

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH
KOLKATA**

**I.A. NO. of 2020
C.A. (IB) No. 1577/KB/2019
C.A. (IB) No. 1650/KB/2019
IN
C.P.(IB) NO. 429/KB/2018**

IN THE MATTER OF:

An application under section 7 of the Insolvency and Bankruptcy Code, 2016;

AND

IN THE MATTER OF:

An application under Rule 11 of the National Company Law Tribunal Rules, 2016;

AND

IN THE MATTER OF:

PUNJAB NATIONAL BANK, a Nationalised Public Sector Bank and body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its Head Office at Plot No. 4, Dwarka, Section – 10, New Delhi – 110075 and carrying on business through its different branches including its branch office at and from Katora Talaab Branch, Gursukh Tower Katora Talaab, Raipur.

..... Financial Creditor

VERSUS

CITY VIKASH MALL PRIVATE LIMITED, a Private Limited Company incorporated under the relevant provisions of the Companies Act, 1956, having its registered office at Perfect Chamber, 36 Ganesh Chandra Avenue, Kolkata – 700013, West Bengal, India. (in CIRP)

..... Corporate Debtor

AND

Mr. AMARESH SHUKLA, son of late K N Shukla, aged about 54 years, by faith Hindu, by occupation Professional and having his office at F-05, Jaideep Complex, 112, Zone –II, M.P. Nagar, Bhopal- 462011, Resolution Professional of Corporate Debtor, City Vikash Mall Private Limited.

**.... Resolution Professional/
Applicant**

Counsels appeared through Video Conference:

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| 1. Mr. Ratul Das, Advocate |] For Applicant |
| 2. Ms. Pallavi Gandhi, Advocate |] |
| 3. Mr. Amaresh Shukla, Resolution Professional |] |
| 1. Ms. Aparajita Rao, Advocate |] For Successful Resolution Applicant
M/s Shrawan Kumar Agrawal |
| 1. Mr. Nirav Parekh |] For JM Financial, |
| 2. Mr. Utsav Mukherjee, Advocate |] Member of CoC |
| 1. Mr. Ramesh Ch. Prusti, Advocate |] For Punjab National Bank,
Financial Creditor |

**Coram: Shri Jinan K.R., Hon'ble Member (Judicial)
Shri Harish Chander Suri, Hon'ble Member (Technical)**

**Date of hearing: 10th July, 2020.
Order pronounced on 10th July, 2020.**

ORDER

Per Shri Jinan K.R., Hon'ble Member (J)

1. This is an un-numbered application filed on behalf of Mr. Amaresh Shukla, Resolution Professional in the CIRP of City Vikash Mall Private Limited, Corporate Debtor, for approval of resolution plan of the H-1 M/s Shrawan Kumar Agrawal Consortium in terms of order dated 05.03.2020 passed by the Hon'ble NCLAT by setting aside the order of this Adjudicating Authority (AA) dated 10.12.2020.

2. This application has been filed requesting for urgent hearing in the matter since the Covid 19 pandemic and the lockdown has significantly affected the business operations of

the Corporate Debtor resulting in acute cash crunch. Having been satisfied with the urgency trying to set up and since there is a direction to approve the plan in accordance with the observation in the order of Appellate Tribunal, the application is admitted and listed for hearing on today (10.07.2020).

3. Brief facts:

4. Punjab National Bank / Financial Creditor, filed the CP for initiating CIRP as against the Corporate Debtor (CD) / CITY VIKASH MALL PRIVATE LIMITED, and vide order dated 26.02.2019 the application was allowed ordering to initiate CIRP as against the CD, and the applicant was appointed as IRP and later confirmed as RP in respect of the Corporate Debtor.

5. After evaluation of the Resolution Proposals, M/s Shrawan Kumar Agrawal Consortium was approved by the CoC as the successful Resolution Applicant. The other Resolution Applicants namely Rituraj Steel Pvt. Ltd., (H-3) and Phil Minerals Beneficiation & Energy Pvt. Ltd., moved applications before this Tribunal challenging the same. The said applications, being CA/IB/1577/KB/2019, CA/IB/1650/KB/2019 were disposed of by a common order dated 10.12.2019 of this AA with directions for fresh bidding within 15 days and to file the re-approved Resolution Plan by 31.12.2019 and conclude the process.

