



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV

ITEM No.103

IA/5236/ND/2021 IN IB/2410/ND/2019

IN THE MATTER OF:

Realiablie Finance Corpn Pvt Ltd	...	Applicant
Versus		
Nature India Communique Ltd	...	Respondent

Order under Section 7 of IBC, 2016.

Order pronounced on 30.10.2023

CORAM:

**MR. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant	:
For the Respondent	:

ORDER

Order pronounced in open Court vide separate sheets.

IA/5236/ND/2021 IN IB/2410/ND/2019 stands dismissed and liquidation is ordered.

Sd/-

**DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH,

COURT-IV

I.A. 5236/ND/2021

IN

C.P. No. IB-2410/ND/2019

(Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016))

IN THE MATTER OF:

M/S RELIABLE FINANCE CORPN PRIVATE LIMITED

....Financial Creditor

Vs.

M/S NATURE INDIA COMMUNIQUE LIMITED.

...Corporate Debtor

AND

IN THE MATTER OF:

MOHD NAZIM KHAN

RESOLUTION PROFESSIONAL OF

M/s. NATURE INDIA COMMUNIQUE LIMITED

ORDER DELIVERED ON:30.10.2023

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,

HON'BLE MEMBER (TECHNICAL)



ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER (TECHNICAL)

The present application has been filed under Section 30(6) read with Section 31 of the Insolvency & Bankruptcy Code, 2016, ('Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') on behalf of Mr. Mohd. Nazim Khan, Resolution Professional of the Corporate Debtor ('applicant'), seeking approval of the Resolution Plan submitted by M/s. Lovely Securities Private Limited ('Successful Resolution Applicant').

CIRP: FACTS IN BRIEF

2. The facts as averred by the applicant in the application are stated in brief as follow:

- a) The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor, M/s. Nature India Communique Ltd., vide this Adjudicating Authority's order dated 03.05.2021, pursuant to an application filed by M/s. Reliable Finance Corpn Private Limited, sole financial creditor under Section 7 of the Code and Mr. Yash Jeet Basrar was appointed as Interim Resolution Professional who was replaced on an application filed by the sole Financial Creditor due to the age limit prescribed by the IBBI and appointed Mr. Attiuttam Prasad Singh as the IRP vide this Adjudicating Authority's order dated 06.07.2021.



- b) The Public Announcement of initiation of CIRP against the Corporate Debtor was made on 09.07.2021 in Form-A in Financial Express, English edition and Jansatta, Hindi edition. After collation of claims and determination of the financial position of the Corporate Debtor, the Committee of Creditors (CoC) was duly constituted by the IRP on 24.07.2021. The first meeting of the Committee of Creditors ('CoC') was held on 31.07.2021, wherein Mr. Atiuttam Prasad Singh had shown his unwillingness and appointment of Mr. Mohd Nazim Khan was approved as the Resolution Professional of the Corporate Debtor by the CoC and the same was confirmed by this Adjudicating Authority vide order dated 15.09.2021.
- c) The status of the claims as admitted by the resolution professional is as follow:-

S No	Name	Details of Admitted Claim (Amount: Rs.)		
		Principal	Interest	Total
1.	Secured Financial Creditors, Unrelated, Having Voting Right	-	-	-
2.	Unsecured Financial Creditors, Unrelated, Having Voting Right	10,00,000	86,718	10,86,718
3.	Unsecured Financial Creditors, Related, Having No Voting Right	-	-	-
4.	Operational Creditors	-	-	-
5.	Workmen Dues	-	-	-
6.	Employees	-	-	-
7.	Others	-	-	-
8.	Government dues	-	-	-
Total		10,00,000	86,718	10,86,718



