IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH (COURT NO. IV)

IA No.1303/2020, 3542/2020
IN
CP (IB) NO. 408/ND/2018

(Under Section 31 of the Insolvency and Bankruptcy Code, 2016 for approval of Resolution Plan)

IN THE MATTER OF:

Shri Krishan Vrind Jain

Resolution Professional of M/s Ireo Fiveriver Pvt Ltd.

...Applicant/ Resolution Professional

AND IN THE MATTER OF:

Worxspace Consulting Pvt Ltd ...Operational Creditor

Versus

M/s Ireo Fiveriver Pvt Ltd ...Corporate Debtor

Order delivered on:06.08.2021

Coram:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

MS. SUMITA PURKAYASTHA

HON'BLE MEMBER (Technical)

For Applicant: Navya Khillon, Pulkit Deora, Advocates

ORDER

Per-Dr. Deepti Mukesh, Member (J)

1. The instant application has been filed by the Resolution Professional, Mr. Krishan Vrind Jain for approval of Resolution Plan under Section 30 (6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereafter referred to as Code) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and read with Regulation 39 of the IBBI (CIRP) Regulations, 2016 for seeking approval of the Resolution Plan. The Resolution Plan was duly approved in the twelfth committee of creditors (CoC), with 100% voting share which has been placed on record.
2. The Company Petition bearing C.P. No. IB-408ND)/2018 was filed by M/S Worxpace Consulting Private Limited/ Operational Creditor under Section 9 of the Code for initiating Corporate Insolvency Resolution Process of M/S Ireo Fiveriver Private Limited/ Corporate Debtor. This Tribunal vide order dated 13.12.2018 admitted the petition and appointed Mr. Kanwal Chaudhary as the Interim Resolution Professional (IRP). The IRP made a public announcement in Form A as prescribed under Regulation 6 (1) of the Regulations on 19.12.2018 of intimation of 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.
3. The appointment of Interim Resolution Professional was confirmed as the Resolution Professional pursuant to the first meeting of CoC on 28.01.2019. The RP conducted CIRP as per the regulations mentioned above and carried out various tasks as per the provisions of the code.

4. The RP submits that Form-G was published in the newspaper dated 19.06.2019 for inviting Expression of Interest. However, no compliant resolution plan was received as there was only one proposal without EMD (Earnest Money Deposit) from the Developer Group India Pvt. Ltd. and that too was only to act as Project Management Consultant and not as resolution applicant. Further, vide order dated 17.09.2019, the RP was replaced with new RP, Mr. Krishan Vrind Jain. That the new RP published Form-G in the newspapers-Business Standard (All India edition) and Amar Ujala (Chandigarh and Delhi edition) dated 04.10.2019 in pursuance of Regulation 36A(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
5. The RP submits that two Valuers (K. G. Somani & Co. and RBSA Valuation Advisors LLP) and one Forensic Auditor (T. R. Chadha& Co.) was appointed in accordance with Regulation 27, however the transaction auditor informed that they started undertaking the audit from the month of July 2019. The CoC was duly constituted on 22.01.2019 comprising of HDFC Limited, Axis Bank and Homebuyers.
6. The RP submits that an application was also moved before this bench on 16.01.2019 against the suspended board members for non co-operation under section u/s 19(2) and 19(3) of the I & B Code, 2016 but the same was disposed.
7. The RP submits that on 29.12.2019, a mail was received from two consortium members out of 5 members of one of the Prospective resolution applicants namely Ajay Yadav & Co. informing about withdrawal from the consortium.

However, Mr. Ajay Yadav continued with his resolution plan (through amended consortium of Mr. Ajay Yadav and Mrs. Lata Yadav against the plan submitted earlier in which 5 members contributed on 29.12.2019). The same was placed before the members of the committee. That on 04.01.2020 an email was received from one of the prospective resolution applicants to allow further time for submission of resolution plan. Thereafter it was decided to grant time to both the prospective resolution applicants and they were asked to submit the same before 04.01.2020.

8. The RP submits that on the recommendation of the CoC, the prospective resolution applicants were given another opportunity to revise/incorporate the resolution plan in terms of better/improvised financial payout to creditors / stakeholders without any textual changes in the plan. That both the prospective resolution applicants submitted their final resolution plans to the RP on 06.01.2020, which were placed before members of the CoC inclusive of homebuyers. Further, the applicant sought vote of members of the COC by electronic voting system which commenced on 06 .01.2020 and was kept open till 08.01.2020.
9. The RP submits that the resolution plan submitted by consortium comprising of Trident Infrahomes Private Limited and Romano Infrastructure Private Limited was approved by the members of the· CoC having 100% voting share in its 12th COC meeting held on 02. 0 1 . 2020.
10. The RP submits that the fair value of corporate debtor is of Rs. 262.77 Crores and liquidation value of corporate debtor is of Rs. 135.28 Crores. The valuation

reports as obtained by the RP are annexed.

