



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.156

**IA/78(AHM)2022 in
CP(IB) 669 of 2019**

Proceedings under Section 30(6) & 31 IBC,2016

IN THE MATTER OF:

Rajeev Dhingra RP of Radha Madhav Corporation Ltd
V/s
Committee of Creditors & Ors

.....Applicant

.....Respondents

Order delivered on ..01/08/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**MADAN B GOSAVI
MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
COURT-1**

IA No. 78 of 2022
in
CP (IB) No. 669 of 2019

IA No. 78 of 2022

[An application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016]

Rajeev Dhingra

Resolution Professional of
Radha Madhav Corporation Limited (In CIRP)
Having address at:
BG 5A/48B, DDA Flats, Paschim Vihar,
New Delhi - 110063

....Applicant

Versus

1. Committee of Creditors

A-270, 1st & 2nd Floor,
Defence Colony,
New Delhi – 110024

2. Mitesh Anilkumar Agarwal

Ex-Managing Director of Corporate Debtor
H.No. 13/728/15,
Radha Madhav Kunj,
Opposite Gem Plaza,
Dunetha Nani Daman - 396210



3. Abhishek Agarwal

Ex-Joint Managing Director of Corporate Debtor
H.No. 13/728/15,
Radha Madhav Kunj,
Opposite Gem Plaza,
Dunetha Nani Daman - 396210

4. Income Tax Department

Income Tax Office,
Vapi, 8th Floor, Fortune Square-II,
Above TBZ, Chala,
Gujarat- 396191

....Respondents

CP (IB) No. 669 of 2019

[An application under section 9 of the Insolvency and Bankruptcy Code, 2016]

In the matter of:

Mr. Harish Vedkumar Anand

C-204, Kanti Apts, Mount Mary Road,
Bandra (West),
Mumbai – 400050

...Applicant / Operational Creditor

Versus

M/s. Radha Madhav Corporation

Survey No. 50/9,
Adaman Industrial Estate,
Village Kadaiya,
Nani Daman,
Daman & Diu – 396210

... Respondent/Corporate Debtor

**Order reserved on 04.07.2022
Order pronounced on 1.08.2022**

Coram: MADAN B. GOSAVI, MEMBER (J)



KAUSHALENDRA KUMAR SINGH, MEMBER (T)

Appearance:

Learned Counsel Mr. Parth S. Shah appeared for the Resolution Professional

Learned Counsel Mr. Dhruvin Dossani appeared for Committee of Creditors

ORDER

1. This application under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (**IBC, 2016**) is filed by Rajeev Dhingra - Resolution Professional (**RP**) of the Corporate Debtor - Radha Madhav Corporation Limited for approval of the Resolution Plan submitted by VAMA Construction Co.
2. On 22.10.2020, the Corporate Debtor was admitted in the Corporate Insolvency Resolution Process (**CIRP**). Mr. Kedar Ramratan Laddha was appointed as the Interim Resolution Professional (**IRP**). IA 756 of 2020 was filed for replacement of IRP. The same application was allowed by this Adjudicating Authority and Mr. Sanjay Badrilal Punglia was appointed as IRP vide order dated 9.11.2020. On 12.11.2020 the IRP made a public announcement of the CIRP of the Corporate Debtor and called upon its creditors to submit claims He collated the claims. On 03.12.2020 the IRP formed the Committee of Creditors (**CoC**) consisting of sole Financial Creditor - Alchemist Asset Reconstruction Company (**AARC**) having 100% voting right.
3. In the first CoC meeting held on 10.12.2020, CoC approved to appoint Mr. Rajeev Dhingra as the RP with 100% votes. Thereafter, IA 952 of 2020 was filed by Alchemist Asset Reconstruction Company Limited on behalf of CoC for



appointment of Mr. Rajeev Dhingra as the RP of Radha Madhav Corporation Limited. The application was allowed vide order dated 07.01.2021.

