

IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

IA No. 2443/~~HEB~~^{PB.}/2021
In CP (IB) No. 1504(PB)/2019

In the matter of
Gammon Infrastructure Projects Ltd.

Gammon Infrastructure Projects Ltd.
3rd Floor, 3/8 Hamilton House,
J.N. Heredia Marg,
Ballard Estate, Mumbai-400038

... Applicant

Versus

1. Sutanu Sinha
Resolution Professional,
Patna Highway Projects Ltd.,
Floor No. 4 Duck Back House,
41, Shakespeare Sarani,
Kolkata - 700017

... Respondent 1

2. Committee of Creditor
Patna Highway Projects Ltd.,
Floor No 4 Duck back House,
41, Shakespeare Sarani,
Kolkata - 700017

... Respondent 2

3. Silver Point Luxembourg
Platform S.A.R.L
11-13 Boulevard de la Foire,
Luxembourg, L-1582

... Respondent 3

Date of Order: 10.05.2022

Coram:

Shri Bhaskara Pantula Mohan, Member Judicial
Shri Hemant Kumar Sarangi, Member Technical





Parties/Counsels present:

- For the GECPL : Mr.Rajshekhar Rao,Sr. Adv.,Mr.Raghavendra Mohan Bajaj,
Mr. Agnish Aditya and Ms. Sonal Sarda, Advocates
- For the RP : Mr.Gaurav Joshi,Sr. Adv., Ms.Pooja Mahajan,
Ms.Mahima Singh, Ms. Srishti Kapoor, Advocates
- For the CoC : Mr.Ramji Srinivasan,Sr. Adv., Mr.Sameer Bansal, Mr.Shivkrit
Rai, Ms.Rajshree Chaudhary, Ms.Harsheen Madan Palli,
Mr.Madhav Gupta, Mr. Apurv S., Advocates
- For the GIPL : Mr.Vikram Nankani, Sr. Adv., Mr.Arijit Mazumdar and
Ms.Akansha Kaushik, Advocates
- For the I.T. Dept. : Mr.Puneet Rai, Sr.Standing Counsel,
Ms.Adeeba Mujahid, Jr. Standing Counsel
- For the SRA : Mr.Kapil Sibal, Sr. Adv., Mr.Arun Kathpalia, Sr. Adv.,
Mr.Prateek Kumar, Ms.Raveena Rai, Mr.Rohit Ghosh,
Advocates

Per: Bench

ORDER

1. The present application is filed by Gammon Infrastructure Projects Ltd. (Applicant), promoter of Patna Highway Projects Ltd. (Corporate Debtor) under Section 60 (5), Insolvency and bankruptcy Code, 2016, Seeking following prayers:-
 - a) Reject the Resolution Plan submitted by Silver Point Luxembourg S.A.R.L on 11th March, 2021 and
 - b) Direct the Committee of Creditors of the Corporate Debtor to consider and approve the Proposal submitted by the Applicant; and
 - c) Pending herein of this Application, not pass any order or direction in I.A. 1538 of 2021 in C.P. (IB) No. 1504 (PB)/2019; and/or
 - d) Pass such other or further order as this Adjudicating Authority may deem fit and proper.
2. Brief facts as stated by the Applicant are as under:-
 - a. That the Applicant has filed the present application to bring on record the various illegalities in the resolution plan submitted for approval of this Adjudicating Authority by the Resolution Professional of the Corporate Debtor in I.A No. 1583 of 2021.
 - b. The Resolution Plan seeks to impose an obligation on NHAI to approve the Successful Resolution Applicant, despite the Successful Resolution



- Applicant not having the technical qualifications and antecedents to carry out the project.
- c. The advertisement dated 16.09.2020 inviting Expression of Interest and the Request for Submission of the Resolution Plan dated 03.11.2020 issued by the Resolution Professional, was vitiated in as much as it did not prescribe the same eligibility criteria as prescribed by NHAI in its Tender Notice.
 - d. The advertisement dated 16.09.2020, inviting Expression of Interest and the Request for submission of Resolution Plan dated 03.11.2020 issued by the Resolution Professional, does not mention the qualifications required to be a Concessionaire under the Concessions Agreement and the Substitution Agreement.
 - e. The Resolution Plan submitted by the Successful Resolution Application is a conditional plan as it is based on various assumptions and key condition precedent.
 - f. The Resolution plan proposed by the Successful Resolution Applicant proposed infusion of a mere Rs. 5 Crores as upfront payment, as against a potential remittance of approximately Rs 2400 crore to be paid by NHAI to the Concessionaire.
 - g. The Resolution Plan, submitted by the Successful Resolution Applicants, fails to achieve maximization of value of assets of the Corporate Debtor.
 - h. The Resolution Plan, proposed by the Successful Resolution Applicant, only offers Rs 930.55 crores against outstanding principal amount of Rs. 1026.93 crores whereas the plan submitted by the Applicant provides for full payment to be made against Outstanding Principal Amount of Rs 1026.93 crores.
 - i. The Resolution Plan, submitted by the Successful Resolution Applicant, fails to address the cause of default of the Corporate Debtor.
 - j. Neither does the Successful Resolution Applicant possess the technical know-how nor does it have the requisite qualification to replace the Corporate Debtor in the Concessions Agreement and therefore, the Resolution plan is neither feasible nor viable.
 - k. The Successful Resolution Applicant is a non-Indian Company (incorporated in Luxembourg), managed by non-Indian persons and may not have the necessary technical qualifications as per the requirements of NHAI for developing, constructing, operating and managing a road infrastructure company.
 - l. No payment to the unsecured financial creditor and related party operational creditors of the Corporate Debtor has been offered by the Successful Resolution Applicant.

- m. That there is a Collusion between Financial Creditors of the Corporate Debtor and Silver Point.
- n. Failure of Successful Resolution Applicant to account for Rs. 350 crores (approx.) lying in the Escrow Account of the Corporate Debtor.
- o. The Resolution Plan is conditional to the fulfilment of various conditions including approval and payments from NHAI and is also based on various assumptions. A few conditions precedent which are encapsulated in the Schedules and Appendices of the Resolution Plan are listed hereunder:
- I. Payment of Rs. 676,71,39,726/- to be made by NHAI on account of missed annuities.
 - II. Additionally, payment of Rs. 586,79,95,460/- to be made by NHAI on account of interest on delayed payments.
 - III. Due to breach of agreement by NHAI and resulting cost overruns, the Corporate Debtor's liabilities towards the ongoing construction works on a part of the Project will be limited to 80% of the originally estimated cost of construction of that stretch and the remaining cost shall be borne by NHAI.
 - IV. Payment of Rs. 50,97,92,881/- to be made by NHAI on account of interest on withheld annuities for the period upto 31.01.2021. It is interesting to note here that Silver Point itself has admitted that the annuities were released by NHAI in November/December 2020.
 - V. Supervision charges to the tune of Rs. 16,41,97,291,-/ should be waived off/reimbursed by NHAI.
 - VI. NHAI to release Rs. 20,66,82,000/- which was withheld on account of damages.
 - VII. Rs. 12,66,82,000/- to be reimbursed by NHAI on account of cost claims and increase in capital costs.
 - VIII. NHAI to waive off all claims against the Corporate Debtor under the Concessions Agreement, upon execution of a new concessions agreement with Silver Point.
 - IX. NHAI will deduct for damages no more than approximately 1.8% from each Annuity payment (excluding any deduction on account of tax deduction at source) in accordance with the terms of the Concession Agreement until the end of the Concession Period.
 - X. That there will be no more than 5% annual operation and maintenance cost inflation until the end of the Concession period.
 - XI. Corporate Debtor will receive all future schedule Annuities (as per the Concession Agreement) on each relevant Annuity Payment Dates.
 - XII. NHAI will settle all the claims with the corporate Debtor.

