

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 04
CA-2083(PB)/2019
u/Ss. 30 & 31 of the
Code, 2016, R/w Regulation
39 of IBBI (IRP for Corporate
Persons) Regulations, 2016

In the matter of:

Puma Realtors Pvt. Ltd.
Through Resolution Professional
Mr. Pawan Kumar Garg,
25A, Pocket J, Sheikh Sarai,
New Delhi-110017

..... Applicant

(IB)-934(PB)/2018

IN THE MATTER OF:

Paramjit Singh Saini & anr.
v.
Puma Realtors Pvt. Ltd.
Order under Section 7 of IBC (CIRP)

...Applicant/petitioner

..... Respondent

Date of order 01.06.2021

CORAM:

SH. RAJESWARA RAO VITTANALA
HON'BLE ACTG. PRESIDENT

SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

Parties/Counsels Present (Through Video Conference):

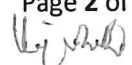
For the Resolution Professional: Ms. Ashish Makhija, Ms. Akanksha
Vasudeva Ms. Neha Santani, Advs.
Along with Mr. Pawan Kumar Garg(RP)
For the Resolution Applicant : Mr. Adhish Sharma, Adv.
For Axis Finance Ltd : Mr. Virender Ganda Sr. Adv, Mr. Atul Sharma
Mr Vishal Ganda Adv, Ms. Renuka Iyer Adv,
Mr Anand Singh Sengar, Adv.

ORDER**Per: Rajeswara Rao Vittanala, Actg. President**

1. The Application bearing CA No. 2083(PB)/2019 in IB-934(PB)/2018 is filed by Mr. Pawan Kumar Garg, Resolution Professional, Under Sections 30, 31 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'Code') read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016 by inter alia seeking approval of Resolution plan submitted by the Resolution Applicant ; to declare that Plan be binding on the Corporate Debtor, its Employees, Members, Shareholders, Creditors, guarantors, Statutory Authorities and other stake holders involved in the Resolution Plan; to declare that the Moratorium imposed in terms of Order dated 06.06.2018 passed by the Adjudicating Authority(AA) shall cease to have effect etc.

2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question in question, are as follows:

(1) Initially, the Adjudicating Authority (AA) had admitted CP (IB)-934(PB)/2018 filed by Mr. Paramjit Singh Saini & anr.(Financial Creditors) U/s 7 of Code, by an Order dated 17.10.2018 by initiating CIRP respect of Puma Realtors Private Ltd(CD) inter alia appointing Mr. Pawan Kumar Garg as IRP, imposing moratorium etc The RP/IRP has taken due permission from the AA with regard to the conducting of meetings of the CoC, seeking extension/exclusion of the time for completing the CIRP of the Corporate Debtor. He has duly invited expression of interest from the concerned



Parties. The CoC as existing on date of 9th COC, consisting of Axis Finance for Rs. 30,25,78,912/-, Axis Bank for Rs. 3,24,10,301/- and Allottees numbering 625 is Rs. 203,48,65,667/-However, the Allotees keep fluctuating due to late submission of claims/relevant documents. He has duly appointed valuers namely Kunal Vikamsey Mrics, transaction Auditor namely Deloitte Touche Tohmatsu India LLP, submission of Information memorandum to CoC, issued Invitation for Expression of Interest in Form G etc.

(2) The Resolution Professional received nine (9) Expressions of Interest, in addition one more from Pradeep Kumar Aggarwal. All the Resolution Plans were scrutinized and prepared a matrix of the Plan in terms of the provisions of the Code and the Rules made thereunder. Ultimately, the RP shortlisted prospective Resolution Applicants on 08.06.2019, which consists of One City Infrastructure Private Limited & AMP Infrastructure; Curo India Private Limited and DSS Buildtech Private Limited; and Kanwar Enterprises Private Limited. Thereafter, a final list of eligible prospective Resolution Applicant was issued by the RP on 16.06.2019, which consist of Consortium of One City Infrastructure Private Limited & AMP Infrastructure; Joint Venture of Eight Capital India Recovery Fund Limited & Ambit Flowers Asset Construction Private Limited; and Kanwar Enterprises Private Limited. The CIRP was delayed due to the non-cooperation of the Corporate Debtor, and therefore, the RP also sought exclusion of 96 days from the Corporate Insolvency Resolution Process and

also sought a direction to the Corporate Debtor to extend co-operation. Hence the delay.

