

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
COURT No. IV, NEW DELHI

Company Application No. 175 (ND)/ 2019
IN
Company Petition No. (IB)-821(ND)/2018

IN THE MATTER OF:

MR. HEMANT GUPTA

...Applicant/Resolution Professional

AND

M/S JASPER ENGINEERS PRIVATE LIMITED

...Corporate Debtor

**FOR APPROVAL OF THE RESOLUTION PLAN UNDER
SECTION 31 OF THE INSOLVENCY AND BANKRUPTCY
CODE, 2016**

Judgment delivered on: 17.09.2019

Coram: DR. DEEPTI MUKESH, MEMBER (J)

SH. HEMANT KUMAR SARANGI, MEMBER (T)



For the Applicant: Mr. Naveen Kumar, Adv.
Ms. Anu Kadian, CS
For the IRP: Mr. Hemant Gupta, Adv.
For the RP: Mr. Hemant Gupta, Adv.
For the Respondent: Mr. Vipin Singh, Adv. with
Mr. Arvind Mathur

ORDER

DR. DEEPTI MUKESH, MEMBER(J)

1. This is an application filed by the Resolution Professional Mr. Hemant Gupta, 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 necessary for disposal of the present application are as follows: -

One of the Operational Creditor, namely, Mr. Shanti Lal Jain (Sole Proprietor of M/s Jainsons (India)) had preferred an application under Section 9 of the Code for initiation of corporate resolution process against M/s Jasper Engineers Private Limited ("Corporate Debtor"). The application was admitted on 05th September 2018 imposing moratorium under Section 14 of the Code and the applicant, Mr. Hemant Gupta was appointed as the Interim Resolution Professional.

3. Thereafter, public announcement in Form A for 'expression of interest' as prescribed under Regulation 6 of the Regulations in English and vernacular newspapers was published on 10th September 2018, respectively intimating commencement of Corporate Insolvency Resolution Process of the Corporate Debtor and for calling the creditors to submit their claims along with the proof in the prescribed format.



4. The First Meeting of COC was held on 06th October 2018, wherein the applicant Mr. Hemant Gupta, 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. The applicant Resolution Professional had engaged two registered valuers M/s Crest Capital and M/s Sapient Services Private Limited under Regulation 27 of the Regulation, to determine the Fair value and Liquidation value of the corporate debtor in accordance with regulation 35. It is submitted in Form H that the date of appointment of registered valuers was 19th November, 2018 and as per the average valuation, the fair value has been evaluated for 493.28 Lakhs and the liquidation value of the corporate debtor was assessed for Rs. 347.26 Lakhs.
6. The Resolution Professional had prepared the information memorandum and invited resolution plans from the prospective resolution applicants. In response to such



invitation, the Resolution Professional had received the resolution plan from the following two applicants:

- (a) M/s JDS Finance Company Limited
- (b) M/s KMG Industrial Traders Private Limited

7. It is submitted that CoC in its 3rd meeting held on 24th December 2018 decided to extend the date of submission of 'expression of interest' to have healthy competition and to allow maximum number of applicants to submit EOI, an extension was sought for extending the CIR Process for a further period of 90 (ninety) days which was allowed on 12th March, 2019.

8. Upon extension of timelines of submission of EOI, the Resolution Professional had received the resolution plan from the following two more applicants:

- (a) M/s BCH Electric Limited
- (b) M/s Garg Traders

9. It is submitted that the Applicant Resolution Professional verified the resolution plans under Section 30 (2) of the



Code and presented the same before the Committee of creditors for their consideration. The Committee of creditors in its 5th (fifth) held on 24th February 2019, deliberated and discussed the resolution plans submitted by the abovementioned 4 resolution applicants. Additional time was granted to all the 4 resolution applicants to incorporate the suggestions communicated by the Committee of creditors and accordingly to submit the revised resolution plans.

10. Subsequently, the Committee of creditors in its 7th (seventh) meeting dated 7th May 2019 approved the resolution plan submitted by M/s BCH Electric Limited by a majority vote of 100%. The Committee of creditors concluded that the resolution plan submitted by M/s BCH Electric Limited was commercially superior than the resolution plan submitted by M/s KMG Industrial Traders Private Limited.

