



## ORDER

1. This is an application filed by the Resolution Professional under Section 30 (6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") read with Regulation 39(4) of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 seeking approval of the Resolution Plan. The Resolution Plan duly approved by the Committee of Creditors (CoC) with the requisite majority has been placed on record.
2. The facts in brief that are necessary for disposal of the present application are as follows: -
3. One of the Financial Creditor, namely, Shree Siyaram Automations Private Limited had preferred an application under Section 7 of the Code for initiation of Corporate Insolvency and Resolution Process against M/s Beans and More Hospitality Private Limited ("Corporate Debtor"). The application was admitted on 13<sup>th</sup> March, 2018 by order CP No IB.512 (ND) /2017 imposing moratorium under Section 14 of the Code and, Mr. Prabhjit Singh Soni was appointed as the Interim Resolution Professional.
4. The First Meeting of COC was held on 25<sup>th</sup> April, 2018, wherein the Mr. Prabhjit Singh Soni, the then interim resolution professional was appointed as the Resolution Professional in accordance with the provisions of Section 22(3) (a) of the Code.

5. Thereafter the Resolution Professional/applicant took charge over the affairs of the Corporate Debtor and managed CIRP under section 12,13,14,15,17,18,20,21,23,24,25,28,29,30 and 31 of IBC,2016 and various relevant regulations of the CIRP.
6. It is submitted that meanwhile the period of CIRP of 180 days was to be expired on 9<sup>th</sup> September, 2018 and an extension under Section 12 (3) beyond 180 days for another 90 days up to 9<sup>th</sup> December, 2018 was granted by the this Bench vide order dated 18.09.2018.
7. It is further submitted in the application that against public notice in Form A, 10 claims worth Rs. 5,11,05,854/- from Financial Creditors were received out of which all were from Unrelated Financial Creditors and COC was constituted on 16<sup>th</sup> April, 2018. First meeting was held on 25<sup>th</sup> April, 2018 and after that 13 more claims were received and amount of claims of COC members was raised to Rs. 19, 81,05,341. 7 of these 13 claims from Related Financial Creditors worth Rs. 67,54,57,977/- and finally the COC was constituted with 16 Financial Creditors only who are unrelated unsecured Financial Creditors.
8. Subsequently, the Resolution Professional under Section 25(2)(h) of IBC,2016 had invited prospective resolution applicants on 31.08.2018 vide form G and published of Form G. The last date for inviting Resolutions plans was 23<sup>rd</sup> October,2018. Three resolutions applicants had

given Expression of Interest and they were given format of Non-disclosure agreement and information Memorandum and Evaluation Matrix.

9. It is stated in the application that in the COC meeting held on 12<sup>th</sup> November, 2018 out of the three plans, one plan of Mr. Abhay Jain, Ex Director and promoter of the CD was found satisfactory out of the three Resolution plans received and discussed fully in the COC meeting pursuant to regulation 38. The RP examined the Resolution Plan submitted by the Resolution applicant - Mr. Abhay Jain, Ex director and promoter and COC and Resolution Professional found the Resolution plan consistent with sub-clauses (a) to (f) of Section 30(2) of the Code.

10. It has been affirmed that the selected plan is fulfilling compulsory requirement of Section 30(2) of the IBC,2016 which are as under:

- 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;*
- 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 provision of the law for the time being in force.*

11. It is also contended that the plan is also covering water fall of distribution of dues of claimants and CIRP costs as prescribed under section 53 of the IBC, 2016.

12. The Resolution Professional also certified that the plan provides for terms of the payment, implementation scheme, the management and control of the business of the corporate debtor during the term of the plan and adequate means for supervising its implementation. Resolution Professional Mr. Prabhjit Singh Soni was appointed as Implementation and monitoring officer of the said plan for next 24 months at a quarterly remuneration of Rs. 30000/- and he will give quarterly reports to this Bench.

13. It is stated in the CA that the Resolution Plan envisages that the Financial Creditors are proposed to be paid against the full and final settlement of their entire financial/operational debt against the Corporate Debtor (including contingent liabilities), as tabulated on page 16 of the typed set of the CA.

