

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, NEW DELHI
COURT-III

IA-263/2021 filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 In IB-1006(ND)/2019.

In the matter of **JBB-Everest Buildtech Private Limited.**

Devender Kumar Sharma

...Financial Creditor

Versus

JBB-Everest Buildtech Private Limited

.... Corporate Debtor

In the matter of **IA-263/2021**

Shri Anil Kumar

Resolution Professional for Corporate Debtor

.....Applicant

Versus

Shri Satiram Yadav

... Resolution Applicant

Order delivered on 5th of April, 2021.

CORAM:

CH. MOHD. SHARIEF TARIQ, MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

For the RP : Mr. Rajendra Beniwal, Mr. Kumar Sumit,
Mr. Chirag Gupta (Advocates).

For the RA : Mr. Avinash B Amarnath, Mr. Savar Mahajan (Advocates)

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. The Resolution Professional viz., *Shri Anil Kumar* has filed the instant IA under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter

referred as "IBC") read with Regulation 39(4) of Insolvency and Bankruptcy Board of India, (Insolvency Resolution Process for Corporate Person) Regulations, 2016 in IB-1006(ND)/2019 for seeking the approval of '*Resolution Plan*' under Section 31(1) of IBC in the matter of *JBB-Everest Buildtech Private Limited* (hereinafter referred to as "Corporate Debtor").

2. The Resolution Professional viz., *Mr. Shri Anil Kumar* has submitted that the Resolution Plan was duly approved by the Committee of Creditors (CoC) with 99.13% voting share, which is accompanied by the Compliance Certificate in the prescribed Form-H.

Objection filed by 5 (five) Homebuyers:-

3. Before going through the Resolution Plan, it is necessary to deal with the objection filed by 5 (five) Homebuyers of the Corporate Debtor (hereinafter referred as "Objectors") against the Resolution Plan submitted by the Resolution Applicant. The prayers made are as follows: -

"i. Allow the present Application/Objections and reject the Resolution Plan in its current form an/or;

ii. Direct the Resolution Applicant to amend the Resolution Plan to the extent of the satisfaction of the objections raised herein in the present application/objections and protect the interest of the objectors in the light of the decree/awards awarded to them; and/or;

iii. Pass order (s) as this Hon'ble Tribunal may deem fit and proper in the present case."

4. It is submitted that the Objectors were allotted units in the Project Grand Square developed by the Corporate Debtor and respective apartment buyer agreement were executed. Further, it is submitted that the Objectors being aggrieved against the deficient acts and failure of Corporate Debtor to deliver the possession of the allotted units had approached the Permanent Lok Adalat (Public Utility Services), Sonipat for adjudication of their claims against the Corporate Debtor. The Permanent Lok Adalat (Public Utility Services), Sonipat vide Order dated 07.08.2019 directed the Corporate Debtor to refund the amount advanced against their respective real estate units along with 12% simple interest. The Order was challenged before the Hon'ble Punjab & Haryana High Court and vide Judgement dated 04.04.2019 dismissed the writ petition and upheld the order of Permanent Lok Adalat (Public Utility Services), Sonipat.

5. Further, it is submitted by the objectors that in the light of the judgement of the NCLAT delivered in the matter of Sh. Sushil Ansal Vs. Ashok Tripathi & Ors., Company Appeal (AT) (Insolvency) No. 452 of 2020 dated 14.08.2020 wherein it is held that the Decree Holders are not Financial Creditors, the IRP removed the objectors from the Committee of Creditors and informed the same to them vide e-mail dated 11.09.2020. It is stated that the Objectors along with other Decree holders were holding voting share of 21.12%. It is further submitted that it is discriminatory and against the IBC that two resolution Plans were placed for voting before the CoC, when an appeal before the Hon'ble Supreme Court is pending.

