

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

I.A. 4681/ 2020

IN

Company Petition No. (IB)-449 (PB)/2018

*Submission of Resolution Plan under Section 30(6) for approval under
Section 31 of the Insolvency and Bankruptcy Code, 2016*

In the matter of:

Mr. Shaikh Nafis Anjum

...Applicant/Resolution Professional

AND

In the matter of:

M/s. Unnati Fortune Hotmart Private Limited

...Corporate Debtor

Order delivered on: 20.05.2021

Coram:

**SH. B.S.V. PRAKASH KUMAR,
HON'BLE ACTG. PRESIDENT
SH. HEMANT KUMAR SARANGI,
HON'BLE MEMBER (TECHNICAL)**

For the Applicant: Mr. Abhishek Anand, Ms. Prachi Johri,
Mr. Rahul Adlakha, Advocates

For the RP: Mr. Kanishk Khetan, Mr. Prateek Khushwaha,
Advocates Mr. S. N. Anjum, RP in person.

ORDER

PER- HEMANT KUMAR SARANGI, MEMBER(T)

1. This is an application filed by the Resolution Professional under Section 30 (6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “Code”) seeking approval of the Resolution Plan under Section 31 of the Code read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in respect of the corporate debtor M/s. Unnati Fortune Hotmart Private Limited.
2. The facts in brief necessary for disposal of the present application are that M/s. Nupur Finvest Pvt. Ltd, one of the Financial Creditors, had preferred an application under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process against M/s. Unnati Fortune Hotmart Private Limited ("Corporate Debtor"). The Company Petition (IB)-449 (PB) / 2018 was admitted on 09.07.2019 imposing moratorium under Section 14 of the Code and by initiating Corporate Insolvency Resolution Process (“CIRP”), against the Corporate

Debtor. Further, Mr. Shaikh Nafis Anjum, was appointed as the Interim Resolution Professional (“IRP”).

3. The Applicant states that after the public announcement Form A was published on 12.07.2019 and thereafter, the IRP constituted the CoC based on the claims received from the creditors of the Corporate Debtor. The first meeting of CoC was conducted by the IRP on 08.08.2019, after the constitution of the CoC. The agenda for confirmation of the IRP to RP was rejected in the said meeting.
4. Thereafter, the second meeting of the CoC was conducted on 28.08.2019, wherein the Applicant, Mr. Shaikh Nafis Anjum was appointed as the RP unanimously. Also, agenda for publication of Expression of Interest (EoI) in Form-G, the Eligibility Criteria, Bid Evaluation Matrix and Request for Resolution Plan was approved by the CoC in the said meeting.
5. The Resolution Professional also took steps for appointment of two valuers namely for each class of Asset, the following were engaged for the process:

CLASS OF VALUATION	REGISTERED VALUER	
	PENSAE VALUATION	D.I.C.O
Financial Assets and Securities	Vikas Aggarwal	Mohit Sagar
Land and Building	Alok Kaushik	Nanak Chand Gupta
Plant and Machinery	Anil Kumar Saxena	N.R. Sharma

under Regulation 27 of the Regulations, to determine the Fair value and Liquidation value of the corporate debtor in accordance with Regulation 35. The closest two estimates were accordingly taken as the Value as per Regulation 35, which is as under:

Fair Value Rs. 3613.2 Lakhs (Average)

Liquidation Value Rs. 2670.1 Lakhs (Average)

Besides this M/s. M.K Aggarwal & Co. Chartered Accountants were appointed as transaction auditor in the fourth meeting of the CoC on 20.01.2019.

6. It is submitted by the Resolution Professional that, it published an invitation for expression of interest in requisite Form G on 11.09.2019 in English and Vernacular language newspapers having wide circulation in Delhi NCR. The RP uploaded the Form G on the website

of his Insolvency Professional Entity (“IPE”), AAA Insolvency Professionals LLP, with 25.10.2019 being the last date for submission of EOI.

