



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-VI

I.A. 1078/2022
IN
C.P. No. IB-806/PB/2019

(Under Section 30 (6) and 31 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))

RAVINDER AGGARWAL & ORS.

.... PETITIONER

VERSUS

M/S MSA DEVELOPERS PRIVATE LIMITED

..... RESPONDENT

AND

AND IN THE MATTER OF:

MR. RABINDRA KUMAR MINTRI
INTERIM RESOLUTION PROFESSIONAL OF
M/S. MSA DEVELOPERS PRIVATE LIMITED

.... APPLICANT

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

**SH. RAHUL BHATNAGAR, HON'BLE MEMBER
(TECHNICAL)**



PRESENT

For the IRP: Mr. Apoorv Agarwal, Ms. Riya Thomas Adv.
Mr. Rabindra Kumar Mintri (RP in person)

For the SRA: Mr. Karan Malhotra Adv.

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

ORDER DELIVERED ON: 13.10.2023

1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') by Mr. Rabindra Kumar Mintri Interim Resolution Professional (IRP) of M/s. MSA Developers Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by Mr. Deepak Aggarwal ('Successful Resolution Applicant') as approved by the Committee of Creditors ('CoC') in its 12th CoC Meeting held on 31.08.2021.
2. Briefly stated, the facts as averred by the applicant in the application are as follows:
 - a) That the Corporate Insolvency Resolution Process against the Corporate Debtor was initiated vide order dated



11.10.2019 and Mr. Rabindra Kumar Mintri was appointed as IRP in the matter.

- b) That the IRP invited claims from the stakeholders by publication of Form A on 17.10.2019 and prepared a list of Creditors after verification of claim received pursuant to the Public Announcement within 7 days from the last date of receipt of the claims and constituted Committee of Creditors.
- c) That in the 6th Meeting of CoC, the CoC resolved to publish Expression of Interest/ Form G to invite prospective resolution applicants for submission of Resolution Plan by 05.12.2020.
- d) That the IRP received 5 Expression of Interest (“EOI”) till the last date of submission.
- e) The COC in the 7th Meeting of CoC held on 23.12.2020 decided to extend the last date of submission of EOI. Accordingly fresh Form G was published on 18.01.2021 and last date for submission was 01.02.2021.
- f) That the IRP received 14 EOI (s) from PRA(s). Out of these 14, four (4) Resolution Plans were submitted and after scrutiny by the IRP two (2) legally compliant resolution plans were put to vote before the members of CoC in its 12th meeting held on 31.08.2021 in which plan submitted by Mr. Deepak Aggarwal was approved by the members of CoC with 80.12% through e-voting conducted from 3rd September, 2021 to 6th September, 2021. The details of the same is reproduced as under: -



Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
	Kindle Infraheights Pvt. Ltd.	14.25	Abstained from voting
	Ascent Buildtech Pvt. Ltd.	4.30	Abstained from voting
	Class of Creditors- Home Buyers/ real estate allottees	80.12	Voted for/in favor of

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g) That up to the date of filing of the present application, a total of 12 (Twelve) Meetings of Committee of Creditors have been conducted.

h) That as per Form H Compliance Certificate the average fair value of the Corporate Debtor is Rs. 43,81,63,405 and liquidation value of Corporate Debtor is Rs. 33,01,40,046/-

i) That the RA prayed for various Reliefs and Concession in the Resolution Plan.

j) That Successful Resolution Applicant has submitted performance bank guarantees of Rs. 2 Crores to COC/Resolution Professional.

3. That some key features as provided in the Resolution Plan are as follows:

i. The Successful Resolution Applicant namely, Mr. Deepak Aggarwal has more than 15 years of experience in the line of Construction. He is a Chartered Accountant by qualification and has been involved in Real Estate and Construction activities in different capacities. In the year



2006, the SRA was appointed as Vice President/ Chief Operating Officer in a leading infrastructure group having interests in Real Estate, Power & Construction Material, where the SRA handled entire operations of the Real Estate Division including land procurement, approvals, technical planning & execution, and marketing for the residential and commercial projects across India including multi-story residential, commercial, IT and townships, apart from other key activities. SRA is professionally qualified Chartered Accountant and has a vast experience in field of residential, commercial and industrial real estate. The SRA shall engage reputed contractors for the construction of the project. The Contractor engaged in the project will be having requisite experience in construction.

- ii. That the Resolution Applicant has proposed an amount of Rs. 102.92 Crore including the CIRP Cost. The amount provided for the stakeholders under the Resolution Plan is as under:-



Financial Creditors (unsecured)	Admitted Claims	Amount Provided under the Resolution Plan	Payment Period
Kindle Infraheights Pvt. Ltd.	9,80,53,274	19,61,065	2% of the claim works out to be Rs 27,35,630. The said amount shall be paid in three equal annual installments commencing from 12 months from the effective date.
Ascent Buildtech Private Limited	2,95,72,877	5,91,458	
L & T Housing Finance Limited	91,55,343	1,83,107	
Total	13,67,81,494	27,35,630	.

