

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH, COURT-VI**

**I.A. 2350/2023**

**IN**

**C.P. No. IB-630/PB/2021**

**(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))**

**M/S. GOGIA LEASING LIMITED**

.... FINANCIAL CREDITOR

**VERSUS**

**M/S. JBO GLOBEWORLD LLP**

..... CORPORATE DEBTOR

**AND**

**AND IN THE MATTER OF:**

**MR. SANJAY GARG**

RESOLUTION PROFESSIONAL OF

M/S. JBO GLOBEWORLD LLP.

.... APPLICANT

**SH. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**PRESENT**

**For the Resolution Professional:** Mr. PBA Srinivasan, Mr. V. Aravind, Ms. Srishti Bansal, Mr. Sumit Swami, Ms. Pooja Kumari, Advocates. PCS Kunwarpreet Singh and Prakul Thadi

**ORDER**

**PER: RAHUL BHATNAGAR MEMBER (TECHNICAL)**

**ORDER DELIVERED ON: 24.01.2024**

1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') by Mr. Sanjay Garg, Resolution Professional (RP) of JBO Globeworld LLP ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by Mr. Hemant Jindal ('Successful Resolution Applicant') as approved by the Committee of Creditors ('CoC') in its 6<sup>th</sup> CoC Meeting held on 06.04.2023.
2. Briefly stated, the facts as averred by the applicant in the application are as follows:
  - a) That the Corporate Insolvency Resolution Process against the Corporate Debtor was initiated vide order dated 22.07.2022 and Mr. Sanjay Garg was appointed as IRP in the matter.
  - b) That public announcement was made on 26.07.2022 in Business Standard (English) & Business Standard (Hindi) and accordingly the IRP prepared a list of Creditors after verification of claim received pursuant to the Public Announcement within 7 days from the last date of receipt of the claims and constituted Committee of Creditors comprising of M/s Gogia Leasing Limited as sole member of CoC.
  - c) That the IRP convened the first Meeting of Committee of Creditors ("COC") on 20.08.2022. In the said meeting, the COC resolved to appoint the Applicant i.e., Mr. Sanjay Garg as Resolution Professional which was subsequently taken on record by this Adjudicating Authority vide order dated 16.09.2022.
  - d) That in the 3<sup>rd</sup> Meeting of CoC, the CoC resolved to publish Expression of Interest/ Form G to invite prospective resolution applicants for submission of Resolution Plan.
  - e) That the applicant published Form G on 05.10.2022, inviting expression of interest from the prospective resolution applicants for the purpose of submitting a Resolution Plan in the CIRP for the Corporate Debtor. As per the Form G published by Applicant.
  - f) The Applicant received two expression of interest from the Prospective Resolution Applicants for the purpose of submitting the Resolution Plan during the CIRP of Corporate Debtor.

- g) Amongst the two Prospective Resolution Applicants, one of them i.e., Mr. Hemant Jindal submitted his resolution plan on 12.12.2022.
- h) The plan submitted by Mr. Hemant Jindal was discussed in the 4<sup>th</sup> meeting of CoC held on 19<sup>th</sup> December, 2022. During the meeting the sole member of CoC requested the RP to conduct due diligence of the Resolution Plan.
- i) That the PRA revised its Resolution Plan to make it legally compliant and submitted the revised Resolution Plan which was placed before the CoC in its 6<sup>th</sup> meeting held on 06.04.2023. In the meeting, the Resolution Plan was approved with 100% voting shares.
- j) That the Resolution Applicant has submitted an undertaking stating that the Resolution Applicant is eligible under Section 29A of the Code.
- k) That the average fair value is Rs. 20,42,742 and average liquidation value is Rs. 20,38,973.

3. We have heard the submissions made by the Ld. Counsel for the applicant and have gone through the documents produced on record.

