

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

ITEM No.302

IA/12(MP)2022 in CP(IB) 6 of 2020

Proceedings under Section 30(6),30(1) r.w Reg 39(4) IBB

IN THE MATTER OF:

Teena Saraswat Pandey RP for Rajpal Abhikaran Pvt Ltd

.....Applicant

Order delivered on 01/07/2022

Coram:

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-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

Braj Mohan

-Sd-

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

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

**IA/12(MP)2022
In
CP (IB) 6 of 2020**

[Application for submission of Resolution Plan under Section 30(6) r.w. Section 31 of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons) for approval of resolution plan]

Through:

**Teena Saraswat Pandey
Resolution Professional of
Rajpal Abhikaran Private Limited**

Office at: 293/2, Niranjapur
A.B. Road, Indore
Madhya Pradesh- 452010

Applicant

**Order Reserved on: 02/06/2022
Order Pronounced on: 01/07/2022**

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

Appearance:

Ld. Adv. Mr. Madhav Lahoti appeared for the applicant;

Ld. Ms. Teena Saraswat Pandey appeared for the RP;

Ld. Sr. Adv. Mr. Rashesh Sanjanwala a.w. Ld. Adv. Mr. Nilesh P Udernani appeared for the suspended management.

ORDER

1. This application under Section 30(6) read with Section 31 of Insolvency & Bankruptcy Code, 2016 (**IBC, 2016**) is filed by the applicant Ms. Teena Saraswat Pandey-Resolution Professional of the corporate debtor- Rajpal Abhikaran Private Limited for approval of the Resolution Plan submitted by Agarwal Real City Private Limited.

2. The Corporate Debtor was admitted in the Corporate Insolvency Resolution Process (“**CIRP**”) on 26.03.2021. Ms. Teena Saraswat Pandey was appointed as Interim Resolution Professional (**IRP**), who made public announcement of CIRP of the Corporate Debtor and called upon its creditors to submit claims with requisite proof.

3. The brief submissions made by the applicant are as under:

(i) The IRP formed the Committee of Creditors (“**COC**”) consisting of the following financial creditors having voting percentage right as stated below:

Sr.	Name of Financial Creditor	% Voting Share
(i)	State Bank of India	23.24%
(ii)	Volark Auto Private Limited	1.61%
(iii)	Suraksha ARC	42.36%
(iv)	AU Small Finance Bank Limited	12.45%
(v)	Sundaram Finance Limited	0.63%
(vi)	Shri Ram City Union Finance Limited	7.98%
(vii)	Toyota Financial Services India limited	11.12%
(viii)	PPG Asian Paints Private Limited	0.60%

(ii) During the CIRP of the corporate debtor, the CoC received two resolution plans in pursuance of the publication of Form-G dated 05.06.2021, however pursuant to reissue of the Form-G dated 02.10.2021 CoC received 5 resolution plans. The plans were discussed on 06.12.2021, 07.12.2021 and 08.12.2021 in the 16th COC meeting and e-voting was done on 14.12.2021;

(iii) The members of the CoC in its 17th meeting dated 17.12.2021 were informed that Agarwal Real city Private

Limited is declared as successful resolution applicant with 90.41% votes as per the e-voting result and hence, the resolution plan submitted by the successful resolution applicant has been submitted before the Adjudicating Authority for approval under Section 30(6) of the IBC, 2016. The liquidation value and fair value of the corporate debtor is reported at Rs.18,39,91,863/- and Rs.23,22,47,203/- respectively;

4. The suspended management filed their objections to the present application. One of the objection placed by the suspended management is that the suspended management being the participant of the CoC meetings was never provided with the copies of the resolution plan placed before the CoC which is against the provisions of the Code. Reliance is placed on the judgement passed by Hon'ble Supreme Court in the matter of Vijay Kumar Jain V/s Standard Chertered Bank and Ors.

