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IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH (COURT NO. IV)

IA No.4673/2020

IN

CP (IB) NO. 1141/ND/2019

**(Under Section 31 of the Insolvency and Bankruptcy Code, 2016
for approval of Resolution Plan)**

IN THE MATTER OF:

Mr. Deepak Maheshwari

...Applicant/ Resolution Professional

AND IN THE MATTER OF

Safe Capital Services Private Limited ...Financial Creditor

Versus

Technopak Advisors Private Limited

...Corporate

Debtor

Order delivered on:08.02.2021

Coram:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

MS. SUMITA PURKAYASTHA

HON'BLE MEMBER (Technical)

For Applicant: Mr. Nikhil Gupta, Advocate



12/02/2021

ORDER**Per-Dr. Deepti Mukesh, Member (J)**

1. The instant application has been filed by the Resolution Professional, Mr. Deepak Maheshwari for approval of Resolution Plan under Section 30 (6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereafter referred to as Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereafter referred to as Regulations) seeking approval of the Resolution Plan. The Resolution Plan was duly approved in the seventh committee of creditors (CoC), which has been placed on record.
2. The Company Petition bearing C.P. No. IB-1141(ND)/2019 was filed by M/S Safe Capital Services Private Limited/ Financial Creditor under Section 9 of the Code for initiating Corporate Insolvency Resolution Process of M/S Technopak Advisors Private Limited/ Corporate Debtor. This Tribunal vide order dated 21.08.2019 admitted the petition and appointed Mr. Deepak Maheshwari as the Interim Resolution Professional (IRP) with necessary directions and to file regular reports of events. The Resolution Professional made a public announcement in Form A as prescribed under Regulation 6



- (1) of the Regulations in English and Hindi Edition of Pioneer newspaper on 27.08.2019 of intimation of commencement of Corporate Insolvency Resolution Process of the Corporate Debtor and for calling the creditors to submit their claims along with the proof in the prescribed format.
3. The appointment of Interim Resolution Professional has confirmed as the Resolution Professional pursuant to the first meeting of CoC on 19.09.2019, the IRP and RP conducted CIRP as per the regulations mentioned above and carried out various tasks as per the provisions of the code. The IRP/RP have filed various status reports before this bench which were taken on record with all just exceptions.
4. Further Regulation 40C of the CIRP Regulations prescribe relaxations with respect to the CIRP timelines under the IBC and the rules/regulations framed thereunder, in view of the difficulties being faced due to the outbreak of the COVID-19 pandemic. The said regulation is reproduced below:

“40C. Special provision relating to time-line: Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could



not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”

5. RP in the 5th meeting of CoC held on 15.01.2020, had intimated the CoC that pursuant to the advertisement i.e. Form G dated 21.1.2019 inviting for Expression of Interest from potential resolution applicants for submitting resolution plan, one resolution applicant had submitted his interest. It was also informed that resolution applicant was the existing promoter/director of the Corporate Debtor. The CoC members enquired for eligibility of the resolution applicant in terms of Section 29A of the Code, the same was discussed and explained by the Resolution Professional, therefore the CoC by a unanimous decision approved for inviting the resolution plan from the sole applicant
6. That pursuant to the decision of the CoC to invite Resolution Plan from the sole resolution applicant, the RP received the resolution plan from Mr. Arvind Kumar Singhal, who is erstwhile director of the corporate debtor. It is submitted that the Resolution Professional verified the resolution plans under Section 30(2) of the Code and upon satisfaction of the plan being compliant with the provisions of the Code, presented the same before the CoC in its 6th meeting for their consideration.



7. In the 6th meeting of CoC was held on 09.03.2020, the resolution plan submitted by the resolution applicant was discussed at length. The resolution applicant was also invited by the RP to attend the meeting. The authorized representative of financial creditors discussed the resolution plan with the resolution applicant and pitched them to increase their financial proposals to give maximum fair realization of the asset of the Corporate Debtor. The meeting was deferred to further discuss upon the resolution plan.
8. That 7th meeting of Committee of Creditors was held on 26.08.2020. Post lockdown, this was the first time that meeting of CoC had been conducted. In the said meeting, the following main agendas amongst the others were discussed, namely:
- I. to take note of the exclusion of CIRP period as per Regulation 40(C) of CIRP Regulation between 25.03.2020 to 30.06.2020 due to nationwide lockdown declared by the Central Government.
 - II. to take note of fair value and liquidation value approved by registered valuers as per CIRP Regulation 35 sub section (2) to Committee of Creditors members;
 - III. to discuss, consider and approve resolution plan submitted by resolution applicant on 15.03.2020 to the Resolution Professional as per CIRP Regulation 39 sub section (1) and submitted by Resolution



Professional to Committee of Creditors as per CIRP Regulation 39 sub section (2).

