

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.154
IA 690 of 2020 in CP(IB) 38 of 2019

Order under Section 30(6) IBC

IN THE MATTER OF:

Ravi Kapoor RP of NRS Projects Pvt Ltd

.....Applicant

Order delivered on ..30/08/2022

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in open Court vide separate sheet.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
DR. MADAN B GOSAVI
MEMBER (JUDICIAL)

sapna

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

**IA No. 690 of 2020
In**

CP (IB) No. 38/7/NCLT/AHM/2019

Mr. Ravi Kapoor, RP of M/s. NRS
Projects Pvt. Ltd.

Having office at:

402, Shaival Plaza, Nr. Gujarat
College, Ellisbridge, Ahmedabad-
380006.

..... Applicant/RP

In the matter of:

Fedbank Financial Services Ltd.
Having office at:
Federal Towers, Alwaye, Ernakulam,
Kerala-683 101.

.....Original Applicant/
Financial Creditor

Versus

M/s. NRS Projects Pvt. Ltd.

Having office at:

302, Riddhi Siddhi Elanza, Ellora Park
Main Road, Subhanpura Vadodara,
Gujarat-390-023

..... Corporate Debtor

Order Pronounced on : 30.08.2022.

**Coram: Dr. Madan Bhalchandra Gosavi, Member (Judicial)
Kaushalendra Kumar Singh, Member (Technical)**

Appearance: Mr. Navin Pahwa, Ld. Sr. Adv. a.w. Ms. Helly Parikh, Adv. for the Applicant/RP, Mr. Kunal P Vaishnav, Ld. Adv. for the Dissenting Financial Creditor, Mr. Ravi Kapoor, RP present in person.

ORDER

1. IA 690 of 2020 in CP (IB) No. 38 of 2019 is filed by Mr. Ravi Kapoor, RP of Corporate Debtor M/s NRS Projects Private Limited for approval of resolution plan submitted by Mr. Nimit Sangani, one of the Promoters of the Corporate Debtor.

2. The said resolution plan has been approved by the COC in its 9th meeting held on 07.09.2020 by 73.03% votes. The following facts are not in dispute:

a) The Corporate Debtor has been admitted in CIRP by order dated 25.07.2019. The Applicant was appointed as the IRP.

b) There is no record available to show that exactly when public announcement of the Corporate Debtor was made. The IRP was obliged to make it within three days from the date of order of admission of CIRP as per Section 13(b) of IBC. However, upon receipt of the claims from the two Financial Creditors and three Operational

Creditors, the IRP constituted the COC consist of two Financial Creditors viz. Fedbank Financial Services Limited and Corporation Bank (now Union Bank). IRP also prepared information memorandum of the assets and liabilities of the Corporate Debtor.

3. On 05.09.2019, the IRP called for first COC meeting. We perused the minutes of first COC meeting. The Applicant was IRP, did not state anywhere as to what was the voting percentage he allotted to each of the Financial Creditors. It was also his duty as per Section 24(6) of IBC. In first COC meeting the appointment of Applicant as the RP was confirmed by the COC (again no voting percentage is disclosed). Applicant as the RP proceeded with the CIRP.

4. It appears from the records that meantime the RP received claims from Reliance Home Finance Limited. There is again no record available with this application as to whether RP re-constituted the COC giving particular percentage of voting rights to newly added Financial Creditors. In second COC meeting held on 11.10.2019, the RP was instructed to call for the expression of interest/resolution plan from the proposed resolution applicants.

In pursuant thereto, he published Form-G in English as well as vernacular daily newspaper dated 14.10.2019.

5. In the fourth COC meeting held on 23.12.2019, one IP, Mr. Sushil Tewary was appointed as the representative of the home buyers, as the Corporate Debtor is a Real Estate Development Company. Meantime, CIRP period of 180 days got over. The COC passed resolution to get CIRP period extended and accordingly it was extended by this Adjudicating Authority. It appears to us that pending the CIRP of this Corporate Debtor a legislature amended Section 5(8) of IBC giving home buyer the status, as the Financial Creditor of the Real Estate project. Thereafter, the home buyers lodged their claims with the IRP. IP, Mr. Sushil Tewary was continued to be representative of the home buyers in the COC.

