IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI BENCH
COURT III

I.A. No. 2714/2021 filed in IB-581(ND)/2020 under Section 30(6), of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of IBBI (CIRP) Regulations

In the matter of **ARYAVIR BUILDCON PRIVATE LIMITED (CD)**

Mr. Shashi Kant Nemani,
Resolution Professional
Aryavir Buildcon Private Limited ... *Applicant*

delivered on: 23.11.2021

CORAM:

Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)

Shri Narender Kumar Bhola
Hon'ble Member (Technical)

For Resolution Professional: Ms. Varsha Benerjee (Advocate)
For Objector: Ms. Eshna Kumar (Advocate)

ORDER

Per: NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

1. The Resolution Professional has filed the instant application under section 30(6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC") r/w Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations (hereinafter referred as

"IBBI (CIRP) Regulations, 2016), in IA No. 2714/2021 for seeking approval of Resolution Plan under section 31(1) of IBC in the matter of Aryavir Buildcon Private Limited (hereinafter referred as "Corporate Debtor")

2. Mr. Shashi Kant Nemani ('Applicant') is the Resolution Professional for Aryavir Buildcon Private Limited, who has submitted the Resolution Plan duly approved by the Committee of Creditors (hereinafter referred as "CoC") which is accompanied by the compliance certificate in the prescribed Form H.

3. It is submitted that Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor was admitted by this authority vide its order dated 17.12.2020 pursuant to the application filed by Financial Creditor i.e., Tourism Finance Corporation of India Limited and Applicant was appointed as the Interim Resolution Professional (IRP) vide same order. It is stated that public announcement in compliance with section 13, 15 and other applicable sections of IB code read with regulation 6 of IBBI (CIRP) Regulations, 2016 was made by the Applicant in Financial Express, English edition and Jansatta, Hindi edition and Dainik Jagran (Punjabi) on 25.12.2020 for intimating the commencement of CIRP against CD and calling for claims.

4. It is stated that applicant received several claims from Operational Creditors and Operational Creditors, applicant collated the list of creditors and constituted the CoC. After constitution of CoC on 12.01.2021 first CoC meeting was held and the applicant was appointed as RP in terms of section 22(2) of IB Code, 2016 and same was confirmed by this adjudicating authority vide order dated 22.01.2021.

5. It is submitted that suspended board of directors preferred an appeal against the admission order and Hon'ble NCLAT was pleased to issue notice vide order dated 02.02.2021 but refrained from staying CIR Proceeding of Corporate Debtor. The said appeal is pending in the Hon'ble Appellate Authority.

6. It is further submitted that the applicant convened the second CoC meeting on 15.02.2021, wherein fees of the two registered valuers appointed by the applicant to carry out the process determining the fair value and liquidation value of the assets of Corporate Debtor as well as fees of transaction auditor of CD was also determined and approved by CoC. In the same CoC meeting prospective resolution applicant (PRAs) was approved and pursuant to that on 19.02.2021 and 20.02.2021 the applicant carried out publication of Form G in Economic Times, All India (Eng), Business Standard, All India (Eng), Business Standard (Hindi)

Delhi Edition and Punjab Jagran Amritsar (Punjabi) and pursuant to that Applicant received a total of 9 EoIs.

7. It is further stated that out of 8 qualified PRAs, 5 parties had submitted their Non-disclosure Agreement, subject to which the applicant shared the IM and RFRP. It is submitted that the CoC was reconstituted on account of settlement of dues with the Promoter of CD of CSL Finance Limited. It is also submitted that in the 5th CoC dated 08.05.2021, CoC rejected the resolution for granting further extension for submission of resolution. In the 6th CoC convened on 16.05.2021, the applicant informed that it has received a total of 5 resolution plans till 10.05.2021. The CoC provided opportunity to all the 5 RAs to revise their offers and correct the deviations, subsequent to which CoC would consider the plans in 8th CoC held on 17.06.2021.

8. It is submitted that in the 9th CoC convened on 21.06.2021, CoC evaluated the revised plans and pursuant to that CoC members, 100% voting share, on the basis of physical voting, approved the resolution plan of Mr. Sarabjit Singh in terms of the Section 30(4) of the IBC, 2016 read with Regulation 39(3B) of the CIRP Regulations.

9. The counsel on behalf of the ex-Management of Corporate Debtor raised objection against the approved resolution plan of Mr. Sarabjit Singh and submitted that CD has been sold at quite less price than the liquidation value of Corporate Debtor. Another objection raised by the Objector is that the Financial Creditor i.e., Tourism Finance Corporation of India Limited holding voting share of 98.30% in the CoC has assigned its debt to the Asset Reconstruction Company--Phoenix ARC on 30.09.2021, which is after the approval of Resolution Plan on 21.06.2021, which is not permissible at such later stage. It is further submitted that the ex-management is ready to settle the dues of creditors.

