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

**Company Petition No. (IB)-1383 (PB)/2018**

I.A. 3013/2020,
C.A. 2605/2019,
C.A. 2706/2019,
I.A. 3399/2021

**<u>In the main matter of:</u>**

PRIYANSHI ARORA

.... FINANCIAL CREDITOR

VERSUS

VARDHMAN BUILDTECH PVT. LTD.

.... CORPORATE DEBTOR

**<u>I.A. 3013/2020 & C.A. 2605/2019</u>**

MANIISH GUPTA

.... RESOLUTION PROFESSIONAL

**<u>C.A. 2706/2019</u>**

RANVIR SINGH & ORS.

.... APPLICANT

VERSUS

VARDHMAN BUILDTECH PVT. LTD

.... RESPONDENT

**<u>I.A. 3399/2021</u>**

PRANAV KUMAR PANDEY S & ORS.

.... APPLICANT

***Order pronounced on:28.01.2022***

**<u>Coram:</u>**

CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT
HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

For the Applicant: Mr. Ankit Bhatia, Adv in I.A. 3399/2021
Ms. Priyanjali Singh, Adv. in C.A. 2706/2019
Mr. Shantanu Chaturvedi, Adv. I.A. 3013/ 2020
Mr. Akshay Gupta, Adv. C.A. 2605/2019

**ORDER**

**PER- HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)**

**I.A. 3399/2021**

1. This Application has been filed by the Applicant under Section 60(5) of the I & B, Code 2016, praying for the following relief(s):

   a. *Allow the present application and process the claim of the Applicant as early as possible preferably within a period of 4 weeks;*
   b. *Stay the execution and implementation of award dated 05.01.2021 passed by the Arbitrator till the time claim of the Applicant is processed by CoC;*
   c. *Pass any such further orders as this Hon'ble Court deems fit and proper in facts and circumstances of the present case.*

2. The Applicant states that it had submitted its claim on 18.02.2019 before the CoC, more than two years have passed but till date the claim of the applicant has not been adjudicated, despite the Applicant having a clear case. The

Applicant states that as on date the Applicant invested a sum of Rs. 50,39,096/- (Rupees Fifty Lakhs Thirty Nine Thousand Ninety Six), in the Corporate Debtor (CD), by booking a residential Unit, H-901, 9th Floor, Tower H, Springdales Project, Sector 3, Dharuhera, Gurgaon, Mahendragarh, Haryana-123101.

3. The Applicant further states that, till January 2017, he kept on paying regular installments to the CD for purchase of the said House/ Unit. The Applicant, for the aforesaid purpose, also availed a housing loan from M/s. Dewan Housing Finance Ltd. ('DHFL'). On 21.01.2017, the Applicant, DHFL and the CD entered into a Tripartite Agreement for sale of the House/ Unit. The CD breached the terms and conditions of the Tripartite Agreement as he failed to build the unit, but kept taking regular payments, by way of EMI installments from DHFL in the Applicant's name.

4. The DHFL initiated an Arbitration against the Applicant and got an award of Rs. 37,44,462/- along with 18% interest in its favour.

5. That final liability of payment came upon the Applicant as loan was taken on behalf of the Applicant. The hard-earned money of Applicant is with CD and DHFL is continuously pressuring Applicant to pay the loan amount along with interest. As on date the amount which DHFL is seeking is Rs. 37,44,462/- from the Applicant.

6. This bench after considering the submissions of the Applicant is of the view that the RP cannot keep the claim of an claimant pending for so long, the claim needs to be decided as per the timelines prescribed under the Code and applicable Regulations. The RP is directed to decide the claim of the Applicant within seven days from the date of this order. Further, with regards to the prayer for stay on execution of Arbitration award, it is stated that this AA does not have any jurisdiction to grant that prayer. The Applicant is at liberty to approach the court of appropriate jurisdiction.

