

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

**I.A. 2201 (PB)/ 2020, I.A. 1166 (PB)/ 2019, I.A. 1802 (PB)/ 2020
IN
Company Petition No. (IB)-272 (PB)/2019**

*Submission of Resolution Plan under Section 30(6) for approval under Section 31 of
the Insolvency and Bankruptcy Code, 2016*

In the matter of:

Mr. RANJEET RAMAKRISHNA YADAV

....Financial Creditor

vs.

M/s. JNC CONSTRUCTIONS PRIVATE LIMITED

.....Corporate Debtor

AND

In the matter of:

Mr. PRABHJIT SINGH SONI

.....Applicant &
Resolution Professional

Order Pronounced on: 04.08.2020

Coram:

**SH. B.S.V. PRAKASH KUMAR,
HON'BLE ACTG. PRESIDENT**

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

For the RP

Mr. G.P. Madaan, Mr. Aditya Madaan, Advs.

Mr. Prabhjit Singh Soni, RP

For the Petitioner

Mr. Ranjeet Ramakrishna Yadav

For the Res. Appl.	Mr. Aseem Chaturvedi, Ms. Wamika Trehan & Mr. Yogesh Gupta, Advs.
For the Homebuyer (AR)	Mr. Sumit Shukla, Adv.
For the HDFC	Mr. Abhishek, Adv.
For the HDFC	Mr. Prasouk Jain, Mr. Rohan Batra, Ms. Rabiya Thakur, Advs. & Mr. Abhishek Aggarwal, Vice President
IA-1802/2020 (Applicant)	Ms. Ranjana Roy Gawai, Mr. Pervinder Tanwar, Mr. Shivansh Gupta, Advs.

ORDER

PER- HEMANT KUMAR SARANGI, MEMBER (T)

1. This is an application filed by the Resolution Professional under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") seeking approval of the Resolution Plan, under Section 31, of the Code, read with regulation 39, of the Insolvency and Bankruptcy Board of India, (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in respect of the corporate debtor M/s. JNC Constructions Private Limited.
2. The facts in brief necessary for disposal of the present application are that one of the Financial Creditors, Mr. Ranjeet Ramakrishna Yadav, had preferred an application under Section 7 of the Code, for initiation of Corporate Insolvency Resolution Process (CIRP), against M/s. JNC Constructions Private Limited ("Corporate Debtor"). The said Company Petition (IB)- 272 (PB)/ 2019 was admitted on 30.05.2019, imposing moratorium under Section 14

of the Code. Mr. Ajay Kumar Jain was appointed as an Interim Resolution Professional (IRP), in respect of the Corporate Debtor, M/s. JNC Constructions Private Limited.

3. Thereafter, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"), the Interim Resolution Professional made a public announcement in FORM-A on 02.06.2019, *inter alia*, calling for the submission of claims of the creditors.
4. In terms of the provisions of Section 18(1) (c) of the Code, the Interim Resolution Professional constituted the Committee of Creditors. For representation of "Home Buyer" class of Financial Creditors, in the Committee of Creditors, IRP shortlisted names of three Insolvency Professionals to act as Authorized Representative to represent the Financial Creditors - [*Home Buyer class under section 21(6A)(b)*]
5. That an application bearing number CA-1805 (PB)/ 2019, was filed by the IRP for exclusion of 62 (Sixty Two) days, from the total period of CIRP, on account of time taken in legal proceedings during the said process. Considering the facts, the AA vide its

order dated 16.09.2019, directed that 38 (thirty eight) days be excluded from the CIRP.

6. The second meeting of the Committee of Creditors ("CoC"), was convened on 23.09.2019. In the second meeting of CoC, Mr. Prabhjit Singh Soni, was appointed to act as the Resolution Professional for the Corporate Debtor.
7. The Applicant states that, under Section 13(1)(b) and 15 of IBC, 2016 and regulation 6, of the CIRP Regulations, Public Announcement of initiation of CIRP in places where Registered Office is located was made, by publishing in Newspapers, in English in Financial Express and in Hindi in Jansatta dated 02.06.2019 by the IRP.
8. In terms of the Regulation 27, of the CIRP Regulations, 2016, the applicant appointed registered valuers for valuation of the securities/financial assets of the corporate debtor and for determination of the Fair Value and Liquidation Value of the Corporate Debtor in accordance with Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 ("CIRP Regulations, 2016"). The average Fair Value as per valuation

report is Rs. 142,70,61,257/- and liquidation value is Rs. 99,89,42,880/-.

