

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, DELHI
BENCH III

CA- 856/2019
In IB-985/ND/2018

The CA- 856/2019 is filed
U/S 3(6) IBC, 2016 r/w
Regulation 9(4) of the IBBI
(CIRP) Regulations, 2016

In the matter of Evan Multispecialty Hospital &
Research Centre Private Limited (CD)

Rakesh Kumar Singala, (RP) for the CD

..... Applicant

Order Delivered on 8th June, 2020

Coram

CH. MOHD SHARIEF TARIQ
Member (Judicial)
SUMITA PURKAYASTHA
Member (Technical)

ORDER

Per: CH. MOHD SHARIEF TARIQ

1. The Resolution professional has filed the instant application under section 30(6) of Insolvency and Bankruptcy Code (hereinafter referred as "IBC") r/w Regulation 39(4) of the Insolvency And Bankruptcy board Of India (Insolvency Resolution Process For Corporate Persons) Regulations (hereinafter referred as "IBBI (IRCP) Regulations, 2016"), in CA- 856/2019 for seeking approval of Resolution Plan under section 31 (1) of IBC in the matter of Evan Multispecialty Hospital & Research Centre Private Limited (hereinafter referred as "Corporate Debtor").

2. Mr. Rakesh Kumar Singala is the Resolution Professional for Evan Multispecialty Hospital & Research Centre Private Limited, who has submitted the Resolution plan duly approved by the Committee of Creditors (hereinafter referred as "COC") which is accompanied by the compliance certificate in the prescribed Form H.

3. Before this Authority proceeds to examine the Resolution Plan, it is necessary to deal with the objections raised by the Income Tax Department (hereinafter referred as 'ITD') with regard to the relief sought for waiver of tax liability including Minimum Alternative Tax (hereinafter referred as "MAT"). The ITD has referred to the decision of NCLT Principal Bench given in the **State Bank of India Versus Bhushan Steel Limited**, wherein under para 82 the Bench observed as follows: -

"That in respect of the relief and concession it is not possible for us to issue any direction except to say that the monitoring agency along with the Resolution Applicant may make a claim before the authorities which shall be considered in accordance with law. Moreover, these reliefs and concessions are also not condition precedent for the acceptance of resolution plan and would not be an impediment for us to accept the Resolution Plan".

4. The ITD has also referred to the decision of NCLT Delhi Bench in the matter of **Uttam Strips Limited**, wherein a similar relief sought was

rejected and it was observed that the Tribunal does not have the power to grant blanket exemption from income tax, to exempt the corporate debtor or Resolution Applicant from meeting legitimate dues to the government such as stamp duty.

5. In **reply** to the objections raised by the ITD, the Resolution professional has referred to the decision of NCLT Mumbai given in State Bank of India V/s Calyx Chemicals Pharmaceuticals Limited wherein under para 12 of the order, it was observed as follows:

'Regarding the exemptions sought, Government liabilities and statutory dues, it is worth to observe that the same should be restricted to those Government liabilities which are ascertained and crystallised as on the date when the CIRP commenced. Further, on commencement of CIRP, due to pronouncement of moratorium if any tax is levied, the same can be considered for waiver as held in the decision of NCLT, Chandigarh Bench wherein waiver is granted in respect of tax dues.'

6. The Resolution Professional further referred to the recent ruling of Hon'ble Apex Court given in **K. Sashidhar Vs. Indian Overseas Bank & Ors.**, reported in MANU/SC/0189/2019, wherein under Para 33, the Hon'ble Apex Court has observed as under:

"Besides, the commercial wisdom of the COC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by I&B Code. There is an intrinsic assumption that the Financial Creditors are fully informed about the viability of the Corporate Debtor and feasibility of the proposed Resolution Plan. The act on the basis of their examination of the proposed Resolution Plan

and assessment made by their team of experts. The opinion on the subject matter expressed by them after deliberations in the COC meetings through voting, as per the voting shares, is a collective business decision. The legislature, consciously, has not provided ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decisions before the Adjudicating Authority. That is made non-justifiable."

7. In view of the above noted observation of Hon'ble Supreme Court, the Resolution professional has submitted that the Objector/Operational Creditor cannot question the decision of the COC. Moreover, the provision made in the Resolution Plan in favour of the Operational Creditors is more than the amount which the Operational Creditors could have received in the event of liquidation of the Corporate Debtor.
8. In view of it, the objection raised by the ITD is overruled for the reason that the COC has taken the decision to the best of their wisdom and this Authority cannot incorporate its own view to change their decision. Moreover, this Authority cannot create additional liabilities on the Corporate Debtor, when the Resolution Applicant is stepping in to revive the business of the Corporate debtor. Therefore, the exemptions and concessions prayed for in the Resolution Plan has to be granted for its successful implementation.

