

**IN THE NATIONAL COMPANY LAW
TRIBUNAL
MUMBAI BENCH, COURT-V**

I.A. No. 3969 of 2023

**IN
C.P. No. 1486 of 2020**

In the matter of an Application under
Section 30(6) and Section 31 of the
Insolvency and Bankruptcy Code, 2016.

**Mr. Mahesh Sureka
(Resolution Professional of Ecool Gaming
Solutions Private Limited)**

...Applicant/Resolution Professional

In the matter of

Nineicon Private Limited

... Financial Creditor

V/s.

Ecool Gaming Solutions Private Limited

... Corporate Debtor

Order Dated: 19.12.2023

Coram:

Hon'ble Reeta Kohli, Member (Judicial)
Hon'ble Madhu Sinha, Member (Technical)

Appearance: Physical

For the Applicant: Counsel for the Applicant

ORDER

Per: Madhu Sinha, Member (Technical)

1. The above captioned Application was filed under Section 30(6) and Section 31, of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) by the Resolution Professional (hereinafter referred as (“**Applicant**”), seeking approval of the Resolution Plan, submitted by the Resolution Applicant - Dusane Infotech (India) Private Limited, which was approved unanimously by the members of the Committee of Creditors (hereinafter referred to as ‘**COC**’).
2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated, vide an order dated 05.08.2022 (Annexure 1), under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as ‘**the Code**’) (**Admission Order**) and Mr. Mahesh Sureka, was appointed as Interim Resolution Professional. The IRP, constituted the Committee of Creditors. The COC in its 1st meeting held on 13.09.2022 appointed (**the present Applicant**) as the Resolution Professional (**RP**). The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
 - b. The Applicant published a Public Announcement in Form A in accordance with Section 15 of the Code, on 25.08.2022 (Annexure 2), in English Newspaper the Free Press Journal and one in Marathi Newspaper Mumbai Lakshdeep, inviting claims from the creditors of the Corporate Debtor.

- c. The claims **received** and **admitted** by Interim Resolution Professional are as under:

Sr. No.	Creditors of the Corporate Debtor	Amount Claimed (in Rs.)	Amount Admitted (in Rs.)
1.	Financial Creditor: Nineicon Private Limited (100% voting share in the COC)	2,00,00,000	2,00,00,000
2.	Operational Creditor: Link Intime India Private Limited	28,516.66	28,516.66
	Total	2,00,28,516.7	2,00,28,516.7

3. After receiving the claims, the Committee of Creditors was constituted. The constitution of COC is as under:

Sr. No.	Name of the Member	Percentage
1	Nineicon Private Limited	100%
Total		100%

4. The Applicant states that in the 2nd COC meeting, dated 04.08.2022, the COC approved with minimum eligibility criteria, Request for Resolution Plan (**RFRP**) and Form G for inviting Expression of Interest ("**EOI**") from Prospective Resolution Applicants as per section 25(2)(h) of the Code. Accordingly, Public announcement for inviting EOI was issued. Form G, inviting EOI, was published on 22.10.2022 (Annexure 7). However, in the 3rd CoC Meeting dated 11.11.2022, the COC was informed that only M/s. Nineicon Private Limited (i.e. the only Financial Creditor) had shown interest in resolving the Corporate Debtor, therefore the Applicant suggested republication of FORM G, and the same was ratified by the CoC. The second Form G was published on 17.11.2022(Annexure 9). The last date for submission of Expression of Interest (EOI) from Prospective Resolution Applicants was 03.12.2023.
5. The CoC decided to appoint valuers. The Resolution Professional accordingly appointed two registered valuers for Securities or Financial Assets (SFA) since there were no physical assets available with the Corporate Debtor, to determine the fair value and liquidation value of Securities or Financial Assets (SFA), as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. These valuers submitted their reports. The Liquidation and fair value is stated as under:

Sr. No.	Name of the Valuer	Fair Value	Liquidation Value
1.	CS Anirudh Kumar Tanvar (Report dt. 12.10.2022)	Rs. 35,00,000/-	31,56,000/-
2.	CA. Ashok Mittal (Report dt. 19.10.2022)	Rs. 35,00,000/-	Rs. 29,84,000/-
3.	Average of both Reports	Rs. 35,00,000/-	Rs. 30,70,000/-

