

IN THE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

COURT NO. 1

ITEM No.303

IA/12(MP)2022 in CP(IB) 6 of 2020

Proceedings under Section 30(6),30(1) r.w Reg 39(4) IBBI

IN THE MATTER OF:

Teena Saraswat Pandey RP for Rajpal Abhikaran Pvt LtdApplicant

Order delivered on 25/08/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**MADAN B. GOSAVI
MEMBER (JUDICIAL)**

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

**IA/12(MP)2022
In
CP (IB) 6 of 2020**

[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:

Teena Saraswat Pandey
Resolution Professional of
Rajpal Abhikaran Private Limited
Office at: 293/2, Niranjanpur
A.B. Road, Indore
Madhya Pradesh- 452010

Applicant

Order Reserved on: 04/08/2022
Order Pronounced on: 25/08/2022

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

Appearance:

Ld. Adv. Mr. Madhav Lahoti appeared for the applicant;

Ld. Ms. Teena Saraswat Pandey appeared for the RP;

Ld. Sr. Adv. Mr Rashesh Sanjanwala a.w. Ld. Adv. Mr. Nilesh P Udernani appeared for the suspended management.

ORDER

1. This application under Section 30(6) read with Section 31 of Insolvency & Bankruptcy Code, 2016 (**Code, 2016**) is filed by Ms. Teena Saraswat Pandey,-Resolution Professional of the corporate debtor-Rajpal Abhikaran Private Limited for approval of the Resolution Plan submitted by Agarwal Real City Private Limited.

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

(i) The Corporate Debtor was admitted in the Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) on 26.03.2021. Ms. Teena Saraswat Pandey was appointed as Interim Resolution Professional (hereinafter referred to as **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)	State Bank of India	23.24%
(ii)	Volark Auto Private Limited	1.61%
(iii)	Suraksha ARC	42.36%
(iv)	AU Small Finance Bank Limited	12.45%
(v)	Sundaram Finance Limited	0.63%
(vi)	Shri Ram City Union Finance Limited	7.98%
(vii)	Toyota Financial Services India limited	11.12%
(viii)	PPG Asian Paints Private Limited	0.60%

(ii) During the CIRP of the corporate debtor, the Committee of Creditors (hereinafter referred to as “**COC**”) received two resolution plans in pursuance of the publication of Form-G dated 05.06.2021, however pursuant to reissue of the Form-G dated 02.10.2021 CoC received 5 resolution plans. The plans were discussed on 06.12.2021, 07.12.2021 and 08.12.2021 in the 16th COC meeting.

(iii) The resolution plan submitted by Agarwal Real City Private Limited has been approved by the COC with 90.41% votes in 17th meeting held on 17.12.2021. The

same plan has been submitted before the Adjudicating Authority for approval under Section 30(6) of the Code, 2016. The liquidation value and fair value of the Corporate Debtor is reported at Rs.18,39,91,863/- and Rs. 23,22,47,203/- respectively.

(iv) The resolution applicant- Agarwal Real City Private Limited has proposed to pay a sum of Rs.22,61,33,000 against the total admitted claim. The details are as follows:

Sr.	Particulars of Claim	Claim admitted by RP (Rs.)	Resolution Plan Proposal (Rs.)
1.	Insolvency Resolution Process Costs	NIL	30,33,000
2.	Secured Financial Creditor	23,02,07,114	19,11,00,000
3.	Unsecured Financial Creditor	76,01,44,603	3,20,00,000
4.	Operational Creditors	14,91,18,974	0
	Total	113,94,70,691	22,61,33,000

(v) The liquidation value of the operational creditors would be nil and therefore, the resolution applicant proposes nil payment to the operational creditor.

(vi) In the resolution plan, the resolution applicant claimed various reliefs and concessions relating to the applicable provisions of the Security Exchange Board of India, Companies Act, Income Tax Act, Goods & Service Tax Act without levying any fees, penalties etc.; and also relating to the licenses, permits, approvals required for the implementation of the terms of the resolution plan. The relief is also claimed relating to all past litigations pending and/or proposed to be raised at different levels and provide

waiver from tax dues, including interest and penalty on such litigations as on Insolvency Commencement Date.

