

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

CA-417/2020 filed in CP IB No.  
324/ND/2019 under section 30 (6) & 31 of  
IBC 2016 r/w Regulation 39 of the IBBI  
(Insolvency Resolution Process for  
Corporate Persons) Regulations, 2016.

In the matter of **Shree Bhomika International Limited**

**Mr. Manish Agrawal**

Resolution Professional

....Applicant

*Order delivered on 5th, Oct. 2020*

CORAM

**CH. MOHD SHARIEF TARIQ,**  
MEMBER (Judicial)  
**SHRI NARENDRA KUMAR BHOLA**  
MEMBER (Technical)

*For Applicant: Mr. Abhishek Anand, Mr. Mohak Sharma (Advocates)*

*For NSEZ, Ministry of Commerce and Industry: Mr. Anshul Rawat Mr. R.  
Soundarajan (Advocates)*

**ORDER**

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. By way of present CA-417/2020 filed in CP No. IB- 324/ND/2019, the Resolution Professional viz., *Mr. Manish Agarwal* has submitted the Resolution Plan approved by the Committee of Creditors (hereinafter referred as "CoC") and prayed for approval of the same under Sections 31 (1), 60 (5), of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as hereinafter referred as "IBC, 2016"), R/w Regulation 39 of the Insolvency and Bankruptcy Board of India (CIRP) Regulations, 2016.

2. The Financial Creditor viz., Stressed Assets Stabilization Fund had filed an Application, CP No. IB - 324/ND/2019 for initiating Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") under the provisions of IBC, 2016 against the Corporate Debtor viz., *Shree Bhomika International Limited* (hereinafter referred as "Corporate Debtor"). This Authority vide Order dated 11.07.2019 admitted said application, declared moratorium and appointed Mr. Manish Agrawal as the Interim Resolution Professional (hereinafter referred as "IRP") for conducting the Corporate Insolvency Resolution Process of the Corporate Debtor.
3. The IRP made a public announcement dated 17.07.2019 in Form- A in terms of Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred as "CIRP Regulations, 2016") for submission of proof of claims. The IRP constituted the committee of Creditor (hereinafter referred as "CoC") comprising of sole Financial Creditor i.e. *Stressed Assets Stabilization Fund- IDBI Bank Ltd.*
4. The 1<sup>st</sup> meeting of the CoC was convened on 08.08.2019 wherein by 100% voting share the IRP was appointed as the Resolution Professional for the Corporate Debtor. The Resolution Professional in terms of Regulation 27 of the CIRP Regulations, 2016 appointed two registered valuers namely, Mr. Sunil Kumar Singhal and Mr. Deepak Bansal for determining Fair and Liquidation Values of the assets of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulations, 2016.
5. The Resolution Professional as per the directions of CoC published the Form-G inviting the Expression of Interest on 25.09.2019 in the newspapers, in response to which two Resolution Plans were submitted. In the 3<sup>rd</sup> Meeting of the CoC convened on 17.12.2019 the Resolution Plans along with EMD of Rs. 5 lacs each were placed before the CoC for discussion. The CoC sought modifications and asked the Resolution Applicant viz., *M/s. Commodities*

Trading (hereinafter referred as "Resolution Applicant") to revise the Resolution Plan. The Resolution Applicant agreed to file revised resolution Plan of Rs. 4.5 Crore, the details of payments are as follows:

- a. Financial Creditors SASF - IDBI Bank Ltd will get Rs. 4 Crore
- b. Operational Creditor Noida SEZ will get Rs. 50 Lacs.

6. In the 4<sup>th</sup> meeting of the CoC, convened on 06.01.2020, the Resolution Plan was approved by 100 % voting share by the Committee through E-voting mode that concluded on 07.01.2020 and the following resolution was passed:

***"RESOLVED THAT,** the Resolution Plan submitted by M/s. Commodities Trading for Rs. 4.5 Crore be and is hereby approved in compliance with the provisions of Section 30 (4) of the Insolvency and Bankruptcy Code, 2016 by CoC members. Further, the Resolution Professional Mr. Manish Agarwal be and is hereby authorized to move an application under Section 31, on behalf of the Committee of creditors, for approval of resolution plan by the Adjudicating Authority."*

7. The highlights of the "Resolution Plan" are as follows; -

i)Details of the Resolution Applicant:

The M/s. Commodities Trading, is a registered partnership concern having its office in Gandhidham, Kutch, Gujarat and works at Kandla SEZ and it is into mainly three activities (a) Warehousing activity (b) Trading Activity in SEZ (c) Trading Activity outside SEZ.