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S.No	Particulars	Amount o/s as per claims admitted As on CIRP date INR	Amount o/s in financial statement but no claim received/admitted INR	Proposed liability post INR	Remarks
1	CIRP Cost			33,45,000	To be paid on priority
2	Workmen & Employee	Nil.	Provisions	5,00,000	Full amount to be paid within 6 Months
3	Employee benefit (dues)	Nil.	If Any	Full Amount	Amount to be carried forward and pay as and when become payable
4	Financial Creditor (unrelated)	198105341	198105341	198105341	Full amount within 12 months or earlier if possible
5	Financial Creditor (related)	675457977	675457977	675457977	Full amount within 24 months or earlier if possible
6	Government liabilities	Nil.	If any	Full Amount	Despite no claims were submitted, RA proposes to make full

					payment of Govt. dues
7	Government Dues	NIL.	Dues if Any	--	Government dues. No notice received if any amount pending it will be paid.
8	Operational Creditors	NIL.	Amount Due	Pending amount	Although these claims were not submitted and verified by the RP thus under IBC Code no payment is due to them. Will be paid 50% if raised pending bill.
	Total	877408318		877408318	

14. It is also submitted that the Resolution Plan envisages the continuation of the Corporate Debtor as a "going concern" and previous management will run the company to make it viable so that society and other stakeholder will gain and keeping company as going concern and continuity of the company will contribute significantly to the society and government by putting the natural resources to best use and contributing significant direct and indirect employment and income generation opportunities in the region and will wait for the decision of the court and acquisition.

15. It is also stated that in respect of the Resolution Applicant, the Resolution Professional has also obtained Affidavits as per eligibility provided under Section 29A from the said Resolution Applicant and their connected persons about their eligibility in terms of Section 29A of the code.

16. It is asserted in the application that the said Resolution Plan has been duly approved by the Committee of Creditors in the meeting held on 12.11.2018 and then by evoting by 74.19% votes after doing full discussions and getting explanations and clarifications in the COC meeting. The resolution applicant had placed copy of minutes of meeting approving the resolution plan.

17. The Resolution Professional has certified that the approved Resolution plan provides for payment of insolvency resolution process cost on priority in accordance with the Regulations and IBC, 2016. As per regulation 38(1) (a) of the CIRP regulations, the source of payment of CIRP cost and repayments of all unrelated Financial Creditors on priority basis has been identified and Resolution Applicant will sell one of his own properties and pay the entire CIRP cost and repayment of Unrelated Financial Creditors worth Rs 21 Crores from that funds on priority basis.

18. It is accordingly submitted that the Resolution Plan provides for term of the plan, its implementation schedule, the management and control of the

business of the corporate debtor during the term of plan and adequate means for supervising its implementation.

19. In the facts, it is seen that the Resolution Plan meets the requirements of Section 30 (2) of the Code and that the resolution plan has provisions for its effective implementation.

20. Moreover, the Resolution Plan has been unanimously approved by the CoC and has been submitted in compliance of Section 30 of the Code for approval. Resolution Professional has confirmed that the Resolution Plan is compliant to sub-section (a) to (f) of Section 30(2) of the Code and also comply Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. He has further certified that it has dealt with the interests of all stake holders.

21. Besides there is no objection from any stake holders in respect of approval of the resolution Plan. In absence of any discrimination or perverse decision it is not open to the Adjudicating Authority to modify the Plan. As per the provisions of the Code, the CoC with the requisite super majority is the competent authority to decide on the rights of various stake holders by approving a resolution Plan. Adjudicating Authority is not expected to substitute its view with the unanimous commercial wisdom of the CoC nor should deal with technical complexity and merits of

Resolution Plan unless it is found contrary to the express Provisions of law and goes against the public interest. Admittedly the revival of the corporate debtor company would certainly enhance the interest of all the stake holders and is in the line to achieve the object of the Code.

22. In view of the finding that the resolution plan approved by the CoC, is in accordance with the sub-section 2 of Section 30 read with Section 31 of the Code and as the Resolution Applicant is not disqualified under Section 29A of the Code and as no infirmity seems to have brought out upon screening of the Resolution Plan; we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.

23. We also grant Liberty to the monitoring committee to apply to the Tribunal for any further direction in order to ensure effective implementation of the plan, if such a necessity arises.

24. As a sequel to the above discussion we are satisfied that the requirements as per the Code and regulations have been complied with.

25. It is hereby declared that the Resolution Plan is binding on the corporate debtor, members, employees of the corporate debtor, creditors of the corporate debtor and other stakeholders involved in the Resolution Plan.

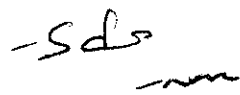
26. It is also declared that the moratorium order passed by this bench under Section 14 of the Code shall cease to have effect.

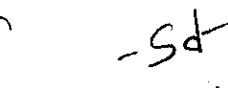
*[Handwritten mark]*

27. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its data base.

28. C.A. 361 (C-III) 2018 along with CP No. (IB) 512/ND/ 2017 are disposed of accordingly.

Let the copy of the order be served to the parties.

  
(Deepa Krishan)  
Member (Technical)

  
19/07/2019  
(R. Varadharajan)  
Member (Judicial)