

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM Nos.302 & 303

**IA/15(MP)2022 & IA/46(MP)2022**

**In**

**TP 241 of 2019 [CP(IB) 628 of 2018]**

**Proceedings under Section 30(6) IBC,2016**

**IN THE MATTER OF:**

**IA/15(MP)2022**

Sajjan Kumar Dokania RP of Divya Jyoti Industries Ltd

.....Applicant

V/s

M S Soya Industries & Ors

.....Respondents

**IN THE MATTER OF:**

**IA/46(MP)2022**

Consortium of M/s Sangeet Television Network  
Pvt Ltd

.....Applicant

Vs.

Sajjan Kumar Dokania & Ors.

...Respondents

**Order delivered on 09/09/2022**

**Coram:**

Dr. Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-Sd-

-Sd-

**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

**DR. MADAN B. GOSAVI  
MEMBER (JUDICIAL)**

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
INDORE BENCH  
COURT-1**

**IA/15(MP)2022 & IA/46(MP)2022  
In  
TP 241 of 2019 [CP(IB) 628 of 2018]**

**IA/15(MP)2022**

[An application under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 for approval of resolution plan]

**Through:**

**Sajjan Kumar Dokania**  
**Resolution Professional of**  
**M/s Divya Jyoti Industries Limited**  
Office at:  
25, Globus Fab city, Kolar Road,  
Chuna Bhatti, Near Suyash Hospital,  
Bhopal, Madhya Pradesh, 462016.

**Applicant**

**In the matter of:**

**Sajjan Kumar Dokania**  
Resolution Professional of  
M/s Divya Jyoti Industries Limited

**Applicant**

**Versus**

M/s M S Soya Industries and Ors.

**Respondents**

**Memo of Parties**

**Sajjan Kumar Dokania**  
**Resolution Professional of**  
**M/s Divya Jyoti Industries Limited**  
Office at:  
25, Globus Fab city, Kolar Road,  
Chuna Bhatti, Near Suyash Hospital,  
Bhopal, Madhya Pradesh, 462016.

**Applicant/  
Resolution Professional**

**Versus**

**M/s M S Soya Industries**  
(Successful Resolution Applicant)

B. No. 37, Shanti Niketan, Ground Floor,  
Jain Colony, Neemuch-458441

**Mr. Girdhari Lal Nyati**

(Suspended Director of Corporate Debtor)  
F. No. 102,  
Balaji Vihar, 1-2 Maa Durga Nagar,  
Indore, Madhya Pradesh-452001

**Mr. Sudarshan Shastri**

(Suspended Director of Corporate Debtor)  
128, Srinagar Colony,  
Main, Indore, Madhya Pradesh, 4452001

**Mr. Gopla Das Nyati**

(Suspended Director of Corporate Debtor)  
F. No. 101,  
Balaji Vihar, 1-2 Maa Durga Nagar,  
Indore, Madhya Pradesh-452001s

**Ms. Babita Nyati**

(Suspended Director of Corporate Debtor)  
F. No. 101,  
Balaji Vihar, 1-2 Maa Durga Nagar,  
Indore, Madhya Pradesh-452001

**Mr. Suresh Kumar Varma**

(Suspended Director of Corporate Debtor)  
Ward-9, Behind Jain Hospital,  
Dhamnood, Madhya Pradesh-454552.

**Income Tax Department**

Through Chief Commissioner/Principal  
Commissioner  
Chief Commissioner of Income Tax  
Aaykar Bhawan, Opp. White Church  
Indore-452001.

**Respondents**

**AND**

**IA/46(MP)2022**

[An application under section 60(5) of the Insolvency and Bankruptcy Code,  
2016]

**Consortium of M/s. Sangeet Television  
Network Pvt. Ltd.,  
Mr. Shailendra Biyani &  
Mr. Gopal Das Niyati**

Office at:  
B-10, YSM Bhavan, Central Road MIDC  
Andheri (East) Mumbai-400093.