S.No	Particulars	% voting	Amount Provided under the Resolution Plan
i.	176 home buyers have filed their claims against 203 units whose claims have been admitted by the Resolution Professional and have voting right.	80.12 %	RA proposes to settle the dispute with the Home Buyers by handing over the possession of their respective flats within 40 months from the effective date. There is no change proposed in the BSP of the respective BBAs already executed.
ii.	Home buyers whose claims have not been admitted as per the latest information Memorandum shall not be accepted by the Resolution Application.	Nil (No Voting right given by RP)	
.	.	80.12 %	



Operational Creditor	Amount Admitted	% of payment proposed by RA	Amount provided to the amount admitted	Proposed Time Schedule
	(Amt. in Rs)		(Amt. in Rs)	
Operational Creditors (Other than Workmen and Employee and Statutory Dues)				
Operational Creditors (Workmen & Employee)				100% to be paid within X + 120 days from the effective date
No Claims filed as per IM	0.00	100%	0.00	
Operational Creditors (Others)				
Ascent Constructions Pvt. Ltd	1,48,71,638	1%	1,48,716	
Operational Creditors (Statutory Dues)				
Income Tax Department	45,52,43,913	0.01%	45,524	
Commercial Tax	3,21,04,208	0.01%	3,210	
Total	47,01,15,551		1,97,450	

iii. That subsequent to filing the present application for approval of Resolution Plan, the IRP received many belated claims from Financial Creditors in a class (Homebuyers). Some of these homebuyers filed IA(s) for admission of their claim and this Tribunal directed the IRP and SRA to consider the claims of these homebuyers. Accordingly, the Resolution Applicant submitted its addendum to the Resolution Plan which was placed before the CoC in its 13th CoC meeting on 26.05.2023 wherein it was affirmed by the SRA that the current addendum has no impact on the existing claim. Further the members of CoC approved the addendum to the Resolution Plan with 80.12% voting shares. The revised settlement proposed in the Resolution Plan is as under: -



Sr. No	Particulars	Claim Admitted	Resolution Amount Proposed (in Cr)
1.	Settlement of CIRP Cost	Actual	1.00
2.	Furnishing of Performance Bank Guarantee	-	2.00
3.	Settlement of Unsecured Financial Creditor	13.68	0.27
4.	Financial Creditors in a class	54.59	Offer of possession in Tower A, B and C
4.	Operational Creditor	1.49	0.01
6.	Statutory Dues	48.73	0.005
7.	Other Creditors	0.14	1% within 120 days from the effective date
8.	Funds Required to complete the construction of Tower A, B & C with common facilities of the Complex	-	85.00
9	Interest During Construction	-	10.59



10.	Contingency	-	4.00
	Total		102.92

Source of Funds		
1.	Fresh Equity infused/ Debt infused by RA	10.00 Cr.
2.	a. Loan from Banks or other financial institutions / Sale of balance inventory b. Interest during Construction funding	58.83 Cr. 10.59 Cr.
3.	a. Receivable from homebuyers b. Receivables from homebuyers (delayed claims) c. Related party of Ex-management (avoidance applications)	21.00 Cr. 2.00 Cr. 0.50 Cr.
Total		102.92



iv. That the final resolution plan submitted by Mr. Deepak Aggarwal meets the requirements of Section 30(2) of the Code as under: -

Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(2)(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;	Yes, Clause 5 of the Plan
30(2)(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	Yes Clause 7 & 8 of the Plan



	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	
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Yes Clause 11.4 & 11.5 of the Plan
30(2)(d)	the implementation and supervision of the resolution plan;	Yes Clause 11.8 of the Plan
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	Yes Clause 16 of the plan
30(2)(f)	conforms to such other requirements as may be specified by the Board.	Yes Clause 16 of the plan



- v. Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) 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.]	Yes Clause 12.2 of the plan
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]	Yes Clause 5, 6, 7 & 8 of the plan
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the	Yes Clause 12.9 of the plan



	failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]	
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	Yes Clause 11 of the plan
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	Yes Clause 11 of the plan
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	Yes Clause 11.5 of the plan
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:	No avoidance application is filed as of date of filing the present application
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	Yes Clause 2.5 of the plan



38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	Yes Clause 3.3 of the plan
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	Yes Clause 3.4 of the plan
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	Yes Clause 6.3.4.3 of the plan
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	Yes Clause 3.5 of the plan

4. With respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is not ineligible under the provisions of Section 29A of the Code, 2016.