Brief Facts:

9. It reveals from the record that IB-985/ND/2018 under section 9 of IBC was filed by the Operational creditor viz., *M/s. Engineered Facility Management services Private Limited* was admitted and Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor was initiated vide order dated 03.12.2018 and Mr

Jitendra Bakshi was appointed as Interim Resolution Professional (hereinafter referred as "IRP").

10. It is noted that the IRP made public announcement in Form A in two newspapers and invited claims from financial/operational creditors/workers/employees of the Corporate Debtor in terms of Regulations, 2016. Thereafter, the IRP constituted committee of Creditors (hereinafter referred as "COC") on the basis of the claims comprising of Punjab National bank (hereinafter referred as "PNB") and De Lage Laden Financial Services India Private Limited. The first meeting was called on 08.01.2019 wherein it was Resolved that the IRP be replaced with another Resolution Professional Mr. Rakesh Kumar Singala (hereinafter referred as "RP"). Accordingly, this Tribunal passed an order on 28.01.2019.
11. The RP published advertisement i.e. Form G dated 15.02.2019 for inviting 'Expression of Interest' (hereinafter referred as EoI) on 16.02.2019 in Delhi edition of Business Standard (English & Hindi) and in Muzaffarnagar edition of Awan- E Hind (Hindi), also published on the website of IBBI. There were 10 (Ten) Resolution Applicants who met the eligibility criteria as laid down by the COC.
12. The 5th meeting of the COC held on 15.03.2019, approved the evolution matrix and draft request for resolution Plan and it was resolved that the request for resolution plan with evolution matrix detailing the resolution plan shall be issued to all the shortlisted applicants to invite resolution plans on or before 17.03.2019.
13. The RP issued Request for Resolution Plan (hereinafter referred as "RFRP") with evolution matrix and invited the shortlisted applicants to submit resolution plan on or before 16.04.2019. The COC members after deliberating and at length discussion, unanimously agreed to incorporate

performance security clause in the existing RFRP for an amount of Rs. 2,50,00,000/- (Two Crore and Fifty lakhs) or 25 % of upfront cash whichever is higher in RFRP and revised the draft of RFRP accordingly. The RP issued the revised RFRP and extended the timeline for submission of resolution plan till 16.05.2019.

14. After the extension of timeline, the RP received resolution Plans from 2 (two) applicants viz., Paras Healthcare Private Limited and Devikripa Ispat Private Limited. In the 7th meeting of the COC the RP presented the Resolution Plans and members tried to negotiate for better terms to be incorporated in the Resolution Plan and inter-alia decided to extend the CIRP period beyond 01.06.2019. This tribunal granted the extension of the CIRP period for 90 (Ninety) days vide order dated 06.06.2019. In the 13th meeting of the COC one of the majority financial creditor viz., PNB brought to the notice of the COC members that there were 3 (three) more prospective investors who had approached the COC.
15. The Resolution Plan alongwith a letter of final negotiated terms and conditions was submitted by the authorised representative of Devikripa Ispat Private Limited, which was placed before the COC for due consideration in the 14th COC meeting which was held on 25.10.2019. The Resolution plan was approved by 100% of the voting share of COC in the said meeting. The resolution passed by the CoC is as follows:

***“RESOLVED THAT** pursuant to Section 30(4) of the Insolvency and Bankruptcy Code, 2016 r/w regulation 39(3) of the IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 the resolution plan of the resolution applicant M/s. Devikripa Ispat Private Limited placed by the resolution professional as per section 30(3) of the Insolvency and Bankruptcy Code, 2016 read with regulation 39(2) of the IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 as evaluated strictly as per*

the evolution matrix to identify the best resolution plan be and is hereby approved today i.e. 25.10.2019 by the Committee of Creditors (COC) with such modification as agreed by the resolution applicant in this meeting and submitted a letter of final terms and conditions before the COC.

“RESOLVED THAT *Insolvency resolution process i.e. cost defined under Section 5 (13) read with Regulation 31 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and duly disclosed such cost as per Regulation 34A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as incurred by the interim resolution professional/ resolution Professional from the date of commencement of the CIR Process i.e. 3.12.2018 till 21.10.2019 equal to Rs. 75,26,554/- as shown in the statement placed before the COC be and is hereby confirmed and approved.*

RESOLVED FURTHER THAT *insolvency resolution process cost i.e. CIRP cost as incurred by RP after 21.10.2019 till the date of resolution plan, if any be approved by the Adjudicating Authority shall form part of the CIRP cost and be treated according to respective provisions of the resolution plan as approved by the COC and Adjudicating Authority.*

RESOLVED FURTHER THAT *the modified resolution plan after incorporation of the terms as agreed today shall be submitted by the resolution applicant to the resolution professional for filing to adjudicating authority and as the CIR Process period near to end, resolution Professional be and I hereby advised to submit modified plan to COC for consent of COC members electronically before filing to the Adjudicating Authority”.*

The above-mentioned resolution was passed with a voting percentage of 100%.

