

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI
C.A. 1364 (PB) / 2020**

IN

Company Petition No. (IB)-1581 (PB)/2018

*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. Sudershan Gupta

...Applicant/Resolution Professional

AND

In the matter of:

VIL Limited

...Corporate Debtor

Order pronounced on: 24.12.2020

Coram:

**SH. B.S.V. PRAKASH KUMAR,
HON'BLE ACTG. PRESIDENT
SH. HEMANT KUMAR SARANGI,
HON'BLE MEMBER (TECHNICAL)**

For the RP:

Mr. Sudershan Gupta- RP in person, Mr.
Kanishk Khetan & Mr. Nipun Gautam & Mr.
Harsh Arora, Advs. for Resolution Applicant

For the Applicant:

Mr. Abhishek Anand & Mr. Rahul Adlakha,
Advs. for Resolution Applicant



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. VIL Limited.
2. The facts in brief necessary for disposal of the present application are that ICICI Bank Limited 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 VIL Limited ("Corporate Debtor"). The Company Petition (IB)-1581 (PB)/2018 was admitted on 19.03.2019 imposing moratorium under Section 14 of the Code and by initiating Corporate Insolvency Resolution Process against M/s VIL Limited, the Corporate Debtor. Mr. Vijendra Sharma was appointed as Interim Resolution Professional ("IRP").



3. In the second CoC meeting conducted on 01.05.2019, the Applicant, Mr. Sudershan Gupta was appointed as Resolution Professional ("RP") with a majority of 78.11%.
4. The Resolution Professional also took steps for appointment of two valuers namely Pensar Advisors and Adroit Valuations, under Regulation 27 of the Regulations, to determine the Fair value and Liquidation value of the corporate debtor. However, the valuation reports received from them were significantly different, hence, a third valuer Mr. Sunil Agarwal, Mr. Rishi Agarwal and Mr. Mohit Sagar were jointly appointed for valuation of the Land and Building, Plant and Machinery and financial assets of the CD, in accordance with Regulation 35. The closest two estimated were accordingly taken as value as per Regulation 35, which is as under:

a. Fair Value : Rs.4448.77 Lakhs

b. Liquidation Value : Rs. 2870.51 Lakhs

5. It is observed that the Resolution Professional published an invitation for expression of interest in requisite Form G on 12.07.2019 in English and Vernacular language which has wide circulation in Delhi NCR and Lucknow. The RP uploaded the Form G on the website of his Insolvency Professional Entity



("IPE"), AAA Insolvency Professionals LLP, to attract maximum prospective resolution applicants. The last date of submission of Expression of Interest ("EOI") was 07.08.2019.

6. It is submitted that, in the sixth meeting of the CoC held on 19.08.2019, the RP placed before CoC members that the RP had received EOIs from 3 Prospective Resolution Applicants ("PRA"), namely:

- i. Tirupati Build-con Private Limited
- ii. UV Asset Reconstruction Company Limited
- iii. Aamir Ahmed and Naushad Ahmed (Promoters)

7. It is further submitted that, in the seventh meeting of the CoC, held on 09.09.2019, wherein the RP informed the CoC that the RP did not receive any resolution plans from the above PRA's and the last date for submission of the plan had expired. The CoC resolved to publish a second Form G for inviting EoI's. Since the 180 day period of Corporate Insolvency Resolution Process (CIRP) was concluding on 14.09.2019, the CoC further resolved to extend the CIRP period by 90 days. In view of the same the RP filed an appropriate application before the AA, for extension for CIRP beyond 180 days, which was duly



allowed by the Hon'ble Tribunal on 23.09.2019. Accordingly, the CIRP period was extended upto 13.12.2019.