**Applicant**

**Versus**

**Mr. Sajjan Kumar Dokania & Ors.**

**Respondents**

**In the matter of:  
Divya Jyoti Industries Limited**

**Corporate Debtor**

**Memo of Parties**

**Consortium of M/s. Sangeet Television  
Network Pvt. Ltd.,  
Mr. Shailendra Biyani &  
Mr. Gopal Das Niyati**

(Through Authorised Representative:  
Mr. Gopal Niyati)

Office at:  
B-10, YSM Bhavan, Central Road MIDC  
Andheri (East) Mumbai-400093.

**Applicant**

**Versus**

**Mr. Sajjan Kumar Dokania**  
The Resolution Professional of Divya  
Jyoti Industries Limited  
344, Block A, Lake Town, Kolkata-700089.

**Bank of Baroda**  
1489, Wright Town, Near Manas  
Bhawan, Jabalpur-482002

**Punjab National Bank**  
ARMB Branch, 20, Sneh Nagar, Indore,  
Madhya Pradesh-452001

**Saraswat Bank**  
74-C, Samadhan Building, 2<sup>nd</sup> Floor  
Senapatibapatmarg, Dadar (West)  
Mumbai, 400028.

**M/s. M S Soya Industries**

B. No. 37, Shanti Niketan, Ground  
Floor, Jain Colony, Neemuch-458441.

**Mr. Sanjay Chopra**

B. No. 37, Shanti Niketan, Ground  
Floor, Jain Colony, Neemuch-458441.

**Respondents**

**Order Reserved on: 08/07/2022**

**Order Pronounced on: .....**

**Coram: Madan Bhalchandra Gosavi, Member (Judicial)  
Kaushlendra Kumar Singh, Member (Technical)**

**Appearance:**

For the Applicant:	Ld. Adv. Mr. V. N. Dubey a.w. Ld. Adv. Mr. Rohit Dubey a.w. Ld. Adv. Mr. Sandeep Pandey (IA/46(MP)2022) & Ld. Adv. Mr. Mayur Jugtawat (IA/15(MP)2022)
For Financial Creditor:	Ld. PCA Mr. Nipun Singhvi (CP(IB) 628 of 2018)
For the IRP/RP:	Ld. Mr. Sajjan Kumar Dokania
For the Resolution Applicant:	Ld. Adv. Ms. Soumya Dharwa
For the Respondent:	Ld. Adv. Mr. Vijayesh Atre (IA/46(MP)2022) a.w. Ld. PCA Mr. Nipun Singhvi (IA/46(MP)2022)

**ORDER**

**[Per: MADAN B. GOSAVI, MEMBER(J)]**

**IA/15(MP)2022 & IA/46(MP)2022**

1. This application (**IA/15(MP)2022**) is filed under Section 30(6) of Insolvency & Bankruptcy Code, 2016 by Mr. Sajjan Kumar Dokania-Resolution Professional (RP) of the corporate debtor-M/s Divya Jyoti Industries Limited for approval of the Resolution Plan submitted by M/s. M S Soya Industries in consortium with Mr. Sanjay Chopra.

Whereas, IA/46(MP)2022 is filed by the Consortium of M/s. Sangeet Television Network Private Limited- Unsuccessful Resolution applicant

alleging that the RP conducted the CIRP against the provisions of law. The Resolution Plan of the Unsuccessful Resolution applicant was approved by the CoC with 67.47% votes and was declared to be successful resolution applicant. Subsequently, the Unsuccessful Resolution applicant requested the RP to give some time to comply requirement of additional Bank guarantee but the RP refused their request without even referring their request to the CoC. Hence, they challenged the Resolution Plan which was approved later on.

2. The following are the submissions made by the applicant/ resolution professional in the present application IA/15(MP)2022:

(i) The corporate debtor was admitted in Corporate Insolvency Resolution Process (CIRP) on 04.12.2020. Mr. Sajjan Kumar Dokania was appointed as IRP. On 07.12.2020 the IRP made public announcement of CIRP of the corporate debtor thereby calling upon its creditors to submit their claim with requisite proof. He constituted the Committee of Creditors (CoC) of the following financial creditors allotting them voting percentage based on their debt value. It is as follows:

<b>Sr.</b>	<b>Financial Creditor</b>	<b>Voting percentage</b>
(i)	Bank of Baroda	39.27%
(ii)	Punjab National Bank	32.53%
(iii)	Saraswat Co-operative Bank Limited	26.48%
(iv)	Abhinav Capital Services Limited	1.72%

The IRP also prepared Information Memorandum of assets and liabilities of the corporate debtor. The CoC confirmed appointment of IRP as the RP and that was approved by this Adjudicating Authority also.