6. The Applicant further states, that in furtherance of the Form-G issued by Applicant, he received EOI from the one Prospective Resolution Applicant (PRA), within the stipulated time period from a Company by the name of, M/s. Dusane Infotech (India) Private Limited.
7. **The COC, in its 6th meeting held on 07.04.2023, approved Resolution Plan submitted by M/s. Dusane Infotech (India) Private Limited with a voting share of 100%. Thereafter, the Applicant has issued compliance certificate in Form “H”.**
8. **The Salient Features of the Resolution Plan are as under:**

A. Brief Background of the Company / Corporate debtor

- i. Ecool Gaming Solutions Private Limited [“Corporate Debtor”] is a private limited company and is classified as “company limited by shares” was incorporated on 03.09.2001. The registered office of the Corporate Debtor is located at 2nd Tower, 4th Floor, International Infotech Park, Vashi Railway Station, Navi Mumbai, Thane 400703.
- ii. The Corporate Debtor was engaged in the business of online lottery as well as paper lottery games. The Company was appointed as an agent by the State Government of Mizoram for sale of Mizoram State’s online lottery games all over India through its agents / sub agents. The License of Corporate Debtor of Mizoram online draws was suspended on 9th July 2018. Because of this, its revenue was affected and from FY 2019-20 onwards there has been negligible revenue.
- iii. The Corporate Insolvency Resolution Process (“**CIRP**”) of Ecool Gaming Solutions Private Limited has been initiated as per

the provisions of the Insolvency and Bankruptcy Code (“**IBC**”) under Section 7. The application was moved before the Hon’ble National Company Law Tribunal, Mumbai Bench (“**NCLT**”) and was admitted vide its order dated 05.08.2022 (Annexure 1) (“**CIRP Order**”). Pursuant to such order, Mr. Mahesh Sureka, (having IP Registration No. IBBI/IPA-001/IP-P00413/2017-18/10736), Insolvency Professional, was appointed as the Interim Resolution Professional (**IRP**).

B. Background of the Resolution Applicant

Dusane Infotech [India] Private Limited is the certified technology consulting and development company [ISO 9001:2015] with focus on middleware engineering services in the gaming and media space. The Company is having headquarterd in Mumbai, India. The registered office of the Resolution Applicant is at Sambhav IT Park, Plot No. B-5, MIDC, Wagle Industrial Area, Thane [West] 400604.

Dusane Infotech [India] Private Limited is engaged in the business of providing technical solutions based on the combination of Hardware, Software, Connectivity Network architecture, Business Process Outsourcing including software implementation, software based information, technology solution. Dusane Infotech [India] Private Limited is in the field of Media, Hospitality, Gaming and Entertainment Industries.

The said Prospective Resolution Applicant is eligible to act as a Resolution Applicant of the Corporate Debtor and is not ineligible under section 29A of Insolvency and Bankruptcy Code and also satisfies the eligibility criterion as mentioned in clause (h) of sub-section (2) of section 25 of the Code.

9. **Summary of Payments under the Resolution Plan**

SN	Particulars	Claims Received	Claims Admitted	Amount payable under the Plan [In Rs.]
1	CIRP Cost	7,08,000.00/-	7,08,000.00/-	7,08,000.00/-
2	Operational Creditor [Link Intime]	28,516/-	28,516/-	28,516/-
3	Financial Creditor [NineIcon Private Limited]	2,00,00,000/-	2,00,00,000/-	2,63484/-
4	Income Tax Department	NIL		
5	GST Department	NIL		

10. **Sources of Funds:**

The PRA proposed Rs. 10,00,000/- [Rupees Ten Lakh only] towards the Corporate Insolvency Resolution of the Corporate Debtor pursuant to the implementation of the proposed resolution plan and the same shall be brought in by the PRA within 30 days of approval of Resolution Plan with Adjudicating Authority and distribute the proposed amount towards CIRP cost and amongst the creditors of the Company pursuant to Section 53 of the Insolvency and Bankruptcy Code, 2016 as below.