10. The Applicant replied to the objection raised by the counsel of ex-Management of CD and relied on the Hon'ble Supreme Court judgment dated 13.09.2021 namely, *Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr. (Civil Appeal No. 3224 of 2020).*

11. The Hon'ble Supreme Court in the aforesaid judgment of Ebix Singapore case (Para 205), while dealing with delays in approval of Resolution Plans by NCLT has made a reference to the thirty-second report of the Ministry of Corporate Affairs' Standing Committee on Finance (2020-2021) on the

'Implementation of Insolvency and Bankruptcy Code-Pitfalls and Solutions'127 represented a despondent state of affairs with regard to pendency of applications before the Adjudicating Authority. As per said report, the major reasons for the delays have been identified as:

"(i) the NCLT taking considerable time in admitting CIRPs; (ii) late and unsolicited bids by Resolution Applicants after the original bidder becomes public upon passage of the deadline for submission of the Plan; and (iii) multiplicity of litigation and the appellate process to the NCLAT and the Supreme Court"

Thereafter, the Hon'ble Court has concluded that:

"Such inordinate delays cause commercial uncertainty, degradation in the value of the Corporate Debtor and makes the insolvency process inefficient and expensive."

Accordingly, the Hon'ble Court has made the following observation/direction:

"We urge the NCLT and NCLAT to be sensitive to the effect of such delays on the insolvency resolution process and be cognizant that adjournments hamper the efficacy of the judicial process. The NCLT and the NCLAT should endeavor, on a best effort basis, to strictly adhere to the timelines stipulated under the IBC and clear pending resolution plans forthwith. Judicial delay was one of the major reasons for the failure of the insolvency regime that was in effect prior to the IBC. We cannot let the present insolvency regime meet the same fate."

12. We have gone through the objections raised by the objector (ex-Management of Corporate Debtor) and

reply given by the Applicant to the objections. Keeping in view the findings/direction given by the Hon'ble Supreme Court in Civil Appeal No. 3224 of 2020 and limited jurisdiction of this Adjudicating Authority to interfere with the Resolution Plan approved by the CoC while exercising its commercial wisdom, the objection raised by the ex-Management of Corporate Debtor is **rejected**.

13. The summary of the Resolution plan submitted by the Resolution Applicant is as follows:

#	***Particulars***	***Proposed Settlement (in INR Crores)***
1.	*CIRP Costs*	*0.50*
2.	*Secured Financial Creditors*	*56.79*
3.	*Unsecured Financial Creditors (Admitted by RP)*	*0.99*
3.	*Operational Creditors (Trade Creditors) (admitted by RP)*	*1.40*
4.	*Operational Creditors (Statutory Authorities)*	*0.23*
5	*Equity Shareholders*	*3.33*
6.	*Contingency Fund*	*4.26*
	Total	***67.50***

*The upfront payment is subject to the outcome of appeal, if any, filed by any stakeholder within the appeal period under IBC against the approval of Resolution Plan by Adjudicating Authority.

14. It is submitted that the Resolution Applicant has already made necessary arrangements to mobilize the

first payment and second payment will be arranged in the form of term loan and contribution by the RA.

15. It is submitted that as per the terms of the request for resolution plan ("RFRP") the successful Resolution Applicant was to submit security for an amount of Rs. 5,00,00,000/- and same was submitted by the Successful Resolution Applicant as Performance Bank Guarantee amounting as required by regulation 36B (4A) of IBBI (CIRP) Regulations, 2016 as evidence from the receipt annexed as Annexure-20.

16. It is further averred that in terms of provisions of regulation 39(4) of IBBI (CIRP) Regulation, the RP is required to submit the Resolution plan approved by the CoC along with a compliance certificate in form H of the schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B. The same is complied with.

17. **Appointment of monitoring agency--Approval**

A committee consisting of a Resolution Professional (as head of the Monitoring Committee), 2 Representatives from the CoC and 2 Representative nominated by the RA.

