IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH, CHENNAI

MA/651/2019inCP/540/IB/2018 filed under *Section 31* of the Insolvency & Bankruptcy Code, 2016

In the matter of ***M/s. PRC International Hotels Private Limited***

Mr. S. RAJENDRAN

...Applicant / Resolution Professional

Order delivered on 27th August, 2019

CORAM

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For RP	:	*Mr. R.Shankaranarayanan, Senior Counsel* *For Mr. N.P. Vijayakumar, Counsel* *Ms. M. Savitha Devi, Counsel* *Ms. R.V. Yajura Devi, Counsel* *Mr. S. Rajendran, RP in person*
For Resolution Applicant	:	*Mr. Chaithanya Lakshmi, in person*
For Objector	:	*Mr. M. Gagan Bothra, in person*

ORDER

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

1. By way of present *MA/651/2019* filed in *CP/540/IB/2018,* the Resolution Professional viz., Mr. S. Rajendran has submitted Resolution Plan approved by the Committee of Creditors (CoC) and prayed for

approval of the same under Section 31 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as *'I&B Code, 2016'*).

2. Before this Tribunal proceeds to examine the Resolution Plan, it is necessary to extract the brief facts of the case;

i. This Authority vide Order dated 24.07.2018, admitted the CP/540/IB/2018 filed by one Mr. M. Gagan Bothra (hereinafter referred to as *'Financial Creditor'*) against M/s. PRC International Hotels Private Limited, (hereinafter referred to as *'Corporate Debtor'*), under Section 7 of I&B Code, 2016 read with Rule 4 of the Insolvency Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and initiated Corporate Insolvency Resolution (CIR) Process against the Corporate Debtor, declared moratorium and appointed one Mr. Venkata Siva Kumar as the IRP.

ii. Subsequently, this Authority vide Order dated 21.08.2018 passed in MA/325/2018, replaced the IRP with one Mr. Ebenezar Inbaraj as suggested by the CoC and later he was confirmed as Resolution Professional. Thereafter, the Resolution Professional invited 'Expression of Interest" ("EoI") in Form – G on various dates i.e. 15.10.2018, 15.11.2018 and 11.12.2018 fixing 06.02.2019 as last date for submission of Resolution Plan.

iii. Pursuant to the said invitation of "EoI", the Resolution Professional has received three "EoI's" viz., *(1)* M/s. Chandran Enterprises through Proprietor Mr. S. Varadharajan, *(2) Mr.* G.S. Body Builders Pvt. Ltd., and *(3)* Mr. Gagan Bothra. The Resolution Plans submitted were placed before the CoC for deliberations. The CoC, upon deliberations, found that the "EoI's" received from M/s. Chandran Enterprises through Proprietor

Mr. S. Varadharajan and Mr. G.S. Body Builders Pvt. Ltd., were eligible and the "EoI" received from Mr. Gagan Bothra was found to be ineligible. However, in the 5thCoC Meeting held on 07.01.2019, the CoC proposed to move a mandate for initiation of Liquidation Process for the Corporate Debtor.

iv. In the meanwhile, the ineligible "EoI" viz., Mr. Gagan Bothra has filed MA/39/2019 before this Authority, seeking direction to reconsider his "EoI". This Authority vide Order dated 19.01.2019, directed the CoC to reconsider the same and also observed that the CIR Process period of 180 days has been completed on 19.01.2019 and that for consideration of the Resolution Plans, extended the CIR Process time for a further period of 90 days w.e.f. 20.01.2019.

v. In the interregnum, this Authority vide Order dated 26.02.2019 passed in MA/440/IB/2019, appointed the Applicant viz., Mr. S. Rajendran as Resolution Profession and thereby relieving the erstwhile Resolution Professional viz., Mr. Ebenezer Inbaraj.