**<u>C.A. 2706/2019</u>**

1. This Application has been jointly filed by eight flat allottees of residential flats in "Springdale" at NH 8, Sector 3, Dharuhera, Gurgaon, which is being developed by the Corporate Debtor (CD), praying for the following reliefs:

a. *Quash and set aside the decision of CoC as recorded in minutes of meeting dated 15.10.2019 to the extent that it approves the Resolution Plan offered by Vivek Gupta Mr. Vivek Gupta (Director) power suspended and promoter of M/s. Vardhman Buildtech Pvt. Ltd.*
b. *Pass such order/orders which this Hon'ble Court may deem fit and proper in the facts & circumstances of the case.*

2. The Applicants state that being flat allottees, they have filed their claims in the capacity of financial creditors. Their claims were duly verified and they became part of the Committee of Creditors (CoC).
3. The Applicants herein dissented during the voting, for valid and legal reasons. This application is now being filed for placing objections of the applicants to the Resolution Plan and further praying for quashing of the minutes of meetings of the CoC dated 15.10.2019 to the extent that it approved the Resolution Plan.
4. It has been observed that the Applicants have become part of CoC, hence, their objections have become irrelevant before this tribunal.

**<u>C.A. 2605/2019 & I.A. 3013/2020</u>**

1. These are applications filed by the Resolution Professional, I.A. 3013/2020 has been filed for early listing of I.A. 2605/20149 and the same stands allowed.
2. The I.A. 2605/2019 has been filled under Section 30 (6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") seeking approval of the Resolution Plan submitted by Sh. Vivek Gupta ('Resolution Applicant'), 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. Vardhman Buildtech Pvt. Ltd.

3. The facts in brief, necessary for disposal of the present application, are that Ms. Priyanshi Arora, one of the Financial Creditors, had preferred an application under Section 7 of the Code, for initiation of Corporate Insolvency Resolution Process against M/s. Vardhman Buildtech Private Limited ("Corporate Debtor"). The Company Petition was admitted on 29.01.2019, imposing moratorium under Section 14 of the Code and thereby, initiating Corporate Insolvency Resolution Process ("CIRP"), against the Corporate Debtor. Further, the applicant herein, Mr. Manish Gupta, was appointed as the Interim Resolution Professional ("IRP").
4. The IRP convened the first meeting of the CoC on 28.02.2019, wherein the CoC resolved to appoint the IRP, Mr. Manish Gupta, as the Resolution Professional ("RP"), of the Corporate Debtor.
5. The Applicant states that in the meeting of the CoC, held on 02.04.2019, the Applicant proposed discussion on the

minimum eligibility criteria for inviting expressions of interest from prospective resolution applicants (PRA's) for the Corporate Debtor. Consequently, a resolution for approval of the minimum eligibility criteria was put to vote of the CoC. In the said meeting, the Applicant also presented the draft advertisement/ Form G, for inviting expression of Interest ("EoIs"), from eligible resolution applicants and providing key parameters for submission of the EoIs.

6. That the Applicant placed/ made advertisements of the EoI in Business Standard, Hindi and English editions, on 15.04.2019, inviting EoI from Prospective Resolution Applicants ("PRA's").

7. That in the CoC meeting, held on 20.07.2019, it was put forth that Sh. Vivek Gupta has submitted an EoI after the deadline, it was listed as Agenda No. 7 whether the delay in submission of EoI by Sh. Vivek Gupta, be condoned which was duly approved by the CoC with 69.05% voting in its favour. Similarly, another EoI was received from one Sh. Surender Kumar, which was also delayed, the same was also put before the CoC as Agenda Item No. 8, which

was duly approved by the CoC with 69.84% voting in favour.

8. Subsequently, vide the $6^{th}$ CoC meeting, held on 28.09.2019, at Agenda No. 7, to seek approval of Request for Resolution Plan ('RFRP') and Evaluation Matrix ('EM'), it is submitted that the same was duly approved by 69.84% in the voting by the CoC.

9. The Resolution Plan, submitted by the Resolution Applicant, i.e., Sh. Vivek Gupta, was put before the CoC in its $7^{th}$ meeting, held on 15.10.2019. It is submitted that there was a little delay in the filing of the Resolution Plan as the CoC had made certain suggestions, pursuant to which a revised Resolution Plan was submitted by the Resolution Applicant. The same was put before the CoC as Agenda No. 7, which was duly approved by the CoC with 97.30% voting in favour.

10. It is pertinent to state herein that the time limit for completion of CIRP, i.e., 270 days in case of the Corporate Debtor, has concluded on 26.10.2019 and the CoC had approved the Resolution Plan on 15.10.2019, with a voting share of 97.30%. Therefore, the Resolution Plan approved

by the CoC is within the stipulated time limit of 270 days, as required under Section 12(1) of the IBC.

11. The Applicant further states that the average liquidation value of the Corporate Debtor, under Regulation 35 of the IBBI (Insolvency Regulation Process for Corporate Persons) Regulations 2016 ("CIRP Regulations"), as valued by the two registered valuers is approximately **Rs.35,25,08,705/-**.

