



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.301

IA/1062(AHM)2022 in CP(IB) 61 of 2019

**Proceedings under Section 30 & 31 IBC,2016 r.w Reg 39 IBBI,2016**

**IN THE MATTER OF:**

Vinod Tarachand Agrawal RP For Salebhai Internet Ltd

.....Applicant

**Order delivered on: 20/06/2023**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open Court, vide separate sheet.

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

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**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH**

**IA No.1062 of 2022  
In  
CP(IB) 61 of 2019**

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

**Through:**

**Mr. Vinod Tarachand Agrawal**  
**Resolution Professional of**  
**M/s Salebhai Internet Limited**  
204, Wall Street-1  
Nr. Gujarat College  
Ellisbridge, Ahmedabad 380006

**Applicant**

**In the matter:**

**BVC Tradeport Private Limited**

**Operational Creditor**

**Versus**

**M/s Salebhai Internet Limited**

**Respondent**

**Order Reserved on: 09.05.2023  
Order Pronounced on: 20.06.2023**

**Coram: Shammi Khan, Member (Judicial)**  
**Kaushlendra Kumar Singh, Member (Technical)**

**Appearance:**

For the Applicant: Ld. Adv. Mr. Vishwas V Shah, a.w. Ld. PCS Mr. Vinodkumar S Shah and Applicant Mr. Vinod T. Agrawal, present in person.

**ORDER**

1. This application is filed on 21.11.2022 under Section 30(6) of Insolvency & Bankruptcy Code, 2016 by Mr. Vinod Tarachand Agrawal - Resolution Professional (RP) of the corporate debtor- M/s Salebhai Internet



Limited for approval of the Resolution Plan submitted by Mr.Smeet Dineshkumar Chaudhari.

2. The averments made by the applicant/ resolution professional in the present application and as argued by the learned counsel are summarized as under:

(i) The corporate debtor was admitted in Corporate Insolvency Resolution Process (CIRP) on 08.12.2021. Mr. Krunal Ramanbhai Tanna was appointed as Insolvency Resolution Professional (IRP). On 29.12.2021 the IRP made a public announcement of the CIRP of the corporate debtor thereby calling upon its creditors to submit their claim with requisite proof. The Committee of Creditors (CoC) was constituted with the sole operational creditor i.e. BVC Tradeport Private Limited having 100% voting percentage based on their debt value.

The said IRP was confirmed as RP, however in the 5<sup>th</sup> CoC meeting the CoC resolved to replace the RP and to appoint Mr. Vinod Tarachand Agrawal as RP. The same was approved by this Adjudicating Authority.

(ii) Meantime, the CIRP period of 180 days was about to get over, the RP, as per the resolution passed by the CoC requested this Adjudicating Authority to extend the CIRP period by 90 days and accordingly, the CIRP period was extended by this Adjudicating Authority vide its order dated 12.09.2022.

(iii) 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.

(iv) The RP published Form-G on 29.07.2022 in widely circulated English as well as local language newspapers. In response thereto, he



received only two resolution plan of Mr. Smeet Dineshkumar Chaudhari & M/s Raj Radhe Finance Limited.

(v) The CoC discussed the proposal, which was received in the form of a Resolution Plan, in its 8<sup>th</sup> CoC meeting. Subsequent to the discussions and revisions in the plan, both plans were put to vote on 14.10.2022. The CoC approved the resolution plan submitted by Mr. Smeet Dineshkumar Chaudhari by 100% votes.

(vi) The resolution applicant- Mr. Smeet Dineshkumar Chaudhari has proposed to pay a sum of Rs.22,78,000/-. The details are as follows:

(Rs. in lacs)

Sr.	Category of Stakeholder	Sub-Category of Stakeholder	Amount claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount admitted %
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Secured Financial Creditors		NA	NA	NA	NA
2	Unsecured Financial Creditors		NA	NA	NA	NA
3	Operational Creditors	(a) Related Party of Corporate Debtor (not having a voting right): (i) Employees	NA	NA	NA	NA
		(b) Other than (a) above (i) Government	NA	NA	NA	NA
		(ii) Workmen	NA	NA	NA	NA
		(iii) Employees	NA	NA	NA	NA
		(iv) Other operational creditors	7,00,000	7,00,000	7,00,000	100 %
		Total [(a)+(b)]	7,00,000	7,00,000	7,00,000	<b>100%</b>
4.	Other debts and dues		NA	NA	NA	NA
5.	CIRP Cost (as approved by CoC)				13,78,000	
<b>Grand Total</b>					<b>20,78,000</b>	
<b>Capex</b>					<b>2,00,000</b>	



3. We heard the learned counsel for the RP and on perusal of records it is noted that the CoC approved the resolution plan of Mr. Smeet Dineshkumar Chaudhari by 100% voting percentage and it is not necessary for us to go into details of the commercial aspect of the plan. We proceed to examine the plan in view of sections 30(2) and 31 of the IBC r.w. Regulation 38 of the IBBI (CIRP of the Corporate Debtor Regulation, 2016). The RP has produced on record the compliance certificate in Form-H. It shows that the fair value of the assets of the corporate debtor is Rs.6,24,500/- whereas, the liquidation value is Rs.3,12,000/-. The successful resolution applicant has proposed a payment of Rs.22,78,603/- in the resolution plan.