vi. In the 6th CoC Meeting held on 11.03.2019, the newly appointed Resolution Profession proposed the CoC members to call for a fresh "EoI" to maximise the value of the assets of the Corporate Debtor. After much deliberation the CoC agreed to call for fresh "EoI" and passed a Resolution authorising the Resolution Profession to issue a fresh advertisement inviting "EoI" in Form G with eligibility criteria of Rs.10 Crores.

vii. Pursuant to the said Resolution, the Resolution Professional invited for fresh "EoI" in Form – G on 05.04.2019 fixing the last date for submission of "EoI" as 22.04.2019.

viii. Consequent upon the said advertisement, the Resolution Professional has received three "EoI's" viz., from (1) Chandran Enterprises, Chennai, (2) Sai Baba Business Solutions Pvt. Ltd., Chennai and its Directors and (3) Outcome Commercial Pvt. Ltd. Mumbai. The Resolution Professional has also received two more "EoI's" after the due date viz., from Mr. M. Gagan Bothra on 24.04.2019 and Kalpathi Investments Pvt. Ltd., on 25.04.2019. The CoC agreed and authorized the Resolution Professional to accept the aforesaid two "EoIs" which were received after the due date.

ix. Thereafter, the Resolution Professional has declared the "EoI" submitted by viz., (1) Chandran Enterprises, Chennai, (2) Sai Baba Business Solutions Pvt. Ltd., Chennai and its Directors and (3) Kalpathi Investments Pvt. Ltd., and a Director, as eligible and found the "EoI's" submitted by viz., Outcome Commercial Pvt. Ltd. Mumbai and Mr. Gagan Bothra as ineligible.

x. The ineligible "EoI" Applicant viz., Mr. Gagan Bothra again filed MA/490/IB/2019 against the rejection of "EoI". This Authority vide Order dated 27.05.2019 directed the Resolution Professional to consider the "EoI" of Mr. Gagan Bothra by giving him due opportunity in consultation with the CoC. In pursuance of the same, the Resolution Professional gave another opportunity to Mr. Gagan Bothra and requested him to submit the necessary documents in order to substantiate his eligibility as per the terms laid by the CoC.

xi. Accordingly, the Resolution Professional in the 8thCoC Meeting held on 17.06.2019 placed the documents received from Mr. Gagan Bothra, for deliberations before the CoC. After much discussions and deliberations on the various documents submitted by Mr. Gagan Bothra in support of his "EoI", the CoC constituting 89.51% of the voting share, decided to *reject* the "EoI" of Mr. Gagan Bothra and passed a Resolution to that effect.

xii. In the same 8th CoC Meeting, the Resolution Professional has placed the Resolution Plans received from M/s. Sai Baba Business Solutions Pvt. Ltd., and from Mr. Gagan Bothra. It is pertinent to note here that, even though the CoC has resolved to reject the "EoI" of Mr. Gagan Bothra, an opportunity was given to him to present the Plan before the CoC members. However, Mr. Gagan Bothra has failed to satisfy the CoC in working of the Resolution Plan, as it lacked clarity on Plan amount and Payment terms. Accordingly, the CoC members constituting 89.51% voting share passed a Resolution rejecting the Resolution Plan submitted by Mr. Gagan Bothra.

xiii. The successful Resolution Applicant viz., *M/s. Sai Baba Business Solutions Pvt. Ltd.,* initially submitted its Resolution Plan amount for a sum of Rs.28,43,98,511/- to the CoC. However, the CoC requested the Resolution Applicant to improve their offer and the Resolution Applicant submitted their revised proposal by providing higher distribution to the Operational Creditor. The amended Resolution Plan amount was submitted by the Resolution Applicant to CoC for a sum of **Rs.28,55,06,654/-.**

xiv. In the 9th CoC Meeting held on 24.06.2019, the Resolution Professional placed the Resolution Plan submitted by the Resolution Applicant viz., *M/s. Sai Baba Business Solutions Pvt. Ltd.*, for a sum of Rs.28,55,06,654/-, for a detailed discussion, deliberations and voting by the CoC members. The CoC members present at the meeting constituting *89.51%* of the voting share, voted in favour of the Resolution Plan submitted by the Resolution Applicant viz., *M/s. Sai Baba Business Solutions Pvt. Ltd.*, and resolved as follows;