(3) The RP also held a pre-coc meeting just before 7th meeting of CoC with all the Representatives of the homebuyers and apprised the Resolution Plans of the Resolution Applicants. He has also given opportunity to all the Resolution Applicants to review and modify their Resolution Plan to get the maximum value of the Corporate Debtor. Ultimately CoC in their 9th meeting has approved the Resolution Plan submitted by the Resolution Applicant i.e. consortium of APM Infrastructure Private Limited & Once City Infrastructure Private Limited by 100% voting majority, which has following salient features:-

(i) Insolvency resolution process costs

Resolution Plan provides for the payment of insolvency resolution costs in priority to the payment of other debts of the Corporate Debtor. If there is any shortfall in cash-flow, the Resolution Applicant shall meet the same by infusing funds by way of unsecured loan.

(ii) Operational creditors

The amount due to operational creditors is to be given priority in payment over financial creditors and the payment to the Operational Creditors shall not be less than liquidation value payable to the Operational Creditors. The Resolution Applicant purposes to give a 75% hair cut to the Operational Creditors.

(iii) Payment to Workmen and Employees

The Resolution Applicant purposes to pay the 100% admitted dues of workmen and employees.

(iv) Settlement of liabilities of unsecured financial creditor/allottees

- a. *The Resolution Applicant vide resolution plan proposes that the Resolution Applicant shall hand over the property of the allottees to them after due payment of the pending amount by the allottees in terms of the builder buyer agreement.*
- b. *The Resolution Applicant further proposes that it shall give compensation as per the builder buyer agreement to the allottees, who have filed their claims with the Resolution Professional.*
- c. **The Resolution Applicant further proposes that it shall provide plot/flats to the homebuyers ,who have an order decree in their favour from the Court.**
- d. *The liabilities with respect to the unsecured financial creditors/allottees as of 25.07.2019 has also given in the Application.*
- e. *The liabilities with respect to the unsecured financial creditors/allottees as on the 9th meeting has also pleaded in the Application.*



(v) Sources of fund

The Resolution Plan identifies the specific sources of funds that will be used to make the upfront payments to the Creditors.

(vi) Interest of stakeholders

The Resolution Applicant has, to the extent possible, taken into account the interest of all stakeholders of the Corporate Debtor.

(vii) Term of the Plan and implementation schedule

The terms of Resolution Plan and its implementation schedule has provided under Para 22 of the Resolution Plan.

(viii) Management and control of affairs of the corporate debtor

After the payment/settlement of operational creditors, which is scheduled for payment within 90 days from the effective date, the Resolution Applicant shall be entitled to appoint its own directors and will be in management and control of the Corporate Debtor.

(ix) Supervision of the plan

The Resolution Applicant further proposes to appoint the Resolution Professional, Mr. Pawan Kumar Garg as the chairman of the monitoring committee to monitor and supervise the implementation of the Resolution Plan.

3. Heard Ms. Ashish Makhija, Ms. Akanksha Vasudeva, Ms. Neha Santani, Advs. for Resolution Professional along with RP Mr. Pawan Kumar Garg; Mr. Adhish Sharma, Adv. for Resolution Applicant; Shri Virendra Ganda,

learned Sr. Advocate for the Axis Finance Ltd **through Video Conference.**

We have carefully perused the pleadings of all the Parties along with the material papers submitted, the extant provisions of the Code, the Rules made there under and the law on the issue.