9. With the approval of CoC in its meeting, the Applicant had issued Form G on 10.12.2019 seeking a Resolution Plan for the Corporate Debtor. Some expression of interest were received from prospective resolution applicants but the members of CoC decided to invite some more and thereafter another Form-G was published after approval of CoC on 17.01.2020.

10. Thereafter in ninth meeting of CoC, held on 03.03.2020, the RP placed before CoC the resolution plans from the Prospective Resolution Applicants, namely:

- a. M/s. SMV Agencies Pvt. Ltd.
- b. M/s. Gautam Builders in consortium with Rapid Contracts Pvt. Ltd.
- c. M/s. Maya Buildcon Pvt. Ltd.
- d. M/s. Zircon Builders Pvt. Ltd.

11. Thereafter, in the eleventh meeting of CoC, held on 17.03.2019, the resolution plans submitted by all the Prospective Resolution Applicants were discussed. Subsequently, in the same meeting of CoC it was decided to put all the plans for e-voting from 23.03.2020 to 26.03.2020. Hence, the resolution plan of

M/s. Gautam Builders in consortium with Rapid Contracts Pvt. Ltd. was approved with 96.07% votes. The copy of minutes of the eleventh CoC meeting along with voting results have been annexed along with the petition.

12. It is submitted by the Applicant that pursuant to approval of the Resolution Plan by the CoC, the Applicant issued a Letter of Intent to the Resolution Applicant, inter-alia, informing that the revised resolution plan, as submitted before the CoC, was approved. The Copies of Letter of Intent and the Performance guarantee have been placed on record.
13. The resolution professional has placed the compliance certificate under Section 30(2), of the Code, and has confirmed that the resolution plan submitted is in compliance with Section 30, of the Code, read with Regulation 38 and 39 of the Regulations. Resolution professional has also placed a copy of the resolution plan as approved by CoC, stated to have been signed by the authorised representative of the resolution applicant.
14. In terms of Section 30 (6), of the Code, read with Regulation 39, of the CIRP Regulations, 2016 the resolution professional has submitted the Resolution Plan for seeking an order under Section

31(1), of the Code, for approval of the resolution plan, passed by the committee of creditors under sub-section (4) of Section 30.

15. It has been submitted in the application, and in Form H duly certified by Resolution Professional, that the Resolution Plan approved by the Committee of Creditors, meets the requirements as laid down in various clauses of sub-section (2) of Section 30 of the Code.

16. The proposed payment plan and other terms and conditions in the Final Resolution Plan of Gautam Builders in consortium with Rapid Contracts Private Limited as approved by the CoC are, inter alia, as follows:

S. No	PAYMENT PLAN	AMOUNT OUTSTANDING	PROPOSED AMOUNT IN %	AMOUNT PROPOSED IN INR	TERMS OF PAYMENT
1	I. CIRP cost II. Construction by M/s Gautam Builders at the	1,22,72,437	100%	1,22,72,437 As per Bill by Gautam Builder	100% of the unpaid amount within 90 days from

	time of RP Resolution, which permitted by Mr. Ajay Jain and Home Buyer, Bill Submission to RP Soni				Effective Date
1A	Payment to FC (Other than Home Buyers) - Secured (Claim Filed) and its term	7,50,41,267	2%	15,00,825	After two years from the Effective date in 10 equal quarterly installments (interest Free)

1B	Paymen t to FC (Other than Home Buyers) - Secured (Claim not Filed) and its term	5,91,68,26 2	2%	11,83,365	After two years from the Effective date in 10 equal quarterly installme nts (interest Free)
1C	Payme nt to FC (Other than Home Buyers) - Un Secure d (Claim Filed) and its term	3,12,78,40 4	0	-	Nil

1D	Payment to FC (Other than Home Buyers) – Un Secured (Claim not Filed) and its term	9,48,53,707	0	-	Nil
1E	Payment to OC- (Claim Filed)	17,58,37,424	60%	10,55,02,454	Payment to OC shall be paid only after completion of THE PARK project which is 36 months from

					effective date but prior to handing over the projects to homebuyers.
1F	Payment to OC- (Claim Not Filed)	59,63,87,497	0%	-	Nil
1G	Payment to Employees - (Claim Filed)	5,85,288	60%	3,51,173	Within 90 days from Effective Date
1H	Payment to Employees - (Claim Filed)	37,11,961	60%	22,27,177	Nil