> *"RESOLVED THAT, the Resolution Plan dated 14th June 2019 submitted by Sai Baba Business Solutions Pvt. Ltd., (CIN: U74999TN2012PTC084753), Chennai and further amended on 24th June 2019, for a sum of Rs.28,55,06,654/- (Rupees Twenty Eight Crores Fifty Lakhs Six Thousand Six Hundred and Fifty Four Only) be and is hereby approved as per Section 30(4) of the Insolvency and Bankruptcy Code, 2016 after discussion by the members of the Committee of Creditors".*

3. It is relevant to mention here that, in the 8th CoC Meeting held on 17.06.2019, the Resolution Professional has collated the claims and provided an updated summary of claims as on 10.06.2019, whereby the Resolution Professional *inter alia* has rejected the claims of the two unsecured creditors viz. (1) Mr.

Mukanchand Bothra to the tune of Rs.15,00,00,000/- (Rupees Fifteen Crores Only) and (2) Mr. Jonathan Mouralidarane to the tune of Rs.5,10,72,990/- (Rupees Five Crores Ten Lakhs Seventy Two Thousand Nine hundred and Ninety Only).

4. This Authority vide Order dated 02.07.2019 passed in *MA/518/2018* allowed the claim of Mr. Mukanchand Bothra and directed the Resolution Profession to treat the claim of Mr. Mukanchand Bothra at par with other unsecured Financial Creditors and make the appropriate provision for payment to which they are entitled, in consultation with the CoC and the Resolution Applicant. Further, this Bench vide Order dated 31.07.2019 passed in *MA/462/2018* also allowed the claim of Mr. Jonathan Mouralidarane and similarly directed the Resolution Profession al to treat the claim of Mr. Jonathan Mouralidarane at par with other unsecured financial creditors and make the appropriate provision for payment to which they are entitled, in

consultation with the CoC and the Resolution Applicant.

5. In pursuance of the same, the Resolution Professional has stated that, initially the Resolution Applicant has proposed to pay a sum of Rs.7,80,73,544/- towards the claims of the Unsecured Financial Creditors which constitute 90% payout of the admitted claims. After the admission of the claim of the Mr. Mukanchand Bothra and Mr. Jonathan Muralidharane by this Tribunal, the Resolution Applicant has proposed to pay the said sum of Rs.7,80,73,544/- to all the Unsecured Financial Creditor with 27.53% payout. The details of the same are as follows;

Payout to Unsecured Financial Creditors

Name	Amount Admitted	**90% Payout**	**27.53% Payout**
4You Tradex	₹4,47,11,012	₹4,02,39,911	₹1,23,08,942
Mr. M. GaganBothra	₹2,33,66,000	₹2,10,29,400	₹64,32,660
Viva Entertainment	₹88,80,603	₹79,92,543	₹24,44,830
Switzer Instrument Pvt. Ltd.	₹69,68,767	₹62,71,890	₹19,18,502
Mr. KR Jaganathan	₹28,22,000	₹25,39,800	₹7,76,897
Mr. MukanchandBothra	₹15,00,00,000	-	**₹4,12,95,002**

Mr. J. Muralidharane	₹4,68,46,027	-	**₹1,28,96,712**
TOTAL	**₹28,35,94,409**	**₹7,80,73,544**	**₹7,80,73,544**

6. As things stand thus, the Resolution Professional has filed this present *MA/651/2019* for approval of Resolution Plan by this Adjudicating Authority in terms of Section 31 (1) of the I&B Code, 2016. When the matter came up for hearing for the first time, this Authority has directed the Resolution Professional to issue individual notice to the stakeholders, particularly to the IT Department giving clear 15 days' time for filing objections, if any. The Resolution Professional has caused advertisement in the newspaper one in English and another in vernacular with respect to the approval of the Resolution Plan by the CoC and has also sent notice to the Employees, Operational Creditors, IT Department, EPF Organization. Since, none of the above person appeared before this Tribunal, this Tribunal vide Order dated 29.07.2019 held that the service against those stakeholders as sufficient and proceeded *ex parte*.