- d) The second meeting of CoC was held on 26.08.2021, wherein the eligibility criteria pursuant to Section 25 (2) of the IBC, 2016 along with the Request for Resolution Plan (RFRP) and Evaluation Matrix was discussed and the same has been passed by the COC unanimously with 100% Voting in favor. The Form-G for invitation of expression of interest was published in prescribed Form G on 28.08.2021 in Pioneer English edition and Pioneer Hindi edition newspapers wherein, the last date for receipt of Expression of Interest was 12th September, 2021.
- e) Pursuant to the publication of Form-G, the applicant had received the Expression of Interest from the sole Prospective Resolution Applicant namely M/s. Lovely Securities Private Limited on 11.09.2021. The provisional list of Prospective Resolution Applicants was made on 22.09.2021 and the final list of Prospective Resolution Applicants on 07.10.2021 wherein M/s. Lovely Securities Private Limited was the sole Prospective Resolution Applicant.
- f) The third meeting of the COC was held on 20.09.2021 wherein the Resolution for the extension of CIRP period was passed by the CoC with 100% voting in favour and this Adjudicating Authority vide order dated 23.09.2021 had extended the CIRP period for 90 days and further vide Order dated 28.09.2021 had allowed the exclusion of 49 days from the CIRP Period on account of COVID-19 lockdown.
- g) The CoC in its fourth meeting held on 01.11.2021, had deliberated on the Resolution Plan submitted by M/s. Lovely Securities Private Limited ('Successful Resolution Applicant') and the same was placed before the COC for voting and the proposed plan of M/s. Lovely Securities Private Limited was passed by COC with 100 % voting in favour.



h) The total consideration payable to various stakeholders as per the

Resolution Plan are as follows:

S No	Particulars	Basis	Amount
i.	Corporate Insolvency Resolution Process cost	Not Applicable	INR 6 Lakh or actual amount, whichever is higher
ii.	Secured Financial Creditors, Unrelated, Having Voting Right	Not Applicable	Nil
iii.	Unsecured Financial Creditors, Unrelated, Having Voting Right	36.81% of the amount of claim admitted	INR 4 Lakh
iv.	Operational Creditors other than workmen and employees	Not Applicable	Nil
v.	Workmen Dues	Not Applicable	Nil
vi.	Employees	Not Applicable	Nil
vii.	Government dues (NSDL, CDSL, Stock Exchange, RTA, Income Tax Dept., etc.)	Not Applicable	Nil
viii.	Others	Not Applicable	Nil
ix.	Contingency	Not Applicable	Nil
Total			INR 10,00,000

3. The Applicant submitted that the Successful Resolution Applicant has submitted an undertaking under Regulation 39(1)(c) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP regulations) that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution



process, forfeit any refundable deposit, and attract penal action under the Code.

4. We have heard the Applicant in person and perused the case records. The Applicant submitted that the proposed Resolution Plan submitted by the Successful Resolution Applicant is as per the provisions contained in the Code and so, the same may be approved.

SALIENT FEATURES OF THE RESOLUTION PLAN

5. The salient features of the proposed resolution plan as submitted by M/s. M/s. Lovely Securities Private Limited ('Successful Resolution Applicant') and approved by the CoC in its 4th CoC Meeting are as follows:-

BACKGROUND OF M/S. NATURE INDIA COMMUNIQUE LIMITED ('CORPORATE DEBTOR'):-

The Corporate Debtor is a Public Company incorporated on 30.11.1981 and listed on Metropolitan Stock Exchange of India. The Corporate Debtor is engaged in the business to manufacture, produce, assemble, repair or otherwise deal in all sorts of items system, plants, machines, instruments, devices article or things of communication of different models, capacities.

MERGER OF M/S. NATURE INDIA COMMUNIQUE LIMITED ('CORPORATE DEBTOR') WITH M/S. LOVELY SECURITIES PRIVATE LIMITED:-

Upon approval of the Resolution Plan by the NCLT, the Corporate Debtor will be merged with the Resolution Applicant i.e. Lovely



Securities Pvt Ltd and then the status of Lovely Securities Pvt Ltd will be converted from the Private Limited to the Public Limited without any further act, deed or thing on the part of the Resolution Applicant to Lovely Securities Limited and immediately upon the said change in the name of the Company becoming complete and effective due to conversion and merger, the new name will be substituted for the existing name wherever it appears in the Memorandum and Articles of Association and in all other records/display of the Company and the Clause 1 of the Memorandum of Association and Articles of Association of the Resolution Applicant will be reworded as follows: “M/S. LOVELY SECURITIES LIMITED”

TRANSFER OF LISTING STATUS OF THE CORPORATE DEBTOR:-

Upon approval of the plan by the NCLT, the listing status of the Corporate Debtor will be transferred to the Resolution Applicant without any further act, deed or thing on the part of the Resolution Applicant and the Resolution Applicant will become the active listed company on Metropolitan Stock Exchange of India after approval of Resolution Plan by the Adjudicating Authority.