In the said meeting, the Agenda No. 10 pertained to discussion, consideration and approval of the resolution plan. The same is reproduced hereunder for reference and perusal of this Hon'ble Tribunal:

"Item No. 10

To discuss, consider and approve resolution plan submitted by resolution applicant to resolution professional as per CIRP Regulation 39(1) and

submitted by resolution profession to Committee of creditors as per CIRP Regulations 39(2)

The Chairman apprised the member that in the last CoC meeting held on 09.03.2020 the Resolution Professional presented sole received resolution plan received from Shri Arvind Kumar Singhal, before the CoC in accordance with section 30(3) of the Insolvency and Bankruptcy Code, 2016 read with regulation 39(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for discussion/negotiation/ approval of the CoC. The authorized representative of resolution applicant who have submitted



resolution plans were also invited to discuss and negotiate with CoC members on their respective resolution plans.

It is stated that in the above said meetings there was discussion happened on financial offers and flexibility in financial offer offered by resolution applicant and CoC deferred the matter for further discussion in next meeting

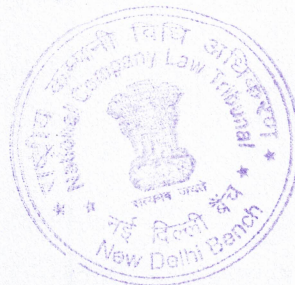
In accordance with the previous discussion the plans was placed again for discussion/negotiation/approval of the CoC. Sh. Arvind Kumar Singhal, the resolution applicant who was invited for the meeting was also present in the meeting. The member of CoC and Resolution Professional discussed the plan in detail with the resolution applicant and the view were that amount offered is less. CoC requested the Resolution Applicant to rework on the offered amount upwards and reduce the terms of the payment. RP also requested the resolution applicant to specify the source of the fund to make upfront payment and future payment.

Resolution Applicant was asked to submit revised proposal before the next CoC meeting which expected to be held in the next month and deferred the matter till the next CoC's meeting and no resolution considered and passed"



9. However, since the RP and members of CoC had requested the Resolution Applicant to rework on the offered amount of Rs 2380.00 Lakhs, specify the source of funds to make upfront payment and future payment, the agenda was deferred for next meeting and was not put to voting.
10. It is further stated that the liquidation value of the corporate debtor as per Regulation 35, as per thereports submitted by the both valuers, the average liquidation value of the corporate debtor is Rs 5.86 crores.
11. That in the 8th meeting of CoC held on 16.10.2020, the resolution plan as submitted by the prospective applicant on 25.09.2020 has been approved as it qualifies all the essential requirements as provided under Section 30 sub section (2) and (4) of the Code, therefore, the present application is being filed seeking approval of this Hon'ble Tribunal on the resolution plan submitted in respect of the Corporate Debtor which is undergoing CIRP pursuant to the order passed by this Hon'ble Tribunal on 21.08.2019. Extract of the minutes of meeting for approving the resolution plan are reproduced hereunder for sake of reference of this Hon'ble Tribunal:

"RESOLVED THAT pursuant to Section 30(4) of the Insolvency and Bankruptcy Code, 2016 read with regulation 39 (3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 the resolution plan of resolution applicant Mr. Arvind Kumar Singhal placed by resolution



professional as per section 30(3) of the Insolvency and Bankruptcy Code, 2016 read with regulation 39(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 be and is hereby approved today i.e. 16.10.2020 by the Committee of Creditors (COC).

RESOLVED FURTHER THAT Resolution Professional be and is hereby instructed to issue letter of intent (LOI) to Mr. Arvind Kumar Singhal, the successful resolution applicant and comply the other terms and condition as per Request for Resolution Plan (RFRP).

