59

BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

IA 227/2018 in C.P. (I.B) No. 54/7/NCLT/AHM/2017

Coram: **Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.07.2018

Name of the Company: Udayraj Patwardhan (RP)
V/s.
Axis Bank Ltd.

Section of the Companies Act: Section 66 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Lalit M. Patel	Advocate	Applicant	[signature]
2.				

ORDER

Advocate Mr. Lalit M. Patel is present for the Applicant. None for the Respondent in IA 227 of 2018.

The order is pronounced in the open court vide separate sheet.

MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 10th day of July, 2018.

BEFORE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH

IA No. 227 of 2018

in

C.P. No.(IB) 54/7/NCLT/AHM/2017

In the matter of:

Mr. Udayraj Patwardhan
Sumedha Management Solutions Private Limited
C Wing 703,
Marathon Innova
Off. G.K. Marg
Lower Parel (W)
Mumbai-400 013

.... Applicant/
Resolution Professional

In the matter of :

Axis Bank Limited
A Company registered under the Companies Act, 1956, bearing CIN: L65110GJ1993PLC020769
Registered Office at
Trishul, 3rd Floor
Opp. Samarteshwar Temple
Law Garden
Ellisbridge
Ahmedabad-380 006

.... Original Applicant/
Financial Creditor

Versus

Keti Highway Developers Private Limited
A company registered under the Companies Act, 1956
Bearing CIN: U45203MP2007PTC019487
Registered Office at
31/6, Vatsalya Chambers
Sneh Nagar Main Road
Indore-452 001
Madhya Pradesh

.... Corporate Debtor

Order delivered on 10th July,2018

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Appearance:
Advocate, Mr. Lalit Patel, is present for the Applicant. Mr. Deven Khakhar, Vice President is present for Sole CoC member in IA No.227 of 2018.

ORDER

1) The Instant Application, bearing No.IA 227 of 2018 in CP (IB) 54/2017, is filed by Mr. Udayraj Patwardhan, the Resolution Professional, in relation to Keti Highway Developers Private Limited, (the Corporate Debtor) under Section-30(6) of the Insolvency and Bankruptcy Code, 2016, seeking approval of this Tribunal to the Resolution Plan for the Corporate Debtor, which is duly approved by the Committee of Creditors (CoC) in their meeting held on 09.04.2018.

2) The brief facts of the case are as under:-

   i) The Financial Creditor, i.e. Axis Bank Limited, filed an application bearing No.CP (IB) 54/2017, under Section-7 of the Insolvency and Bankruptcy Code 2016, before this Adjudicating Authority for initiation of Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor, i.e, Keti Highway Developers Private Limited. The said application was admitted on 17.08.2017, wherein Interim Resolution Professional (IRP), namely, Mr. Udayraj Patwardhan, was appointed.

   ii) On admission, the IRP assumed his duty and appointed two registered valuers for determining the liquidation value apart from other necessary requirements as per law.

   iii) Thereafter a Committee of Creditors was constituted and filed report dated 16.09.2018 before this Tribunal, thereby certifying the constitution of the CoC as required under Regulation-17(1) of the CIRP Regulation. **The copy of the same is enclosed as Annexure-B** with petition / application.

The report consists of position of the Financial Creditor, reflecting the percentage exposure and the voting share which is as under:-

Name of the Financial Creditor	**Amount of claim Admitted (in INR crores)**	**Percentage share in CoC**	**Percentage share in voting**
Axis Bank Limited	75,58,28,469	100%	100%
Total	75,58,28,469	100%	100%

iv) The first meeting was held on 21.09.2017 at 2.30 pm at Sumedha Management Solutions Private Limited, C-703, Marathon Innova, Off. G.K. Mark, Lower Parel, (West) Mumbai-400 013, wherein the CoC resolved with 100% (hundred percent) majority to appoint the applicant as Resolution Professional as per Section-22(2) of the Code.

v) Subsequently, 2nd meeting of the CoC was held on 07 November 2017, 3rd meeting of the CoC was held on 12 December 2017, 4th meeting of the CoC was held on 28 December 2017, 5th meeting of CoC was held on 12 January 2018, 6th meeting of the CoC was held on 19 January 2018, 7th meeting of the CoC was held on 09 February 2018, 8th meeting of the CoC was held on 12 February 2018, 8th meeting of the CoC was held on 05 March 2018, 10th meeting of the CoC was held on 20 March 2018, 11th meeting of the CoC was held on 11 April 2018, 12th meeting of the CoC was held on 07 May 2018. (True copies of the minutes of the meeting held on 07 November 2017, 12 December 2017, 28 December 2017, 12 January 2018, 19 January 2018, 09 February 2018, 12 February 2018, 05 March 2018, 20 March 2018, 11 April 2018, 07 May 2018 are annexed as Annexure-D1, Annexure-D2, Annexure-D3, Annexure-D4, Annexure-D5, Annexure-D6, Annexure-D7, Annexure-D8, Annexure-D9, Annexure-D10, Annexure-D11 respectively).

vi) The applicant in pursuance to the duties has published an advertisement and invited Expression of Interest on 02.01.2018 from the prospective Resolution Applicants in the following Newspapers on 02.01.2018.

a) Dainik Bhaskar, Indore edition (Hindi Language Newspaper)
b) Times of India, Indore edition (English Language Newspaper)
c) Economic Times, Mumbai edition (English Language Newspaper)
d) Economic Times, Ahmedabad edition (English Language Newspaper) and
e) Free Press Journal, Mumbai edition (English Language Newspaper)

As per the advertisement dated 02.01.2018, E.O.I. from the interested parties were to be submitted by 15.01.2018.

