

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-II**

IA. No. 2279/2022

In

CP(IB)No. 427/MB/C-II/2019

Application filed under section 30(6), r/w Section 31(1) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,

Filed by

**Mr. Ritesh Prakash Adaitya,
Resolution Professional**

...Applicant

In the matter of

**Outdoor Advertising Professional (India) Private
Limited**

...Operational Creditor

Versus

Graphene Media Private Limited

...Corporate Debtor

Order Pronounced on: - 03.04.2024

Coram:

**Anil Raj Chellan
Member (Technical)**

**Kuldip Kumar Kareer
Member (Judicial)**

Appearances -

For the Resolution Professional: Adv. Aniruth Purusothaman a/w Adv.
Aditya Sharma

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. The present Interlocutory application is filed by **Mr. Ritesh Prakash Adatiya-** the Applicant, Resolution Professional of **Graphene Media Private Limited**, ('the Corporate Debtor') seeking approval of the resolution plan under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 submitted by MSL Investment Consultants LLP in consortium with Mr. Sanjoykumar Chakrabarty and Mr. Ashish Narender Lala, the suspended/former directors of the Corporate Debtor. The Plan was approved by 76% of the Committee of Creditors ('CoC') in its 8th CoC meeting held on 08.07.2022.
2. The Applicant submits that the Operational Creditor, Outdoor Advertising Professionals (India) Private Limited, initiated the Corporate Insolvency Resolution process (CIRP) against the Corporate Debtor under Section 9 of the Code. Vide Order dated 25.01.2022, CIRP against the Corporate Debtor was initiated and Mr. Ritesh Prakash Adatiya was appointed as Interim Resolution Professional (IRP).

3. The Applicant published the Public Announcement inviting claims on 28.01.2022 in Form 'A' and the last date specified for receipt of claims was 08.02.2022. Based on the claims received, the CoC comprising of three financial creditors was constituted on 22.02.2022. In the 1st CoC meeting, the Applicant informed that there was no business operation nor tangible assets, except laptops owned by the Corporate Debtor. There are no employees nor cash flows except soft asset in the form of digital application. There are many litigations pending against the Corporate Debtor and the financial statements of the Corporate Debtor have not been finalized after financial year 2018-19.
4. In the 3rd CoC meeting held on 25.03.2022, the IRP was appointed as RP by the members of the CoC with majority of votes i.e. 69.39%. Further, the RP and CoC members had detailed discussion on appointment of Registered Valuers to determine the Liquidation Value and Fair Value for each class of assets of the Corporate Debtor.
5. The Applicant presented and circulated the detailed invitation for Expression of Interest (EoI) for Resolution Plan to the members of the CoC. The eligibility criteria for submission of Resolution Plan, publication of notification and advertisement in Form G were accordingly approved by the members of the CoC. Pursuant to the approval, Form G was published in the newspapers namely, Active times (English) and Mumbai Lakshadeep (Marathi) on 10.04.2022. Further, the Applicant issued a Request for Resolution Plan (RFRP) along with the Evaluation Matrix on 13.04.2022. Also, the financial eligibility criteria and evaluation matrix for Prospective Resolution Applicant was approved by majority of CoC

members with 74.85% of votes.

6. In the 5th meeting of the CoC held on 06.06.2022, the Applicant informed the CoC that one of the Financial Creditors had settled its claim through its Guarantors, the Directors of the Corporate Debtor and has withdrawn its claim. The Applicant also informed that one company in consortium with the Suspended Director of the Corporate Debtor, Mr. Sanjoykumar Chakrabarty and former director Mr. Ashish Narender Lala submitted its Resolution Plan on the last day specified for submission ie., 09.06.2022, which was reviewed by the Applicant. The Applicant further informed that the Corporate Debtor is an MSME and the suspended directors are eligible to submit resolution plan.
7. In the 8th meeting of the CoC, the Applicant informed that as per e-voting, the CoC has approved the Resolution Plan by 76% of votes.
8. Subsequently, in the CoC meeting held on 20.07.2022, it was decided to file an application for avoidance of certain transactions under Sections 43 and 66 of the Code and accordingly, the Applicant has filed IA No. 2359 of 2022.
9. The Resolution Plan approved by the CoC envisages a total payment of Rs. 32,46,500/- as under:

