

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

**I.A. No. 539 of 2020
In CP (IB) No. 218/9/HDB/2019
Under section 30(6) of the IB Code, 2016.**

In The Matter of
M/s. PROSEED INDIA LIMITED
(CIN: L01403TG2002PLC039113)

Mr. Sreenivasa Rao Ravinuthala
Resolution Professional
For M/s. Proseed India Limited

...Applicant

Date of Order: 03.12.2020.

Parties/Counsel(s) are present:

For the Applicant: Mr. R. Srinivas Rao, RP along with
Mr. Shabeer Ahmed, counsel.

**Per: K. Anantha Padmanabha Swamy,
Member Judicial**

ORDER

1. The present Application bearing IA No.539/2020 is filed by Resolution Professional (RP) under section 30(6) of the Insolvency and Bankruptcy Code, 2016 read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons Regulations, 2016), inter-alia seeking the following reliefs:
 - a) Allow the instant Application;
 - b) Approve the Resolution Plan;
 - c) Approve the Reliefs and Concessions sought by the Resolution Applicant in Resolution Plan;
 - d) To dispense with the requirement of shareholders' approval if any required under the Companies Act, 2013 or under the constitutional documents of Corporate Debtor for the implementation of the resolution plan;
 - e) The Corporate Debtor shall be dispensed with the requirement of shareholders' and regulatory authorities' approval under

Regulations 39(6) of the CIRP for making alternations in the name and object clause of Memorandum of Association in furtherance of new business activities as envisaged for the Corporate Debtor in the resolution plan;

- f) With effect from the date of the Completion Date, the Resolution Applicant shall restructure the Share Capital of the Corporate Debtor by way of cancellation and re-issue of equity to all the shareholders as mentioned in the resolution plan and shall not require to follow any other procedure as required under the Companies Act, including that under Sec 66 of the Companies Act or Regulations of the SEBI;
- g) The acquisition of shares and voting rights by the Resolution Applicant shall be exempt from making an open offer under the Takeover Regulations pursuant to the Resolution Plan being approved under the Code;
- h) The acquisition of shares and voting rights by the Resolution Applicant beyond maximum permissible non-public shareholding is allowed pursuant to the Resolution Plan being approved under the Code;
- i) The Resolution Applicant will be allowed to increase the public shareholding to at least ten percent and twenty five percent within a maximum period of eighteen months and thirty six months respectively from the date of such fall (date of allotment of shares upon approval of the plan by the Adjudicating Authority), in the manner specified by the SEBI;
- j) The issuance of equity shares to the Resolution Applicant, shall be exempted from the requirements of Chapter VII of the ICDR Regulations (except the lock-in provisions), pursuant to the Resolution Plan being approved under Code;
- k) The Corporate Debtor shall be exempt from the Regulations of 31A of the SEBI LODR Regulations 2015 to classify existing promoters as public and Resolution Applicants as Promoters pursuant to the Completion Date;

- l) The immovable property of Corporate Debtor under provisional attachment by the Sub-registrar of Chevella Mandal, Ranga Reddy District on the advice of the Assistant Commissioner of Income Tax u/s 281B of the Income tax Act for the recovery of the tax dues be discharged and released pursuant to approval of resolution plan;
 - m) All the charges, encumbrances created by the Secured Financial Creditor with ROC and other government authorities in respect of properties of Corporate Debtor shall stand discharged and satisfied and shall be released by extinguishment of any liability on the Completion Date and the relevant charge holders be directed to handover the said properties to resolution applicant;
 - n) Commitments and Contingent liabilities mentioned in the Information Memorandum against which no claim has been ascertained till the initiation of the Insolvency proceedings shall be written off in full and shall stand permanently extinguished and the Corporate Debtor shall at no point of time be held responsible or liable in relation thereafter.
2. Before proceeding with this matter, it would be appropriate to make a note of the submissions made by RP for the purpose of determination of this Application:
- a. That this Adjudicating Authority vide its order dated 10.07.2019, admitted the Application filed under section 9 of the IBC, 2016 in CP (IB) No.218/9/HDB/2019 for initiation of CIRP against the Corporate Debtor i.e., M/s. Proseed India Limited and appointed Mr. Venka Reddy Bathina as Interim Resolution Professional (IRP). Later he was replaced with Mr. Sreenivasa Rao Ravinuthala as Resolution Professional (RP) by this Adjudicating Authority vide its order dated 15.10.2019.
 - b. That the CIRP commenced from 10.07.2019 and Public Announcement was made on 24.07.2019 and Committee of Creditors was constituted on 22.08.2019 and thereafter meetings were held at periodic intervals.
 - c. That the time frame of 180 days elapsed on 06.01.2020. The Adjudicating Authority vide its order dated 06.01.2020 in IA No.30