3. The suspended management objected to the approval of the said resolution plan on the ground that the resolution plan was not provided to them before the CoC meeting wherein the resolution plans were discussed & the resolution plan of Agarwal Real City Private Limited was approved. Therefore, this Adjudicating Authority vide its order dated 01.07.2022 directed the resolution professional to provide the resolution plans to the suspended management and then conduct CoC meeting to deliberate on the resolution plans afresh, after considering the objections by the suspended management and to comply the said order within two weeks.

4. The resolution professional has through its affidavit in compliance dated 16.07.2022 stated that the copy of all the resolution plans were provided to the suspended management through email dated 02.07.2022 as directed by this Adjudicating Authority and thereafter, in the 21st CoC meeting dated 11.07.2022, all the resolution plans were discussed and voted upon after heeding to the objections by the suspended management. The CoC in the said meeting approved the resolution plan of Agarwal Real City Private Limited with 98.39% votes. Thereby, the CoC has approved the same resolution plan in its 17th CoC meeting and 21st CoC meeting with 90.41% and 98.39% votes respectively.

5. We have heard the learned counsels for the applicant and the suspended board of management and perused the material available on record. 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.18,39,91,863/- and Rs.23,22,47,203/- respectively. The resolution plan should adhere to the following requirements:

(i) It should provide for the payment of insolvency resolution process costs in priority to the repayment of other debts of the corporate debtor.

[Section 30(2)(a) read with CIRP Regulation 38(1)(a)];

(ii) The repayment of the debts of operational creditors and dissenting financial creditors, shall not be less than the amount to be paid to such respective creditors in the event of liquidation of the corporate debtor under section 53 of the Code.

[Section 30(2)(b) read with CIRP Regulation 38(1)(b) & 38(1)(c)];

(iii) Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan.

[Section 30(2)(c) read with CIRP Regulation 38(2)(b)];

(iv) The implementation and supervision of the resolution plan.

[Section 30(2)(d) read with CIRP Regulation 38(2)(a) & 38(2)(c)];

(v) It does not contravene any of the provisions of the law for the time being in force.

[Section 30(2)(e)];

(vi) The resolution plan shall contain the term of the plan.

[CIRP Regulation 38(2)(a)]

6. In view of the above provisions of the Code, 2016, the resolution plan submitted before us has been examined as follows:

(i) In the plan, the provision for payment towards CIRP costs has been made. Thereby, section 30(2)(a) read with CIRP Regulation 38(1)(a) has been complied with.

(ii) No provision of payment is made with respect to the operational creditor in the said resolution plan. The resolution professional has stated that the operational creditor would be paid nil under the waterfall mechanism in the event of liquidation of the corporate debtor.

It is also seen from the material on record that the Volark Auto Private Limited, having 1.61% voting share objected to the approval of the said resolution plan and therefore, appears to be dissenting Financial Creditor. However, we note that in the plan an amount of Rs.6,72,229/- (as against the claim admitted by the resolution professional for Rs.1,59,68,482/-) is proposed for payment to Volark Auto Private Limited, a dissenting Financial Creditor presuming that the said dissenting financial creditor is paid an amount that would have been payable as per Section 53 of the Code, 2016, in the event of Liquidation of the Company. The said dissenting financial creditor has not filed any objection before this Adjudication Authority against the approval of the said resolution plan. We hold that provisions of section 30(2)(b) read with CIRP Regulation 38(1)(b) & 38(1)(c) have been complied with.

(iii) 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 consisting of RP, a nominee of CoC and two nominees of resolution applicant, 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 Section 30(2)(c) read with CIRP Regulation 38(2)(b) have been complied with.

(iv) The resolution plan contains a provision wherein, the implementation of the said plan will be supervised by the Monitoring Committee. Thereby, Section 30(2)(d) has been complied with.

(v) The RP has submitted that the plan does not contravene any provisions of law. 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. Thereby, Section 30(2)(e) has been complied with.

(vi) The term of the resolution plan shall commence on the date of approval of the said plan by the Adjudicating Authority and shall continue until the date by which the provisions of the plan relating to the payment of settlement amount of the creditors have been completed. The plan contains a provision of disbursement to financial creditor within 30 days from the date of approval of the plan as per Section 31 of the Code, 2016. Thereby CIRP Regulation 38(2)(a) has been complied with.