5. However, resolution professional through its reply dated 21.05.2022, replied to the objections of the suspended management; the reply to the said objection is reproduced below:

"2. In the present case, in the 4th CoC meeting dated 03.07.2021, wherein the suspended management along with other members were informed about the procedure of obtaining data / documents of the company , RP stated in the meeting that she will create a data room where IM/all data of the company will be uploaded and access will be provided to those who will submit the confidentiality undertaking. Needless to mention that RP kept reiterating in various meetings that undertaking is required for obtaining any data of the company....."

6. We have heard the learned counsels for the resolution professional and the suspended board of management and perused the documents available on record. It appears that it is undisputed fact that the copy of resolution plan has not been provided to the suspended management. Further the law has been well settled by the Hon'ble Supreme Court in the case of **Vijay Kumar Jain Vs. Standard Chartered Bank & Ors. reported in MANU/SC/0111/2019** in the following words:

“13. It is also important to note that every participant is entitled to a notice of every meeting of the committee of creditors. Such notice of meeting must contain an agenda of the meeting, together with the copies of all documents relevant for matters to be discussed and the issues to be voted upon at the meeting vide Regulation 21(3)(iii). Obviously, resolution plans are “matters to be discussed” at such meetings, and the erstwhile Board of Directors are “participants” who will discuss these issues. The expression “documents” is a wide expression which would certainly include resolution plans.

14. Under Regulation 24(2)(e), the resolution professional has to take a roll call of every participant attending through video conferencing or other audio and visual means, and must state for the record that such person has received the agenda and all relevant material for the meeting which would include the resolution plan to be discussed at such meeting. Regulation 35 makes it clear that the resolution professional shall provide fair value and liquidation value to every member of the committee only after receipt of resolution plans in accordance with the Code [see regulation

35(2)]. Also, under Regulation 38(1)(a), a resolution plan shall include a statement as to how it has dealt with the interest of all stakeholders, and under sub-clause 3(a), a resolution plan shall demonstrate that it addresses the cause of default. This Regulation also, therefore, recognizes the vital interest of the erstwhile Board of Directors in a resolution plan together with the cause of default. It is here that the erstwhile directors can represent to the committee of creditors that the cause of default is not due to the erstwhile management, but due to other factors which may be beyond their control, which have led to non-payment of the debt. Therefore, a combined reading of the Code as well as the Regulations leads to the conclusion that members of the erstwhile Board of Directors, being vitally interested in resolution plans that may be discussed at meetings of the committee of creditors, must be given a copy of such plans as part of “documents” that have to be furnished along with the notice of such meetings.”

7. In view of the above, the suspended management must be provided with the copy of the resolution plan. However, the resolution professional can take an undertaking from members of the erstwhile Board of Directors to maintain confidentiality. In the present case, the reply of resolution professional to the objection of the suspended management, states about the 4th CoC meeting, wherein the procedure to obtain the data was informed; the said relevant part of the 4th CoC meeting is reproduced below:

Item NO 5.RP further informed CoC members that she is in process of creating Data room where IM / updated IM / all data of the company will be uploaded & access will be

provided to RA & COC members who submit undertaking of confidentiality.”

Hence, the 4th CoC meeting talks about the access to be provided to RA & CoC members and nowhere it talks about the access to be provided to the suspended management

8. Considering the above, we hereby direct the resolution professional to provide the resolution plans to the suspended management and then convene a meeting of the CoC and the CoC will deliberate on the resolution plans afresh and either reject them or approve them with the requisite majority, after which, the further procedure detailed in the Code and the Regulations will be followed. Further, the resolution professional and CoC may consider the other objections of the suspended management, if relevant. It is to be done within two weeks.

9. We may indicate that the time has been utilized in these proceedings must be excluded from the period of the resolution process of the corporate debtor as has been held in **Vijay Kumar Jain Vs. Standard Chartered Bank & Ors.**

10. IA/12(MP)2022 to come up in cause list after the resolution professional files minutes of the meeting of the CoC as above.

-sd-

Kaushalendra Kumar Singh
Member (Technical)

-sd-

Madan B. Gosavi
Member (Judicial)