Details of the Partners & Profit- Sharing ratio:

- (i) Mr. Devendra Bansal 50 % of Capital Holding
- (ii) Mr. Pramod Bansal 50% of Capital Holding

Distribution of the amount offered in the Resolution Plan:

- The Financial Creditor - SASF - IDBI Bank Ltd of the Corporate Debtor shall be paid Rs. 4 Crore against its claim within 30 days from the approval of the Plan by this Authority.
- The Operational creditor - Noida SEZ of the Corporate Debtor shall be paid Rs. 50 Lakhs within 30 days from the approval of the Plan by this Authority.

Evaluation of the offer made in the Resolution Plan:

The total amount offered in the Resolution Plan is Rs. 4.50 Crore.

The Average Fair Value of the Corporate Debtor as per the valuation Reports is Rs. 6.10 Crores.

The Liquidation Value of the Corporate Debtor as per the valuation Reports is Rs. 4.25 Crores.

- It is observed that the amount offered in the Resolution Plan is more than the Liquidation value.

CIRP Cost:

The Resolution Plan provides that the CIRP costs will be paid in full to the Resolution Professional as per the actual incurred in priority to payments to all other creditors (secured or unsecured), operational creditors, workmen and employees on approval of the Plan by the CoC. The CIRP Cost shall be included in the price offered for the other stakeholders. The CIRP cost shall be paid to the Resolution Professional within 30 days of approval of the Resolution Plan.

Sources of Settlement:

The Resolution Plan provides that the total payment shall be brought within 30 days of approval of the Resolution Plan from the existing liquidity of the Resolution Applicant.

Implementation and Supervision:

The Resolution Plan provides that the implementation of the plan shall be jointly supervised by the Monitoring Committee, which shall comprise of:

- a) A representative or an advisor of the Financial Creditor (other than related party)
- b) A representative of the Resolution Applicant, and
- c) Resolution Professional (An IBBI registered Insolvency Professional)

Fees of Monitoring Committee:

The Resolution Plan provides that the remuneration of the members of the monitoring committee shall be paid by the Resolution Applicant till the initial payment date which shall form part of CIRP Cost.

Management and Control of the Corporate Debtor:

The Resolution Plan provides that after the Closing date, the Resolution Applicant shall be the shareholder(s) of the Corporate Debtor and the reconstituted Board of the Corporate Debtor shall manage the business and operations of the Corporate Debtor.

Concessions & Waivers:

All the concessions and waivers prayed for by the Resolution Applicant under Para 10 of the Resolution Plan approved by the CoC fall within the parameters of I&B Code, 2016, and other applicable laws. Therefore, from the plan approval date, all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand withdrawn, satisfied and discharged. 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 licences/withdrawal/dismissal or abatement of the proceeding as the case may be. The Corporate Debtor shall be entitled to carry forward all accumulated business losses and unabsorbed depreciation, if any. Further, from the plan approval date, except as provided in the Resolution Plan, all the pending statutory dues including taxes/cess /interest/ penalty and other liabilities shall stand satisfied/ waived off.

Section 29 A of the IBC:

8. The Resolution Applicant has filed the Affidavit stating that at the time of submission of Resolution Plan, the accounts of the Resolution Applicant and any connected person, as per Explanation-1 provided under Section 29 A of the IBC,2016 or an account of the Corporate Debtor under the management or control of such person, of whom, such person is a Promoter, is not classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulations Act, 1949 or guidelines of a Financial Sector Regulator issued under any other law for the time being enforce and at least a period of one year or more has lapsed from the date of such classification till the date of commencement of Corporate Insolvency Resolution Process of the Corporate Debtor and the Applicant has not failed to make the payment of all overdue amounts with interest therein and charges related to non-performing assets before submission of the Resolution Plan. The other conditions provided under Section 29 A are also not attracted in case of the Resolution Applicant, even if he has been holding the position of the Managing Director or CFO in the Corporate Debtor. Form-H as required under Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for corporate persons) Regulation, 2016 and the evidence of receipt of performance security required under sub-regulation (4A) of Regulation 36B has also been filed by the Resolution Professional. Form-H, filed by the Resolution Professional indicates that the Fair value of the assets of the Corporate Debtor is Rs. 6,10,32,705 and the Liquidation value is Rs. 4,25,44,393. The

offer made under the Resolution Plan is for Rs. 4.5 Crores that is accepted and approved by the CoC, which is more than the Liquidation value, as stated earlier.