12. After perusing the resolution plans and submissions made by the counsels of the RP, it is submitted that the requirements of Section 31 of the Code read with Regulation 39 of the Regulation are satisfied in the present case and that the resolution plan submitted by Mr. Arvind Kumar Singhal which is approved by the CoC in its 8th meeting with 100% of voting in its favour.
13. That pursuant to the approval of the Resolution Plan in the meeting of CoC held on 16.10.2020, the RP issued a Letter of Intent (LoI) dated 19.10.2020 to the Resolution Applicant for compliance of condition of Regulation 36B of the Regulations for furnishing a performance guarantee of an amount equivalent to 15% of the entire Resolution Plan amount payable in cash within 5 days of the issuance of LoI in favour of designated bank account held in the name of the Corporate Debtor. Also, the RP opened a bank



account with Kotak Mahindra Bank, Gurgaon-Mehrauli in the name of 'Technopak Advisors Private Limited Insolvency Account' to enable the Resolution Applicant to submit the performance bank guarantee/security. The Resolution applicant has deposited the sum of Rs.1,47,00,000/- (One Crore Forty-Seven Lakhs Only) in the said account in pursuance of complying the requirements of performance security. Hence, all the requirements essential for submission and compliance in respect of the Resolution Plan are complete.

14. The Compliance Certificate in Form H as prescribed under Regulation 39 (4) as amended by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018, is also filed by the RP.
15. The RP further states that the CoC constitute monitoring committee comprising of Resolution Applicant and Members of CoC, to monitor the implementation of the resolution plan as permitted herein and execute all required tasks after the order of this bench approving the resolution plan is passed.

Number of Members	Comprising of
2	Resolution applicant
1	Member of committee of



	creditors
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16. The parameters for approval of resolution plan are set out in the IBC, 2016 read with IBBI (CIRP) Regulations, 2016. Which are briefly set forth herein below:

Section/Regulation	Compliance made
Section 30(1) of the IBC, 2016	As per form H separate affidavit has been filed by Resolution Applicant to confirm its eligibility
Section 30(2)(a) of the IBC, 2016 And Regulation 38(1A) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	As per section B clause 1 of the resolution plan the insolvency process cost will be paid in priority. The Resolution Plan provides for the interest of all stakeholder, including Financial Creditors and Operational Creditors, of the Corporate Debtor.
Section 30(2)(b) of the IBC, 2016 And Regulation 38(2)(c) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	Section B of Chapter 9 of the resolution plan provides for the treatment of the operational creditor Adequate means for supervising the resolution plan implementation has been provided in Chapter X of the resolution plan
Section 30(2)(c) and Section 30(2)(d) of the IBC, 2016	A committee consisting of 2 resolution applicant and 1 member of committee of creditors shall manage the Corporate Debtor during the implementation of Resolution Plan.



Section 30(2)(e) of the IBC, 2016	The Resolution Plan does not contravene any of the provisions of law for the time being in force
Section 30(4) of the IBC, 2016	Resolution Plan is approved by 100%

17. It is submitted that the date of expiry of 180 days of CIRP was 17.02.2020.

The date of order extending the period for 90 days was 26.02.2020, expiring on 23.08.2020 excluding lockdown period from 25.03.2020 to 30.06.2020.

An application was filed seeking availment of 330 days as per section 12(3) which will add 60 days of CIRP. However, the application came before the bench on 27.10.2020. But the period of 330 days already expired on 21.10.2020 hence, the application became infructuous. It is submitted by the counsel that the resolution plan had been filed on the last day of expiry of 330 days i.e on 21.10.2020. Further, another application was filed seeking extension of 60 days of CIRP from expiry of 330 days in order to take forward the procedure for implementation of the plan, which was allowed by this bench.

18. In view of the above discussion that the resolution plan, as approved by the CoC, is in accordance with the sub-section 2 of Section 30 read with Section 31 of the Code and as the Resolution Applicant is not disqualified under Section 29A of the Code; we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.



19. It is hereby declared that the Resolution Plan is binding on the corporate debtor, members, employees of the corporate debtor, creditors of the corporate debtor and other stakeholders involved in the Resolution Plan.
20. It is also declared that the moratorium order passed by this bench under Section 14 of the Code shall cease to have effect.
21. The Resolution Professional shall forward all records relating to the CIRP process and the resolution plan to IBBI to be recorded at its data base in terms of Section-31(3)(b) of the Code.
22. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
23. I.A. No. 4673/2020 is allowed and disposed of accordingly.
- Let the copy of the order be served to the parties.

Sd/-
(MS. SUMITA PURKAYASTHA)
MEMBER (T)

Sd/-
(DR. DEEPTI MUKESH)
MEMBER (J)



[Handwritten signature]
02/02/2021

[Handwritten signature] 12.2.2021
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003