Disbursement of Resolution Amount in Rs.		
Under section 53 of IBC, 2016	Amount to be distributed	Amount
(a)	CIRP Cost	7,08,000
(b)(1)	Workmen's Due of last 24 months	0
(b)(2)	Debt owed to secured creditor	0
(c)	Wages and Unpaid dues to employees other than workmen	0
(d)	Financial Debt owed to unsecured creditor	2,63,484
(e) (i)	Statutory Dues	0
(e) (2ii)	Debt due to secured creditor	0
(f)	Remaining Debt	28,516
	Total disbursement	10,00,000

Any increase in CIRP cost will be added in the original CIRP cost approved by COC. The PRA shall bring in corresponding additional sum to account for any increase in CIRP Costs from Rs. 7,08,000/-.

The PRA proposed to bring additional capital of Rs.5,00,000/- [Rupees Five Lakh only] by way of equity share divided into 50000 equity shares of Rs. 10/- each as may be decided and approved by the RA, within 90 days from the date of approval of Resolution Plan by the Adjudicating Authority. This Rs. 5,00,000 as a fresh capital shall be brought over and above Rs. 10,00,000/-. The details of fresh capital infusion is as under :

SN	Parameters	Amount Payable [Rs.]	Sources of Funds	Description of the Proposal
1	Additional fund by way of subscription of 50000 equity shares @ Rs. 10 each within 90 days by NEFT payment to corporate debtor account	Rs. 5,00,000/- [Rupees Five Lakh] divided into 50000 shares of Rs. 10/- each	Owned	Fresh Capital will be brought in within next 90 days from the date of approval of Resolution Plan by the Adjudicating Authority

11. Payments proposals of the various stakeholders under the Resolution Plan:

A. Proposal for payment to the Financial Creditors

The Information Memorandum reveals the following details about the Financial Creditors as per Regulation 36 (2) (d)

Other Financial Liabilities	2,00,00,000	Interest free loan from Nineicon Private Limited
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The amount proposed to be paid under the plan is Rs.2,63,484/-.

The Terms of Payment:

The SRA shall make the payment in the following time schedule:-

100 % of amount of the proposed under resolution plan for CIRP cost and payment to creditors, i.e., amount of Rs. 10 Lakhs would be paid within 30 days from the date of approval of Resolution Plan by the Adjudicating Authority.

B. Proposal for GST and Income Tax Department

The RP has not received any claim from GST and Income Tax Department. Hence, no payment has been envisaged under the plan towards these statutory authorities.

C. Proposal for Payment to the Operational Creditors:

The information memorandum shows the details of operational creditor as below:

Operational Creditor		
Link Intime India Private limited	28,516.66	100%
Total Claim by operational creditor	28,516.66	100%

D. Proposal for Employees and Workmen

The Information memorandum does not reveal any claim from any workmen or employees. Hence no amount is provided for employees and workers in the Resolution Plan.

E. Proposal for the Equity Share Holders

The paid-up equity share capital as on 31.03.2022 as per the Information Memorandum is Rs. 1,00,000/-. Upon approval of the Resolution Plan, all existing equity shares shall be cancelled, and the total equity share capital shall be written down.

The paid-up preference share capital is Rs. 37,00,00,000 (Rupees Thirty-Seven Crore Only) and which will be reduced to zero as issued preference shares.

All Claims and dues of the shareholders and members of the Corporate Debtor pertaining to the period prior to the approval of the Resolution Plan by the COC shall stand satisfied and extinguished, and no such existing claim or due shall subsist against the Corporate Debtor and the PRA by the shareholders and members of the Corporate Debtor.

Post issue of fresh equity shares as stated above, the shareholding of existing shareholders will not be given any single shares and as such, their shareholding in the Corporate Debtor would be nil. Therefore, after resolution plan appeared, the PRA and its nominees will be holding 100 % shareholding the Corporate Debtor Company.

12. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance)Yes / No(

25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	14.5	Yes
	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	3.3, 3.12, 14.5	Yes
Section 30 (1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	3.3, 3.12	Yes
Section 30 (2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?]	2.5, 6, 6.3, 6.4, 6.6, 6.7, 6.8(d), 6.9, 6.11, 8.1, 9, 11(b), 11(e), 11(f), 12, 14	Yes
Section 30 (4)	Whether the Resolution Plan)a(is feasible and viable, according to the CoC?	3.14,	Yes

)b(has been approved by the CoC with 66% voting share?		
Section 30(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	9, 14.1	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	6.9, 6.11	Yes
Regulation 38 (1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	6.6(4), 10.1(c), 10.5 A(11) & 11	Yes
Regulation 38 (1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	14.5	No
Regulation 38 (2)	(a) Whether the Resolution Plan provides:)a(the term of the plan and its implementation schedule?)b(for the management and control of the business of the corporate debtor during its term?)c(adequate means for supervising its implementation?	8, 9, 12 (i), 12(ii) 14, 14.2, 14.3	Yes

Regulation 38 (3)	Whether the resolution plan demonstrates that –)a(it addresses the cause of default?)b(it is feasible and viable?)c(it has provisions for its effective implementation?)d(it has provisions for approvals required and the timeline for the same?)e(the resolution applicant has the capability to implement the resolution plan?	3.13, 3.14, 8.1, 9, 14.1	Yes
Regulation 39 (2)	(b) Whether the RP has filed applications in respect of transactions observed, found or determined by him?	-	No
Regulation 39 (4)	(c) Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	2.4	Yes

13. **Monitoring Committee:**

The Monitoring Committee will be formed for 1 [One] Month from the date of receipt of approval of resolution plan by the Adjudicating Authority with Mrs. Shreya Karangutkar, Authorised Representative of SRA and RP. The tenure may be extended as per the requirements. In case it exceeds more than 1 month, RP will continue on same. The payment to RP will be paid by RA for the implementation period with same fees as of CIRP period per month.

14. Observations and Findings:

- i. As per IBC Code 30(2)(a) – A Resolution Plan 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.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid in priority. However, in the present case there is no dissenting financial creditor.
- iv. The plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(d).
- v. The plan provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (d) & Regulation 38(2)(c).
- vi. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - Resolution Plan provides for the implementation and supervision of the resolution plan as per Section 30(2) (e)
- vii. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- viii. As per IBBI Guidelines 38(1)(b) - the amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in

favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.

- ix. The resolution applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- x. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
 - d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - e. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under sub-section (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
 - f. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.

- g. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
 - h. The plan provides for the management and control of the business of the Corporate Debtor during its term.
 - i. All the above factors demonstrate that the plan address as the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
 - j. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
 - k. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).
15. The Resolution Plan has been approved in the 6th meeting held on 07.04.2023 with 100% voting in accordance with the provisions of the Code.
16. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** 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.

17. In ***India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)*** the Hon'ble Apex Court held that the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC). The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the value of security interest held by it, cannot seek to challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.

18. The Hon'ble Apex Court at para 42 in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online**, has 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.

*“Para 42- 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).”*

19. In view of the above cited case law, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent of scrutiny provided under section 31 of Code and the direction of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code.
20. In view of the discussions, this Bench is of the considered view that 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 Resolution Plan is feasible and viable. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- a) The Interlocutory Application No. 3969 of 2023 is **allowed**. The Resolution Plan submitted by **M/s. Dusane Infotech (India) Private Limited**, is hereby approved. **It shall become effective from this date and shall form part of this order**. 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 payment of dues arising under any law for the time being in force is due.
- b) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned 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.
- c) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- d) The Monitoring committee shall supervise the implementation of the Resolution Plan and shall file status of its implementation before this Authority from time to time, preferably every quarter.
- e) 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.
- f) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

- g) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- h) The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- i) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- j) The Interlocutory Application No. 3969 of 2023 is accordingly allowed.**

SD/-

Madhu Sinha

Member (Technical)

/Aakansha/

SD/-

Reeta Kohli

Member (Judicial)