6. It is seen from the material on record that one of the Promoters of the Corporate Debtor, Mr. Nimit Sangani had submitted EOI but he did not submit the resolution plan. The COC thought it fit to pass resolution to recommend liquidation of the Corporate Debtor. But, it was not passed. In sixth COC meeting held on 13.03.2020, it was decided by the COC to direct RP to make application for exclusion of 84 days from the total CIRP period. This Resolution was opposed by two Financial Creditors i.e. Fedbank Financial Services Limited and Reliance

Home Finance Limited. However, the Corporation Bank having 20.30% votes and the home buyers then having 59.15% votes passed the resolution requesting this Authority to exclude certain period from CIRP period that application was allowed by this Adjudicating Authority. The RP was again instructed to republish Form-G calling upon EOI. The Form-G was published in English as well as in vernacular newspaper dated 23.05.2020 (Annexure-N). Form-G was again modified and republished on 01.06.2020.

7. 8th COC meeting was held on 28.08.2020. At that time voting percentage of home buyers was 68.34%. However later the voting percentage of home buyers got increased to 73.03%. The table below reflects the final voting percentage of each of the CoC Members:

Sr. No.	Name	Voting %
1.	Union Bank of India [Erstwhile Corporation Bank]	13.41
2.	Fedbank Financial Services Ltd.	4.47
3.	Reliance Home Finance Ltd.	9.10
4.	Home Buyers 174	73.03

8. Mr. Nimit Sangani one of the Promoters of the Corporate Debtor submitted the resolution plan. It was discussed by the

members of the COC. In 9th COC meeting held on 07.09.2020, the COC by 73.03% votes approved the resolution plan. Interesting fact requires to be noted is that all Financial Creditors except the Home buyers opposed this plan.

9. Section 30(4) of IBC states that COC may approve the resolution plan by vote not less than 66% of voting share. This resolution plan is approved by 73.03% votes, hence, it cannot be rejected on this ground.

10. The COC had approved the resolution plan by requisite voting percentage after considering its commercial feasibility and viability and hence this Adjudicating Authority has no reason to go into the commercial aspect of the resolution plan. We now examine the resolution plan in view of Section 30(2) and 31 of IBC. r.w. Regulation 38 of IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. There are three dissenting Financial Creditors, One Union Bank (Corporation Bank), Fedbank Financial Services Limited and Reliance Home Finance Limited. There are some Operational Creditors also. Section 30(2)(b)(i) and 30(2)(b)(ii) of IBC require that payment of debt of Operational Creditor and dissenting Financial Creditor has to be made in priority subject to the

provisions of Section 53 of IBC, after the provision for CIRP cost is made, as per Section 30(2)(a) of IBC. In this resolution plan, the provision for CIRP cost is made as Rs. 36 Lakhs (para 4.1.1 of the plan), provision for payment debt of the Operational Creditor is made Rs. 2,54,88,273/- (para 4.1.4 of the plan). Additional provision of Rs. 5,00,000/- is made for government dues (para 4.1.4.3 of the plan).

12. It is to be noted that the provision for payment of debt of all dissenting Financial Creditors is made. They are paid 100% amount of their claims. The following table will display the fact that dissenting Financial Creditors are treated in equitable manner in payment of debt.

Name of the Secured Creditor	Nature	Admitted Claim		Payment to Secured Financial Creditors	
Banks and FI Corporation			% Debt		% of Settlement amount
Bank-Akota Branch-Vadodara	Secured	97381573	49.70%	97381573	100%

Fedbank Financial Services Ltd- Ahmedabad	Secured	32446819	16.56%	32446819	100%
Reliance Home Finance Ltd- 390007	Secured	66101784	33.74%	66101784	100%
Total Secured Financial Creditors		195930176	100%	195930176	100%

13. Despite payment of 100% of total debt amount is made, all three Financial Creditors opposed the resolution plan. We were curious about the fact as to by why they are opposing the resolution plan. Learned counsel, Mr. Kunal Vaishnav appearing for one of such Financial Creditor submitted that the Financial Creditors have security interest in some of the flats in this project. They do not wish to relinquish the security interest therein. It appears to us that the dissenting Financial Creditors may be opposing the plan because in case the Corporate Debtor goes in liquidation they may get some more amount. This resolution plan pertains to the home buyers who are trying hard to get homes for which they might have invested their life time earnings. All concerns including the Financial Creditors should

do all possible efforts to see that the home buyers get possession of their flats as early as possible. We leave this aspect here only.

