IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.302

IA/69(MP)2022 in TP 234 of 2019 [CP(IB) 115 of 2019]

Proceedings under Section Sec. 30(6) of IBC, 2016

IN THE MATTER OF:

Parag Sheth, RP of Kyati Foods Pvt Ltd ....**Applicant**
V/s
Pawan Agarwal & Ors ....**Respondents**

Order delivered on 15/07/2022

Coram:

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

PRESENT:

For the Applicant :
For the Respondents :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-Sd- -Sd-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

MADAN B. GOSAVI
MEMBER (JUDICIAL)

Braj Mohan

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

IA/69(MP)2022
In
TP 234 of 2019 [CP(IB) 115 of 2019]

[Application for submission of Resolution Plan under Section 30(6) r.w. Section 31 of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons) for approval of resolution plan]

Through:

Parag Sheth
Resolution Professional of
Khyati Foods Private Limited
Office at:
404, Sachet II, Opp. GLS University
Maradia Plaza Lane
C.G. Road
Ahmedabad– 380006 **Applicant**

In the matter of:

Parag Sheth
Resolution Professional of
Khyati Foods Private Limited **Applicant**

Versus

Pawan Agarwal and Ors. Respondents

Memo of Parties

Parag Sheth
Resolution Professional of
Khyati Foods Private Limited
Office at:
404, Sachet II, Opp. GLS University
Maradia Plaza Lane
C.G. Road
Ahmedabad– 380006 **Applicant/**
Resolution Professional

Versus

Pawan Agrawal
(Successful Resolution Applicant)
E-1/50, Arera Colony
Bhopal, Madhya Pradesh-462016 **Respondent**

Bank of Baroda
(Member of Committee of Creditors)
Habibganj Branch, Plot No.9
Zone-II, MP Nagar
Bhopal, Madhya Pradesh-462001

Responsibility Fair Agriculture Fund AG
(Member of Committee of Creditors)
Joseffrasse 59, 8005
Zurich, Switzerland

Diwakar Vedantwar
(Member of Suspended Board of Management)
69, Alkapuri
Dewas, Madhya Pradesh-455001

Income Tax Department
Through Commissioner/ Principal Commissioner
CDIT/ACIT 3(1) Bhopal
Aayakar Bhawan, Arera Hills
Bhopal-462027

Order Reserved on: 01/07/2022
Order Pronounced on: 15/07/2022

Coram: Madan Bhalchandra Gosavi, Member (Judicial)
Kaushlendra Kumar Singh, Member (Technical)

Appearance:
Ld. Adv. Mr. Nipun Singhvi appeared for the applicant;

Ld. Sr. Adv. Mr. Navin Pahwa a.w. Ld. Adv. Mr. Ravi Pahwa & Ld. Adv. Mr. Jatin Sehgal appeared for the Respondent.

ORDER

1. This application under Section 30(6) read with Section 31 of Insolvency & Bankruptcy Code, 2016 (**Code**) is filed by Mr. Parag

Sheth- Resolution Professional of the corporate debtor- Khyati Foods Private Limited for approval of the Resolution Plan submitted by Mr. Pawan Agrawal- suspended board of director.

2. The following are the submissions made by the applicant/ reolution professional in the present application:

(i) The Corporate Debtor was admitted in the Corporate Insolvency Resolution Process (**CIRP**) on 25.07.2019. Mr. Parag Sheth was appointed as Interim Resolution Professional (**IRP**), who made public announcement of CIRP of the Corporate Debtor and called upon its creditors to submit claims with requisite proof. The IRP formed the CoC consisting of the following financial creditors having voting percentage right as stated below:

Sr.	Name of Financial Creditor	% Voting Share
(i)	Bank of Baroda	84%
(ii)	Responsibility Fair Agriculture Fund	16%

(ii) During the CIRP of the Corporate Debtor, the Committee of Creditors (**COC**) received 3 Expression of Interest (EOI) in pursuance of the publication of Form-G dated 26.10.2019, however pursuant to reissue of the Form-G dated 05.02.2020 and 01.10.2020 CoC received 2 Expression of Interest (EOI), but only 1 resolution plan was received by the Resolution Professional (**RP**) from Mr. Pawan Agrawal- suspended board of director being MSME. The plan was discussed in several meetings and thereafter, final plan was discussed on 24.02.2022 in the 18th CoC meeting.