5. Some allegations were raised by the PRA(s) which are as under: -



- a. That the SRA was convicted u/s 138 of Negotiable Instrument Act, 1881 for dishonoring of cheque hence he is barred to submit the Resolution Plan.
 - b. That the SRA is disqualified because he has placed forged document before the IRP.
 - c. The SRA is disqualified as per Section 164(2) of the Companies Act, 2013, based on the list published by the RoC that includes the names of directors who are disqualified
6. This Tribunal directed the IRP and the SRA to file additional affidavits clarifying the points as mentioned above. The clarifications provided are as below: -
- (a) With respect to the first allegation, the SRA has submitted an affidavit stating that he is not ineligible under the provisions of Section 29A of the Insolvency and Bankruptcy Code, 2016. The IRP submitted that conviction of SRA executed in terms of the judgment dated 04.09.2015 passed by the Hon'ble Metropolitan Magistrate, Delhi was not during the period of the Corporate Insolvency Resolution Process (CIRP). That the period of incarceration/conviction of the SRA was from 15.12.2015 till 03.12.2016. The Conviction under section 138 of NI Act, 1881 does not bar the SRA to submit a Resolution Plan. It is further stated that a cheque dishonour case would not amount to disqualification on grounds of moral turpitude as



per various judgements passed by the Hon'ble Supreme Court and High Courts, hence the said conviction would not be disqualification under Section 29-A of the Insolvency and Bankruptcy Code, 2016. Further, as per Section 29A (d) of the IBC, 2016, only a person who has been convicted for an offense punishable with imprisonment of 2 years or more under any act specified in the Twelfth Schedule is ineligible to submit a resolution plan. Section 29A is reproduced below:"

29A. Persons not eligible to be resolution applicant. –

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(d) has been convicted for any offence punishable with imprisonment – (i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment: Provided further that this clause shall not apply in relation to a connected person referred to in clause(iii) of Explanation I;

- (b) With respect to the second allegation, the SRA submitted a Comfort Letter from Axis Bank in which there was an in-principal approval of Rs. 10



Cr. in favour of SRA. However, the Bank denied its issuance. The SRA has filed an affidavit dated 12.12.2022 wherein the SRA has submitted that he has received the copy of the Comfort Letter from one of the officials of the Axis Bank over WhatsApp. Therefore, the Deponent believed that the letter to be genuine as it was coming from an official source and thus there was no reason for the SRA to doubt the authenticity of the letter because it was received from one of the officials of the bank (Mr. Ajay Bansal, Manager) and thus it was forwarded along with the draft Resolution Plan without making it as attachment or referring to it in the Resolution Plan. That the SRA has not relied on the contents of the said document in the Resolution Plan and the Resolution Plan is not based on the Comfort Letter nor it is dependent in any manner on the Comfort Letter. The SRA further submitted that he has received in principal approval from SWAMIH INVESTMENT FUND I (sponsored by Government of India with SBI CAP Ventures Ltd. as Investment Manager) Fund for sum of Rs. 141.20Cr for the Resolution Plan after pursuing the credentials of the SRA. The CoC approved the Resolution Plan with an overwhelming majority of 80.12% during the 13th CoC meeting, along with an addendum to the Resolution Plan.

- (c) With respect to the third allegation, it was observed that, as per the order of disqualification of



Directors passed by RoC and published on 15.09.2017, the name of SRA has appeared, disqualifying him from being a director from 01.11.2016 to 31.10.2021. The SRA submitted that the Registrar of Companies, Delhi & Haryana published two lists of disqualified directors under Sec. 164(2), namely, (i) on 03-10-2017 relating to the period commencing from the year 2014 and ending in 2019; and (ii) on 15-09-2017 relating to the period commencing from the year 2016 and ending in 2021. The name of SRA appeared in both the lists as disqualified director. Insofar as the list published on 03-10-2017 is concerned, it expired on 31-10-2019; and w.r.t list published on 15.09.2017, the SRA challenged the same before the Hon'ble Delhi High Court in Writ Jurisdiction by filing the Writ Petition(C) 8196 of 2021 and Hon'ble High Court quashed the list published on 15-09-2017 relating to the disqualification for the years 2016 to 2021. Therefore, the list published on 15-09-2017 [Second List] as per law is illegal from the beginning and inception. It is submitted that where a High Court quashes a notification it is considered to be still born in law and treated as invalid from the beginning. It is a settled principle of law that though the quashing may have been done on a later date but quashing will relate to the date of notification and the impugned notification shall be deemed to be non-est in the eyes of law



from the inception. The IRP submitted that as per Section 164 of the Companies Act, 2013, directors are to be disqualified for certain non-compliances, the list pertaining to the disqualified director was reviewed and it was found that Mr. Deepak Aggarwal (SRA) was disqualified in the year 2014, and hence the period of disqualification ended in 2019. Any subsequent list that included his name could not have made the SRA disqualified on account of recurrence or continuance of default.