(ii) The RP carried valuation of the assets of the corporate debtor on the basis of Information Memorandum and calculated fair value as well as liquidation value of the assets of the corporate debtor. The CoC

instructed the RP to publish Form-G calling upon the prospective resolution applicants to submit the EoI/Resolution Plans for the corporate debtor.

(iii) On 17.02.2021 the RP published Form-G in widely circulated English as well as local language newspapers. In response thereto, he received four EoI/resolution plans, one of them was plan of unsuccessful resolution applicant M/s. Sangeet Television Network Private Limited.

(iv) Meantime, CIRP period of 180 days got over, the RP, as per the resolution passed by the CoC requested this Adjudicating Authority to extend CIRP period by 90 days and accordingly, CIRP period was extended.

(v) The CoC discussed all four proposals which were received in form of EoI and Resolution Plans in number of their meetings but they could not approve any plan, meantime, CIRP period was over. The RP filed application for exclusion of certain period from total CIRP period on the ground of lockdown and other related issues, accordingly certain period was excluded from CIRP period by this Adjudicating Authority.

(vi) In 14<sup>th</sup> CoC meeting held on 25.08.2021, Resolution Plan of M/s. Sangeet Television Network Private Limited was discussed and approved by the CoC by 67.47% votes. It appears from record that M/s. Sangeet Television Network Private Limited was asked to give additional Bank guarantee within certain period, as such, additional Bank guarantee was not furnished within that period, therefore, the CoC set aside and cancelled the Resolution Plan and forfeited EMD of Rs 15,00,000/. The RP was directed by CoC to publish Form-G again calling upon the fresh EoI/Resolution Plans for the corporate debtor.

(vii) On 11.10.2021 Form-G was again published, the RP received three Resolution Plans in response thereto, those Plans were

discussed in number of CoC meetings. Lastly in 22<sup>nd</sup> CoC Meeting dated 07.12.2021, the Plan of M S Soya Industries in Consortium with Mr. Sanjay Chopra is approved by 98.28% votes.

(viii) The resolution applicant- M S Soya Industries in Consortium with Mr. Sanjay Chopra has proposed to pay a sum of Rs.15.25 crore against the total admitted claim. The details are as follows:

Sr.	Category of Stakeholder	Amount admitted (Rs. in lakhs)	Amount provided under the Plan. (Rs. in lakhs)
1.	CIRP Cost (Unpaid)	-	40
2.	Secured financial creditors	4652.18	1485
3.	Unsecured financial creditors	81.65	0
4.	Operational creditors	222.52	0
	<b>Total</b>		<b>Rs 1525</b>

(ix) Since, the CoC approved the resolution plan by requisite voting percentage. It is not necessary for us to go into details of commercial aspect of the plan. We proceed to examine the plan in view of section 30(2) and 31 of the IBC r.w. Regulation 38 of the IBBI (CIRP of the Corporate Debtor Regulation, 2016).

3. The unsuccessful resolution applicant- M/s. Sangeet Television Network Private Limited filed an application IA/46(MP)2022 objecting the resolution plan approved by CoC, stating that though its plan was approved and it was ready to give additional Bank guarantee as directed but the RP did not accept the same, he did not refer the matter to CoC and ultimately its Plan was set aside and cancelled. According to unsuccessful resolution applicant the CIRP was not carried by the RP in legal manner.

4. However, in our considered view the CoC has set aside and cancelled the Resolution Plan because M/s. Sangeet Television Network Private Limited did not give additional Bank guarantee in Bank. We do not find any illegality therein; it cannot be said that the RP conducted CIRP in illegal manner. It was commercial decision of the CoC to ask for additional Bank guarantee which that unsuccessful resolution applicant could not furnish.

