

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

**M. A. No. 2713 of 2019
In
C.P. No. 2921/IB/2018**

In the matter of an Application under
Section 30(6) and Section 31 of the
Insolvency and Bankruptcy Code, 2016
read with Rule 39 of Insolvency &
Bankruptcy Board of India (Insolvency
Resolution Process for Corporate Persons
Regulations, 2016

In the matter of
M/s. Beli Sharma & Co.
... Operational Creditor
V/s.
M/s. AVK Automart Pvt. Ltd.
... Corporate Debtor

M.A. No. 2713/2019

Mr. Rajat Mukherjee
... Applicant/
Resolution Professional

Order delivered on 05.03.2021

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance (through video conferencing):

For the Applicant/RP : Mr. Amir Arsiwala, Advocate
For the Resolution Applicant : Mr. Kunal Kanoonago, Advocate

Per Shri Shyam Babu Gautam, Member (Technical)

ORDER

1. This is an Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the Code) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant, M/s. Leadadroit Services Pvt. Ltd.

2. The facts leading to the Application are as under:

- i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 06.11.2018 (Admission Order) and Mr. Navin Srichand Kanjwani was appointed as Interim Resolution Professional. The IRP published a public announcement on 17.11.2018 inviting claims from the creditors of the Corporate Debtor.
 - ii. The CoC in its 2nd meeting held on 08.01.2019 decided to replace the IRP with Mr. Rajat Mukherjee (the present Applicant) as the Resolution Professional (RP). This Tribunal by order dated 18.02.2019 confirmed the appointment of the Applicant as the RP.
 - iii. Thereafter, pursuant to the public announcement IRP received three claims from financial creditors i.e. Bank of India, Omkara Asset Reconstruction Pvt. Ltd. and ASREC India Ltd. and from one operational Creditor i.e. M/s. Beli Sharma and Company. The Interim Resolution Professional upon verification of the same, constituted the CoC.
 - iv. The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.
3. During the period of CIRP the RP issued Form-G on 14.02.2019 inviting expressions of interest (EOI) in “Free Press Journal” in English and “Tarun Bharat” in Marathi from prospective resolution applicants (PRAs). The last date for receiving the expression of interest was 01.03.2019. The Applicant received EOIs from 2 Prospective Resolution Applicants (PRAs) within the stipulated time period and 1 more expression of interest was received after the expiry of stipulated time period. Provisional list of eligible PRAs was issued to the CoC on 28.05.2019. Request for the resolution plan along with information memorandum, evaluation matrix was issued to the PRAs on 07.03.2019. The Applicant issued the final list of PRAs to the CoC on 28.05.2019. Further, with the consent of the CoC the last date for submission of resolution plan was extended till 19.04.2019. The Applicant received resolution plans from the M/s. Leadadroit Services Pvt. Ltd. (the prospective resolution applicant).

4. It is worthwhile to mention that this Tribunal, in respect of the timelines of the CIRP of the Corporate Debtor, has passed extension of 90 days was granted vide order dated 26.04.2019. The CIRP thus stood extended from 05.05.2019 to 03.08.2019.
5. The CoC in its 4th meeting held on 28.05.2019 decided to appoint a Valuer. The RP accordingly appointed two registered valuers to determine the fair value and liquidation value of the Corporate Debtor, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016.
6. The Applicant submits that on 19.04.2019, the Applicant received resolution plan form M/s. Leadadroit Services Pvt. Ltd. (Resolution Applicant). The Applicant/RP negotiated with the Resolution Applicant to make the resolution plans more robust and to improve the same and submit the revised resolution plan. Accordingly, the resolution applicants revised their resolution plan and submitted the revised plan on 26.07.2019. Accordingly, the Applicant/ RP at the 5th meeting of the CoC held on 26.07.2019 placed revised plan before the CoC members, in which detailed deliberations and discussions were carried out on the resolution plans. Following are the prospective resolution applicants:
 - i. M/s. Leadadroit Services Pvt. Ltd.
 - ii. M/s. Paridhi Finvest Pvt. Ltd.
 - iii. M/s. Outcome Commercial Pvt. Ltd.
7. The RP submits that after due verification of the eligibility of the successful Resolution Applicant in terms of Section 29(A) of the Code, the CoC in its 5th meeting held on 26.07.2019 considered the revised and final Resolution Plan of M/s. Leadadroit Services Pvt. Ltd. and approved the Plan with the voting share of 90%. Accordingly, compliance certificate was in Form "H" was issued by the Resolution Professional.
8. **The salient features of the Resolution Plan are as under:**
 - A. The Resolution Applicant is engaged in the business of providing financial consultancy in various fields including insurance sector re-insurance & insurance banking and has client from insurance, re- insurance & insurance broking

