

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301

IA(Plan)/46(AHM)2024 in CP(IB)/210(AHM)2021

Proceedings under Section 30(6) r/w 31 of IBC,2016 r/w Reg 39(4) of the IBBI Reg,2016

IN THE MATTER OF:

Arpan Maheshkumar Shah RP for Omshri DevProcon Limited

.....Applicant

Order delivered on: 03/07/2025

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced on open court vide separate sheet.

sd/-

**DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

sd/-

**CHITRA HANKARE
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

**IA (Plan) No. 46 of 2024
in
CP (IB) No.210 of 2021**

*(An application filed under Section 30 r.w. Section 31 of the
Insolvency and Bankruptcy Code, 2016)*

In the matter between:

Aakar Construction

....Applicant/
Operational Creditor

Versus

M/s. Omsfri Devprocon Limited

...Respondent/
Corporate Debtor

In the matter of:

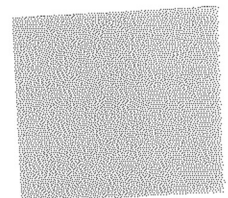
Mr. Arpan Maheshkumar Shah
Resolution Professional of
Omsfri Devprocon Limited
Having address at:
301, Shopper Plaza- 4, Opp. BSNL,
C. G. Road, Navrangpura,
Ahmedabad-380006

Order pronounced on 03.07.2025

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**



Present:

For the Applicant : Mr. Arjun Padhiyar, Adv.
RP : Mr. Arpan Shah

JUDGEMENT

1. This is an application filed under Section 30 read with Section 31 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as "IBC") for the approval of revised resolution plan submitted by Resolution Applicant- Mr. Chintan N Patel for the Corporate debtor- M/s Omsfri Devprocon Limited and to condone the delay of 39 days in filing the present application.
2. The Operational Creditor had filed an insolvency application under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor which was admitted *vide* order dated 04.08.2022. The IRP made public announcement in Form A dated 06.08.2024.
3. It is stated that after receiving the claims from 9 unsecured financial creditors one operational creditor and one from EPFO department, the IRP constituted the Committee of Creditors ("CoC") comprising of two

unsecured financial creditors. The 2nd CoC meeting was held on 19.12.2022 wherein the members of CoC inter alia resolved to initiate the process of Expression of Interest (“EoI”); further the CoC also approved minimum eligibility criteria and evaluation matrix and draft Request for Resolution Plan. Thereafter the applicant published Form G on 20.12.2022.

4. The applicant submitted that out of two final PRA’s only one PRA i.e. Mr. Chintan N Patel submitted the Resolution Plan. The voting on the Resolution Plan placed in 4th meeting of COC held on 17.04.2023 whereby the CoC approved the resolution plan with the majority of 100% voting share submitted by Mr. Chintan N Patel.
5. The applicant had previously submitted a resolution plan by the same SRA in IA No. 641 of 2023, which was rejected by this Tribunal *vide* order dated 02.11.2023 on following substantive grounds:

"12. It is observed that the Resolution Applicant is an individual and his financial background, net worth, experience and funding of the resolution plan has not been properly explained. The Information Memorandum, Resolution Application and Form H are

not satisfactory to enable us consider the application for resolution of the company by a Resolution Plan by an individual. Even though the valuer was appointed the Fair Value and Liquidation Value have not been arrived at by the RP for consideration of the Resolution Plan by the COC. There are huge Income Tax Arrears and the claims of many other financial creditors have not been verified and admitted before the Resolution Plan was finalised. No provision made for the Income Tax Due to be paid.

13. The RP had received an amount of Rs.80.59 crores of claims from 9 Financial Creditors, while he has accepted only 2 Unsecured Creditors claims of Rs.4.00 crores, stating that these were under verification and there by the constitution of COC is also found to be unbalanced and the RP has not specified why they were pending. Before rejection or acceptance of such claims and without arriving at the liquidation value of the CD, the Resolution Plan of an individual receiving without proper financial exposure and net worth certification, intent to bring funds through equity/quasi equity was passed by the COC. The resolution plan has also not addressed the cause of default, a proper information memorandum was not prepared and is not feasible and viable addressing the liabilities of the corporate debtor."