4. Shri Adhish Sharma, learned Senior counsel for the Resolution Applicant, while pointing out various salient features of Resolution Plan as briefly stated supra, has further asserted that the Resolution Plan is strictly in compliance with the various provisions of the Code and the rules made thereunder. The Resolution Plan was duly approved by 9th COC in their meeting held on 23rd August, 2019. Though the instant Application was filed as early as on 1st October, 2019, it is kept pending disposal for one reason or the other. In the meanwhile, several Parties aggrieved by various actions taken during CIRP in question, have filed several Applications so as to stall the approval of Resolution Plan in question, resulting into severe adverse financial implications on the Plan and if the Plan is approved at least now, majority of Home Buyers would be get their Flats at an early date. Due to non-approval of Plan, the Resolution Applicant could not start implementing the plan. Therefore, the learned Senior Counsel has earnestly urged the AA to decide the matter, in the interest of justice and to uphold timelines prescribed for CIRP under the provisions of Code and the Rules made thereunder.
- 5 Shri Virendra Ganda, learned Sr. Advocate for the Axis Finance Ltd, has supported the Resolution Plan.

6. Several Learned Counsels, who have filed various Applications in the instant case seeking various reliefs, have strongly opposed disposal of instant Application for approval of Resolution Plan, on the ground that if Resolution Plan in question is approved by AA, their pending Applications would become infructuous. It is also stated that an Application U/ ss 43,45/66 has been filed, and it is also pending disposal.

In this regard, it is to be clarified that CIR process is to be completed in a time bound manner and every Application is required to be decided on its own merits without clubbing all the Applications. The instant Application is filed for approval of Resolution Plan, as early as on 1st October, 2019, however, it is still pending disposal. It has to be decided independently basing on parameters prescribed under law, and it cannot be kept pending till disposal of all pending Interim Applications and if allowed, it will defeat the object of Code. It is also relevant to point out here that in the Resolution Plan in question, the Resolution Applicant proposes that it shall provide plot/flats to the homebuyers, who have an order decree in their favour from the Court. It is also settled position of law that everybody is bound by decision(s) given by Tribunal/AA/Courts on the litigation pending before it. Therefore, the contention of learned Counsels that pending Interim Applications would become infructuous, once the Resolution Plan is approved is not correct, and AA would decide those Applications on its own merits and grant appropriate relief(s) Moreover, aggrieved Party/parties have to file their respective Applications within prescribed time allowed by

law and they cannot file Applications as and when they wish so as to stall CIR process from concluding by approving the Resolution Plan. In the normal circumstances, all interim Applications have to be decided before deciding the Application for approval of Resolution Plan. However, in case those Applications could not be decided in time bound manner on whatever grounds, the Application for approval of Resolution Plan cannot kept pending for a long time , if allowed, it would defeat the entire of object of Code.

7. Since the instant Application is filed Under Sections 30 & 31 of the Code. R/w Regulation 39 of IBBI (IRP for Corporate Persons) Regulations, 2016, it is necessary to examine requisite conditions prescribed, under those provisions and Regulations. before accepting the Resolution Plan. **Sections 30 & 31 of the Code read as under:-**

Section 30 - Submission of resolution plan.

- (1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.
- (2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—
 - (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;



- (b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—
- (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
 - (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.
- (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- (d) the implementation and supervision of the resolution plan;
- (e) does not contravene any of the provisions of the law for the time being in force;
- (f) conforms to such other requirements as may be specified by the Board.
- (3) The Resolution professional shall present to the committee of creditors for its approval such Resolution plans, which confirm the conditions referred to in sub-section (2).



(4) The Committee of Creditors may approve a Resolution plan by a vote of not less than [sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, [the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board: (6) The Resolution professional shall submit the Resolution plan as approved by the committee of Creditors to the Adjudicating Authority.

Section 31- Approval of Resolution plan

(1) If the Adjudicating Authority is satisfied that the Resolution plan as approved by the committee of Creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

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(3) After the order of approval under sub-section (1),--

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.

