

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-IV

I.A. 5288/ND/2021

IN

C.P. No. IB 2178/ND/2019

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

Amit Arya

....Applicant

Vs.

Banyantree Developers Pvt. Ltd.

...Corporate Debtor

And

In the Matter of:

Debashish Nanda, Resolution Professional

Banyantree Developers Pvt. Ltd.

ORDER DELIVERED ON: 17. 12 .2021

CORAM:

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

MR. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)



ORDER

Per: Sh. P.S.N PRASAD, MEMBER (JUDICIAL)

1. The present petition has been filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016, (the Code) on behalf of the Resolution Professional (RP), seeking approval of the Resolution Plan.
2. The facts mentioned in the application in brief are as follows:

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- i. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor, M/s Banyantree Developers Pvt. Ltd., vide order dated 01.03.2021 passed by this Adjudicating Authority, admitting the application filed by the Financial Creditor (FC) whereby Mr. Anil Tayal was appointed as Interim Resolution Professional.
- ii. Thereafter the applicant carried out a public announcement of initiation of CIRP. After collation of claims and determination of the financial position of the Corporate Debtor, a Committee of Creditors (CoC) was duly constituted by the Applicant. In the second meeting held on 20.04.2021, the CoC appointed the Applicant as Resolution Professional (RP) of the corporate debtor.
- iii. Thereafter, Expression of Interest was published in prescribed Form G on 18.06.2021 in newspapers. The applicant received EOIs, from (1), Kundan care products Private Limited (PRA1) and (2) M/s R.M. Alloys Private Limited (PRA 2). However, only one Resolution Plan from R.M. Alloys Private Limited was received by the applicant.
- iv. Meanwhile, since the CIRP period of 180 days was coming to an end this Adjudicating Authority vide order dated 09.09.2021 extended the CIRP period for 90 days.
- v. It is submitted that the Prospective Resolution Applicant, R.M. Alloys Private Limited also submitted an addendum letter dated 27.08.2021, stating that any amount recovered from outcome of



T.P. 55 of 2019, would be paid to the financial creditors in the same ratio as proposed in the Resolution Plan.

- vi. It is submitted that the CoC in the sixth meeting held on 14.10.2021, with 100% voting shares, approved the Resolution Plan with addendum, submitted by M/s R.M. Alloys Private Limited (PRA 2). The copy of Minutes of 6th meeting has been placed on record. The copy of approved resolution plan and addendum have also been filed alongwith the application.
- vii. It is submitted that the successful resolution applicant has submitted an undertaking under Regulation 39(1)(c) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP regulations) that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code. The Applicant has also submitted that the Successful Resolution Applicant has submitted an affidavit of eligibility under section 29A of the Code.
- viii. In compliance of sub-regulation (4A) of regulation 36 B of CIRP Regulations, 2016, the Successful Resolution Applicant vide letter dated 03.11.2021 has submitted that performance bank guarantee of Rs. 5,00,000 has been deposited in the Bank account of Corporate Debtor.



ix. The repayment plan for total Rs. 100 lacs, as per the Resolution Plan is as follows:

- a) Amount of Rs. 15 lacs will be paid towards CIRP Costs.
- b) Amount of Rs. 1 lac to be paid towards operational creditors.
- c) Amount of Rs. 84 lacs to be paid towards Financial Creditors, Rs. 4 lacs upfront payment and remaining in 7 equal instalments.

3. We have heard the parties and perused the case records.

4. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code. Section 30 (2) is quoted below: -

“(2) The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution

Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

- (i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;*
- (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*
- (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]*

(c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;

(d) The implementation and supervision of the Resolution Plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) conforms to such other requirements as may be specified by the Board.

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

5. Further, as per Regulation 38 of the CIRP Regulations, a Resolution Plan is required to contain a statement how it will deal with the interest of all the stakeholders including Financial Creditors and the Operational Creditors and if these are sufficiently provided in the

Resolution Plan, the Adjudicating Authority may approve the Resolution Plan.

6. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the Resolution Plan in Chapter VII Part A at page no. 16 and 17 of Resolution Plan has provided that the CIRP cost will be paid in priority to all other debts.
7. As regards compliance of clause (b) of Section 30 (2) of the Code, the applicant has certified in Form H that Part B, Chapter VII at page 17 of the Resolution Plan provides for the payment of the debts of operational creditors 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. It is submitted that the liquidation value of the corporate debtor is not sufficient to meet out the debt due to financial creditors, therefore, in terms of Section 53 the amount payable to operational creditors in event of liquidation will be NIL.
8. In terms of Section 30 (2)(c), management of the affairs and control of the business of the Corporate Debtor has been provided in paragraph C of Chapter X at page number 37 of the Resolution Plan.
9. The next requirement envisaged by Section 30 (2)(d) is that it must provide for the implementation and supervision of the Resolution Plan. In this regard, para (a) and (b) of Chapter X at page 38 of the Resolution Plan provide for the Monitoring Committee.
10. Other conditions in terms of Section 30 (2) (e) (f) of the Code provide to ensure that the Resolution Plan does not contravene any of the



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provisions of the law and conforms to such other requirements as may be specified by the Board. In this regard a declaration has been made at page no. 45 chapter XV of the resolution plan.

11. Ld. Counsel appearing for the Resolution Applicant submitted that the Resolution Plan is as per the provisions contained in the Code and so, the same may be approved. In terms of Regulation 39(4) of the CIRP Regulations, the Resolution Professional has filed compliance certificate in Form-H which is annexed as Annexure-P at page 382. It has been submitted in the application and in Form H duly certified by Resolution Professional that the final Resolution Plan meets the requirements as laid down in various clauses of Section 30 (2) of the Code.
12. As a sequel to aforesaid discussions, we are satisfied that all the requirements of Section 30 (2) are fulfilled. In respect of compliances regarding CIRP Regulations especially Regulations 38 and 39, the Resolution Professional has certified in Form-H and explained in details that the Resolution Plan has complied with all the required Regulations.
13. For the reasons discussed above, in our considered view, the Resolution Plan fulfils the requirement as referred in Section 30 (2) of the Code and there are sufficient provisions in the Plan for its effective implementation as required under the proviso of Section 31 (1) of the Code. The Resolution Plan has been approved by CoC with 100% favourable voting.



14. Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019**, vid its judgement dated **15.11.2019** has observed as follows:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”

15. Accordingly, we hereby **approve the Resolution Plan**, which was earlier approved by the CoC by the majority vote of 100%.

16. 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.

17. 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.

18. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code.



19. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.

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

-Sd-

(RAHUL BHATNAGAR)

MEMBER (T)

-Sd-

(P.S.N PRASAD)

MEMBER (J)