

IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH

CA No. 371/2019

IN

CP.NO(IB)322/ALD/2018

*(under Section 30 (6) of Insolvency and  
Bankruptcy Code, 2016) (r/w Regulation 39(4)  
of Insolvency and Bankruptcy Board of India (  
Insolvency Resolution Process for Corporate  
Persons) Regulation, 2016)*

IN THE MATTER OF:

MRS. ANITA NIRULA & ANR

.....Financial Creditor

v/s

M/S PIYUSH SHELTERS INDIA PVT LTD

.....Corporate Debtor

IN THE MATTER OF:

Mr. Swami Deen Gupta  
(Resolution Professional)

.....Applicant

ORDER DELIVERED ON :14.07.2021

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Resolution Professional: Ms Babita Jain Adv Alongwith  
Mr. Ram Kumar Mishra, PCS  
For the Homebuyers: Mr. Yash Tondon, Adv  
For Resolution Applicant: Ms. Gunjan Jadhvani, Adv

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

ORDER

1. The instant application is filed under Section 30 (6) & 31(1) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (CIRP Regulations) for seeking approval of Adjudicating Authority, under Section 31 of the IBC, of the resolution plan submitted by the successful resolution applicants i.e Mr. Naveen Kumar Gupta as a lead member of Consortium of Maya Buildcon Pvt. Ltd, Geotech Homz Pvt. Ltd & Naveen Kumar Gupta.

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2. The Corporate Insolvency Resolution Process ("CIR Process") of the corporate debtor was initiated vide order of this Tribunal dated 04.12.2018 upon admission of an application filed by the Financial Creditor under Section 7 of the Code and Mr. Swami Deen Gupta was appointed as the IRP who was later confirmed as RP .
3. As per the averment made in the application 79.71% vote shares rests with the Financial Creditors in a class (Commercial space real estate allottees) and balance 20.29% with Financial Creditors.
4. During the CIRP period, three times Expression of Interest (EOI) in form G were published and invited from prospective Resolution Applicants but no EOI was received from RAs meeting minimum eligibility criteria against first two invitations, then against the 3<sup>rd</sup> invitation of EOI with relaxed eligibility criteria, a sole Resolution Applicant fulfilling eligibility criteria submitted the EOI and also the Resolution Plan which was negotiated with Committee of Creditors (CoC) in 7<sup>th</sup> CoC meeting held on 21<sup>st</sup> August 2019 and but before approval of Plan by CoC through e-voting scheduled, the resolution applicant submitted for withdrawal of the plan stating that the multiple lease deeds demarcated over areas of other units and common areas of passages and due to the flaw in the lease deeds the resolution plan cannot be executed, if approved.
5. After withdrawal of resolution plan, 8<sup>th</sup> CoC meeting was called on 25<sup>th</sup> September 2019 to discuss and decide further course of action and again the 4<sup>th</sup> time EOI (with earlier relaxed criteria) in Form G was published in Financial Express and Jansatta Delhi edition on 1<sup>st</sup> October 2019 and EOI was received from only one Resolution Applicant from Naveen Kumar Gupta as lead member of Consortium of "Maya Buildcon Pvt. Ltd, Geotech Homz Pvt. Ltd & Naveen Kumar Gupta" eligible as per the eligibility criteria set for submission of EOI and further the RFRP, EM and Information Memorandum were issued to the sole Resolution Applicant on 13<sup>th</sup> October 2019 and the Resolution Plan alongwith individual affidavits of all the members of consortium stating that individual members are eligible under Section 29A were received from the Resolution Applicant on 27<sup>th</sup> October 2019.