5. The Hon'ble Supreme Court has upheld the order passed by the NCLT, Kolkata Bench in the case of **Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021**. In the said case the NCLT, Kolkata Bench had made the following observation with respect to the objections raised by the unsuccessful resolution applicant challenging the approval of the Resolution Plan by the CoC:

*“It appears to us that it is a deliberate attempt to stage manage an objection against the approval of a resolution plan other than the plan submitted by the resolution applicant. We also found that CA 398 of 2018 filed for rejection of the resolution plan is liable to be dismissed since the very same applicant not at all succeeds in proving its contention and that the applicant approaches the Bench without any clean hand. Instances of challenging resolution plan by unsuccessful resolution applicant is at the increase. Filing like petition is also one among the reason for the delay in approving the resolution plan passed by the CoC in compliance of the provisions of the Code. This is a unique case in which the applicant herein filed the application without any valid grounds. Dismissing like petition without cost may encourage the applicant like the applicant to file like petition. It would also amount to allowing the applicant to abuse the process of the Tribunal as well as deliberately delaying the completion of CIRP process. Accordingly, we hold that this application is liable to be dismissed with costs of Rs.1,00,000/-. Awarding cost of Rs.1,00,000/- in the peculiar nature and circumstances of the case in hand is found reasonable.”*

6. We hold that the objection of unsuccessful resolution applicant is not maintainable. We reject IA No. **IA/46(MP)2022**.

7. We examine the Resolution Plan of M/s. M S Soya Industries in consortium with Mr. Sanjay Chopra which was approved by CoC; the RP has produced on record the compliance certificate in Form-H. It shows that fair value of the assets of the corporate debtor is Rs 15,71,00,087/- whereas, the liquidation value is Rs 11,95,72,878/-. The successful resolution applicant stated total cost of resolution plan is 15,25,00,000/- it is almost equivalent to the fair value of the assets of the corporate debtor.

8. The resolution plan should adhere to the following requirements as per Section 30(2) of the Code:

(i) It should provide for the payment of insolvency resolution process costs in priority to the repayment of other debts of the corporate debtor.

[Section 30(2)(a)]

(ii) The repayment of the debts of operational creditors and dissenting financial creditors should not be less than the amount to be paid to such respective creditors in the event of liquidation of the corporate debtor under section 53 of the Code. Moreover, the payment to the operational creditor is to be made in priority over the financial creditor; and the payment to dissenting financial creditor is to be made in priority to the consenting financial creditors.

[Section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b)];

(iii) Provides for the management of the affairs of the corporate debtor after approval of the resolution plan.

[Section 30(2)(c) read with CIRP Regulation 38(2)(b)];

(iv) The implementation and supervision of the resolution plan.

[Section 30(2)(d) read with CIRP Regulation 38(2)(c)];

(v) It does not contravene any of the provisions of the law for the time being in force.

[Section 30(2)(e)];

(vi) It conforms to such other requirements as may be specified by the Board.

[Section 30(2)(f)]

Such other requirements of the resolution plan as detailed in IBBI (Resolution Process for Corporate Persons) Regulations, 2016 which are not covered above, are as under:

(a) The resolution plan should include statement as to how it has dealt with the interests of all stakeholders including

financial creditors and operational creditors of the corporate debtor.

[CIRP Regulation 38 (1A)]

- (b) The resolution plan should include a statement giving details as to whether the resolution applicant or any of its related parties has at any time failed to implement or caused to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority.

[CIRP Regulation 38 (1B)]

- (c) The resolution plan should contain the term of the plan and its implementation schedule.

[CIRP Regulation 38(2)(a)]

- (d) The resolution plan should also demonstrate that it addresses the cause of default; is feasible and viable; has provisions for its effective implementation; has provisions for approvals required and timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan.

[CIRP Regulation 38(3)]

9. In view of the above provisions of the Code, 2016, the resolution plan submitted before us has been examined as follows:

(i) In the plan, the provision towards CIRP costs is made for Rs. 40,00,000/- in priority to the repayment of other debts of the corporate debtor. Thereby, section 30(2)(a) has been complied with.

(ii) No provision of payment is made with respect to the operational creditor in the said resolution plan. The resolution professional has stated that the operational creditor would be paid nil under the

waterfall mechanism in the event of liquidation of the corporate debtor.

