

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 146

IA/654(AHM)2021 in CP(IB) 497 of 2019

Order under Section 30 IBC,2016

IN THE MATTER OF:

Rajkumar Poddar RP of Vadraj Energy (Guj) Ltd

.....Applicant

.....Respondent

Order delivered on ..05/10/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)

Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

IA/654(AHM)/2021 in CP(IB) No. 497/7/AHM/2019

[An application under Section 30(6) of IBC, 2016 for approval of resolution plan]

**Mr. Raj Kumar Poddar
Resolution Professional of
Vadraj Energy (Gujarat) Ltd.**

Having address at:
1201/02 "D" Block, Ashok Towers,
Dr. S.S. Rao Road, Parel, Mumbai-400012

....Applicant

In the matter of:

Oriental Bank of Commerce.
(Now known as Punjab National Bank)

Having address at:
Harsha Bhawan, E-Block, Connaught Place,
New Delhi-110001, and Corporate office at
Plot No. 5, Sector-32, Institutional Area,
Gurugram-122001

....Financial Creditor

Versus

Vadraj Energy (Gujarat) Limited
(Formerly known as ABG Energy Gujarat Limited)

Having its Registered office at:
Survey No. 186, Village Mora Taluka-
Choryasi, Surat, Gujarat-394510

.... Corporate Debtor

Order reserved on : 27.09.2021
Order pronounced On : 05 .10.2021

Coram: MADAN B. GOSAVI, MEMBER (J)
VIRENDRA KUMAR GUPTA, MEMBER (T)

Appearance:

For the Applicant: Ld PCS Mr. Devrajan Raman a.w. RP in person

ORDER

[PER: VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. This application is filed by Resolution Professional under Section 30(6) r.w. Section 31 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC, 2016**") for approval of Resolution Plan.
2. The facts, in brief, are that the Corporate Debtor was admitted into CIRP vide order dated 08.01.2020 in CP(IB) 497 of 2019. Mr. Raj Kumar Poddar, having Registration No. IBBI/IPA-001/IP-P00339/2017-2018/10610 was appointed as IRP who collated the claims and constituted the COC comprising of State Bank of India, Punjab National Bank and Union Bank, having voting share of 41.35%, 35.18% and

23.47% respectively. In the 1st meeting of COC held on 13.02.2020, the COC resolved to appoint IRP as RP. The RP followed all the procedure in accordance with provisions of IBC, 2016 and Regulations made there-under. Form-G was published on 22.10.2020 wherein the last date of submission was 06.11.2020. Four EOIs were received out of which one was not eligible, being an NPA account as on the date of signing of the affidavit. The applicant has also sought extension of CIRP period of further 90 days beyond 180 days and exclusion of 314 days from this Adjudicating Authority. In 7th meeting of COC held on 11.01.2021, RP informed the COC that he received a request from prospective Resolution Applicant i.e., Alpha Alternatives Holding Pvt. Ltd. jointly with Algebra Endeavour Pvt. Ltd. to extend the last date for submission of plan. Thereafter, the prospective Resolution Applicant filed resolution plan but the same was not approved by the COC on some technical grounds. After rejection of Plan by COC, prospective Resolution Applicant filed an application before this Adjudicating Authority for non-consideration of plan by the COC. The Adjudicating Authority vide its order dated 12.07.2021, directed the

RP/COC to not proceed with the liquidation due to some technical grounds and also directed the prospective Resolution Applicant to submit the revised plan. The COC perused the revised plan of the Resolution Applicant and suggested for further modification. The COC in its 18th meeting held on 10.08.2021 approved the modified resolution plan received from Resolution Applicant i.e., M/s. Alpha Alternative Holding Pvt. Ltd. jointly with Algebra Endeavour Pvt. Ltd. The modified resolution plan was finally approved on 23.08.2021 with 100% voting share.

