

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**Coram: SHRI AJAY KUMAR VATSAVAYI,**  
**HON'BLE JUDICIAL MEMBER**  
**SHRI RAGHU NAYYAR,**  
**HON'BLE TECHNICAL MEMBER**

**IA No. 241/JPR/2020**  
**In CP No. (IB)- 262/7/JPR/2019**

**IN THE MATTER OF SECTION 7 OF IBC, 2016.**

**IN THE MATTER OF:**

**S J SERVICES PRIVATE LIMITED**

**... Financial Creditor**

**VERSUS**

**R G BUILDESTATE PRIVATE LIMITED**

**...Corporate Debtor**

**IA No. 241/JPR/2020**

**MEMO OF PARTIES**

**Chander Shekhar**  
**(Resolution Professional of**  
**R G Buildestate Private Limited)**  
204, R-7, Park Saroj, Yudhistra Marg,  
C- Scheme, Jaipur- 302001

**...Applicant**

For the Applicant : Rishabh Jain, Adv. for RP  
Chander Shekhar, RP

For the Respondents : None-appeared

**Order Pronounced On: 07.10.2021**

**ORDER**

**Per: Shri Raghu Nayyar, Technical Member**

1. This Application is filed by Mr. Chander Shekhar, Resolution Professional ('RP' / 'Applicant') of R G Buildestate Private Limited ('Corporate Debtor') under Sections 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') seeking approval of resolution plan.
2. The insolvency application was filed by the Financial Creditor S J Services Private Limited under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and the same was admitted by this Adjudicating Authority vide order dated 30.01.2020. The Applicant was appointed as the Interim Resolution Professional ('IRP') and on 02.02.2020, the IRP issued a public announcement as per Regulation 6 of the Insolvency And Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') read with Sections 13 and 15 of the Code in Form A in two newspapers i.e., Indian Express (English) and Raj Express (Hindi) thereby inviting claims from the creditors of the Corporate Debtor as envisaged in the Code.
3. The Applicant upon receipt of claims constituted the Committee of Creditors ('CoC') on 22.02.2020 and convened the 1<sup>st</sup> CoC meeting dated

29.02.2020 wherein the Applicant was appointed as the RP. In the 2<sup>nd</sup> CoC meeting convened on 12.03.2020, CoC appointed two registered valuers for determination of liquidation value of the Corporate Debtor. Further, in compliance of the resolution passed in the 3<sup>rd</sup> CoC meeting dated 21.05.2020, the RP made public announcement in Form G in two newspapers i.e., Economic Times (English), Raj Express (Hindi) Jaipur Edition and Arun Prabha (Hindi) Alwar Edition inviting Expression of Interest ('EOI') on 25.05.2020. In response, the Applicant RP received one EOI and two emails and phone calls showing interest in submitting the EOI and seeking extension of time to submit their EOI due to lockdown imposed for prevention of COVID-19. In the 4<sup>th</sup> CoC meeting dated 15.06.2020, the CoC resolved to not extend the period of receiving EOI. So, on 18.06.2020, the Applicant RP in compliance of Regulation 36A (10) of the Regulations issued a provision list of eligible prospective resolution applicants.

4. It is further stated that in the 5<sup>th</sup> CoC meeting dated 24.08.2020, wherein the CoC voted in favour of the following:
  - a. To approve the nature, value, duration and source of the performance security required to be furnished by the resolution applicant; and
  - b. To discuss and approve Request for Resolution Plan (RFRP).

In compliance of Regulation 36B (1) of the Regulations, the Applicant RP vide email dated 24.06.2020 issued RFRP along with Information Memorandum (IM) and Evaluation Matrix to the prospective Resolution Applicant.

5. It is also stated that in the 6<sup>th</sup> CoC meeting dated 06.08.2020, the Resolution Plan proposed by One City Infrastructure Private Limited in consortium with Mr. Sunil Kumar Jain and Ms. Dipika Jain was duly approved by 100% members of the CoC in terms of section 30(4) of the Code. The copy of the revised Resolution Plan along with the compliance certificate in Form H is filed vide diary no. 975/2020 dated 09.12.2020.
6. We have carefully considered the submissions of the learned counsel for the RP and the learned Counsel for the resolution applicant and have also perused the record.
7. The Corporate Debtor was incorporated on 17.01.2012 and the CIRP proceedings were initiated under Section 7 of the Code against the Corporate Debtor by order delivered on 30.01.2020. The present application is filed for approval of the resolution plan submitted by One City Infrastructure Private Limited in consortium with Mr. Sunil Kumar Jain and Ms. Dipika Jain (Successful Resolution Applicant). The approval has been sought under the provisions of Section 31 (1) of the Code.
8. We may first of all state that after receipt, verification and collation of claims, the IRP constituted the CoC as per the provisions of Section 21 of

the Code. The details of the financial creditors, the distribution of voting share among them and the position of voting for the resolution plan is as under (para No.5 of Form H) –

S. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	S J SERVICES PRIVATE LIMITED	100	VOTED FOR

9. The details of stakeholders under the resolution plan are given in Para 7 of Form H:-

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)	Page No of IA 241/J PR/2020
(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) above:	494.68	494.68	242.00	48.92%	Page No-112, Para No-18.3
		(i) who did not vote in favor of the resolution Plan					
		(ii) who voted in favor of the resolution plan					

		Total[(a) + (b)]	494.68	494.68	242.00	48.92%	
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	176.72	176.72	NIL	NIL	Page No-119 Para No-18.8(i ii)
		(b) Other than (a) above:	-	-	-	-	
		(i) who did not vote in favor of the resolution Plan	-	-	-	-	
		(ii) who voted in favor of the resolution plan	-	-	-	-	
		Total[(a) + (b)]	176.72	176.72	NIL	NIL	
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-	Page No-115, Para 18.5
		(b) Other than (a) above:	-	-	-	-	
		(i) Government	-	-	-	-	Page No-117, Para 18.7(i i)
		(ii) Workmen	-	-	-	-	
		(iii) Employees	-	-	-	-	
		(iv) .....	-	-	-	-	Page No-116, Para 18.6
		Total[(a) + (b)]					

4	Other debts and dues		-	-	-	-	Page No-121, Para 18.10
Grand Total			671.40	671.40	242.00	36.04%	

\*If there are sub-categories in a category, please add rows for each sub-category.

# Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

10. The abovementioned amount of Rs. 2,42,00,000/- payable to the secured Financial Creditors is proposed to be paid by making payment of Rs. 30,00,000/- within 90 days from the Plan Effective Date and rest to be paid after 3 years as per the Repayment Schedule provided in the Resolution Plan.

11. The compliance aspect of the resolution plan has been given in Para No. 9 of Form H, which is as follows:-

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)	Page No of IA 241/JPR/2020
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		YES	
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	17	YES	110
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		YES	
Section 30(2)	(a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors?	10.1	YES	106
		10.2	YES	106

	(c) provides for the payment to the financial creditors who did not vote in favor of the resolution plan?	NA	NA	
	(d) provides for the management of the affairs of the corporate debtor?	10.3	YES	106
	(e) provides for the implementation and supervision of the resolution plan?	10.4	YES	106
	(f) contravenes any of the provisions of the law for the time being in force?	10.5	YES	106
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?		YES YES	72, Item No-4
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	15	YES	108
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?		NO (There was no transaction in previous 2 years)	
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	NA	NA	
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	13	YES	108
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.  (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	14  NA	YES  NA	108  NA
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	15.1- 15.2 15.3	YES YES YES	108 108 108-109
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default?	16.1	YES	109

	(b) it is feasible and viable?	16.2	YES	109
	(c)it has provisions for its effective implementation?	16.3	YES	109
	(d)it has provisions for approvals required and the timeline for the same?	16.4	YES	109
	(e)the resolution applicant has the capability to implement the resolution plan?	16.5	YES	110
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	NA	Not required	
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	18.16		124 and 79

12.The approval of the resolution plan has been sought under Section 31(1) of the Code, which reads as follows:-

*“If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan 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.*

*Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.”*

13.The conditions provided in Section 31(1) of the Code for approval of resolution plan are as follows:-

- (a) *The Resolution Plan is approved by the CoC under Section 30(4) of the Code;*
- (b) *The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;*

- (c) *The Resolution Plan has provisions for its effective implementation.*

The satisfaction of the conditions is discussed below.

14. It is seen that the CoC consists of one Financial Creditor that voted in favour of approval of the Resolution Plan, therefore the conditions provided for by Section 30(4) of the Code are satisfied.

15. The provisions of Section 30(2) of the Code are as follows:-

- “(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) confirms 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.”*

16. The compliance of Section 30(2) of the Code is given in para No. 9 of Form

H (*supra*). The same is being further examined as under:-

- a. **Section 30(2)(a):** The resolution plan (Part 2 Clause 10.1 at Page 106 of the application) states that share capital of Rs. 1,00,000/- and unsecured loan of Rs. 39,00,000/- is proposed to be infused by the Resolution Applicant which shall be utilised for payment of unpaid CIRP costs on priority basis within 90 days from the Effective Date.