11	<i>Payment to avas vikas</i>	1,23,07,52,746	10%	12,30,75,275	Dues shall be converted into sq. feet of area to be completed and payment shall be made on sq feet basis at the time of Registrati on of each of the units.
	<i>Payme nt to Greate r Noida Author ity</i>	13,47,40,819	10%	1,34,74,082	Dues shall be converted into sq. feet of area to be completed

	<i>(Claim not filed)</i>				and payment shall be made on sq. feet basis at the time of Registratio n of each of the
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					units.
1J	<i>Paymen t of statutor y dues & taxes</i>	1,14,24,757	10%	11,42,746	Payment shall be made in line with the payment made to Greater Noida authority and UP awas

					Parishad
	Total	241,37,82,1 32		26,07,2 9,264	
2	Period of resolution plan for completion of flats to Home Buyers & Commercial Shops	193,09,28,5 32			<p><u>Completion of Projects Green Woods at Vasundhara</u></p> <p>:</p> <p>While committing to complete the whole "Green Woods" project within 24 months, we</p>

					<p>wish to clarify the phase wise completion of various towers as following:-</p> <p>Tower B and Tower C :</p> <p>Including complete parking, all services, external development</p> <p>- In Nine (9) Months from the cuff-off date</p> <p>Tower D -</p> <p>In fifteen (15) Months from the</p>
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					<p>cuff-off date</p> <p>Tower A -</p> <p>Including all other facilities not less than as committed in BBA - in Twenty Four (24) Months from the cut-off date.</p> <p>It is further clarified that work will progress simultaneously in all the towers however the work will be taken in the</p>
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					<p>manner to avoid inconvenience to residents of future occupied towers.</p>
					<p>The Park at Greater Noida: While committing to complete the whole “The Park” project within 36 Months, we wish to clarify the phase wise</p>



					completion of various towers as following:
					<p>Tower A1 and Tower B1</p> <p>including Parking, External Development and part of recreational facilities – In Fifteen (15) Months from the cut-off date.</p> <p>Tower C1 and Tower D :</p> <p>Including Parking,</p>

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					<p>External Development and part of recreational facilities – In Twenty four (24) Months from the cut-off date.</p> <p>Tower A2, Tower B2 and Tower C2 including Parking and External Development – In Thirty Six (36) Months</p>
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					<p>from the cut-off date, including all other facilities like Commercial and Club House etc. complete in all respect.</p> <p><i>Cut off date means</i></p>
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					<p><i>Effective Date (means the date being on which the NCLT approves the Resolution Plan with or without amendment and the copy of order duly received by the Resolution Applicant)</i></p>
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3	Upfront fund mobilization by RA				<p>The first tranche funding shall fall within a period of 90 days from the Effective Date; the first tranche funding shall be upfront Amount of Rs. 10Crores which shall be brought in by the Resolution Applicant from their own sources. There are clear funds available to the extent of Rs. 6 crores by way of FD in the account of Deepak Kumar Gautam and an unutilized amount of Rs. 7crores towards unutilized credit limits and Rs. 6 crores unutilized Non fund Based Limits in Rapid</p>
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					<p>Contractors Pvt Ltd.</p> <p>The amount shall be utilized for payment towards unpaid CIRP costs and employee cost as per the Resolution Plan. Under this Resolution Plan, the Resolution Applicant shall infuse any shortfall into COMPANY immediately either from its own resources to meet the requirements of the COMPANY and mobilize the resources to revive the commercial operations of the COMPANY.</p>
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4	Discount/Late penalty payments/interest by RA as per BBA to HB				<p>Delay penalty amount to be paid to every home buyers, irrespective mentioned in their BBA, @ Rs. 5.10 PSF per month for total delay in possession from scheduled date of possession as mentioned in original BBA to proposed date of possession or actual date of possession, whichever is later, on first day and if:-</p> <p>The penalty amount is more to due amount, in that case no amount will be demanded.</p> <p>In the event of delay penalty</p>
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					<p>exceeds the final demand payable by buyer, same shall be paid to the buyer at the time of possession.</p> <p>No interest will be charged from Defaulters if they pay the balance due amount within 15 days from the first demand which is going to be raised only after 90 days from the cut-off date. These buyers will also be eligible to get a late penalty as other home buyers.</p>
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5	Additional funding sought from existing members				Nil. However the amount due as per BBA shall be recovered.
6	Refund of amount claim accepted to Home buyers				100% (interest free) shall be paid after 30 months from the Effective Date
7	Other terms and conditions				After 90 days of commencement of work, the builder will review the payment made so far by the buyers. All such buyers who have already paid 80% or above of their total fiat value will not be demanded any amount till possession of flat. Remaining amount