industry. The Resolution Applicant confirmed that it is eligible to submit Resolution plan as per Section 29A of Insolvency and Bankruptcy Code.

- B. As the Corporate Debtor is dealer of cars and insurance products, including fresh insurance & renewals the Resolution Applicant under this Resolution Plan has proposed to use customer's data collected by the Corporate Debtor for its insurance advisory.
- C. The Resolution Applicant has proposed to acquire the full ownership and control over the share capital and management of the Corporate Debtor in the following manner:
- i. Reconstitution of the board of directors of the corporate debtor such that nominees of the Resolution Applicant shall constitute all the members of the board of directors of the Corporate Debtor;
 - ii. Cancellation and reduction of entire share capital of the Corporate Debtor;
 - iii. Infusion of Equity Subscription amount into the Corporate Debtor by the Resolution Applicant as per the terms of the Resolution Plan;
 - iv. Issue and allotment of Promoter Equity Shares to the Resolution Applicant and/ or its nominees;
- D. Pursuant to the order of this Hon'ble Tribunal approving the Resolution Plan following actions will be undertaken to accomplish the Resolution Plan.
- i. Reconstitution of the board of directors of the Corporate Debtor.
 - ii. Reduction of the entire share capital of the Corporate Debtor.
 - iii. Infusion of Equity Subscription Amount to the designated Bank account.
 - iv. Issuance and Allotment of Corporate Debtors equity share and the authorized, issued, subscribed and paid up capital of the Corporate Debtor shall be as follows:

Authorized Share Capital	Amount (in Rs.)
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7,47,500 Equity shares of Rs. 10 each	74,75,000
Total	74,75,000
Issued, Subscribed and Paid Up Capital (Fully paid up and issued at par)	Amount (in Rs.)
7,47,500 Equity shares of Rs. 10 each	74,75,000
Total	74,75,000

- E. **Payment of CIRP cost** on actual basis. Estimated cost is Rs. 16 Lacs.
- F. **Payment towards Workmen** as per information memorandum no claims were received from the workers and employees. If any workers/employee desires to continue after approval of the Resolution Plan the terms of the employment will be discussed separately.
- G. **Payment towards Operational Creditor** — as per Section 30(2)(b) of IBC, the Operational creditors shall be paid not less than the amount which would be payable in the event of liquidation. Since, the liquidation value is nil, payment to the Operational Creditors will be nil. However, the Resolution Applicant had made provision for Rs. 6.75 Lacs as full and final payment towards operational dues (which also includes dues of Central Government, State Government and any other local authority).
- H. **Payment to financial creditors** — Resolution Applicant propose to pay Rs. 52 Lacs as full and final payment towards all dues, rights and claims of the financial creditors. Out of Rs. 52 Lacs, ASREC India Ltd. will be paid Rs. 7.04 Lacs, Omkara Assets Reconstruction Pvt. Ltd. will be paid Rs. 39.70 Lacs and Bank of India will be paid Rs. 5.25 Lacs.

