Addl.1

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

IA 846 of 2020 in CP (IB) 404 of 2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.01.2021

Name of the Company: Parthiv Parikh
RP for M.V. Omni Projects (India) Ltd.
V/s
Mathuraprasad C Pandey & Ors.

Section 30 (6) & 31 of the Insolvency and Bankruptcy Code, 2016.

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER
(Through Video Conferencing)

Advocate, Ms. Hirva Dave is present on behalf of the applicant/RP, Sr. Advocate, Mr. Navin Pahwa is present on behalf of the Resolution Applicant and Advocate, Mr. Lalit M. Patel is present on behalf of Axis Bank.

The order is pronounced in the open court, vide separate sheet.

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)

MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 28th day of January 2021

sr

BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

I.A. No. 846 of 2020
in
CP(IB) No. 404 of 2019

In the matter of:

Mr. Parthiv Parikh
Resolution Professional of
M/s. M. V. Omni Projects (India) Limited ... Applicant

Versus

Mr. Mathurprasad C. Pandey and Others ... Respondents

Order delivered on 28th January, 2021

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance: Advocate Mr. Jaimin R Dave for the Applicant and Senior Advocate Navin Pahwa along with Advocate Mr. Ravi Pahwa for the Respondent.

ORDER

[Per se: Ms. Manorama Kumari, Member (J)]

1. The instant application is filed by the Applicant, the Resolution Professional of M/s. M.V. Omni Projects (India) Limited (hereinafter referred to as "Corporate Debtor") under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IB Code") for seeking approval of Resolution Plan dated 22.09.2020 along with the addendum dated 13.11.2020.

2. The facts of the case is/are herein under:

   2.1 CP(IB) No. 404 of 2019 was filed by Operational Creditor viz. Mr. Nandish Patel, under section 9 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor which was admitted on 29.08.2019 by this Adjudicating Authority and Mr. Manish Kumar Bhagat was appointed as Interim Resolution Professional (hereinafter referred as "IRP").

2.2 That the Committee of Creditors (hereinafter referred as "CoC") was formed and in its Second Meeting held on 24.10.2019, CoC decided for appointing the Applicant as RP. An application in this regard was filed before this Adjudicating Authority and the order was passed on 20.01.2020.

2.3 That on the expiry of 180 days of CIRP further 90 days beyond 180 days was extended vide order dated 24.02.2020. Thereafter, due to the nationwide lockdown and the provisions inserted in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, the lockdown period was excluded and the CIRP expired on 13.08.2020.

2.4 After calling for Expression of Interest (hereinafter referred as "EoI") several times, 3 EoIs were received and thereafter, two Resolution Plans were received by- i) Mr. Mathurprasad Pandey, Mr. Vrindavan Pandey, M/s Transwind Infrastructure Limited, M/s Deepjyoti Commodities Private Limited and (ii) M/s Aaryavrat Infrastructure Private Limited.

2.5 Pursuant to the Resolution Plans received, CoC requested the Resolution Applicants to modify their plans in the 9th CoC

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meeting held on 21.07.2020. Thereafter, since the CIRP was expiring on 13.08.2020, CoC resolved to file an application for extension of time by further 30 Days over and above the statutory period for completion of CIRP. The said application was allowed by this Adjudicating Authority vide order dated 18.08.2020.

2.6 That on further extension of 30 days, four CoC meetings were held for the consideration of the Resolution Plans. However, in the meantime competent officers of the CoC got infected with Covid which delayed the decision making and the Resolution Plan could not be approved.

2.7 In the 14th CoC meeting held on 07.09.2020, clarificatory addendum submitted by one of the Resolution Applicant i.e. Mr. M. C. Pandey was discussed and it was felt by the CoC that further 15 days extension is required to complete the CIRP beyond the 30 days extension as the situation in Mumbai Head Office is worst due to the pandemic and the offices are sealed for this purpose and officers are under quarantine. An application was made by CoC with 70.07% majority voting to seek extension before this Adjudicating Authority which was listed on 17.09.2020. The Bench directed the Applicant of the application to complete the voting process on or before 21.09.2020 and file an application for approval of Resolution Plan, if any.