12. The Resolution Professional has submitted its Compliance Certificate, under Section 39(4) of the Code, along with the resolution plan, under Section 39(4) for approval before the Committee of Creditors.

13. Resolution professional has also placed a copy of the resolution plan as approved by CoC, stated to have been signed by the Authorized Signatory of the resolution applicant, being Mr. Vivek Gupta.

14. The Compliance Certificate filed by the Resolution Professional in Form H under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has also been placed on record.

15. That brief contours as per Form H, of the Resolution Plan, as approved by the CoC, along with the amounts provided for the stakeholders under the Resolution Plan is detailed herein below: -

**(Amount in Rs. Lakh)**

| S.No. | Sub-Category of Stakeholder | Amount Claimed | Amount Admitted | Amount provided under the Plan | Amount provided to the amount claimed |
|---|---|---|---|---|---|
| 1. | Dissenting Secured Financial Creditors | 335.12 | 303.99 | 90.52 | 29.78% |
| 2. | a) Other Secured Financial Creditors | 1322.93 | 389.84 | 175.00 | 44.89% |
| | b) Home Buyer Classes | 15,148.64 | 11,038.69 | 7,715.03 | 69.89% |
| 3. | Dissenting Unsecured Financial Creditors | NIL | NIL | NIL | NIL |
| 4. | Other Unsecured Financial Creditors | 1,066.12 | 1,028.15 | 661.75 | 64.36% |
| 5. | Operational Creditors | 1,066.12 | 141.24 | 141.24 | 100% |
| | Government | 429.78 | 429.78 | NIL | |
| | Workmen | NIL | NIL | NIL | |
| | Employees | 23.68 | 22.66 | 22.66 | 100% |
| **Grand Total** | | **19,395.96** | **13,354.35** | **8806.20** | 65.94% |

16. 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, with *97.30%* voting share.

17. Section 31 of the Insolvency and Bankruptcy Code, deals with the approval or rejection of a resolution plan by the Adjudicating Authority. Approval of the resolution Plan is accorded under the provisions of Section 31(1) of the Code.

18. Sub-section 2 of Section 30 casts a duty on the Resolution Professional, to examine the Resolution Plan received by him, to confirm that such Resolution Plan provides for the payment of Insolvency Resolution Process costs, provides for the payment of the debts of the operational creditors and financial creditors in such manner as specified, provides for the management of the affairs of the corporate debtor after approval of the Resolution Plan; the implementation and supervision of the Resolution Plan, that the Resolution Plan does not contravene any of the provisions of the law, and that the

Resolution Plan conforms to such other requirements as may be specified by the Board.

19. The Resolution Professional has filed compliance certificate in Form H and *inter alia,* has confirmed that it has examined and verified the Resolution Plan approved by the CoC of Mr. Vivek Gupta, in the light of the requirements of the Code and Regulations and that it is compliant to the relevant provisions of the Code and Regulations.

20. It has been submitted in the application and in Form H, duly certified by RP, that the final Resolution Plan, approved by *97.30%* vote share of the members of the Committee of Creditors, meets the requirements as laid down in various clauses of Section 30 (2) of the Code.

21. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the resolution plan, at *Part II Clause B (1)* which provides for payment of CIRP costs, in priority over payments to any other creditors, from the upfront amount brought in by the SRA. The Resolution Professional has also confirmed in the compliance certificate, given in Form H, that the

Resolution Plan provides for the payment of Insolvency Resolution Process costs.

22. As regards compliance of clause (b) of Section 30 (2) of the Code, the Resolution Professional has certified that the resolution plan provides for the payment of the 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 liquidation of the corporate debtor under Section 53.

23. 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.

24. Besides, the resolution plan provides for the payment of the 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 liquidation of the corporate debtor under Section 53.

25. 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.

26. 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 C* 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.

27. The fourth requirement envisaged by Section 30(2)(d) is that it must provide for the implementation and supervision of the resolution plan. The Resolution Professional has confirmed, in the compliance certificate given in Form H, that the Resolution Plan provides for adequate means for supervising its implementation.

28. The fifth and sixth conditions in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code, provide to

ensure that the Resolution Plan does not contravene any of the provisions of the law and conforms to such other requirements as may be specified by the Board.

