

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No.302

IA/641(AHM)2023

in

CP(IB)/210(AHM)2021

Order under Section 30(6) r.w 31 & 60(5) r.w Reg. 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

IN THE MATTER OF:

Arpan Maheshkumar Shah RP Of Omshri Devprocon Ltd
Vs. Committee Of Creditors & Anr.

.....**Applicant**

.....**Respondent**

Order delivered on 02/11/2023

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-s/d-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-s/d-

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

IA No. 641 / NCLT / AHM / 2023

IN

CP(IB) No. 210 / NCLT / AHM / 2021

**(Under Section 30(6) r.w. Section 31 and 60(5) of the
Insolvency and Bankruptcy Code, 2016 read with Regulation
39(4) of the Insolvency & Bankruptcy Board of India
(Insolvency Process of Corporate Persons) Regulations, 2016)**

IN THE MATTER BETWEEN

Arpan Maheshkumar Shah

RP of Omsri Devprocon Limited

.... Applicant

Versus

1. Committee of Creditors

(Omsri Devprocon Limited)

.... Respondent No.1

2. Income Tax Department

C/O Dy. Commissioner of Income Tax

Circle – 3(1)(1),

Nr. Panjrapole, Ambawadi,

Ahmedabad – 380015

... Respondent No.2

AND IN THE MATTER OF

Aakar Construction

Through its Proprietor:

Mr. Sani P. Panchal

... Operational Creditor

Versus

Omsfri Devprocon Limited

... Corporate Debtor

Order pronounced on 02.11.2023

Coram:

MRS. CHITRA HANKARE

HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY

HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

Arpan Maheshkumar Shah

Resolution Professional of

Omsfri Devprocon Limited

301, Shopper Plaza-4, Opp BSNL, C G Road

Navrangpura, Ahmedabad-380006

... Applicant

Present:

For the Applicant : Mr. Arjun Padhiyar

ORDER

1. The present application is filed under Section 30(6) read with Section 31 and 60(5) of the Code, 2016 and other relevant provisions of the Code, seeking for approval of the resolution plan in the matter of Omshri Devprocon Limited (IN CIRP).
2. The applicant states that an Insolvency application was preferred and filed by one of the Operational Creditor i.e. Aakar Construction Through its Proprietor Mr. Sani P. Panchal under Section 9 of the Insolvency and Bankruptcy Code 2016 seeking for the Initiation of Corporate Insolvency Resolution Process of the Corporate Debtor i.e. Omshri Devprocon Limited. The application was accepted against CD for a debt of 1,22,88,481/- and CIRP was ordered on 4.8.2022 and moratorium was declared. Interim Resolution Applicant was appointed by the Tribunal. There were claims received amounting to Rs 4 crores from financial creditors (M/s J P Manek Infrastructure Pvt Ltd and M/s Sangani Infrastructure Pvt Ltd), Rs.1.18 crores from Operational Creditor and Rs.0.98 lakhs from Statutory Authorities.
3. The applicant states and submits that erstwhile IRP had in accordance with Section 21 of the code constituted the

Committee of Creditors ("CoC"). In the first meeting of the Committee of Creditors ("CoC") held on 04.09.2022, the CoC Members had resolved to replace & appoint the applicant as Resolution Professional of the Corporate Debtor. Pursuant to resolution passed in the aforesaid Second CoC meeting, Publication of Form G was made in the newspapers namely Financial Express, Ahmedabad Edition (English Language and Jay Hind, Ahmedabad Edition (Gujarati Language) on 20.12.2022 wherein the last date for submission of Expression of Interest was 04.01.2023.

4. The Applicant further state and submit that out of two prospective resolution applicants who submitted the EOI, only one prospective resolution applicant i.e. Mr. Chetan Patel submitted the Resolution Plan for revival of the corporate debtor and the same was placed before the members of CoC in their 4th meeting dated 17.04.2023 for consideration which was approved with 100% majority votes. The total amount of claims admitted is Rs 5.19 crores of which the amount of claims proposed to be paid is Rs 29.46 lakhs. The RP has also stated that only 2 of the financial creditors claims were accepted, while 7 other applicants claims are under verification. The RP had not provided the list of participants in the 4th meeting of COC which approved the Resolution Plan. There was no valuation done of the assets of the CD even though a valuer was appointed.