7. Pursuant to the public invitation, the RP received EOI for submission of Resolution Plan from the following parties:-
 - a. One City Infrastructure Private Limited
 - b. OESPL Private Limited
 - c. Kundan Care Products Limited

Further, it is stated that, M/s. OESPL Pvt. Ltd. and M/s. Kundan Care Products Ltd., two of the resolution applicants requested the CoC for more time for evaluating and preparing the Resolution Plan, hence after deliberation the CoC approved the extension of the last date of submission of Resolution Plan upto 03.12.2019.

8. That in the sixth meeting of the CoC held on 19.12.2019, the RP informed the CoC members that the earlier PRA’s had requested to extend the last date of submission of the Resolution Plan as they require more days for submitting their plan. Hence, the CoC passed a resolution with 100% voting share for extension of CIRP period for further 90

days. This tribunal on 13.01.2020 extended the period of CIRP for further 90 days w.e.f 04.01.2020.

9. In the seventh meeting of the CoC held on 04.01.2020, wherein, the Resolution Plan received from M/s. OESPL Pvt. Ltd. was discussed and it was rejected by the CoC.
10. On 08.01.2020 the RP re-issued Form-G, pursuant to re-issue of Form-G. The last date for the submission of EoI was 18.01.2020.
11. In the eighth meeting of the CoC on 16.01.2020 the RP apprised the CoC about the filing of an application for extension of CIRP period beyond 180 days, which was duly allowed by this tribunal on 13.01.2020, thereby extending the CIRP period upto 04.04.2020.
12. In the ninth meeting of the CoC held on 07.02.2020, the RP informed the CoC that a Resolution Plan has been received from M/s. OESPL Pvt. Ltd. and M/s. Kundan Care Products Ltd. Further, in the tenth meeting of CoC held on 14.02.2020 & 15.02.2020 the RP and the CoC members discussed and negotiated with one of the RA namely, M/s. Kundan Care Products Limited for revising their bid.

13. In the twelfth meeting of the CoC held on 26.02.2020, the agenda was the discussion of the Resolution Plan in which the CoC discussed in detail and decided that a resolution should be passed for finalizing M/s. OESPL Pvt. Ltd. as the H1 bidder, the said resolution was put forth and passed with 100% voting share.
14. That on account of the outbreak of Novel Coronavirus the Central Government had imposed nationwide lockdown on 25.03.2020, which continued till June, 2020. The end date of CIRP was 04.04.2020 but due to lockdown the Applicant delayed in performing its duties and the approval of the Resolution Plan also got delayed. The CoC also approved the resolution for extension of CIRP period beyond 270 days. In pursuance of which the RP moved an application for the extension of CIRP period (I.A. No. 2612/2020). This tribunal on 22.07.2020 had extended the period of CIRP after excluding the period of lockdown for 90 days and 11 more days making a total of 101 days, w.e.f. 09.06.2020.
15. In the fourteenth meeting of CoC held on 01.06.2020, the CoC discussed the revised Resolution Plan of the

successful Resolution Applicant. In the sixteenth meeting of CoC, held on 06.08.2020 and 11.08.2020, the CoC had discussed the financial aspect of the Resolution Plan and the changes as recommended by the CoC in the Resolution Plan were discussed in detail.

16. The Resolution Professional has submitted its Compliance Certificate under Section 39(4) of the Code along with the resolution plan under Section 39(4) for approval before the Committee of Creditors.

17. The Resolution Professional presented the resolution plan to the CoC for discussion and approval in the thirteenth meeting of CoC held on 21.03.2020. At the CoC meeting, the resolution applicant also made a presentation to the CoC members. Thereafter, the resolution plan was discussed in detail. The CoC sought certain documents from the successful Resolution Applicant which were awaited, in view of this the Resolution Plan couldn't be approved. The said meeting was adjourned. On account of outbreak of Novel Coronavirus the Central Government had imposed nationwide lockdown on 25.03.2020, which continued till June, 2020. The end date of CIRP was

04.04.2020, but due to lockdown the Applicant delayed in performing its duties and the approval of the Resolution Plan also got delayed.

