Shanky Financial Service Private Limited.
5.	Internal Accruals	25.52	After infusion of ₹11 crore as Resurrection Cost/Promoter's infusion.
Total		67.02	

10. The Resolution applicant has stated in the Plan that it has dealt with the interest of all the stakeholders of the Corporate Debtor. The Resolution Plan provides the following information with regard to the interest of various stakeholders:

Sr. No.	Category of Stakeholder	Amount Claimed (₹crore)	Amount Admitted (₹crore)	Amount provided in Plan (₹crore)	Amount provided to Amount claimed (approx.%)
1.	Secured Financial Creditor	106.35	106.26	45	42
2.	Un-secured Financial Creditor	43.80	43.80	0.44	1
3.	Operational Creditor	18.17	20.23	1.01	5
4.	Government Dues	2.95	2.95	0.51	17
5.	Workmen/ Employees	1.65	1.53	1.36	82
6.	Related Party Creditors	14.13	14.13	Nil	0

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

M.A. 1352/2018 in CP 1283/2017

11. The Operational Creditors are being paid more than the Unsecured Financial Creditor, in proportion to their respective debts. The Entire proposed amount will be paid upfront as full and final settlement by 31.03.2019.
12. The Resolution Plan states that the term of the proposed resolution plan will commence from the Effective Date i.e. date of approval of the plan by the Adjudicating Authority, and shall continue for five years ending in FY 2022-23. Further, the RA would induct Dr. Avinash Shukla as a professional CEO and CFO to control and manage the day to day financial and operational affairs of the Company during the term of the plan. The Company shall be managed by reconstituted board of directors comprising two directors appointed by the RA and one industry expert as Independent Director.
13. According to the report on Liquidation Value issued by Right Value Consultants Private Limited ("RVCPL"), the liquidation value of the Corporate Debtor is ₹57.77/- crores, whereas as per the report on Liquidation Value issued by Rakesh Narula & Co. ("RNC"), the liquidation value of the Corporate Debtor is ₹53.06/- crores. The average liquidation value of both the reports amounts to ₹55.42/- crores. The Fair value of the assets of the Corporate Debtor is ₹73.64 crores. As compared to this, the amount offered in the Resolution Plan is ₹67.02/- crore apportioned to all the stakeholder which is more than the average Liquidation Value
14. The Resolution Applicant has entered into a MoU with Medium Healthcare Consulting Private Limited, a consulting firm whereby the whole responsibility of carrying out the business of the Corporate Debtor will be of Medium Healthcare Consulting Private Limited.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

M.A. 1352/2018 in CP 1283/2017

15. The Resolution Applicant has entered into a strategic tie-up, by way of an MoU dated 11.06.2018 with an Orissa based local diagnostic chain, M/s Geeta Diagnostic Center, which has agreed to infuse ₹9,00,00,000/- for 20% equity in the entire business of Odisha segment.
16. With regard to the eligibility under section 29A of IBC, the Resolution Applicant in the Resolution Plan has annexed a list of its connected persons as annexure 3. The RA has declared, as per section 30(1) of IBC, that neither the R.A. nor any of its connected persons are ineligible under section 29A of IBC. It is further declared that Medium Health Care Consulting Private Limited and Gita Diagnostic Centre are also not ineligible under section 29A of IBC. The required affidavits of RA, Medium Healthcare Consulting Private Limited and Geeta Diagnostic Centre were submitted to the CoC at the Eight meeting.
17. With regard to section 30 (2), the RP vide its letter dated 12.11.2018 submitted its Certificate to CoC stating that the plan is in compliance as required under section 30(2) as follows:

Section 30 (2) clause	Whether the Resolution Plan:	Clause of Resolution Plan
(a)	Provides for the payment of insolvency resolution process costs?	<p>As per Clause 7(3) of the Plan the Resolution Applicant has specified that the IRP Cost shall be paid in priority to all other debts.</p> <p>As per Clause 8.2 of the Plan, IRP cost is specified as ₹4.25 crore.</p> <p>It is further undertaken that the actual CIRP cost,</p>