of 2020 has approved the extension of CIRP period by 90 days till 05.04.2020.

- d. That on account of the Covid-19 pandemic, lock-down was imposed by the Central Government from 25.03.2020 and the lock-down has been extended up to 30.06.2020. By virtue of Gazette notification dated 20.04.2020, amending the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2020, the lock-down period stands excluded from the CIRP Period. Hence, as per the amended Regulations, the CIRP period came to an end on 12.07.2020.
- e. That only one Resolution Plan for the Corporate Debtor herein, was received from the Resolution Applicant i.e., Mr. Ratakonda Vivek Kumar, Chartered Accountant jointly with M/s. Srija Hotels & Properties Private Limited and M/s. Equivas Capital Private Limited ("**Resolution Applicant**").
- f. That Members of the Committee of Creditors in their 7th CoC meeting held on 06.03.2020 discussed the Resolution Plan along with deviations in the Request for Resolution Plan in detail and upon voting, approved the same by 84.65% of the total voting share in the CoC through e-voting.
- g. The voting pattern of the approval of the Resolution Plan is as follows:

Name of the Member	Share in Voting Rights (%age in COC)	Approval of Resolution Plan
Phoenix ARC Pvt Ltd	84.65	Approved
Corporation Bank	15.35	Rejected
TOTAL	100.00	

- h. Resolution Applicant (RA): Consortium led by Mr. Ratakonda Vivek Kumar is as under:

Name	Category	Contribution to consortium
Mr. R. Vivek Kumar	Lead Member	26%
Srija Hotels & Properties Pvt	Member	26%

Ltd		
Equivas Capital Pvt Ltd	Member	48%
Total		100%

i. Eligibility of consortium Resolution Applicants:

1. Resolution Applicant submitted Declaration under Section 5 (24), Section 25 (2) (h) and Section 29 (A) of the IB Code, 2016.
2. The eligibility criteria under Section 25 (2) (h) as declared in EOI is that the RA should have minimum Networth of ₹1.00 crore as on the date of EOI., which is complied with.
3. The Resolution Applicant deposited an amount of ₹20,00,000.00 (Rupees Twenty Lakhs only) as EMD at the time of submission of Resolution Plan, as stipulated in RFRP.
4. The Resolution Applicant has to submit a deposit for an amount of ₹20,00,000/- (Rupees Twenty Lakhs only) with Phoenix Trust FY 14-18 within 7 days from approval of Resolution Plan by CoC.

<u>Sl.No.</u>	<u>Profiles of the Consortium members</u>	
1	Mr. R. Vivek Kumar (Lead member): Networth-₹3.78 Crs	Mr. Vivek Kumar is a practicing Chartered Accountant, with an experience of nearly 3 decades. He has provided consultancy services in the areas of Corporate Finance & Accounting, M&A including funding services to domestic and international companies. He has vast experience in Corporate Finance, Investor relations and execution of financial planning.
2	Srija Hotels & Properties Pvt Ltd (member): Networth-₹0.14 crs (Directors: Mr. R. Vivek Kumar & Mrs. R. Jhansi Lakshmi)	Srija Hotels & Properties Pvt Ltd was incorporated in 2007 with the objective of business in completing buildings and construction under civil engineering. The company has not earned any revenue during 2018-19.
3	Equivas Capital Pvt Ltd (member): Net worth- ₹0.74	The company is incorporated in 2011. The objectives of the company

crs (-ve) (Directors: Mrs. Dronamraju Vindhya & Mr. DVSS Lakshmi Narayana)	include, providing consultancy services for investments, investment planning, tax planning, portfolio management and purchase/ acquire/ takeover as a going concern all such business as may be in conformity with the objects of the company. The company has employed the company Bodhtree for development of digital platform "EquiPPP" for providing assistance in implementation of CSR projects. The digital platform is reportedly developed and yet to be acquired by the company. There is no revenue earned by the company during 2018-19.
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j. **Payments to Stakeholders**