8. Thereafter, a second Form G inviting EOIs was published by the RP on 16.09.2019 in English and Vernacular language which has wide circulation in Delhi NCR and Lucknow. The RP uploaded the Form G on the website of his IPE, AAA Insolvency Professionals LLP, to attract maximum PRAs. The last date of submission of EOI was 01.10.2019. In the ninth meeting of the CoC, held on 01.11.2019, wherein, the RP informed the CoC that he had not received any plans from the above PRA's.
9. Thereafter, in the ninth meeting of the CoC held on 07.11.2019, wherein the RP informed the CoC that he had not received any plans from any of the PRAs. The CoC was also informed that a company, namely, Sino Credits and Leasing Limited, had expressed their interest for submission of a Resolution Plan after the last date for receipt of EOIs. The same was however not accepted on the grounds of delay in submission of EOI. In view of non receipt of any Resolution Plan, the CoC resolved to publish a third Eoi.
10. The RP conducted the tenth CoC meeting on 26.11.2019, wherein, he informed the CoC that on PRA had expressed



interest for submission of plan, namely Sino Credits and Leasing Limited, who had also submitted their Resolution Plan dated 21.11.2019. In the said meeting, it was also discussed that as the valuation reports received earlier from the 2 registered valuers, namely, Pensar Advisors and Adroit Financial Services Limited were significantly different, a third valuer was appointed in terms of Regulation 35(1)(b) of the IBBI (CIRP Regulations), 2016. Accordingly, Mr. Sunil Agarwal, Mr. Rishi Agarwal and Mr. Mohit Sagar were jointly appointed for valuation of the Land and Building, Plant and Machinery and Financial Assets of the CD. The closest two estimates were accordingly taken as the value as per Regulation 35, which is as under:

Fair Market Value: Rs. 4,448.77 lakh

Liquidation Value: Rs. 2,870.51 lakh

11. In the thirteenth CoC meeting, held on 10.12.2019, as the Resolution Plan was on the stage of discussions and CIRP period of 270 days was due to expire on 13.12.2019, the CoC resolved to seek exclusion of 60 days from the period of CIRP which lapsed due to the pending litigation before the Hon'ble NCLT owing to the non-cooperation from promoters and non-



receipt of information. Accordingly, this AA was pleased to allow such exclusion on 19.12.2019. The CIRP was accordingly now due to expire on 11.02.2020.

12. The Resolution Professional presented the resolution plan to the CoC for discussion and approval in the 17th meeting of CoC held on 29.01.2020. 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 e-voting by the CoC members and the following resolution was approved unanimously.

13. The summary of claims vis-a-vis provisions as per the approved Resolution Plan is as follows:

- a. *The Resolution Applicant proposes a payout of Rs. 45.00. crores ("Resolution Payment"), which shall be used towards payment of CIRP Costs, settlement of operational creditors of the Corporate Debtor ("Operational Creditors") (including workmen, employees and government dues) of the Corporate Debtor and admitted claims of financial creditors of the Corporate Debtor ("Financial Creditors") and in accordance with the Resolution Plan Rs. 45.00*



crores comprises of Rs. 33.00 crores plus Rs. 12.00 crores towards arbitration case. This Resolution Payment comprises of:

- i. CIRP cost of Rs. 3.80 cr.
- ii. Upfront payment commitment of amount equivalent to liquidation value payable to Operational Creditors in the event of a liquidation or Rs. 1.10 Crore, whichever is higher to the Operational Creditors (including workmen, employees and government dues) of the Corporate Debtor.
- iii. The claims of the Financial Creditors which shall be settled in the manner described in Clause 6.2.3 of the Plan.

The basis of settlement of claims of various classes of stakeholders, their order of priority and their respective settlement amount is provided under:

CIRP Cost

The CIRP Cost (to the extent unpaid) shall be paid in priority to any other creditors of Corporate Debtor. CIRP costs will be first met out from the available cash balance of the Corporate Debtor and the remaining liability if any from the Financial Creditor Settlement Amount

Financial Creditors

Total payment of Rs. 45.00 cores as reduced by payment of CIRP Costs and payment to Operational Creditors and Workmen/ Employees will be paid in cash thereafter to be paid to the Financial Creditors ("Financial Creditors, Settlement Amount").