Number of Members	Comprising of
2	Representative of CoC
2	Representative of

	Resolution Applicant
1	Resolution Professional

18. The parameters for approval of resolution plan are set out in section 30 and 31 of the IBC, 2016 and IBBI (CIRP) Regulations, 2016. The Resolution Plan seems to have complied with such mandatory compliance, which are briefly set forth herein below:

Section/Regulation	**Compliance made**
Section 30(1) of the IBC, 2016	Resolution Applicant has submitted an affidavit stating that it is eligible
Section 30(2)(a) of the IBC, 2016 And Regulation 38(1A) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	As per clause 5.3.1 of the Resolution Plan, payment of CIRP costs shall be made in priority to the payment of other debts of the Corporate Debtor. Clause 5.2 of the Resolution Plan provides that the Resolution Plan has dealt with the interest of all stakeholders.
Section 30(2)(b) of the IBC, 2016 And	As per clause 5.3.7 r/w addendum dated 03.06.2021 the Resolution plan provides for the payment of the debts of operational creditors in such manner as may be specified by the IBBI which shall not be less than the amount to be paid to the operational creditors in the event of

	liquidation of the company.
Regulation 38(2)(c) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	Clause 5.10 of the Resolution Plan provides for management and control of the business of Corporate and control debtor
Section 30(2)(c) of the IBC, 2016	Clause 5.3.2 & 5.3.3 r/w addendum dated 03.06.2021 provides for the payment of the financial creditor who did not vote in favour of the resolution plan
Section 30(2)(d) and Section 30(2)(e) of the IBC, 2016 And Regulation 38(2)(a) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	Clause 5.10 of the Resolution Plan provides management of the affairs of the Corporate Debtor and implementation of the plan until the final payment. The implementation of plan as stated by the Resolution Applicant in the Resolution Plan is 90 days as per clause 5.6 & 5.10, from the date of receipt of certified true copy of order for approval of Resolution Plan by Adjudicating Authority.
Section 30(2)(f) of the IBC, 2016	As per clause 5.16, the Resolution Plan does not contravene any of the provisions of law for the time being in force.
Section 30(4) of the IBC, 2016	The Committee of Creditors, after considering the feasibility and viability of the Resolution Plan have

	approved the same by 100% voting share.

19. Thus, the resolution plan filed with the Application meets the requirements of section 30 and 31 of IBC, 2016 and Regulation 37, 38, 38(1A) and 39(4) of the IBBI(CIRP) Regulations, 2016. The provisions of Section 29A of IBC are not attracted. The RP has also verified that the "Resolution Plan" approved by the CoC does not contravene any of the provisions of the law for the time being in force. The RP has filed compliance certificate in Form H as required under regulation 39(4) of the IBBI (CIRP) Regulations, 2016.

20. The Resolution Applicant has prayed for the reliefs as enumerated under the Resolution Plan approved by the CoC. From the plan approval date, all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand withdrawn, satisfied and discharged. From the date of approval of the 'Resolution Plan', the Resolution Applicant shall be legally authorised to seek appropriate orders from respective

authorities/courts/tribunals for renewal of licences/withdrawal/dismissal or abatement of the proceeding as the case may be.

21. The Corporate Debtor shall be entitled to carry forward all accumulated business losses and unabsorbed depreciation, if any, from the date of approval of the Resolution Plan, except as provided in the Resolution Plan, all the pending statutory dues including taxes/cess/interest/penalty and other liabilities due to the operational creditors shall stand satisfied/waived off. The reason for these waivers and abatement is that the Operational Creditors would not get more than that as provided in the Resolution Plan, in the event of liquidation of the Corporate Debtor, as per the waterfall mechanism provided under Section 53 of the I&B Code, 2016. Moreover, this is with a view to implement the Resolution Plan successfully as approved by the CoC. It is also made clear any relief/concession prayed by the applicant, which is beyond the jurisdiction of this adjudicating authority shall be construed as rejected.

22. In view of the above, the "Resolution Plan" annexed with I.A. No. 2714/2021 filed in IB-581(ND)/2020 is hereby **approved**, shall be binding on the corporate debtor and its employees, members, creditors,

guarantors, other stakeholders including statutory authorities and the Resolution Applicant.

23. The Resolution Applicant or Monitoring Agency as the case may be is at liberty to approach this authority for seeking appropriate directions for effective implementation of the Resolution Plan.

24. The order of moratorium date 17.12.2020 passed by this adjudicating authority under section 14 of IBC shall cease to have effect from the date of this order.

25. The RP shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI, so that the Board may record the same on its data base.

26. The approved resolution plan shall become effective from the date of passing of this order.

27. The Resolution Professional shall forthwith send a copy of this order to the participants and the Resolution Applicant.

28. The Registry is directed to communicate this order to the Registrar of Companies concerned with which the Corporate Debtor is registered for updating the master data.

29. Accordingly, I.A. No. 2714/2021 filed in IB-581(ND)/2020 stands **allowed.**

30. The order is pronounced.

Sd/- Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)