6. It is stated that the objectors being removed from the Committee of Creditors, their claim cannot be changed in an arbitrary manner and the relief provided by the successful Resolution Applicant is grossly discriminatory and against the well settled principles of law. The Resolution Plan provides for compensation to all the homebuyers as per their voting share along with the allotted unit but the objectors' voting share has not been considered and has given only 2,00,000/- as compensation along with the allotted unit which is against the decree awarded. The extract of the relief provided to the different creditors in the resolution plan is as under: -

Sl. No.	Type of Creditors	Voting share	Relief provided by the Resolution Applicant
1	Secured Financial Creditors	~1%	100% Principal + Interest
2	Financial Creditors –Home Buyers	>99%	Flat + No escalation charges+ No super Area charges + No delayed payment charges + 25, 000/- to 8 Lacs depending on voting share.
3	Other Creditors-Home Buyers Decree Holders	0%	Flat + 2 Lacs Despite everyone with more than 1% voting share. Neither their Decree from High Court being honoured nor being treated at par with Home Buyers. Hence less than 100% their rights
4	Operational Creditors	0%	100% of claimed amount

Reply filed by the RP to the objection:-

7. The Resolution Professional has filed **reply** to the objection filed by the 5 home buyers, which is as follows: -

i) The Resolution Professional denied that the Objectors were removed arbitrarily from the CoC. It is stated that the classification of the Decree Holders was done in the light of the Judgement of the Hon'ble NCLAT passed in Sh. Sushil Ansal's case (supra). Further, it is submitted that only 5 Decree Holders have filed

their objections have voting share of 6.00%, and the objectors never approached this Authority against the classification under the category of 'other creditors', hence they cannot claim parity with the creditors in class at the juncture when one Resolution Plan has been approved by the members of CoC with 99.13%.

ii) It submitted that the Hon'ble Supreme Court has not granted any stay on the CIRP proceedings of the Corporate Debtor and no directions were issued to the Resolution Professional until the last date of the CIR Process i.e., 19.01.2021, therefore, in order to adhere to the model timelines and applicable provisions of IBC, 2016 the Resolution Professional placed the Resolution Plans for voting before the CoC, which cannot be said to be discriminatory, as alleged by the objectors.

iii) It is submitted that the compensation qua terms of Resolution Plan is neither specifically provided under IBC, 2016 nor is a prerogative of the Resolution Professional. Thus, is the commercial wisdom of the CoC and is a subject to negotiate between the CoC and the Resolution Applicant. Further, it is submitted that the Resolution Applicant has not neglected the Objectors as Rs. 2 Lakh + possession of flat is granted as per the resolution plan, the same is not discriminatory, as alleged. However, to avail the benefit/to fall under the compensation provided by the Resolution Applicant to the financial creditors in class, the objectors (home buyers) who are categorised as other creditors ought to have relinquished their rights being decree holders to become the part of the CoC, which they did not do.

Conclusion:-

8. Heard the Ld. Counsels for the rival parties and perused the documents including the Resolution Plan. The Resolution Plan provides that the Decree holders would receive compensation of Rs. 2, 00,000/- per Unit + the possession of the Unit allotted and the compensation amount shall be paid subject to clearance of outstanding dues, if any, as per the schedule provided in the plan. The objectors (home buyers) are categorised as other creditors in the light of the judgment of the Hon'ble NCLAT delivered in Sh. Sushil Ansal's case (supra), with regard to which an appeal is pending before the Hon'ble Supreme Court. However, it is submitted by the RA during the course of arguments that the decision of the Apex Court, if any, will be honoured with regard to the objectors/deGREE holders. In view of it, the interest of the objector/deGREE holders is taken care of. Therefore, the objection of the decree holders is devoid of merits and stands **rejected**.

Factual Matrix:

9. The Corporate Debtor is a private Limited Company having CIN U45400DL2007PTC163271 and the date of incorporation is 11.05.2007. The Corporate Debtor had undertaken development of residential housing project at Kundli, Haryana namely "Grand Square". However, the Corporate Debtor fell behind in construction and delivering the units to the homebuyers as per schedule due to various reasons and apparently failed to pay dues of financial creditors.