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
M.A. 1352/2018 in CP 1283/2017

		as ratified by CoC will be paid within thirty business days from the effective date.
(b)	Provides for the payment or the debts of Operational Creditors?	<p>Operational Creditors:</p> <p>Admitted claim – ₹ 20.83 crores</p> <p>Liquidation value – NIL</p> <p>Payment as full and final settlement ₹1.01 crores (upfront payment)</p> <p>Employee/Workmen Dues:</p> <p>The Plan proposes to completely settle the existing principal outstanding dues to Workmen/Employees including payment of gratuity, over a period of three years.</p> <p>Income Tax Dues:</p> <p>The plan propose that any liability towards the demand raised by the Income Tax Department towards interest, penalty and short payment of TDS, would be settle and paid over a period of 5 five years.</p>

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
M.A. 1352/2018 in CP 1283/2017

(c)	Provides for the management of the affairs of the Corporate debtor?	The plan proposes to replace and reconstitute the existing Board of Directors of the Corporate Debtor.
(d)	Provides for the implementation and supervision of the resolution plan?	<p>The plan proposes for appointment of Monitoring Agency within thirty business days from the effective date.</p> <p>The plan also provides that, for the period from effective date to the appointment of monitoring agency, the RP shall supervise the plan.</p>
(e)	Contravenes any of the provisions of the law for the time being in force?	The Resolution Plan does not contravene with any of the provisions of the law for the time being in force.

18. The Resolution Plan was put to vote in the Eight CoC meeting and as per the section 30(4) the said plan was approved by 99.4758% of the CoC as per details below:

No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan
1.	Axis Bank Limited	49.8931%	Voted in favour of the Resolution Plan

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

M.A. 1352/2018 in CP 1283/2017

2.	Clix Finance India Unlimited (earlier known as GE Capital Services India)	0.7312%	Voted in favour of the Resolution Plan
3.	India Infoline Finance Limited	1.5720%	Voted in favour of the Resolution Plan
4.	Siemens Financial Services Pvt Ltd.	0.5241%	Voted against the Resolution Plan
5.	State Bank of India	47.2795%	Voted in favour of the Resolution Plan
Total Vote in Favour of Resolution Plan			99.4758%

19. The RP vide its certificate dated 14.11.2018, as required under regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 certified that the contents of the resolution plan meets with the requirements of the IBC and the regulations thereto and that the resolution plan has been approved by the CoC in the manner prescribed under the IBC.
20. The Resolution Plan provides that within 30 business days of the Effective date, the Company shall appoint a "Monitoring Agency" constituting of two representative of the Secured Financial Creditors, one of Resolution Applicant and one of Resolution Professional to monitor and supervise the implementation of the Resolution plan.
21. This bench directs that the Monitoring Agency shall constitute one representative each of Axis Bank Limited and State Bank of India and one representative of the Resolution Professional.
22. The Resolution Applicant is allowed to remove and/or substitute the Monitoring Agency with prior approval of this Adjudicating Authority if the Monitoring Agency is unable to satisfactorily perform its responsibilities or breaches terms of its appointment.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

M.A. 1352/2018 in CP 1283/2017

23. The Plan seeks approval of this Tribunal to the effect that post the approval of the resolution plan by this Tribunal, no re-assessment/revision or any other proceedings under the provisions of the Income Tax Act or any other statutory Act should be initiated on the Company in relation to period prior to acquisition of control by the RA and any consequential demand should be considered non-existing and as not payable by the Company. Any proceedings which were kept in abeyance in view of process under the code or otherwise should not be revived post the order of this Tribunal. The Income Tax Department to grant exemption from the applicability of provisions of section 79, section 41(1) and section 28 of Income Tax Act 1961 in relation to the Plan. The said reliefs cannot be granted and are hereby rejected.
24. The Plan further seeks immunity from any actions and penalties (of any nature) under any law for any non-compliance of laws in relation to the Company or by the Company, which was **existing as on the date of acquisition of control by the Resolution Applicant** over the Company and which continues for a period of upto 12 months after the acquisition of control by the Resolution Applicant over the Company. The said reliefs cannot be granted and are hereby rejected.
25. The Plan also seeks immunity for the RA and the Company from any actions and penalties (of any nature) under any law for any non-compliance of laws in relation to the Company or by the Company, which was **existing as on the Completion Date** and which continues for a period of upto 12 months after the acquisition of control by the RA over the Company. The said reliefs cannot be granted and are hereby rejected.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