The following are the payments to all stakeholders, proposed in the Resolution Plan:

CIRP Cost	100%	Actual, duly approved by CoC outstanding as on CIRP commencement date
Claims of Employees	25%	
Secured Financial Creditor		
Phoenix ARC Limited	7%	₹1,50,28,462/-
Unsecured Financial Creditors		
Corporate Bank	0%	No Payment
Related Parties	0%	No Payment
Operational Creditor		
Operational Creditors	0%	No Payment
Government Dues	0%	No Payment
Other debts (less than ₹50,000/-)	100%	

Out of the total liabilities of ₹39,18,22,320/-, the payment proposed is ₹1,51,79,982/-

k. **Salient features of Resolution as per plan are as under:**

- i. That new business activity proposed are IT and ITes activities, since the present activity cannot be revived as it

requires lot of capital infusion and long gestation period, long drawn process of establishing dealer network etc. The new activity involves acquisition of digital platform namely “EquiPPP” from the consortium member Equivas Capital Pvt Ltd. The purchase of digital platform, and rights associated with the web site www.equipp.com, including intellectual property rights, copy rights etc. The digital platform is for assisting various stake holders in the implementation of CSR projects, which are developed by Equivas in collaboration with Bodhtree Consulting Ltd, CMMI level5, IT consulting and software service provider.

- ii. That the business model is considered by RA to have good potential for independent growth and capable of attracting separate set of investors, strategic partners, creditors and other stakeholders for ensuring progress of the company.
- iii. That cancellation of equity shareholding of promoters and reduction of shareholding of other shareholders by 95% (1:20) and fresh issue of shares to the Resolution Applicant towards the funds brought in for Resolution Plan and also acquisition of EquiPPP.com. Shares will be issued at the ratio of 1:20 to the public, and fresh shares will be issued to the Resolution Applicant. Any fraction of shares arising out of reduction shall be rounded off to 1 (one) share. The share price is retained at ₹1/- per share.

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity				
	a) Existing Promoters	3,42,81,707	0	35.67%	N.A
	b) Public	6,18,26,729	30,91,336	64.33%	3%
	Total Equity	9,61,08,436	30,91,336	100%	3%
2	Preference	Nil	Nil	Nil	Nil
	Total Equity	9,61,08,436	30,91,336	100%	3%

iv. Shareholding after CIRP is proposed as under.

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Existing share holders	9,61,08,436	30,91,336	100%	3%
2	Resolution Applicant	0	2,00,00,000	0%	19.40%
3	Shares allotted in lieu of acquisition of EquiPPP	0	8,00,00,000	0%	77.60%
	Total Equity	9,61,08,436	10,30,91,336	100%	100%

1. Implementation of Resolution Plan:

i. The Resolution Applicant shall complete the payment within 90 days from the date of approval of Resolution Plan by Adjudicating Authority.

ii. A committee consisting of the Resolution Professional, members of the COC and nominees of the Resolution Applicant shall constitute monitoring committee for managing the affairs of Corporate Debtor during the interim period and overseeing the implementation of terms of Resolution Plan.

m. Reiterating the above, counsel for the Applicant prayed to allow the instant Application as sought for.

3. Heard and perused the record.

4. Section 30(2) of the Code as amended w.e.f. 06.08.2019 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.
 - 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.
5. Section 30(4) of the Code as it stands at present after the amendment 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.”*
6. Section 30(6) of the Code enjoins the resolution professional to submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority. Section 31 of the Code deals with the approval of the resolution plan by the Adjudicating Authority, if it is satisfied that the resolution plan as approved by the committee of creditors under section 30(4) meets the requirements as referred to in section 30(2).