Section 30 (2) of the IBC & Regulations:

9. The requisites for approval of Resolution Plan are set out in Section 30 (2) of the IBC, 2016 and the Regulations made. The Resolution Plan under consideration appears to have complied with such requirements as endorsed by the Resolution Professional under Form- H, the detail of which is noted as follows:

Section / Regulation	Compliance made
<b>Section 30(1)</b> of the IBC, 2016	Resolution Applicant has submitted an Affidavit stating that he is not disqualified under the provisions of Section 29A.
<p data-bbox="316 1099 708 1189"><b>Section 30(2)(a)</b> of the IBC, 2016</p> <p data-bbox="485 1263 544 1301"><i>And</i></p> <p data-bbox="309 1794 687 1995"><b>Regulation 38(1A)</b> of IBBI (Insolvency Process for Corporate persons) Regulations, 2016</p>	<p data-bbox="735 1099 1398 1626">The Resolution Plan provides payment of the CIRP Cost, in priority to the payment of other creditors (secured or unsecured), operational creditors, and workmen for employees on approval of the Plan by CoC. The CIRP Cost shall be included in the price offered for the other stakeholders. The payment of CIRP cost shall be made to the Resolution Professional within 30 days from the date of approval of the Resolution Plan by this Authority.</p> <p data-bbox="735 1693 1398 1783">The Resolution Plan deals with the interest of all the stakeholders.</p>

<p><b>Section 30(2)(b) of the I&amp;B Code, 2016</b></p> <p style="text-align: center;"><i>And</i></p> <p><b>Regulation 38(1) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016</b></p>	<p>The Resolution Plan provides for the payment of Rs. 50 Lakhs to the Operational Creditor.</p> <p>Yes, given priority in payments.</p>
<p><b>Section 30(2)(c) and Section 30(2)(d) of the IBC, 2016,</b></p> <p style="text-align: center;"><i>And</i></p> <p><b>Regulation 38(2) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016</b></p>	<p>There is no dissenting Financial Creditor.</p> <p>The Resolution Plan provides for reconstitution of the board of the Corporate Debtor for managing its affairs.</p> <p>The Resolution Plan provides that within 30 days of the approval of the Resolution Plan by this Authority, the Resolution Applicant will bring in total money from the existing liquidity of the Resolution Applicant.</p>
<p><b>Section 30(2)(e) of the I&amp;B Code, 2016</b></p>	<p>The Resolution Plan provides that the implementation of the plan shall be jointly supervised by the Monitoring Committee.</p>
<p><b>Section 30(4) of I&amp;B Code, 2016,</b></p> <p style="text-align: center;"><i>And</i></p> <p><b>Regulation 38(3) of IBBI (Insolvency Process for Corporate persons)</b></p>	<p>The Committee of Creditors, after considering the feasibility and viability of the Resolution Plan has approved the Plan by <b>100%</b> voting share.</p> <p>The Resolution Plan fulfils all the conditions prescribed under Regulation 38(3).</p>

<i>Regulations, 2016.</i>	
<b>Regulation 39 (4) of IBBI</b> <i>(Insolvency Process for Corporate persons)</i> <i>Regulations, 2016.</i>	The Resolution Applicant has paid 5% of the Resolution Plan amount through Demand Draft.
<b>Regulation 35 A of IBBI</b> <i>(Insolvency Process for Corporate persons)</i> <i>Regulations, 2016.</i>	As per the CoC, not required.

10. In view of the above, the “Resolution Plan” annexed with the CA-417/2020 filed in CP IB No. 324/ND/2019 is hereby **approved** which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, statutory authorities and other stakeholders involved in the Resolution Plan including the Resolution Applicant.

11. While approving the Resolution Plan, as mentioned above, it is clarified that the Resolution Applicant shall pursuant to the Resolution Plan approved under Section 31(1) of the IBC, 2016, 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 period as provided for under such law.

12. The order of moratorium passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order.

13. The Resolution Professional 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 database.

14. The approved Resolution Plan shall become effective from the date of passing of this Order.

15. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.

16. Accordingly, CA-417/2020 filed in CP IB No. 324/ND/2019 stands **allowed**.

17. This Order is pronounced

  
**NARENDRA KUMAR BHOLA**  
MEMBER (Technical)

  
**CH. MOHD SHARIEF TARIQ**  
MEMBER (Judicial)