18. The fourteenth meeting of CoC was conducted on 01.06.2020, wherein the CoC had discussed the revised Resolution Plan submitted by the successful Resolution Applicant. The CoC had also approved the resolution for extension of CIRP period beyond 270 days. The Applicant moved an Application for extension of CIRP period. This tribunal on 22.07.2020 had extended the period of CIRP after excluding the period of lockdown for 90 days + 11 days (101 days) w.e.f. 09.06.2020.

19. Further, it is submitted that the revised Resolution Plan submitted by the M/s. OESPL Pvt. Ltd. (the successful Resolution Applicant), was unanimously approved by the CoC in its sixteenth meeting dated 06.08.2020 & 11.08.2020. It is further submitted that the e- voting for the sixteenth CoC meeting was concluded on 10.09.2020 and the Resolution Plan was approved.

20. Resolution professional has also placed a copy of the resolution plan as approved by CoC, stated to have been

signed by the authorised representative of the resolution applicant being the consortium of M/s. SBC Exports Limited and M/s. JM Propinfra Private Limited.

21. The Compliance Certificate dated 23.10.2020 filed by the Resolution Professional in Form H under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has also been placed on record.

22. That brief contours of the Resolution Plan of M/s. OESPL Private Limited as approved by the CoC along with the amounts provided for the stakeholders under the Resolution Plan is detailed herein below: -

Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan	Amount provided the amount claimed
Secured Financial creditor	a) Creditors not having a right to vote under sub-section 2 of section 21	NIL	NIL	NIL	NIL
	b) Other than above:-				
	i) who did not vote in favour of the resolution plan	NIL	NIL	NIL	NIL
		2828.33	2826.43	2826.43	99.93%

	ii) who voted in favour of the resolution plan	2828.33	2826.43	2826.43	99.93%
	Total (a+b)				
UnSecured Financial Creditors	a) Creditors not having a right to vote under sub-section 2 of Section 21	2272.40	1862.01	NIL	NIL
	b) Other than above:-				
	i. who did not vote in favour of the resolution plan	NIL	NIL	NIL	NIL
	ii. who voted in favour of resolution plan	311.42	311.42	300	96.33%
	Total (a+b)	2583.82	2173.43	300	11.61%
Operational creditors	a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
	b) Other than above:-				
	i) Government Dues	40.39	40.39	8.03	
	ii) Workmen	NIL	NIL	NIL	
	iii) Employees	NIL	NIL	NIL	
iv) Others (Other than Government and	755.07	35.10	6.97	19.87%	

	Workmen & Employees)	795.46	75.49	15.00	1.89%
	Total (a+b)				
Total		3443.05	3443.05	1849.60	
Other debts and dues	<ul style="list-style-type: none"> • Form F • Ghaziabad Development Authority(GDA) has not filed any claim, however they have sent a letter/ Notice of Demand 	238.94	134.90	15.00 200.00	6.28%
Grand Total#		6,446.57	5210.26	3356.43	52.07%

The total amount of Resolution Plan is Rs. 39,11,43,576 comprising of payment of CIRP Cost, settlement of Operational Creditors and settlement of Financial Creditors.

The Amount of Rs. 39,11,43,576 also includes payment to GDA of Rs. 200.00 Lakhs and further Investment and working Capital of Rs. 485.00 Lakhs.

23. In terms of Section 30 (6) of the Code read with Regulation 39 of the CIRP Regulations, 2016 the resolution professional has submitted the Resolution Plan for seeking an order under Section 31(1) of the Code for approval of the resolution plan passed by the committee of creditors under sub-section (4) of Section 30 with 100% voting share.

