

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT NO. IV)

IA No.1139/2021

IN

CP (IB) NO. 893/ND/2018

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

IN THE MATTER OF:

Mr. B.Naga Bhushan

RP of Abir Infrastructure Private Limited

...Applicant/ Resolution Professional

AND IN THE MATTER OF

M/S Vinayak Wire Products Private Limited

...Operational Creditor

Versus

M/S Abir Infrastructure Private Limited

...Corporate Debtor

Order delivered on: 28.10.2021


Coram:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

MS. SUMITA PURKAYASTHA

HON'BLE MEMBER (Technical)

 **For Applicant:** Rakhi Ray and Vaibhav Gulai, Advocates

IA No.1139/2021

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

1. The instant application has been filed by the Resolution Professional, Mr. B Naga Bhushan 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 eighteenth meeting of committee of creditors (CoC), which has been placed on record.
2. The Company Application bearing C.P. No. IB-893(ND)/2018 was filed by M/S Vinayak Wire Products Private Limited/ Operational Creditor under Section 9 of the Code for initiating Corporate Insolvency Resolution Process of M/S Abir Infrastructure Private Limited/ Corporate Debtor. This Tribunal vide order dated 30.01.2019 admitted the application and appointed Mr. Alok Kumar Agarwal 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 newspapers i.e. Financial Express (English-Delhi Edition) and Jansatta (Hindi- Delhi Edition) newspaper on 30.01.2019 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 1st COC meeting was held on 01.03.2019, wherein the IRP has received claims from financial creditors and constituted the COC consisting of 7

financial creditors. The IRP informed COC that one winding up petition was filed by a creditor against the corporate debtor under the provisions of the section 433(e) of the Companies Act, 1956 which was admitted by the Honorable High Court, Delhi and Provisional Liquidator was appointed. IRP sent a letter to the Provisional Liquidator to handover the custody and control of the corporate debtor to the IRP in pursuance of CIRP order dated 30.01.2019. The official liquidator who was in charge did not respond.

4. The 4th COC meeting was held on 26.06.2019, wherein, the IRP informed COC that the Registered office and books of accounts were in the custody of Official Liquidator and therefore, the CIRP could not move forward; even the claims received were admitted on provisional basis as cross verification with books of accounts could not be done by the IRP. On the application filed by the SBI before the Hon'ble Delhi High Court seeking transfer of the pending winding up proceedings to NCLT, the Hon'ble High Court of Delhi vide order dated 19.08.2019 directed the transfer of above mentioned winding up petition to the NCLT and directed the Official Liquidator to handover the books of accounts and other assets of the Corporate Debtor to the RP.
5. In the 6th COC meeting held on 03.10.2019, the IRP explained that in the present case as the Registered Office, Corporate Office and books and records of the corporate debtor were seized by the Official Liquidator due to which neither Form G could be published nor Information memorandum could be prepared nor claims could be verified. The COC appointed Mr. B. Naga Bhushan as RP which was confirmed by the bench.

6. RP submits that in the 9th meeting of the COC held on 27.01.2020, the RP put forth, the modified eligibility criteria for submission of EOI through Form G and also the publication in both Delhi and Hyderabad editions i.e. Economic Times (English), Navbharat Times (Hindi) and Eenadu (Telugu). The COC approved with voting of 99.99%. The issuance of Form G with the revised eligibility criteria and publication of Form G was made.
7. In the 10th COC meeting held on 17.02.202, six expression of interests were received from Proposed Resolution Applicants in response to the Form G. However, only two EOIs i.e. 1) One Developers Private Limited (One Developers) and 2) SREI Multiple Asset Investment Trust - VisionIndia Fund, Kolkata (SMAIT) submitted the required documents along with undertakings and affirmations. In the 13th meeting of COC held on 29.09.2020, One Developers informed that they may not be able to improve the offer, the SMAIT Fund assured to relook into some of the issues and requested some more time. As per the e-voting result sheet, the Resolution applicant No. 1 pertaining to the resolution plan of M/ s. One Developers India Limited was rejected as it got only 48.82% vote whereas the plan of Resolution applicant 2, M/s. Srei Multiple Asset Investment Trust was voted with a majority of 99.99% voting shares of the COC and is declared as the Successful Resolution Applicant for the resolution of the Corporate debtor.
8. 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."

9. It is further stated that the liquidation value of the corporate debtor as per Regulation 35, the average liquidation value and the fair value of the corporate debtor is Rs 37,25,84,090/- and Rs 55,73,22,793/- respectively, as per Form H submitted by RP. It is further submitted that CIRP has been conducted as per time line described in detail in Form H and the resolution plan is not subject to any contingency.
10. That in the 18th meeting of CoC held on 20.01.2021, the resolution plan as submitted by the resolution applicant M/s. SREI Multiple Asset Investment Trust 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. Extract of the minutes of meeting for approving the resolution plan are reproduced hereunder for reference:

"Resolved that the Resolution Plan submitted by M/s SREI Multiple Asset Investment Trust on 26th August 2020 to the Resolution Professional and subsequently modified resolution plan submitted on 22nd January 2021, having the

broad features given in the undermentioned table, and laid before the Committee of Creditors, duly Initialed by RP for the purpose of identification, be and Is hereby approved by the Committee of Creditors in terms of section 30(4) of IBC 2016 and other applicable provisions and Regulations”

11. Perused the Resolution Plan and considered submissions made, it is observed 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 which is approved by the CoC in its 18th meeting with 99.99% of voting in its favour. Moreover, there are no objections received from any party by RP neither any objections are filed before us.
12. 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.
13. 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
1	Nominated by Financial Creditor
2	Members of Resolution applicant
1	Resolution Professional

14. 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 clause 5.1 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, Workmen, Employees 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	Cluse 5.2 of the resolution plan provides for the treatment of the operational creditor Adequate means for supervising the resolution plan implementation has been provided in Clause 8 of the resolution plan
Section 30(2)(c) and Section 30(2)(d) of the IBC, 2016	A committee consisting of 1 member nominated by secured Financial Creditor, 2 member of the resolution applicant and Resolution Professional shall manage the Corporate Debtor during the implementation of Resolution Plan.s
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 99.99%

15. The Resolution Plan proposes to distribute the resolution plan amount to different stakeholders in the following manner:

Details of expense/stakeholder	Amount claimed INR	Amount of claim admitted INR	Payment proposed as per resolution plan INR	% payment to amount claimed
Operational creditors	40,33,828,238	11,55,598,729	150,00,000	0.37
Secured financial creditors	363,84,76,630	139,86,12,110	3,60,00,000	0.96
Unsecured financial creditors	895,21,17,266	895,21,17,266	600,00,000	0.67

16. It is submitted that the date of expiry of 180 days of CIRP was 28.07.2019, which was extended by the period for 90 days, 270 days expired on 26.10.2019. Further 60 days' time period extension was also allowed by the bench for availment of 330 days as per section 12(3) of the code. Exclusion of lock-down period of 98 days from 25.03.2020 to 30.06.2020 was allowed by the bench. It is submitted by the counsel that the resolution plan had been filed on 12.02.2021 well within CIRP period as the last day of expiry of 330 days was on 14.02.2021.

17. 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.

18. 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.
19. It is also declared that the moratorium order passed by this bench under Section 14 of the Code shall cease to have effect, from the date of this order.
20. 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.
21. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
22. Application 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)