

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

**I.A. 4881/ 2020**

**IN**

**Company Petition No. (IB)-572 (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. Dinesh Khetan

...Applicant/Resolution Professional

AND

**In the matter of:**

Bigmoon Buildcon Private Limited

...Corporate Debtor

**Order delivered on: 04.01.2021**

**Coram:**

**SH. B.S.V. PRAKASH KUMAR,**

**HON'BLE ACTG. PRESIDENT**

**SH. HEMANT KUMAR SARANGI,**

**HON'BLE MEMBER (TECHNICAL)**

For the RP:

Mr Amit Goel, Advocate for RP

For the Applicant:

Mr. Parikaj Agarwal, Advocate for RP

## **ORDER**

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

1. This is an application filed by the Resolution Professional under Section 30 (6) of 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 Bigmoon Buildcon Private Limited.
2. The facts in brief necessary for disposal of the present application are that Mr. Dinesh Khetan, 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 Bigmoon Buildcon Private Limited ("Corporate Debtor"). The Company Petition (IB) 572 (PB) / 2019 was admitted on 03.09.2019 imposing moratorium under Section 14 of the Code and by initiating Corporate Insolvency Resolution Process against the Corporate Debtor.



3.

4. The Resolution Professional also took steps for appointment of two valuers namely, Mr. Pankaj Chandani & Mr. Pradeep Kumar Garg, for Land & Building and Ms. Gunjan Agarwal & Ms. Nisha Malpani, for securities or Financial Assets, under Regulation 27 of the Regulations, to determine the Fair value and Liquidation value of the corporate debtor in accordance with Regulation 35. Besides M/s Prem Gupta & Company was appointed as transaction auditor.

5. It is observed that the Resolution Professional published an invitation for expression of interest in requisite Form G on 07.11.2019 in Financial Express (English) and Jansatta (Hindi) editions of newspapers with 23.11.2019 being the last date for submission of EOI.

6. Pursuant to the public invitation, the RP received EOI for submission of Resolution Plan from the following parties:-

- a. PanchTatva Promoters Private Limited
- b. One City Infrastructures Private Limited
- c. Mr. Sunil Kumar Agrawal

7. It is stated that Resolution Professional did not receive a resolution plan from any of the three resolution applicants. Therefore, RP called for the 4th meeting of the CoC on 14.01.2020 to discuss re-issuance of Form G & extension of CIRP period by 90 days. The same was unanimously voted for by the CoC members.
8. On 16.01.2020 the RP re-issued Form-G, pursuant to re-issue of Form-G, RP received one EOI from SBC Exports Limited & JM Propinfra Private Limited.
9. The Resolution Professional has submitted its Compliance Certificate under Section 30(2) of the Code along with the resolution plan under Section 30(3) for approval before the Committee of Creditors.
10. On 27.02.2020, resolution applicant filed an application for extension of CIRP period by 90 days beyond the period of 180 days. The said application was allowed by this AA vide its order dated 03.03.2020.
11. That RP called for the 6th meeting of the CoC on 11.03.2020 for discussion on re-issuance of invitation for EOI with 18.03.2020 being the last date to submit EOI and reduction in amount of EMD to be submitted along



with resolution plan. The same were approved unanimously by the members present.

12. The RP published revised Form G on 14.03.2020. Pursuant to which the RP received EOI from two more persons. However due to Covid-19 lockdown was imposed by the state government and the central government. The said period was excluded from the CIRP period of the CD by the order of this AA in the application filed by RP for exclusion of the period of lockdown.
13. On 28.07.2020, RP sent an email to all prospective RA to submit their resolution plan at the earliest so that the same may be placed before CoC. On 30.07.2020, another RA M/s. SBC Exports Limited sent an email to RP seeking further time to submit their resolution plan.
14. In the 10th meeting of CoC to be held on 14.10.2020, the CoC discussed the opening of the resolution plan submitted by a consortium of M/s. SBC Exports Limited and M/s. JM Propinfra Private Limited. It was unanimously decided by the members of the CoC present to open the plan and discuss it.



15. On 16.10.2020, RP sent his observations to RA. The same were replied by way of addendum / clarification by the resolution applicant on 17.10.2020.
16. The Resolution Professional presented the resolution plan to the CoC for discussion and approval in the 11<sup>th</sup> meeting of CoC held on 20.10.2020. At the CoC meeting, the resolution applicant also made a presentation to the CoC members. Thereafter, the resolution plan was discussed in detail and the final plan based on the discussion with the resolution applicant was circulated electronically to the CoC members. The resolution for approval of the resolution plan submitted by the resolution applicant was put for voting by the CoC members and the following resolution was approved by 100% vote share of the members of the Committee of Creditors.
17. It is submitted that pursuant to approval of the Resolution Plan by the CoC the Applicant issued a Letter of Intent by way of email, dated 20.10.2020 to the Resolution Applicant inter-alia, informing the resolution applicant that the revised resolution plan as submitted before the CoC was approved and accordingly, the



resolution applicant was requested to convey their unconditional acceptance. The resolution applicants duly submitted their unconditional acceptance and submitted a Performance security to the tune of 2% of the resolution plan amounting to Rs.38.14 Lakhs. In response to the above, successful resolution applicant submitted two demand drafts as per the following details as performance security:

- a. Demand Draft dated 12.10.2020 drawn on HDFC Bank Limited for Rs. 10 Lakhs.
- b. Demand Draft dated 23.10.2020 drawn on Axis Bank Limited for Rs. 30 Lakhs

18. 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 being the consortium of M/s. SBC Exports Limited and M/s. JM Propinfra Private Limited.