9. The Resolution Plan proposes an upfront payment of INR 74.75 Lacs to creditors (including CIRP costs), in the following manner:

Particulars	Amount payable	Source of funds and Rights with respect to fund infusion	Detailed description of proposal
Treatment of CIRP Coast and Operational Creditors (other than Financial Creditor)			
CIRP Costs	16 Lacs or any lower amount	1. Infusion through Leadadroit Services Private Limited through SPV in the form of subsidiary company by way of release of its liquid funds/ investments against Which corporate debtor will issue Equity Shares of the Corporate Debtor.	Refer point 5 and 7 of Resolution Plan
Workmen/ Employees	NIL	1. Infusion through Leadadroit Services Private Limited through SPV in the form of subsidiary company by way of release of its liquid funds/ investments against which corporate debtor will issue Equity Shares of the Corporate Debtor.	Refer point 5 and 7 of Resolution Plan
Operational creditors, excluding employees and workmen (this include various statutory authorities like Income Tax, VAT and Service Tax)	6.75 Lacs	1. infusion through Leadadroit Services Private Limited through SPV in the form of subsidiary company by way of release Of its liquid funds/ investments against which corporate debtor will issue Equity Shares of the Corporate. Debtor.	Refer point 5 and 7 of Resolution Plan
Treatment of Financial Creditors			
Upfront cash payment to financial creditors (within 90 days)	52 Lacs	Infusion through Leadadroit Services Private Limited SPV in the form of subsidiary company by way of release of its liquid funds/investments against which equity share capital will be issued by corporate debtor and all the financial creditors shall extinguish the charge created on all the assets of the corporate debtor including. all the corporate guarantees and personal guarantees issued by any person including the promoters of corporate debtor or by any other person to secure the financial debt. *refer point 5.11.8	Refer point 5 and 7 of Resolution Plan
Treatment of other stakeholders			
Related Party dues	NIL	Not Applicable	Refer point 5 and 7 of Resolution Plan

Equity shareholders	NIL	Not Applicable	Refer point 5 and 7 of Resolution Plan
Total Resolution Plan Amount	74.75 Lacs	-	-

Note 1: CIRP Costs:

RA have estimated CIRP Cost to be Rs. 16,00,000/-. Any excess or shortfall will be accordingly adjusted with the Payment of financial creditor. All the CIRP Coast incurred by Resolution Professional after approval of resolution plan by CoC will be with due intimation to RA or the monitoring committee appointed by RA. In terms of section 30(2)(a) of the IBC, the CIRP coasts are to paid in priority to any other creditor of the Corporate Debtor. Accordingly, RA have proposed to allocate Rs. 16,00,000/- towards CIRP which will be paid in priority to all other debt. In the event any CIRP cost is due after the completion of CIRP period and same is approved by CoC and Resolution Professional, same shall be paid out fully.

Note 2: Operational Creditors (other than workmen and employees dues)

-Payment to them shall be as follows:

- a. So far no claims have been received till date as set out in the Information Memorandum RA appreciates if any of the existing employees pursue for the continuation of the employment even after the approval of the resolution plan of the corporate debtor. Accordingly, necessary discussions. and changes with respect to employment terms will be decided between the continuing employees and P.A.
- b. However, RA propose to-pay rupees Nil as the full and final settlement -towards Liabilities pertaining to the Workmen and Employees. Amount if allocated shall be payable in following order: -
 - I. First, towards full and final discharge of the dues/wages of workmen of the Corporate Debtor for the period of 24 months preceding the ICD;

II. Second towards full discharge of the liabilities of the corporate debtor for gratuity and leave encashment accrued till the 1CD or any other liability liabilities of the corporate debtor for gratuity and leave encashment accrued during CIRP and not paid till Effective Date.

III. Third towards full discharge of the outstanding dues of Corporate Debtor with respect to Tax Deducted at Source under the Income Tax Act, 1961 on the wages/ salaries paid to the workmen and employees, undischarged/ outstanding liability of the corporate debtor under the Employee State Insurance Act, the Provident Fund Act, the Industrial Dispute Act, the Payment of Bonus Act, the Contract Labour Act, the Minimum Wages Act and the Equal Remuneration Act;

IV. Fourth towards full discharge of the liability of the Corporate Debtor for the outstanding amounts of the wages and salaries of the continuing workman and employees of the Corporate Debtor (which have not resigned from/ discontinued their employment with the Corporate Debtor.