(iii) The resolution plan submitted by Mr. Pawan Agrawal has been approved by the COC with 83.62% votes in 18th CoC meeting held on 24.02.2022. The same plan has been submitted before the Adjudicating Authority for approval under Section 30(6) of the IBC, 2016. The liquidation value and fair value of the Corporate Debtor is reported at Rs.12,99,43,114/- and Rs.16,28,38,616/- respectively.

(iv) The resolution applicant- Mr.Pawan Agrawal has proposed to pay a sum of Rs.13,00,11,000/- against the total admitted claim. The details are as follows:

Sr.	**Particulars of Claim**	**Claim admitted by RP (Rs.)**	**Resolution Plan Proposal (Rs.)**	**Amount provided to the claimed amount (%)**
1.	Insolvency Resolution Process Costs (Already paid Rs.75 lacs)	-	1,05,00,000	
2.	Secured Financial Creditor	29,74,54,621	11,90,00,000	40.01%
3.	Unsecured Financial Creditor	6,62,92,559	5,00,000	0.86%
4.	Operational Creditors	2,10,000	11,000	5.24%
	Total	**36,39,57,180**	**13,00,11,000**	

3. We have heard the learned counsels for the applicant and perused the material available on record. The resolution plan submitted before us has been examined in view of the provisions of Section 30(2) of the IBC, 2016. The plan amount is more than the

liquidation value of the assets of the Corporate Debtor. The liquidation value and fair value of the corporate debtor is reported at Rs.12,99,43,114/- and Rs.16,28,38,616/- respectively. In the plan, the provision for payment towards CIRP costs and towards claim submitted by the operational creditor have been made. Thereby, the provisions of Section 30(2)(a) and 30(2)(b) have been complied with. It is also seen from the material on record that unsecured financial creditor- Responsibility Fair Agriculture Fund, having 16% voting share objected to the approval of the resolution plan and therefore, appears to be dissenting Financial Creditor. However, we note that in the plan equal treatment is given in payment of the claim submitted by the Responsibility Fair Agriculture Fund though it is a dissenting Financial Creditor. The Responsibility Fair Agriculture Fund has not filed any objection before this Adjudication Authority against the approval of the resolution plan. We hold that provisions of Regulation 38 of IBBI(CIRP) Regulations, 2016 have been complied with.

4. The mechanism for management and control of the affairs of the Corporate Debtor after approval of the resolution plan has been provided in the resolution plan itself whereby the Monitoring Committee along with the Resolution Professional will look after the management of the Corporate Debtor after approval of the resolution plan and till plan being implemented fully. We hold that thereby provisions of 30(2)(c) have been complied with.

5. Section 30(2)(d) speaks about the implementation and supervision of the resolution plan whereas Section 30(2)(e) speaks about whether the plan contravenes any provisions of law for the time being in force. The RP has submitted that plan is in

compliance of section 30(2) of the Code and Regulation 38 of IBBI(CIRP) Regulations, 2016.

6. We also noted that the plan does not contravene any provisions of the law for the time being in force. It is in compliant with all directions of IBBI.

7. The resolution plan is submitted by the suspended director of the corporate debtor. However, it is not in dispute that the corporate debtor is MSME. As per Section 240A of IB Code, 2016 provisions of Section 29A of IB Code, 2016 would not apply though the resolution applicant is a related party.

8. As far as reliefs and concessions claimed by the resolution applicant, the law has been well settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021*** in the following words:

> *86. "........The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*
>
> *87. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not*

abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief…..”

9. In view of the above, all past claims would stand extinguished. However, as far as various statutory rights vested with the Corporate Debtor in form of various licenses, leases, and others alike matter, we make it clear that the successful resolution applicant has to approach the concerned statutory authority for those concessions and those authorities will consider the same as per their established procedure.

10. With these directions, we approve the resolution plan submitted by Mr. Pawan Agarwal and proceed to pass the following orders:

(i) Application is allowed.

(ii) The resolution plan of Mr. Pawan Agarwal (suspended board of director) for Corporate Debtor i.e., Khyati Foods 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.

(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/69(MP)2022 In TP 234 of 2019 In CP (IB) 115 of 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-	**-sd-**
Kaushalendra Kumar Singh	**Madan B. Gosavi**
Member (Technical)	**Member (Judicial)**

Swati-LRA