16. The COC consented to the modified plan on 04.11.2019 which was submitted by the successful Resolution applicant M/s. DevikripaIspat Private Limited to the RP on 03.11.2019. The Resolution Applicant accepted the Letter of Intent and deposited Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakhs only) on 08.11.2019 apart from the earnest Deposit of Rs 1,00,00,000/- (Rupees One crore).
17. The RP has stated that the Resolution Plan submitted by the successful Applicants and supported by the financial Sponsor Viz., Mr. Vijay Jain is exhaustive and provides for settlement of dues to the secured Financial Creditors and Operational Creditors. The RP further submitted that the Resolution Applicant seeks waiver of all dues payable to all the Central and State Public Sector Undertaking in addition to the full cancellation of all statutory dues as envisaged under the plan and to waive the entire statutory dues between approval date till implementation date. It is also submitted that the Resolution Plan is in accordance with the amended provisions of 30(2) (b) of the IBC r/w Regulation 38 of the IBBI (IRCP) Regulations, 2016 and the Plan is not in violation of any of the existing provisions of Law.
18. The ***Salient features*** of the Resolution Plan are summarised as follows:
 - i. **Resolution Applicant/Financial Sponsor:**
 - a. M/s. DevikripaIspat Private Limited (Resolution Applicant)
 - b. Mr. Vijay Jain (Financial Sponsor)
 - ii. **Corporate Insolvency Resolution Process Cost payable as per the resolution Plan:**

The Resolution Plan proposes an amount of Rs 24.01 Crores, which is more than the liquidation value. The Resolution Applicant proposes to infuse Rs 76,00,000/- (Rupees Seventy-Six Lakhs) towards the outstanding CIRP Cost in 0 to 30 days. ✓

iii. Claims of the Financial Creditors and settlement thereof:

a) The RP has submitted that the Resolution Applicant proposes to infuse Rs. 22.55 Crores by ways of a loan to the Corporate debtor by the Financial Sponsor to settle the Secured financial Creditors within a period of 90 business days from the date of approval.

iv. Claims of Operational Creditors and payment to workmen, employees.

b) The Resolution Applicant proposes to infuse Rs 70,00,000/- (Rupees Seventy Lakh) by way of a loan to the Corporate Debtor by the financial sponsor. The claims of Operational Creditors (non-related parties) to the tune of Rs. 52, 00,000/-, would be settled within a period of 30 business days from the date of approval, in the proportion of their admitted claim. The remaining outstanding dues shall be cancelled/ written off. The Workmen & Employees would be settled to the tune of Rs. 18,00,000/-.

v. Shareholding pattern of the Corporate Debtor post Resolution Plan:

The Resolution Plan provides that after its approval by this Authority, the Resolution Applicant viz., M/s.

DevikripalpatPrivate Limited will be 100% shareholder of the Corporate Debtor.

vi. Concessions, relief and waiver (s) sought in the Resolution Plan with respect to Income Tax, EPF & ESIC and ETCP & GST/ VAAT/ TDS:

The RP submitted that as per the list of creditors (upto 31.03.2019) no claims have been received from Government, Statutory Authorities etc. The resolution applicant seeks waiver of all dues payable to all the Central and State Public Sector Undertaking in addition to the full cancellation of all statutory dues as envisaged under the plan and to waive the entire statutory dues between approval date till implementation date. The subsidies, incentives etc., which were enjoyed/ available to the corporate debtor shall be entitled to be enjoyed/ available post approval of this Resolution Plan. Corporate Debtor to get the benefits available for all future capex as may be available for new investments under any state, central government or other government body's scheme, programs etc. Further relief has been sought regarding all the pending legal and arbitration/ other proceedings and actions shall stand disposed of and discharged as per the Resolution Plan. Further, the Resolution Applicant seeks waiver from the applicable provisions of Section 79 of the income Tax Act,1961, relating to carry forward and setoff losses in case of companies where a change in shareholding has taken place, with respect to business losses incurred by the Corporate Debtor. Also, the resolution applicant to be entitled to carry forward and set-off the accumulated losses and unabsorbed depreciation as per the provisions of Section 72 and 72A of the Income Tax Act,1961.