7. We have gone through the allegations as well as the response given by SRA and IRP. With respect to the objections raised, it is observed as below: -

(a) The SRA was convicted under section 138 of Negotiation Instruments Act, 1881 by the Metropolitan Magistrate of Delhi vide orders dated 04.09.2015 which was upheld by the Hon'ble Delhi High Court. The SRA underwent imprisonment from 15.12.2015 till 03.12.2016. In the clarification provided by SRA it is submitted that a cheque dishonour case would not amount to disqualification on the grounds of moral turpitude. Further, as per section 29(A)(d) of the IBC 2016 only a person who has been convicted for an offence punishable with imprisonment of 2 years or more or under any Act specified in 12th Schedule is ineligible to submit a resolution plan. The SRA has neither been convicted



for a period of 2 years, nor is the Negotiable Instrument Act, 1881 mentioned under the 12th Schedule. Hence, the said conviction could not be a disqualification under section 29A of IBC 2016.

(b) The SRA has submitted a comfort letter purportedly issued by Axis Bank in which Axis Bank has agreed to provide credit facility of Rs. 10 crores to SRA. This letter is on record. Axis Bank has categorically denied issuing any such letter. In his clarification, SRA has stated he has received the copy of the Comfort Letter from one of the officials of the Axis Bank over WhatsApp. Therefore, the Deponent believed that the letter to be genuine as it was coming from an official source and thus there was no reason for the SRA to doubt the authenticity of the letter because it was received from one of the officials of the bank and thus it was forwarded along with the draft Resolution Plan without making it as attachment or referring to it in the Resolution Plan. Even though the SRA has not relied on this letter in the Resolution Plan and has not made it a part of the Resolution Plan, the authenticity of the comfort letter being denied by Axis Bank creates doubts about the bonafide of the SRA since he was to be the beneficiary of the said letter.

(c) The second list of disqualified Directors was published on 15.09.2017 by RoC by which the listed



persons were disqualified from being Directors from 01.11.2016 to 31.10.2021. The SRA submitted the Resolution Plan on 20.03.2021. The list published on 15.09.2017 was quashed by Hon'ble Delhi High Court by order dated 29.09.2021. Therefore, it is clear that the list was quashed by the Hon'ble Delhi High Court only after the SRA had submitted the Resolution Plan. Therefore, the SRA could not have known the outcome of the judgment of the Hon'ble Delhi High Court on the date he submitted the Resolution Plan. Hence, it is clear that on the date of the submission of the Resolution Plan, the SRA was disqualified to act as Director in terms of the disqualification list of RoC dated 15.09.2017 and hence not eligible to submit a Resolution Plan under section 29A of the IBC 2016. The duty of the IRP is not limited to obtaining an undertaking that SRA is eligible to submit a Resolution Plan under section 29A of the Code, however a basic verification was in order. The SRA would have been well aware of the fact that he was ineligible to submit a Resolution Plan, as indicated by the list published by ROC on 15.09.2017. Nevertheless, the SRA chose not to disclose this information in the Section 29A affidavit and submitted an affidavit to the CoC in which he has stated that he is eligible to submit a Resolution Plan when, in fact, he was not eligible. The SRA has given the clarification that since the Hon'ble Delhi High Court quashed the disqualification list dated



15.09.2017 by its order dated 29.09.2021, the notification of the list is to be considered still born in law and treated as invalid from the beginning. The order of the Hon'ble High Court of Delhi does not anywhere state that the list has been quashed retrospectively. However, we find no reason to go into the question of judicial precedence in this respect, since the law (IBC) unequivocally mandates under section 29A(e) as under: -

29A. Persons not eligible to be resolution applicant. -

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

...

e) is disqualified to act as a director under the Companies Act, 2013;

On the date of submission of the resolution plan by the SRA, the disqualification list of ROC of 15.09.2017 had not been rescinded and therefore was effective. The Resolution Plan and the SRA cannot be treated as distinct from each other and must be dealt with in conjunction. We are, therefore, of the view that this Resolution Plan failed this basic test as its resolution applicant could not have submitted a resolution plan on that date.



4. In view of the above, and in the interest of the stakeholders, this Tribunal dismisses the present application and rejects the Resolution Plan. The IRP may conduct meeting of the CoC and can decide the further course of action in the CIRP of the Corporate Debtor

SD/-

SD/-

(RAHUL BHATNAGAR) (BACHU VENKAT BALARAM DAS)
MEMBER TECHNICAL MEMBER JUDICIAL