11. The list of financial creditors of the corporate debtor, distribution of voting share amongst them and the result of



voting concluded in 7th CoC meeting held on 7th May, 2019
are enumerated as under:

Sl. No	Name of Creditors	Voting Share (%)	Voting for Resolution Plan (Voted for/Dissented/Abstained)
1	Bank of India	93.32 %	Voted for Resolution Plan
2	Amit Industries Private Limited	5.46%	Voted for Resolution Plan
3	Bhavna Goel	1.18%	Abstained from the meeting. Later voted for Resolution plan through e-voting

12. Post approval of the M/s BCH Electric Limited's resolution plan by the Committee of Creditors, an application being CA-175(ND)/2019 was filed on 23rd May, 2019 under Section 30(6) of the Code read with Regulation 39 of the CIRP Regulations for seeking approval of the resolution plan. Resolution Professional also filed the compliance certificate in Form H as prescribed under Regulation 39 (4) of the CIRP Regulations, which was introduced by the Insolvency and Bankruptcy Board of India vide notification IBBI/2018-19/GN/Reg 031 dated July 3, 2018 with effect from July 4, 2018.



13. Admittedly the Resolution Plan was approved by the CoC with a majority vote of 100 percent. In terms of Section 30 (6) of the Code the resolution professional has submitted the Resolution Plan, passed with requisite majority by the CoC and has prayed for its approval. The Resolution Applicant M/s BCH Electric Limited has also submitted an affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit Resolution Plan.

14. Adjudicating Authority is not expected to delve into the commercial wisdom and decision of the CoC nor should it examine/deal with the technical complexity and merits of Resolution Plan unless it is found contrary to express provision of law and goes against the public interest or in any manner in non-compliance of any of requirements of Section 30(2) of the Code. The object of the Code is to promote resolution subject to compliance of provision of Code with view to protect the interest of the stakeholders and maximization of assets.



15. While accepting the Resolution Plan, it should be ensured that it is advantageous to all the stake holders and amounts to maximisation of the assets of the Corporate Debtor and promotes entrepreneurship and to ensure that the Company continue to function as a going concern. The right of rejection or approval of a plan is with the CoC. In a particular case, what should be the percentage of claim amount payable to one or other 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor' can be decided by the Committee of Creditors based on facts and circumstances of each case. The Adjudicating Authority is only required to supervise whether the plan approved by CoC meets the requirements as referred to in sub-section (2) of Section 30 of the Code, or not and eligibility conditions of proposed resolution applicant are fulfilled or not.

16. Hon'ble NCLAT in the case of Darshak Enterprise Pvt Ltd Chhaparia Industries Pvt. Ltd & Ors. Passed in Civil Appeal (AT) (Ins) No.327 of 2017 has held that:

"In absence of any discrimination or perverse decision, it is not open to the Adjudicating Authority or the Appellate Tribunal to modify the plan."



17. Resolution Professional has submitted that the amounts provided for the stake holders under the resolution plan approved by the CoC with 100% voting share is as under:

(Amount in Rs. Lakhs)

Sl. No	Category of Shareholder	Amount claimed	Amount admitted	Amount provided under the plan#	Amount Provided to the Amount Claimed (%)
1	Secured Financial Creditor*	622.47	622.47	435.73	70%
2	Unsecured Financial Creditors - Unrelated	44.27	44.27	30.99	70%
3	Unsecured Financial Creditors- Related parties	89.80	54.50	-	-
3	Operational Creditors	283.72	190.23	67.98	35.73%
	Government	-	-		
	Workmen	7.22	6.66	6.66	100%
	Employees- Unrelated	20.33	19.06	19.06	100%
	Employees- Promoters	61.45	47.12	-	-
4	Other Debts and Dues- Related parties	122.10	51.30	-	-
	TOTAL	1251.36	1035.61	560.42	
	IRP Cost	19.81	19.81	19.81	
	Total amount provided in the Resolution Plan	1271.17	1055.42	580.23	



18. It is thus seen that as per the liquidation value of the corporate debtor and the waterfall mechanism provided under Section 53 of the Code, no amount would be liable to be paid to persons other than resolution process cost, secured creditors and wages to workmen. However as per compliance certificate of Resolution Professional, Rs. 67.98 lakhs (35.73%) has been kept for operational creditors and Rs. 466.72 Lakhs (70%) has been provided for financial creditors. It is no longer *res-integra* that there is an intelligible differentia between the FCs and OCs and such classification between FCs and OCs is neither discriminatory nor arbitrary nor violative of Article 14. The provisions made in the Resolution Plan in favour of the operational creditors is more than the amount which the operational creditors could have received in the event of liquidation of the corporate debtor.

19. Spirit of the Code encourages resolution as against liquidation. Resolution is the rule; whereas liquidation is to be an exception. The object of the Code is to promote resolution and every effort must be made to try and see that



resolution is made possible specially when CoC has passed the resolution Plan with 100% voting share and an application for approval of said Resolution plan is placed before us.