19. Appointment of monitoring agency/Approval

- i. The term of monitoring agency shall come to an end on the implementation date, unless extended by this Authority. The monitoring agency for the implementation of the Resolution Plan is appointed as under:

Sl. No.	Number of members	Comprising of
1	2 Members	Resolution Applicant (M/s. Devikripalpat Private Limited)
2	2 Members	Nominees of the Financial Sponsor

20. The parameters for approval of Resolution Plan are set out in Section 30 and 31 of the IBC, 2016 and CIRP Regulations. The Resolution Plan seems to have complied with such mandatory compliance, which are briefly set forth herein below:

Section / Regulation	Compliance made
Section 30(1) of the IBC, 2016	Resolution Applicant has submitted an affidavit stating that he is not disqualified under the provisions of Section 29A.
Section 30(2)(a) of the I&B Code, 2016 <i>And</i> Regulation 38(1A) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016	The Resolution Plan provides payment of the CIRP Cost in priority to the payment of other debts of the Corporate Debtor. The Resolution Plan provides that the interest and treatment of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtors is dealt with.

<p>Section 30(2)(b) of the I&B Code, 2016</p> <p style="text-align: center;"><i>And</i></p> <p>Regulation 38(1) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016</p>	<p>The Resolution Plan provides for the payment of 100% of the admitted claims of the Operational Creditor including those of the Employee and Workmen.</p> <p>Sufficient liquidity declared as per net-worth certificate</p>
<p>Section 30(2)(c) and Section 30(2)(d) of the I&B Code, 2016,</p> <p style="text-align: center;"><i>And</i></p> <p>Regulation 38(2) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016</p>	<p>The Resolution Plan provides that there will be monitoring Agency as appointed by this Authority which will look after the affairs and business of the Corporate Debtor. The term of the Monitoring Agency shall come to end on the implementation date.</p> <p>The implementation of plan as stated by the Resolution Applicant in the Resolution plan is 30 days from the approval date and on payment of aggregate consideration to all creditors and also the CIRP cost.</p>
<p>Section 30(2)(e) of the I&B Code, 2016</p>	<p>The Resolution Plan does not contravene any of the provisions of law for time being in force.</p>
<p>Section 30(4) of I&B Code, 2016,</p> <p style="text-align: center;"><i>And</i></p> <p>Regulation 38 (3) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016.</p>	<p>The Committee of Creditors, after considering the feasibility and viability of the Resolution Plan have approved the same by 100% voting share.</p>

21. Thus, the Resolution plan filed with the Application meets the requirements of Section 30 and 31 of IBC and Regulations 37, 38, 38(1 A) and 39(4) of the IBBI (CIRP) Regulations, 2016. The provisions of Section 29A of IBC are not attracted. The RP has also certified that the "Resolution Plan" approved by the COC does not contravene any of the provisions of the law for the time being in force. The RP has filed

compliance certificate in Form H as required under Regulation 39 (4) of the IBBI (CIRP) Regulations, 2016.

22. All reliefs and concessions prayed for by the Resolution Applicant fall under the preview of IBC and other applicable laws. Therefore, such reliefs and concessions are granted which shall not be limited to Section 79 of the income Tax Act, 1961 relating to carry forward and setoff losses in case of companies where a change in shareholding has taken place, with respect to business losses incurred by the Corporate Debtor. The resolution applicant would also be entitled to carry forward and set-off the accumulated losses and unabsorbed depreciation as per the provisions of Section 72 and 72A of the Income Tax Act, 1961.
23. In view of the above, the “Resolution Plan” annexed with CA 856/2019 filed in IB-985/ND/2018 is hereby **Approved**, shall be binding on the Corporate Debtor and its employees, members, creditors. Guarantors, other stakeholders including statutory authorities and the Resolution Applicant.
24. 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 IBC, obtain all the necessary approval as may be 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 this authority or within such periods as provided for under such law.

25. The Resolution Applicants or the Monitoring Agency as the case may be are at liberty to approach this Authority for seeking appropriate directions for effective implementation of the Resolution Plan.
26. The order of moratorium dated 03.12.2018 passed by this Adjudicating authority under Section 14 of IBC shall cease to have effect from the date of passing of this Order.
27. The RP shall forward all records relating to the conduct of the CIRP and the resolution Plan to the IBBI, so that the Board may record the same on its data base.
28. The approved resolution Plan shall become effective from the date of passing this Order.
29. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
30. Accordingly, CA-856/C-III/ND/2019 filed in CP No. 985/ND/2018 stands ***disposed of***.

31. The Order is pronounced.



SUMITA PURKAYASTHA
MEMBER (Technical)



CH. MOHD SHARIEF TARIQ
Member (Judicial)

This Order of the Bench consisting of the above-mentioned members was pronounced in the Open court by one of the members on behalf of the Bench under Rule 151 of NCLT Rules, 2016.

Court Officer