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6. It is further submitted that the Resolution Plan dated 21.10.2019 was examined by RP with regard to the adherence to the provisions as Section 30(2) of IBC and Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 and was circulated vide email dated 29<sup>th</sup> October 2019 alongwith notice for 9<sup>th</sup> CoC Meeting which was scheduled to be held on 1<sup>st</sup> November 2019 to the CoC members including individual Financial Creditors in class (commercial space real estate allottees) for evaluation, deliberations on the feasibility and viability of Resolution Plan in presence of Resolution Applicant and thereafter voting for acceptance or rejection of Resolution Plan).
7. It is stated that the RP presented before the CoC that Resolution Applicant in the Resolution Plan dated 21.10.2019, has worked out Resolution Plan taking into consideration the liquidation value at Rs. 40 Crores on estimation as approximately 50 % (amended to 30% in final revised resolution plan) of the total resolution debt and therefore liquidation value is not sufficient to cover the amounts owed to Financial Creditors in full as well of the Operational Creditors or other creditors or other stakeholders is Nil and accordingly they will not be entitled to receive any payment if the company were to be liquidated on the insolvency commencement date. The RP also presented before CoC that the liquidation value considered by RA for making resolution plan is approx. 45% of the liquidation valued as per the average value of valuation done by the 02 valuers appointed by the RP.
8. The CoC further deliberated para wise contents of the resolution plan and noted that the RA in infusing the funds to the tune of Rs.3.00 Crores through contribution to meet the funds requirement for development renovation & completion of project. Thus COC was of the opinion that RA has proposed very low infusion of the funds and further it was recommended by the CoC that after receipt of revised offer, if any, by the Resolution Applicant, the same be circulated to the CoC members by email on 13<sup>th</sup> November 2019, to have final view on the overall viability, feasibility of Resolution Plan and capability of RA before e-voting by the members for either acceptance or rejection of final Resolution Plan.
9. After discussion with CoC in 9<sup>th</sup> CoC meeting held on 1<sup>st</sup> November 2019, the Resolution Applicant submitted Final Resolution Plan dated 05.11.2019 and the same was circulated

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to CoC members and the e-voting instructions were issued to CoC members vide email dated 5<sup>th</sup> November 2019 for voting on 06<sup>th</sup> to 07<sup>th</sup> November 2019, which was done and subsequently, the E-voting results circulated to CoC members vide e-mail dated 07.11.2019 in which the CoC has approved the Resolution plan with 80.16% of the voting share in favour.

10. Accordingly, the Resolution Professional has filed the present application seeking approval of the Resolution Plan in terms of Section 31(1) of the Code.

11. Heard the Ld. Counsels for the parties and perused the record available.

12. It is observed that the Resolution Professional has examined the Resolution Plan and has found it to be in compliance with Section 30 (2) of the IBC read with Regulation 38 of the CIRP Regulations. In accordance with Regulation 39 (4) of the CIRP Regulations, the RP vide his Affidavit certified that:

- a) *The contents of the Resolution Plan submitted by Mr. Naveen Kumar Gupta as a lead member of Consortium of Maya Buildcon Pvt. Ltd , Geotech Homz Pvt. Ltd & Naveen Kumar Gupta meet all the requirements of the IBC and the Regulations thereunder; and*
- b) *The Resolution Plan submitted by Mr. Naveen Kumar Gupta as a lead member of Consortium of Maya Buildcon Pvt. Ltd , Geotech Homz Pvt. Ltd & Naveen Kumar Gupta has been approved by the Committee of Creditors by 100% voting share under Section 30 (4) of the IBC in its meeting.*
- c) *Further, Resolution Professional has submitted compliance certificate in Form-H as required under Regulation 39(4) of the CIRP regulations, interalia, certifying eligibility of Resolution Applicant under Section 29 A of the Code and feasibility & viability of the Resolution.*

13. Sub-section 2 of Section 30 of the Code reads as under;

*“The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan-*

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- 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) Confirms to such other requirement as may be specified by the Board."

Further, Regulation 38 & 39 of CIRP Regulations specify certain mandatory contents of the resolution plan.