7. The Resolution professional has submitted that he has received certain objections from other creditors and Related Parties through e-mails. Hence this Tribunal vide Order dated 19.07.2018 directed the Resolution Professional to file the list of objectors along with the objections and replies thereto by the Resolution Professional. Accordingly, the Resolution Professional has filed a comprehensive typed set containing the details of the notice(s) issued and the objection(s) raised by the related parties. Further, no claim/objections were made by the Statutory Creditors viz. IT Department and EPF Organization.

8. The Resolution Professional has stated that the Related Parties of the Corporate Debtor and the other objectors have all raised a common objection to the Resolution Plan, whereby they did not agree to the percentage of payout being made by the Resolution Applicant in the Resolution Plan and further stated that the liquidation value of the property is much more than

the value offered by the Resolution Applicant. However, the Resolution Professional has stated that the Related Parties are being treated at par with other unsecured financial creditor and Resolution Applicant is at liberty to distribute the Resolution Plan amount to the stakeholders at their discretion within the provisions of I&B Code, 2016.

ANALYSIS OF RESOLUTION PLAN:

9. As has been mentioned in the preceding paragraphs, ~~The~~ the Resolution Applicant had increased the Resolution Plan amount to sum of Rs.28,55,06,654/- thereby the payout percentage to the Operational Creditor was increased from 70% to 80% as detailed in the tabular column herein below:

S. No.	Stakeholders	Proposed Resolution Plan Amount	% of payout on admitted claims
1	CIRP Cost	₹44,00,000/-	100%
2	Operational Creditors – Workmen and Employee	₹21,27,734/-	**80%**

3	Operational Creditors (Other than Workmen and Employee)	₹57,30,531/-	**80%**
4	Operational Creditor (Statutory Dues)	₹90,67,740/-	40%
5	Financial Creditors Secured	₹16,29,29,996/-	100%
6	Financial Creditors – Unsecured	₹7,80,73,544/-	27.53%
7	Financial Creditors Related Party	₹1,31,72,812/-	15%
8	Other Creditors	₹90,04,297/-	45%
9	Equity Shareholders	₹10,00,000/-	
	TOTAL RESOLUTION PLAN AMOUNT FOR STAKEHOLDERS	**₹28,55,06,654/-**	

10. The Resolution Plan also provides that the Resolution Applicant shall infuse the Resolution Plan amount through its own source and by borrowing funds from Financial Institutions.

11. The Resolution Plan further provides for payment of the sum of Rs.28,55,06,654/- to all the stakeholders within 30 days from the date of approval of the Resolution Plan by the Adjudicating Authority.

12. The Resolution Plan further details with regard to the Implementation of the Resolution Plan and

Management of the Corporate Debtor, which are as follows:-

- *SBBPL shall forthwith upon approval of the Resolution plan assume the management and running of the PRC so as to initiate the steps required for implementing the revival plan.*

- *The payment of the Resolution plan amounts to different stakeholders and the complete assumption of the control and management of PRC is expected to be completed within a period of 30 days from the date on which Adjudicating Authority approves the proposed Resolution plan under Sec. 31(1) of the Code, assuming the timely and complete provisions of reliefs and concessions and conclusion of all proceedings / appeals under the Code, if any in connection with the approval of the proposed resolution plan.*

- *The Proposed Resolution plan provides for the formation of an <u>Interim Monitoring Committee (IMC) till such</u> time, SBBPL assume complete control. The IMC shall consist of 3 members, being the following:*

    I. *Resolution Professional*
    II. *A nominee of a Secured Financial Creditor to represent the CoC*
    III. *A nominee from the SBBPL*

  to manage and monitor the implementation of the Resolution Plan. The approved Resolution Plan shall be deemed to have been completed upon the occurrence of the following:

    i. *Payments made to all stakeholders completely, in full satisfaction of their claims as contemplated under the approved Resolution Plan and*

    ii. *All reliefs, concessions and approvals as sought for under the proposed Resolution* *plan are provided as sought for the satisfaction of the Resolution Applicant.*

And for the above, the Resolution Applicant anticipates that the duration would be 30 days, upon the completion of which the IMC as constituted would stand disbanded.