2.8 That on conclusion on voting process, no Resolution Plan was approved by the CoC and hence, Liquidation application i.e. IA 670 of 2020 was filed on 22.09.2020 by the RP. However, Respondent No. 1-3 also filed an application i.e. IA 667 of 2020 for opposing the Liquidation, as they submitted the revised Resolution Plan for consideration for CoC on 22.09.2020, which was listed on 12.10.2020. The Bench directed the RP to re-discuss with regard to the plan so filed by the Respondents.

2.9 In accordance with said direction, CoC meeting was convened and necessary procedure was followed. The RP apprised the Bench about the developments taking place for the approval of the Resolution Plan time and again when the matter was listed. Subsequently, both the Resolution Applications submitted their addendum to the Resolution Plan dated 13.11.2020 and 17.11.2020 respectively. Thereafter, in the 17th CoC meeting the Resolution Plans was put to vote through e-voting on 19.11.2020. In the said e-voting, Resolution Plan submitted by Mr. M. C. Pandey jointly with others was approved by majority of 97.79% of the CoC members and 99.23% CoC members voted against the Liquidation of the Corporate Debtor.

2.10 The Applicant filed Compliance Certificate in 'Form H' as reflected at page no. 134-151 as **Annexure S** of the application. Applicant has also submitted two Liquidation values and fair values from two different valuers as reflected from page no. 135 of the application

2.11 It is pertinent to mention herein that the Corporate Debtor is a MSME which is reflected from the Resolution Plan (page no. 50 of the application) with Registration No. UAN No. GJ01F0086283 and is also apparent from Udyog Aadhaar acknowledgment issued by Government of India, Ministry of Micro, Small and Medium Enterprises showing the applied date as 30.11.2017.

3. Heard the parties, the present application has been filed for approval of the Resolution Plan under Section 31 of the IB Code (as amended upto date) submitted by RP in respect of the Corporate Debtor. The Applicant/ the Resolution Professional, deliberating the sequence of events right from calling of EoI up to approval of the Resolution Plan by the CoC in its 17th meeting submitted the Resolution Plan duly approved by the CoC by 97.79% in favour of the Resolution Plan so submitted by Resolution Applicant as the Resolution Plan complies with the requirements as envisaged under Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as well as Section 30 of the Code, and sought for approval of the Resolution Plan by this Adjudicating Authority. Furthermore, Respondents No. 1-3 are not debarred to submit a Resolution Plan under Section 29A of the IB Code as they are small scale enterprise and by virtue of Section 240A of the IB Code, they are excluded from Clause (c) and (h).

4. On perusal of the records, it is found that the Resolution Applicant has taken account the interest of all stakeholders of the Corporate

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Debtor to the extent possible, as envisaged in this Resolution Plan for insolvency resolution of "M. V. Omni Projects (India) Limited".

5. The brief summary of the Resolution Plan is as follows-

Total Resolution Plan is for Rs. 4171.99 Lakh (including claimed Bank Guarantee obligations of Rs. 571.99 and excluding other bank guarantees of Rs. 1476.07 Lakh)

Source of funds	Amount (Rs. In Lakh)
Loan from bodies corporate/ corporate guarantors and their nominees	910.00
Realization from Debtors and other receivable	200.00
Realization of various deposits of Corporate Debtors and Margin Money	350.00
Unsecured loan from relatives and friends for Corporate Debtor	41.00
Sale of Assets of Promoters of Corporate Debtor after obtaining specific NOC and contribution from Corporate Guarantors	2099.00
Total	**3600.00**
Application	
CIRP Cost	79.11
Secured Financial Creditors (including amount payable to other FC where promoters are co-borrowers)	3459.89
Operational Creditors	30.00
Employees	15.00
Statutory Dues	5.00
Provident Fund/ ESI	3.00
Unsecured Financial Creditors	8.00
Total	**3600.00**

Claimed Bank Guarantee of Rs. 571.99 has not been considered in the sources and application as the same is contingent amount.