14. The resolution plan approved by the Committee of Creditors meets the requirements laid down in various Clauses of Section 29 A and Sec 30 (2) as per the compliance table below:

Section	Requirement	Compliance (yes/no)
Section 29 A	The resolution applicant is eligible to submit resolution plan as per final list of resolution professional or order, if any, of the Adjudicating Authority	Yes
Section 30	(1)The resolution Applicant has submitted an affidavit stating that he is eligible	Yes
	(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan only one resolution plan received in the Insolvency resolution process of the CD)	
a)	Provides for payment of IRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Yes
b)	Provides for repayment of debts of operational creditors (OCs) in such manner as may be specified by the Board, which shall not be less than the amount payable to them in the event of liquidation u/s 53.	Yes
c)	Provides for the payment to the financial creditors who did not vote in favour of the Resolution Plan	Yes

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d)	Provides for management of the affair of the CD after approval of the resolution plan.	Yes
e)	Implementation and Supervision of resolution plan	Yes
f)	Plan does not contravene any of the provisions of the law for the time being in force.	Yes
Sec 30(4)	Whether the Resolution Plan (a) Is feasible and viable, according to the COC? (b) Has been approved by the COC with 66% voting Share?	Yes  Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the COC	Yes

15. The following table shows that the requirements of Regulation 35 A, Regulation 38 & Regulation 39(2), Regulation 39(4) CIRP Regulation are met by the approved plan:

Reference of Regulations	Requirement	Compliance (yes/no)
38(1)	The resolution plan identifies specific sources of funds that will be used to pay the insolvency Resolution process	Yes
38 (1A)	Plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of Corporate Debtor.	Yes
38 (1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any Resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation.	NO
38(2) (a)	Plan shall provide the term of the Plan and its implementation schedule.	Yes
38 (2) (b)	Plan shall provide for the management and control of the business of CD during its term.	Yes
38 (2) (c)	Plan shall provide for adequate means for supervising its implementation.	Yes
38 (3)	A resolution plan shall demonstrate that (a) The term of the plan and its implementation schedule (b) It is feasible and viable (c) It has provisions for its effective implementation (d) It has provisions for approval required and the timelines for the same (e) The resolution applicant has the capability to implement the resolution plan	Yes

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39(2)	The RP has filed applications in respect of transaction observed, found or determined by him	Yes
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16. Regulation 36B(4A) of the CIRP Regulations requires that the Resolution Applicant shall provide a performance security. Resolution Professional has certified that the Resolution Applicant has submitted performance security of Rs 1.00 crore in the form of bank guarantee, which is 10% approx. of the Resolution cost which shall be submitted within 10 days of effective implementation of the Resolution Plan.
17. The resolution plan is for the amount of Rs. 12.38 crores, and the Resolution Applicant has to implement the Resolution Plan within the period of 24 months from the effective date in accordance with implementation Schedule which is as follows:

Action	Timeline
Approval of the Resolution Plan by the Adjudicating Authority	Date of order
Effective Date	X
Execution of Performance Guarantee	X+10 days
Resignation of existing directors, appointment of new directors in the board of new directors in the board of corporate debtor	X+10 days
Formation of Monitoring Committee	X+10 days
Transfer of Monitoring Committee	X+10 days
Payment to creditors	X+30 days
Payment to secured Financial Creditor i.e HDB Financial Services Limited	To be paid in 8 quarterly installments without obligation to pay interest. 1 <sup>st</sup> Year(1 <sup>st</sup> - 4 <sup>th</sup> Quarter)-Rs. 50 Lacs each 2 <sup>nd</sup> Year (5 <sup>th</sup> -8 <sup>th</sup> Quarter)-Rs. 150 Lacs each Quarter
Payment to other creditors	X+ at the end of 8 <sup>th</sup> Quarter.

