

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH (COURT – II)**

**IA No. 112/AHM/NCLT/2022
In
CP (IB) No./116/AHM/NCLT/2021**

(Application under Section 54K(15) IBC, 2016)

IN THE MATTER OF:

Parag Sheth RP of

M/s. GCCL Infrastructure and Projects Limited

.....Corporate Debtor

Order pronounced on: 05/09/2023

Coram:

Shammi Khan, Hon'ble Member (J)

Dr. Velamur G. Venkata Chalapathy, Hon'ble Member (T)

PRESENT:

For the Resolution Professional: Mr. Pavan S. Godiawala,
Advocate

For the Resolution Applicant: Mr. Ishan P. Shah, Advocate

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate order sheet.

-Sd-

**DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

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AHMEDABAD BENCH (COURT – II)**

**IA No. 112/AHM/NCLT/2022
In
CP (IB) No./116/AHM/NCLT/2021**

[An application under section 54K(15) of the Insolvency and Bankruptcy Code, 2016]

Parag Sheth

Resolution Professional of
GCCL Infrastructure and Projects
Limited

Having its address at:
A/115, Siddhivinayak Towers,
B/h DCP office, off S.G. Highway,
Makarba, Ahmedabad- 380051

..... Resolution Professional

Order pronounced on: 05/09/2023

Coram:

**SHAMMI KHAN,
HON'BLE MEMBER (JUDICIAL)**

**DR. VELAMUR G. VENKATACHALAPATHY,
HON'BLE MEMBER (TECHNICAL)**

Appearance:

For the Applicant/RP : Mr. Pavan S. Godiawala, Adv.
For the SRA: Mr. Ishan Shah, Adv.

ORDER

1. Preliminary

1.1 The present interlocutory application bearing **IA No. 112 of 2022** was filed on behalf of Resolution professional (RP) of GCCL Infrastructure and Projects Limited, under the Section 54K of the Insolvency & Bankruptcy Code, 2016 [IBC] read with Regulation 44 and 45 of the IBBI (Pre-Package Insolvency Resolution Process) Regulations, 2021 (PIIRP Regulations) for

the approval of the Resolution plan submitted by the GCCL Infrastructure and Projects Limited being successful resolution applicant [SRA] as approved by the Committee of Creditors (**COC**) under sub-section 12(4) under Section 54(L) of the IBC..

1.2 The CD was admitted in Pre-Package Insolvency Resolution Process (**PPIRP**) on 14.09.2021 and Mr. Parag Sheth was appointed as RP. On 21.09.2021, the RP of the Corporate Debtor constituted the CoC with the following financial creditor based on the list of claims confirmed under section 54F(2)(a):

Sr. No.	Financial Creditor	Voting percentage
1	Guardian Finance Private Limited	100%

2. Collation of Claims by RP

2.1 On 15.09.2021 the RP made a public announcement of PPIRP of the CD by publishing it on the website of IBBI thereby calling upon its creditors to submit their claim with requisite proof.

3. Evaluation and Voting

3.1 At the 1st meeting of the CoC held on 28.09.2021, the RP presented the Base Resolution Plan as submitted by the CD which confirmed to requirements referred to in section 54K and that the CD was provided an opportunity to revise the Base Resolution Plan.

3.2 The 1st COC meeting also took note of the certificate from RP that the Base Resolution Plan confirms the

requirements of section 30(1) & (2).

3.3 The RP appointed valuers for the valuation of assets of the Corporate Debtor.

3.4 In the 3rd CoC meeting held on 02.12.2021, the Base Resolution Plan for submission to the Adjudicating Authority was submitted by the Corporate Debtor as approved by 100% votes as it did not impair any claim received from the operational creditors. It was also noted that the Base Resolution Plan includes the amalgamation of the TV undertaking of Shreyarth Aaspas Limited with it and the proposed scheme of amalgamation includes the dilution of shareholding of the existing promoter shareholders in the CD.

3.5 The CoC has approved the Resolution Plan by a vote of 100% after considering its feasibility and viability, it is not necessary for us to go into details of the commercial aspect of the plan. We proceed to examine the plan in accordance with sections 30(1) and (2) r. w. Regulation 45 of the IBBI (PPIRP) Regulations, 2021. The RP has produced on record the compliance certificate in Form P12.

4. Cause of default

4.1 It is stated that the major cause of default was due to the PANDEMIC, where the company was not in a position to recover the money from sundry debtors and it was likely that there would be a delay in recovery which resulted in a delay in making timely payment to the financial creditor.

5. Details of Resolution Plan/ Payment Schedule

5.1 The Resolution Applicant M/s. GCCL Infrastructure & Projects Limited has proposed to pay a sum of **Rs.1,14,74,000/-** (Rupees One crore fourteen lakh seventy-four thousand only) against the total admitted claim i.e. 100%. The details are as follows:-

Sr. No.	Category	Amount Claimed	Amount admitted
1	PPIRP cost	Rs. 3,50,000/- (Rupees three lakh fifty thousand only) or actual at the time of approval of Resolution Plan by the Hon'ble NCLT	100%
2	Financial Creditor	Rs. 56,19,000/- (Rupees Fifty-six lakh nineteen thousand only) plus interest @ 9% p.a. or actual at the time of approval of Resolution Plan by the Hon'ble NCLT	100%
3	Operational Creditors	Rs. 55,05,000/- (Rupees Fifty-five lakh five thousand only) or actual at the time of approval of Resolution Plan by the Hon'ble NCLT	100%
	Total Up Front Payment	Rs.1,14,74,000/- (Rupees One crore fourteen lakh seventy-four thousand only)	

6. Compliance of Successful Resolution Plan with the provision:

A. The Resolution Plan should adhere to the following

requirements as per Section 30(2) of the IBC:

- 6.1 It should provide for the payment of insolvency resolution process costs in priority to the repayment of other debts of the Corporate Debtor. [Section 30(2)(a)]
- 6.2 The repayment of the debts of Operational Creditors and dissenting Financial Creditors is to be made in priority over the financial creditors. [Section 30(2)(b) read with PPIRP Regulations 45(5)(a) & 45(5)(b)];
- 6.3 Provides for the management of the affairs of the Corporate Debtor during the term of the Resolution Plan.
- 6.4 The implementation and supervision of the Resolution Plan. [Section 30(2)(d) read with PPIRP Regulation 45(2)(c)];
- 6.5 It does not contravene any of the provisions of the law for the time being in force. [Section 30(2)(e)];
- 6.6 It conforms to such other requirements as may be specified by the Board. [Section 30(2)(f)] Such other requirements of the Resolution Plan as detailed in IBBI (PPIRP) Regulations, 2021 which are not covered above, are as under:-
 - (a) The Resolution Plan should 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. [PPIRP Regulation 45(4)].
 - (b) The Resolution Plan should include a statement giving details as to whether the Resolution Applicant or any of its related parties has at any time failed to implement or caused the failure of

implementation of any other Resolution Plan which was approved by the Adjudicating Authority. [PPIRP Regulation 45 (1)(b)]

- (c) The Resolution Plan should contain the term of the plan and its implementation schedule. [PPIRP Regulation 45 (2)(a)]
- (d) The Resolution Plan should also demonstrate that it addresses the cause of default; is feasible and viable; has provisions for its effective implementation; has provisions for approvals required and a timeline for the same. Further that the Resolution Applicant has the capability to implement the Resolution Plan. [PPIRP Regulation 45 (3)]

B. The Resolution applicant submitted the details of compliance with the Code and the PPIRP regulations which a Plan is required to adhere to, as follows:

- (a) In the Plan, the provision towards the PPIRP costs is made for Rs. 3,50,000/- (Rupees three lakh fifty thousand only) or actual as may be conveyed at the time of approval of the Resolution plan by the Hon'ble NCLT which shall be paid in priority to the repayment of other debts of the Corporate Debtor. Thereby, section 30(2)(a) has been complied with.
- (b) The Operational Creditor will be paid an amount of Rs. 55,05,000/- (Rupees Fifty-five lakh five thousand only) in priority over the Financial Creditor. We hold that provisions of section 30(2)(b) read with PPIRP Regulations 45(5)(a) & 45(5)(b) have

been complied with.