					<p>after adjustment of delay penalty @ Rs. 5.10 PSF per month for total delay in possession from scheduled date of possession as per original BBA to proposed date of possession or actual date of possession, whichever is later, if found payable will be demanded only at the time of possession. In the event of delay penalty exceeding the final demand payable by buyer, same shall be paid to the buyer at the time of possession.</p>
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					<p>Those buyers who have not paid last demand as per their construction linked plan will be exempted from penal interest. Such buyers need not to pay any penalty/interest amount to R.A.</p>
					<p>Individual buyers will not be charged any additional amount on account of increase in area/FAR in any manner.</p>

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				<p>No demand shall be raised till 90 days from commencement of work.</p> <p>All other terms and conditions of the BBA/RA Plan/Addendums/Clarifications, as the case may be, in the interest of home buyers, which are not expressly superseded by terms and conditions mentioned in this Letter of Intent shall remain the same.</p> <p>Construction work of the projects shall not be halted or delayed at any point of time due to fund deficiency after resumption of construction or cutoff date, whichever is earlier.</p> <p>Regarding the obligation of the company to construct flats for EWS category, we do not intend to include any such scheme in the existing projects, and would be applying for necessary waiver from the competent authority accordingly. In case such waiver may require any additional</p>
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financial commitment over and above proposed in our resolution plan, we are agreeable to bring in such funds from our own sources, without any burden to home buyers.

We confirm to make a functional club in "Green Woods" project as per the provisions of original plans

Without demanding additional cost from the Home Buyers, the Resolution Applicant proposes to provide the following benefits/ facilities to them over and above all the facilities mentioned in the BBA:-

Home Automation program for all flats.
Hybrid (Solar/Electrical) powered street lights.

Centralized water softener

					<p>plant Enhance power back up for 2 Bedroom flat 1.00 KV and $\frac{3}{4}$ Bedroom flats 2.00 KV PNG Gensets.</p>
8	Shifting policy				<p>1. Buyer may avail shifting facility of his unit (within project) at the maximum capping rate of Rs.2600 per sq. feet in JNC The Park.</p> <p>2. Buyer may avail shifting facility of his unit (within project) at the maximum capping rate of Rs.3850/- per sq. feet in Greenwood Project.</p>

					<p>3. Buyer may avail shifting facility of his unit from JNC The Park to Greenwood at the maximum capping of Rs.3850/- per sq. feet Shifting</p> <p>Policy is applicable only on increased area.</p>
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17. In respect of compliance of Section 30(2)(a), of the Code, it is seen that there is a provision in the resolution plan Chapter VI clause 6.1 provides for payment of CIRP costs in priority over payments to any other creditors. *Be that as it may it is made clear that Insolvency Resolution Process cost shall be paid in its entirety by the resolution applicant in priority to other debts of the corporate debtor.*

18. As regards compliance of clause (b) of Section 30 (2) of the Code, the Resolution Professional has certified that clause 6.2 of the resolution plan provides for the payment of the debts of

operational creditors in such manner as may be specified by the Board (IBBI) 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 Section 53.

19. There appears to be no discrimination in the resolution plan in respective class of creditors, as same treatment is provided to similarly situated each class of creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors. Needless to say, that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors. Equitable treatment has been accorded to each creditor depending upon the class to which it belongs.

20. As a sequel to the aforesaid discussion it is seen that clause (b) of sub-section (2) of Section 30 of the Code stands satisfied. In terms of Section 30(2)(c), the Resolution Plan provides for management of affairs of the corporate debtor after approval of the Resolution Plan. The management of the affairs and control of

the business of the corporate debtor after approval of the Resolution Plan has been provided at clause 10.3 of the Resolution plan which, *inter alia*, provides that the Company shall continue as a going concern and operate in its normal course of business upon implementation of the Resolution Plan. The Resolution Professional has confirmed in the compliance certificate given in Form H that the Resolution Plan provides for the management and control of the business of the corporate debtor.