4. On 06.02.2021, the RP published Form-G in widely circulated “Financial Express” English and “Daman Ganga Times” Gujarati newspaper calling upon the prospective Resolution Applicants to submit Expression of Interests (**EoIs**)/Resolution Plans on the basis of the information memorandum of the assets and liabilities of the Corporate Debtor.
5. Out of total 8 EoIs received from Prospective Resolution Applicants (**PRAs**), 4 PRAs were found eligible to participate in submission of Resolution Plan. In the fourth CoC meeting held on 30.03.2021, CoC approved extension of CIRP period by 90 days. Thereafter, IA 270 of 2021 was filed for extension of CIRP period by 90 days. The same was allowed by this Adjudicating Authority vide order dated 07.04.2021.
6. In the fifth CoC meeting held on 27.05.2021, CoC approved the resolution for seeking exclusion of 99 days from CIRP period. Thereafter, IA 441 of 2021 was filed for exclusion of 99 days from CIRP period. The Adjudicating Authority allowed exclusion of 99 days from CIRP period vide order dated 06.07.2021.
7. In the sixth CoC meeting held on 20.08.2021, CoC directed the Applicant to re-publish Form G. In accordance with the same, the Applicant re-published Form G on 22.08.2021.
8. In the seventh CoC meeting held on 15.09.2021, CoC was informed that 8 EoIs were verified provisionally, pursuant to which 3 PRAs were selected provisionally and 5 were kept as provisionally ineligible PRAs.
9. In the eighth CoC meeting held on 14.10.2021, CoC approved the resolution for seeking exclusion of 93 days from CIRP period.



Thereafter, IA 735 of 2021 was filed for exclusion of 93 days from CIRP period. The Adjudicating Authority allowed exclusion of 60 days from CIRP period to complete Resolution Process vide order dated 02.11.2021.

10. IA 750 of 2021 was filed by CRP Infrastructure Private Limited to direct the RP for consideration of their plan. The same was allowed by this Adjudicating Authority vide order dated 03.11.2021.
11. In the eleventh CoC meeting held on 20.11.2021, CoC rejected the Resolution Plan submitted by CRP Infrastructure Pvt. Ltd being non-compliant with eligibility criteria.
12. 1 plan was received from VAMA Construction Company on 26.10.2021 which was the last date for submission of plans. The revised Resolution Plan was circulated to CoC on 10.12.2021.
13. In the thirteenth CoC meeting held on 13.12.2021, the Resolution Applicant requested for additional time to submit revised Resolution Plan.
14. Thereafter, in the fifteenth CoC meeting held on 18.12.2021, the RP verified the revised Resolution Plan and informed the CoC that the Resolution Plan complied with all necessary statutory requirements. Thereafter, the Resolution Plan was put to vote before CoC. On 22.12.2021, the Resolution Plan submitted by VAMA Construction Co. was approved by CoC with 100% voting rights. Accordingly, the RP had filed an application, bearing no. IA No. 78 of 2022 for approval of that Resolution Plan.
15. The Resolution Applicant- VAMA Construction Co. has proposed to pay a sum of Rs. 36,46,00,000/- against the total admitted claim of Rs. 573,82,12,000/-. The total haircut under the proposed plan is 93.65%. The details are as follows:



Payment to	Sub-category	Amount claimed	Amount proposed to be paid
Secured Financial Creditors	Who voted in favour of Resolution Plan	Rs. 533,64,11,000/-	Rs. 36,00,00,000/-
Unsecured Financial Creditors	N/A	N/A	N/A
Operational Creditors	(i) Government	Rs. 13,08,38,000/-	Rs. 25,00,000/-
	(ii) Workmen	Rs. 1,02,78,000/-	Rs. 8,82,000/-
	(iii) Employee	Rs. 91,63,000/-	Rs. 2,18,000/-
	(iv) EPFO	Rs. 86,40,000/-	NIL
	(v) Others	Rs. 39,46,02,000/-	Rs. 10,00,000/-
Other Debts	N/A	N/A	N/A
Total		Rs. 588,99,32,000/-	Rs. 36,46,00,000/-

16. The liquidation value and the fair value of the Corporate Debtor are reported at Rs. 57,84,35,280/- and Rs. 75,65,30,854/- respectively. The Plan value is Rs. 36,46,00,000/- which is less than the liquidation value of the Corporate Debtor. We noted the fact. The Hon'ble Supreme Court in the case of ***Maharashtra Seamless Limited vs.***



Padmanabhan Venkatesh & Ors. Civil Appeal No. 4242 of 2019 held that no provision in the Code or Regulations was brought to their notice under which the bid of any Resolution Applicant should match liquidation value. The object behind prescribing such valuation process is to assist the CoC to take decision on a Resolution Plan properly. Once, a Resolution Plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. The relevant paragraphs of the said judgment are reproduced below:

“26. No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.”

