



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
AHMEDABAD
DIVISION BENCH
COURT-1**

IA No. 736 of 2021 in CP(IB) 339 of 2019

IN THE MATTER OF:

**Mr. Kailash T. Shah
RP of Bansal Multiflex Limited**

....Applicant

V/S

Malay Bhow & others

....Respondent

**Order
Under Rule 154 of NCLT Rules, 2016**

The matter was heard and pronounced in open court on 31.05.2022. However, on perusal of the record, it is noted that few typographical corrections are required to be carried out in the order.

Hence, by invoking the provision under rule 154 of the National Company Law Tribunal Rules, 2016 the necessary corrections are carried out. The registry is directed to upload the amended order.

**-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

**-SD-
MADAN B GOSAVI
MEMBER (JUDICIAL)**

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IA No. 736 of 2021 in CP(IB) 339 of 2019

IN THE MATTER OF:

**Mr. Kailash T. Shah
RP of Bansal Multiflex Limited**

....Applicant

V/S

- 1. Malay Bhow
Resolution Applicant**
Having an address at:
18, Hans Residency, Opp. Samuktakarsh hall,
Anandnagar Main Road, Satellite,
Ahmedabad-380015
- 2. IIFL Finance Limited**
(Member of Committee of Creditors)
Having an address at:
3rd Floor, IIFL House, Sun Infotech Park,
Road No. 16V, Wagale Estate,
Thane West, Mumbai-400604
- 3. Tata Capital Financial Services Limited**
(Member of Committee of Creditors)
Having an address at:
Tower A, 1101, Peninsula Business Park,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai-400013
- 4. Indusind Bank Limited**
(Member of Committee of Creditors)
Having an address at:
2401, Gen. Thimmaya Road,
Cantonment, Pune, Maharashtra
- 5. Anup Kumar Rajendra Kumar Bansal**
(Member of the Suspended Board of directors)
Having an address at:



803, Krishna, Parth Sarathi Avenue,
Near Shyamal City Gold, Shyamal Cross Road,
Satellite, Ahmedabad, Gujarat-380015

6. Tejas Anup Bansal

(Member of the Suspended Board of directors)

Having an address at:

803, Krishna, Parth Sarathi Avenue,
Near Shyamal City Gold, Shyamal Cross Road,
Satellite, Ahmedabad, Gujarat-380015

7. Income Tax Department

Through Commissioner/Principal Commissioner
of Income Tax -3)

Having an address at:

Aaykar Bhavan, Anand Nagar Road,
Vejalpur, Ahmedabad-380015

.....Respondents

Order Reserved on: 04.05.2022

Order pronounced on: 31.05.2022

Coram: MADAN B. GOSAVI (MEMBER JUDICIAL)

KAUSHALENDRA KUMAR SINGH (MEMBER TECHNICAL)

Appearance:

Mr. Nipun Singhvi, Advocate along with Mr. Mayur Jagtawat,
Advocate for the RP.

Mr. Kailash T. Shah, Resolution Professional.

ORDER
Per Bench

1. The instant application is filed by Mr. Kailash T. Shah, Resolution Professional of M/s. Bansal Multiflex Limited for approval of the Resolution Plan under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “Code”) of Mr. Malay Bhow.



2. It is submitted that the Corporate Debtor was admitted into the Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) on 18.12.2020 and a copy of the order was received by the Interim Resolution Professional (“IRP”) on 28.12.2020. Mr. Bal Mukund Bhagchand Kabra was appointed as an IRP who formed the Committee of Creditors (“CoC”). The first meeting of the CoC was conducted on 04.02.2021 and the CoC in that very meeting approved to replace of the IRP and appoint Mr. Kailash T. Shah as Resolution Professional (“RP”). This Adjudicating Authority confirmed the replacement of the resolution professional vide order dated 08.03.2021.
3. It is submitted that the COC in the 3rd meeting dated 24.06.2021 has resolved to publish the Expression of Interest (hereinafter referred to as “**EOI**”) and also resolved to extend the period of 90 days (beyond 180 days). This Adjudicating Authority had allowed the extension of 90 days and further excluded 10 days on account of delayed receipt of a copy of the admission order dated 19.07.2021 in IA No. 469 of 2021.
4. It is also submitted by the applicant that the resolution professional has published Form-G on 26.06.2021 wherein the last date for submission of the resolution plan was 25.08.2021. In response to the EOI published by the RP, seven EOI were received.



