

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH : COURT-IV

IA-1186/2020  
in  
C.P.(IB)-1712(MB)/2019

Under Section 30(6) of the Insolvency and  
Bankruptcy Code, 2016.

*Application moved by:*

**Minita D. Raja**

...Resolution Professional

*In the matter of*

**Vidarbha Diagnostics Pvt. Ltd.**

...Financial Creditor

Vs.

**Vijay Engineering Enterprises Pvt. Ltd.**

...Corporate Debtor

Order Pronounced on : **02.05.2023**

*Coram:*

Hon'ble Shri Kishore Vemulapalli : Member (Judicial)

Hon'ble Shri Prabhat Kumar : Member (Technical)

*Appearances:*

For the Applicant : Ms. Ami Jain, Advocate.  
Ms. Minita Raja, RP in person

**ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. This Application has been filed on 18.07.2020 by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'the Code') on behalf of the Committee of Creditors seeking approval of the Resolution Plan submitted by the Successful Resolution Applicant and approved by 100% of the voting share of the members of the Committee of Creditors (hereinafter referred to as 'CoC') of the Corporate Debtor viz. Vijay Engineering Enterprises Private Limited [CIN: U51503MH2001PTC132334] (hereinafter referred to as 'Corporate Debtor').
2. The facts leading to the Application are as under:
  - i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated vide an order dated 09.08.2019 of this Court in C.P.(IB)-1712(MB)/2019 on an application filed by Vidarbha Diagnostics Pvt. Ltd. (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code 2016. Ms. Minita Dhirajlal Raja (Reg. No.: IBBI/IPA-001/IP-P00635/2017-18/11088) was appointed as Interim Resolution Professional (IRP), who was confirmed as RP in the first CoC meeting held on 09.09.2019. The Applicant made a public announcement in the newspapers in Form-A on 18.08.2019 inviting claims from the creditors, workers/employees of the Corporate Debtor and from government bodies. IRP constituted the Committee of Creditors (CoC) based on the

claims received by her and the first meeting of the CoC held on 09.09.2019.

- ii. Form G was issued on 30.12.2019 inviting Expression of Interest for submission of Resolution Plan for which two (2) Expression of Interest (EoI) were received, Information Memorandum was shared to the eligible Resolution Applicant on 29.01.2020, the last date for submission of the resolution plan was 29.02.2020, which was extended to 11.03.2020 in the fifth CoC meeting held on 29.02.2020. The Prospective Resolution Applicant submitted the Resolution Plan on 11.03.2020. However, due to the pandemic situation, the Central Government declared lockdown which halted further progress in the matter. Earliter, the CIRP period was extended by 90 days by the Adjudicating Authority vide order dated 24.02.2020 in MA-21/2020 and the last date of CIRP was 04.05.2020. RP filed one IA-1360/2020 seeking exclusion of period on account of lockdown which was withdrawn on 16.11.2021 stating that fresh IA will be filed for appropriate days of exclusion from the CIRP period. RP filed another IA-1456/2022 seeking exclusion of 77 days from the CIRP period, which was allowed vide order dated 27.06.2022. As 77 days excluded from the CIRP period up to 04.05.2020, the period gets extended to 20.07.2020.
- iii. Upon request from the RP, the Resolution Applicant submitted revised resolution plan on 06.07.2020, which was considered by the CoC at the meeting held on 10.07.2020 and approved by 100% voting share. The RP submits that the resolution plan submitted by **Dr. Sudhir Neral** is compliant with the various provisions of the Code and CIRP

regulations. Therefore, RP states that the Resolution Plan approved by the CoC is in compliance with the requirements of Section 30(2) of the Code.

vii. As per the RP, the Fair Value and Liquidation Value determined by the registered Valuers are as follows:

Fair Value ₹84,09,257.00 (average)

Liquidation Value ₹81,47,030.50 (average)

viii. In the circumstances mentioned hereinabove, the Applicant has filed Application seeking approval of this Tribunal on the resolution plan, submitted by the Resolution Applicant i.e. **Dr. Sudhir Neral**, stating that the plan is in accordance with the Section 30(2) and other provisions laid down under the Code.

3. The Resolution Applicant viz. Dr. Sudhir Neral is a Director of Vidarbha Diagnostics Pvt. Ltd., which is a company engaged in the business of providing healthcare diagnostic services, incorporated at Nagpur in November 2014 [CIN: U85110MH2004PTC149647] having office at Gr. Floor, Plot No. 12, Near Land Mark, Wardha Road, Nagpur. The Resolution Applicant confirmed that it is eligible to submit Resolution Plan as per Section 29A of Insolvency and Bankruptcy Code.

4. The Resolution Applicant has confirmed that -

- i. its connected persons are not convicted for any offence punishable with imprisonment for two years or more;
- ii. not disqualified under Companies Act, 2013 to act as a Director.
- iii. not identified as a willful defaulter by any bank or financial institution

or consortium thereof in accordance with the guidelines of the Reserve Bank of India.