5. The applicant has stated that the Resolution Applicant (who is an individual and not an entity with net worth of Rs 76 lakhs as per last audited financials of 2021-22 (copies not provided) has by affidavit under Sec 29A of IBC confirming its eligibility to submit the resolution Plan. Form H dated 5.5.2023 is also submitted. As per the Resolution Plan and MCA records, the CD has an equity of Rs 20 crores and is involved in construction business and the CD has created a charge with Kotak Mahindra Bank Ltd created on 28.10.2010 for an amount of Rs 25 crores.
6. The resolution Plan further states that there are unsecured financial creditors of Rs 4 crores and operational creditors (other than Government authorities) amounting to Rs.1.18 crores, while the dues to Government/Statutory Authorities is mentioned to be 0.98 lakhs and the proposed payment will be Rs 29.47 lakhs as against claims admitted of Rs 5.19 crores. The funding is stated to be by equity and quasi equity subscriptions. However, the Resolution Plan also states that as per Information Memorandum and other details the liquidation value is not known to the Resolution Applicant.
7. As per the list of Creditors, there are no dues outstanding towards the Employees/Workmen. No claim has been received from any employee or workmen. Hence, RA does not propose to make any payment towards dues of employees/workmen, under this resolution plan.

8. As per the information available in Information Memorandum, amount of Claim from government authorities as admitted is Rs.98108 in respect of EPFO. In view of the same, RA proposes an amount of Rs.3679/- to settle all claims against admitted amount of EPFO.
9. There is an income tax demand of Rs.8004.27 lakhs for the assessment years 2007-08 to 2014-15 which is disputed in High Court and there is another demand for Rs 779.32 lakhs for assessment year 2018-19 which dispute is pending before CIT (A). The IT authorities have issued a letter to RP regarding outstanding amount of Rs.77.37 lakhs to be paid, but the RP has not factored the same for reason that no claim has been received and the Resolution Plan has not factored in the claim or dues payable.
10. The RP has provided a detailed brief on the Resolution Plan received by this Tribunal on 21 September 2023 which is taken on record. The approval of the plan was filed on 06.05.2023 with a delay of 4 days. This Hon'ble Tribunal vide order dated 06.07.2023 passed in IA No. 640 of 2023 while allowing the said application for extension of CIRP period also condoned the delay of 4 days in preferring the present application.
11. A notice was issued by the Tribunal on 18 August 2023 to the Income Tax and Suspended Management after hearing the petitioner. A response has been received from the Income Tax Department.

12. It is observed that the Resolution Applicant is an individual and his financial background, net worth, experience and funding of the resolution plan has not been properly explained. The Information Memorandum, Resolution Application and Form H are not satisfactory to enable us consider the application for resolution of the company by a Resolution Plan by an individual. Even though the valuer was appointed the Fair Value and Liquidation Value have not been arrived at by the RP for consideration of the Resolution Plan by the COC. There are huge Income Tax Arrears and the claims of many other financial creditors have not been verified and admitted before the Resolution Plan was finalised. No provision made for the Income Tax Due to be paid.
13. The RP had received an amount of Rs80.59 crores of claims from 9 Financial Creditors, while he has accepted only 2 Unsecured Creditors claims of Rs.4.00 crores, stating that these were under verification and there by the constitution of COC is also found to be unbalanced and the RP has not specified why they were pending. Before rejection or acceptance of such claims and without arriving at the liquidation value of the CD, the Resolution Plan of an individual receiving without proper financial exposure and net worth certification, intent to bring funds through equity/quasi equity was passed by the COC. The resolution plan has also not addressed the cause of default, a proper information memorandum was not prepared and is not

feasible and viable addressing the liabilities of the corporate debtor.

14. The Resolution Plan submitted does not meet requirements of Section 30(2) of the Code.

15. Considering above said facts we are not satisfied that the plan has provisions of its effective implementation.

ORDER

Resolution Plan rejected under Section 31 (2) of the IBC 2016 and Regulation 36 of IBC.

-s/d-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-s/d-

CHITRA HANKARE
MEMBER (JUDICIAL)