29. In this regard 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. *Be that as it may in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code, we make it clear that the Resolution Applicant shall comply with all applicable laws under the proposed Resolution Plan, whether or not specifically provided therein.*

30. It is pertinent to state here that Section 29A of the Code prescribes certain eligibility criteria and disqualifications, for persons who submit a resolution plan. 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,* confirmed that the

Resolution Applicant is eligible to submit a resolution plan and does not fall under any of the categories as mentioned in Section 29A of the Code.

31. Regulation 36B(4A) of the CIRP Regulations requires that the Resolution Applicant shall provide a performance security. Resolution professional has stated that the Resolution Applicant has submitted a Performance Guarantee of Rs. 50,00,000/- (Rupees Fifty Lakhs Only), in compliance of Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

32. As to the Reliefs and Concessions stated in Chapter IX of the Resolution Plan, the exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted. As regards the other reliefs and concessions as sought for, which exempts the Corporate Debtor from holding them liable for any offenses committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016, is hereby granted to 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.

## ORDER

33. 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.

34. The Resolution Professional has further certified that the Resolution Plan has been approved by *97.30%* of voting share of financial creditors, after considering its feasibility and viability and other requirements specified by the Code and IBBI Regulations.

35. The Adjudicating Authority is not expected to substitute its view with the commercial wisdom of the CoC nor should it deal with the technical complexity and merits of the Resolution Plan, unless it is found contrary to express provisions of law and goes against the public interest. The

object of the Code is to promote resolution and every effort must be made to try and see that resolution is made possible.

36. Accepting the Resolution Plan is advantageous to all the stakeholders and amounts to maximization of the assets of the Corporate Debtor and promotes entrepreneurship and to ensure that the Company continues to function as a going concern. The right of rejection or approval of a plan is with the CoC. In a particular case, what should be the percentage of claim amount payable to one or other 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor', can be decided by the Committee of Creditors, based on facts and circumstances of each case. What can be screened by this Bench is whether the plan approved by CoC meets the requirements as referred to in sub-section (2) of Section 30 of the Code.

37. The Hon'ble Supreme Court in the case of ***Kalparaj Dharamshi v. Kotak Investment Advisors Ltd, 2021 SCC OnLine SC 204, decided on 10.03.2021,*** held as follows;

> "… the appeal is a creature of statute and that the statute has not invested jurisdiction and authority

> either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same."
>
> "... the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis."
>
> *"155. It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code."*

38. In the present case the resolution plan has been unanimously approved with *97.30%* voting share, much above the statutory requirement of 66%, in terms of Section 30 (4) of the Code and has the requisite statutory voting share. Besides the decision of CoC is a reasoned and self-speaking one, as required under proviso to Regulation 39(3) of the CIRP Regulations, 2016. Needless to state here that the Resolution Plan cannot take care of total outstanding dues of the creditors in its entirety. It is however seen that the resolution applicant proposes to pay the total consideration amount of Rs.8806.20 Lakhs within 24 months from the date of approval of the resolution plan, which is higher than the liquidation value of Rs.35,25,08,705/-.

39. It is a well settled proposition of law that commercial and business decisions of CoC are not open to judicial review. Adjudicating Authority cannot enquire into the commercial wisdom of CoC. The ground for rejection is limited to the matter specified under Section 30(2). It is however reiterated that the resolution plan in question meets the requirements specified in Section 30(2) of the Code and the reasoned commercial decision of CoC is neither discriminatory nor perverse.

40. In view of these facts we are satisfied that the requirements, as per the Code and the relevant Regulations have been complied with. Moreover, the Resolution Plan has been approved by *97.30%* voting share of the members of CoC and has been submitted in compliance of Section 30 of the Code for approval. 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 under sub-section (1) of Section 31 of the Code.*

41. In respect of reliefs and concessions sought for in the Plan which are beyond the jurisdiction of this Tribunal,

the Monitoring committee can make such a claim before the authorities which shall be considered in accordance with law.

42. 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.

43. 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.

44. We hereby exclude the period spent under adjudication and it is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.

45. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its database.

46. The approved 'Resolution Plan' shall become effective from the date of passing of this order.

47. Accordingly, I.A. 2605/2019, I.A. 3013/2020, 3399/2021 are allowed & disposed of. C.A. 2706/2019 is declared infructuous.

Let the copy of the order be served to the parties.

-SD-

**[CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR]**
**(PRESIDENT)**

-SD-

**(HEMANT KUMAR SARANGI)**
**MEMBER (TECHNICAL)**