10. It reveals from the record that on 09.08.2019, IB-1006(ND)/2019 filed by the Financial Creditor viz., *Mr. Devender Kumar Sharma* (hereinafter referred as "Financial Creditor") was admitted and Corporate Insolvency Resolution Process (hereinafter referred as "CIR Process") was initiated against the Corporate Debtor and *Mr. Anil Kumar* was appointed as Interim Resolution Professional (hereinafter referred as "IRP").
11. The IRP caused public announcement on 25.10.2019 in two newspapers namely "Financial Express" (English) and Jan Satta (Hindi) about the commencement of CIRP of the Corporate Debtor and invited claims from creditors of the CD. The IRP constituted CoC on 19.11.2019 and the 1st Meeting of the CoC was convened on 22.11.2019. This Authority vide Order dated 22.11.2019 confirmed the appointment of Mr. Sunil Kumar Gupta as the Authorised Representative of the Creditors in class i.e., Homebuyers.
12. The Form G Inviting Expression of Interest from Prospective Resolution Applicants was published on 29.02.2020, pursuant to which the IRP received 3 EOIs. The date of receipt for Eoi was extended till 23.06.2020 in the wake of spread of novel corona virus and lockdown. Subsequently, Eois were received from Mr. Satiram Yadav on 03.07.2020 and Mr. Anil Khandelwal on 17.07.2020. This Authority vide Order dated 26.08.2020 passed in IA-2748/2020 extended the period of CIRP process by 90 days and further excluded the period of lockdown.

13. This authority vide Order dated 23.09.2020 appointed Mr. Rajbir Singh Khatak as the Authorised Representative on behalf of the homebuyers and vide Order dated 03.12.2020 he was replaced by Mr. Alok Kaushik.

14. The revised resolution Plans were submitted by both the PRAs to the Resolution Professional on 28.12.2020 and were discussed in the 9th CoC Meeting. The voting on the Resolution Plans was scheduled on 04.1.2021 to 05.01.2021 and the summary of the e-voting is as follows: -

Number of Homebuyers/Secured Financial Creditors	Plan of Mr. Satiram Yadav	Plan of Mr. Anil Khandelwal
No. of Homebuyers who voted in favour (% vote share)	135 (74%) resulting in 99.13% vote of class of homebuyers	32 (18%)
No. of Secured Financial Creditors who voted in favour	0	3 (0.24%)
Total	135	35

15. It is submitted by the RP that out of 182 homebuyers, 167 homebuyers cast their votes and 15 abstained, however, majority of the class of creditors cast their vote in favour of the Resolution plan filed by Mr. Satiram Yadav, which has been approved by the COC with 99.13% voting share. The resolution passed is as follows; -

***“Resolved That** pursuant to Section 30 and other applicable provisions, if any, of the Insolvency and Bankruptcy Code, 2016 and in accordance with regulations made thereunder, approval of committee of creditors be and is hereby accorded for the resolution plan as submitted and revised by Mr. Satiram Yadav, Resolution Applicant in the matter of Corporate Insolvency*

Resolution Process of M/s. JBB-Everest Buildtech Pvt Ltd., Subject to the approval of the Hon'ble NCLT."

16. The Resolution Professional issued a letter to the successful Resolution Applicant viz., Mr. Satiram Yadav and requested to submit the Performance Guarantee as per the clause of the RFRP. However, it is brought to our notice that the amount of Performance Guarantee has been deposited in the account of the CD by the RA, and further benefits are extended to the creditors as per e-mail dated 04.01.2021, to this effect, a separate affidavit is file by the RA, which shall form part of the resolution plan.

17. **Resolution Plan:-** The Resolution Plan is submitted by the Resolution Applicant viz., *Mr. Satiram Yadav* pursuant to the request for Resolution Plan, IM and other documents by the Resolution Professional. The Resolution Applicant is a first-generation entrepreneur who has been building a leading band 'BTW' and promoter of company 'BTW India P Ltd.'

