

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

IA/2931/2020

In

(IB)-1431(PB)/2019

*Under Section 30(6) of the IBC, 2016 r/w Regulation 39(4) of the
IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*

In the matter of

Axis Bank Limited

---Applicant

Vs.

Payne Realtors Private Limited

---Corporate Debtor

And

In the matter of

Mahender Kumar Khandelwal

---Applicant/Resolution Professional for Payne Realtors Private Limited

And

City Gold Entertainment Limited

---Resolution Applicant

Order delivered on: 24.08.2020

Coram:

**B. S.V. PRAKASH KUMAR, ACTING PRESIDENT
HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)**

For the Resolution Professional : Mr. Ritin Rai, Adv.

For the Resolution Applicant : Mr. Aditya Mehta, Adv.

For the CoC : Ms. Aditi Mittal & Mr. Harshit Khare, Adv.

ORDER

Per: B. S.V. PRAKASH KUMAR, ACTING PRESIDENT

Order Pronounced on: 24.08.2020

It is an application filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 ("**the Code**") r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of the Resolution Plan by this Bench based on the approval already given by the Committee of Creditors ("**CoC**") in its 11th Meeting held on 10.07.2020 with requisite majority of 100% u/s 30(4) of the Code.

2. Looking at the application moved by the Resolution Professional, it appears that Axis Bank/Financial Creditor has filed the petition u/s 7 of the Code against the Corporate Debtor, which this Bench admitted on 25.07.2019 by initiating Corporate Insolvency Resolution Process ("**CIRP**") by appointing Mr. Mahender Kumar Khandelwal, as Interim Resolution Professional who was subsequently confirmed as the Resolution Professional in 1st CoC meeting held on 30.08.2019.

3. Thereafter, the Resolution Professional in terms of the timelines stipulated under the Code, made Public Announcement u/s 13 of the Code and over a period of time issued Form G for expression of Interest. In the meantime, the initial time period of 180 days of CIRP having come to end on 21.01.2020 and the Applicant, based on the Resolution passed in 4th CoC meeting held on 09.01.2020, filed an Application u/s 12 of the Code, over which, this Tribunal vide its order dated 22.01.2020, extended CIRP for a further period of 90 days till 20.04.2020. Thereafter, in view of the global pandemic outbreak of Covid- 19 and consequential lockdowns, the Hon'ble NCLAT by taking *suo motu* cognizance of the said situation, by its order dated 30.03.2020, extended the period of CIRP by excluding the lockdown period and as such CIRP was automatically extended further for a period of 28 days.

4. During 2nd CoC meeting held on 27.09.2019, CoC passed a resolution by fixing minimum eligibility criteria for inviting Expression of Interest ("EoI") and thereafter, the Applicant made paper advertisement in Business Standards, Jaihind Gujarati and

Financial Express on 07.10.2019, by fixing the last date for EoI as 22.10.2019. However, to ensure larger participation of the prospective Resolution Applicants, the last date for submission of EoI was extended time to time from 08.11.2019, 22.11.2019, 27.11.2019, 18.12.2019 and finally till 13.01.2020.

5. As on the last date for the submission of EoI, the Resolution Professional received eight EoI's and based upon the evaluation made, seven were identified and qualified as the prospective Resolution Applications for participating in the Resolution Plan process of the Corporate Debtor. In 5th CoC meeting held on 19.02.2020, the Resolution Professional has informed CoC that he has received Resolution Plan from two Resolution Applicants viz. (1) **M/s. City Gold Entertainment Limited** and (2) **M/s. Sunrise Industries**. In 6th CoC meeting held on 04.03.2020, CoC has suggested for various modifications to the Resolution Plan submitted by both the Resolution Applicants and granted time to submit revised Resolution Plan.

6. In 7th CoC meeting held on 17.03.2020, M/s. City Gold Entertainment Limited was declared as the highest bidder by the CoC and after making some minor changes to the Resolution Plan as suggested by the CoC, the Successful Resolution Applicant viz. M/s. City Gold Entertainment Limited submitted the final Resolution Plan to the Applicant on 26.06.2020.

7. After submission of the final Resolution Plan by the successful Resolution Applicant, the same was put to vote in 11th CoC meeting held on 11.07.2020, wherein it was approved with 100% affirmative vote in terms of Section 30(4) of the Code. The said factum of approval of the Resolution Plan was communicated to the Resolution Applicant by way of letter of intent dated 13.07.2020. Thereafter, in compliance of the Code, and as discussed in 11th CoC meeting, the Resolution Applicant has deposited ₹10Crore by way of RTGS as Performance Bank Guarantee to the Corporate Debtor on 16.07.2020.

8. As regards the Resolution Plan, from Form – H filed by the Resolution Professional, it is evident that Fair Value is ₹32,60,08,744 and the Liquidation Value is ₹23,23,81,453. It is also observed that admitted claim value against the debtor company is more than the liquidation value of the company.

9. The summary of payments to be made by the Successful Resolution Applicant is as under:

Particulars	Amount (INR)
Mandatory Payment	
Unpaid Corporate Insolvency Resolution Process	Full*
Payment of debts of operational creditors	20,25,918.00 (100%)
Payment of Financial Creditors who don't vote in favour of Final Resolution Plan	NA
Financial Creditor	
Secured	27,36,69,491.20 (100%)
Unsecured	75,00,000.00
Others	
Employees	No Claim
Workmen	No Claim
Provident Fund Commissioner	11,250.00 (100%)
Provision for payment of Gratuity	50,133.00 (100%)
Provision for Interest Free Security Deposit of Lessees	1,52,74,678.00 (100%)
Preference Shareholders	0.00

Equity Shareholders	0.00
Total amount provided under the Plan for Creditors	30,10,31,470.00
Need Based Working Capital	25,00,000.00

10. In so far as the payments to be made to the Financial Creditors, it is seen that Axis Bank is the sole Secured Financial Creditor of the Corporate Debtor and the total claim amount of the Axis Bank for a sum of ₹27,36,69,491 which was admitted by the Resolution Professional is shown as to be paid in full by the Resolution Applicant within 60 days from the Appointed Date. In so far as the Unsecured Financial Creditors who are all related parties of the Corporate Debtor, as against their total verified claims of ₹20,38,93,025, the Resolution Applicant has proposed to pay a sum of ₹75Lakh within 60 days from the Appointed Date.

