

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. II**

**IA 1772 of 2020
IN
CP (IB) 1602/MB/C-II/2017**

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016.

In the Application of

Mr. Vinod Tarachand Agrawal,
Address: 121, UdyogBhavan,
Sonawala Lane, Goregaon East,
Mumbai – 400063.

**...Applicant/Resolution
Professional**

In the matter of

Narottambahi Swomabhai Patel

..Financial Creditor

Versus

**Wow Solutions & Systems
Private Limited**

Corporate Debtor

Order Delivered on :- 31.05.2021

Coram:

Hon'ble Member (Judicial) : Mr. H.P. Chaturvedi
Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

Appearances:

For the Applicant : Ms. Aakansha Agarwal, Advocate
For the CoC : Mr. Halmish K. Shah, Advocate
For the Resolution Applicant : Mr. Naushar Kohli, Advocate

Per: Ravikumar Duraisamy, Member

ORDER

1. The Resolution Professional (in short, the RP) of Wow Solutions & Systems Private Limited (the Corporate Debtor) seeks approval of the Resolution Plan (in short, the Plan) in this Application under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (in short, the Code) read with Regulation 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (in short, the Regulations).
2. The brief facts leading to the Application are as under.
 - i) This Authority vide its order dated 19.12.2019 directed initiation of Corporate Insolvency Resolution Process (CIRP) of the CD and appointed Mr. Vinod Tarachand Agrawal as the Interim Resolution Professional (IRP).
 - ii) Pursuant to Order of CIRP, the IRP issued a public announcement on 21.12.2019 in Business Standard, English and Lokmat, Marathi for calling of submission of proof of claim from the Creditors.

- iii) The IRP submits that the claims of three Financial Creditors namely 1) Narottambhai Swomabhai Patel with a claim amount of Rs. 73,36,110/-, 2) Kantilal Narayandas Patel HUF with a claim amount of Rs. 51,94,361/- and 3) Samir Patel with a claim amount of Rs. 12,10,285 were received by the IRP and CoC was constituted.

- iv) The first CoC meeting was held on 18.01.2020 after the constitution of the CoC and the status of the claim of the Creditors of the Corporate Debtor was apprised by the IRP to the CoC.

- v) The second meeting of the CoC was conducted on 29.02.2020 and points as to approve Evaluation Matrix, appointment of forensic auditor, publication of Form G etc. were considered and discussed.

- vi) The third CoC meeting was held on 07.05.2020, wherein the members of the CoC took status of the points discussed in the second CoC meeting. The CoC members also voted on the Bank guarantee extended by Punjab National Bank to the Corporate Debtor.

- vii) In the fourth CoC meeting held on 19.06.2020, the members of the CoC approved to apply for exclusion of the period of Lockdown from the CIRP and also approved the re-issuance of Form 'G'.

- viii) In the fifth CoC meeting conducted on 20.08.2020, the Applicant apprised the CoC that after publication of revised Form 'G' and invitation of Expression of Interest and the Applicant had received EOI from five Resolution Applicants. Further since the 180 days period was completed, the Applicant had already applied for the exclusion of the Lockdown period from the CIRP period and make necessary application for extending the CIRP period for further 90 days. The members in the said meeting also approved the extension of time for submission of Resolution Plan due to Covid – 19 situation.
- ix) In the sixth CoC meeting conducted on 17.09.2020, the Applicant informed the members about the claim received from Bank of India and thereafter voting share of the CoC was reconstituted. The Applicant also informed the members that out of the five EOI received, two Resolutions Plan were received namely (i) D –Vois SSV Broad Band Pvt. Ltd. (ii) Intech Online Pvt Ltd. After discussing both the Resolution Plans, the members of the CoC approved the Plan submitted by D-Vois SSV Broadband Pvt. Ltd by 100% voting share.
- x) The salient features of the Resolution Plan recorded in the sixth meeting are hereunder :-
- a)The Resolution Professional are infusing Rupees 3,93,00,000/- in the Corporate Debtor in the form of Equity and Unsecured Loans. Out of Rs.

3,93,00,000/- Rupees 80,00,000/- shall be paid towards the CIRP cost, Rupees 1,51,81,059/- shall be paid within 30 days from the effective date (Effective Date is defined as the date from the day order by NCLT is approved approving the resolution plan of the corporate debtor to the Financial Creditor. Rupees 38,69,349/- shall be paid to the Operational Creditor, Rupees 1,17,94,450/- shall be paid towards statutory dues. Further a provision of Rs. 4,55,142/- is made for ongoing running of Business and any contingent liability in normal cause of business. The following is the summary of the payment schedule as per the Resolution Plan.

I) Financial Creditor Details :-

Sr. No.	Name	Amount Claimed	% of Voting Share
1.	Narottambhai Swomabhai Patel	73,36,110/-	48.32%
2.	KantilalNarayandas Patel HUF	51,94,361/-	34.22%
3.	Samir Patel	12,10,285/-	7.97%
4.	Bank of Baroda (Formerly Dena Bank)	14,40,303/-	9.49%
Total		1,51,81,059/-	100%

100% claim amount is admitted of all the above Financial Creditors.