18. The ***salient features*** of the Resolution Plan are summarised as follows: -

I. Corporate Insolvency Resolution Process Cost Payable as per the Resolution Plan:

It is submitted that the CIRP cost are being met from the current cash flows and a provision of Rs. 0.50 Crore has been made towards any outstanding CIRP cost which shall be paid as per actual and after verification. Accordingly, the following provision is made for discharge of any outstanding CIRP cost: -

a. Provision for Insolvency Resolution Process Cost- the Resolution Plan makes provision of Rs. 0.50 crore towards any outstanding CIRP cost approved by the CoC. The CIRP cost shall be paid as per actuals and Resolution Applicant shall provide additional funds, if required.

b. Source of Funds – Outstanding CIRP cost shall be met out of funds infused by the Resolution Applicant.

c. Priority of Payment- Outstanding CIRP cost shall be fully paid and discharged before any payment is made to any of the Creditors as per the Resolution Plan after approval of the Resolution Plan by this Authority.

II. Claims of the Financial Creditors and settlement thereof:-

It is submitted that the Resolution Applicant has proposed to settle the dues of secured financial Creditors by paying 100% of their admitted claim as on 30.09.2020 subject to the terms and conditions. The list of financial creditors and the terms and conditions are as follows: -

List of Financial Creditors:-

Sr. No.	Name of Financial Creditor	Amount admitted as on 30.09.2020 (Rs. in lacs)	Settlement Amount (Rs. in lacs)
1	Devender Kumar Sharma	33.20	33.20
2	Dharampal Jain	4.60	4.60
3	Efficacy Finance Services P Ltd.	5.93	5.93
4	RPMG Services P Ltd.	2.11	2.11
	Total	45.84	45.84

Terms and Conditions as provided in the Resolution Plan:-

The total amount of Rs. 45.84 lacs provided for settlement towards secured financial creditors, shall not undergo any change even in the event of admission, if any, of further amount towards the individual secured financial creditors till effective date and the amount shall be distributed in proportion of admitted claim of the individual financial creditors to the total admitted claims of the secured financial creditors. The amount shall be paid within 180 days from the effective date and a no dues/no charge certificate shall be issued by the Secured Financial Creditors on receipt of settlement amount as provided in the Plan.

The settlement of claim of homebuyers of the Corporate Debtor:-

There are 474 homebuyers in general category and 17 decree holders re-classified as other claims and 46 homebuyers in EWS category. It is stated that the Resolution Applicant shall complete the construction of units of the homebuyers as per the Builder Buyer agreement. The Resolution Professional has admitted 182 claims of homebuyers as financial creditors (Homebuyers) aggregating to Rs. 52.60 crore.

The Resolution Applicant shall waive increase in Super Area Charges, Interest at 15% P.A. on delayed payment, Escalation clause charges in respect of units 182 homebuyers, whose claim have been admitted by the Resolution Professional. The CoC member- homebuyers shall be provided compensation for delay in offer of possession as per scale of vote share in CoC, the table providing scale of vote share in COC is as follows: -

Vote Share Range	Rupees
0%-0.2%	25,000
0.2%+-0.5%	1,00,000
0.5%+-0.7%	3,00,000

0.7%+-0.9%	6,00,000
0.9%+-1.10%	7,00,000
1.10%-1.50%	8,00,000

It is stated that the Decree holders shall be provided compensation of Rs. 2, 00,000/- per Unit. The compensation amount shall be paid subject to clearance of outstanding dues, if any as per the schedule provided in the plan. The waiver of certain dues payable by the CoC members -homebuyers is also provided in the Resolution Plan.