5. It is also submitted that the RP has reconstituted the CoC as one claim was received from another financial creditor viz. IIFL Finance Limited after the last date of submission of the claim. Thereafter reconstituted members of the COC comprised of 3 members viz. Indusind Bank Limited, Tata Capital Financial Services Limited, IIFL Finance Limited.
6. It is also submitted that out of seven EOIs received, only two resolution plans were submitted by the resolution applicants viz. I. Malay Bhow and II. Aeron Overseas along with Shilpa Shah. The COC in the 5th meeting dated 09.09.2021 considered both the plans submitted by the prospective resolution applicants and also considered their eligibility under Section 30 r.w. section 29A of the Code.
7. It is submitted by the applicant that the CoC in the 6th meeting dated 20.09.2021 considered the resolution plan submitted by the prospective resolution applicants and approved the resolution plan submitted by Malay Bhow with 100% votes. The total plan value offered by him was Rs. 31 Lakh.
8. The admitted claim of the unsecured financial creditor is Rs. 44,82,094/- and the resolution applicant has proposed to pay an amount of Rs. 18,84,101/- within 120 days from the date of approval of the resolution plan. There are no secured creditors in the corporate debtor. The admitted claim (excluding employees,



workmen, and PF) of the operational creditor is Rs. 14,71,226/-. One claim has been received from the PF Department of Rs. 1479/-. The resolution applicant has proposed to pay an amount of Rs. 2,14,420/- for the total operational debt within 30 days from the approval of the resolution plan. The resolution applicant proposed to pay the amount of Rs. 1,479/- to the PF Department. The detail of the proposed payments under the resolution plan is as under:

The key features of the Resolution Plan are summarized below:

Resolution Applicant proposed Amount	Amount (in Rs.)	Timeline	Clause of Resolution Plan
Payment of CIRP Cost <i>The CIRP cost is Rs. 10 Lakh. The Resolution Applicant Propose to pay a sum of Rs. 10 Lakh for payment of CIRP Cost. However, if CIRP cost increase the same shall be proportionately adjusted against the payment to be made to Financial Creditors</i>	10,00,000/- (100%)	Within 30 days from effective date	Clasue 4.2.1 Page 6 of the Plan
Payment to the Financial Creditors (excluding the Related Party Creditor) <i>There are no secured creditors and hence payment is made to unsecured financial creditors. Resolution Applicant Propose to pay a sum of Rs. 18,84,101/- for total admitted claim of Rs. 1,16,31.253</i>	18,84,101/- (16.20%)	Payment to be made within 120 days from effective date.	Clause 4.2.2 at Page 6 of the plan
Payment towards the Operational Creditors, Other Creditor and	2,14,420/- (14.57%)	Within 30 days from	Clause 4.2.3 at Page 6 of the



related party (Excluding Employees and workmen)		Effective Date	plan
Payment toward Employee and workmen) As per the information memorandum it is stated that none of the employees/workmen have filed claims. Accordingly RA is not proposing any amount	_____	_____	Clause 4.2.10 at page 9 of the Plan
Payment to EPFO PF department has lodged its claim for Rs. 1,479	1,479/-	Within 30 days from Effective Date	Clause 4.2.11 of the Plan
Payment to Shareholders of CD. As per Shareholding pattern as on 31.03.2019, promoters of the Corporate Debtor holds 53,02,800 Equity Shares (71.56%) where as public shareholder holds 21,07,200 Equity Shares	b. The equity shares held by the promoters of the corporate debtor shall stand cancelled and no amount will be payable to the said shareholders. c. Whereas the equity shares held by the public, RA is proposing to issue 1 Share for every 100 equity shares held by public shareholders.	_____	
TOTAL BID AMOUNT	Rs. 31,00,000 (Thirty One Lakhs 16.03%)		

9. It is also submitted that the resolution applicant proposed to issue 1 share for 100 equity shares held by public shareholders. The resolution plan also contains that the operational creditor shall be paid in priority. The resolution plan is feasible and viable



and it also stated that the resolution plan does not contravene any provision of the code.