21. Chapter 10 clause IV of the Resolution Plan provides for adequate means for supervising its implementation that fulfills the requirement envisaged by Section 32(2)(d) of the Code. It has been stated that one representative of Lenders alongwith two representatives of resolution applicant shall act as the monitoring agency.

22. In short, the resolution professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of the law for the time being in force.

23. The Resolution Applicant has given adequate declaration and undertaking on their eligibility to submit the Resolution Plan. At para 4(ii) of Form H Resolution Professional has also certified that *the Resolution Applicant has submitted an affidavit in this regard*. It has been confirmed that the Resolution Applicant is eligible to submit resolution plan and does not fall under any of the categories as mentioned in Section 29A of the Code.
24. As a sequel to aforesaid discussions, we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law for the time being in force appears to have been contravened.
25. In respect of provisions of Regulation 39 (4), the RP in Form H states that the compliance of said provision has been done. A bank guarantee of Rs. 3.30 crore from Bank of Baroda and a RTGS of Rs. 1 crore has been made.
26. The Resolution Professional has confirmed compliance of Section 38 (2) and (3) in the compliance filed alongwith the application.
27. The ex-director/ suspended director Mr. Chandra Prakash, has filed an I.A. 1802 (PB)/ 2020, praying for allowing the I.A. 1166 (PB)/ 2019 and set aside the order dated 30.05.2019

passed by the Adjudicating Authority and allow withdrawal of petition in view of the settlement between the parties. The I.A. 1166 (PB)/ 2019, has been filed by Mr. Ranjeet Rama Krishna, for withdrawal of Company Petition No. IB-272 (PB)/ 2019 on account of settlement between the parties.

28. The records reveal that, vide order dated 05.07.2019, the applicant in I.A. 1166 (PB)/ 2019 was given directions to present a proposal to satisfy the claims of all the Financial Creditors, However, it failed to bring in any such proposal and also the RP has filed an affidavit wherein, it states that the Petitioner in I.A. 1166 (PB)/ 2019, Mr. Ranjeet Ramakrishna Yadav, vide email dated 27.07.2020, states that the settlement arrived at between him and the Suspended-Director is null and void as the settlement entailed certain conditions which have not been fulfilled by the Suspended-Director. Since the plan has been approved by the CoC with requisite majority, now the Suspended-Director cannot raise all these objections. A set procedure is devised under the Code for withdrawal of the CP, as long as such proposal has not come forth, this Bench cannot go by the untenable objections raised by the Suspended-Director,

therefore we have not found any merit in the application filed by the Suspended-Director.

29. In view of the aforesaid discussions and as no infirmity have been brought out upon screening of the Resolution Plan; ***we hereby approve the Resolution Plan submitted by M/s Gautam Builders in consortium with Rapid Contracts Pvt. Ltd. under sub-section (1) of Section 31 of the Code.***

30. We also grant Liberty to the monitoring Committee to apply to the Tribunal for any further direction in order to ensure effective implementation of the plan, if such a necessity arises.

31. In respect of reliefs and concession sought for in the Plan which are beyond the jurisdiction of this Tribunal, liberty is accorded to the Monitoring Committee to pursue such matters before the relevant authorities which shall be considered in accordance with law.

32. In terms of sub-section (4) of Section 31 of the Code 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.

33. It is clarified that Section 30 (2) (f) of the Code mandates that the resolution plan should not be against any provisions of the existing law. The Resolution applicant therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein.
34. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its database in terms of Section-31(3)(b) of the Code.
35. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
36. For the Resolution Applicant already conceded to pay off ₹26,97,196 to M/s HDFC Bank, the same being reflected in the order dated 31.07.2020; notwithstanding the quantum of payment payable to HDFC Bank mentioned in the Resolution Plan, we hereby direct the Resolution Applicant to pay off the same to HDFC Bank as ordered.

37. I.A. 1802 (PB)/ 2020 and I.A. 1166 (PB)/ 2019 are hereby **dismissed as misconceived**. I.A. 2201 (PB)/ 2020 in CP No. (IB) 272 (PB)/ 2019 is hereby **disposed of**.

The order is pronounced. Let the copy of the order be served to the parties involved in the plan.

Sd/-

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)