II) Operational Creditors Details:-

SR. NO.	NAME	AMOUNT CLAIMED
A.	OPERATIONAL CREDITORS (OTHER THAN EMPLOYEES)	
1.	Spiktel Technologies Pvt Ltd	16,14,122/-
2.	Microscan Infocommtech Pvt Ltd	3,24,500/-
3.	Go Ip Global Services Pvt Ltd	12,319/-
4.	Network Techlab (I) Pvt Ltd	74,688/-
5.	Pluto Enterprise	1,682/-
6.	Misha Electronics	29,320/-
7.	Akash Optifibre Limited	17,68,763/-
8.	Natraj Infotech Pvt Ltd	34,515/-
9.	Ir Management Solutions	9,440/-
10.	Kinseed Private Limited	5,45,545/-
Total		44,14,894/-
C.	OPERATIONAL CREDITORS (STATUTORY DUES)	
1.	Income Tax Department	1,17,94,450/-

100 % claim amount is admitted of all the above Operational Creditors Except M/s Kinseed Private Limited (Being related party of CD and Mismatch of Claim amount with outstanding as per books.

b)The existing Directors would be removed and nominee of the Resolution Applicant would be appointed as the Director of the Company. The Applicant further submits that entire dues of the Financial Creditor are been paid within 30 days from the effective date. The claims of the Operational Creditor is 100% being paid except for one Operational Creditor who is covered under related party definition as per the Code.

c)That the Compliance Certificate of the Applicant as prescribed under Regulation 39 (4) of the CIRP Regulations.

3. The Applicant submitted that the Compliance Certificate in Form-H under Regulation 39(4) of the Regulations showing the compliances of the Plan as mandatorily required under the Code and Regulations and that the Plan had been approved by the CoC.
4. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.
5. The Bench had sought queries with regard to the source of the funds. In this regard the Applicant filed addendum to the Resolution Plan altering the Resolution Plan dated 07.09.2020. The addendum shall form an integral part of the Resolution Plan.

Earlier Sources/Infusion of funds is as follows :-

Sr. No	Nature	Upfront Consideration within 30 days of approval of Resolution Plan by NCLT	Total
1	Equity by way issue of Share Capital	1,00,000	1,00,000
2	Loans from Resolution Applicant	3,12,00,000	3,12,00,000
3	Cash flow from Debtors Recovery of the Corporate Debtor and profit during CIRP period as per the details given by Resolution Professional	80,00,000	80,00,000
	Total	3,93,00,000	3,93,00,000

The above table stands to be omitted and replaced by the below table as under:

Sr. No	Nature	Upfront Consideration within 30 days of approval of Resolution Plan by NCLT	Total
1	Contribution by way of issue of Share Capital	3,13,00,000	3,13,00,000
2	CIRP Costs	NIL	Refer Note – 1 Below
	Total	3,13,00,000	3,13,00,000

The CIRP cost as mentioned in the Information Memorandum provided by Resolution Professional is Rs. 80 Lakhs (Rupees Seventy Lakhs only) out of which paid during CIRP Period is Rs. 80 Lacs from the proceeds generated and existing debtors

recovery during the CIRP period. The amount provided is in full however since it is already paid, balance payable NIL. Further, outstanding amounts, if any, payable will be paid on actuals.

The Applicant states that the Resolution Applicant shall open a separate escrow account in the name of the Corporate Debtor having joint signatories of the Resolution Applicant – D Vois SSV Broadband Private Limited and Resolution Professional – Mr. Vinod Tarachand Agrawal for introducing upfront consideration within 30 days of approval of Resolution Plan by Hon'ble NCLT I.e. Effective date*. On approval of resolution plan, D-Vois SSV Broadband Private Limited shall take 100% control of the Corporate Debtor by transfer of 100% equity shares to the company.

6. Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such 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 - For the purpose of this section –

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and
 - (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).
- 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) Confirms to such other requirements as may be specified by the Board.

7. Section 30 (4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.

8. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.
9. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
10. The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through two registered valuers. The Liquidation value of the Corporate Debtor is Rs. 1,10,23,440/-. The Fair value of the assets of the Corporate Debtor is Rs. 4,76,85,201. As compared to this, the amount offered in the Resolution Plan is Rs.3,13,00,000/- apportioned to all the stakeholders which is more than the liquidation value.
11. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.
12. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of The Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.

13. The Resolution Plan has been approved by the CoC in the 7th meeting held on 17.09.2020 with 100% votes.
14. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
15. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para42 Hon'ble Court observed as under:

"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business

*decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar(supra)**.”*

16. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

ORDER

The Application IA No. 1772 of 2020 in CP 1602 of 2017 be and the same is allowed. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

- i. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.

- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.

- v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.

- vi. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.

- vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)
31.05.2021

Sd/-

H.P. CHATURVEDI
Member (Judicial)