- iv. not debarred from accessing to, or trading in securities markets under any order or directions of the Securities and Exchange Board of India.
- v. Not been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code.

## 5. Resolution Plan for the Corporate Debtor:

### 5.1 Summary of the Financial Proposal

The Resolution Applicant has proposed to take-over the management and ownership control of the Corporate Debtor by acquiring 100% ownership of the Company in the manner specified in the Resolution Plan. The Resolution Applicant proposes a total consideration of ₹1,03,22,417/- (Rupees One Crore Three Lakh Twenty-two Thousand Four hundred Seventeen only) to all the stakeholders to be paid within a period of 15 months from the effective date of this resolution plan.

### 5.2 The structure of the payment to the stakeholders under the Resolution Plan is as under:

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided	Amount Provided to the
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					under the Plan#	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	Nil	Nil	Nil	Nil
		(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	Nil	Nil	Nil	Nil
		<b>Total[(a) + (b)]</b>	<b>Nil</b>	<b>Nil</b>	<b>Nil</b>	<b>Nil</b>
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	<b>1,202.45</b>	<b>1,162.32</b>	<b>23.25</b>	<b>1.93%</b>
		Creditors not having a right to vote under sub-section (2) of section 21( <b><u>who have not filed the claims</u></b> )	-	-	4.69	
		(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	Nil  41.56	Nil  41.56	Nil  2.08	Nil  5%

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		<b>Total[(a) + (b)]</b>	<b>1244.01</b>	<b>1203.88</b>	<b>30.02</b>	
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	0.08	
		(b) Other than (a) above:				
		(i)Government	3956.87	1148.62	33.86	0.86%
		(ii)Workmen			0.02	
		(iii)Employees			0.56	
		(iv) Other Operational Creditors	3948.78	252.22	5.04	0.13%
		Other Operational Creditors (who have not filed claim)	-	-	3.64	
		<b>Total[(a) + (b)]</b>	<b>7,905.65</b>	<b>1,400.84</b>	<b>43.21</b>	
4	Other debts and dues		-	-	-	
<b>Grand Total</b>			<b>9,149.66</b>	<b>2,604.72</b>	<b>73.22</b>	

**Timeline for the payment:**

Payment as per Plan	Financial Creditors	Unsecured FC	Operational Creditors	Salaries & Wages	Op.Cr- Others	Total Amount
Within 3 M	-	-	1,350,631	20,104	129,265	1,500,000
Within 6 M	-	-	1,350,631	20,104	129,265	1,500,000
Within 9 M	12,390	166,585	1,189,478	17,705	113,841	1,500,000
Within 12M	103,845	1,396,155	-	-	-	1,500,000
Within 15M	91,551	1,230,866	-	-	-	1,322,418
<b>Total</b>	<b>207,787</b>	<b>2,793,606</b>	<b>3,890,740</b>	<b>57,914</b>	<b>372,371</b>	<b>7,322,417</b>

5.3 **CIRP Costs:** It is being paid in full and out of the existing current assets of the Corporate Debtor. However, if any additional sums are required towards the same as per the provisions of the Code and as approved by the Committee of Creditors, the same shall be brought in by the RA. Such CIRP costs will be paid in priority to other creditors.

The provision for the CIRP cost in the Plan is ₹30,00,000/-.

- a) In accordance with Regulation 38(1)(a) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process Corporate Persons), it is required to be paid in priority to other creditors and the CIRP Cost will be paid in priority to all other creditors.
- b) Payment of CIRP Costs will be ₹30,00,000/- or actuals whichever is higher (as determined by RP) in priority to Payment to Operational Creditors and Secured Financial Creditors and any CIRP costs over and above ₹30,00,000/- will be brought in by RA.

### 5.2 *Effective Date*

The Effective Date of the Resolution Plan shall be the date when the Resolution Plan is approved by this Tribunal.

### 5.3 *Term of Resolution Plan*

This Resolution Plan is valid for a term of Fifteen (15) months till all the payments are made to all the stakeholders as per the terms and conditions of the Resolution Plan. The obligations of the Resolution Applicant to implement the Resolution Plan shall become effective only from the Effective Date.

The Resolution Plan shall become binding on the Corporate Debtor and its employees, members, creditors, guarantors, Central Government, any State Government, any local authority and other stakeholders involved in the Resolution Plan on the Effective Date.

5.4 The Resolution Applicant has sought various reliefs and concessions as set out in the Resolution Plan.

5.5 The Applicant has submitted that the Resolution Plan, submitted by Dr. Sudhir Neral and approved with 100% voting of the members of the Committee of Creditors, has been examined and the Resolution Plan -

- a. provides for payment of Insolvency Resolution Process Costs in a manner specified by the board in priority to the payment of other debts of Corporate Debtor;
- b. provides for payment of the debts of the Operational Creditors in such manner as specified by Regulation 38(1) of the IBBI (Insolvency Resolution Process for Corporate Persons Regulations) 2016;
- c. provides for management of the affairs of the Corporate Debtor after the approval of the Resolution Plan; and
- d. does not contravene any of the provisions of the law for the time being in force.