4. In order to obtain the approval of the Adjudicating Authority the resolution plan should adhere to the following requirements as per Section 30(2) of the Code r.w. CIRP Regulation 38:

(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 should not be less than the amount to be paid to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code, or the amount that would have been paid to the said creditors if the amount to be distributed under the resolution plan had been distributed in accordance of section 53(1) of the Code.

Moreover, the payment to the operational creditor is to be made in priority over the financial creditor;

Further, the repayment of the debts of dissenting financial creditors should not be less than the amount that would have been paid to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code and the payment to the said 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)]

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

(i) In the plan, the provision towards CIRP costs is made for Rs. 13,78,306/- in priority to the repayment of other debts of the corporate debtor i.e. to be paid within 30 days from the effective date. Thereby, section 30(2)(a) has been complied with.

(ii) There are no financial creditors, further, the plan provides payment to operational creditors amounting to Rs. 7,00,000/- which is 100% of their admitted claim.

As such the provisions of section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b) are 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 Resolution Professional will look after the business of the corporate debtor after approval of the resolution plan and pending its implementation. We hold that thereby provisions of Section 30(2)(c) read with CIRP Regulation 38(2)(b) are complied with.



(iv) The resolution plan contains a provision wherein, the implementation of the said plan will be supervised by the Monitoring Committee consisting of RP, one representative of CoC & two representative of RA. 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 30 days. It provides for the implementation schedule as under:

Indicative Activity Schedule		
Sr. No.	Activity	Timeline (days)
	Payment of CIRP costs as approved by CoC	E+30
	Payment to Operational creditors	E+30
	Payment to financial creditors	E+30
	Change in Memorandum and Articles of Association and other documentation as required under the proposed plan	E+90





	Management of company	
	i. Constitution of new board	E+30
	ii. Appointment of key managerial personnel; and	E+30
	iii. Resolution Applicant shall appoint statutory auditors of their choice, subject to applicable regulations.	E+90

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 for approvals required and the 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.

6. The resolution applicant is an Engineer-BE Civil and has joined M/s DBD Enterprise Private Limited on 08.09.2017 as director of the company. The said company is engaged in the business of manpower supply services in Gujarat. Sources of funds is by way of equity share capital amounting to Rs.1 lac and promoters funds i.e. Rs.19.78 lacs towards upfront cash & Rs.2 lacs as capex/initial working capital.

7. It is also noted that the resolution applicant has sought waiver of certain reliefs & concessions such as:

- i) statutory liabilities/ contingent liabilities incurred and accrued to statutory authorities viz. Income Tax, GST, ESIC, PF, EPCG, VAT, Sales Tax, Excise, Customs, FEMA etc;
- ii) MAT liability arising on account of write off of loans;
- iii) dues of the operational creditors except the claim received and other current liabilities and any other operational liability accrued and incurred before CIRP;
- iv) any other liability incurred or accrued before initiation of CIRP.



Moreover, the approval of the resolution plan is not conditional to the reliefs & concessions sought by the resolution applicant.

8. As far as reliefs and concessions claimed by the resolution applicant with respect to the unpaid liabilities after approval of the plan and also the claims that were not filed at all with the RP during the CIRP, 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.....”*

9. In view of the above, all unpaid liabilities and claims that are not filed with the RP before the approval of the resolution plan and those which are not included in the said resolution plan would stand extinguished. However, as far as other reliefs and concessions as sought by the resolution applicant, we direct the said successful resolution applicant to approach the concerned statutory authority for those reliefs & concessions and the concerned authorities will consider the same as per the provisions of law under the relevant Acts.



10. 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. Smeet Dineshkumar Chaudhari for Corporate Debtor i.e., M/s Salebhai Internet Limited and in addition to the above directions, proceed to pass the following order:

- (i) Application is allowed.
- (ii) The resolution plan of Mr. Smeet Dineshkumar Chaudhari for Corporate Debtor i.e., M/s Salebhai Internet Limited 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 08.12.2021 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 1062 of 2022 in CP(IB) 61 of 2019 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-**

**Shammi Khan**  
**Member (Judicial)**

Swati Khandelwal