Note 3: Payments to remaining Operational Creditors –

However, RA will pay Rs. 6,75,000/- as full and final Payment towards remaining operational creditor (Which also includes dues of Central Government, any State Government and any other local authority) within 90 days.

Note 4: Payments to Financial Creditors under the Plan –

Out of the Total Resolution Amount, the RA will make payment to the financial creditors Rs.52,00,000/- (financial debt settlement amount) as full and final settlement towards all dues, rights and claims of financial creditors. Resolution Applicant will infuse Rs. 52,00,000 in the corporate debtor against which RA will get Equity Shares of Corporate Debtor. Pursuant to this upfront payment, the financial creditors are fully discharging the Liabilities of the Corporate Debtor also including the corporate and personal guarantees issued to the relevant Financial Creditors with respect to loans and other facilities granted by the relevant Financial Creditors to the said corporate debtor. Accordingly, after due

payments, the corporate and personal guarantors of the Corporate Debtor shall stand fully discharged from the books of all the banks and shall be assigned to the Resolution Applicant on payment of upfront (within T+90 days) amount Rs. 52 Lacs.

Total consideration is to be distributed between all the financial creditors will be as per point 5.11.8 of the resolution Plan.

Sr.	Name of the Financial Creditor	Amount to be paid	Time line
1.	Bank of India.	5,25,295	Within T+90 Days
2.	Omkara Assets Reconstruction Private Limited	39,70,240	Within T+90 Days
3.	Asrec (India) Limited	7,04,465	Within T+90 Days
	Total	52,00,000	

10. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor in terms of Section 30(2)(c). The Plan also provides for implementation of provision of the Resolution Plan as stated above as per Section 30(2)(d). The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:

- a) Payment to Operational Creditor will be made in priority over Financial Creditor (Regulation 38(1)(a)).
- b) Since the plan has been approved by 90% voting share of the CoC. This is in compliance of Regulation 38(1)(b) of the Regulations.
- c) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A)).
- d) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan.

11. It is beneficial to refer to the observation of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.*: (2019) SCC OnLine SC 1478 as under:

“67.

A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove.”

12. In view of the above ruling of the Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. As already indicated the Resolution Plan has been approved by the CoC in its meeting held on 26.07.2019 with 90% votes.
13. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

14. In **CoC of Essar Steel** (*supra*) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

*“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (*supra*).”*

15. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. There are no workers claims. Adequate provision is provided for future claims of Operational Creditors if any the by Resolution Applicant. Resolution Applicant agreed to pay the full CIRP cost and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Applicant is making full payments to Financial Creditors. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

16. We are of the considered opinion that the distribution of the payments to the Creditors, Financial or Operational, as the case may be, shall be subject to orders to be passed in the respective Miscellaneous Application within the ambit of the Code. We are thus inclined to dispose of this Application in the following terms. Hence ordered.

ORDER

- i. The Miscellaneous Application No. 2713 of 2019 is allowed. The Resolution Plan submitted by **M/s. Leadadroit Services Pvt. Ltd.** is hereby approved. It 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.

- ii. We shall clarify here that the Resolution Applicant shall take over the corporate debtor with all its assets and liabilities as per terms of approved resolution plan. If any relief concerning any identified liability of the corporate debtor is required then that needs to be specifically mentioned and sought for in the resolution plan. This bench cannot allow any general power to any resolution applicant absolving him of liability of the corporate debtor company, without knowing about the liability against which such exemption is sought. In other words, relief/ exemptions from only existing liabilities which are specifically identified can be sought and allowed in the resolution plan.
- iii. 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.
- iv. 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.
- v. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- vi. 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 every quarter.

- vii. 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.
- viii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-

H. V. SUBBA RAO
MEMBER (JUDICIAL)