19. The Compliance Certificate dated 23.10.2020 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.

20. That brief contours of the Resolution Plan of NIIL Infrastructure Private Limited as approved by the CoC along with the amounts provided for the stakeholders under the Resolution Plan is detailed herein below: -

Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan	Amount provided the amount claimed
Secured Financial creditor Alchemist Asset Reconstruct ion Company Private Limited	a) Creditors not having a right to vote under sub-section 2 of section 21	NIL	NIL	NIL	NIL
	b) Other than above:-				
	i) who did not vote in favour of the resolution plan	NIL	NIL	NIL	NIL
	ii) who voted in favour of the resolution plan	2902.50	2902.50	1741.50	60.00%
	<b>Total (a+b)</b>	2902.50	2902.50	1741.50	60.00%
UnSecured Financial Creditors	a) Creditors not having a right to vote under sub-section 2 of Section 21	NIL	NIL	NIL	NIL

	b) Other than above:-  i. who did not vote in favour of the resolution plan ii. who voted in favour of resolution plan  <b>Total (a+b)</b>	NIL  540.55  540.55	NIL  540.55  540.55	NIL  108.10  108.10	NIL  20.00%  20.00%
Operational creditors	a) Related Party of Corporate Debtor  b) Other than above:-  i) Government Dues  ii) Workmen  iii) Employees  iv) Suppliers  <b>Total (a+b)</b>	NIL  NIL  NIL  NIL  NIL	NIL  NIL  NIL  NIL  NIL	NIL  NIL  NIL  NIL  NIL	NIL  NIL  NIL  NIL  NIL
<b>Total</b>		<b>3443.05</b>	<b>3443.05</b>	<b>1849.60</b>	
Insolvency Resolution Process Cost		50.00	50.00	50.00	
<b>Total amount provided in the resolution plan</b>		<b>3493.05</b>	<b>3493.05</b>	<b>1899.60</b>	

21. 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 100% voting share.
22. 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.
23. 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.

24. The Resolution Professional has filed compliance certificate in Form H on 23.10.2020 and *inter alia*, has confirmed that she has examined and verified the Resolution Plan approved by the CoC of Bigmoon Buildcon Private Limited, 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.

25. In terms of Section 31(1) of the Code, the Adjudicating Authority has also to examine whether the requirements of sub-section (2) of Section 30 have been complied with or not.

26. It has been submitted in the application and in Form H duly certified by RP that the final Resolution Plan approved by 100% 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.

27. 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 Chapter VI and Chapter VIII Clause 8.4 which provides for payment of CIRP costs in priority over payments to any other creditors from the upfront amount brought in by the RA. 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. *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.*

28. 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 a liquidation of the corporate debtor under Section 53.



29. 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.
30. 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 a liquidation of the corporate debtor under Section 53.
31. 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.
32. 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 *Section XI at page 81* 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.

33. 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 *page no. 75-79* of the Resolution Plan provides for adequate means for supervising its implementation. It has been stated that one representative of Resolution Applicant, one representative of CoC and Mr. Ajay Goyal, Resolution Professional shall constitute the monitoring agency.

34. 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.

35. 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.*

36. 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, which is a consortium of M/s. SBC Exports Limited and M/s. JM Propinfra Private Limited* 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.

37. Regulation 36B(4A) of the CIRP Regulations requires that the Resolution Applicant shall provide a performance security. Resolution professional has certified that the Resolution Applicant has submitted Performance security in the form of demand drafts of Rs. 40 Lakhs, i.e, 2% of the amount of the resolution plan as stipulated in RFRP in compliance of Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

38. As to the Reliefs and Concessions stated in Chapter XII Clause 1 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 offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016 is 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. In view of the same, this plan is hereby **approved**.

39. 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.

40. The Resolution Professional has further certified that the Resolution Plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the Code and CIRP Regulations.

41. 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 Resolution Plan, unless it is found contrary to express provision 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.



42. Accepting the Resolution Plan is advantageous to all the stakeholders and amounts to maximisation 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.

43. Hon'ble NCLAT in the case of Darshak Enterprise Pvt Ltd Chhaparia Industries Pvt. Ltd & Ors. Passed in Civil Appeal (AT) (Ins) No.327 of 2017 has held that:

*"In absence of any discrimination or perverse decision, it is not open to the Adjudicating Authority or the Appellate Tribunal to modify the plan."*

44. In the present case the resolution plan has been unanimously approved with 100% 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. 1899.60 lakhs within 3 months from the date of approval of the resolution plan, which is higher than the liquidation value of Rs. 1465.99 Lakhs.

45. 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.

46. In the facts we are satisfied that the requirements as per the Code and regulations have been complied with. Moreover, the Resolution Plan has been approved by 100% 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.*

47. We also approve appointment of 'Monitoring Committee' with modification that the Monitoring Committee shall be composed of It has been stated that one representative of Resolution Applicant, one representative of CoC and Mr. Ajay Goyal, Resolution Professional shall constitute the monitoring agency. 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.

48. 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 claim before the

authorities which shall be considered in accordance with law.

49. 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.

50. 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.

51. 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.

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

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

54. I.A. 4881/ 2020 and CP No. (IB) 572 (PB)/ 2019 are disposed of accordingly.

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

Sd/-

**[B.S.V. PRAKASH KUMAR]**

**PRESIDENT [ACTG.]**

Sd/-

**[HEMANT KUMAR SARANGI]**

**MEMBER [TECHNICAL]**