13. The Resolution Plan has sought for certain Reliefs and Concessions for its successful implementation which are as follows:-

AS TO LIABILITES, PROCEEDINGS, ETC:

- *All liabilities of PRC and guarantees extended by PRC whether monetary or non-monetary, statutory, crystallized or not crystallized, claimed or not claimed, admitted or not admitted, disputed or not disputed, confirmed or contingent or due or overdue or future due, and all such duties of the Corporate debtor PRC shall stand extinguished and discharged in full without any recourse to SBBPL upon approval of the Proposed Resolution Plan.*

- *All or any inquiries, investigations, notices, causes of action, suits, claims, disputes, arbitrations and proceedings including those pending before any judicial, quasi-judicial, administrative, tax, arbitral or any other regulatory body or local authority, including and not limited to those pertaining to GST, Sales tax, Central Excise, Customs and Income Tax, initiated against PRC shall stand terminated or abated upon approval of this Proposed Resolution Plan and without any liability whatsoever to PRC or the SBBPL.*

- *All liabilities and debt of PRC as admitted by the RP on or before 90 days from date of CIR commencement date, as disclosed in the Information Memorandum, in accordance with Regulation 40A read with Regulation 12(2) alone shall be paid as provided for in this proposed Resolution Plan. All other liabilities or debt whether financial, operational, statutory, contingent or otherwise for which no claim had been filed with the RP and admitted by him including those pertaining to statutory dues and penalties shall be deemed as having been fully discharged in accordance with the* *provisions of the Code and PRC and the SBBPL shall be deemed as fully discharged and not liable for the same.*

- *The Resolution plan upon its approval under Sec. 30(1) of the code would operate to discharge PRC of all liabilities including contingent liabilities as above; Further all claims and liabilities of PRC, as principal debtor including those which would arise by virtue of subrogation by the guarantors will stand discharged without any recourse whatsoever to PRC or SBBPL. Further all corporate guarantees, sureties, comfort letters and commitments provided by PRC would stand fully discharged without any recourse to PRC upon the approval of the proposed resolution plan, as above.*

AS TO VESTING OF PROPERTY, ASSETS, LICENSES ETC:

- *Upon approval of the proposed Resolution plan and completion of payments made to all stakeholders completely in full satisfaction of their claims as contemplated under the approved Resolution plan, the entire assets* *of PRC including each asset (including land, building and property of all description, whether on freehold or leasehold or license basis) of PRC shall stand vested with, free and clear of all encumbrances or any claims, including in title from any persons and to the discharge of all creditors of PRC, including and not limited to the Secured and Unsecured, Operational, Other and Financial creditors, whether admitted or not admitted, claimed or not claimed with the RP.*

- *All licenses shall continue to stand vested, fully in favour of PRC after approval of this proposed Resolution plan without any hindrance or any further approval thereof, despite the change in management of PRC as contemplated under this proposed resolution plan.*

AS TO TAXES AND EXEMPTIONS:

- *Direct the Income tax authorities to grant the benefit of carry forward and set-off losses under applicable sections of the Income Tax act 1961 including Sec. 2(1B), Sec. 72A, Sec. 79 Proviso 3 there-under. Relief shall also be* *granted so as to exempt PRC from tax liability that might arise upon write-back of amount that would arise on account of the reduction in liability payable to the Creditors of PRC. Further, upon the Resolution plan becoming effective, notwithstanding anything to the contrary contained in the provisions of the plan, all accumulated tax losses, unabsorbed tax depreciation, Minimum Alternate credit, if any, of PRC as on the date on which Adjudicating Authority approves the proposed Resolution plan under Sec. 31(1) of the Code shall for all purposes continue to be treated as its accumulated tax loss, unabsorbed depreciation and Minimum Alternate Tax credit, notwithstanding the change in management of PRC, pursuant to the approval of this Resolution Plan. It is further clarified that any business loss or unabsorbed depreciation of the corporate debtor company as specified in its books of account shall continue to be included as its business loss and unabsorbed depreciation for the purposes of computation of minimum alternate tax.*

