

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, (BENCH IV)
IA No. 517/(ND)/2021

IN

COMPANY PETITION NO. (IB) 1388/(ND)/2018

[Under Section 30,31 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India for approval of Resolution Plan]

IN THE MATTER OF:

MR. SANTOSH SHARMA
(RESOLUTION PROFESSIONAL)
M/s DASH EXPORTS PRIVATE LIMITED

.... APPLICANT

And

In the matter of:

M/s. RAKESH KUMAR PRADEEP KUMAR

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

DASH EXPORTS PRIVATE LIMITED

...RESPONDENT/ CORPORATE DEBTOR

ORDER PRONOUNCED ON: 29.09.2021

Coram:

DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)

[Handwritten Signature]
29/09/2021

MEMO OF PARTIES

Mr. Santosh Sharma

Resolution Professional

For M/s Dash Exports Private Limited (under CIRP)

HAVING OFFICE AT:

Unit No.110, First Floor, JMD Pacific Square,

Part- II, Sector-15, Gurugram-122001.

Haryana

Email: sci.santoshsharma@gmail.com

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...APPLICANT

Present:

For Applicant -

For the Respondent -

For RP - Mr. Ashish Makhija,
Mr. Anurag Bhatt, adv.



ORDER

Per-Dr. Deepti Mukesh, Member (Judicial)

1. The present application has been filed by the Resolution Professional, Mr. Santosh Sharma for approval of Resolution Plan under Section 30 (6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereafter referred to as Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereafter referred to as Regulations) seeking approval of the Resolution Plan of M/s Asteroid Shelters Homes Private Limited in respect of on-going CIRP of Dash Exports Private Limited. The Resolution Plan was duly approved in the eighth meeting of committee of creditors (CoC) held on 27.11.2020, with 99.22% of voting share. The minutes of the said meeting along with the voting result has been annexed.
2. An application bearing C.P. No. IB-1388/(ND)/2018 was filed by M/s Rakesh Kumar Pradeep Kumar/Operational Creditor under Section 9 of the Code for initiating Corporate Insolvency Resolution Process against Dash Exports/Corporate Debtor. This Bench vide order dated 26.02.2020 admitted the Section 9 application and appointed Mr. Santosh Sharma the Interim Resolution Professional (IRP) (hereinafter referred to as the "Applicant") with necessary directions and to file regular reports of events. Subsequently, Mr. Santosh Sharma was confirmed as the Resolution Professional (RP) at the 1stCoC meeting held on 08.06.2020.
3. The applicant made a public announcement in Form-A dated 01.03.2020 as prescribed under Regulation 6 (1) of the Regulations published in Financial Express (English) and Jansatta (Hindi) both at Delhi NCR location, intimating the commencement of Corporate Insolvency Resolution Process of the Corporate Debtor and for calling the creditors to submit their claims along with the proof in the prescribed format.

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4. The applicant states that the RP constituted the CoC pursuant to Section 21 of the code and filed reports with the Hon'ble NCLT. The copy of report is annexed. As per Section 29 of the code read with regulation 36(2) of the CIRP Regulation, an information memorandum was prepared by the applicant as the regulation for formulating the resolution plan. The copy of Information memorandum has been annexed.
5. The applicant states that the CIRP commenced on 26.02.2020 accordingly the 180 days period was expiring on 24.08.2020. However, due to Covid -19 pandemic, the government of India with effect from 25th March 2020 declared a nationwide lockdown. The Insolvency and Bankruptcy Board of India vide notification dated 29.03.2020 inserted Regulation 40C, which prescribes relaxations with respect to the CIRP timelines under the IBC and the rules/regulations framed there under, in view of the difficulties being faced due to the outbreak of the COVID-19 pandemic. The said regulation is reproduced below:

"40C. Special provision relating to time-line: Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process."

Further the Hon'ble NCLAT vide its order dated 30.03.2020 in Suo moto Company Appeal (AT) (Insolvency) No.1 of 2020, ordered that the period of lockdown shall be excluded for the purpose of counting the period for 'Resolution Process under Section 12 of the Insolvency and Bankruptcy code, 2016', in all case where CIRP has been initiated and is pending before any bench.

Accordingly, the lockdown period of 68 days was excluded while counting the CIRP period of 180 days and the revised CIRP period was expiring on 31.10.2020. Thereafter an extension of 90 days was sought by the applicant by filing an application under Section 12 of the code, which was duly granted by this bench. Accordingly, the CIRP period was extended upto 270

days which was expiring on 30.01.2021. The present application was filed 20.01.2021, i.e. before the expiry of 270 days. Therefore there was no requirement for extension of CIRP period upto 330 days.