6. The Resolution Plan is offering the following amounts to various stakeholders:

Sl. No.	**Category of Stakeholders***	**Sub-Category of Stakeholders**	**Amount claimed Amount in Rs. Lakh**	**Amount Admitted Amount in Rs. Lakh**	**Amount provided under the Plan#**	**Amount provided to the amount claimed (%)**
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a)	22,706.98	22,706.98	3,447.86	15.18 %

		above:				
		(i) who did not vote in favour of the resolution plan	340.91	340.91	36.83	10.80 %
		(ii) who voted in favour of the resolution plan	22,366.08	22,366.08	3,411.03	15.25 %
		Total [(a) + (b)]	22,706.98	22,706.98	3,447.86	15.18 %
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a)	1,034.94	1,030.97	20.03	1.94%

		above: (i) who did not vote in favour of the resolution plan	53.66	53.66	4.43	8.26%
		(ii) who voted in favour of the resolution plan	981.28	977.30	15.59	1.59%
		Total [(a) + (b)]	1034.94	1030.97	20.03	1.94%
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:			30.00	
		(i) Government			8.00	

		(ii) Workmen (iii) Employees (iv) ………			15.00	
		Total [(a) + (b)]			53.00	
4	Other debts and dues		-	-	571.99 (Bank Guarantees which are contingent in nature)	
Grand Total			**23,741.93**	**23,737.95**	**4092.87**	**17.24 %**

7. The implementation schedule proposed by the Resolution Applicant is reproduced herein below:

Particulars	**Indicative Actions**	**Amount (Rs. In Lacs)**	**Timeline**	**Total Days**
Unmet-IRP Cost	Payment in designated	79.11	Within 90 days from	X+90

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(Presently estimated)	account		Appointed Date	
Operational Creditors	Payment in designated account	30.00	Within 90 days from Appointed Date	X+90
Employees	Payment in designated account	15.00	Within 90 days from Appointed Date	X+90
Operational Creditors (Statutory Dues)	Payment in designated account	5.00	Within 90 days from Appointed Date	X+90
Deposit of Employer Contribution in PF department	Payment in designated account	3.00	Within 90 days from Appointed Date	X+90
First Trench to secured financial creditors	Payment in designated account	217.89	Within 90 days from Appointed Date	X+90
Second Trench to secured financial	Payment in designated account	350.00		X+180

creditors				
Third Trench to secured financial creditors	Payment in designated account	1100.00		X+365
Fourth Trench to secured financial creditors and Payment to un secured financial creditors	Payment in designated account	1800.00		X+730
		3600.00		

8. On perusal of the record, it is found that the Resolution Applicant has also filed Form H as **Annexure S** under regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 at page no. 134-151 of the application, which is self explanatory.

9. In view of above Section 30(2) and 30(4) is applicable in the instant case. For sake of the convenience the amended provision is reproduced herein below-

"30. Submission of Resolution Plan

(1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution 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.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

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

[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]"

FINDINGS:

10. Looking to the entire facts of the case, it is found that the COC has approved the plan with 97.79% voting in favour of the approval of the plan. Moreso, the Resolution Applicant fulfils the mandatory contents of the Resolution Plan as provided under Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. Regulation 38 is reproduced herein under-

*"**38. Mandatory contents of the resolution plan**.*

(1) A resolution plan shall identify specific sources of funds that will be used to pay the –

(a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;

(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and

(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.

["(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor."]

(2) A resolution plan shall provide:

(a) the term of the plan and its implementation schedule;

(b) the management and control of the business of the corporate debtor during its term; and

(c) adequate means for supervising its implementation."

11. It is to be mentioned herein that the Corporate Debtor is an MSME and falls under Section 240A of the IB Code. For the sake of convenience, the section is reproduced herein under:

"***240A. Application of this Code to micro, small and medium enterprises***. –

(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises.

(2) Subject to sub-section (1), the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—

(a) not apply to micro, small and medium enterprises; or

(b) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification.

(3) A draft of every notification proposed to be issued under subsection (2), shall be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

(4) If both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or shall be

issued only in such modified form as may be agreed upon by both the Houses, as the case may be.

(5) The period of thirty days referred to in sub-section (3) shall not include any period during which the House referred to in sub-section (4) is prorogued or adjourned for more than four consecutive days.

(6) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament.

Explanation.— *For the purposes of this section, the expression "micro, small and medium enterprises" means any class or classes of enterprises classified as such under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006).]"*

12. Further, from the object of the IBC, it is amply clear that the **"Resolution is Rule and the Liquidation is an Exception"**. Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only, if there is any surplus after satisfying the claims of a prior set of stakeholders fully. The IB Code', therefore, does not allow liquidation of a corporate debtor' directly. It allows liquidation only on failure of corporate insolvency resolution process'. It rather facilitates and encourages resolution in several ways.