6. The applicant challenged the order *supra* before the Hon'ble NCLAT wherein the Hon'ble NCLAT uphold the impugned order *vide* order dated 08.01.2024 and granted the liberty to the RP to issue fresh Form G.
7. The applicant published fresh Form-G on 08.04.2024 in furtherance of the Hon'ble NCLAT order and received one EoI from the Prospective Resolution Applicant. It is

submitted that the applicant sent repeated reminders via emails dated 23.05.2024 to the unsecured financial creditors to submit the documents for substantiation of their claims. However the applicant rejected the claims for want of proper documents substantiating their claims.

8. The applicant convened 7th CoC meeting on 14.08.2024 wherein he placed the resolution plan submitted by PRA, Mr. Chintan Patel before the CoC. In 8th meeting of COC held on 10.09.2024 the CoC was apprised about the claim received from the Income Tax Department. Accordingly the Resolution Applicant was directed to consider the said claim in the Resolution Plan. Therefore, the Resolution Applicant submitted revised resolution plan on 12.09.2024. Thereafter the applicant started the e-voting for the approval of revised resolution plan on 12.09.2024. It is submitted that the CoC with 100% majority has approved the Revised Resolution Plan submitted by Mr. Chintan Patel.
9. The SRA has also deposited EMD of Rs.5,00,000/- on 26.04.2024 and Rs.7,50,000/- on 08.10.2024 towards

performance security. The resolution applicant also sought certain reliefs and concessions. As per form-H list of financial creditors are as under: -

Name of creditors	COC % of Voting Share	Total Claimed Rs.	Claim Admitted
J. P. Manek Infrastructure Private Limited	50%	2,00,00,000/-	2,00,00,000/-
PIRAMAL CRITICAL CARE.INC	50%	2,00,00,000/-	2,00,00,000/-
TOTAL	100%	4,00,00,000/-	4,00,00,000/-

10. Amount provided for stakeholders as per the Regulation 38A of the CIRP Regulation is as under: -

(Amount in Rs.)

Sl. No	Category of Stakeholder*	Sub-Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan
(1)	(2)	(3)	(4)	(5)	(6)
1.	CIRP Cost		NIL		20,00,000/-
2.	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	0	0	0
			0	0	0
			Total[(a)+(b)]	0	0
3.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0

		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	0	0	0
		Total[(a)+(b)]	80,59,06,747	4,00,00,000	38,00,000
4.	Operational Creditors	(a) Related Party of Corporate Debtor	0	0	0
		(b)Other than (a) above:			
		(i)Government	83,56,59,736	83,56,59,736	5,50,000
		(ii) Workmen	0	0	0
		(iii)Employees	0	0	0
		(iv) Others	1,18,15,847	1,18,15,847	11,22,505
		Total[(a)+(b)]	84,74,75,583	84,74,75,583	16,72,505
5.	Other debts and dues	Nil	0	0	0
GRAND TOTAL			165,33,82,330	88,74,75,583	74,72,505

11. It is submitted that full amount of Rs.0.98 lakh proposed to EPFO and remaining amount of Rs.4.51 Lakh proposed to IT Department under the Revised Resolution Plan.
12. On perusal of Form-H, it is seen that the fair value and liquidation value is NIL. The RP has not filed any fresh valuation report which had been shown as NIL in earlier submission for approval of resolution plan.
13. However on perusal of the additional affidavit filed 16.03.2025 as directed by this Tribunal, it is observed from the balance sheet for the year 31 March 2022 that

the CD had total assets of Rs.137,11,44,255 of which other Current assets are shown to be as Rs 114,21,97,846 (which has gone up from Rs. 103,00,21,012) and the total liabilities have gone up from Rs.103,53,03,198 to Rs.137,11,44,255 during same period. When the assets are not valued including the Current Assets which have gone up sizeably within 2 years before the CIRP, the RP and the COC has not provided proper explanation as to how the Resolution Plan can be brought in with huge dues particularly for the Income Tax which is a statutory department having to collect dues amounting to Rs.83,56,59,736 which is mainly pertaining to a demand of Rs.64,52,11,655. We also observe that the Statutory Audit report and financial statements submitted as part of affidavit as no details are not also available of these huge current assets reflected in balance sheet. The balance sheet has been prepared without revealing details and the valuation report treats the entire assets as NIL.

14. There is no Section 66 or avoidance application filed or pending. The applicant has also submitted that there is

no dues remains for the employees and workmen and therefore not provided under the plan. There is no Section 19 application filed seeking any cooperation for documents submitted and we find that Information Memorandum prepared has no adequate details to prepare an appropriate resolution plan to satisfy claims of all creditors.