10. The Resolution Applicant has prayed for the following reliefs and concessions :

- i. All the government authorities, if any, the Security Exchange Board of India (SEBI), and the National Stock Exchange shall waive the non-compliance, if any, of the Corporate Debtor prior to the appointed date without levying any fee, penalty, or additional duty for non-compliance of various provisions regulations formed by SEBI.
- ii. Upon approval of the Resolution Plan, NSE shall revoke the suspension of listing of shares and list the equity shares of the corporate debtor which are issued pursuant to the resolution plan continue listing the equity shares of the Corporate Debtor.
- iii. For issuance of new shares to the resolution applicant, its nominees, and to existing public shareholders, corporate debtor, it is deemed that the Corporate Debtor has complied with the provisions prescribed under the Companies Act, 2013, SEBI (Substantial Acquisition Shares and Take Over) Regulations, 2015 and SEBI



(Listing Obligations and Disclosure Requirements) Regulation, 2015.

- iv. Since the commencement of the CIRP, while resolution professional is putting their efforts to control and manage the affairs of the Corporate Debtor, there may a chance that certain business permit of the corporate debtor lapsed, expired, suspended, cancelled, revoked, terminated, or corporate debtor has non-compliance in relating thereof. Accordingly, all government authorities to provide a reasonable time period after the appointed date in order for the resolution applicant to access the status of these business permits and ensure that the corporate debtor is in compliance with the terms of the business permits and applicable law without initiating any investigation, actions or proceeding in relation to such non-compliance.
- v. All Government Authority to grant all relief, concession, or dispensation as may be required for the implementation of the resolution plan in accordance with the terms and conditions.
- vi. Upon approval of the resolution plan, by this Adjudicating Bench, the Income Tax Department shall be deemed to have waived the corporate debtor from levy or payment



- from Income Tax on waiver of principal and interest by Bank/institutions.
- vii. Upon approval of the resolution plan by this Adjudicating Bench, the Income Tax Department shall be deemed to have been condoned the delay in filing of Income Tax Return of the corporate debtor without levy or payment of any additional fee and permit the corporate debtor to file the Income Tax Return under section 139(1) and consider the date on which the Income Tax Return is filed by the Resolution Applicant in compliance with section 139(1).
- viii. Upon approval of the resolution plan by the Adjudicating Bench, the Ministry of Corporate Affairs shall be deemed to have waived the penalty for not holding Annual General Meeting by the corporate debtor within the stipulated time limit prescribed under the Companies Act, 2013 and rules framed thereunder for the Financial Year 2018-2019, 2019-2020, and 2020-2021.
- ix. Upon approval of the resolution plan, all beneficiaries of the guarantee issued by the Corporate Debtor and liability of the corporate debtor with respect to such guarantee shall stand extinguished.
- x. Upon approval of the resolution plan, all matters/litigation pending before the labour authority



shall stand disposed of and the corporate debtor and the resolution applicant shall not liable to make any payment including any penalty, damages, cost, or otherwise.

11. The direction was given to serve the notice to the suspended management and Income Tax Department vide order dated 3.11.2021 of this Adjudicating Bench. Notice was served to the Suspended Management and Income Tax Department. At the request of the Income Tax Department, the matter was adjourned vide order dated 21.12.2021 but no objections/ submission has been filed by the Income Tax Department.
12. Heard the counsel of the applicant and perused the material on record. It is noted that the resolution plan submitted by Malay Bhow has been approved by the CoC in the 6th meeting dated 20.09.2021 with 100% votes. The resolution applicant has proposed to pay the amount of Rs. 31,00,000/- to the creditors as set out in the resolution plan against the NIL liquidation value as per the valuation report. It is stated by the applicant that the only reason for bidding on the Corporate Debtor is that it is a listed company and the cost of reviving the Corporate Debtor is less than listing a new company under the NSE and BSE.
13. It is also noted that the CoC has considered that the resolution plan does not contravene any provisions of the Code and the resolution plan is feasible and viable as per Regulation 38(3)(b) of



CIRP Regulations, 2016. The cause of default of the Corporate Debtor has also been stated in the resolution plan.