Further, if the listing is suspended on Metropolitan Stock Exchange of India due to any reason whatsoever, the said suspension will be removed by the Metropolitan Stock Exchange of India immediately after approval of the Resolution Plan by the Adjudicating Authority.

The entire dues of Metropolitan Stock Exchange of India towards listing fee on account of listing of shares of the Resolution Applicant will be paid by the Resolution Applicant.

EFFECTIVE DATE:-

Effective Date shall mean such date on which the approval is granted by Hon'ble Adjudicating Authority and any other appropriate authority in order to implement the Resolution Plan and certified true copy of the



order approving the Resolution Plan has been received by the Resolution Applicant.

COMPLETION DATE:-

Completion Date" is the later date on which the terms of the Resolution Plan are approved by the Adjudicating Authority in entirety and all necessary approvals and authorisations for effecting such terms have been obtained from the various statutory/ regulatory authorities; it being understood that all such approvals being to the satisfaction of the Monitoring Agency. It means by completion date on which the Resolution Applicants shall have the complete management control and operations of the Corporate Debtor.

ISSUANCE OF SHARE CERTIFICATES

Upon completion date and approval of the Plan by the NCLT, all the members of the Corporate Debtor shall become the members of the Resolution Applicant without any change in the number of shares and face value of shares held by the members of the Corporate Debtor and accordingly, the new shares of the Resolution Applicant will be credited to the dematerialization account of the members of the Corporate Debtor without any further act, deed or thing on the part of the Resolution Application.

INDICATIVE TIMELINE FOR IMPLEMENTATION OF THE PROPOSED RESOLUTION PLAN IS AS FOLLOWS:-

S. No.	Activity	Estimated Time Line
1.	Submission of proposed Resolution Plan by the Resolution Applicant	27/10/2021
2.	Date of Approval of Adjudicating Authority	X (effective date)
3.	Formation of monitoring committee	X+10 days
4.	Signing of Definitive Agreement	Within X+30 Days
5.	Infusion of funds	Within X+90 days
6.	Payment of certain upfront amounts to various stakeholders as contemplated under the Plan	Within X+120 days
7.	Issue / Transfer of Promoters Equity shares to the RA	Within X+180 days



6. A perusal of the Resolution Plan indicates that the Resolution Plan provides for a Scheme of Merger in which the Corporate Debtor ('transferor company') shall be merged with the Successful Resolution Applicant ('transferee company'), subject to payment of the obligations of the SRA and such other terms and conditions of this Resolution Plan. It is, therefore, pertinent to refer to Section 5(26) of the Code, 2016 and Regulation 37 of IBBI (CIRP) Regulations, 2016 provisions of Section 5(26) of the Code, 2016 are as follows:-

“5(26) “resolution plan” means a plan proposed by 3 (three) resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II

[Explanation.- For removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger;]”

7. Thus, the definition of 'Resolution Plan' under Section 5(26) of the Code, 2016 includes restructuring by way of merger, amalgamation/demerger etc. In fact, in CIRP Regulation 37, clause (ba) was inserted vide Notification No. IBBI/2019-20/GN/REG052 dated 27.11.2019 w.e.f. 28.11.2019 to incorporate the said provision to clarify that a Resolution Plan submitted by the SRA may also provide for restructuring of the Corporate Debtor by way of merger, amalgamation and demerger.



Therefore, the Resolution Plan approved by the CoC provides for merger of the Corporate Debtor into the SRA, subject to payment of the obligations by the SRA.

8. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code.

Section 30 (2) is quoted below: -

“(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.]”



9. From the averments made in the Application as well as in compliance of Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid down in various clauses of Section 30 (2) of the Code. This Tribunal is duty bound to examine the Resolution Plan vis-à-vis the mandatory compliance under the Code and the compliance made under the subject Resolution Plan is captured hereunder.

10. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the Resolution Plan in clause 6.2.1 (CIRP Costs) and 6.2.2 (Treatment) which provides that the CIRP cost, as approved by CoC shall be payable as INR 6 Lakh or actual amount, whichever is higher and in priority to the repayment of any other dues of the Corporate Debtor as per the provisions of the IBC.