III. Claims of the Operational Creditors and settlement thereof:

The Resolution Plan provides for Rs.0.68 Crore for payment of claims of all the operational creditors as on Effective Date. The amount provided for Operational Creditors shall be paid from upfront contribution within 120 days of the Effective Date, in priority to any payment to the financial creditors. The terms of settlement of the claims of the Operational Creditors are provided in the Resolution Plan. The list of Operational creditors and the amount admitted is as under:-

Sl. No.	Creditors	Amount Claimed	Amount admitted
1.	Government	30,09,175.00	30,09,175.00
2.	Employees	7,03,007.00	2,20,497.00
3.	Others	60,68,098.00	35,73,633.00

IV. Government Dues

It is stated that as per IM the Resolution Professional has admitted 1 claim in respect of Assessing Authority Sonapat (Excise & Taxation Department, Govt of Haryana) aggregating to Rs. 30.09 lakhs.

V. Shareholding Pattern of Corporate Debtor post Resolution Plan:-

The Authorised share Capital of Corporate Debtor consist of 9,90,000 Equity Shares of Rs. 10 each and the paid-up Share Capital consists of 7,60,000 Equity Shares of Rs. 10 each. The Resolution Plan provides that the paid-up share capital of the corporate debtor shall stand fully written off on approval of the resolution plan and the existing share certificates shall be deemed to have been cancelled on approval of the Resolution Plan.

The Corporate Debtor shall issue fresh 1, 00,000 equity shares of Rs. 10 each to the Resolution Applicant to its nominees against the upfront contribution of Rs. 10 lacs which shall constitute 100% of the paid-up equity share capital post restructuring of equity under the Resolution plan. Therefore, the Resolution Applicant shall hold/control 100% of the paid-up share capital of the Corporate Debtor by itself or through SPV having majority/controlling stake of Resolution Applicant. The Resolution Applicant shall subscribe to further equity of the Corporate Debtor by way of preferential allotment against the amount contributed towards the Resolution Plan, as may be considered prudent by the Resolution Applicant.

VI. Supervision, monitoring and implementation of the Resolution Plan:-

The Resolution Plan provides that the Resolution Applicant/its nominees shall take over the management and control of the Corporate Debtor. After the approval of the Resolution Plan the Resolution Applicant shall nominate his representative (s) who shall join the Board of Directors of the Corporate Debtor. In the interim period i.e., with effect from the cut-off date and the effective date, the Resolution Professional shall manage the Company and exercise all powers as per the provisions of IBC.

Further, it is stated that the implementation of the Resolution Plan shall be monitored by a Monitoring Committee comprising of the following: -

- (i) 2 (two) representatives of Resolution Applicant (one each from Technical and Financial team)
- (ii) 2 (two) representatives of homebuyers (on 3 (three) months rotation basis), who have not received possession and the Resolution Professional.

19. OBSERVATIONS / APPROVAL:-

The parameters for approval of Resolution Plan are set out in Section 30 and 31 of the IBC, 2016. The Resolution Plan has to fulfill certain mandatory requirements under the Code and CIRP Regulations and the Resolution Plan has complied with such mandatory compliance, which are briefly set forth herein below; -

Section / Regulation	Compliance made
Section 30(1) of the IBC, 2016	Resolution Applicant has submitted an affidavit stating that he is not disqualified under the provisions of Section 29A.
<i>Section 30(2)(a) of the IBC, 2016</i> <i>And</i> <i>Regulation 38(1A) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016</i>	The Resolution Plan provides payment of the CIRP Cost, in priority to the payment of other debts of the Corporate Debtor. The Resolution Plan also dealt with the interest of all the stakeholders.
<i>Section 30(2)(b) of the IBC, 2016</i>	The Resolution Plan provides for the payment Rs.0.68 Crores for payment of claims of all the operational creditors as on Effective Date. The amount provided for Operational Creditors shall