- *Without prejudice to the generality of the above, all refunds, benefits, incentives,* *claims, exemptions, losses, credits (including Income tax, Service tax, Excise duty, Goods and Service tax and applicable State Value Added tax) to which PRC is entitled to in terms of applicable tax laws, shall continue to be available to it even after the approval of the Resolution Plan and change in its management.*

- *It is assumed that the proposed scheme involving the transfer of the Undertaking of the Transferor to the Transferee Company would suffer registration fees and stamp duty under the Tamilnadu Stamp act. It is prayed that the Adjudicating Authority direct the appropriate authorities to consider granting relief to the SBBPL from the same, deeming that the same is not a transfer of undertaking.*

AS TO COMPANIES ACT, 2013:

a. Revised Share Capital:

Treatment of payout of existing shareholders and proposed fresh infusion of equity shall be dealt with as per Companies Act, 2013.

b. Removal of present directors and induction of directors nominated by the SBBPL:

On or after effective date, all existing directors of PRC as of date shall be deemed as having resigned and vacated their office and the Board of Directors of PRC shall be reconstituted by the SBBPL by appointing its nominee directors on the board of PRC, upon completion of its obligations under the proposed resolution plan upon approval. Directions may be given to the Registrar of Companies, to take on record the relevant forms as may be filed by the Company in this regard, upon its assumption by the SBBPL.

c. Change of the Statutory Auditors of PRC

The Statutory Auditors of PRC shall complete the statutory audit for the year ending 31st March 2019, upon which they shall be deemed as having retired and the Firm / Individual nominated by the SBBPL shall be designated and appointed as the Statutory Auditor of the Company.

d. Others:

All Powers of attorneys, mandates, corporate authorizations and permissions granted by the company PRC shall stand revoked. All outstanding negotiable instruments issued by the corporate debtor shall stand terminated or discharged without liability.

OTHERS:

- *Direct that all present share holders including the current promoters, the directors; their associates and their related parties in whose name the Equity shares of PRC shall stand, shall upon approval of this Resolution Plan, surrender their entire holding of the said Equity shares, irrespective of whether they still held so or have pledged or encumbered the same, to the SBBPL or their nominees as the case may be. The said shares shall stand transferred to SBBPL upon payment of the nominal exit price of Rs. 1(Rupee one only) per Equity Share being the consideration in full and final settlement payable on or before 30 days. Upon payment of the said sum the holders of the Equity shares as aforesaid shall surrender the* *share certificates without demur and the same shall stand transferred and vested in SBBPL or their nominees as provided for while making the payment thereof in accordance with the process as may be approved.*

All the Reliefs and Concessions as prayed for in the Resolution Plan by the Resolution Applicant fall within the parameters of the I&B Code, 2016, and therefore, it is hereby granted to the Resolution Applicant.

14. Thus, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A. 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.

15. 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.

16. In view of the above, the 'Resolution Plan' annexed with MA/651/2019 filed in CP/540/IB/2018 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 Applicant.

17. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution Applicant shall pursuant to the Resolution Plan approved under Sub-section (1) of Section 31 of the I&B Code, 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.

18. The order of moratorium dated 24.07.2018 passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall ceased to have effect from the date of passing of this Order.

19. The Resolution Professional shall forward all record 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.

20. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.

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

22. The Order is pronounced in the open court.

-SD-
ANIL KUMAR B
MEMBER (TECHNICAL)

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

ATHISTAMANI