“27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan.”



“28. The Appellate Authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a resolution plan, the Adjudicating Authority has to be satisfied that the requirement of sub-section (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the other point on which an Adjudicating Authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation.”

17. The Resolution Applicant of VAMA Construction Co. has proposed to pay a sum of Rs. 36,46,00,000/- within 33 months from the effective date against full and final payment for all the liabilities of a Corporate Debtor.
18. We now take up the Resolution Plan of VAMA Construction Co. for examining the same in view of provisions of section 30(2) of the IBC, 2016.
19. Section 30(2)(a) requires that the Resolution Plan shall provide for the payment of the CIRP costs in priority to the payment of other debts of the Corporate Debtor. Upon going through the plan, we noted that a sum of Rs. 25,00,000/- is provided to meet



out the expenses towards the CIRP costs. We hold that provisions of section 30(2)(a) are complied with.

20. The perusal of the Resolution Plan shows that the Secured Financial Creditor will get a sum of Rs.36,46,00,000/- against their total claimed amount of Rs. 533,64,11,000/-.The Government will get a sum of Rs. 25,00,000/- against their total claimed amount of Rs. 13,08,38,000/-. The Workmen will get a sum of Rs. 8,82,000/- against their total claimed amount of Rs. 1,02,78,000/-. Employees will get a sum of Rs. 2,18,000/- against their total claimed amount of Rs. 91,63,000/-. The EFPO will get NIL against total claimed amount of Rs. 86,40,000/-. The Resolution Applicant has submitted that there is a stay order of Hon'ble High Court of Delhi on the said amount. The Resolution Applicant has proposed to pay entire principal amount whenever the Hon'ble High Court of Delhi gives direction/order in the said matter in full and final settlement of their claims/liabilities. Others will get a sum of Rs. 10,00,000/- against their total claimed amount of Rs. 39,46,02,000/-. The CIRP cost has been kept by the Resolution Applicant of Rs. 25,00,000/-. The amount of CIRP cost will be paid within 60 days from the receipt of the order. The amount of Operational Creditors and others will be paid within 60 days from the receipt of the order. The upfront payment to Secured Financial Creditors will be paid within 60 days from the receipt of the order. In view thereof we hold that this complies with provisions of section 30(2)(b) of the IBC, 2016.

21. In the Resolution Plan (at page-21) proposal for management of the business of the Corporate Debtor is given. Within 60 days from the NCLT Approval date all the existing Directors of the CD shall be deemed to have demitted office and shall stand removed as the Directors of the CD. The Resolution Applicant shall



appoint 3 Directors on the Board of Directors of CD which would consist of Resolution Applicant and its nominees and accordingly, the business of CD shall be carried on by the new management. With this, we hold that the provisions of section 30(2)(c) is complied with.

22. In the Resolution Plan (at page-21) supervision of the Resolution Plan by Monitoring Committee is given. Monitoring Committee will come into force on the date of approval of Resolution Plan. Monitoring Committee shall be constituted by CoC in consultation with the Resolution Applicant, which would comprise of one Insolvency Professional, one representative of the Resolution Applicant and one from the Secured Financial Creditors of the Corporate Debtor. With this, we hold that the provisions of section 30(2)(d) is complied with.

23. The RP has certified that the Resolution Plan does not contravene any provisions of law for the time being in force. On examination of the Resolution Plan, we also find that the Resolution Plan does not contravene any provisions of law. We also hold that the Resolution Plan is in compliance with the provisions stated in Regulations 38 and 39 of the IBBI (CIRP of the Corporate Person) Regulations, 2016, and the interests of all stakeholders are taken care of. The term of the plan is also stated. Hence, we see no reason to reject this Resolution Plan on any grounds.

24. It is mentioned in the Resolution Plan that the entire public paid up share capital of Radha Madhav Corporation Limited shall be reduced in the ratio of 100:1 and the promoters/promoter's group shareholding shall be extinguished. No amount shall be paid to any of the existing



shareholders. The existing Authorised Capital of Rs. 1,14,00,00,000/- consisting 11,40,00,000 equity shares of face value of Rs. 10 each will be reorganized to 11,40,00,000 equity shares of Rs. 10 each.