11. In so far as payments to the Operational Creditor is concerned, it is seen that the Resolution Professional has admitted the claims of the Operational Creditor to the extent of ₹20,25,918 and the Resolution Applicant has proposed to pay the entire

admitted amount of ₹20,25,918 to the Operational Creditor within 30 days from the Appointed Date.

12. As per the Resolution Plan, the Resolution Applicant has proposed not to pay any amount to the Preference Shareholders and Equity Shareholders. However, in relation to the Equity Shareholders, it is proposed to reduce the existing paid up share capital to Nil and the existing equity shareholders shall cease to have any shareholding in the Corporate Debtor and as a part of the Resolution Plan 10,000 fully paid up new equity shares of ₹10each shall be allocated to the Resolution Applicant and its nominees on the Effective Date.

13. In so far as infusion of the sum of ₹30.10Crore is concerned, it is stated in the Resolution Plan that a sum of ₹1,00,000 would be infused in the form of 10,000 fully paid up equity shares of ₹10each in the Corporate Debtor. Further a sum of ₹10Crore is infused in the form of internal accruals and own funds of the Resolution

Applicant and the remaining sum of ₹20.09Crore is infused in the form of interest-bearing unsecured loan.

14. As per the provision of the Code, this Tribunal is duty bound to examine the Resolution Plan as to whether it satisfies the conditions as laid down in Section 30(2) of the Code. A comparison of the mandatory compliance under the Code *vis-à-vis* the same made under the Resolution Plan is tabulated hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
<u>S. 30(1)</u> - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	The Resolution Professional in Form-H has certified that the Resolution Applicant has submitted an affidavit.
<u>S. 30(2)(a)</u> -Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 4.1 (Table – 1) of the Resolution Plan provides for the payment of CIRP costs. The CIRP Cost is arrived at Rs.25 Lakhs.
<u>S. 30(2)(b)</u> -Payment of 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 a liquidation of the Corporate Debtor under Sec. 53	Clause 4.1 (Table – 2) of the Resolution Plan states that a sum of Rs.20.25 Lakhs is being paid to the Operational Creditors

Reg. 38(1A) -Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor.	Clause 3.1 of the Resolution Plan states that the interest of all the stakeholders of the Corporate Debtor has been taken into account by the Resolution Applicant while preparing the Resolution Plan.												
S. 30(2)(c) -Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Clause 3.4 of the Resolution Plan deals with the Management and Control of the Corporate Debtor after the approval of the Resolution Plan.												
S. 30(2)(d) -Implementation and Supervision of the Resolution Plan	Clause 3.5 of the Resolution Plan deals with the Implementation of the Resolution Plan in a time bound manner. The monitoring Committee is being chaired by the Resolution Professional.												
S. 30(2)(e) -Does not contravene any of the provisions of the law for the time being in force	Clause 3.7 of the Resolution plan is an Undertaking by the Resolution Applicant wherein it has been stated that the Resolution Plan is not in contravention with the provisions of any Applicable Laws.												
S. 30(4) -Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board	The CoC, in its 11th meeting has approved the Resolution Plan in the following voting pattern; <table><tr><th>S. No</th><th>Name of Creditor</th><th>Ascent (%)</th><th>Dissent (%)</th></tr><tr><td>1.</td><td>Axis Bank</td><td>100</td><td>-</td></tr><tr><td></td><td>TOTAL</td><td>100</td><td>-</td></tr></table>	S. No	Name of Creditor	Ascent (%)	Dissent (%)	1.	Axis Bank	100	-		TOTAL	100	-
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1.	Axis Bank	100	-										
	TOTAL	100	-										

15. A perusal of Form-H as filed by the Resolution Professional also posits the fact that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code and also the Resolution Applicant has filed an Affidavit to the effect that he is eligible to submit the Resolution Plan taking into consideration Section 29A of the Code.

16. The Monitoring Committee chaired by the Resolution Professional shall supervise the implementation of the Resolution Plan and shall be in control of the management and affairs of the Corporate Debtor from the Appointed Date, until the Effective Date.

17. As to Schedule 6 - Reliefs and Concessions, Clause-1 is granted, with regard to Clause-6, upon approval of the plan, the guarantee issued by the Corporate Debtor, if any, shall stand waived, and the Creditors having such guarantees shall not raise any claim against the Corporate Debtor, in respect to Tax Dues payable as on the date of admission of the Company Petition, shall

not raise any claim after approval of this plan save and except as provided in Clause-4 of Section A of this Plan. Income Tax dues shown as not verified, after verification, if it comes out as payable, the same shall be paid by the Resolution Applicant. With regard to other concessions and reliefs, most of them are subsumed in the reliefs above granted, whichever is beyond the reliefs granted above, they shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted. In view of the same, this plan is hereby **approved**.

18. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise the further line of action required for starting of the operation.



19. Accordingly, the Resolution Plan in IA/2931/2020 is hereby approved and the application **disposed of**.

Sd/-

(B.S.V. PRAKASH KUMAR)

ACTING PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)

MEMBER (TECHNICAL)