6. The first CoC meeting was held on 08.06.2020 wherein it was discussed that the IRP intend to move an application under Section 19(2) of IBC regarding non-Co-operation from the suspended board of directors and personnel. The IRP was also confirmed and appointed as Resolution Professional of corporate debtor. The 2nd meeting of CoC was held on 10.07.2020, in the said meeting the agenda for invitation of expression of interest in prescribed Form - G and eligibility criteria was put forth before the members of CoC. On 15.07.2020 the RP published the Invitation for expression of Interest and the last date of submission of Resolution Plan was 23.09.2020. That on the last date of submission two resolution plans was received. The 3rd meeting of CoC was held on 13.08.2020, claims received were to be discussed. The 5th CoC meeting was held on 03.10.2020, the RP appointed Mr. Munish Sharma, independent professional for carrying out the due diligence of the resolution plan submitted by the Resolution Applicant. In the 6th meeting held on 28.10.2020, the due diligence report prepared by the resolution professional and the independent professional was placed before the CoC.
7. Thereafter on 19.10.2020 an email was received, wherein one of the resolution applicant being M/s Asteriod Shelters Homes increased the plan value from Rs.25.90 Crore to Rs.28 Crore, the same was informed to CoC that the Plan value is marginally higher than the liquidation value. The Judgment passed by Hon'ble Supreme Court in the case of "*Essar Steel India Limited*" was discussed and it was suggested by the COC members, that in order to make the resolution plan effective and legally compliant, a sum of Rs. 10,00,000/- must be apportioned for the operational creditor. It was further informed that vide email dated 21.10.2020, one of the resolution applicant being Mr. Anuj Goyal has proposed to increase his plan

value from Rs. 11 Crore to Rs. 16 Crore, wherein after due diligence various non-compliances were found, hence was rejected.

8. Thereafter, on 12.11.2020, in the 7th CoC meeting, the resolution plan with increased value was discussed and approved. The CIRP cost as per regulation 34 of the insolvency and bankruptcy board of India (Insolvency Resolution process for corporate Persons) Regulations, 2016 was also fixed.
9. In the 8th CoC meeting held on 27.11.2020 final revised resolution plan of Asteroid Shelter Homes Pt. Ltd., was put for E-voting and the same was approved by the members of the CoC with 99.22% voting share and passed the following Resolution :-

“RESOLVED THAT pursuant to the Regulation 34 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016, the CIRP Cost of Rs. 54,04,626/- (Rupees Fifty Four Lakh Four Thousand Six Hundred and Twenty Six Only) as per the below calculation during the CIRP of the corporate debtor be and is hereby approved.

“RESOLVED THAT approval of Committee of Creditors is granted in the following manner in compliance with provisions of Regulation No. 39B, 39C and 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

- The resolution Professional being eligible and having consented may be appointed as liquidator; ”

The applicant in terms of Regulation 39(4) of the regulations has filed Compliance certificate in Form H and the same is annexed with the application. The applicant also filed receipt of performance security under sub-regulation [4A] of the Regulation 36 B and as per the clause 1.9 of RFRP, the performance security of Rs. 2 Crore has been received from successful applicant.

10. The applicant filed affidavit stating that the total liability of the corporate debtor towards the financial creditors is only on account of corporate

guarantees issued by the corporate debtor for the debt disbursed to the principal borrower, M/s Shakti Bhog. The said disbursement never was extended to corporate debtor but the entire financial debt is on account of corporate guarantees issued. Under the resolution plan, only the rights of persons who have issued any guarantee with respect to corporate debtor in respect of any debt has been extinguished. Hence the financial creditors are already availing their right against the principal borrower for the entire debt.

The applicant states that there is no legal prohibition on the financial creditor to avail their remedy against the principal borrower and to support its contention has relied upon the case of *Kanwar Raj Bhagat Vs. Gujrat Hydrocarbons and Power SEZ Ltd and Another* bearing company appeal no. 1096 of 2020.