7. In this behalf, we heard learned senior counsel Mr. Rashesh Sanjanwala for the Suspended Management at length. His first objection was that the RP did not give copy of the resolution plan to the Suspended Management. He submitted that it is in contravention of the judgment of the Hon'ble Supreme Court in case of M/s. Vijay Kumar Jain Vs. Standards Chartered Bank and Ors. (Civil Appeal No. 8430 of 2018). We consider his submissions. By order dated 01.07.2022, we directed the RP to provide the copy of the resolution plan to the Suspended Management, called for the CoC meeting and allowed the Suspended Management to put their say as against the plan. Accordingly, the RP provided the copy of the resolution plan to the Suspended Management. On 07.07.2022, the Resolution Professional called for meeting of the CoC. The Suspended Management was allowed to put its say. It is seen from the compliance affidavit dated 02.08.2022 filed by the RP that on behalf of the Suspended Management one Mr. Rakesh Ashok Rajpal attended the CoC meeting. He put before the CoC the objections relating to some provisions of the resolution plan. We have seen those objections. We find those objections are mainly relating to earnest money deposit amount payable by Resolution Applicant. Most of the objections of the Suspended Management are relating to commercial viability of the plan. The Suspended Management also contended that the Committee of Creditors was wrongly constituted. The RP received the claims wrongly. The RA does not have enough funds to keep the Corporate Debtor as a going concern. It appears to us that most of the objections are relating to commercial/financial arrangement made by Resolution Applicant in the resolution plan. We make it clear that the CoC in

its commercial wisdom has considered that aspect. This Adjudicating Authority cannot enter into that arena.

8. Learned senior counsel Mr. Sanjanwala tried to impress upon us that the Resolution Applicant does not have enough source to infuse funds in the Corporate Debtor. We have gone through the resolution plan very minutely. In para 7 of the resolution plan, the Resolution Applicant has given its profile. Resolution Applicant M/s. Agarwal Real City Pvt. Ltd. is a group company having turnover more than Rs. 5,700/- crores. Other companies in the group are M/s. Agarwal Fuel Coal Corporation Pvt. Ltd., Agarwal Coal Washing Pvt. Ltd. Singapore Agarwal Coal Corporation (SPTE Ltd.). All these companies are in existence for more than 45 years. We do not wish to go into all details of their financial health but suffice to say is that the RA is wealthy and solvent company. At this stage, we cannot reject the resolution plan on this ground which is approved by the CoC in its commercial wisdom.

9. It was our query to the Suspended Management that if we accept their submission and reject the plan then we will left with no option but to pass the order of liquidation of the Corporate Debtor. In that situation, how the Suspended Management will be benefited ? but there is no answer to this query. The Suspended Management is not in position to revive this Corporate Debtor. It appears to us that the Suspended Management wanted to derail the entire CIRP for some reasons which they did not disclose. Be that as it may, we find that the resolution plan submitted for our approval complies the provision of Sections 30(2), 31 of IBC r.w.

Regulation 38 CIRP Regulation, 2016. We do not see any reason to reject this resolution plan.

10. 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.....”*

11. 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 other 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.

12. The proviso to section 31 of the Insolvency and Bankruptcy Code, 2016, states that before passing an order for approval of the resolution plan the Adjudicating Authority, shall satisfy that the resolution plan has provisions for its effective implementation. We being satisfied, approve the resolution plan submitted by Agarwal Real City Private Limited and in addition to the above directions, proceed to pass the following orders:

- (i) Application is allowed.
- (ii) The resolution plan of Agarwal Real City Private Limited for Corporate Debtor i.e., M/s. Rajpal Abhikaran Private Limited stands allowed as per Section 30(6) of the Insolvency and Bankruptcy Code, 2016.
- (iii) The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- (iv) The order of moratorium dated 26.03.2021 passed by this Adjudicating Authority under Section 14 of the Insolvency and Bankruptcy 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 12 of 2022 in CP(IB) 6 of 2020 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-
Kaushalendra Kumar Singh
Member (Technical)

-SD-
Madan B. Gosavi
Member (Judicial)

Swati-LRA