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- p. The purported successful resolution applicant, i.e. Silver Point herein, now stands to gain benefit of the remaining 21 annuities, which would amount to Rs. 1986,60,00,000/-. That the Resolution Plan proposed by Silver point proposed infusion of a mere Rs. 5 Crore as upfront payment, as against a potential remittance of approximately Rs 2000 Crores to be paid by NHAI to the concessionaire. While the Silver Point has to pay approximately Rs. 9,000 Crores to the financial creditors of the Corporate Debtor, it proposed to do so out of the future annuities.
- q. That Clause 5.3 of the Concession Agreement relates to the obligation of the parties with respect to change in ownership of the Corporate Debtor. That any change in the ownership of the Corporate Debtor shall be subject to prior approval of NHAI from national security and public interest perspective. The construction and operation of national highways is a matter of grave national importance and the Resolution Plan cannot be approved without first getting the approval from NHAI.
- r. The Resolution Plan submitted by Silver Point identifies the cause of default by Corporate Debtor in clause 10.3 of the plan as following:
- I. Delay in construction due to:
 - a. Non-availability of right of way;
 - b. Hindrances from the locals to the Corporate Debtor; and
 - c. Delay in permission from Railways , which led to increase in construction costs;
 - II. Delay/lapses in collection of annuity payments to the Corporate Debtor which resulted in inability to serve the debt out of the cash flow; and
 - III. Lack of intent on the part of /support from Promoter Group.
- s. That none of the causes of default are attributable to any action/inaction on the part of the corporate Debtor. On the contrary, the default by Corporate Debtor is solely and completely attributable to the lenders. In May 2018, the lenders, who committed to release a total sum of about Rs. 85 Crores for completion of one stage of the Project, has in fact released much lesser amount than agreed to Corporate Debtor from the annuity proceeds released by NHAI. This non disbursement of funds by the lenders led to inability on the part of the Corporate Debtor to adhere to the deadline given for completion of the part of the Project.
- t. Sometime in 2019, Corporation Bank initiated proceedings against the Corporate Debtor for initiation of CIRP before this Adjudicating Authority. Around the same time, all the lenders of the Corporate Debtor, except Corporation Bank, assigned their debts to Phoenix ARC Pvt. Ltd.



- As against an outstanding amount of Rs. 955, 92,17,063/-, the debt was assigned to Phoenix ARC for merely Rs. 474,22,00,000/-, which is roughly half the amount of outstanding payment.
- u. That most of the lenders here are public sector banks. In the usual course of business, loans are assigned when banks feel chances of recovery from borrower account have diminished. However, in the present case, it was not so. Termination of the concession Agreement would have led to payment of an amount equal to 90% of the Debt due to the Corporate Debtor. As a result, the lenders would have received a larger repayment than what they received under the assignment agreements. However, all the lenders, except Corporation Bank, chose to assign their loans at significant loss, leading to not only losses to the banks itself but also loss of public money.
 - v. That in view of the above mentioned facts and circumstances, it is clear that the Resolution Plan, submitted by Silver Point, suffers from various illegalities and is also not feasible or viable. Therefore, the Resolution Plan submitted by Silver Point should be rejected by the Adjudicating Authority and a direction be issued that proposal submitted by the Applicant under Section 12A should be considered and approved by CoC.
3. Counsel for the Resolution Professional filed counter, *inter-alia*, stating as under:-
- a. That GIPL is the promoter of PHPL, who has filed objections with the sole objective of scuttling the revival of the Corporate Debtor and the only intention appears to be to somehow prevent any other person from taking over the Corporate Debtor.
 - b. That GIPL itself is disentitled to submit a resolution plan under Section 29A of the code. Hence, it presented its resolution plan in the guise of a 'proposal' under Section 12A of the Code and is now urging this Adjudicating Authority to reject a resolution plan duly approved by the CoC and instead asking the NCLT to direct the CoC to approve its Section 12A proposal.
 - c. In the absence of any legal ground for challenge to the Resolution Plan, various allegations including of fraud have been filed by GIPL against various parties, including RP, CoC, SRA, erstwhile lenders and even NHAI, solely with the mala-fide intent to wrestle control of the Corporate Debtor and if the same is not possible, to push the Corporate Debtor into liquidation.
 - d. That it is not sufficient to merely plead fraud in oral arguments. The threshold for proving fraud is very high and except for repeated bare allegations of fraud, there is no evidence of fraud provided by GIPL. That a Writ Petition was filed by GIPL before the High court of Delhi on



- 26.11.2020, seeking various reliefs including, inter alia, stay on payment of annuities by NHAI and no coercive action against GIPL. In the Writ Petition, similar allegations of fraud were made by GIPL against erstwhile lender and Phoenix ARC. However, the writ Petitioner was ultimately dismissed as withdrawn on 06.04.2021.
- e. That entire Gammon Group is in trouble and various subsidiaries/group companies of GIPL are either in CIRP or facing serious financial distress and operational hurdles. In any event, reasons for default, if any, should have been argued by GIPL at the stage of admission of Section 7 application and not at the stage of plan approval.
 - f. That a bare reading of Regulation 36B (5) of the CIRP Regulation shows that the said regulation is ex-facie not applicable to the present case. The regulation only refers to modification to request for resolution plan (RFRP) and the evaluation matrix. It is not the case of GIPL that there was a modification of RFRP or evaluation matrix by the RP. Hence, the question of providing 30 day timeline to PRAs does not arise.
 - g. Section 31(4) of the Code expressly provides that the resolution applicant shall seek necessary approvals required under any law within one year from the date of the approval of the resolution plan by Adjudicating Authority or within such period as provided in such law, whichever is later. Hence, the Code itself provides for approvals within one year from approval of the NCLT. This because statutory authorities are unlikely to give approvals where plans have not even been approved by the NCLT.
 - h. Gammon has relied on Clause 5.3.1 of the Concession Agreement to argue that NHAI approval should have been taken. However, the said provision requires NHAI approval for effecting change in ownership/control of the CD and not for filing of the Plan Approval Application with NCLT. Resolution Plan specifically provides for approval of the NHAI as a condition prior to effecting any change in shareholding and control of the Corporate Debtor.
 - i. Neither the NHAI rules nor the Code specified any requirement to procure upfront approval of the NHAI for change in ownership even before approval of the resolution plan by the NCLT.
 - j. In the event, NHAI is aware about the ongoing CIRP and proposed change of shareholding in favor of SRA pursuant to the implementation of the Resolution Plan-meetings held on 16.09.2020 and 06.10.2020. During the meeting, NHAI representatives raised concerns about the past defaults and delay already cause on the Project and asked the RP to start the balance works as early as possible considering the CIRP or else they will issue another tender.



- k. From time to time, the RP has informed the NHAI about the progress of the CIRP of the Corporate Debtor. The NHAI has also been informed about the CoC approval of the Resolution Plan. In fact, NHAI has responded to the letter issued by the RP expressing its hope for speedy resolution of the Corporate Debtor by SRA.
- l. That in the present case, Mr. Sutanu Sinha (RP) is not proposed to be 'employed' with the SRA or the Corporate Debtor. He is an independent professional who will be appointed as the managing Agency until the Closing Date, to assist the Monitoring committee in supervising and managing the business and operations of the Corporate Debtor as a going concern. Further, RP's assignment comes to an end with the approval of the resolution plan, post which the RP becomes functus officio and thereafter, there is no restriction on him acting as a managing agency in any matter.
- m. The Code and the underlying Regulation do not bar/restrict the RP from continuing as the Managing Agency after the Resolution Plan is approved by the NCLT.
- n. That CoC is providing term loan of INR 900 Crores is incorrect. No such loan is being given, instead, after payment of Repaid Debt, the balance amount (minus interest) is being restructured as 'Reconstituted Debt'. Schedule 5 of the Resolution Plan provides for Restructured Terms of the Reconstituted Debt, i.e.:
- Nature of debt (term loan)
 - Bullet payment at the end of the concession period (i.e. 11 Aug, 2025) with excess cash sweep each quarter.
 - Interest of 9.8% p.a. payable in March and September.
- o. Since excess cash sweep will be done to Secured FCs, the total amount may get paid much earlier than 2025. Nevertheless, there is a complete obligation on SRA to pay the Reconstituted Debt latest by the end of concession period. Therefore, the SRA is committed to pay the secured financial creditors. Significantly, even the existing financing document, namely the Master Restructuring Agreement (MRA), executed between the CD and the lenders, does not provide for an upfront bullet re-payment to the lenders.
- p. That the SRA will be making an equity infusion of INR 5 Crores into Corporate Debtor and will be making upfront payment of excess cash from Corporate Debtor to the secured Creditors. It is in fact GIPL's proposal, under Section 12A of the Code, which did not provide for any upfront payment or equity infusion by promoters. Without prejudice,

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there is no provision under the IBC or CIRP Regulations which requires fund infusion of a specific amount by SRA.