3. Learned PCS for the Applicant appeared and after narrating the above facts submitted that in the 7th COC of meeting held on 11.01.2021, RP informed that one EOI was received from prospective Resolution Applicant i.e., Alpha Alternatives Holding Pvt. Ltd. jointly with Algebra Endeavour Pvt. Ltd. to extend the timeline for submission of resolution plan. After extending the timeline, Resolution Plan was submitted by prospective Resolution Applicant but the same was rejected by the COC on some technical grounds. Being aggrieved by the decision of COC, the Resoluiton Applicant filed an application before this Adjudicating Authority wherein the

Adjudicating Authority vide its order dated 12.07.2021 directed the RP/COC to call the Resolution Applicant and allow him to re-submit resolution plan and also directed to not proceed with liquidation on technical grounds as liquidation is last resort. Thereafter, revised plan of Alpha Alternatives Holding Pvt. Ltd. jointly with Algebra Endeavour Pvt. Ltd was placed in 18th COC meeting held on 18.08.2021. After considering its feasibility and viability and other requirements specified by the CIRP Regulations, 2016, the same was approved by COC with 100% voting share on 23.08.2021.

4. It is submitted that the Office of the Collector of Electricity Duty filed an application bearing no. IA No. 70 of 2021 before this Adjudicating Authority seeking directions to the RP to admit their claim. The said application was allowed on 02.08.2021.
5. It is submitted that Resolution Professional could not appoint Transaction Auditor due to non-availability of Books of Account, secretarial records and other commercial records as the holding company of the Corporate Debtor viz Vadraj Cement Limited was under the liquidation and accounts of

Corporate Debtor and the holding company were managed by the same common computer system and all the aforesaid documents were under the custody of Liquidator of holding company who did not allow the RP to proceed for the Transaction Audit. It is also submitted by the Applicant that the valuation of the all assets of the Corporate Debtor were made on the direction of the Hon'ble high Court of Bombay due to obstruction by the Liquidator of holding company. Valuers made the valuation of all land, plant & Machinery and security and financial assets of the Corporate Debtor wherein Fair Value and Liquidation Value stand at Rs. 50,11,45,192/- and Rs. 34,22,46,797/- respectively.

6. It is submitted that the Successful Resolution Applicant has also filed an affidavit dated 15.12.2020 clarifying his status that he is not a related party of the Corporate Debtor and is eligibility to submit a resolution plan under Section 29A of IBC, 2016. The RP has also filed Form-H in compliance of Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
7. Learned PCS drew our attention to the Resolution Plan in detail. Based upon the contents of the Plan, it was submitted

that Resolution Plan approved by COC complies with all the provisions of Section 30(2) of IBC, 2016 and r.w. relevant regulations made there-under.

8. The amounts provided for the stakeholders under the Resolution Plan are as under:

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favor of the resolution plan	-	-	-	-
		(ii) who voted in favor of the resolution plan	601,35,54,145	593,68,95,085	*110,72,36,087	18.41%
		Total [(a)+(b)]	601,35,54,145	593,68,95,085	110,72,36,087	18.41%

*Note:-
Resolution value
Less CIRP expenses which may vary on actual basis
Less Operational Creditors including employees

Rs. 112,00,00,000
Rs. 1,11,00,221
Rs. 16,63,692

2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	-	-	-	-
		Total [(a)+(b)]	-	-	-	-
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i) Government	42,74,75,666	22,05,34,302	10,00,000	0.23%
		(ii) Workman	-	-	-	-
		(iii) Employees	43,97,689	22,98,960	-	-
		a) Within 12 Months	-	6,63,692	6,63,692	15.09%
		b) Beyond 12 Months	-	16,35,268	-	-
		(iv) (other than Workman and Employees and	2,81,52,655	1,13,63,918	-	-

		<i>Government Dues)</i>				
		<i>Total [(a)+(b)]</i>	46,00,26,010	23,41,97,180	16,63,692	0.36%
4	<i>Other debts and dues</i>	-	-	-	-	-
	Grand Total		647,35,80,155	617,10,92,265	110,88,99,779	17.13%

9. We have considered the submissions made by Learned PCS for the Resolution Applicant and perused the material available on record. It is noted COC, on 23.08.2021, through E-voting of its 18th meeting, approved the resolution plan with 100% voting right submitted by Resolution Applicant. It is also noted that Resolution Applicant is not a related party of the Corporate Debtor. Resolution Applicant has also filed an affidavit dated 15.12.2020 certifying his eligibility to submit a resolution plan under Section 29A of IBC, 2016. It is noted that an application under Section 43 of IBC, 2016 is pending. We have also perused the contents of the resolution plan and all document/compliance certificates as required under Section 30(2) of IBC, 2016 r.w. Regulations 36 to 39 of CIRP Regulations, 2016. Accordingly, we hold that the resolution plan complies with all the requirements of Section 30(2) of IBC, 2016. The Resolution Plan complies with all the applicable provisions. The total outstanding admitted claims

of all stakeholders stand at Rs. 617,10,92,265/- and Resolution Applicant has committed payment to them at Rs. 110,88,99,779/- which amounts to 17.13% of total outstanding debt. The resolution plan also contains provisions for its effective implementation and we as Adjudicating Authority are satisfied that the resolution plan so approved can be successfully implemented. The monitoring committee and supervisory committee as mentioned in the resolution plan shall be formed for effective implementation of the resolution plan.