6. Being aggrieved with the order passed on 10.12.2019 by this Tribunal in C.A. (IB) No. 1577/KB/2019, under section 31 of the Code, M/s Shrawan Kumar Agrawal Consortium had filed an appeal before Hon'ble NCLAT being Company Appeal (AT) (Insolvency) No. 1490/2019. Similar appeals against the order of this Tribunal dated 10.12.2019 were filed by M/s Rituraj Steel Pvt. Ltd., being Company Appeal (AT) (Insolvency) No. 78/2020 and M/s Phil Mineral Beneficiation and Energy Pvt. Ltd., being Company Appeal (AT) (Insolvency) No. 184/2020.

7. The Hon'ble Appellate Tribunal disposed of all these appeals by a common order dated 05.03.2020 setting aside the order of this Tribunal and the matter remitted back to the Adjudicating Authority to pass order for approval of the Resolution Plan in the light of the directions given by the Hon'ble NCLAT. The para 26 in the said order is good to read for a better understanding. It is reproduced below:

"26. Based on the discussion above, we are satisfied that the Resolution Plan satisfies the muster of sub clause (2) and (4) of Sec 30 of the Code.

In the circumstances stated above, the impugned order passed by the Adjudicating Authority / National Company Law Tribunal, Kolkata, dated 10th December, 2019 passed in C.A. (IB) No. 1577/KB/2019, under Section 31 of the Insolvency in Bankruptcy Code 2016 (in short I&B Code'), whereby the Adjudicating Authority, Kolkata Bench has issued directions for fresh bidding within 15 days and file the re-approved Resolution Plan by 31st December 2019 is set aside and remitted back to the Adjudicating Authority to pass order for approval of Resolution Plan, in the light of directions given by us".

8. Heard both sides. Perused the records and the order of the Appellate Tribunal.

9. The Ld. Counsel Ms. Aparajita Rao, for the resolution applicant (RA) whose plan come up for consideration for approval submitted that the RA is ready and willing to take over the assets of the CD but learned that for non payment of electricity dues the connection to the CD was disconnected on yesterday and an application in this regard has filed before the registry on yesterday. Pending approval of the plan the RA has no right to approach before the AA, but can approach before the CoC. Moreover, the Ld.RP submitted that the amount payable is a resolution cost and it is to be settled if the RA approached the CoC.

10. The Ld.Counsel Mr. Ratul Das for the RP submits that the CD is a going concern and the resolution plan is to be approved at the earliest as directed by the Hon'ble appellate Tribunal. According to him all the requirements to be met under subsection (2) of section 30 of the Code, has been complied and that plan has provisions for its effective implantation. In regards to the submission on the side of the RA, he submitted that it could be solved as and when the plan is implemented.

11. The Ld. Counsel Mr. Ramesh Ch. Prusti also requested to approve the plan as directed by the Hon'ble appellate Tribunal.

12. Having heard the counsel on both sides and going through the directions in the order cited above, we have to approve the plan as it is satisfied all the requirements to be satisfied as per section 30(2) of the Code and as directed by the Hon'ble appellate Tribunal.

13. Having regard to what has been said above we hereby approve the resolution plan upon the following directions :-

ORDERS

i) Resolution Plan of M/s Shrawan Kumar Agrawal Consortium which is approved by CoC with 84.70% voting shares, is hereby approved under provisions of sub-section(1) of Section 31 of the Insolvency and Bankruptcy Code, 2016, which shall be binding on the Corporate Debtor, M/s City Vikash Mall Pvt. Ltd., its employees, members, creditors, guarantors, the Central Government, any State Government or any local authority and other stakeholders involved in the Resolution Plan.

ii) The Resolution Plan shall come into force from the date of pronouncement of this order.

iii) The moratorium order passed under Section 14 shall cease to have effect.

iv) The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

v) IA(IB)of 2020 in C.P. (IB) No. 429/KB/2018 is allowed. C.P. (IB) No. 429/KB/2018 is disposed of.

vi) Registry of hereby directed to communicate the order to all the Applicants, Respondents and to the Resolution Applicant through email and free copy.

vii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)

Member (T)

(Jinan K.R.)

Member (J)

Signed on this, the 10th day of July, 2020

gk