- q. The commercial terms of Resolution Plan, including amount of funds to be infused into Corporate Debtor, fall within the domain of commercial wisdom of CoC.
- r. Resolution Plan provides a mechanism for the usage of the funds lying in the escrow account. The funds lying in the escrow account of the CD are currently being utilized by the RP towards construction of balance work which GIPL failed to do. On the payment date, after keeping aside the project related cost, operating expenses, CIRP Cost etc., the balance cash; will be paid to the Secured Financial Creditors. From approx. INR 314 Crore cash lying with CD, it is proposed to set aside INR 210.5 Crores for these costs.

Particulars	Amount	Remarks
Escrow Balance as on 27.10.2021	314 Cr.	Rounded off figure, as provided by RP Team
Less: Construction Obligations (balance) + GST	208 Cr.	Actually awarded + Additional 10 Crores
Less: O&M CIRP Costs (Jul 21 to Dec21)	2.50 Cr.	Conservative Estimate
Approx. Excess Cash as on 27.10.2021	103.5 Cr.	

- s. The term of the Reconstituted Debt provides for bullet payment at the end of the concessional period with quarterly excess cash sweep to the Secured Financial Creditors. Hence, the annuities are proposed to be used first towards project related expenses and the operating expenses and only the balance will be used for paying Secured Financial Creditors.
- t. That NHA1 approval is a requirement of law and not a condition imposed by SRA that can be waived. All aspects of the SRA's Resolution Plan, including the conditionalities specified, were duly considered by the CoC and the Resolution Plan was eventually approved by the CoC in its commercial wisdom, after finding it to be feasible and viable.
- u. Schedule 6, list down the open items and open claims between NHA1 and CD, which are to be mutually discussed and settled between SRA and NHA1 as part of Supplementary Agreement.
- v. Promoter Proposal itself had various conditions attached to it, such as
- a) Waiver by NHA1 of all the penalties levied/to be levied from annuities till date;

- b) Release by NHAI of all the overdue annuities including the withheld amount, from the aucties released along with the penalties recovered;
- c) Recovery from any future annuities shall be made by NHAI only to the extent of the actual certified work done.
- w. Given the promoter Proposal itself was conditional, it is evident that GIPL does not have an issue with conditionality per se, but is raising grievance that its own conditional plan was rejected in favor of Resolution Plan of SRA.

Reiterating above, counsel for the Respondent prayed to dismiss the instant Application.

4. Counsel for CoC filed Counter, *inter-alia*, stating as under:-
- a. That because of mismanagement by Applicant, since 2017 the NHAI had refused to release annuities to PHPL (viz. during the Applicant's management of the Corporate Debtor), prior to initiation of CIRP under the provisions of the Code. However, a marked progress in the Project works has been overseen by the Respondent No. 1, who has been in control of the Corporate Debtor during the CIRP period. In this period, through concerted efforts and discussions involving the lenders and NHAI, the withheld annuity amounts for nearly 2 years have been released by NHAI thereby greatly benefiting the Corporate Debtor which is reflected by greatly improved execution of works on the ground level.
 - b. That despite the gross mismanagement, the applicant sought to regain control of the Corporate Debtor by submitting a resolution plan on 23.07.2020 ("Promoter Plan") purportedly under Section 12A of the Code.
 - c. The Promoter Plan, being only a 2 page document, failed to address the root cause of default of the Corporate Debtor, lacked provisions specifying neither its capability for obtaining prior approvals from the NHAI, nor gave any timelines for the same. Instead, Promoter Plan imposed unfeasible and onerous terms and conditions upon the lenders and the NHAI. In any event, the Applicant was disqualified from submitting resolution plans in respect of the Corporate Debtor, being legally disqualified by operations of Section 5(24) read with Section 29-A of the Code. The CoC, after giving the Applicant a fair hearing, in its commercial wisdom had unanimously rejected the Promoter Plan (by 100% voting share) on 06.10.2020.
 - d. That the entire application is nothing more than a collection of baseless allegations against the Respondents, without a shared of evidence in support.

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- e. That an examination of the above allegations would show that the Applicant is clearly not interested in the resolution and revival of the Corporate Debtor and is merely making this last ditch effort to delay the resolution of PHPL. The allegations of wrong-doings raised by the Applicant are not backed by even a single piece of evidence and are in fact completely erroneous and incorrect. The applicant further seeks reconsideration of the Promoter Plan which was unanimously rejected on 06.10.2020 by the CoC in its commercial wisdom.
- f. That a fair and transparent process for invitation of bids was followed by the CoC, which culminated in the near unanimous approval of the Resolution Plan of the Respondent No. 3, the latter's Resolution Plan was found to contain far superior terms, in the commercial wisdom of the CoC. By way of illustration, the superior commercial terms of the Resolution Plan include - ensuring the "going concern" status of the Corporate Debtor, effective implementation, 100% recovery to unrelated Operational Creditor (and to employees & workmen), and very high recovery of 73.27% of dues to secured Financial Creditors. Unlike the Applicant, the Respondent No. 3 is not disqualified under Section 29-A of the Code, the Resolution Plan meets the eligibility criteria under the EOI and RFRP, and the Resolution Plan has been refined pursuant to multiple rounds of negotiations between CoC and the Respondent No. 3. The Respondent No. 3 has received the feedback and comments from the CoC, and duly taken the same into consideration when submitting the improved Resolution Plan on 11.03.2021; with a view to accommodate the request of the CoC and ensure revival of the Corporate Debtor.
- g. That during voting upon the Resolution Plan, in the meeting of CoC dated 12.03.2021, Bank of India (BOI) which is an unsecured Financial Creditor of PHPL (being beneficiary of a corporate guarantee obtained from the Corporate Debtor), was the sole dissenter. All other lenders have unanimously approved the Resolution Plan.
- h. The argument that the termination of the Concession Agreement was preferable to approval of the Resolution Plan of the Respondent No. 3, this submission of the Applicant completely lays bare its true motive, which is to derail on-going resolution resulting in liquidation of PHPL. The absurdity of this submission can be readily gauged from the fact that if the argument of the Applicant were to be accepted, the termination of the Concession Agreement would lead to significantly lower recoveries for the Financial Creditors as compared to the Resolution Plan. The likely recovery from termination of the Concession Agreement would be a significantly lower amount as opposed to the total debt exposure of the Corporate Debtor, and in any event, is much lesser than the proposed

- treatment of secured lenders dues under the Resolution Plan. As such, it is apparent that the approach of the Applicant is in destructive of the spirit and objectives of the Insolvency & Bankruptcy Code.
- i. In the commercial wisdom of the CoC, the Resolution Plan was found to be commercially feasible and viable, ensuring value maximization of the Corporate Debtor and balancing the interest of all stakeholders. The business rationale behind acceptance of haircut taken by the secured Financial Creditors is to reduce the value of the outstanding Financial Debt of the Corporate Debt so that the Project debt is maintained at a sustainable level. The Resolution Plan provided 100% recovery to admitted claims of Operational Creditors (including employees & workmen) ensuring the Corporate Debtor remains a "going concern" and proposes adjustment of the secured Financial Debt to ensure the ongoing viability of the company's operations. In a nutshell, the Resolution Plan ensures achievements of the stated objectives of the Code and ensures the Corporate Debtor remains a "going concern".
 - j. The CoC have duly deliberated upon, negotiated and examined the financial proposals and business plan submitted by the Respondent No. 3 in the Resolution Plan. The CoC having considered all factors and following a fair process, have found the Resolution Plan to contain commercially viable terms of the turnaround of the business of the Corporate Debtor. Since the CoC voted in favour of the plan with an overwhelming majority of 97.95% (which constitutes 100% of the secured lenders), the commercial wisdom of the CoC must prevail.
 - k. That the construction of the Project highway involves public interest and is of national importance, and the disingenuous agenda of the Applicant, who is a discredited ex-promoter of the Corporate Debtor, should not come in the way of the successful insolvency resolution under the provisions of the Code.
5. Counsel for successful Resolution Applicant filed Counter, *inter-alia*, stating as under:-
- a. That PHPL's financial stress and ultimate insolvency is solely on account of mismanagement, repeated defaults and abandonment of the project by the Applicant. The pattern of mismanagement by the Applicant has affected the financial condition and operational capabilities of its other subsidiaries undertaking construction and development of various other infrastructure projects in public interest. Other subsidiaries of the Applicant indulging Rajahmundry Godavari Bridge Limited, Indra Container Terminal Private Limited, Sindhi-Singrauli Road Project Limited etc., which are undertaking large scale infrastructure projects, are undergoing financial stress and even insolvency proceedings under the

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Code. It is submitted that the record of poor financial management by the Applicant demonstrates its lack of credibility. The present Application is nothing but a last-ditch attempt to subvert the statutory process to resolve the insolvency of PHPL.

