

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH, DELHI  
BENCH III**

I.A. No. 3708/2020 filed in IB-1404(ND)/2019 under Section 30(6), of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of IBBI (CIRP) Regulations

In the matter of '**Prius Commercial Projects Private Limited**'

**Mr. Mahender Kumar Khandelwal**, RP for 'Prius Commercial Projects Private Limited'

*... Applicant*

Order delivered on 4<sup>th</sup> January, 2021

CORAM:

**CH. MOHD SHARIEF TARIQ, HON'BLE MEMBER (JUDICIAL)**  
**SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER (TECHNICAL)**

For Resolution Professional: Mr. Abhinav Vashist, Ms. Priya, Mr. Raunak Singh  
For Resolution Applicant: Mr. Suresh Dutt Dobhal and Mr. Shikhar Kumar  
For CoC: Ms. Aditi Mittal, Mr. Aditya Narayan Mahajan

**ORDER**

Per: SHRI NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

1. The Resolution Professional has filed the instant application under section 30(6) of Insolvency and Bankruptcy Code,

2016 (hereinafter referred as "IBC") r/w Regulation 39 (4) of the Insolvency and Bankruptcy board of India (Insolvency Resolution Process for Corporate Persons) Regulations (hereinafter referred as "IBBI (CIRP) Regulations, 2016), in IA No.3708/2020 for seeking approval of Resolution Plan under section 31(1) of IBC in the matter of 'Prius Commercial Projects Private Limited' (hereinafter referred as "Corporate Debtor")

2. Mr. Mahender Kumar Khandelwal is the Resolution Professional for Prius Commercial Projects Private Limited, who has submitted the Resolution Plan duly approved by the Committee of Creditors (hereinafter referred as "CoC") which is accompanied by the compliance certificate in the prescribed Form H.

3. It is submitted that Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor was admitted by this authority vide its order dated 09.08.2019 pursuant to the application filed by one of the Financial creditors and Mr.

Mahender Khandelwal was appointed as the Interim Resolution Professional (IRP) vide same order.

4. The first CoC meeting held on 27<sup>th</sup> September, 2019, wherein it was resolved to appoint IRP as RP of the Corporate Debtor. It is submitted that the RP has been acting in accordance with the terms of the Code and the regulations made therein. All the action has been taken by the applicant as required by the IBC,2016 and CIRP Regulations.
5. It is submitted that the time was also extended firstly, by this authority vide order dated 12 February, 2020 for further 90 days and then Hon'ble NCLAT passed an order dated 30 March 2020, directing that the period of Lockdown, as may be extended either in whole or part of the country, as applicable in the area where registered office of the Corporate Debtor is situated, shall be excluded for the purpose of counting of the CIRP period under section 12 of the Code, in all cases where CIRP has been initiated and pending before any bench of the National Company National Company Law Tribunal or in Appeal before the Appellate Tribunal. This Adjudicating Authority also excluded another

60 days vide its order dated 21 August 2020 after taking into consideration various factors.

6. In the first CoC meeting the discussion took place on the minimum eligibility criteria for inviting expressions of interest from prospective resolution applicants for the corporate debtor and same was approved with 100% voting in favour. It is submitted that the applicant placed invitation of expressions of interests in Business Standard, Hindi and English editions on 7<sup>th</sup> October and to ensure the larger participation of the prospective resolution application, the last date was extended from time to time and finally it was extended till 13 January 2020 vide advertisement dated 09 January 2020.
7. Out of the EoIs submitted, the applicant identified 13 as qualified prospective applicants/ qualified bidders for participation in the resolution plan process for the corporate debtor. The Request for Resolution Plan (RFRP) including the evaluation matrix and the revised modified timelines in the RFRP were duly approved by the CoC in the respective

meetings. The RFRP was issued by the Applicant/Resolution Professional on 09 December 2019.