- b. **Section 30(2)(b):** The resolution plan (Part 2 Clause 10.2 at Page 106 of the application) states that in terms of the Code, the payment due to operational creditors should not be less than the liquidation value payable to the operational creditors in the event of liquidation of the Corporate Debtor under Section 53 of the Code. The liquidation value is not sufficient to cover the debt of the financial creditor in full, thus, the liquidation value of the operational creditors of the Corporate Debtor is NIL. So, the Resolution Applicant proposed to make NIL payment to Operational Creditors other than related parties.
- c. **Section 30(2)(c):** Resolution Plan (Part 2 Clause 10.3 at Page 106 of Application) provides that on cut off date, Resolution Applicant shall be entitled to change members of Board of Directors as envisaged in the Resolution Plan, with the approval of Monitoring Committee and the powers of the Board of Directors shall be restored.
- d. **Section 30(2)(d):** In Resolution Plan (Part 2 Clause 10.4 at Page 106 of Application), it is stated that the Resolution Applicant has provided for the mechanism to monitor the progress for implementation, which includes engagement of monitoring professionals for supervision of the resolution plan.
- e. **Section 30(2)(e):** In Form H Para 4, the RP has certified that the Resolution Plan does not contravene any of the provisions of the law for the time being in force.

17. The RP has also certified that the Resolution Applicant has submitted an affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. Section 29A affidavit has been filed by the Applicant RP vide Diary No. 975/2020 as Annexure A2.
18. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. Clause 15 of the resolution plan discusses term of plan and its implementation schedule. It is stated that the term of the plan will be 90 days and will commence from the Plan Effective Date. On approval of the plan by this Authority, the powers of Board of Directors shall get restored and Resolution Applicant will be entitled to change members of the Board after settlement of operational creditors with the approval of Monitoring Professional. It is also stated that the Monitoring Professional will monitor and supervise the implementation of the Resolution Plan.
19. With regard to compliance of Regulation 39(4) in relation to submission of the Performance Bank Guarantee by the successful resolution applicant is concerned, the Resolution Applicant has submitted a performance bank guarantee of Rs. 10,00,000/- in terms of Regulation 36B(4A) (Annexure 10) of the CIR regulations. The Applicant RP pursuant to order dated 03.12.2020 passed by this Authority has filed an affidavit wherein the performance security furnished by the Resolution Applicant has been

extended for another six months i.e., till 23.06.2020. Copy of the extended bank guarantee is annexed as Annexure A4 vide diary no. 975/2020.

20. With regard to the compliance under Regulation 35A, it is stated in Form H that no such transactions of the nature covered under sections 43, 45, 50 or 66 of the Code have taken place in the last two years. Therefore, no applications under these sections have been filed.

21. A perusal of Regulation 38 would clearly show that by virtue of mandatory contents of resolution plan as discussed in the preceding paragraphs in relation to Section 30 and Section 31 of the Code, the requirement of Regulation 38 also stands fulfilled. Thus, the resolution plan fulfills all the requirements of Regulation 38 of the CIRP Regulations.

22. The Resolution Plan inter-alia entails the following:

- a. Effective date shall be the date on which the Resolution Plan is approved by this Adjudicating Authority under Section 31 of the Code.
- b. On approval of Resolution Plan, the entire existing equity share capital held by the shareholders shall be transferred to the Resolution Applicant free of cost. In addition to that, Resolution Applicant proposes to increase the equity share capital by Rs. 10,00,000/-.
- c. Extinguishment of any/ all claims against the Corporate Debtor along with related legal proceedings, including criminal proceedings and other proceedings which shall stand abated, settled and extinguished.

- d. All existing and future claims, rights, entitlement, etc. of the Corporate Debtor with Government Authorities or any other person (including third parties) shall not be affected and shall remain enforceable after the effective date.
- e. The Resolution Professional shall be released of his duties and responsibilities and the CoC shall be dissolved from the Effective Date.
- f. The Corporate Debtor shall continue as a going concern and operate in its normal course of business upon implementation of the Resolution Plan.
- g. The term of the Plan will be 90 days and will commence from the Plan Effective Date.

23. In view of the above discussion, the resolution plan submitted by One City Infrastructure Private Limited in consortium with Mr. Sunil Kumar Jain and Ms. Dipika Jain as approved by the CoC under Section 30(4) of the Code is hereby approved. The resolution plan so approved 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.

24. Under the provisions of Section 31(3) of the Code, we also direct as under:-

- a. The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 30.01.2020 shall cease to have effect; and
- b. The RP shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the Board to be recorded on its database.

35. In view of the foregoing, IA No. 241/JPR/2020 is disposed of.



Sd-

**SH. RAGHU NAYYAR,  
TECHNICAL MEMBER**



Sd-

**SH. AJAY KUMAR VATSAVAYI,  
JUDICIAL MEMBER**