14. Para 5.2 and 5.3 of the resolution plan deal with the provisions relating to Management Committee to keep the Corporate Debtor as a going concern after the approval of the resolution plan and pending its implementation. The Management Committee consist of RP appointed by COC will be assisted by the Resolution Applicant, who is expert in field of a Real Estate Development, have been given task to keep the Corporate Debtor as a going concern. The same committee has also to supervise the implementation of the resolution plan effectively. In view of this we hold that provisions of Section 30(2)(c) and 30(2)(d) of IBC are complied with.

15. The Applicant/RP filed on record Form-H i.e. compliance certificate. He certified that the plan does not contravene any provision of law time being enforced.

16. Learned counsel for the dissenting Financial Creditors submitted that Mr. Namit Sangani, one of the Promoters of the Corporate Debtor has submitted the resolution plan. He is not eligible to submit the plan in view of Section 29A of the IBC being related party of the Corporate Debtor.

17. Learned counsel further submitted that though the Corporate Debtor is MSME, but still one individual promoter of the Corporate Debtor cannot get benefit of the provisions of Section 240A of the IBC and submit the resolution plan. Such resolution plan has to be rejected as it is in contravention of provisions of Section 29A of IBC.

18. As against this learned Sr. Counsel, Mr. Navin Pahwa for the RP submitted that promoter of the Corporate Debtor individually permitted to submit the resolution plan and he cannot be held to be disqualified under Section 29A of IBC in view of Section 240A of the IBC, as the Corporate Debtor is MSME. Learned Sr. Counsel relied on the order of Hon'ble NCLAT in case of Saravana Global Holdings Ltd. and Anr. Vs. Bafna Pharmaceuticals Ltd. and Ors. (Company Appeal No. 203 of 2019).

19. It is not in dispute that the Corporate Debtor is MSME. It is also not in dispute that Mr. Nimit Sangani, one of the Promoters of the Corporate Debtor has submitted the resolution plan in his individual capacity. We have to see whether Mr. Nimit Sangani, the Resolution Applicant can get benefit of Section 240A of IBC?

20. Above provision of law was for consideration of Hon'ble NCLAT in the order cited above. In that case also one promoter of the Corporate Debtor, therein, i.e. M/s .Bafna Pharmaceuticals Ltd. and Ors., has

submitted the plan (Bafna Pharmaceuticals Ltd. and Ors. is also an MSME). Taking into consideration the intention of the legislature in enacting Section 240A of the IBC the Hon'ble NCLAT held that :

21. "Admittedly, the 'Corporate Debtor is a 'MSME' and the promoters are not ineligible in terms of Section 29A of the 'I&B Code'. Therefore, it is not necessary for the 'Committee of Creditors' to find out whether the 'Resolution Applicant' is ineligible in terms of Section 29A or not. "

It has further been held that " if the promoters satisfy all the creditors and is in position to keep the Corporate Debtor as a going concern, is always open to committee of Creditors to accept the terms of settlement and approved by 90% of voting shares. The same principle can be followed in case of MSME".

22. Above order of Hon'ble NCLAT squarely applies to the facts in this proceeding. In view of the statement of law as made by Hon'ble NCLAT, we hold that Mr. Nimit Sangani, one of the Promoters of the Corporate Debtor is not ineligible to submit the resolution plan though he is a related party of the Corporate Debtor in view of the Section 240A of the IBC because he is paying debt of all the stakeholders in equitable manner.

23. The term of the plan is in between 180 days to 720 days. In view of material on record, we hold that the resolution plan as submitted

for our approval complies the provisions of Section 30(2),Section 31 and Regulation 30 of IBBI (CIRP of Corporate Person) Regulations 2016. We approve this plan and proceed to pass the following order:

ORDER

- I. Application is allowed.
- II. The resolution plan for Corporate Debtor i.e., M/s NRS Projects Private Limited stands allowed as per Section 30(6) of the IBC, 2016.
- III. The approved 'Resolution Plan' shall become effective from the date of passing of this order. A copy of this approved plan is enclosed to this order.
- IV. The order of moratorium dated 25.07.2019 passed by this Adjudicating Authority under Section 14 of I & B Code, 2016 shall cease to have effect from the date of passing of this order.
- V. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).
- VI. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency

Resolution Process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

VII. Accordingly, **IA/690(AHM)/2020** in **CP(IB) 38(AHM)/2019** is allowed and stands disposed of in terms of the above directions.

VIII. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
Dr. MADAN B GOSAVI
MEMBER (JUDICIAL)

sapna