24. Section 31 of the Insolvency and Bankruptcy Code, deals with the approval or rejection of a resolution plan by the Adjudicating Authority. Approval of the resolution Plan is accorded under the provisions of Section 31(1) of the Code.
25. Sub-section 2 of Section 30 casts a duty on the Resolution Professional to examine the Resolution Plan received by him to confirm that such Resolution Plan provides for the payment of Insolvency Resolution Process costs, provides for the payment of the debts of the operational creditors and financial creditors in such manner as specified, provides for the management of the affairs of the corporate debtor after approval of the Resolution Plan; the implementation and supervision of the Resolution Plan, that the Resolution Plan does not contravene any of the provisions of the law, and that the Resolution Plan conforms to such other requirements as may be specified by the Board.
26. The Resolution Professional has filed compliance certificate in Form H on 23.10.2020 and *inter alia*, has confirmed that it has examined and verified the Resolution

Plan approved by the CoC of M/s. OESPL Pvt. Ltd., in the light of the requirements of the Code and Regulations and that it is compliant to the relevant provisions of the Code and Regulations.

27. In terms of Section 31(1) of the Code, the Adjudicating Authority has also to examine whether the requirements of sub-section (2) of Section 30 have been complied with or not.

28. It has been submitted in the application and in Form H duly certified by RP that the final Resolution Plan approved by 100% vote share of the members of the Committee of Creditors meets the requirements as laid down in various clauses of Section 30 (2) of the Code.

29. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the resolution plan at Chapter VI Clause a which provides for payment of CIRP costs in priority over payments to any other creditors from the upfront amount brought in by the RA. The Resolution Professional has also confirmed in the compliance certificate given in Form H that the Resolution Plan provides for the payment of Insolvency Resolution

Process costs. *Be that as it may it is made clear that Insolvency Resolution Process cost shall be paid in its entirety by the resolution applicant in priority to other debts of the corporate debtor.*

30. As regards compliance of clause (b) of Section 30 (2) of the Code, the Resolution Professional has certified that the resolution plan provides for the payment of the debts of operational creditors in such manner as may be specified by the Board 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.
31. There appears to be no discrimination in the resolution plan in respective class of creditors, as same treatment is provided to similarly situated each class of creditors.
32. Besides, the resolution plan provides for the payment of the debts of operational creditors in such manner as may be specified by the Board 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.

33. As a sequel to the aforesaid discussion it is seen that clause (b) of sub-section (2) of Section 30 of the Code stands satisfied.
34. In terms of Section 30(2)(c), the Resolution Plan provides for management of affairs of the corporate debtor after approval of the Resolution Plan. The management of the affairs and control of the business of the corporate debtor after approval of the Resolution Plan has been provided at *Chapter 3 clause 2c and Chapter IX* of the Resolution plan which *inter alia* provides that the Company shall continue as a going concern and operate in its normal course of business upon implementation of the Resolution Plan. The Resolution Professional has confirmed in the compliance certificate given in Form H that the Resolution Plan provides for the management and control of the business of the corporate debtor.
35. The fourth requirement envisaged by Section 30(2)(d) is that it must provide for the implementation and supervision of the resolution plan. The Resolution Professional has confirmed in the compliance certificate given in Form H that *Chapter IX Clause* of the Resolution

Plan provides for adequate means for supervising its implementation.

36. The fifth and sixth conditions in terms of clause (e) & (f) of sub-section (2) of Section 30 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.

37. In this regard the resolution professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of the law for the time being in force. *Be that as it may in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code, we make it clear that the Resolution Applicant shall comply with all applicable laws under the proposed Resolution Plan, whether or not specifically provided therein.*

38. It is pertinent to state here that Section 29A of the Code prescribes certain eligibility criteria and disqualifications for persons who submit a resolution plan. Resolution

Applicant has given adequate declaration and undertaking on their eligibility to submit the Resolution Plan. At para 4(ii) of Form H Resolution Professional has also certified that *the Resolution Applicant, M/s. OESPL Pvt. Ltd.* confirmed that the Resolution Applicant is eligible to submit a resolution plan and does not fall under any of the categories as mentioned in Section 29A of the Code.