20. Hon'ble Supreme Court of India in the matter of *K. Sashidhar Versus Indian Overseas Bank & Ors., in Civil Appeal No.10673 of 2018 decided on 05.02.2019*, has held that:

“ The scope of enquiry and the grounds on which the decision of “approval” of the resolution plan by the CoC can be interfered with by the adjudicating authority (NCLT), has been set out in Section 31(1) read with Section 30(2) and by the appellate tribunal (NCLAT) under Section 32 read with Section 61(3) of the I&B Code. No corresponding provision has been envisaged by the legislature to empower the resolution professional, the adjudicating authority (NCLT) or for that matter the appellate authority (NCLAT), to reverse the “commercial decision” of the CoC muchless of the dissenting financial creditors for not supporting the proposed resolution plan. Whereas, from the legislative history there is contra indication that the commercial



or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority.”

21. It is thus clear that the judicial scrutiny of the approved resolution plan can only be done within the parameters of Section 30 (2) and Section 31 (1) of the Code.

22. Section 31(1) & (2) of the Code deals with the approval or rejection of the resolution plan by the Adjudicating Authority as approved by the CoC. Before approving the Resolution Plan, the Code mandates the Adjudicating Authority to ensure that:

(A) the Resolution Plan meets the requirements of Section 30(2) of the Code and

(B) the resolution plan has provisions for its effective implementation, as laid down in proviso to Section 31(1).

In respect of compliance of point (A) above, sub-section 2 of Section 30 casts duty on the Resolution Professional to examine the resolution Plan received by him to confirm that such Resolution Plan provides for the payment of insolvency



resolution process costs, provides for the payment of the debts of the operational creditors in such manner as may be specified, provides for the management of the affairs of the corporate debtor after approval of the Resolution Plan; the implementation and supervision of the Resolution Plan, that the Resolution Plan does not contravene any of the provisions of the law, and that the Resolution Plan conforms to such other requirements as may be specified by the Board.

23. In compliance of the said provision, the Resolution Professional has filed compliance certificate in Form H and *inter alia* has confirmed that he has examined and verified the Resolution Plan approved by the CoC, in the light of the requirements of the Code and Regulations and that it is compliant to the relevant provisions of the Code and Regulations.

24. Further in terms of Section 31(1) of the Code, Adjudicating Authority has also to examine whether the requirements of sub-section (2) of Section 30 have been complied with or not. It has been submitted in the application that the final



Resolution Plan approved by the CoC meets the requirements laid down in various clauses of Section 30 (2) of the Code.

25. In respect of compliance of Section 30(2)(a) there is provision in the resolution plan as at Clause 5.4 (a), which provides for payment of CIRP costs in priority over payments to any other creditors. The clause *inter alia* provides that each holder of such priority claim shall be unimpaired under the Resolution Plan and would be paid CIRP Costs (estimated at INR 2.0 Crores) in full as per the prevailing Code and CIRP Regulations from the Effective Date prior to payments to all other Creditors. The Resolution Professional has confirmed in the compliance certificate given in Form H that the Resolution Plan provides for the payment of Insolvency Resolution Process costs.

26. Therefore Section 30(2)(a) stands satisfied and it is made clear that Insolvency Resolution Process cost shall be paid in its entirety by the resolution applicant in priority to other debts of the corporate debtor. As per Section 30(2)(b) of the Code, the Resolution Plan must provide for the payment 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. In this connection Regulation 38(1) of CIRP Regulations provides for payment to the operational creditor in priority to the financial creditors.

27. In regard to the aggregate amount owed to Operational Creditors (including statutory authorities and regulatory authorities and dues towards employees and workmen) as admitted by the Resolution Professional, the Resolution plan provides an amount of Rs. 67,98,000/- (Rupees Sixty-Seven Lakhs and Ninety- Eight Thousand only) shall be paid in priority to any payment made to Financial Creditors however but not later than 30 days of Closing date. Further Rs. 25,72,000/- (Rupees Twenty- Five Lakhs and Seventy- Two Thousand only) is stipulated to be paid to workmen and employees within 30 days of approval of plan by Hon'ble Adjudicating Authority in priority over Financial creditors. The distribution of amount provided amongst Operational Creditors will be in a pro-rata basis to the number of claims admitted by the Resolution Professional as disclosed in



Resolution Professional's documents. Any other additional claims that may be admitted by the competent judicial authority, shall be paid on similar basis as above. The Resolution Professional has confirmed in the compliance certificate given in Form H that the payment to Operational Creditors have been given priority over payment to Financial Creditors. Therefore Section 30(2)(b) read with Regulation 38(1)(b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 stands satisfied.

28. In terms of Section 30(2)(c), the Resolution Plan provides for management of affairs of the corporate debtor after approval of the Resolution Plan. The term of Plan and its implementation schedule as per Regulation 38(2)(a) has been provided for at Clause 6 of the Resolution plan which provides that the Company shall continue as a going concern and operate in its normal course of business upon implementation of the Resolution Plan. The Resolution Professional has confirmed in the compliance certificate given in Form H that section 5 and 6 of the Resolution Plan provides for the



management and control of the business of the corporate debtor.

