

**NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH, COURT-IV**

**I.A. 4320/ND/2021**

**IN**

**C.P. No. IB 651/ND/2020**

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

**IN THE MATTER OF:**

Nuvision (Delhi) Pvt. Ltd. ....Financial Creditor

**Vs.**

Flywheel Logistics Solutions Pvt. Ltd. ...Corporate Debtor

And

**In the Matter of:**

Rishabh Chand Lodha, Resolution Professional

Flywheel Logistics Solutions Pvt. Ltd.

E-5, Basant Vihar,

Bhilwara-311001

**ORDER DELIVERED ON: 26.11.2021**

**CORAM:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**Per: Sh. DHARMINDER SINGH, 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 follow:

- The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor, Flywheel Logistics Solutions Pvt. Ltd., vide order dated 06.10.2020 passed by this Adjudicating Authority, admitting the application under Section 9 of the Code filed by the Operational Creditor (OC) whereby Mr. Yogesh Mittal was appointed as Interim Resolution Professional.
- Thereafter the applicant carried out a public announcement of initiation of CIRP on 09.10.2020. 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. The first meeting was held on 05.11.2020, wherein the CoC rejected the appointment of the IRP Mr. Yogesh Mittal as Resolution Professional (RP).
- Thereafter the second meeting of CoC was held on 05.12.2020, wherein Mr. Rishabh Chand Lodha was appointed as Resolution Professional.
- Thereafter, Expression of Interest was published in prescribed Form G for the fourth time on 18.06.2021 in newspapers, thereafter following EOIs, was from (1), Shyam Sundar Agarwal (PRA1) and (2) Candid Resources Limited (PRA 2). Thereafter, both the PRAs submitted their Resolution Plans.

- Meanwhile, since the CIRP period of 180 days was coming to an end this Adjudicating Authority vide order dated 06.04.2021 extended the CIRP period for 90 days. Further the exclusion of 49 days, lost due to lockdown imposed due to COVID -19, was allowed vide Order dated 27.08.2021.
- It is submitted that the CoC in the ninth meeting held on 13.08.2021, with 93.40% e-voting shares, approved the revised Resolution Plan with addendum, submitted by Shyam Sundar Agarwal (PRA1). The copy of Summary record of discussions taken on the relevant agenda items at the 9<sup>th</sup> Meeting has been placed on record. The copy of revised and approved resolution plan has also been filed alongwith the application.
- 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 in its Form-H that the Successful Resolution Applicant has submitted an affidavit of eligibility under section 29A of the Code which is in order.
- Following is the payment plan as per the Resolution Plan:

(Amount in Lakhs)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i) who did not vote in favour of the Resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the Resolution Plan	837.11	833.23	150.00	17.92%
<b>Total[(a) + (b)]</b>			<b>837.11</b>	<b>833.23</b>	<b>150.00</b>	<b>17.92%</b>
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	46.27	0.00	0.00	0.00%
		(b) Other than (a) above:				
		(i) who did not vote in favour of the Resolution Plan	59.38	59.38	2.50	4.21%
		(ii) who voted in favour of the Resolution Plan	NIL	NIL	NIL	NIL
<b>Total[(a) + (b)]</b>			<b>105.64</b>	<b>59.38</b>	<b>2.50</b>	<b>2.37%</b>
3	Operational Creditors:	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL

		(b) Other than (a) above:				
		(i) Government	16.48	4.23	0.04	0.24%
		(ii) Workmen &	-	-	-	-
		(iii) Employees	9.49	-	-	-
		(iv) Goods and Services in day to day business	1335.86	813.78	7.46	0.55%
<b>Total[(a) + (b)]</b>			<b>1361.83</b>	<b>818.01</b>	<b>7.5</b>	<b>0.55%</b>
4	Other debts and dues		-	-	-	-
5	CIRP cost		-	-	-	-
<b>Grand Total*</b>			<b>2304.58</b>	<b>1710.62</b>	<b>160</b>	<b>6.92%</b>

26/11  
Page 4 of 10

- It is submitted that the applicant issued Letter of Intent ('LOI') to the successful Resolution Applicant on 02.09.2021 as the pre-requisite of the Resolution Plan submitted by the Successful Resolution Applicant is satisfied. The Successful Resolution Applicant received and accepted the LOI along with contents. It has been affirmed by the applicant in its Form-H that in compliance of sub-regulation (4A) of regulation 36 B of CIRP Regulations, 2016 and Request for Resolution Plan (RFRP) issued thereon, the Successful Resolution Applicant has submitted performance bank guarantee ('PBG') for an amount of Rs. 50 lacs/-equivalent to 10% of the total Resolution Debt under the Resolution Plan through RTGS in CIRP account.

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 Point no. 7 at page no. 17 which provided that the CIRP shall be paid in priority to payments to financial creditors, operational creditors and other creditors contemplated in this Resolution Plan.
7. As regards compliance of clause (b) of Section 30 (2) of the Code, the applicant has certified in Form H that Part B at page 25 and 31 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.
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 Schedule 4 para C of Clause 1.4 And 1.5 at page 29 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, Schedule 3, para I and 3 at page number 14-15 and 20 respectively of the Resolution Plan provide for the Monitoring Committee.



10. Further, 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 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 in Schedule 3, point 9, 10 and Para (e) at page 18-19 and page 14 respectively 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-A-24 at page 278. 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 93.40% favourable E-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. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which was earlier approved by the CoC by the majority vote of 93.40%.

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.

  
26/11

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

-Sd-

(SUMITA PURKAYASTHA)

MEMBER (T)

-Sd-  
26/11/21

(DHARMINDER SINGH)

MEMBER (J)

NOTE

Pronounced today in open court in pursuance of power under Rule 151 of NCLT Rules, 2016 as Ms. Sumita Purkayastha, Hon'ble Member (T) is not holding Court today.

Vishal Rana

Court Officer