15. A perusal of the revised resolution plan reveals that the SRA being an individual has declared his net worth for the financial year 2021–2022 to be Rs. 76 lakhs, while the total value of the proposed resolution plan is Rs. 74 lakhs. However, the RP has failed to furnish a current and duly certified net worth certificate or provide a credible explanation as to the source of funds or financial arrangement for the implementation of the plan, despite deficiencies raised by this Tribunal in the earlier plan rejection order. Further, the affidavit filed under Section 29A of the Insolvency and Bankruptcy Code, 2016 appears to be defective, as it is neither notarized nor duly verified, dated, or signed by the SRA in accordance with procedural requirements. Moreover, there is no record of

due diligence being conducted by the RP with respect to the SRA's eligibility under Section 29A.

16. In view of above, we observe that the Resolution Plan is not in compliance of the provisions and we are not satisfied with the approval of COC of approving a resolution plan to allocate a paltry sum to the operational creditors while ignoring the valuation of the assets in appropriate form as required. Further, as per the order of Hon'ble NCLAT dated 08.01.2024, the RP should have done a fresh valuation of the assets before issue of Form G to meet the claims of all creditors. In case the valuation of the assets of the CD would have been made appropriately, the amount to be paid to such creditors in compliance with Sec 30(b) would have been higher. We further observe that the resolution plan is a proposal in deceit to erase the assets and liabilities at the cost of the statutory debt due to be paid, avail its concessionary benefits, without properly resolving the entity. The procedure followed in bringing this resolution plan is not transparent, revealing the true status of the CD under CIRP and its resolution and not in consonance

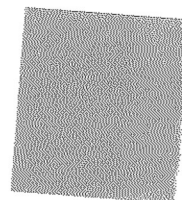
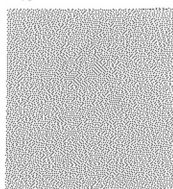
with Section 30 of IBC. As the Resolution Plan does not confirm to the requirements it deserves to be rejected.

17. Hence, we pass the following orders:

ORDER

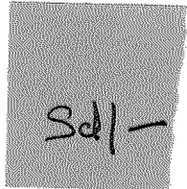
- I. IA (Plan) No./46 (AHM)/2024 is rejected.
- II. Resolution Plan is rejected.
- III. Corporate Debtor to be liquidated in the manner laid down in Chapter III of IBC.
- IV. We hereby appoint Mr. Kailash Shah having IBBI registration no. IBBI/IPA-001/IP-P00267/2017-2018/10511 and email id- ipktshah@gmail.com as per the panel suggested by IBBI as the Liquidator of the Corporate Debtor to carry the liquidation process. The Liquidator so appointed shall complete the Liquidation process as per the provisions of the Insolvency and Bankruptcy Code, 2016 r.w. Insolvency and Bankruptcy Board of India (Liquidation process) Regulation, 2016.
- V. All the powers of the Board of Directors, key managerial persons, and the partner of the Corporate Debtor, as the case may be, hereafter cease to exist. All these powers henceforth vest with the Liquidator.

- VI. The personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- VII. The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and same shall be paid to the Liquidator from the proceed of the liquidation estate under section 53 of the Code.
- VIII. Once the liquidation process is initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor. The Liquidator has the liberty to institute a suit and other legal proceedings on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority, as provided in sub-section (5) of section 33 of the Code.
- IX. This liquidation order shall be deemed to be notice of discharge to the officers, employees, and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator. ,

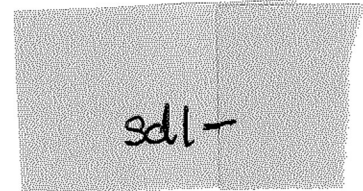


- X. The CoC is directed to contribute to the liquidation cost if any short fall occurs from the liquidation value of the Corporate Debtor.
- XI. This Adjudicating Authority directs the Liquidator to issue a public announcement stating that the Corporate Debtor is in liquidation. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workmen/employees could also be informed of this liquidation order through their association.
- XII. The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also filed its response for disposal of any pending Company Applications during the process of liquidation.

- XIII. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.
- XIV. The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, IBBI, the resolution professional, and the Liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities.
- XV. Accordingly, the present IA (Plan) 46 of 2024 in CP (IB) 210 of 2021 stands disposed of.



DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)



CHITRA HANKARE
MEMBER (JUDICIAL)