14. The applicant-RP has also placed on record a compliance certificate dated 18.09.2021 issued by Chartered Accountants Pinakin Shah & Co. and Form-H under regulation 39 of CIRP Regulations, 2016. The Resolution Applicant has proposed an amount of Rs. 31 lakhs against the total admitted claim of Rs. 59,54,799/- which constitute 52.05 percent of the total admitted claim.
15. It is also noted that the resolution applicant has not proposed the formation of a monitoring committee as the Resolution Applicant proposed to settle the dues of the unsecured financial creditors, operational creditors, and other stakeholders within 30 days. However, it has submitted that the supervision of the payment to the stakeholders shall be done by the mutually decided Independent person. The resolution plan also proposed to provide performance security of 10% of the value of the resolution plan within 7 days from the date of issuance of LOI by the COC or such other extended date as may be notified by the Resolution Professional in prior consultation with the COC.
16. The resolution plan also contains the method of payment to the different stakeholders as per Section 53(1) of the IB Code. The



affidavit of the resolution applicant with the respect to section 29A of the IB Code is also on record.

17. The CoC has also considered the feasibility and viability of the resolution plan. It is also stated that the resolution plan does not violate any of the provisions of the law and complied with Section 30 (2) of the IB Code.

18. We are of the considered view that the resolution plan has complied with all the relevant provisions of the Code. Accordingly, we being satisfied, approve the resolution plan and pass the following order:

- I.** The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- II.** The order of moratorium dated 18.12.2020 passed by this Adjudicating Bench under section 14 of IBC, 2016 shall cease to have effect from the date of this order.
- III.** The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, and other stakeholders involved in the Resolution Plan.
- IV.** The independent person will supervise the payments of the stakeholders.



- V.** The Resolution Professional, Mr. Kailash T. Shah shall be released from the duties as per the provisions of the Code and rules/regulations made thereunder.
- VI.** The Resolution Professional shall forthwith send a copy of this order to the participants and the resolution applicant(s).
- VII.** The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.
- VIII.** As regards to various reliefs and concessions which are being sought, we hereby grant the following reliefs and concessions only as against reliefs and concessions claimed by the Resolution Applicant:
- i.** After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders shall stand permanently extinguished and other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that



contingent/unconfirmed dues shall also stand extinguished;

- ii.** From the date of this order, all claims except those provided in the plan of the Corporate Debtor shall be extinguished.
- iii.** From the date of this order, all encumbrances on the assets of the Corporate Debtor prior to the plan shall stand permanently extinguished.
- iv.** For reliefs and concessions sought from the Government/Statutory Authorities, we direct the resolution applicant to approach the concerned Authorities. The concerned Authorities are directed to decide the matter as per applicable provisions of law for effective implementation of the Resolution Plan.
- v.** As regard to reliefs prayed under various provisions of the Income Tax Act, 1961, the corporate debtor/ resolution applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the resolution applicant in accordance with the provisions of Income Tax Act, 1961.



- vi.** The resolution applicant shall be entitled to review, revise or terminate any agreements entered into by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements/MoUs/contracts;
- vii.** The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the resolution applicant for proper running operations of the business of the Corporate Debtor;
- viii.** The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution;
- ix.** The resolution applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under section 31 or within such period as provided for in such law, whichever is later, as the case may be;
- x.** All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been



obtained and the provisions made in the resolution plan as regard to the restructuring of capital shall be binding on them. For concession of stamp duty as prayed in the resolution plan for enhancement of share capital, the resolution applicant may approach the concerned Government Authority.

- xi.** With respect to the grant of license/ Government approval if the license or approval is terminated, suspended, or revoked. The resolution applicant may approach the concerned Department/ Authorities for such approval/ renewal, and Government Authorities may consider the request of the resolution applicant as per applicable provisions of law for effective implementation of the resolution plan.

19. Accordingly, IA 736 of 2021 is allowed with the above-said observations and directions and stands disposed of.

20. An urgent certified copy of this order, if applied for, is to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-

-SD-

(KAUSHALENDRA KUMAR SINGH)
MEMBER (TECHNICAL)

(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

RB