The said objective of the Resolution Plan is affirmed in the decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors.** The Supreme Court has observed that National Company Law Tribunal has no jurisdiction and authority to analyze or evaluate the commercial decision of the Committee of Creditors (CoC) to enquire into the justness of the rejection of the Resolution Plan by the dissenting Financial Creditors.

Keeping in view such object behind the enactment of the Code, intention of the Legislature, that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for brining Resolution Plan were failed or it cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is rule as per the apex court's decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors** as discussed above.

The Hon'ble Supreme Court in its recent judgment in Civil Appeal No. 10673 of 2018 in **K. Sashidhar Vs. Indian Overseas Bank & Ors.** comprising of Hon'ble Justice A.M. Khanwilkar and Hon'ble Justice Ajay Rastogi observed that Adjudicating Authority has no jurisdiction to interfere with the commercial wisdom of the CoC.

13. With regard to the **Clause 4.2.4.8.** (at page no. 61 of the application), it is to be mention that since all the Financial Creditors, Operational Creditors and other Stakeholders have already lodged their claims during the CIRP and the same has been already considered by CoC and accordingly, Resolution Plan has been approved by CoC with majority. The claims of any Stakeholder and others, if remained unaddressed or not considered by CoC, shall not claim upon Corporate Debtor after the approval of Resolution Plan. Furthermore, if there is any proceeding pending before any competent authority(s), Resolution Applicant may approach the said authority for appropriate order.

14. With regard to **Schedule 4: Extinguishment of Claims** (at page no. 78 of the application) and **Schedule 5: Reliefs and Concessions** (at page no. 80 of the application), it is to be specifically mention herein that no claim against the Resolution Applicant will lie on and from the date of approval of the Resolution Plan by this Adjudicating Authority. However, any extinguishment, waiver or concession, if claimed, by the Resolution Applicant from any competent authority of Government/ Semi Government/ Central or Local Authority, Resolution Applicant is required to approach them for such relief, claim and/or any waiver.

15. With regard to the **subrogation** (Clause 4 at page no. 78 of the application), it is hereby observed that since Resolution Plan is approved by the CoC, they have already dealt with the Guarantee, if any, provided by the Corporate Debtor i.e. before the approval of the Resolution Plan. Hence, are not dealt herein again. However, if any

member of the Resolution Applicant has entered into or stand as Guarantor in individual capacity, in that event, he shall not be covered with any immunity given under the Resolution Plan.

16. With regard to any pending proceeding before any competent authority(s), civil as well as criminal, against the Corporate Debtor, Resolution Applicant may approach before the said competent authority for any relief as provided for Resolution Applicant in IB Code.

17. It is needless to mention herein that approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/own jurisdiction to pass any appropriate order or as the case may be. The Resolution Applicant(s) on approval of the Plan may approach those Competent Authorities/Courts/Legal Forums/Offices- Govt, or Semi Govt. / State or Central Govt, for appropriate relief(s) sought for in the Resolution Plan.

18. Thus, not allowing the above said relief and/or concession and/or waiver are not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant(s) has/have liberty to approach Competent Authorities for any concession, relief or dispensation, as the case

may be as when required for proper and effective implementation of the Plan.

19. Apart from the above observations and directions, it is further directed/ observed that:

    i. The approved Resolution Plan shall come into force with immediate effect.

    ii. The Resolution Plan shall be subject to the various existing laws in force and shall also confirm to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.

    iii. The Resolution Applicant(s) shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority under section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.

    iv. 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 on its database.

20. Under such facts and circumstances, we, the Adjudicating Authority, is of the considered opinion and also being satisfied that the Resolution Plan as approved by the Committee of Creditors

(CoC) meets the requirements as referred to under section 30(2) of the Code.

21. Accordingly, IA 846 of 2020 is allowed with the above said observations and directions and stands disposed of in view of the above order.

22. Any IA(s), if pending, in relation to the instant Resolution Plan stands infructuous.

Chockalingam Thirunavukkarasu
Adjudicating Authority
Member(Technical)

Manorama Kumari
Adjudicating Authority
Member(Judicial)

Shreya