Since terms of E.O.I were changed and the last date of submission of E.O.I. from the interested parties was revised to 18.01.2018, as such the fresh advertisement was made on 11.01.2018 in all the aforesaid newspapers in the similar fashion inviting expression of interest again.

It is also pertinent to mention herein that the applicant also published an advertisement on 02.01.2018 in Free Press Journal, Mumbai edition, English language, for inviting E.O.I for acting as Resolution Consultant with respect to scouting Resolution Applicant(s) / Investor(s).

vii) Upon fresh publication of the advertisement inviting expression of interest, 15 (fifteen) expression of interest received up to 18.01.2018 being the last date of submission.

The applicant received E.O.I's from the following entities/prospective Resolution Applicants:-

1. Samayak International Limited
2. Anik Industries Limited
3. Kotak Investment Advisors Limited

4. Phoenix ARC Private Limited
5. Highway Infrastructure Private Limited
6. M/s. Mytemple Capital Advisors LLP
7. IDFC Alternatives Limited
8. Ayushajay Construction Private Limited
9. CMM Infraprojects Limited
10. Sarthak Industries Limited
11. Bharat Road Network Limited (SREI Group)
12. Phonenix Structural and Engineering Private Limited
13. Phoneix Engineering
14. Sudhir Gupta & Meenakshi Gupta
15. SMS Limited

viii) The communique for submission of Resolution Plan (outlining the terms and conditions and process) dated 31.01.2018 approved by CoC in its 6th meeting held on 19.01.2018. The Entities were issued evaluation matrix (via e-mail) dated 27.02.2018 approved by Axis Bank Limited and endorsed by the CoC in its 9th meeting held on 05.03.2018. Thereafter, Information Memorandum (IM) and other relevant information of the Corporate Debtor were shared with the Entities, by giving them excess to the virtual data room created for this purpose.

ix) Meanwhile, the Axis Bank Limited, being the Sole Member of the CoC, vide its email dated 14.03.2014, approved further extension of date for submission of Resolution Plan till 09.04.2018. The same was also intimated to all the prospective Resolution Applicants, vide e-mail dated 14.03.2018.

x) In view of the extension of date, only one Resolution Plan was received as on 09.04.2018 from M/s.Samyak International Limited (hereinafter also referred to as the **Resolution Applicant**). Accordingly, the 11th meeting of the CoC was held on 11.04.2018 for opening the Resolution Plan submitted by the Resolution Applicant.

xi) The CoC, in its 12th meeting held on 07.05.2018, approved the Resolution Plan i.e. Annexure-1 as enclosed with the petition subject to certain clarification and covenants that were stipulated by the CoC in the said meeting. The applicant, vide its letter dated 07.05.2018, sent the aforementioned clarification and covenants to the Resolution Applicant, which were accepted by the Resolution Applicant, vide its letter dated 08.05.2018, which is annexed as **Annexure-J1 & J2.**

xii) The CoC, in its meeting held on 21.09.2017, also approved the payment of an amount of INR 38,000 (Rupees Thirty Eight Thousand only) to Kotak Mahindra Prime Limited to repay the outstanding debts of the Corporate Debtor, the said amount was paid to the Kotak Mahindra Bank Limited, pursuant to the receipt of such approval from the CoC.

The break-up of the consideration payable by the Resolution Applicant is as under:_

Name of the Financial Creditor	**Admissible claim amount (in INR crores)**	**Percentage (%)**	**Crystalized amount (100% cash) (in INR crores)**
Axis Bank Limited	75,58,28,469	24.48	18,50,00,000
Operational Creditors	2,41,45,000	11.70	28,24,000
Total	77,99,73,469	24.09	18,78,24,000

xiii) In the light of the above, the Resolution Applicant has agreed to restructure the debt taken over as follows:

a) The admitted claim amount of Axis Bank Limited (as stated under paragraph-4) will be settled for INR 18,50,00,000 (Indian Rupees Eighteen Crore Fifty Lakhs), in addition to the upside claim amount of 5% (five per cent), as stated under page no.16 of the Resolution Plan, paragraph-N, Sr. Nos. 7 and 10.

b) The admitted claim amount of the operational creditors amounts to INR 28,24,000 (Indian Rupees Twenty Eight Lacs Twenty Four Thousand), which includes INR 2,37,000 (Indian Rupees Two Lakhs Thirty Seven Thousand) that are payable to operational creditors who have not submitted their claims under Form-B, shall be paid in full.

c) The dues towards the employees of the Corporate Debtor amounts to INR 34,99,000 (Indian Rupees Thirty Four Lacs Ninety Nine Thousand) wherein the Resolution Applicant has agreed to pay the liquidation value (i.e. Nil), which are due to the employees of the Corporate Debtor.

d) The statutory dues of the Corporate Debtor amounts to INR 1,63,01,000 (Indian Rupees One Crores Sixty Three Lacs One Thousand), shall be paid to be extent of the liquidation value (i.e. Nil), thereby extinguishing the balance amount.