10. As far as relief and concessions are concerned, the applicants have sought various reliefs, however, we grant relief and concessions in the following manner and to this extent only:

I. After the payment of the dues to the all stakeholders as per the resolution plan all the liabilities of the said stakeholders shall stand permanently extinguished after the approval of the resolution plan. We further hold that other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We

further hold that contingent/unconfirmed dues shall also stand extinguished.

- II. On the effective date, all claims of the suspended management, erstwhile directors, and erstwhile shareholders shall stand permanently extinguished.
- III. On the effective date and with effect from the appointed date, all encumbrances, security interest, liens on the assets of the Corporate Debtor prior to the plan shall stand permanently extinguished on completion of procedural formalities as provided in Companies Act, 2013.
- IV. For reliefs and concessions sought from the Government/Statutory Authorities, we direct the Resolution Applicant to approach the concerned Authorities who shall decide the issues under the respective statutes.
- V. As regard to relief prayed under various provisions of Income Tax Act, 1961, the Corporate Debtor/Resolution Applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by

the Resolution Applicant in accordance with the provisions of Income Tax Act, 1961.

- VI. Prayer as regard to exemption for ineligibility to the Resolution Applicant or its affiliates or connected person under Section 29A of IBC, 2016 which may arise on account of implementation of this resolution plan, we hold that this may be considered at appropriate time in terms of provisions of law and particularly under Section 29A of IBC, 2016 when the situation so arises. Hence, this prayer of the Resolution Applicant cannot be granted as of now and therefore, stands rejected.
- VII. Prayer regarding assignment of land owned by Vadraj Cement Limited, we hold that it is not connected with the Corporate Debtor and it can be pursued independently by the owner of the land, holding company of the Corporate Debtor. Accordingly, we reject this prayer and decline to express any opinion on this prayer.
- VIII. The Resolution Applicant shall be entitled to review, revise or terminate any appointments/agreements entered into by or on behalf of the Corporate Debtor in

accordance with the terms and conditions of such agreements/MoUs/contracts;

IX. The RP shall complete the accounting entries to give effect to the resolution plan in the Books of Account as per the applicable Accounting Standards and provisions of the Companies Act, 2013.

X. The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the Resolution Applicant for proper running operations of the business of the Corporate Debtor.

XI. The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution.

XII. The Resolution Applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtained the necessary approvals 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 the Adjudicating Authority under Section 31 or within such period as provided for in such law, whichever is later, as the case may be.

- XIII. All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the resolution plan as regard to the restructuring of capital shall be binding on them. This order shall be treated as evidence of compliances of all formalities as may be required in this regard under the provisions of the Companies Act, 2013.
- XIV. On the effective date and with effect from the appointed date, the entire existing share capital of the Corporate Debtor shall stand extinguished without any payment (including any cancelled value of the said equity shares or preference shares) to shareholders of the Corporate Debtor holding such existing share capital. The Resolution Applicant would be entitled to issue new equity share capital in accordance with the provisions of Companies Act, 2013 r.w. rules and regulations made there-under.
- XV. We further hold that avoidable transactions in the form of preferential or undervalued or extortionate credit and fraudulent transactions pending on the date of approval of plan shall be pursued by the Resolution Applicant and

recovery proceeds, if any, shall be distributed among all stakeholders in terms of provisions of Section 53 of IBC, 2016.

11. Apart from the above observations and directions, it is further directed that:

- I. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- II. The order of moratorium dated 08.01.2020 passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this order.
- III. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).
- IV. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

12. Accordingly, IA/654(AHM)2021 in CP (IB) No. 497 of 2019 is allowed and stands disposed of in terms of the above directions.

13. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Dated this the 5th day of October, 2021

Rajeev K Sen/Stenographer