11. The RP submits that pursuant to approval of the Resolution Plan by the COC, the RP issued a Letter of Intent dated 17.01.2020 to the successful·Resolution Applicant and accordingly, the resolution applicant informed the RP that they shall create a bank fixed deposit by 30.01.2020 as Performance Bank Guarantee. As an alternative, they have offered collateral security which will be mortgaged in favour of the creditors of the corporate debtor and have requested to release the fixed deposit on creation of such mortgage to the satisfaction of monitoring committee/ resolution professional/ committee of creditors.

12. The objectors being 20 number of homebuyers, have filed their objections vide IA 3542/2020, which was listed for hearing along with present application wherein it is argued that there are various illegalities in the Resolution Plan. It is submitted that the objectors had approached the Hon'ble High Court of Delhi by filing the Civil Writ Petition bearing No. 1033712019 titled as "Col Sanjeev Dhawan & Ora vs Union of India & Ors" and a Criminal Writ Petition beating No. 679/2020 titled' Col Sanjeev Dhavan & On vs Lalit Goyal & Ors to expose the illegalities committed by the Directors alongwith other office bearers of the Corporate Debtor including misappropriation of funds, violation of FBI norms, illegal buy back of share and defrauding the innocent home buyers. The petitioner have filed the copy of order of Hon'ble High Court of Delhi, which held that '*the 10 land owning Companies, which though strangely not part of the CIRP proceedings but an essential part of the Resolution Plan, have been directed not to create any third party interest, ie. Not to transfer ownership or title.*'

The objectors have stated that the funds that were received from the public and investors, instead of buying the land for the project in its name, the corporate debtor misappropriated the funds so received and the land of the project was bought in the name of 10 land owning companies, hereby meaning that the corporate debtor does not own the project land, it had entered into a Joint Development Agreement with the 10 land owning Companies for development of the project. The Resolution Applicant in its Resolution Plan has stated that it shall buy the shares of 10 land owning companies thereby making them subsidiaries of the corporate debtor.

13. It is submitted that not only that the RP has miserably failed to do its duty as per section 30(2) of the Code, but the RP has miserably failed to conduct a transparent and fair Resolution Process and the COC have nefariously passed the Resolution Plan submitted by the Trident and Romano Pvt. Ltd without examining the illegalities and non- compliances of the Resolution Plan as the current Resolution Plan is based on conjectures and probabilities.

14. The objectors have brought the following faults and irregularities in reaching the Liquidation Value of the Corporate Debtor to be Nil.

    A. Faulty Information Manual - The present RP has adopted the same IM as prepared by the earlier IRP Mr Kanwal Chaudhary who was replaced by the current Resolution Professional owing to glaring defects and lacunae in the Information Memorandum (brevity IM) that was time and again brought to the notice at the COC meetings and also through emails written communications. The important and glaring points rendering the IM grossly defective are that the RP has not factored the refunds made to some home buyers and shifting some out of them to other projects. The corporate debtor has signed joint venture agreements with other sister companies of the Ireo Group, but the IM is silent on the present status of these joint ventures, which have not been factored by the RA. The IM fails to give a true picture of the actual liabilities of the corporate debtor. Further, even the statutory auditors of the Corporate Debtor have deliberately acted in a negligent and fraudulent manner and prepared manipulated financial statements.

B. No Evaluation Report and Forensic Audit Conducted by the RP - That it is submitted that inspite of the repeated reminders about the Forensic Audit, the RP till now have failed to complete the Forensic Audit.

C. Preferential Treatment of Some Financial Creditors (Banks) Vis-A Vis Others (Home Buyers)- The present Plan has grossly over looked the interest of the buyers vis-a vis banks (Other financial Creditors). It is pertinent to mention here that the HDFC bank raised a claim of Rs. 192 crores and the same has been admitted and AXIS Bank, which is another Financial Creditor claimed 65.13 crores and the RP has admitted 62.50 crores whereas the Home Buyers claim of Ra. 178 crores has been brought down to Rs. 149.20 Crofts The above mentioned exercise by the RP has been done in order to make the banks having the majority of the Voting share. The Banks having a majority voting share of 64% have been catered by the RA and whereas the Home buyers have been grossly overlooked.

D. Differential Treatment Even Within the Same Class of Creditors (Home Buyers) - That the Resolution Plan is discriminatory towards the Flat, buyers, Applicants who had invested in the project for getting a built up property. It is submitted that the Resolution Applicant has kept the plot owners in mind while making the present Resolution Plan, however the needs of the Flat owners have been completely disregarded. No haircut has been borne by the Plot owners, it is only the Flat buyers who have recieved the haircut vis-a-vis their while making the present Resolution Plan, however the needs of the flat owners have been completely disregarded. Thus, the Resolution Plan is discriminatory.

It is submitted that the I&B Code defines Resolution Plan as a plan for insolvency resolution of the Corporate Debtor as a going concern. It is submitted that the present plan, as is envisaged by the Resolution Applicant is not a viable plan nor does it keep the corporate debtor as a going concern. It is submitted that the Corporate Debtor is a reality, developers/ Construction firm where as in the plan, the Resolution Applicant has turned this into a plot sale purchase company, which in anyway cannot be called a plan for corporate debtor as a going concern.