③. In the light of above provisions of Law, it is to be examined whether the Resolution Plan, as submitted by consortium of APM Infrastructure Private Ltd and One City Infrastructure Private Ltd (herein after referred to as Resolution Applicant) as approved by COC, as per law, has satisfied the requisite conditions for its approval. The Resolution Professional has filed **FORM H COMPLIANCE CERTIFICATE** dated 01.10.2019 detailing various compliance of provisions of Code. The Applicant has interalia certified as under:



- a) The date of initiation of CIRP is 17th October, 2018, and has conducted 9 meetings of COC and last date of CIRP period, after extension is 18th October, 2019. The date of invitation of Resolution plan is 15th June, 2019 with last date as 5th July, 2019. Receipt of final Resolution plan, after multiple discussion with COC is 24.08.2019. He has examined all the Resolution Plans received from Resolution Applicants and found that one received from APM Infrastructure Private Ltd and One City Infrastructure Private Ltd is in compliance with extant provisions of Code and the Rules made thereunder. The Resolution Applicant has submitted an affidavit confirming his eligibility under section 29A of the Code to submit its Resolution Plan, which is found to be in order.
- b) The Resolution Plan has been approved by COC by 100 % of voting share of financial Creditors after considering its feasibility and viability and other requirements specified by CIRP Regulations. Home buyers are duly represented by Mr. Atul Mittal as AR.
- c) The Plan provides for payment of CIRP costs, repayment of debts of operational creditors as per law, provides for the management of affairs CD after approval of Resolution. Mr. Pawan Kumar Garg, the RP shall stand appointed as the chairman of Monitoring Committee to monitor and supervise the implementation of Resolution plan.
9. The Applicant has filed a copy of Minutes of 9th Committee of Creditors of CD held on 23rd August, 2019. By perusing the minutes, it discloses that all

the Representatives on behalf of Financial Creditors and Home Buyers were present during the meeting. Notice for the meetings along with all annexures and explanatory statements were sent to Members of COC and Authorised Representative of 'Home Buyers class of Creditors. All COC Members along Mr. Atul Mittal , AR have attended the meeting. E-voting results of 9th COC of CD dated 7th September, 2019 were filed along with the Application, which discloses that the Resolution plan submitted by H1 Prospective Resolution Applicant viz Consortium of APM Infrastructure Private Ltd & One City Infrastructure Private Ltd ,which is in accordance provisions laid down under Section 30(2) was approved, under Section 30(4) of Code.by COC consisting of Financial Institutions Viz Axis Finance (12.77 %) Axiz Bank Ltd (1.36 %) Home Buyers (85.87 %)represented by Mr. Atul Mittal, AR.

10. We are convinced that the Resolution plan as duly approved by the COC has fulfilled all the requisite conditions as mandated under extant provisions of Code and the rules made thereunder. And it is settled position of law that AA/Tribunal has limited jurisdiction to interfere in Resolution plan as approved by COC in accordance with law.
11. For the aforesaid reasons and circumstances of the case, and taking into consideration of settled position of law on the issue, we are satisfied that the Resolution plan submitted by Resolution Applicant viz Consortium of APM Infrastructure Private Ltd & One City Infrastructure Private Ltd , fulfil



all the requisite conditions as prescribed, under section 31 of Code and the Rules made thereunder, so as to accord its approval.

12. By exercising powers conferred on the Adjudicating Authority, under provisions of section 31 of the Code, both I.A. No. 2083(PB)/2019, and CP IB-934(PB)/2018 are hereby allowed with the following directions:

- 1) It is hereby approved the Resolution plan as submitted by consortium of APM Infrastructure Private Limited & Once City Infrastructure Private Limited, which shall be binding on the Resolution Applicant, Corporate Debtor and its Employees, Members, Creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution plan:
- 2) The moratorium as imposed by the Adjudicating Authority in pursuance to the Admission of the case on 17.10.2018 shall cease to have effect from the date of issue of this order;
- 3) The Resolution Professional is directed to forward all the records relating to the conduct of the CIRP and Resolution plan to the IBBI and also to all the concerned Authorities;
- 4) The Resolution Professional, as well as other Aggrieved Parties, whose Applications are pending on the file of this Adjudicating Authority, are at liberty to prosecute their respective litigations. And



this order is passed without prejudice to the rights of the Parties in the pending Interim Applications.

- 5) No order as to costs.

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(RAJESWARA RAO VITTANALA)
ACTG. PRESIDENT

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(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

01.06.2021
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