6. The Applicant/Resolution Professional further submits that -

6.1 The application seeking approval of Plan of the Bench is filed before the expiry of the period of CIRP provided in Section 12 of the Code, as this Bench had granted an extension in the CIRP period vide its order dated

24.02.2020 and exclusion vide order dated 27.06.2022 thereby the period of CIRP ends on 20.07.2020. Therefore, the Application filed within the valid period of CIRP.

6.2 The Applicant has filed application along with Form 'H' prescribed under Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and has appended a tabular summary of Applicant's determination of compliance of the Resolution Plan with various provisions and regulations under the Code and CIRP Regulations.

The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Clause 1	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	NA	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Annexure4	Yes
Section 30(2)	Whether the Resolution Plan-  (a) provides for the payment of insolvency resolution process costs?	6.1(i) entire CIRP cost has been met out of the funds of cd till the date of filing of application .  6.1(v)	Yes

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	(b) provides for the payment to the operational creditors?	Also an email undertaking has been received by RP from RA to pay 100% of Provision for dues for wages , the same would be paid over & above the liquidation value.	Yes
	(b) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	N.A	Yes / NA
	(c) provides for the management of the affairs of the corporate debtor?	Chapter 3 & 7	Yes
	(d) provides for the implementation and supervision of the resolution plan?	Chapter 7	Yes
	(e) contravenes any of the provisions of the law for the time being in force?	Annex. 3B	No, save and except as detailed in NOTE TO CLAUSE 11
Section 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 Chapter 7	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	Yes, filed on 9 <sup>th</sup> July, 2020 but could not be filed within the timeline	Yes

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Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	6.1(v) Also Ra Has provided Email to that Effect	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	7.5	Yes
Regulation 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?	Mention in Resolution plan & also undertaking received annexure 3b	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Chapter 3 & 7	Yes
38(3)	Whether the resolution plan demonstrates that –  (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	1, 2 & 3	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Rs 1500000/- Received as Performance Security . Copy of Bank Statement Attached as Annexure 1 to form H	

7. During the course of hearing, Ld. Counsel for the Resolution Applicant submitted that during the pendency of this Application, the CIRP cost had gone up exorbitantly, which is estimated to create additional liability of ₹52,91,510/- and as per Resolution Plan, the RA is under obligation to pay such costs in actuals. The Resolution Professional apprised this Bench that since filing of this Application, there have been certain recoveries and restitution of land parcel, which is outside the Resolution Plan. The total value such asset is stated to be ₹39,09,520/-. Accordingly, the Resolution Professional was directed to seek approval of CoC if additional CIRP cost can be appropriated from such recoveries. Pursuant to the directions sought from CoC, the Resolution Professional filed an IA-1336/2023 confirming the approval of CoC for such appropriation and prayed in this IA for utilizing a sum of ₹14,51,520/- lying in the escrow account with the RP towards payment of unpaid CIRP cost amounting to ₹17,65,128.20 and utilization of balance amount of ₹3,13,608.20 lying in escrow account and amount of such CIRP cost already funded by financial creditor amounting to ₹24,85,441/- from the proceeds of land recovered vide order dated 19.05.2021. This bench feels that amount recovered pursuant to order of Adjudicating Authority confirming avoidance transaction goes to financial creditors in case their claim is not settled in full. The Financial Creditor has consented to such appropriation. In view of the same, this Bench **allows** this IA-1336/2023.
8. The Resolution Plan submitted by **Dr. Sudhir Neral** is hereby **approved**. The Resolution Plan shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State

Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

- 8.1 The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- 8.2 The moratorium under Section 14 of the Code shall cease to have effect from this date.
- 8.3 The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably in every quarter.
- 8.4 The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. Further, any application for renewal or extension or restoration of any license or approval or connection from any authority shall be subject to payment of prescribed fee and/or deposit(s) and adherence to the procedure stipulated by such authority, however such authority shall not refuse/deny

approval/extension/restoration merely on ground of previous defaults/non-compliance of the Corporate Debtor.

- 8.5 In terms of the judgement of Hon'ble Supreme Court in the matter of *"Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited"*, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan."

*"95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;*

*(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;*

*(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the*

*adjudicating authority grants its approval under Section 31 could be continued."*

- 8.6 In view of the above judgement, the applicant is entitled to waivers/ concessions/reliefs as expressly provided under the Code and under any other law for the time being in force.
- 8.7 The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- 8.8 The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
10. With the above directions, the Resolution Plan of the Applicant is approved by this Bench and accordingly IA-1186/2020 is **allowed**. IA-1336/2023 is also **disposed** of, accordingly.

Sd/-

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

Sd/-

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**

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