29. The last but not the least, Section 30 of the Code provides to ensure that the Resolution Plan does not contravene any of the provisions of the law and conforms to such other requirements as may be specified by the Board. Clause 9 of the Resolution Plan covers compliance with various provisions of laws currently in force. The Resolution Applicant agrees to comply with all applicable laws under the proposed Resolution Plan, whether or not specifically provided herein.

30. It is pertinent to state here that Section 29A of the Code prescribes certain eligibility criteria and disqualifications for persons who submit a resolution plan. Resolution applicants have given adequate declaration and undertaking on their eligibility to submit the Resolution Plan. Resolution Professional has also certified that he has verified that the Resolution Applicant and the persons in management and control of the company and the other 'Connected Persons' are eligible to submit resolution plan and does not fall under any



of the category as mentioned in Section 29A as inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2017.

31. The Resolution Professional has stated to have examined the Resolution Plan and has confirmed that the Resolution Plan has been approved by 100 % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the Code and CIRP Regulations. Resolution Professional has further certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

32. Regulation 36B(4A) of the CIRP Regulations requires that the Resolution Applicant shall provide a performance security. In view of Regulation 36B(4A) of the CIRP Regulations, the Committee of creditors have approved an amount of Rs. 58,02,299/- (Rupees Fifty- Eight Lakhs Two Thousand Two



Hundred and Ninety-nine only) as a performance security to be deposited by M/s BCH Electric Limited.

33. Accordingly, in compliance of Regulation 36B(4A) of the CIRP Regulations, the successful Resolution applicant has submitted a bank guarantee of Rs. 58,02,299/- as performance security as per the following details: -

Date of issuance of Bank Guarantee- 16.05.2019

Name of Issuing Bank- Punjab National Bank

Amount of Bank Guarantee- Rs.58,02,299/-

Period of Bank Guarantee- Valid upto 15.11.2019

34. As a sequel to aforesaid discussions we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provisions of the law at present in force has been contravened.

35. It is relevant to note here that 'Explanation' in sub-section (2) of Section 30 provides *deemed approval of shareholders* for implementations of actions under the Resolution Plan, making it clear that it shall not be a contravention of law.



36. In respect of reliefs and concession sought for in the Plan which are beyond the jurisdiction of this Tribunal, Monitoring agency along with the Resolution Applicant can make such claim before the authorities which shall be considered in accordance with law. Besides under sub-section (4) of Section 31 the resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval 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 sub-section(1) or within such period as provided for in such law, whichever is later.
37. 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.
38. In the facts we are satisfied that the requirements as per the Code and regulations have been complied with. Moreover, the Resolution Plan has been approved by the requisite majority of the members of 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.

39. In absence of any discrimination or perverse decision, it is beyond purview of 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 technicality 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 in view of the plan offering higher value than liquidation,



the maximization of assets is endeavored to be achieved which falls in the line to achieve the object of the Code.

40. In view of the finding that the resolution plan, as approved by the requisite majority of members of 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.
41. The resolution applicant shall appoint a 'Monitoring Agency' with modification that Resolution Professional shall be appointed as 'Monitoring Agency' to monitor and supervise the implementation of the Resolution Plan. We also grant Liberty to the monitoring Agency to apply to the Tribunal for any further direction in order to ensure effective implementation of the plan, if such a necessity arises.
42. It is hereby declared that the Resolution Plan is binding on the corporate debtor, members, employees and workmen of



the corporate debtor, creditors of the corporate debtor and other stakeholders involved in the Resolution Plan.

43. The resolution applicant shall obtain the necessary approval required under any law for the time being in force within a period of one year from the date of this order or within such period as provided for in such law, whichever is later.
44. The Resolution applicant has to adhere to all the applicable law for the time being in force.
45. Approval of Resolution Plan shall confer change in management and ownership of the corporate debtor and the entire control of the Corporate Debtor shall vest with the new management. The RP is directed to hand over all records, assets, paper & proceedings and all other belongings of Corporate Debtor to the Resolution applicant within 7 days without any demur.
46. We hereby exclude the period spent under adjudication and it is declared that the moratorium order passed by this



Bench under Section 14 of the Code shall cease to have effect from the date of this order.

47. 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.
48. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
49. C.A. 175 (ND) 2019 and CP No. (IB) 821 (ND)/ 2018 along with all pending applications moved by various Operational Creditors are disposed of accordingly.

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

Sd/-

(SH. HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)

FREE OF COST COPY



सहायक पंजीयक
18/09/19
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
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