3. On perusal of the record it is found that, Resolution Plan has provided for repayment towards the Operational Creditor of the Corporate Debtor for an amount of INR 28,24,000 (Rupees Twenty Eight Lacs Twenty Four Thousand only) which includes INR 2,37,000 (Rupees Two Lacs Thirty Seven Thousand only) that are payable to Operational Creditors, who have not submitted their claims under Form-B, no payment is made to Keti Construction Limited, as the claim is not admitted. Out of said amount to the extent of the liquidation value due to the operational creditor will be paid in priority to any financial creditor within a period of 30 days from the approval of the Resolution Plan by this Bench.

4. The Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP" cost) amounting to INR 60,00,000 (Rupees Sixty Lacs Only) is getting paid from the internal cash accruals of the Corporate Debtor. In case of any shortfall in payment towards the CIRP cost,

additional funds required will be infused by the Resolution Applicant.

5. Besides above, the Resolution Plan provides that the entire equity capital and the share premium of the existing promoter will be written off and the same will be adjusted against the accumulated loss. No equity share will be allotted to the financial creditor. Further INR 6,00,00,000/- (Rupees Six Crores only) will be brought in from own sources of Resolution Application by way of issue of fresh equity shares.

6. The revised shareholding pattern of the Corporate Debtor is as follows:-

Particulars	**No. of New Equity Shares of INR 10 each**	**Face value of New Equity Shares (INR in crore)**	**Percentage**
M/s. Samyak International Limited	59,99,999	10	100.00
Sunit Jain	1	10	0.00

7. It is submitted by the Resolution Professional that the Resolution Applicant has not contravened any of the provisions as stipulated under Section-29 (A) of the Code as such he is eligible to submit the Resolution Plan to that effect has also filed Undertaking which is annexed as **Annexure-N.**

8. Heard the Ld. Lawyer appearing on behalf of the RP. The Vice President of the Financial Creditor, i.e., Axis Bank, was also present.

9. Perused the averments contained in the petition and the documents annexed thereto as well as Resolution Plan approved by the CoC. The condition which are imposed by the CoC is also acceptable to the Resolution Applicant as reflected from the letter dated

08.05.2018, i.e, Annexure-J2, issued by Resolution Applicant, i.e. M/s. Samayak International Limited, to the IRP.

10. Perused the Resolution Plan, i.e. Annexure-1, approved by the CoC in its 12th meeting conducted on 07 May 2018 subject to certain clarification and covenants that were stipulated by the CoC in the said meeting. The applicant/resolution professional, vide letter dated 07 May 2018, sent those clarification and covenants to resolution applicant i.e. annexure-J1, which were duly accepted by the resolution applicant, vide its letter dated 08 May 2018, i.e Annexure-J2, which is the part of Resolution Plan.

On perusal of the resolution plan, it is found that the resolution plan is in order and is in compliance with the provisions of the IB Code and the Rules and Regulations made thereunder. Accordingly, the CoC approved the same as it meets all the requirements of IB Code and Regulations. The resolution plan so submitted by the resolution applicant is in the interest of the corporate debtor and/or its stakeholders, hence, appears to be bona fide.

While taking into the consideration and commercial wisdom and conscious decision of the CoC and as also facts and circumstances as discussed above, the resolution plan as submitted by the RP is deserves to be approved.

11. Accordingly, IA No. 227 of 2018 is allowed with following directions:-

a) The Resolution Plan shall be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.

b) As per Regulation 39(6) of the Regulations, it is further directed that any problem in the Resolution Plan which would otherwise require the consent of the members of the Corporate Debtor, shall take effect notwithstanding that such consent has not been obtained.

c) The moratorium order passed by this adjudicating authority under section-14 vide order dated 17.08.2017 in CP (IB) 54 of 2017, has ceased.

d) The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.

e) The Resolution Professional is further directed to send a copy of this order with approved Resolution Plan to all the participants and invitee(s) of the CoC as also to the Resolution Applicant.

f) The Registry of this Tribunal is directed to forward a copy of this order along with copy of the Resolution Plan to the Registrar of Companies, Gwailor, and to the Insolvency & Bankruptcy Board of India, for information.

12. The IA No.227 of 2018 is allowed and disposed off.

Manorama Kumari
Member (Judicial)

sudha