- b. That the NHAI had refused to release annuities for nearly 2 years which were due and payable under the Concession Agreement, when the Corporate Debtor was under management of the Applicant. The non-receipt of annuities by the PHPL during this period was one of the primary cause of the default leading up to initiation of CIRP.
- c. On the other hand, Respondent No. 3 is given to understand that in the short period since the initiation of CIRP during the term of the RP in management of PHPL, NHAI has released annuities aggregating to approximately INR 378 Crores which were withheld from the Corporate Debtor during management of the Applicant and there has been significant progress on the Project highway under the new management.
- d. The Applicant in fact never had any intention of reviving the Corporate Debtor, which is evident from its commercially unviable and unfeasible purported resolution plan under Section 12-A of the Code. Prima facie, the purported resolution plan was a mere 2 page term sheet with inadequate provisions for the effective implementation and unsatisfactory financial proposals. In closer conspectus of this purported resolution plan, it becomes clear that the said resolution plan does not offer a real settlement to the lender and states that more than 70% of the payments will be paid over a period of 8 years, which is even beyond the Concession period itself (expiring in 2025). The Said resolution plan of the Applicant also imposes onerous terms and conditions upon the lenders and the NHAI, without the Applicant adducing any concrete business plan or vision to revive the Corporate Debtor. It appears that in view of these very reasons, the CoC, in its commercial wisdom and business prudence unanimously rejected the resolution plan submitted by the Applicant on 06.10.2020.
- e. That the disclosure of suspect financial transactions and serious offences has resulted in an application being instituted in the present Petition by the Respondent No. 1 being LA No. 1761/2021 ("Avoidance Application"), seeking avoidance of the transaction involving the Applicant.
- f. The sole purpose and objective of incorporation of the Corporate Debtor is to perform its duties and obligations under the Concession Agreement and Project Contracts (defined hereunder). The Applicant has insinuated that the termination of the said Concession Agreement was preferable to the approval of the Resolution Plan submitted by the Respondent No. 3.



The Applicant cannot be permitted to take advantage of its own wrong and perpetuate the illegalities committed during its management of PHPL.

- g. That accepting the Applicant's contentions would be the death knell of the Corporate Debtor and result in its corporate death, in any event, the termination of the Concession Agreement would yield a substantially low recovery of INR 325.5 Crores as one-time payment. As opposed to this, the Resolution Plan approved by an overwhelming majority of 97.95% of the CoC in its commercial wisdom, will lead to value maximization of the Corporate Debtor, balance interest of stakeholders including NHA and result in revival of PHPL. Indeed, the secured Financial Creditors have taken a haircut so that the Resolution Plan provides for a sustainable path forward to build the Project highway, which is a national priority. As such, the contentions of the Applicant are in direct contravention of the stated objectives and purpose of the Code and ought to be rejected at the threshold by this Hon'ble Tribunal.
- h. The Applicant has raised issues on the eligibility criteria for resolution applicants. That the eligibility criteria for submission of resolution plan are to be set by the CoC in its commercial wisdom. In any event, the resolution plan contemplates approval of NHA prior to its implementation in due compliance with Section 32(4) of the Code.
- i. Respondent No. 3 boasts of significant turn-around experience at a global level, who proposes to retain technical partners employed by Respondent No. 1 to continue project works. Respondent No. 1 will continue to manage the Project as part of the Managing Agency till implementation of the Resolution Plan.
- j. Respondent No. 3 is committed to implement the Resolution Plan and to ensure completion of all steps required in this direction for the turnaround of the Corporate Debtor.
- k. That the contentions of the Applicant being vexatious and dilatory, is evident from the baseless allegations of collusion levelled against the Respondent in the present Application. False allegations have been levelled by the Applicant without presenting any evidence in support of alleged collusion between the Respondent No. 2 and 3, purely with the interest to derail resolution of a Project highway of national importance. The Project highway involves considerable public interest and investment by public sector banks, and any further disruptions to the Project will completely cripple traffic operations on the national highway.
- l. The present Application is clearly non-maintainable, as the Applicant has no *locus standi* to allege purported violations of contracts to which it is not even a signatory - including the Concession Agreement and the Common



Loan Agreement dated 18.08.2010 ("Common Loan Agreement"), executed between PHPL, NHAI and the lenders of PHPL in relation to the execution of the Project.

6. Counsel for Applicant filed Rejoinders to the Counters filed by the Respondents herein, *inter-alia*, denying the allegations made in the counter and further prayed to allow the Application as prayed for.
7. Heard. Perused the record.
8. In this case, the Applicant herein is the Promoter of the Corporate Debtor herein, who has filed this application, alleging various illegalities in the Resolution Plan as proposed by R3 herein and approved by CoC with requisite majority. The said plan is now placed before this Adjudicating Authority for its consideration.
9. The applicant has *inter-alia* levelled several allegations of various illegalities against CoC members and the RP and has sought to reject the Resolution Plan placed for consideration before this Adjudicating Authority and also sought for direction to CoC for approval of proposal as proposed by the Applicant herein.
10. According to the provisions of IBC, 2016 once a CIRP application is admitted, it is the duty of RP to constitute CoC and thereafter publish EoI, Information Memorandum and evaluation matrix on the basis of decisions taken in CoC meetings. Thereafter, upon receipt of EoI by potential Resolution Applicants, various Resolution plans are examined by the RP and the same are put up before the CoC for deliberations about each of those plans for considering their feasibility and reliability. In this regard, it is pertinent to note here that under the provisions of the Code, the commercial wisdom of the CoC has been given paramount status without any scope for judicial intervention. As has been categorically held by Hon'ble Apex Court in *K.Shashidhar vs. Indian Overseas Bank & Ors* (2019)..... "*There is an intrinsic assumption in the framework of the Code that that the Financial Creditor are fully informed about the viability of the Corporate Debtor and feasibility of the proposed Resolution Plan. They act on the basis of thorough examination of the proposed Resolution plan and the opinion expressed by them, after due deliberations in the CoC meetings through voting, as per respective*



voting shares, is a collective business decision. The legislature, consciously has not provided any ground to challenge the 'commercial wisdom' of either the individual Financial Creditor or their collective decision before the Adjudicating Authority that is made non-justiciable."

11. In the judgement in *Arcelor Mittal India Pvt Ltd vs. Satish Kumar Gupta*, 2019 2 SSC1, Hon'ble Apex Court have laid down that a resolution applicant cannot claim a vested right that his Resolution plan be considered and therefore, no challenge can be preferred to the Adjudicating Authority at this stage. However, if on the other hand, a Resolution plan has been approved by the CoC and has passed muster before the Adjudicating Authority, this determination can be challenged before the NCLAT under section 61 or further challenged before the Supreme Court under section 62, if a question of law arises out of such order. In para 79 of the order, Hon'ble Supreme Court held as under:

"79. Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This is also made clear by the first proviso to Section 30(4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster."

12. In *JMF ARC vs. Welldo Holdings and Export Pvt Ltd* (Company Appeal (AT) No.134/2019) Hon'ble NCLAT made it clear that no Interlocutory Applications before the Adjudicating Authority would be maintainable during the period of submissions of a CoC approved Resolution Plan by the RP before the Adjudicating Authority for final determination of that proposed CoC approved Resolution Plan. Even after determination of the Resolution Plan by the Adjudicating Authority, no IAs would be maintainable before the Adjudicating Authority, but only an appeal may be filed against such determination before



Hon'ble NCLAT or before Hon'ble Supreme Court under section 62 of the Code, if a question of law arises out of such order.

13. In the instant matter, the CoC have approved the Resolution Plan submitted by the successful Resolution Applicant in terms of Section 30(4) and the same is pending before this Adjudicating Authority for determination under Section 31 of the Code. As laid down by Hon'ble NCLAT and Hon'ble Apex Court in the judgements *supra*, no challenge by way of an IA before this Adjudicating Authority or even by way of a Writ Petition before a High Court is possible at this stage, as no rights are affected at this stage. Therefore, the Applicant's prayer for staying the process of approval/determination of the CoC approved Resolution Plan by this Adjudicating Authority cannot be acceded to.
14. With the above observations, the instant IA is dismissed as not maintainable.

HEMANT KUMAR SARANGI
MEMBER (TECHNICAL)

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Pronounced today under Rule 151 of NCLT Rules, 2016 as the Hon'ble Member (T) Sh. Hemant Kumar Sarangi, is not holding the court today.

Court Officer
10.05.2022

IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

IA No.3954/2021
In C.P.No.1504(PB)/2019

In the matter of
M/s. Gammon Engineers & Contractors Private Limited

M/s. Gammon Engineers & Contractors -
Private Limited,
Gammon House, Veer Savarkar Marg,
Prabhadevi, Mumbai - 400025.

... Applicant

VERSUS

1. Sutanu Sinha
Resolution Professional,
Patna Highway Projects Ltd.,
Floor No.4, Duck Back House,
41, Shakespeare Sarani,
Kolkata - 700017.

... Respondent No.1

2. Committee of Creditors
Patna Highway Projects Ltd.,
Floor No.4, Duck Back House,
41, Shakespeare Sarani,
Kolkata - 700017.

... Respondent No.2

Date of Order: 10.05.2022

Coram:

Shri Bhaskara Pantula Mohan, Member Judicial
Shri Hemant Kumar Sarangi, Member Technical

Parties/Counsels present:

For the GECPL : Mr.Rajshekhar Rao,Sr. Adv.,Mr.Raghavendra Mohan
Bajaj, Mr. Agnish Aditya & Ms. Sonal Sarda, Advocates





- For the RP : Mr.Gaurav Joshi,Sr. Adv., Ms.Pooja Mahajan,
Ms.Mahima Singh, Ms. Srishti Kapoor. Advocates
- For the CoC : Mr.Ramji Srinivasan,Sr. Adv., Mr.Sameer Bansal,
Mr.Shivkrit Rai, Ms.Rajshree Chaudhary, Ms. Harsheen
Madan Palli, Mr.Madhav Gupta, Advocates
- For the GIPL : Mr.Vikram Nankani, Sr. Adv., Mr.Arijit Mazumdar and
Ms.Akansha Kaushik, Advocates
- For the I.T. Dept. : Mr.Puneet Rai, Sr.Standing Counsel,
Ms.Adeeba Mujahid, Jr. Standing Counsel
- For the SRA : Mr.Kapil Sibal, Sr. Adv., Mr.Arun Kathpalia, Sr. Adv.,
Mr.Prateek Kumar, Ms.Raveena Rai, Advocates

Per: Bench

ORDER

1. Instant application has been filed by M/s Gammon Engineers & Contractors Pvt. Ltd under Section 60(5) of the Code, 2016 seeking following prayers:
 - a. Reject the Resolution Plan submitted by Silver Point Luxembourg S.A.R.L on 11.03.2021; and
 - b. Pending hearing of this Application, not pass any order or direction in LA. 1538 of 2021 in C.P. (IB) No. 1504 (PB)/2019; and
 - c. Direct the Resolution Professional to provide a copy of Resolution Plan submitted by Silver Point Luxembourg S.A.R.L. on 11.03.2021 to the Applicant; and
 - d. Direct the Resolution Professional to issue fresh invitation for Expression of Interest; and/or
 - e. Pass such other and further order as this Tribunal may deem fit and proper and in the facts and circumstances of the instant case.
2. Brief facts as stated by the Applicant are as under:-
 - a. Applicant being aggrieved by the Resolution Plan submitted by Silver Point Luembourg S.a.r.l on 11.03.2021 and LA. 15328 of 2021 filed by Mr. Sutanu Sinha, Resolution Professional of the Corporate Debtor before this

Tribunal for approval of the Resolution Plan, begs to prefer the instant Application.

- b. That a Concessions Agreement dated 24.02.2019 was executed between National Highway Authority of India (NHAI) and Corporate Debtor for augmentation of the existing Hazipur Muzaffarpur Road Carriageway section on NH-77 on build operate and transfer (Annuity) basis.
- c. That an engineering, procurement and construction contract dated 22.02.2011 was executed between Gammon India Ltd and the Corporate Debtor herein to execute design engineering procurement of materials, plant, construction and all other works and things etc.
- d. GIL completed the work on the area available to it. The Provisional Commercial Operation Date (PCOD) was only granted to the Corporate Debtor on 01.09.2016 as GIL fulfilled its part of the obligations under the EPC Contract. It is pertinent to mention here that NHAI has till date released several annuities to the Corporate Debtor because of the work done by GIL but the Corporate Debtor has failed to clear the dues of the Applicant. The details of bills raised by the Applicant and the balance payable is as follows:-

S. No.	Description	Amount (in Rs.)
1	Total amount of work done as per various RA Bills	830,49,88,092.00
2	Recoveries	(37,55,05,706.18)
3	Amount payable	7,92,94,82,386.68
4	Amount paid	7,78,06,12,516.99
5	Balance Payable against work done	14,88,69,869.69

- e. The Applicant has acquired the Civil EPC Undertaking of GIL (Civil EPC Business together with all assets, employees, pre-qualification, trademarks, contracts, rights, privileges, licenses and all liabilities, debts and obligations of any nature) through a Scheme of Arrangement between the



- Applicant and GIL. The Scheme of Arrangement was approved by the NCLT, Mumbai on 22.03.2017 and it came to effect on 31.03.2017.
- f. Consequently, the EPC Contract for execution of the Project also stood transferred to the Applicant. The Corporate Debtor was informed of the transfer of the EPC Contract from GIL to the Applicant vide letter dated 11.04.2017.
 - g. The Applicant was surprised to see that NHAI had floated tenders and signed contracts for part of the work of the project, despite the same being against the Contract. The Applicant suffered huge losses due to this and communicated the same to the Corporate Debtor vide letters dated 05.05.2019.
 - h. Certain disputes and difference arose between the Applicant and the Corporate Debtor and the Applicant issued a notice of invocation of arbitration 04.11.2019 in terms of the EPC Contract. The Applicant, in its letter, also nominated its nominee arbitrator.
 - i. The Corporate Debtor, vide letter dated 15.11.2019, nominated its nominee arbitrator and both the arbitrators appointed the Presiding Arbitrator. The Presiding Arbitrator issued formal notice on 25.11.2019 for constitution of Arbitral Tribunal and called for first arbitral hearing on 05.12.2019. On the first day of hearing, i.e. on 05.12.2019, the Applicant filed their Statement of Claims claiming an amount of Rs. 428,22,98,000/- along with interest, cost of arbitration and applicable GST on award amount.
 - j. The Applicant also submitted an urgent application under Section 31(6) of the Arbitration and Conciliation Act, 1996 praying for status quo on the EPC contract, along with other reliefs. While the Ld. Arbitral Tribunal directed the Corporate Debtor to file its report to the Application, it also directed the Corporate Debtor to maintain the status quo on EPC Contract on the said works and not further descope/ terminate the said contract or further reduce the contract value or levy any penalty/LD till next date of hearing. The next date of hearing was fixed on 13.03.2020. Thereafter, the



Corporate Debtor filed its statement of Defense and the Applicant filed its rejoinder.

- k. While the arbitral proceedings were underway, this Tribunal vide order dated 03.01.2020 admitted the Company Petition No. (IB) 1504 of 2019 and initiated the Corporate Insolvency Resolution Process of the Corporate Debtor.
- l. The second arbitral hearing scheduled for 13.03.2020 was cancelled due to spread of Covid-19 virus. The second hearing of the arbitration proceedings was held on 12.10.2020. On 12.10.2020, the Resolution Professional appeared before the Ld. Arbitral Tribunal along with his lawyers and informed the Ld. Arbitral Tribunal that the Corporate Debtor is undergoing CIRP. He also made detailed submissions praying for vacation of the order dated 05.12.2019 passed by the Ld. Arbitral Tribunal.
- m. That as there is a moratorium against the Corporate Debtor, the present arbitration proceedings cannot be continued and would be in suspension till moratorium under the Code is lifted. The Ld. Arbitral Tribunal, while taking on record the submissions post 12.10.2020, also directed status quo on the arbitral proceedings and any order passed prior to 12.10.2020. It is pertinent to mention here that the Resolution Professional has not challenged this order and therefore, it has attained finality.
- n. The Applicant submitted his claim of Rs. 481,57,58,500/- to the Resolution Professional on 20.02.2021 in Form B and supplied all the supporting documents along with it. The Resolution Professional informed the Applicant that their claim has been kept under the Disputed category.
- o. In the meantime, the Committee of Creditors of the Corporate Debtor approved a Resolution Plan submitted by Silver Point Luxembourg Platform S.A.R.L. on 11.03.2021 in the 14th CoC meeting held on 12.03.2021. Thereafter, I.A. No. 1538 of 2021 is filed by the Resolution Professional of the Corporate Debtor for the approval of the Resolution Plan.



- p. The Resolution Professional, vide letter dated 05.04.2021 informed the Applicant that their claim is under the disputed category and the claim has been collated in accordance with the Code, read with the underlying regulations and was furnished as part of the information memorandum to resolution applicant. The Applicant was also informed that in any case, a resolution plan has been approved by the Committee of Creditors of the Corporate Debtor and an application has been filed before this Tribunal for its admission.
- q. The Resolution Professional has also filed an application purportedly under Section 25(2)(i) read with Section 43, 44 and 60(5) of the Code being LA. No. 1761 of 2021 against the Applicant. That the Applicant and the Corporate Debtor are not related parties. The Respondents have sought to categorize the Applicant as related party of the Corporate Debtor so as to defeat the claims of the Applicant under the arbitration proceedings and to avoid the liabilities of the Corporate Debtor in the arbitration proceedings.
- r. That in any case, the claims of the Applicant arise under the EPC Contract, which was an independent contract. That the Applicant diligently complied with its obligations under the EPC Contract and even went above and beyond to ensure the completion and appropriate maintenance of the Project. However, on-going through the Resolution Plan, the Applicant was surprised to find that Respondent No. 3 makes no provision for the claims of the Applicant. On the contrary, Silver Point has unilaterally rejected the claims of the Applicant, despite being a Resolution Applicant and having no jurisdiction to do so.
- s. Such action by a Resolution Applicant is completely arbitrary, unlawful and illegal. The Code provides that all claims must be submitted to and decided by the Resolution Professional.
- t. The Successful Resolution Applicant has adjudicated upon the Applicant's claim, dispute the same being classified as 'disputed' by the Resolution

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Professional. Silver Point also calls for the termination of the EPC Contract in the Resolution Plan.

- u. It is a well settled principle of law that unilateral termination of legally binding contract that were entered into by the Corporate Debtor before the CIRP initiation is not allowed under the Code. The Respondent No. 3 in the Resolution Plan, while rejecting all the claims of the Applicant against the Corporate Debtor, has provided that all the claims of Corporate Debtor against the Applicant shall be valid and subsisting.
- v. Respondent No. 3 cannot seek to terminate the EPC Contract and extinguish all the rights of the Applicant against the Corporate Debtor while providing for preservation of the claims, demands and liabilities of the Corporate Debtor against the Applicant arising out of the EPC Contract. The Resolution Plan is unjust and unfair and discriminatory towards the Applicant and cannot be allowed in its present form.
- w. That while the Respondent No. 3 is seeking to terminate the EPC Contract and extinguish the claims of the Applicant thereunder, it is also claiming reimbursement from NHAI on account of Claims raised by contractor(s) on the Corporate Debtor.
- x. That the Respondent Nos. 1 and 2 are well aware of such terms of the Resolution Plan but have not made any objections regarding the same. In fact, the Resolution Plan has been approved by the majority of the members of the Respondent No. 2. On the fact of it, the Resolution Plan suffers from patent illegality and should not have been approved by the Respondent No. 2 in the first place.
- y. That it has been able to make the above-mentioned submissions based on a brief inspection of the pleadings filed in LA. No. 1538 of 2021 filed by the Resolution Professional. It is abundantly clear that the rights of the Applicant are substantially affected by the Resolution Plan and therefore, the Applicant humbly prays that a copy of the Resolution Plan should be provided to the Applicant. The Applicant reserves its rights to make



additional submissions with respect to the Resolution Plan, once it receives a copy of the same.

3. Counsel for RP and CoC filed their respective counters and same have been perused.
4. Heard. Perused the record.
5. This Application is, *inter-alia*, filed seeking to reject the Resolution Plan, provide copy of the Resolution Plan and issue direction for calling of fresh EOI.
6. In relation to the rejection of the Resolution plan, it is pertinent to note the settled position of law as laid down by Hon'ble NCLAT in *JMF ARC vs. Welldo Holdings and Export Pvt Ltd* (Company Appeal (AT) No.134/2019). Hon'ble NCLAT made it clear that no Interlocutory Applications before the Adjudicating Authority would be maintainable during the period of submissions of a CoC approved Resolution Plan by the RP before the Adjudicating Authority for final determination of that proposed CoC approved Resolution Plan. Even after determination of the Resolution Plan by the Adjudicating Authority, no IAs would be maintainable before the Adjudicating Authority, but only an appeal may be filed against such determination before Hon'ble NCLAT or before Hon'ble Supreme Court under section 62 of the Code, if a question of law arises out of such order.
7. Thus at this juncture, any objection to the Resolution plan by any party is not maintainable, more so, when the law is clear that any resolution plan, can only be rejected if it fails to fulfil any of the conditions as laid down under Section 30(2) of the IB Code, 2016. In view of the same, the Applicant's plea regarding rejection of the Resolution Plan is hereby dismissed in limine.
8. Further in relation to prayer to provide copy of the Resolution plan, it appears to us from the pleadings itself, from the manner it has pointed out various contents of the Resolution plan, that the Applicant is already holding a copy of the Resolution Plan. However, leaving that apart, it is a settled position of law that the Resolution Plan is a confidential document until the same is approved by the Adjudicating Authority. Hence, the Applicant, not being participant






during the CoC meetings, cannot now seek copy of the Resolution Plan through this Adjudicating Authority.

9. In view of the above, this Application is dismissed.
10. No order as to costs.

HEMANT KUMAR SARANGI
MEMBER (TECHNICAL)


BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Pronounced today under Rule 151 of NCLT Rules, 2016 as the Hon'ble Member (T)
Sh. Hemant Kumar Sarangi, is not holding the court today.



Court Officer
10.05.2022

IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

IA No. 1538 of 2021

In

CP (IB) 1504(PB)/2019

IN THE MATTER OF
M/s. PATNA HIGHWAY PROJECTS LIMITED

BETWEEN:

M/s. Sutanu Sinha,
Floor No. 4, Duck Back House,
41, Shakespeare Sarani,
Kolkata - 700017

...Applicant/Resolution Professional

Versus

Corporation Bank

Patna Highway Projects Limited

Date of Order: 10.05.2022

Coram:

Shri Bhaskara Pantula Mohan, Member Judicial

Shri Hemant Kumar Sarangi, Member Technical

Parties/Counsels present:

For the GECPL : Mr.Rajshekhar Rao, Sr. Adv., Mr.Raghavendra Mohan Bajaj,
Mr. Agnish Aditya and Ms. Sonal Sarda, Advocates

For the RP : Mr.Gaurav Joshi, Sr. Adv., Ms.Pooja Mahajan,
Ms.Mahima Singh, Ms. Srishti Kapoor, Advocates

For the CoC : Mr.Ramji Srinivasan, Sr. Adv., Mr.Sameer Bansal, Mr.Shivkrit
Rai, Ms.Rajshree Chaudhary, Ms.Harsheen Madan Palli,
Mr.Madhav Gupta, Mr. Apurv S., Advocates

For the GIPL : Mr.Vikram Nankani, Sr. Adv., Mr.Arijit Mazumdar and
Ms.Akansha Kaushik, Advocates

For the I.T. Dept. : Mr.Puneet Rai, Sr. Standing Counsel.





For the SRA : Ms. Adeeba Mujahid, Jr. Standing Counsel
: Mr. Kapil Sibal, Sr. Adv., Mr. Arun Kathpalia, Sr. Adv.,
Mr. Prateek Kumar, Ms. Raveena Rai, Mr. Rohit Ghosh,
Advocates

Per: Bench
ORDER

1. Under consideration is an Application filed U/s. 30(2) of the I&B Code, 2016, by the Resolution Professional, inter-alia, seeking following reliefs:-
 - a. Allow the present Application and approve the revised Resolution Plan dated 11.03.2021, submitted for the Corporate Debtor by Silver Point Luxembourg Platform S.A.R.L (successful Resolution Plan) in terms of Section 31(1) of the Code;
 - b. Direct that the Successful Resolution Plan approved/sanctioned by this Adjudicating Authority shall be binding on the Corporate Debtor, its employees, members/stakeholders, creditors, guarantors and other stakeholders involved in the Successful Resolution Plan.
2. Brief facts of the case, as stated by the Applicant, are as under:-
 - a. That this Adjudicating Authority vide order dated 03.01.2020, admitted the Corporate Debtor into CIRP and appointed Mr. Sutanu Sinha as the Interim Resolution Professional (IRP). Subsequently the IRP herein was confirmed as Resolution Professional.
 - b. That the summary of the claims filed and the amount admitted by the Applicant is as under:-

Creditors	Claims Filed (INR)	Claims Admitted (INR)
Financial Creditors	1340,68,58,499.95	1311,80,72,486.15
Operational Creditors (including government dues)	522,33,49,895.68	80,83,655.60
Employee and Workmen dues	2,70,306	18,198
Other Creditors	104,60,50,000	-
Total	1967,65,28,701.63	1312,61,74,339.75



- c. That on 23.06.2020, a proposal, stated to be a 'resolution plan' for the Corporate Debtor, was submitted by M/s Gammon Infrastructure Projects Limited ("GIPL"), the erstwhile management/ promoter/ holding company of the Corporate Debtor. By letter dated 15.09.2020, GIPL requested that the 'resolution plan submitted by it on 23.07.2020 be considered under Section 12A of the Code. The 'resolution plan' of GIPL was discussed in the first, second and third meetings of the CoC. Further, in the fifth meeting of the CoC held on 6.10.2020, the members again had a discussion on the 'resolution plan' submitted by GIPL under Section 12A of the Code. After discussions and deliberations, the 'resolution plan' of GIPL was put to voting, however, same was not approved by the CoC with the requisite votes.
- d. Accordingly, on 16.09.2020 the Applicant published the Form G, inviting EOI from PRAs and the last date for submission of EOI was initially fixed as 01.10.2020. Subsequently, after considering the request from one of the PRAs, the last date for submission of EOI was extended to 09.10.2020. The extension of the last date for submission of EOI was ratified by the CoC members in the fifth meeting of the CoC held on 06.10.2020.
- e. Pursuant to the invitation of EOIs, the RP received EOIs from 9 PRAs. Out of the 9 PRAs, 8 PRA's were shortlisted as eligible and the RP issued a provisional list of PRAs on 19.10.2020. A final list comprising 8 eligible PRAs was issued on 03.11.2020 by the RP.
- f. The Applicant accordingly informed the CoC members during the eighth CoC meeting held on 15.12.2020. While the members of the CoC accorded their consent to extend the last date for submission of resolution plans considering the requests received from some PRAs, it was decided that the last date would be finalized in the next meeting of the CoC.
- g. Accordingly, a revised Form G was issued by the RP on 04.01.2021 and the amended RFRP and Evaluation Matrix was shared with the PRAs, specifying the last date for submission of resolution plans as 04.02.2021.



That by 04.02.2021, the Applicant received resolution plan from two Resolution Applicants ("RA") - Silver Point Luxembourg Platform S.A.R.L and Kotak Investment Advisors Limited ("KIAL").

- h. That on 11.03.2021, the Successful Resolution Applicant i.e., M/s. Silver Point Luxembourg Platform S.A.R.L submitted its final executed Resolution Plan. On 12.03.2021, the fourteenth meeting of the CoC was held to discuss and evaluate the final Resolution Plan. During the meeting, the Applicant confirmed the compliance of the Resolution Plan with the mandatory requirements of the Code, read with the CIRP Regulations. Further, the CoC discussed and considered the evaluation of the Resolution Plan as per the Evaluation Matrix, the feasibility and viability of the Resolution Plan and the report on compliance checks under Section 29A of the Code. During the CoC meeting, the representatives of the Successful Resolution Applicant were also invited to present the changes in the final Resolution Plan. Accordingly, the Resolution Plan was put to vote during the fourteenth meeting of the CoC and Phoenix ARC, having 80.15% voting share in the CoC, voted in favour of the Resolution Plan. The representative of Corporation Bank (Now Union Bank of India), stated that they were unable to vote during the meeting and would require more time for obtaining consent from their higher authority and the representative of Bank of India left the meeting before the voting started. During the meeting, Phoenix ARC also approved a resolution fixing the term of the PGB to be 12 months from the issuance of Letter of Intent ("LoI") which shall be renewed/ extended as may be required by the Resolution Professional and/ or the Beneficiary (not later than 15 days prior to the expiry of the 'PBG Validity Period') for such period as may be required by the Resolution Professional/ CoC/ the Beneficiary and also having an additional claim period of 12 months after 'PBG Validity Period'.

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- i. As two of the CoC members i.e., Corporation Bank (Now Union Bank of India) and Bank of India did not cast their vote during the CoC meeting, e-voting was conducted as per Regulation 25 (5) read with Regulation 26 of the CIRP Regulations from 13 March 2021 to 22 March 2021. After conclusion of the e-voting, the Resolution Plan was approved by a 97.95% of the voting share.
- j. That the table below encapsulates summary of payments to be made to difference classes of creditors and stakeholders of the Corporate Debtor:

S. No.	Category of Stakeholders	Verified Amount	Proposed Payment
A	CIRP Costs (estimated by RA till NCLT Approval Date, including Going Concern expenses)	-	The CIRP Costs shall be paid in full and in priority to other creditors of the Corporate Debtor, in terms of Section 30 (2)(a) of the Code. Further, the Corporate Debtor or the Successful Resolution Applicant shall pay the CIRP Costs to the relevant persons in accordance with the details provided by the Resolution Professional to the Corporate Debtor and the Successful Resolution Applicant in writing at least 7 business days prior to the due date of the CIRP Costs
B.	Payments towards claims		
S. No.	Category of Stakeholders	Verified Amount (INR)	Proposed Payment (INR)
1	Secured Financial Creditors (Total Cash Recovery)	1284,92,69,968.87	930,55,13,082
2	Unsecured Financial Creditors	26,88,02,517	NIL
3	Employee Dues	18,198	18,198
4	Operational Creditors (other than Employee Dues)	80,83,655	80,83,655.60
5	Related Party Operational Creditors	NIL	NIL

[Handwritten Signature]



6	Other Creditors	NIL	NIL
TOTAL			931,36,14,935.16

- k. The Successful Resolution Plan complied with the mandatory requirements under the Code and the CIRP Regulations.
- l. That the Successful Resolution Applicant has submitted the affidavit (as required under the Code) on compliance with Section 29A of the Code. The contents of the said affidavit are found to be in order. Further, based on the review exercise carried out under Section 29A of the Code, the Applicant is of the view that the Successful Resolution Applicant is not disqualified under Section 29A of the Code.
3. Further the Resolution Professional has also filed a note dated 23.12.2021, *inter-alia*, submitting as under:-
- a. Term of plan, Payment Date, Closing Date:-
- The Resolution Plan is subject to the satisfaction of condition precedent as per para 2.1 of schedule 2 by long stop date.
 - Effective Date: Date falling 2 business days after completion of the last condition precedent or any other date decided by the CoC and SRA.
 - Payment Date: 60 days following the Effective Date and such date as may be extended upon mutual agreement of the CoC and SRA.
 - Term of the Plan shall be from NCLT approval dated till Closing Date. Closing date means when all the implementation steps including issuance of shares and taking over control will be completed as per Schedule 2.
- b. Few of the Condition Precedents are as under:-
- Execution of a Supplementary Agreement - 2021 between the Corporate Debtor and NHAI as per terms set out in Schedule 6.
 - Termination of EPC Contract between the Corporate Debtor and the Related party EPC Contractor.



- iii. Termination of all sub-contracts/work orders in relation to the Project Highway except the Project Contracts.
- c. Plan shall be implemented in accordance with Schedule 2.
- d. Management and Control of the Corporate Debtor until closing date:
 - i. Monitoring Committee shall be constituted with 1 representative of CoC and 2 representative of the SRA.
 - ii. RP shall be Managing Agency until the Closing Date, to assist Monitoring Committee
- e. Avoidance Transactions:
 - i. In case of any order by the Adjudicating Authority under Section 43, 45, 51 and Section 66 of the Code, the amount recovered/received by the Corporate Debtor shall be passed through and assigned to the Financial Creditors.
 - ii. Monitoring Committee shall be authorized to pursue the Application for avoidance of transactions on behalf of the Secured Financial Creditors.
4. Further, an Affidavit was filed by Committee of Creditors dated 03.09.2021, placing facts on record in compliance with the order dated 31.07.2021, in relation to assignment of loans etc., and the same has been perused.
5. RP has also filed an Affidavit dated 25.09.2021, in relation to the Order of this Adjudicating Authority dated 03.09.2021, in relation to assignment of loans etc. and the same has been perused.
6. Heard counsel for the Resolution Professional/Applicant and perused the Resolution Plan and other documents submitted along with Application.
7. Section 30(2) of the Code as amended w.e.f. 06.08.2019 enjoins upon the resolution professional to examine each resolution plan received by him to confirm that such plan -
 - a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;



- b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-
 - i. the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
 - ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the Corporate Debtor.
 - c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
 - d) the implementation and supervision of the resolution plan;
 - e) does not contravene any of the provisions of the law for the time being in force
 - f) Confirms to such other requirements as may be specified by the Board.
8. Section 30(4) of the Code as it stands at present after the amendment reads as follows: -

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.”

9. Section 30(6) of the Code enjoins the resolution professional to submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority. Section 31 of the Code deals with the approval of the resolution plan by the Adjudicating Authority, if it is satisfied that the resolution plan, as





approved by the committee of creditors under section 30(4), meets the requirements as referred to in section 30(2).

10. Thus, before approving the Resolution plan, it is the duty of the Adjudicating Authority that it should satisfy itself that the Resolution plan, as approved by the COC, meets the requirements as referred to in sub-section (2) of Section 30.
11. On perusal of the Resolution Plan, this Adjudicating Authority has observed that the Resolution plan placed for consideration provides for the following:
 - a) Payment of CIRP Cost as specified U/s 30(2)(a) of IBC, 2016.
 - b) Repayment of Debts of Operational Creditors as specified U/s 30(2)(b) of IBC, 2016.
 - c) Provides for management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of IBC, 2016.
 - d) The implementation and supervision of Resolution Plan shall be done by Insolvency Resolution Professional and by the COC as specified U/s 30(2)(d) of IBC, 2016.
 - e) The Resolution Plan is not in contravention to any of the provisions of Law, for the time being in force, as specified U/s 30(2)(e) of IBC, 2016.
 - f) The Resolution plan conforms to other requirements specified by the Board.
12. The Resolution Applicant has proposed for payment as under:-

S. No.	Category of Stakeholders	Verified Amount	Proposed Payment
A	CIRP Costs (estimated by RA till NCLT Approval Date, including Going Concern expenses)	-	The CIRP Costs shall be paid in full and in priority to other creditors of the Corporate Debtor, in terms of Section 30 (2)(a) of the Code. Further, the Corporate Debtor or the Successful Resolution Applicant shall pay the CIRP Costs to the relevant persons in accordance with the details provided by the





			Resolution Professional to the Corporate Debtor and the Successful Resolution Applicant in writing at least 7 business days prior to the due date of the CIRP Costs.
B.	Payments towards claims		
S. No.	Category of Stakeholders	Verified Amount (INR)	Proposed Payment (INR)
1	Secured Financial Creditors (Total Cash Recovery)	1284,92,69,968.87	930,55,13,082
2	Unsecured Financial Creditors	26,88,02,517	NIL
3	Employee Dues	18,198	18,198
4	Operational Creditors (other than Employee Dues)	80,83,655	80,83,655
5	Related Party Operational Creditors	NIL	NIL
6	Other Creditors	NIL	NIL
TOTAL			931,36,14,935

13. In terms of Regulation 27 of CIRP Regulations, Liquidation value was ascertained through two registered valuers. The Liquidation value as ascertained by RP is Rs.32,987.065 Lakhs and the fair market value is Rs.51,308.355 Lakhs.
14. The RP has complied with the code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of CIRP regulations.
15. The identity of the Resolution Applicants have been duly verified by the RP and affidavit as per section 30(1) of the Code has been obtained from the Resolution Applicants stating that it is not ineligible U/s 29A of the IB Code, 2016.
16. The Plan also provides for keeping the Company as a going concern and operate in its normal course of business upon implementation of Resolution Plan. There is no objection filed by any other person in this regard.



17. The RP has inter-alia filed the following Certificate in Form H:-

"I have examined the Resolution Plan received from Silver Point Luxembourg S.A.R.L and approved by Committee of Creditors (CoC) of M/s. Patna Highway Projects Limited.

I hereby certify that-

- i. The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.*
- ii. The Resolution Applicant, M/s. Silver Point Luxembourg S.A.R.L. has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.*
- iii. The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 97.95% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.*
- iv. I sought vote of members of the CoC during the fourteenth meeting held on 12.03.2021 and by electronic voting system which was kept open at least for 24 hours as per the regulation 26."*

18. It is also evident that the Resolution Plan placed before this Adjudicating Authority, was approved by the Committee of Creditors in its meeting dated 12.03.2021 with 97.95% votes cast in favour of Approval of Resolution Plan.

19. In *K Sashidhar Vs. Indian Overseas Bank & Others*, decided on 05.02.2019 in Civil Appeal No.10675/2018 with CA Nos.10719/2018, 10971/ 2018 and SLP(C) No.29181/2018, the Hon'ble Supreme Court, noticing the provisions of section 30(4), 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 (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less.

20. In the said judgment, in para 35, the Hon'ble Supreme Court 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.
21. In the recent judgement in Essar Steel (Civil Appeal No.8766-67 of 2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority will not have power to modify the Resolution Plan as approved by the CoC in their Commercial Wisdom. In para 42 of the said judgment, Hon'ble Apex Court has 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. Shashidhar (supra)."

22. In view of the discussions in the foregoing paragraphs, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A. Hence, this Adjudicating Authority is satisfied that the Resolution Plan is in accordance with Law. Therefore, the 'Resolution Plan' annexed with Application bearing IA No. 1538 of 2021 filed in CP (IB)1504(PB)2019 is hereby approved, which forms part of this Order and which



shall be binding on the corporate debtor and 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, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

23. However, the Resolution Plan approved shall not construe any waiver to any statutory obligations/liabilities, arising out of the approved Resolution Plan and the same shall be dealt with in accordance with the appropriate authorities as per relevant Laws. We are of the considered view that if any waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities. The same has also been held by Hon'ble Supreme Court in the case of *Ghanashyam Mishra and Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited*.
24. Accordingly, the MoA and AoA shall be amended and filed with the RoC for information and record as prescribed. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution Applicant shall, pursuant to the Resolution Plan approved under Sub-Section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approvals as may be required under any law, for the time being in force, within the period as provided for in such law.
25. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.
26. This Adjudicating Authority hereby directs constitution of a Monitoring Committee comprising of one Representative of the Financial Creditors, two representative of the Resolution Applicant and the Resolution Professional shall act as the Monitoring Agent. The RP is to supervise the implementation of the Resolution Plan and file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.
27. The order of moratorium passed by this Adjudicating Authority under Section 14 of the I&B Code, 2016 shall cease to have effect from the date of passing of this Order.



28. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI along with Copy of this Order, so that the Board may record the same on its data-base.
29. The Registry is directed to communicate this order to the Registrar of Companies for updating the master data and to IBBI.
30. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
31. Accordingly, IA No.1538 of 2021 is disposed of as allowed.

HEMANT KUMAR SARANGI
MEMBER (TECHNICAL)

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Pronounced today under Rule 151 of NCLT Rules, 2016 as the Hon'ble Member (T)
Sh. Hemant Kumar Sarangi, is not holding the court today.

Court Officer
10.05.2022

SKRATHI