11. It is further submitted that the amount proposed in the resolution plan is in line with average liquidation value of the corporate debtor and the CoC in its commercial wisdom has approved the resolution plan by overwhelming majority. There is no provision under IBC that mandates that resolution plan value should be more than the liquidation value. The applicant has relied upon the case of Supreme Court in *Maharashtra Seamless Limited Vs. Padmanbhashi Venkatesh & Ors* to support in this argument. It is further stated that commercial wisdom of CoC has been declared sacrosanct and given paramount status without any judicial intervention as held by Hon'ble Supreme Court in the case of *Kalparaj Dharamshi Vs. Kotak Investment Ltd.* (2021) SCCOnline SC, 204.
12. The applicant further stated the following:
 - a) The liquidation value of the corporate debtor as determined by two registered valuers is Rs. 27,57,01,355/-, whereas, the Resolution Applicant is offering a total payment of Rs. 28,00,00,000/- which is in line with the average liquidation value. The payment plan as provided by the Resolution Applicant under the resolution plan has been annexed.

- b) Regulation 38 of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016, has been complied with.
- c) The parameters for approval of resolution plan are set out in the IBC, 2016 read with IBBI (CIRP) Regulations, 2016. Which are briefly set forth herein below:

Section/Regulation	Compliance made
Section 30(2)(a)	CIRP cost will be paid in priority over payments to any other creditors on closing date, in accordance with the IBC.
Section 30(2)(b) read with Regulation 38 of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	<p>The following payment shall be made after the payment of CIRP costs and the liquidation value owing to operational creditors (which is nil)</p> <p>a) The dissenting financial creditors will be paid the liquidation value owing to them.</p> <p>b) The approving financial creditors will be paid the admitted financial debt.</p> <p>c) The liquidation value is insufficient for payment to the operational creditors of the company and the claims of even statutory dues in full.</p> <p>Therefore, no payment shall be made to the operational creditors. However, in order to safeguard their interest Rs. 10 Lakh is being proposed for operational creditors.</p> <p>There are no dues towards workman and employees. (as per affidavit filed by the applicant)</p> <p>Resolution Plan provides for the interests of all</p>

	stakeholders, including Financial Creditors and Operational Creditors, of the Corporate Debtor.
Section 30(2)(c)	<p>The new promoters, shall be having the right to manage the corporate debtor from the effective date i.e. date of approval of Resolution Plan by Adjudicating Authority.</p> <p>The resolution applicant has provided for the constitution of monitoring committee for supervision and implementation of resolution plan.</p> <p>The monitoring committee shall comprise of</p> <ol style="list-style-type: none"> One representative of financial creditor Two representative of resolution applicant. Resolution professional <p>All decision of the monitoring committee shall be taken by way of majority decision.</p>
Section 30(2)(d)	The implementation of the resolution plan shall be supervised by the monitoring committee, from the effective date till the closing date.
Section 30(2)(e) &(f)	<p>The proposed resolution plan provided by resolution applicant does not contravene any of the provisions of law for the time being in force.</p> <p>The Resolution applicant further confirms that the information submitted is complete, strictly as per the requirement stipulated in the Request for resolution plans (RFRP), IBC Code</p>

	and the CIRP regulations.
Section 30(4) of the IBC, 2016	Resolution Plan is approved by 99.22%
Regulation 39 of CIRP Regulations	An affidavit dated 06.11.2020 provided by the resolution applicants confirming compliance of Section 29A of the code. The information and records provided in resolution plan is true and correct, discovery of false information and record at any time will render the applicant ineligible to continue in the CIRP, forfeit any refundable deposit, and attract penal action. Resolution applicant confirms that while

13. In view of the above discussion that the resolution plan, as approved by the CoC, is in accordance with the sub-section 2 of Section 30 read with Section 31 of the Code and as the Resolution Applicant is not disqualified under Section 29A of the Code; we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.
14. The monitoring committee is directed to file compliance report on regular basis. It is hereby declared that the Resolution Plan is binding on the corporate debtor, members, workmen and employees as well as creditors and other stakeholders in general.
15. It is also declared that the moratorium order passed by this bench under Section 14 of the Code shall cease to have effect.
16. The Resolution Professional shall forward all records relating to the CIRP process and the resolution plan to IBBI to be recorded at its data base in terms of Section-31(3)(b) of the Code.

17. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
18. I.A. No. 517/2021 is allowed and disposed off accordingly.
19. Let the copy of the order be served to the parties.

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SUMITA PURKAYASTHA
MEMBER (TECHNICAL)

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(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)



[Signature]
29/9/2021

[Signature] 29.9.2021
Deputy Registrar
National Company Law Tribunal
CGO Complex New Delhi-110003