7. Thus, before approving the Resolution plan, it is the duty of the Adjudicating Authority that it should satisfy itself that the Resolution plan as approved by the COC meets the requirements as referred to in sub-section (2) of Section 30.
8. On perusal of the Resolution Plan, this Adjudicating Authority has observed that the Resolution plan placed for consideration provides for the following:
 - a) Payment of CIRP Cost as specified U/s 30(2)(a) of IBC, 2016.
 - b) Repayment of Debts of Operational Creditors as specified U/s 30(2)(b) of IBC, 2016.
 - c) Provides for management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of IBC, 2016.
 - d) The implementation and supervision of Resolution Plan shall be done by Insolvency Resolution Professional and by the COC as specified U/s 30(2)(d) of IBC, 2016.
 - e) 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 IBC, 2016.
 - f) The Resolution plan conforms to such other requirements specified by the Board.
9. In terms of Regulation 27 of CIRP Regulations, Liquidation value was ascertained through two registered valuers, and the Resolution Plan offers more than the average liquidation value.
10. The RP has complied with 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 CIRP regulations.
11. The identity of the Resolution Applicants have been duly verified by the RP and affidavit as per section 30(1) of the Code has been obtained from the Resolution Applicants stating that they are not ineligible U/s 29A of the IB Code, 2016.

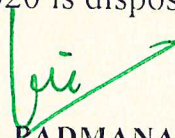
12. The Plan also provides for keeping the Company as a going concern and operate in its normal course of business upon implementation of Resolution Plan. There is no objection filed by any other person in this regard.
13. Copy of Form-H (Compliance Certificate) filed by the RP along with the Plan has been perused and considered. The RP inter-alia has certified as under:
 - i. *The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.*
 - ii. *The Resolution Applicant M/s. R Vivek Kumar has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.*
 - iii. *The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 84.65% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.*
 - iv. *The voting was held in the meeting of the 7th CoC on 06.03.2020 where all the members of the CoC were present and decided to put the resolution plan for e-voting.*
14. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and Regulations thereunder.
15. It is also evident that the Resolution Plan placed before this Adjudicating Authority, was approved by the Committee of Creditors in its 7th CoC meeting dated 06.03.2020 with 84.65% votes cast in favour of Approval of Resolution Plan.
16. In *K Sashidhar Vs. Indian Overseas Bank & Others*, decided on 05.02.2019 in Civil Appeal No.10673/2018 with CA Nos.10719/2018, 10971/ 2018 and SLP(C) No.29181/2018, the Hon'ble Supreme Court, noticing the provisions of section 30(4), 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 (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less.

17. In the said judgment, in para 35, the Hon'ble Supreme Court 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.
18. In view of the discussions in the foregoing paragraphs, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A. Hence, this Adjudicating Authority is satisfied that the Resolution Plan is in accordance with Law. Therefore, the 'Resolution Plan' annexed with Application bearing IA No. 539 of 2020 filed in CP(IB)No. 218/9/HDB/2019 is hereby approved, which forms part of this Order and which shall be binding on the corporate debtor and 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, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.
19. However, the Resolution Plan approved shall not construe any waiver to any statutory obligations/liabilities arising out of the approved Resolution Plan and same shall be dealt in accordance with the appropriate Authorities as per relevant Laws. This Adjudicating Authority is of the considered view that if any waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities. The same view has also been held by Hon'ble Principal Bench, NCLT in the

case of Parveen Bansal Vs. Amit Spinning Industries Ltd. in CA No.360 (PB) 2018 in CP No (IB) 131 (PB)/ 2017.

20. Accordingly, the MoA and AoA shall be amended and filed with the RoC for information and record as prescribed. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution Applicant shall pursuant to the Resolution Plan approved under Sub-Section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for in such law.
21. This Adjudicating Authority orders for the Constitution of Monitoring Committee consisting of Mr. R. Srinivas Rao, RP, members of CoC and a representative nominated by the Resolution Applicants to supervise the implementation of the Resolution Plan and further Resolution Professional is directed to file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.
22. This Adjudicating Authority hereby directs the RP to supervise the implementation of the Resolution plan and file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.
23. The order of moratorium passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this Order.
24. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.
25. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI along with Copy of this Order, so that the Board may record the same on its data-base.
26. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
27. Accordingly, IA No. 539 of 2020 is disposed of as allowed.


K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL