

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**M.A. No. 2882 of 2019**

**In**

**CP No. 3063/I&BP/2018**

Under Section 31 of the Insolvency and Bankruptcy Code, 2016

In the matter of

**Ms. Jovita Reema Mathias**

... Applicant

IN

**Religare Finvest Limited**

...Petitioners

Vs

**Nippon Investment and Finance Co. Pvt. Ltd.**

...Corporate Debtor

**Order Delivered on 05.12.2019**

**Coram:** Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble Shyam Babu Gautam, Member (Technical)

For Resolution Professional: Adv. Mr. Amir Arsiwala a/w Jovita Reema Mathias

**Per: Shyam Babu Gautam**

**Per: Bhaskara Pantula Mohan**

**ORDER**

1. This Application is filed under section 30(6) and 31 of Insolvency and Bankruptcy Code, 2016 in the C.P. No. 3063 of 2018 which was admitted vide order of this Tribunal dated 18.02.2018 initiating Corporate Insolvency Resolution Process against Surya Treasure Island Private Limited (hereinafter the 'Corporate Debtor').
2. Based on the abovementioned order Ms. Jovita Reema Mathias was appointed as Interim Resolution Professional (IRP). The Committee of Creditors (CoC) later resolved to appoint Ms. Jovita Reema Mathias as

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the Resolution Professional as on 20.03.2019. The applicant submits that the CIRP was conducted in compliance to the terms of the Code and the relevant Rules and Regulations. The Resolution Professional submits that advertisements inviting claims from the creditors were issued, valuers were appointed, advertisement inviting Expression of Interest (EOI) was published in two newspapers, Information Memorandum was prepared, three Expression of Interests (EOI) were received from three prospective Resolution Applicants, however, none had complied with the criteria as set out by the Members of the CoC U/s 25 (2) (h) of IBC. Further it was brought to the notice of the CoC that the Applicant received an email from a Prospective Resolution Applicant, however, the said EOI was received after the last date and therefore the same was put up before CoC for consideration. The CoC concluded that the said EOI may be entertained.

3. It is submitted by the RP that he received resolution plan from the Resolution Applicant. It is stated that, the resolution plan confirmed to the condition's U/s 30 (2) of the I&B Code and the RP submitted a note, certifying the same, to the CoC. The RP has confirmed that the resolution applicant aims and believes that there is a potential to revive the Corporate Debtor and that he is going to put its assets to better use and tun the mall in order to provide stability to existing employment of the mall and to have income from renting business.
4. The Resolution Professional has filed this application under Section 30(6) and 31 of the Code, seeking orders for approval of the resolution plan for the Corporate Debtor submitted by the erstwhile director of the Corporate Debtor on behalf of the Corporate Debtor as approved by the members of Committee of Creditors.
5. The resolution plan was discussed and voted upon in the CoC meeting dated 12.08.2018. In the said meeting the resolution plan was approved by the CoC by 87.62% in favor and 6.84% dissenting the Resolution Plan. The remaining 5.54% of the CoC abstained from voting

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6. The RP has certified that the said resolution plan, as approved by CoC, is in compliance of the provisions of the I&B Code. The liquidation value of the corporate debtor as arrived at by the registered valuers appointed by RP and adopted in the information memorandum is Rs. 71,52,272.50 Lakhs.
7. Followings table sets out the provisions made for repayment of dues in the Resolution Plan in comparison to the Liquidation Value and dues:

<b>S.No</b>	<b>Category</b>	<b>Treatment</b>
1.	CIRP Costs	As per actuals.
2.	Secured Financial Creditors	NIL (no claims filed or admitted)
3.	Unsecured Financial Creditors	The amount remaining from the total cash infusion of Rs. 10 Crores after deduction of CIRP Costs, payments to Operational Creditors and Government Dues, shall be distributed amongst the unsecured financial creditors on pro-rate basis.
4.	Operational Creditors (other than Employees, Workmen, and Government Dues)	100% of admitted claims
5.	Other Creditors	NIL (no claims filed or admitted)
6.	Employees and Workmen Dues	NIL (no claims filed or admitted)
7.	Government Authority Dues	Rs. 5,00,000/- to be paid against liabilities of Rs. 5,51,38,835/-.  No claims were filed, the amount of liability determined by Applicant on the basis of records of the Corporate Debtor.

8. The Resolution Applicant comprises of a consortium of three entities, namely 1) Vyom Tele Infrastructure Private Ltd 2) Nucleus Energy Pvt. Ltd & 3) Saffron Broadcast & Media Ltd. Vyom Tele Infrastructure Private Ltd, Nucleus Energy Pvt. Ltd and Saffron Broadcast & Media Ltd have formed a consortium in order to jointly enter a resolution plan in the CIRP of the Corporate Debtor. This consortium is led by Vyom Tele Infrastructure Private Ltd.

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9. The Resolution Applicant vide his Resolution Plan submits that they intend to continue the business of the Corporate Debtor as a going concern. It is submitted by the Resolution Applicant that the Corporate Debtor has a healthy portfolio of listed and unlisted stocks/shares which can yield healthy returns for Corporate Debtor in the long run. The Corporate Debtor has trade receivables which are due to be paid to the Corporate Debtor, the Resolution Applicant will make efforts to recover the said trade receivables. The Resolution Applicant is desirous of entering the business of financing and advancing short term & long-term loans and credit to individuals, companies or associations of individuals. The Corporate Debtor has been a part of the financing business for over four decades and has a good foothold in the business of financing and advancing short term & long-term loans.
10. As per the Resolution Plan, from the NCLT Approval Date, and till the occurrence of the Effective Date, the Corporate Debtor shall be managed by the Implementation and Monitoring Committee. The said committee will comprise of 3 people of which 1 will be Ms. Jovita Reema Mathias, 1 will be nominated by the CoC and one will be nominated by the Resolution Applicant. However, after the approval of Resolution Plan, till the Effective Date, the Implementation and Monitoring Committee shall oversee the management of the affairs of the Corporate Debtor (along with the Reconstituted Board).
11. The Resolution Plan proposes to write down the existing equity shares from INR 10 each to a face value of INR 1 each. Thereby reducing the share capital to about INR 10,00,000. After this equity structure of the Corporate Debtor would be as follows:

<b>Particulars</b>	<b>No. of Shares</b>	<b>Face value</b>	<b>Total Share Capital</b>	<b>Percentage</b>
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Erstwhile Promoters	10,000	100	10,00,000	100 %
Others	0	100	0	0 %
<b>Total</b>				<b>100%</b>

12. Any relief sought for in the Resolution Plan, where the contract/agreement/understanding/proceedings/actions/notice etc. is not specifically identified or is for future and contingent liability, is at this moment rejected.
13. The Resolution Applicant in its resolution plan, has dealt with interests of all stakeholders of the Corporate Debtor, including the Financial Creditors, the Operational Creditors and the CIRP cost.
14. Section 30 of the Code provides as below:
- “(1) A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.*
- (2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan— (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor; (b) provides for the repayment 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; (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) conforms to such other requirements as may be specified by the Board.*
- (3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).*

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*(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.*

*(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.*

*(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority”*

15. Section 31 of the Code provides as below:

*“(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.*

*(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.*

*(3) After the order of approval under sub-section (1),— (a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and (b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.”*

16. It is also necessary to refer the provisions of Regulation 38 and 39 of CIRP Regulations to come to a conclusion that requirements of the Regulations are fulfilled and the same reads as below:

*“Regulation 38 - Mandatory contents of the resolution plan:*

*(1) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.*

*(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.*

*(2) A resolution plan shall provide:*

*(a) the term of the plan and its implementation schedule;*

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- (b) the management and control of the business of the corporate debtor during its term;*
- and*
- (c) adequate means for supervising its implementation.*
- (3) A resolution plan shall demonstrate that –*
  - (a) it addresses the cause of default;*
  - (b) it is feasible and viable;*
  - (c) it has provisions for its effective implementation;*
  - (d) it has provisions for approvals required and the timeline for the same; and (e) the resolution applicant has the capability to implement the resolution plan.”*

*“Regulation 39 - Approval of resolution plan:*

- (1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with*
  - (a) an affidavit stating that it is eligible under section 29A to submit resolution plans;*
  - (c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.*
- (1A) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.*
- (2) [The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him:-*
  - (a) preferential transactions under section 43;*
  - (b) undervalued transactions under section 45;*
  - (c) extortionate credit transactions under section 50; and*
  - (d) fraudulent transactions under section 66,*
- (3) The committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit: Provided that the committee shall record the reasons for approving or rejecting a resolution plan.]*
- (4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule.*
- (7) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.*

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*(8) A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.*

*(9) No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.*

*(10) A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan."*

17. As discussed supra by virtue of mandatory contents of resolution plan, the same is in accordance with Section 30 and 31 of the Code, and also complies with the requirement of the Regulations 38 and 39 of CIRP Regulations.

18. The Hon'ble Supreme Court in the case of "K. Sashidhar vs. Indian Overseas Bank" (2019 SCC OnLine SC 257) at para 49 of the Judgement held as below:

*"49. The argument, though attractive at the first blush, but if accepted, would require us to re-write the provisions of the I&B Code. It would also result in doing violence to the legislative intent of having consciously not stipulated that as a ground - to challenge the commercial wisdom of the minority (dissenting) financial creditors. Concededly, the process of resolution plan is necessitated in respect of corporate debtors in whom their financial creditors have lost hope of recovery and who have turned into non-performer or a chronic defaulter. The fact that the concerned corporate debtor was still able to carry on its business activities does not obligate the financial creditors to postpone the recovery of the debt due or to prolong their losses indefinitely. Be that as it may, the scope of enquiry and the grounds on which the decision of "approval" of the resolution plan by the CoC can be interfered with by the adjudicating authority (NCLT), has been set out in Section 31(1) read with Section 30(2) and by the appellate tribunal (NCLAT) under Section 32*

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*read with Section 61(3) of the I&B Code. No corresponding provision has been envisaged by the legislature to empower the resolution professional, the adjudicating authority (NCLT) or for that matter the appellate authority (NCLAT), to reverse the “commercial decision” of the CoC much less of the dissenting financial creditors for not supporting the proposed resolution plan. Whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority.”*

19. On perusal of the resolution plan, this Bench being satisfied with the valuation given by the registered valuers, estimation of turnover during the resolution period, repayment schedule to all the creditors, the approval of resolution plan as approved by the CoC with 87.62% voting, approves the resolution plan.
20. Furthermore, as per the law laid down by the Hon'ble Supreme Court is applied to the case on hand, this Resolution Plan approved by the COC with the required majority satisfies all the criteria required for approval of Resolution Plan and accordingly the Resolution Plan is approved.
21. The Resolution Applicant, on taking control of the Corporate Debtor, shall ensure compliance under all applicable law for the time being in force.
22. We shall clarify here that any resolution applicant shall takeover the Corporate Debtor with all its assets and liabilities as per terms of the approved Resolution Plan. If any relief concerning any identified liability of the Corporate Debtor is required, then that needs to be specifically mentioned and sought for in the Resolution Plan. This bench cannot allow any general power to any resolution applicant absolving him of liability of the corporate debtor company without knowing about the liability against which such exemption is sought. In other words,

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reliefs/exemptions from only existing liabilities which are specifically identified can be sought and allowed in the Resolution Plan.

23. On perusal of the Resolution Plan, we find that the resolution plan has necessary provisions for its effective implementation.
24. The resolution applicant shall obtain the necessary approval required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.
25. Given the above observations, we approve the resolution plan, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the resolution plan.
26. In view of the approval of the Resolution Plan as sought by the RP, this Bench hereby discharges the RP from duties of the RP by submitting all the records maintained by him to the Insolvency and Bankruptcy Board of India as provided under the Insolvency and Bankruptcy Code, 2016 and the regulations thereunder.
27. Accordingly, this MA No: 2882/2019 is hereby allowed by vacating the moratorium already granted at the time of admission of Company Petition No: 3063/2018 under section 31(1) of IBC. The MA 2882/2019 is accordingly allowed and disposed of.

**Sd/-**

**Shyam Babu Gautam  
Member (Technical)**

**Sd/-**

**Bhaskara Pantula Mohan  
Member (Judicial)**

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