- (c) The management and control of the affairs of the Corporate Debtor after approval of the Resolution Plan shall vest with the SRA/ Corporate Debtor itself whereby Mr. Amam S. Shah, Director of GCCL Infrastructure and Projects Limited will act as CEO for the control and management of the Corporate Debtor. We hold that the provisions of Section 30(2)(c) read with PPIRP Regulations 45(2)(b) have been complied with.
- (d) The Resolution Plan contains a provision wherein for the supervision of its implementation, a Monitoring Committee shall be constituted consisting of the Chairman, 1 (one) nominee of the Transferee Company and 1 (One) nominee of the Transferor Company. The term of the Monitoring Committee will end on full payment as mentioned in the Resolution Plan or 9 (nine) months from the Hon'ble NCLT Approval Date, whichever is earlier. Thereby, Section 30(2)(d) read with PPIRP Regulations 45(2)(a) has been complied with.
- (e) The SRA has submitted that the Plan does not contravene any provisions of law. We also noted that the plan does not contravene any provisions of the law for the time being in force. Thereby, Section 30(2)(e) has been complied with.
- (f) The Resolution Plan adequately deals with the interests of all stakeholders, including Financial

Creditors and Operational Creditors of the Corporate Debtor. Thereby, the Plan is in compliance with PPIRP Regulation 45(4).

- (g) It is submitted that neither the Resolution Applicant nor any of its related parties have at any time failed to implement or contributed to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority. Thereby, the Plan is in compliance with PPIRP Regulation 45(1)(b).
- (h) The Resolution Plan addresses the cause of default; is feasible and viable; has provisions for its effective implementation and contains provisions for the required approvals. Further that the Resolution Applicant has the capability to implement the resolution plan. Thus, PPIRP Regulation 45(3) has been complied with.
- (i) The term of the Plan is 9 (nine) months from the approval of the Resolution Plan. It provides for the implementation schedule as under:

Sr. No.	Category	Amount admitted under the Plan	Time o
1	PPIRP Cost	Rs.3,50,000/- (Rupees three lakh fifty thousand only) or actual at the time of approval of Resolution Plan by the Hon'ble NCLT	Payment will be made within 15 days of approval of the Resolution Plan by the Hon'ble NCLT.

2	Financial Creditor	Rs.56,19,000/- (Rupees Fifty-six lakh nineteen thousand only) plus interest @ 9% p.a.	100% Payment within 4 months from the date of approval of the Hon'ble NCLT
3	Employee/workmen	N.A.	All the existing employees and workmen will be considered for employment
4	Provident Fund	N.A.	The Resolution Plan provides for the continuation of employment
5	Operational Creditors	Rs.55,05,000/- (Rupees Fifty-five lakh five thousand only)	100% Payment within 4 months from the date of approval of the Hon'ble NCLT. The payment to the Operational Creditors shall be made in priority to the financial creditors.
6	Statutory Dues	Nil	NA
	Total Up-Front Payment	Rs.1,14,74,000/- (Rupees One crore fourteen lakh seventy-four thousand only)	

Thereby PPIRP Regulation 45(2)(a) has been complied with.

6.7 The Ld. Counsel for the Resolution Applicant submits that they have submitted an affidavit in regard to the eligibility under section 29A of the Code, as required under the Code.

6.8 The Applicant has filed a Compliance Certificate in Form 'P12' in compliance with Regulation 49(1) of the PPIRP Regulations.

C. The Resolution Applicant submitted that Resolution Plan incorporates the below-mentioned reliefs and concessions as allowable under PPIRP Regulation 44 :-

(a) Reduction of Capital

(i) Physical Capital

Out of the total 60,05,500 equity shares, 21,81,700 equity shares are proposed to be cancelled and thereby approval of Reduction of Capital pursuant to Section 66 of the Companies Act, 2013 to the extent of 21,81,700 equity shares of Rs. 10/- each having a value of Rs. 2,18,17,000/-

(ii) Demat Capital

Out of the total equity shares, 38,23,800 equity shares of Rs.10/- each are in demat form and out of it 34,41,420 equity shares are to be cancelled and thereby the reduction of capital of 34,41,420 equity shares of Rs. 10/- each amounting to Rs. 3,44,14,200/- to be reduced and after reduction the paid-up equity share capital shall be 3,82,380 equity shares of Rs. 10/- each amounting to Rs. 38,23,800/- . Hence, the total equity share capital to be reduced by way of reduction of capital under Section 66 of the Companies Act, 2013 shall be Rs. 5,62,31,200/-.

(b) Amalgamation

The amalgamation of the TV undertaking of Shreyarth Aaspas Limited (Demerged Company) with the Corporate Debtor (Transferee Company) is proposed by way of a Composite scheme of Demerger and Amalgamation and such amalgamation process is a part of the Resolution Plan.

(c) Under the SEBI (LODR) Regulation, 2015

A waiver under Regulation 37 of SEBI (LODR) for approval of a draft scheme of amalgamation.

(d) Under the Companies Act, 2013

(i) Waiver of the convening of a meeting of shareholders and creditors of the CD as per the provisions of Section 230(3) of the Companies Act, 2013 and rule 6 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 for approval of the composite scheme of amalgamation.

(ii) Waiver of valuation of equity shares under Section 230(2)(c) of the Companies Act, 2013 of the corporate debtor for the purpose of determination of exchange ratio.

7. Performance Guarantee

Within 30 business days of the date of approval of the Resolution Plan by the Adjudicating Authority, the Successful Resolution Applicant(s) shall provide a Performance Guarantee of INR equivalent to 15% of the Resolution Plan amount, by way of Fixed Deposit/ Bank Guarantee in favour of nationalized bank, ("Performance Guarantee"). Such Performance Guarantee shall be provided in Section 54K (13) of the Code read with Regulation 43(5) of the Regulations. The Performance Guarantee should be payable at Ahmedabad, Gujarat and should be executed from Scheduled

Bank located in India. The Performance Guarantee shall be valid for an initial period of [period of implementation of Resolution plan + 6 months] from the date of approval by the Adjudicating Authority and shall be extended/renewed by the Successful Resolution Applicant(s) for such period until 100% of the Successful Resolution Applicant(s) Contribution is made by the Successful Resolution Applicant(s) in accordance with the Resolution Plan ("Performance Guarantee Validity Period"). The Performance Guarantee shall have a claim period of [3 months] days after the Performance Guarantee Validity Period. The CoC shall have the right to invoke the Performance Guarantee by issuance of a written demand in the prescribed format to invoke the Performance Guarantee. The Performance Guarantee can be invoked at any time, if (a) any of the conditions under the Resolution Plan are breached; or (b) non-receipt of required approvals within the timelines specified in the Resolution Plan or if the Resolution Plan is not effective due to any approval required by the Resolution Applicant(s) to give effect to the Resolution Plan; or (c) Successful Resolution Applicant(s) fails to make payment. The Performance Guarantee shall be returned in a period of [15] working days upon infusion of Successful Resolution Application Contribution by the Successful Resolution Applicant.

8. Monitoring Committee

The resolution applicant shall appoint Mr. Parag Sheth, RP as a chairman of the monitoring committee, one nominee from the transferee and one nominee transferor company.

9. Details on fraudulent and avoidance transaction

It is stated by the RP and SRA that there is no avoidance transaction pointed out by the Resolution Professional and no

proceedings related to avoidance transactions are pending before this Adjudicating Authority.