11. As regards compliance of clause (b) of Section 30 (2) of the Code, it is seen that clause (b) of Section 30 (2) of the Code shall not be applicable as the corporate debtor has no outstanding debts owed to the operational creditor.

12. As regards compliance of clauses (c) and (d) of Section 30 (2) of the Code, it is seen that the manner of the management of the affairs and control of the business of the Corporate Debtor has been provided in Chapter –V,



Clause 5.1 to 5.8 of the Resolution Plan. The Clause 5.7 of the plan provides for appointment of the monitoring agency for the implementation and supervision of the Resolution Plan. The Monitoring Agency shall comprise of Mr. Mohd Nazim Khan, Resolution Professional as the Chairman with two representatives of the Successful Resolution Applicant.

13.As regards compliance of clause (e) and clause (f) of Section 30 (2) of the Code, the successful resolution applicant has submitted declaration under Section 30(2)(e) and Section 30(2)(f) of the Code affirming that the Resolution Plan does not contravene any of the provisions of the law and conforms to such other requirements as may be specified by the Board.

VALUATION OF CORPORATE DEBTOR

14.On a perusal of Form-H, we observe that no application under Section 43, 45, 50 and 66 of the Code, 2016 is filed and pending before this Adjudicating Authority and also the liquidation value and fair value of the Company is Nil. This Adjudicating Authority in its order dated 17.07.2022 had raised the query regarding the valuation of the Corporate Debtor and directed the Applicant to furnish the Liquidation and Fair Market Value. The Applicant had submitted an affidavit dated 25.07.2022 in compliance of this Adjudicating Authority's order dated 17.07.2022 along with the minutes of the 2nd CoC Meeting wherein the following submissions are made by the applicant:-



“The erstwhile Interim Resolution had apprised the CoC in its Second CoC Meeting held on 26.08.2021 that as per the books of accounts of the Corporate Debtor as on the date of commencement of CIRP, no assets except the Bank Balance exist in the name of the Corporate Debtor and thus, for all the practical purposes, any kind of valuation of the Corporate Debtor cannot be carried out and the CoC had also resolved not to go for valuation in any class.”

15. On perusal of the Application and the documents annexed therewith, this Adjudicating Authority observes that as per the Information Memorandum of the Corporate Debtor and Audited Balance Sheets of the Corporate Debtor, no assets except the Bank Balance exist in the name of the Corporate Debtor. Further, from the website of the Metropolitan Stock Exchange of India, we find that the securities of the Corporate Debtor i.e., M/s. Nature India Communique Limited having ISIN:INE639R01011 was temporary suspended by Metropolitan Stock Exchange of India from 12.02.2021 on account of Non-Compliance of SEBI (LODR) Regulations, 2016. Accordingly, this Adjudicating Authority is prima facie satisfied that the Valuation of the Assets and the Securities of the Corporate Debtor cannot be conducted.

16. This Adjudicating Authority vide order dated 27.09.2023 directed the Applicant to file clarification through an affidavit as to how the present Resolution Plan complied to Section 30(2)(e) of IBC 2016, in view of the clause related to “Transfer Of Listing Status of the Corporate Debtor”.



The clause of “Transfer of Listing Status of the Corporate Debtor” is reproduced herein for ready reference:-

“TRANSFER OF LISTING STATUS OF THE CORPORATE DEBTOR: -

“Upon approval of the plan by the NCLT, the listing status of the Corporate Debtor will be transferred to the Resolution Applicant without any further act, deed or thing on the part of the Resolution Applicant and the Resolution Applicant will become the active listed company on Metropolitan Stock Exchange of India after approval of Resolution Plan by the Adjudicating Authority. Further, if the listing is suspended on Metropolitan Stock Exchange of India due to any reason whatsoever, the said suspension will be removed by the Metropolitan Stock Exchange of India immediately after approval of the Resolution Plan by the Adjudicating Authority. The entire dues of Metropolitan Stock Exchange of India towards listing fee on account of listing of shares of the Resolution Applicant will be paid by the Resolution Applicant.”