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| Sr. No. | Category of Stakeholder* | Sub-Category of Stakeholder | Amount Claimed | Amount Admitted | Amount Provided under the Plan# | Amount Provided to the Amount Admitted% |
|---------|-------------------------------|---|----------------|-----------------|---------------------------------|---|
| 1 | CIRP Cost | NIL | - | - | 8,00,000 | 100% |
| 2 | Unsecured Financial Creditors | (i) who did not vote in favour of the resolution Plan | 33,79,056 | 33,79,056 | 4,97,000 | 14.70% |
| | | (ii) who voted in favour of the resolution plan | 1,02,19,821 | 1,02,19,821 | 15,03,000 | 14.70% |
| | | Total [(a+b)] | 1,35,98,877.00 | 1,35,98,877.00 | 20,00,000 | 14.70% |
| 3 | Operational Creditors | (i) Government | 0 | 0 | 0 | 0 |
| | | (ii) Workmen | 0 | 0 | 0 | 0 |
| | | (iii) Employees | 4,30,250 | 4,30,250 | 3,86,500 | 89.83% |
| | | (iv) Other Operational Creditors | 7,03,53,809.18 | 7,03,53,809.18 | 60,000 | 0.09% |
| | | Total[(a+b)] | 7,07,84,059.18 | 7,07,84,059.18 | 4,46,500.00 | 0.63% |
| 4 | Other debts | | NIL | NIL | NIL | NIL |

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| | | | | | | |
|--------------------|----------|-----------------------|-----------------------|------------------|--|--|
| | and dues | | | | | |
| Grand Total | | 8,43,82,936.18 | 8,43,82,936.18 | 3,246,500 | | |

10. It is stated that the application filed under Sections 44, and 66 of the Code would be pursued by the Resolution Applicant and the recoveries, if any, out of preferential/ fraudulent transactions shall be retained by the Resolution Applicant/Corporate Debtor.

11. The Applicant submits that the Corporate Debtor is an MSME as per the MSME Registration Certificate dated 21.02.2019 and the Resolution Applicants are eligible to submit the resolution plan as per Section 29A of the Code based on the affidavit dated 05.05.2022 submitted by MSL Investment Consultants LLP.

12. The Applicant further submits that the Resolution Plan submitted is in compliance **with Section 30 (2) of the Code and Regulation 38 (A) of the CIRP Regulations**. The RP has provided a compliance certificate in “**FORM H**” as mandated under the Code for seeking approval of the Resolution Plan from this Tribunal.

Analysis and finding

13. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with the Application.

14. In respect of an application filed under Section 30(6) of the Code, it is necessary for this Tribunal to satisfy itself that the resolution plan approved

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by the CoC meets the requirements specified under Section 30 of the Code which includes, inter alia, eligibility of the resolution applicants under Section 29A of the Code. Sub-clauses (a) to (j) of Section 29A of the Code specify the list of such persons ineligible to be a resolution applicant. Although Section 240A of the Code excludes the application of sub-clauses (c) and (h) of Section 29A to resolution applicants in respect of corporate insolvency resolution process or prepackaged insolvency resolution process of any micro, small and medium enterprises, other subclauses are equally applicable to resolution applicants in the case of MSME also.

15. It is to be noticed that the CoC after approval of the resolution plan on 08.07.2022, decided at its meeting held on 20.07.2022, to apply to this Tribunal for avoidance of certain preferential transactions under Section 43 of the Code as also for declaring certain transactions as fraudulent or wrongful trading under Section 66 of the Code and accordingly, the Application bearing No. 2359 of 2022 was filed by the Applicant. Since the eligibility of the Resolution Applicant is subject to the outcome of the said Application, the said matter was also heard along with this Application. This Tribunal, vide separate order of even date, has come to a conclusion that the Resolution Applicants, who are the former directors of the Corporate Debtor are liable for having carried out preferential and fraudulent transactions within the meaning of Section 43 and 66 of the Code.

16. The relevant sub-clause of 29A of the Code is extracted below:

29A. A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person-

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(g) *has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under the Code:*

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction.

17. By virtue of Section 29A in the Code, persons who have contributed to the defaults of the corporate debtor or are undesirable due to incapacities as specified in the section, are prevented from gaining control of the Corporate Debtor. As the Resolution Applicants being the ex-directors/promoters of the Corporate Debtor have been rendered ineligible under sub clause (g) of Section 29A to submit a Resolution Plan under the Code in the light of the finding recorded in IA No. 2359 of 2022, the resolution plan submitted by such directors/promoters, is liable to be rejected. Accordingly, **IA 2279 of 2022 praying for approval of the Resolution Plan is rejected.** The Applicant shall forthwith submit a copy of this Order to the CoC to take further actions in accordance with provisions of the Code.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)