The total payment of Rs. 45.00 crore will be made in the following manner:

Tranche	% of Payment	Timelines
1	10%	Upfront i.e. within 15 Days from the Effective Date.
2.	20%	6 months from the Effective Date.
3	20%	9 months from the Effective Date.
4.	20%	12 months from the Effective Date.
5.	20%	15 months from the Effective Date.

6.	10%	18 months from the Effective Date.
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Apart from the above, there are other payments also proposed in the Plan by way of recoverable from pending litigations, which is more categorically explained in the Plan.

Operational Creditors other than Workmen / Employees

(i) The Information Memorandum / VDR as prepared by the Resolution Professional and subsequent communication provides that the claims aggregating to Rs. 83,78,06,325/- have been received out of which claim of Rs. 29,70,11,962/- have been admitted, from operational creditors (other than employees and governmental dues).

(ii) The Resolution Applicant shall pay the amount equivalent to liquidation value payable to operational creditors in the event of a liquidation of Rs. 0.50 Crore, whichever is higher towards the verified claims of the operational creditor of the Corporate Debtor, henceforth referred to as the "Operational Creditors Settlement Amount", which is in compliance with amended Section 30(2)(b) of IBC. The payment to the operational creditors shall be given priority in payment over financial creditors as per Regulation 38(1).

Workmen/Employees

The Information Memorandum/ VDR as prepared by the Resolution Professional and subsequent communications provides the claims from workmen/employees of the Corporate Debtor claimed and provisionally admitted by Resolution Professional are Rs. 49,64,080/-. The admitted claims of workmen/employees will be first met out from the available cash balance of the Corporate Debtor and the remaining liability if any from the Financial Creditor Settlement Amount. The claims of workmen/employees (to the extent unpaid) shall be paid, out of the Resolution Payment of Rs. 45.00 crores, in priority to any other creditors of Corporate Debtor.

iv. Plan for revival Corporate Debtor has no working capital. Most of the machineries have already completed their productive life and would need to be gradually phased out and replaced. The resolution Plan envisages total infusion of Rs. 5.00 crore towards working capital and capital expenditure.

vi. Sources of funding

The Resolution Applicant proposes to finance the Resolution Payment through own fungi and/or from sale proceeds of assets as explained in Clause 6.3.2. (iii)(c)(ii) of the Plan.

Further, the Resolution Applicant has investment in quoted securities of various listed companies which are easily saleable in stock market which may be used in case any short fall arises. The value of these, securities as appearing in the audited financial statement of FY 2019 was Rs. 47.60 crores. Further Resolution Applicant undertakes that the shares will be sold in event of any shortfall in funds to make payment as defined under 6.2.3 (iii). Further, the Resolution Applicant undertakes to maintain the security equivalent to the unpaid settlement/ resolution amount.

vii. Implementation of the plan

(i) On and from the Effective Date, and until the Closing Date, a monitoring committee shall be constituted for the Corporate Debtor ("Monitoring Committee"). The Monitoring Committee shall supervise the implementation of the Plan in accordance with its scope of work as mentioned in Annex-ure-3, and shall be required and entitled to do all such acts, deeds, matters and things as may be necessary, desirable or expedient in order to implement and give effect to this Plan in accordance with its terms.

(ii) The board of directors shall be re-constituted on the Effective Date by the Resolution Applicant, and the board shall take only such steps that are required in the ordinary course of running the business of the Corporate Debtor and to give effect to the terms of this Plan. Such directors shall be subject to and bound by the terms of this Plan.

(iii) Additional cost relating to the Monitoring Committee will be mutually decided after the Resolution Plan is approved by the Adjudicating Authority. The cost of the monitoring committee will be borne by the resolution applicant.