8. It is submitted by the applicant that the average liquidation value of the Corporate Debtor under regulation 35 of IBBI (CIRP) Regulations, as valued by the two registered valuers is approximately INR 429.07 crores.
9. It is further submitted that before the 4<sup>th</sup> CoC meeting held on 19<sup>th</sup> February, 2020 there were 4 resolution plans received by the Applicant namely, (i) Sattva Developers Private Limited ("**SDPL**") (ii) The consortium of Kotak Investment Advisors Limited, Minicon Insulated Wires LLP and Elita Capital Advisors LLP ("**Successful Resolution Applicant**") (iii) Majestic Auto Limited ("**MAL**") and (iv) Consortium of Trident Infrahomes Private Limited and Anant Raj Limited ("**Trident**")
10. In the 5<sup>th</sup> CoC meeting legal compliance reports with respect to the resolution plans submitted by the resolution applicants before the CoC and various changes were required to be carried out by the resolution applicants.

One of the Resolution Applicant namely, Trident vide. its email dated 21 May 2020 communicated that they were not keen to take up and participate in CIRP of the Corporate Debtor. Hence, the resolution plan of the remaining resolution applicants was considered thereon. All the three resolution applicants submitted revised resolution plans post rectification/treatment of the required changes on 16 August 2020.

11. The resolution plans of all the three resolution applicants were placed before CoC members for voting and approval under section 30(4) of the Code. The resolution plan of the successful resolution applicant was approved with a unanimous, 100% majority of the voting share of CoC members in its favour.

12. The summary of the Resolution plan submitted by the Resolution Applicant is as follows:

#	Particulars	Proposed Settlement (in INR)
1.	CIRP Costs	On Actual Basis
2.	Assenting Financial Creditors and Dissenting Financial Creditors	407,83,93,691
3.	Operational Creditors	7,32,52,458
4.	Related Financial Creditors (Including any Related Financial Creditor which is	35,30,00,000

	<i>classified as unrelated financial creditors at any time after the date of the resolution plan)</i>	
5	<i>Improvement, maintenance and/or operation</i>	15,00,00,000
6.	<i>Security Deposit</i>	20,33,21,784
<b>Total</b>		<b>485,79,67,933+ CIRP cost</b>

13. The payment proposed in the resolution plan for **Assenting Financial Creditors** is as follows:

<b>Name of Secured Financial Creditors</b>	<b>Admitted Claims (Rs.)</b>	<b>Amount payable under this Resolution Plan</b>
Axis Bank	96,53,82,058	100% of the Admitted claim
Oriental Bank of Commerce	95,85,07,538	100% of the Admitted claim
Phoenix ARC Limited	97,03,83,512	100% of the Admitted claim
Punjab & Sindh	70,72,37,566	100% of the Admitted claim
SBI	47,68,83,017	100% of the Admitted claim
<b>Total</b>	<b>407,83,93,691</b>	

14. It is submitted that the upfront payment may be brought in by the successful Resolution Applicant through mix of equity capital, preference capital, preference capital, debentures (non-convertible, fully convertible or partially convertible) or loans by the Resolution Applicant/its Affiliates and/as otherwise provided.
15. It is submitted that as per the terms of the request for resolution plan ("RFRP") the successful Resolution Applicant was to deposit security for an amount of Rs. 25,00,00,000 and same was submitted by the Successful Resolution Applicant as Performance Bank Guarantee amounting as required by regulation 36B (4A) of IBBI (CIRP) Regulations, 2016.
16. It is further averred that in terms of provisions of regulation 39(4) of IBBI (CIRP) Regulation, the RP is required to submit the Resolution plan approved by the CoC along with a compliance certificate in form H of the schedule and the evidence of receipt of performance security required

under sub-regulation (4A) of regulation 36B. The same is complied with.

**17. Appointment of monitoring agency--Approval**

A committee consisting of a 2 representative of the CoC and 2 representative of the Resolution Applicant and the Monitoring Agent (who will be the Chairman of the Committee) shall manage the Corporate Debtor during the period between the plan approval date and the upfront payment date ("standstill period").