17. The applicant in compliance of the order dated 27.09.2023 had submitted the affidavit dated 11.10.2023, wherein the following clarifications are submitted:-

- a) As per Regulation 37 of Listing Obligation and Disclosure Requirements, 2015 (LODR, 2015) it is mandatory for the Listed Entity to file the draft scheme of arrangement as per Section 230 to section 232 of the Companies Act, 2013 to the Stock Exchange for the purpose of obtaining the No-objection letter, before filing such scheme to Tribunal. It is important to note that the requirement



under this regulation shall not apply to a restructuring proposal approved as part of a resolution plan by the tribunal under Section 31 of IBC, 2016. Therefore, there is no requirement to obtain the prior approval of the Stock Exchange in this matter.

- b) It is also submitted that as per Section 30(2)(e) of the IBC,2016 the Resolution Professional shall examine Resolution Plan received by him to confirm that it does not contravene any of the provisions of the law for the time being in force. "The Law" here means "Insolvency and Bankruptcy Code, 2016 and Rules and Regulations, Notifications, Circulars, etc thereto" and does not relate to any other law, Act or Statute for the time being in force i.e. the Companies Act, 2013, Income Tax Act, SEBI, etc.

18. We have heard the submissions made by the Applicant and perused the averments made in the affidavit. The question before this Adjudicating Authority is that, " *whether pursuant to a merger under IBC, 2016 as a part of the Resolution Plan, the Listing Status of the Corporate Debtor ('Transferor Company') can automatically be transferred to the Successful Resolution Applicant ('transferee Company'), specifically in view of restriction as provided under Section 232(3)(h)(A) of the Companies Act, 2013?*"

19. The relevant provision of Section 232 (3)(h)(A) of the Companies Act, 2013 is reproduced hereunder for ready reference:-

"232(3) (3) The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—



- a) *****
- b) *****
- c) *****
- d) *****
- e) *****
- f) *****
- g) *****

h) where the transferor company is a listed company and the transferee company is an unlisted company,—

(A) the transferee company shall remain an unlisted company until it becomes a listed company.

(B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal:

Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;”

20. Thus as per the provisions of Section 232(3)(h) of the Companies Act, 2013, the transferee Company shall remain an unlisted Company until it becomes a listed company and the public shareholders shall have to be given an option to opt out of the Transferee Company and provisions are made for value of their shares in accordance with SEBI Regulations, It is pertinent to note that the Applicant himself has admitted that no valuation of shares of the Corporate Debtor is possible.



21. Further, it is important to note here that as per the provisions of Section 21 of SCR Act, 1956, for listing the securities on any Stock Exchange, the Company needs to comply with the conditions of the Listing Agreement with that Stock Exchange and no Company can get its Securities automatically listed without compliance to these conditions.

22. The exemption as provided under Regulation 37 (7) of Listing Obligation and Disclosure Requirements, 2015 (LODR) as relied upon by the Applicant, only exempts the restructuring proposal approved under IBC, from the requirement of seeking the No-Objection Certificate from the Stock Exchange. Accordingly, the same is of no help to the Applicant in the present case as the issue in question is different and is not related to the Stock Exchange's prior approval with respect to the Scheme of merger as part of the Resolution Plan. Therefore, the clarification(a) provided by the Applicant vide affidavit dated 11.10.2023 cannot be accepted.

23. As regards the clarification (b) placed vide affidavit of the applicant dated 11.10.2023, this Adjudicating Authority is of the view that the construction of Section 30(2)(e) by no means be restricted to the Insolvency and Bankruptcy Code, 2016. Here, it is immediately discernible from the Explanation below Section 30(2)(f) which reads as under:-



“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.”

24.The explanation clearly lays down that consent of shareholders of the Corporate Debtor shall be deemed to have been given under the provisions of the Companies Act, 2013 or any other law, if it is required for implementation of the Resolution Plan and it will not be a contravention of the Companies Act, 2013 or the relevant law. Therefore, the scope of Section 30(2)(e) of the Code, 2016 cannot be restricted to the provisions of the Code, 2016 and the Regulations and notifications, circulars etc. thereunder as contended by the Applicant.