4. That some key features of the Resolution Plan are as follows:

**OVERVIEW OF THE RESOLUTION PLAN**

- i. The Resolution Plan submitted by Mr. Hemant Jindal provides for the following payments: -

<b>Serial No</b>	<b>Type of Claim</b>	<b>Claim Admitted</b>	<b>Amount Provided in the plan</b>	<b>Payment Terms</b>
1.	CIRP Cost	-	4,00,000	Within 90 days from effective date
2.	Secured Financial Creditor	7,17,97,497.93	1,05,00,000	Within 90 days from effective date
3.	Unsecured	NIL	NIL	NA

	Financial Creditor			
4.	Operational Creditor (Govt Dues)	1,00,00,000	2,00,000	Within 90 days from effective date
5.	Other Creditors	95,95,458.09	NIL	NA
	Total	9,13,92,956.02	1,11,00,000	

**Source of Funds**

- ii. The Resolution Applicant shall infuse the proposed resolution amount through his own funds.

**Compliances**

- iii. That the final Resolution Plan submitted by SRA meets the requirements of Section 30(2) of the Code as under: -

Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(2)(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;	YES Page 23 of the Resolution Plan provides for payment of the Insolvency Resolution Process Cost.
30(2)(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-	Yes Page 26-28 of the Resolution Plan

	<p>(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or</p> <p>(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</p>	
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	<p>Yes</p> <p>Page 30 of the Resolution Plan provides for the management of the affairs of the Corporate Debtor.</p>
30(2)(d)	the implementation and supervision of the resolution plan;	<p>Yes</p> <p>Page 30 of the Resolution Plan provides for the implementation and supervision of the Resolution Plan.</p>

30(2)(e)	does not contravene any of the provisions of the law for the time being in force	Yes Page 32 of the Resolution Plan
30(2)(f)	conforms to such other requirements as may be specified by the Board.	Yes Page 32 of the Resolution Plan

iv. Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]	Yes Page 27 of the Resolution Plan
38(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.]	Yes Page 32 of the Resolution Plan
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of	Yes Page 29 of the Resolution Plan

	implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]	
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	Yes Page 29 of the Resolution Plan
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	Yes Page 30 of the Resolution Plan
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	Yes Page 30-31 of the Resolution Plan
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:	Yes Page 25 of the Resolution Plan  It is stated that RA or Financial Creditor will peruse the avoidance application and in the event the avoidance application is allowed, any amount received will be for the benefits of creditors and shall be pass to the Creditors as per section 53 of the Code.
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	Yes Page 16 of the Resolution Plan
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	Yes Page 32 of the Resolution Plan
38(3)(c)	A resolution plan shall demonstrate that –	Yes Page 30 of the Resolution

	it has provisions for its effective implementation;	Plan
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	Yes Page 33 of the Resolution Plan
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	Yes Page 33 of the Resolution Plan

- v. There are no objections to the Resolution Plan by any of the stakeholders.
- vi. The SRA has filed an affidavit dated 29.08.2023 stating that the Resolution Plan is not conditional to the approval/grant of exemptions/relief(s) waiver sought in the Resolution Plan.
- vii. With respect to compliance regarding 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 sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is not ineligible under the provisions of Section 29A of the Code, 2016.
- viii. The applicant has prayed for number of waivers in the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, we direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-



39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

5. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority is duty bound to follow the judgement of the **Hon’ble Supreme Court in the matter of K.Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-

35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on

*which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.*

6. Also, the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

*“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with Prospective Resolution Applicants.”*

7. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.
8. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved. In view of the above, **I.A. 2350/2023 stands allowed.**
9. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
10. However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).**
11. Accordingly, MoA and AoA of the corporate debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary

approvals as may be required under any law for the time being in force within the period as provided for such in law.

12. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
13. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.
14. Let the copy of the order be served to the parties

**SD/-**  
**(RAHUL BHATNAGAR)**  
**MEMBER TECHNICAL**

**SD/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER JUDICIAL**