39. Regulation 36B(4A) of the CIRP Regulations requires that the Resolution Applicant shall provide a performance security. Resolution professional has certified that the Resolution Applicant shall submit Performance security within 20 days of the approval by CoC in compliance of Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

40. As to the Reliefs and Concessions stated in Chapter XII Clause 1 of the Resolution Plan, the exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted. As regards the other reliefs and concessions as

sought for, which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016 is granted to the Resolution Applicant. With regard to other concessions and reliefs, most of them are subsumed in the reliefs above granted, whichever is beyond the reliefs granted above, they shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted. In view of the same, this plan is hereby **approved**.

41. As a sequel to aforesaid discussions we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law for the time being in force appears to have been contravened.

42. The Resolution Professional has further certified that the Resolution Plan has been approved by *100%* of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the Code and CIRP Regulations.

43. The Adjudicating Authority is not expected to substitute its view with the commercial wisdom of the CoC nor should it deal with the technical complexity and merits of the Resolution Plan, unless it is found contrary to express provision of law and goes against the public interest. The object of the Code is to promote resolution and every effort must be made to try and see that resolution is made possible.

44. Accepting the Resolution Plan is advantageous to all the stakeholders and amounts to maximisation of the assets of the Corporate Debtor and promotes entrepreneurship and to ensure that the Company continues to function as a going concern. The right of rejection or approval of a plan is with the CoC. In a particular case, what should be the percentage of claim amount payable to one or other 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor' can be decided by the Committee of Creditors based on facts and circumstances of each case. What can be screened by this Bench is whether the plan approved by CoC meets the requirements as referred to in sub-section (2) of Section 30 of the Code.

45. Hon'ble NCLAT in the case of Darshak Enterprise Pvt Ltd Chhaparia Industries Pvt. Ltd & Ors. Passed in Civil Appeal (AT) (Ins) No.327 of 2017 has held that:

“In absence of any discrimination or perverse decision, it is not open to the Adjudicating Authority or the Appellate Tribunal to modify the plan.”

46. In the present case the resolution plan has been unanimously approved with 100% voting share much above the statutory requirement of 66 % in terms of Section 30 (4) of the Code and has the requisite statutory voting share. Besides the decision of CoC is a reasoned and self-speaking one as required under proviso to Regulation 39(3) of the CIRP Regulations, 2016. Needless to state here that the Resolution Plan cannot take care of total outstanding dues of the creditors in its entirety. It is however seen that the resolution applicant proposes to pay the total consideration amount of Rs. 39,11,43,576 within 15 months from the date of approval of the resolution plan, which is higher than the liquidation value of Rs. 2670.1 Lakhs.

47. It is a well settled proposition of law that commercial and business decisions of CoC are not open to judicial review. Adjudicating Authority cannot enquire into the commercial wisdom of CoC. The ground for rejection is limited to the matter specified under Section 30(2). It is however reiterated that the resolution plan in question meets the requirements specified in Section 30(2) of the Code and the reasoned commercial decision of CoC is neither discriminatory nor perverse.

48. In the facts we are satisfied that the requirements as per the Code and regulations have been complied with. Moreover, the Resolution Plan has been approved by 100% voting share of the members of CoC and has been submitted in compliance of Section 30 of the Code for approval. In view of the aforesaid discussions and as no infirmity have been brought out upon screening of the Resolution Plan; *we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.*

49. In respect of reliefs and concessions sought for in the Plan which are beyond the jurisdiction of this Tribunal, the Monitoring committee can make such a claim before

the authorities which shall be considered in accordance with law.

50. The resolution applicant shall obtain the necessary approval required under any law for the time being in force within a period of one year from the date of this order or within such period as provided for in such law, whichever is later.

51. 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.

52. We hereby exclude the period spent under adjudication and 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.

53. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its database.

54. The approved 'Resolution Plan' shall become effective from the date of passing of this order.

55. I.A. 4681/ 2020 and CP No. (IB) 449 (PB)/ 2018 are disposed of accordingly.

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

Sd/-

[B.S.V. PRAKASH KUMAR]
PRESIDENT [ACTG.]

Sd/-

[HEMANT KUMAR SARANGI]
MEMBER [TECHNICAL]

20.05.2021