18. *"The Schedule of payment of the Resolution Applicant Amount is as follows:*

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Sl. No.	Particulars	Amount (INR) Crs.
<i>1</i>	<i>Application of funds</i>	
<i>a.</i>	<i>CIRP Cost</i>	0.31
<i>b.</i>	<i>Employee/ workmen dues</i>	0.06
<i>c.</i>	<i>Financial creditor- Secured- HDB Financial Services Ltd.</i>	8.00
<i>d.</i>	<i>Financial creditor- Secured- Mahindra &amp; Mahindra Finance</i>	0.33
<i>e.</i>	<i>Registered deed holders (Non Claimant)</i>	-
	<i>Financial creditor- in a class (Allottees/ MOU Holder)</i>	-
	<i>Financial Creditor – Non Claimant (Allottees/ MOU Holder)</i>	-
	<i>Financial creditor – unsecured</i>	0.28
	<i>Operational creditors</i>	0.34
	<i>Statutory Dues</i>	-
	<i>Other Stakeholders</i>	-
	<i>Shareholders</i>	0.06
	<i>Further investment for Development/ renovation &amp; Completion</i>	3.00
	<b>TOTAL</b>	<b>12.38</b>

The sources of funds are as follows:

Particulars	Amount (INR) Crs.
<i>Fresh Equity Capital/ Convertible Preference Shares</i>	1.00
<i>Fresh Equity Capital/ Convertible Preference Shares</i>	2.00
<i>Internal Accruals/ Quasi Equity / Secured Loans/ Unsecured Loans</i>	9.38
<b>Total</b>	<b>12.38</b>


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19. The RP as required under regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 certified that the contents of the resolution plan meets with the requirements of the IBC and the regulations thereto and that the resolution plan has been approved by the CoC in the manner prescribed under the IBC.
20. Further it is a well settled proposition of law that the commercial wisdom of COC are not open to judicial review thus the Adjudicating Authority cannot enquire into it. It is however reiterated that the Resolution plan in question meets the requirement specified in Sec 30(2) of the Code and the reasoned commercial decision of COC is neither discriminatory nor perverse.
21. In the facts as stated, this bench is satisfied that the requirements as per the Code and regulations have been complied with. Moreover, the Resolution Plan has been approved by 100% voting share of the members of COC by e voting in its 9<sup>th</sup> meeting held on and has been submitted in compliance of Sec 30 of the Code for approval. In view of the aforesaid discussions and as no infirmity have been brought out upon screening of the Resolution plan, this Adjudicating Authority hereby approve the Resolution plan under sub- section (1) of Section 31 of the Code.
22. This bench further directs that the Monitoring Agency shall comprise of one representative of COC, one from COC and the Resolution Professional and thus appointed persons to act as "Monitoring Agency" to monitor and supervise the implementation of the Resolution plan and the remuneration of the monitoring agency shall be on Rs. 1,50,000/- plus taxes and out of pocket expenses at actual.
23. The Resolution Applicant is allowed to remove and/or substitute the Monitoring Agency with prior approval of this Adjudicating Authority if the Monitoring Agency is unable to satisfactorily perform its responsibilities or breaches terms of its appointment.
24. It is directed that the resolution plan so approved shall be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. With the approval of the resolution plan, the moratorium order passed by

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this Tribunal under Section 14 of the Code shall cease to have effect. The Resolution Professional is directed to forward all the records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.

25. The Resolution applicant has to adhere to all the applicable law for the time being in force. The Resolution Applicant can seek clarifications, if any, from this Tribunal.
26. In view of the above discussion, the Resolution Plan submitted by Mr. Naveen Kumar Gupta as a lead member of Consortium of Maya Buildcon Pvt. Ltd, Geotech Homz Pvt. Ltd & Naveen Kumar Gupta, is hereby approved.
27. Accordingly, IA No. 371/2019 is allowed and stands **disposed of**.
28. With the above observations and directions all the pending applications stand disposed of as becomes infructuous.



**JUSTICE RAJESH DAYAL KHARE**  
**MEMBER (J)**

**Date: 14.07.2021**

Swati Gupta  
(LRA)