25.Here, it is also relevant to refer the ‘General Circular No. IBC / 01 / 2017, Bearing No. 30 / 14 / 2017 – Insolvency, Government of India, Ministry of Corporate Affairs, New Delhi dated 25.10.2017’, issued by the ‘Director’ on the subject ‘Clarification regarding approval of Resolution Plans, under section 30 & 31 of Insolvency and Bankruptcy Code, 2016’, wherein, at Paragraph 3, it is observed as under:

“3. “It is understood that the requirement of section 30(2)(e) of the Code is to ensure that the resolution plan(s) considered **and approved by the Committee of Creditors and the Adjudicating Authority is compliant with the provisions of the applicable laws and therefore is legally implementable.** For example, a resolution plan must not contemplate 100%



foreign investment in a corporate debtor if the FDI policy / relevant foreign exchange laws permit foreign investment only up to 75% in the relevant sector of the industry; it should be compliant with requirements such as restrictions on an Indian entity to issue securities to a person resident outside India under Foreign Exchange Management Act, 1999, etc. The purpose is to prevent approval of resolution plans, which are not legally implementable.”

26. When we examine the submissions of the Applicant that for implementing the ‘Resolution Plan’ under the ‘IBC’, the compliance of Section 232(3) (h) (A) of the Companies Act, 2013, is not required, in the light of, the General Circular No. IBC / 01 / 2017 dated 25.10.2017, it is crystalline clear that any resolution plan(s) considered and approved by the Committee of Creditors and the Adjudicating Authority has to be mandatorily compliant with the provisions of the applicable laws, for the time being in force so as to become legally implementable. Therefore, by no means, it can be construed that the restriction under Section 232(3)(h)(A) of the Companies Act, 2013 can be by-passed by means of restructuring under IBC,2016. Accordingly, the submission of the Applicant that the scope of Section 30(2)(e) of the Code, 2016 is only limited to I & BCode, 2016 cannot be accepted.

27.No doubt, in terms of explanation to Section 30(2) of the Code, if any approval of shareholders is required under the Companies Act 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 the Companies Act or the other law. In view of the deemed consent of shareholders and the resolution plan being binding upon the creditors, where the resolution plan contemplates restructuring of the corporate debtor by way of merger, amalgamation or demerger, the corporate debtor should not be required to comply with the merger framework separately under the provisions of the Companies Act, 2013.

28. However, in view of the above discussion, this Adjudicating Authority is of the considered view that neither the Listing Status of the Corporate Debtor ('Transferor Company') can automatically be transferred to the Successful Resolution Applicant ('Transferee Company') nor the suspension of Listing can be invoked by virtue of the merger/amalgamation of the Corporate Debtor into the Successful Resolution Applicant, as the same would be in violation of Section 232(3)(h)(A) of the Companies Act, 2013. Therefore, the Resolution Plan in its present form which is in contravention of Section 232(3)(h) of the Companies Act, 2013 and is not legally implementable and hence, the same is hereby rejected as being violative of Section 30(2)(e) of the Code, 2016.



29. Resultantly, in view of the aforesaid discussion and observation the proposed Resolution Plan ***stands rejected and I.A.5236/ND/2021 stands dismissed.***

ORDER

In view of the above rejection of the Resolution Plan and pursuant to Section 33(1)(b) of the Code, 2016, it is hereby ordered that liquidation of the corporate debtor, namely M/s. Nature India Communique Limited shall be commenced in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

- a.** Mr. Prabhat Jain, registered insolvency professional having registration number IBBI/IPA-001/IP-P-01980/2020-2021/13123 having e-mail id prabhat@pdmco.in, is appointed as Liquidator in terms of Section 34(1) of the Code for corporate debtor from the Panel of Insolvency Professionals for the period July 1 – December 31, 2023 as forwarded by IBBI vide letter no. IP-12011/1/2020-IBBI dated 04.07.2023. The appointed Liquidator is directed to submit his consent in Form-2, valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three (3) days of pronouncement of this order.
- b.** Mr. Prabhat Jain, is directed to take over all the Assets, documents, information and record of CIRP proceedings from the Resolution Professional, who shall hand over the charge to the Liquidator within 7 days.
- c.** The Liquidator is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of



Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Regulations);

- d.** The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- e.** The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Code shall commence;
- f.** The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Code and in accordance with the relevant regulations.
- g.** The liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (l) of the Code.
- h.** The liquidator shall also follow pending application, if any, for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- i.** The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Regulations.
- j.** Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**