Number of Members	Comprising of
2	Representative of CoC
2	Representative of Resolution Applicant
1	Monitoring Agent (RP/Applicant or such other person identified by the Monitoring Committee)

18. The parameters for approval of resolution plan are set out in section 30 and 31 of the IBC, 2016 and IBBI (CIRP) Regulations, 2016. The Resolution Plan seems to have complied with such mandatory compliance, which are briefly set forth herein below:

<b>Section/Regulation</b>	<b>Compliance made</b>
Section 30(1) of the IBC, 2016	Resolution Applicant has submitted an affidavit that he is not disqualified under the provisions of section 29A
Section 30(2)(a) of the IBC, 2016  And  Regulation 38(1A) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	The Resolution Plan provides for payment of CIRP cost in priority to the payment of other debts of the Corporate Debtor.  The Resolution Plan is the interest of all stakeholders, including Financial Creditors and Operational Creditors, of the Corporate Debtor.
Section 30(2)(b) of the IBC, 2016  And  Regulation 38(2)(c) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	The Resolution plan provides an amount of Rs.7,32,52,458 as payment to operational creditors.  The upfront payment will be brought by the Successful Resolution Applicant as per the paragraph 14 discussed above.
Section 30(2)(c) and Section 30(2)(d) of the IBC, 2016  And  Regulation 38(2) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	A committee consisting of 2 Representative of the CoC and 2 nominees of the Resolution Applicant and Monitoring Agent shall manage the Corporate Debtor during the Standstill Period.  The implementation of plan as stated by the Resolution Applicant in the Resolution Plan is 60 days from the plan approval date.
Section 30(2)(e) of the IBC, 2016	The Resolution Plan does not contravene any of the provisions of law for the time being in force.

Section 30(4) of the IBC, 2016	The Committee of Creditors, after considering the feasibility and viability of the Resolution Plan have approved the same by 100% voting share.
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19. Thus, the resolution plan filed with the Application meets the requirements of section 30 and 31 of IBC, 2016 and Regulation 37, 38, 38(1A) and 39(4) of the IBBI(CIRP) Regulations, 2016. The provisions of Section 29A of IBC are not attracted. The RP has also verified that the “Resolution Plan” approved by the CoC does not contravene any of the provisions of the law for the time being in force. The RP has filed compliance certificate in Form H as required under regulation 39(4) of the IBBI (CIRP) Regulations, 2016.

20. The Resolution Applicant has prayed for the reliefs as enumerated under the Resolution Plan approved by the CoC. From the plan approval date, all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation

to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand withdrawn, satisfied and discharged. From the date of approval of the 'Resolution Plan', the Resolution Applicant shall be legally authorised to seek appropriate orders from respective authorities/courts/tribunals for renewal of licences/withdrawal/dismissal or abatement of the proceeding as the case may be.

21. The Corporate Debtor shall be entitled to carry forward all accumulated business losses and unabsorbed depreciation, if any, from the date of approval of the Resolution Plan, except as provided in the Resolution Plan, all the pending statutory dues including taxes/cess/interest/penalty and other liabilities due to the operational creditors shall stand satisfied/waived off. The reason for these waivers and abatement is that the Operational Creditors would not get more than that as provided in the Resolution Plan, in the event of liquidation of the Corporate Debtor, as per the waterfall mechanism provided under Section 53 of the I&B Code, 2016. Moreover, this is with a view to implement the

Resolution Plan successfully as approved by the CoC. It is also made clear any relief/concession prayed by the applicant, which is beyond the jurisdiction of this adjudicating authority shall be construed as rejected.

22. In view of the above, the “Resolution Plan” annexed with IA No.3708/2020 in IB-1404(ND)/2019 is hereby **approved**, shall be binding on the corporate debtor and its employees, members, creditors, guarantors, other stakeholders including statutory authorities and the Resolution Applicant.

23. The Resolution Applicants or Monitoring Agency as the case may be is at liberty to approach this authority for seeking appropriate directions for effective implementation of the Resolution Plan.

24. The order of moratorium date 09.08.2019 passed by this adjudicating authority under section 14 of IBC shall cease to have effect from the date of this order.

25. The RP shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI, so that the Board may record the same on its data base.

26. The approved resolution plan shall become effective from the date of passing of this order.

27. The Resolution Professional shall forthwith send a copy of this order to the participants and the Resolution Applicant.

28. The Registry is directed to communicate this order to the Registrar of Companies concerned with which the Corporate Debtor is registered for updating the master data.

29. Accordingly, IA No.3708/2020 in IB-1404(ND)/2019 stands **allowed**.

30. The order is pronounced.

- Sol -

(NARENDER KUMAR BHOLA)  
MEMBER (TECHNICAL)

- Sol -

(CH. MOHD SHARIEF TAROIQ)  
MEMBER (JUDICIAL)