25. The Resolution Applicant will induct an amount of Rs. 36,71,00,000/- to implement the Resolution Plan by way of equity, quasi equity/debt by the Resolution Applicant in tranches as may be warranted from time to time. The Resolution Applicant or its nominees or newly formed Special Purpose Vehicle will induct Rs. 12,71,00,000/- upfront on the effective date as equity capital.
26. As far as reliefs and concessions claimed by the resolution applicant, the law has been well settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021*** in the following words:
- I. "The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.
- II. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of IB Code and



continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief...”

27. In view of the above, we hold that the Resolution Applicant cannot be saddled with any previous claim against the Corporate Debtor prior to initiation of its CIRP. For the permits, licenses, leases, or any other statutory right vested in the Corporate Debtor shall remain with the Corporate Debtor and for the continuation of such statutory rights, the Resolution Applicant has to approach the concerned statutory authorities under relevant laws.
28. With these directions, we approve the Resolution Plan submitted by VAMA Construction Co. and proceed to pass the following orders:

ORDER

- I. Application is allowed.
- II. The Resolution Plan of VAMA Construction Co. for Corporate Debtor i.e. Radha Madhav Corporation Limited, stands allowed as per section 30(6) of the IBC, 2016.
- III. The Resolution Applicant claimed various reliefs and concessions in the Resolution Plan. However, we grant the reliefs in the following manner and to this extent;
 - a. After the payment of the dues to the creditors, as per the Resolution Plan, all the liabilities of the said stakeholders prior to CIRP against the Corporate Debtor shall stand permanently extinguished after the approval of the resolution plan. We further hold that other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall also stand extinguished against the Corporate Debtor after the approval of the



Resolution Plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;

- b. On the effective date, all claims, except provided in the Resolution Plan, of the suspended management, erstwhile directors, and erstwhile shareholders shall stand permanently extinguished;
- c. On the effective date and with effect from the appointed date, all encumbrances on the assets of the Corporate Debtor prior to the plan shall stand permanently extinguished on completion of procedural formalities as provided in Companies Act, 2013; and laws time in force as applicable;
- d. For reliefs and concessions sought from the Government/Statutory Authorities, we direct the Resolution Applicant to approach the concerned Authorities who shall decide the issues including waivers/exemption from such stamp duty, taxes and/or other fees or duty.
- e. For reliefs and concessions sought in respect to payment of stamp duty, tax and/or other fees or duty to any Government Authority, we direct the Resolution Applicant
- f. As regard to relief prayed under various provisions of Income Tax Act, 1961, the Corporate Debtor / Resolution Applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the Resolution Applicant in accordance with the provisions of Income Tax Act, 1961.
- g. All licenses, permits etc. belonging to the Corporate Debtor whether expired or existing during the process of



implementation of the Resolution Plan shall remain vested with the Corporate Debtor and the Corporate Debtor/Resolution Applicant shall approach relevant authorities for obtaining licenses, permits etc. Further, Monitoring Committee and Resolution Professional shall provide necessary support in this regard.

- h. The Resolution Applicant shall be entitled to review, revise or terminate any appointments/agreements entered into by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements/MoUs/contracts;
- i. The RP shall complete the accounting entries to give effect to the Resolution Plan in the books of account as per the applicable accounting standards and provisions of the Companies Act, 2013;
- j. The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the Resolution Applicant for proper running operations of the business of the Corporate Debtor;
- k. The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution;
- l. The Resolution Applicant shall, pursuant to the resolution plan approved under section 31(1) of the Code, obtain necessary approvals 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 the Adjudicating Authority under section 31 or within such period as provided for in such law, whichever is later, as the case may be;



- m. All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the Resolution Plan as regard to the restructuring of capital shall be binding on them. This order shall be treated as evidence of compliances of all formalities as may be required in this regard under the provisions of the Companies Act, 2013.
- IV. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- V. The order of moratorium dated 22.10.2020 passed by this Adjudicating Authority under section 14 of IBC, 2016 shall cease to have effect from the date of passing of this order.
- VI. The RP shall forthwith send a copy of this order to the participants and the Resolution Applicant(s).
- VII. The RP shall forward all records relating to the conduct of the CIRP and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.
- VIII. Accordingly, IA 78 of 2022 in CP (IB) 669 of 2019 is allowed and stands disposed of in terms of the above directions.
- IX. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**MADAN B. GOSAVI
MEMBER (JUDICIAL)**

Shweta Desai – LRA