E. The home buyers have been intimidated to vote in favour of the Resolution Plan supported by the Banks, which has been passed by the COC. The home buyers have been misled into believing that since the banks have the majority voting share ie. 64-65 % all they need is 1 % of the vote to pass it through the COC, the home buyers were told that the Dissenting Creditor will be given money as per the Liquidation value, which due to the faulty IM and in absence of forensic report is zero. The RP when asked about the fate of the Dissenting Creditor by the home buyers did not provide a clear picture, which led to people voting in favour of the Resolution Plan endorsed by the banks and supported by the RP.

15. After perusing the resolution plans and submissions made by the counsels of the RP, it is submitted that the requirements of Section 31 of the Code read with Regulation 39 of the Regulation are satisfied in the present case and that the resolution plan submitted by

Trident Infrahomes Private Limited and Romano Infrastructure Private Limited- "consortium", is approved by the CoC with 100% of voting.

16. The Compliance Certificate in Form H as prescribed under Regulation 39 (4) as amended by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018, is also filed by the RP.

17. The RP further states that the monitoring committee shall constitute 3 representatives of the Resolution Applicants, 3 representatives of COC members and 1 qualified insolvency professional (which may or may not be the Resolution Professional), to monitor the implementation of the resolution plan as permitted herein and execute all required tasks after the order of this bench approving the resolution plan is passed.

Number of Members	Comprising of
3	Resolution applicants
3	Member of committee of creditors
1	Insolvency Professional

18. The parameters for approval of resolution plan are set out in the IBC, 2016 read with IBBI (CIRP) Regulations, 2016. Which are briefly set forth herein below:

Section/Regulation	**Compliance made**
Section 30(1) of the IBC, 2016	As per form H separate affidavit has been filed by Resolution Applicant to confirm its eligibility
Section 30(2)(a) of the IBC, 2016 And	As per chapter V of the resolution plan the insolvency process cost will be paid in priority. The Resolution Plan provides for the interest of all stakeholder, including Financial Creditors and Operational Creditors, of the Corporate Debtor.

Regulation 38(1A) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	The amount claimed by secured financial creditors are Rs 25716.79/- lakhs and the amount provided under the plan is Rs 20688.08/- lakhs. The resolution applicant is offering the following options to the homebuyers (allotees) under the resolution plan: i. Possession to plot applicant ii. Possession to flat applicant iii. Interest settlement
Section 30(2)(b) of the IBC, 2016 And Regulation 38(2)(c) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	Chapter 5 of the resolution plan provides for the treatment of the operational creditor. Out of total amount claimed of Rs 21006.57 lakhs, Rs 16.55 lakhs was provided under the plan. Adequate means for supervising the resolution plan implementation has been provided in Chapter VI of the resolution plan
Section 30(2)(c) and Section 30(2)(d) of the IBC, 2016	A committee consisting of 3 members of resolution applicant, 3 members of committee of creditors and 1 Insolvency Professional shall monitor the implementation of Resolution Plan.
Section 30(2)(e) of the IBC, 2016	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	Resolution Plan is approved by 100%

19. It is submitted that the date of expiry of 180 days of CIRP was 11.06.2019. The period of 90 days of CIRP was extended vide order dated 04.06.2019, which expired on 09.09.2019. An application was filed seeking availment of 330 days of CIRP as per section 12(3), which was granted by the bench vide order dated 25.11.2019. The present application is filed on 31.01.2020.

20. It is seen from record that objectors are 20 homebuyers. The plan is approved with 100% voting share of CoC which comprises of two banks HDFC bank, Axis bank and also association of home buyers, comprising of approximately by 343 homebuyers. They have

after deliberation passed resolution approving plan. In present case 37.69% homebuyers have consented in favour. It is only 20 no. of homebuyers who have raised objections to approval of plan. Moreover, the apex court has held that commercial wisdom of CoC need not be interfered by adjudicating authority and in present case it is approved by 100% voting share of CoC. The provisions of section 31 read with regulations are complied. The liquidation value is Rs 135.28 crores and plan offers Rs 220 crores which is much higher than liquidation value. The financial creditors have been provided with 80.44% of amount claimed and operational creditor are paid 0.295% of claim wherein if the company goes in liquidation the same values will deplete substantially. Thus, in our view resolution plan needs to be approved.

21. In view of the above discussion that the resolution plan, as approved by the 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; we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.

22. It is hereby declared that the Resolution Plan is binding on the corporate debtor, members, employees of the corporate debtor, creditors of the corporate debtor and other stakeholders involved in the Resolution Plan.

23. It is also declared that the moratorium order passed by this bench under Section 14 of the Code shall cease to have effect.

24. The Resolution Professional shall forward all records relating to the CIRP process and the resolution plan to IBBI to be recorded at its data base in terms of Section-31(3)(b) of the Code.

25. The approved 'Resolution Plan' shall become effective from the date of passing of this order.

26. IA No. 3542/2020 is rejected and I.A. No. 1303/2020 is admitted & disposed of accordingly.

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

SD/-

(MS. SUMITA PURKAYASTHA)
MEMBER (T)

SD/-

(DR. DEEPTI MUKESH)
MEMBER (J)