It is also seen from the material on record that the financial creditor having 1.72%, voting share objected to the approval of the said resolution plan and therefore, appears to be dissenting Financial Creditor. However, we note that in the plan a provision is made regarding the payment to the dissenting financial creditor in priority to other consenting financial creditors which will not be less than the amount that would have been payable as per Section 53 of the Code, 2016, in the event of Liquidation of the Company. We hold that provisions of section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b) have been complied with.

(iii) The mechanism for management and control of the affairs of the corporate debtor after approval of the resolution plan has been provided in the resolution plan itself whereby the Monitoring Committee will look after the business of the corporate debtor after approval of the resolution plan and pending its implementation. It consist of RP or an independent IP nominated by the CoC. The same committee is given task of implementation of the Plan. We hold that thereby provisions of Section 30(2)(c) read with CIRP Regulation 38(2)(b)

(iv) The resolution plan contains a provision wherein, the implementation of the said plan will be supervised by the Monitoring Committee. Thereby, Section 30(2)(d) read with CIRP Regulation 38(2)(c) has been complied with.

(v) The RP has submitted that the plan does not contravene any provisions of law. We also noted that the plan does not contravene any provisions of the law for the time being in force. Thereby, Section 30(2)(e) has been complied with.

(vi) The resolution plan also conforms to other IBBI Regulations as given hereunder:

- a) The resolution plan adequately deals with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor. Thereby, the plan is in compliance with CIRP Regulation 38 (1A)
- b) It is submitted that neither the resolution applicant nor any of its related parties has at any time failed to implement or contributed to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority. Thereby, the plan is in compliance with CIRP Regulation 38 (1B).
- c) The term of the Plan is 90 days maximum. It provides for the implementation schedule as under:

Sr.	Particulars	Amount (Rs. in crores)	Time of Payment
1	Appropriation of Bid Bond Bank Guarantee	0.15	On approval of resolution plan as part of upfront cash payment.
2	Submission of performance security in the form of RTGS transfer	1.53	Within 2 days of issuance of letter of intent.
3	Upfront cash payment	5.00	Within 30 days from the date of approval of resolution plan by AA.
4	Remaining payment (After Appropriation of performance	8.57	Within 90 days from the date of approval of resolution plan by AA.

	security amount of Rs.1.53 crores)		
	<b>Total Bid Amount</b>	<b>15.25</b>	<b>Total term of resolution plan 90 days</b>

Thereby CIRP Regulation 38(2)(a) has been complied with.

- d) The resolution plan addresses the cause of default; is feasible and viable; has provisions for its effective implementation; contains provisions corporate debtor for approvals required and timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan. Thus CIRP Regulation 38(3) has been complied with.

10. As far as reliefs and concessions claimed by the resolution applicant, the law has been well settled by the Hon'ble Supreme Court in the case of **Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021** in the following words:

86. *".....The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*

87. *We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the*

*proceedings, has brought out the 2019 amendment so as to cure the said mischief.....”*

11. In view of the above, all past claims would stand extinguished. However, as far as various statutory rights vested with the corporate debtor in form of various licenses, leases, and other alike matter, we make it clear that the successful resolution applicant has to approach the concerned statutory authority for those concessions and those authorities will consider the same as per their established procedure.

12. The proviso to section 31 of the Code, 2016, states that before passing any order for approval of the resolution plan, the Adjudicating Authority should also satisfy that the resolution plan has provisions for its effective implementation. We being satisfied, approve the resolution plan submitted by Mr. Sanjay Chopra for Corporate Debtor i.e., M/s Divya Jyoti Industries Ltd and in addition to the above directions, proceed to pass the following order:

- (i) Application is allowed.
- (ii) The resolution plan of Mr. Sanjay Chopra for Corporate Debtor i.e., M/s Divya Jyoti Industries Ltd stands allowed as per Section 30(6) of the IBC, 2016.
- (iii) The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- (iv) The order of moratorium dated 04.12.2020 passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this order.
- (v) The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).
- (vi) The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and

Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

- (vii) Accordingly, IA/15(MP)2022 in TP 241 of 2019 [CP(IB) 628 of 2018] is allowed and stands disposed of in terms of the above directions.
- (viii) Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-sd-

**Kaushalendra Kumar Singh**  
**Member (Technical)**

-sd-

**Madan B. Gosavi**  
**Member (Judicial)**

Swati-LRA/Braj Mohan