<p style="text-align: center;"><i>And</i></p> <p>Regulation 38(1) of IBI <i>(Insolvency Process for Corporate persons) Regulations, 2016</i></p>	<p>be paid from upfront contribution within 120 days of the Effective Date.</p> <p>The Resolution Plan provides that the Operational creditors would be paid in priority to any payment to the financial creditors.</p>
<p>Section 30(2)(c) and Section 30(2)(d) of the IBC, 2016,</p> <p style="text-align: center;"><i>And</i></p> <p>Regulation 38(2) of IBI <i>(Insolvency Process for Corporate persons) Regulations, 2016</i></p>	<p>The Resolution Plan provides that the dissenting secured Financial Creditors would receive payment at E-170days.</p> <p>The Resolution Applicant shall nominate his representative (s) who shall join the Board of Directors of the Corporate Debtor after the approval of the Resolution Plan and in the interim period i.e., with effect from cut-off date and effective date, the resolution professional shall manage the company and exercise all powers as per the provisions of IBC.</p> <p>The Resolution Plan envisages duration of 6 months for delivery of the Complete Units/project to the home buyers. Further, a cushion of 3 months has been sought to rectify any inadvertent delays. Therefore, the term of resolution plan may be considered as 9 months from Effective Date.</p>
<p>Section 30(2)(e) of the IBC, 2016</p>	<p>The Resolution Plan does not contravene any of the provisions of law for time being in force.</p>
<p>Section 30(4) of IBC, 2016,</p> <p style="text-align: center;"><i>And</i></p>	<p>The Committee of Creditors, after considering the feasibility and viability of the Resolution Plan has approved the same by 99.13% voting share. The Resolution Plan provides for manner of</p>

<p>Regulation 38 (3) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016.</p>	<p>distribution in compliance with IBC, 2016 and Regulations thereunder.</p> <p>The Resolution plan addresses the key reasons for default and addresses all stakeholders, details the steps and means of implementation.</p> <p>The Resolution Plan also provides the capability of the Resolution Applicant to implement the Resolution Plan.</p>
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20. Thus, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of IBC, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The Resolution Professional has also certified that the "Resolution Plan" approved by the CoCs does not contravene any of the provisions of the law for the time being in force.

21. The Resolution Professional has also filed Compliance Certificate in **Form H** as required under *Regulation 39(4)* of IBBI (Insolvency Process for Corporate persons) Regulations, 2016.

22. In view of the above, the 'Resolution Plan' annexed with IA-263/2021 filed in IB-1006(ND)/2019 is hereby **approved** which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, other stakeholders including statutory authorities involved in the Resolution Plan and the Resolution Applicants.

23. 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 authorized to seek appropriate orders from respective authorities/courts/tribunals for renewal of licences/withdrawal/dismissal or abatement of the proceedings, as the case may be. Further, all the statutory duties including taxes/cess /interest/ penalty and other liabilities due to the operational creditors shall stand satisfied/ waived off, save as provided in the Resolution Plan. This is with a view to implement the Resolution Plan successfully, as is envisaged in the Code.

24. Further, the Resolution Applicant shall pursuant to the Resolution Plan approved under Sub-section (1) of Section 31 of the IBC, 2016, obtain all the necessary approval as may be required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan by this authority or within such period as provided for in such law or regulations.

25. The Resolution Applicant is directed to file an affidavit within three days in the Registry by deposing therein that the Performance Security shall be extended till the completion of the project, as provided in Resolution Plan. It is further noted

that the Performance Security shall not be the part of the amount proposed to be infused by the Resolution Applicant in the project as per the Resolution Plan.

26. The Resolution Applicant or the Monitoring Committee, as the case may be, are at liberty to approach this Authority for seeking appropriate directions for effective implementation of the Resolution Plan.
27. The order of moratorium dated 09.08.2019 passed by this Adjudicating Authority under Section 14 of IBC, 2016 shall cease to have effect from the date of passing of this Order.
28. The Resolution Professional shall forward all record relating to the conduct of the CIR Process and the 'Resolution Plan' to the IBBI, so that the Board may record the same on its data-base.
29. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.
30. The Resolution Professional shall forthwith send a copy of this Order to the participants including the Resolution Applicant.
31. The Order is pronounced through video conferencing.



(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)



(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)