10. Waivers, Reliefs and Exemptions

No further waivers, reliefs and exemptions are granted as prayed in the petition, however, from the date of approval of the 'Resolution Plan', the Resolution Applicant shall be legally authorised to seek appropriate orders from respective authorities/courts/tribunals for renewal of licenses/withdrawal/dismissal or abetment of the proceedings as the case may be, as per law.

11. During the proceedings before the Tribunal, the Learned Counsel for the applicant submitted a detailed note on the query raised by the bench on 18 Jan 2023 as to how the shareholders in different category, being shareholders having demated shares and shareholders having physical shares and how part of the shares are proposed to be extinguished completely and some part of the share capital proposed for reduction along with issuance of new shares to the new shareholders. The same was taken as clarification and recorded.

12. Further the salient features of the resolution plan proposed was explained to the bench on 22 June 2023. The bench again on 28 August 2023 sought clarification on the updated status of the financial position of the applicant and whether the debt due to the financial and other creditors still continues and would be repaid in full as per plan and whether the MSME status would continue after the approval of the resolution plan. It was submitted that the resolution plan proposed through demerger (spin off) of the subsidiary entity Shreyarth Aaspas Limited with

the transferee company M/s GCCL Infrastructure and Projects Limited (applicant) will bring in synergy and there are no regulatory or other non-compliances as on date.

- 13.** The Ld. counsel also assured that the COC still comprises of sole Financial Creditor (who is not a related party) still confirms to abide by the resolution plan submitted and there are no objections or Interim Applications against the Resolution Plan received till date. It was also submitted that the company is being run as a going concern. In this regard an affidavit dated 31.08.2023 clarifying that the corporate debtor will remain as MSME after approval of resolution plan and that the financial creditor, sole member of CoC as on 31.08.2023 for the ongoing process of resolution plan filed before this Adjudicating Authority along with certificate of the chartered accountant confirming the outstanding of financial and operational creditors amounting to Rs. 1,67,70,311/- and that of the operational creditors is Rs. 20,70,041,.94/- as on 31.03.2023 thereby, updating their eligibility under Section 54A of the IBC, 2016 filed before this Adjudicating Authority.

14. Findings

In view of the submissions and clarifications obtained, taking the documents on record, the application filed under Section 54K has been considered, we are satisfied that the resolution plan has provisions for its effective implementation. We approve the Resolution Plan submitted by the Corporate Debtor and in addition to the above directions, proceed to pass the following order: -

14.1 Subject to the observations made in this Order, the

Resolution Plan of **M/s GCCL Infrastructure and Projects Limited** is hereby approved as per section 54L(1) of the IBC. The Resolution Plan shall form part of this Order.

14.2 The approved 'Resolution Plan' shall become effective from the date of receipt of a certified copy of the Order of Adjudicating Authority approving the Resolution Plan.

14.3 The order of approval under Section 54L(1) shall have such effect as provided under Sub-section 1,3 & 4 of Section 31 which shall mutatis mutandis apply to the proceedings under this chapter. The order of moratorium dated 14.09.2021 passed by this Adjudicating Authority under section 14 of IBC shall cease to have effect from the date of passing of this order.

14.3.1 The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).

14.3.2 The Resolution Applicant shall, pursuant to the resolution plan approved under section 54L(1) of the IBC, shall proceed to apply with immediate effect and obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority within such period as provided for in such law, whichever is later, as the case may be;

14.4 Liberty is hereby granted for moving appropriate applications if required in connection with the implementation of this Resolution Plan.

14.5 A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, Gujarat.

14.6 The Resolution Professional shall forward all records relating to the conduct of the PPIRP and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

14.7 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.

14.8 The Resolution Professional is further directed to hand over all records, premises/factories/documents available with it to the Resolution Applicant to finalize the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalize the further course of action required for starting operations of the Corporate Debtor.

14.9 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.

14.10 Accordingly, IA No.112 of 2022 in CP (IB) No. 116 of 2021 is allowed and stands disposed of in terms of the above directions.

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

-Sd-

**DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN
MEMBER (JUDICIAL)**