M.A. 1352/2018 in CP 1283/2017

26. The above reliefs are with respect to future contingent actions that may be initiated against the Company. These liabilities are neither certain nor reasonably foreseeable. This, in our view, is a commercial risk that any Resolution Applicant has to take as per its own commercial wisdom. We do not agree to any exemptions from liabilities that may not be existing at the time of approval of the plan and specifically reject these aforementioned reliefs as mentioned in Schedule 2 of the plan. However, the present initiated/pending proceedings and issued notices by regulatory authorities shall be deemed to be withdrawn.
27. The RA shall endeavour to identify such non-compliances and take steps to rectify any such non-compliances immediately from the date it takes charge of the Company.
28. The Resolution Applicant in the Plan also seeks to retain the right to either continue or terminate the existing agreements entered into by the Company with various hospital operators w.e.f. the Effective Date. The resolution applicant states that any such termination shall not be construed as pre-mature termination and the Resolution Applicant shall not be liable to make any payment of any nature whatsoever, including but not limited to any penalty which may arise on account of termination of any existing agreements. This Bench is of the view that the RA has all the rights to either continue or terminate the existing agreements of the Company but only as per applicable laws and this bench would not extend any exemption from liability under any Law.
29. The aforesaid relief is very vague as the agreements in respect of which the RA seeks the relief are not identified. Therefore, this bench is not inclined to grant any such relief in which the subject is not identified and the relief sought is vague and general.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

M.A. 1352/2018 in CP 1283/2017

30. This and any other such relief if sought for in the Resolution Plan, where the contract/agreement/understanding/proceedings/actions/notice etc. is not specifically identified or are for future and/or contingent liabilities are hereby rejected.
31. We shall clarify here that any resolution applicant shall overtake the Corporate Debtor with all its assets and liabilities. If any relief with respect to any identified liability of the Corporate Debtor is required, then that needs to be clearly mentioned and sought for in the Resolution Plan. This bench cannot allow any general power to any resolution applicant absolving him of a liability of the corporate debtor company without knowing about the liability against which such exemption is sought. In other words, reliefs/exemptions from only existing liabilities which are specifically identified can be sought and allowed in the Resolution Plan.
32. The resolution plan has necessary provisions for its effective implementation.
33. It may be noted that the MA 649/2018 filed on 27.06.2018 by the RP seeking order for Liquidation of the Corporate Debtor was still pending before this Tribunal when in the meanwhile the above developments took place and was brought to the notice of this tribunal. Other two applications, MA 736/2018 and MA 737/2018 filed against the liquidation application are also pending which if allowed would result in rejection of application for Liquidation. Also considering the fact that the Resolution Professional, applicant in MA 649/2018 has filed another application being MA 1351/2018 seeking withdrawal of the Liquidation Application. We hereby exclude the period under Adjudication and allow this application as under the CIRP.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

M.A. 1352/2018 in CP 1283/2017

34. The resolution applicant shall obtain the necessary approval required under any law for the time being in force within a period of one year from the date of this order or within such period as provided for in such law, whichever is later.
35. In view of the above observations, we hereby approve the resolution plan with modifications, as mentioned above, which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.
36. The moratorium order under section 14 shall cease to have effect from the date of this order.
37. The resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.
38. The Resolution applicant has to adhere to all the applicable law for the time being in force. The Resolution Applicant can seek clarifications, if any, from this Tribunal.
39. The Resolution Plan is hereby approved under section 31(1) of IBC with abovementioned modifications from what the CoC has approved. The MA 1352/2018 is accordingly partly allowed and disposed of.
40. The MA 649/2018, MA 736/2018, MA 737/2018, and MA 1351/2018 are disposed in accordance to the above order.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V.P. SINGH
Member (Judicial)

22nd January, 2019

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
M.A. 1352/2018 in CP 1283/2017**

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
M.A. 1352/2018 in CP 1283/2017