(iv) The CoC, the Monitoring Committee, the Corporate Debtor, its existing management, employees, shareholders and creditors shall provide all the necessary cooperation as shall be required for obtaining the regulatory approvals. The existing promoter group and the current management team of the Corporate Debtor will undertake all such actions and shall do all such acts, deeds and things required, including executing any and all documents as may be required for the purposes of implementation of the Plan.

(v) The CoC will issue no due certificate on receipt of entire settlement amount of Rs. 45 crores. However even after issue of no dues certificates, the COC will have the right to recover the money to be realized through arbitration proceedings and application under section 43, 45, 49 & 66 as mentioned in para 6.2.3 (iii)(c).

30. That the Compliance Certificate of the Resolution Professional as prescribed under Regulation 39(4) of CIRP Regulations in Form H has been annexed and marked as Annexure XXIX.

31. That the copy of the Audited Financial Statements of the Corporate Debtor for the Financial Year ending March 31, 2019 is annexed and marked as Annexure XXX.

32. That in light of the above facts and circumstances, the present application is being submitted by the Resolution Professional under Section 31 of the Code seeking approval of this Hon'ble Tribunal for the Resolution Plan approved by the CoC.

14. It is submitted that pursuant to approval of the Resolution Plan by the CoC the Applicant issued a Letter of Intent dated 10.02.2020 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 Bank Guarantee of Rs. 4.50 Crores. Letter of Intent dated 10.02.2020, Unconditional Acceptance dated 18.02.2020 and performance bank guarantee dated 18.02.2020 have been placed on record.

15. 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 M/s. Sino Credit and Leasing Limited.



16. The Compliance Certificate dated 02.01.2020 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.
17. 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.
18. The Resolution Professional has filed compliance certificate in Form H on 02.01.2020 and *inter alia* has confirmed that he has examined and verified the Resolution Plan approved by the CoC of VIL 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.
19. 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.



20. 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.
21. 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.
22. 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.
23. The Resolution Applicant has filed an affidavit to bring on record the letter dated 21.10.2020, issued by Resolution Applicant to substantiate the oral statement made in front of the bench as recorded in the order dated 04.11.2020, which is as follows:




“... that the resolution applicant has made an offer in the letter dated 21.10.2020 to pay the guarantee holders i.e., Central Bank of India, Union Bank of India, Bank of Baroda about Rs. 1,51,12,053 over and above the plan value mentioned in the original plan and other details mentioned in the letter shall be reflected in the order for approval of the resolution plan.”

24. 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.
25. 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 clauses 4.2 and 15 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 clauses 4.2 and 15 of the Resolution Plan provides for the management and control of the business of the corporate debtor.



26. 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 section IX of the Resolution Plan provides for adequate means for supervising its implementation by way of a monitoring agency.
27. 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.
28. 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.

29. 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, Sino Credits and Leasing 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.

30. 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 Guarantee of Rs.4,50,00,000/- (Rupees Four Crores and Fifty Lakhs only) issued by South Indian Bank Limited, Chittaranjan Park, New Delhi, in compliance of Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



31. As to the Reliefs and Concessions stated in Clause 17 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 Resolution Applicant 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**.

32. 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.

33. 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.
34. 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.
35. 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.

36. 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.”

37. 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.4109.64 lakhs within 18 months from the date of approval of the



resolution plan, which is higher than the liquidation value of Rs. 2870.51 lakhs.

38. 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.

39. 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 unanimously by 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.*

40. 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.

41. 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.
42. 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.
43. 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.
44. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its database.
45. The approved 'Resolution Plan' shall become effective from the date of passing of this order.



46. C.A. 1364 (PB) / 2020 and CP No. (IB) 1581 (PB)/ 2018 are disposed of accordingly.

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

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[B.S.V. PRAKASH KUMAR]
PRESIDENT [ACTG.]

-sd-

[HEMANT KUMAR SARANGI]
MEMBER [TECHNICAL]

24.12.2020

SIDDHANT, LRA