

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
PRINCIPAL BENCH

IA- 3261(PB)/2021
In
C.P. No. IB- 2488(PB)/2019

Under Section : 30(6) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:
Debashish Majumdar

...Financial Creditor

Versus

M-Tech Developers Private Limited

...Corporate Debtor

Memo of Parties

IN THE MATTER OF:

Mr. Rakesh Kumar Gupta
Resolution Professional for
M-Tech Developers Private Limited
701, Vikrant Tower
Rajendra Place,
New Delhi-110008

...Resolution
Professional/Applicant

Versus

M/s. Sarthi Constructions
R-369, Dream Apartment,
Thatipur, Gwalior,
Madhya Pradesh-474002

...Resolution Applicant/Respondent

Order Delivered on : 15.03.2022

CORAM:

CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT
SHRI. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Resolution Applicant : Mr. Milan Negi, Advocate
For the Resolution Professional: Mr. Abhishek Anand,
Mr. Prateek Kushwaha and
Ms. Samriddh Bindal, Advs.

ORDER

Per: HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

The present Application has been filed by Mr. Rakesh Kumar Gupta, the Resolution Professional of M/s. M-Tech Developers Private Limited (hereinafter referred to as '**Applicant/ Resolution Professional**'), for approval of the Resolution plan, under section 30(6) of the Insolvency and Bankruptcy Code, 2016 on 13.07.2021.

2. The prayers sought by the Applicant are as follows:

- (a) *Allow the present application;*
- (b) *Approve and accept the resolution plan submitted by M/s Sarthi Constructions as approved by the Committee of Creditor with 100% voting share in its 5th CoC meeting as submitted in respect of the Corporate Debtor i.e. M-Tech Developers Private Limited;*
- (c) *Declare that upon approval of the Resolution Plan by this Hon'ble Adjudicating Authority, the provisions of the Resolution plan shall be binding on the Company, its creditors, guarantors, members,*

employee and other stakeholders in accordance with Section 31 of the Code, and shall be given effect to and implemented pursuant to the order of this Hon'ble Adjudicating Authority;

- (d) Approve the appointment of the monitoring agency as approved by the Committee of Creditors;*
- (e) Approve and grant reliefs and directions sought under the resolution plan by the Resolution Applicants;*
- (f) Pass such order or further order/order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.*

3. The present Application is moved by the Applicant/Resolution Professional, it is further submitted by the Applicant that; Mr. Debashish Majumdar/Financial Creditor had initially filed the Company Petition bearing IB-No.- 2488(PB)/2019, under Section 7 of the Code, against the Corporate Debtor M/s. M-Tech Developers Private Limited, which was admitted by this Bench on 12.11.2020, by initiating Corporate Insolvency Resolution Process (**"CIRP"**) and by appointing Mr. Rakesh Kumar Gupta, as Interim Resolution Professional (**"IRP"**), who was further confirmed as the Resolution Professional (**"RP"**).
4. It is further submitted that in terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said Interim Resolution Professional made a public announcement in Form-A on 14.11.2020, with the last date for submission of claims being 26.11.2020.

5. It is further added that the RP, as per section 18(1))a) of the Code, collated all claims submitted by the creditors, pursuant to the Public Announcement and after determination of the financial position of the Corporate debtor, constituted CoC on 10.12.2020 in the matter of the Corporate Debtor.
6. It is further stated by the Applicant that the 'Form-G' was published first, on 28.01.2021 in the newspapers namely, Business Standard (Hindi & English - All India Edition). That the last date for submitting the EOI against the initial publication of Form G was 11.02.2021. That the last date for submission of Resolution Plan was fixed for 28.04.2021
7. Thereafter, the Applicant filed an application bearing IA-5295 of 2020, before this Bench, seeking Appointment of Mr. Tarun Jain as Authorised Representative to represent the class of creditors (home buyers), as required under section 21(6A) of the Code, since the Applicant received 96.43% approval of homebuyers to elect Mr. Tarun Jain as their Authorised Representative. This Bench, vide order dated on 08.12.2020, approved the appointment of the Mr. Tarun Jain as the Authorised Representative.
8. It is further submitted by the Applicant that on the last date for the submission of EoI, the Resolution Professional received 03 EoI(s) and based upon the evaluation made, 02 were rejected for participating as Prospective Resolution Applicant

("PRA") for participating in the Resolution Plan process of the Corporate Debtor.

9. Thereafter, in the 5th CoC meeting; while discussing the Agenda Item-8, the Resolution Professional informed the CoC in terms of the timelines stipulated under the Code, that the initial time period of 180 days of the CIRP having come to an end on 10.05.2021 and pursuant to the agenda the CoC has decided to seek extension to the timeline of CIRP.

"RESOLVED THAT Committee of Creditor of M-tech Developers Pvt. Ltd., hereby authorizes the Resolution Professional to file the application seeking extension of CIRP period by 90 days before the Adjudicating Authority in pursuant to the provisions of section 12(2) of IBC, 2016 for resolution of the Corporate Debtor beyond 180 days"

"FURTHER RESOLVED THAT the Resolution Professional be and is hereby authorized to engage the professionals and to do all such acts and deed as he may deem necessary for implementing aforesaid resolution"

10. The Applicant, based on the Resolution passed in the 4th CoC meeting held on 22.04.2021, filed an application u/s 12 of the Code over which, this Tribunal vide its order dated 04.05.2021 extended the CIRP for further period of 90 days with effect

from 11.05.2021.

11. Thereafter, the 5th CoC meeting was held on 22.06.2021. The Resolution Professional/Applicant informed the CoC that one Resolution Plan has been received from M/s Sarthi Constructions on 12.04.2021. Applicant further submitted that he had sent a gist of the Resolution Plan, along with the Resolution Plan, to the members of the CoC on 25.05.2021 for review/suggestions to the Resolution Plan. The Authorized Representative of the allottees stated that he has not received any comments/suggestions to the Resolution Plan. Thereafter, after all the discussions and deliberations, the members of the CoC directed the Applicant to place the final resolution plan, submitted by M/s Sarthi Construction, the Successful Resolution Applicant ("SRA"), for voting in terms of section 30(4) of the Code. the same was put to vote, wherein it was open for e-voting from 24.06.2021 and ended on 27.06.2021. In the CoC Meeting, it was approved with the 100% of members present and with a vote share of 91.03% of total voting rights in terms of Section 30(4) of the Code. The Following Resolution was placed for voting before the members of the CoC.

"RESOLVED THAT the resolution plan submitted by M/s Sarthi Construction (Resolution Applicant) be and is hereby approved by the Committee of Creditors of M- Tech Developers Pvt. Ltd. under section 30(4) of

IBC, 2016 subject to condition of provision of bank guarantee or deposit of 10% of committed contribution i.e. Rs. 2,00,00,000 in addition to EMD of Rs. 1,00,00,000/- (Rs. One Crore Only) already provided as performance security.

FURTHER, the resolution professional be and is hereby authorized to file an Application with the Hon'ble Adjudicating Authority under section 30(6) of the IBC, 2016".

12. The Brief contours of the Resolution Plan submitted by M/s Sarthi Constructions as approved by the Committee of Creditors, is reproduced herein below and overleaf:

Usage	INR Lacs	Timeline	Source
CIRP Costs	At actual	Upfront within 30 days of implementation date	Upfront funding

Workmen/ Employees Dues & Accrued Bonus	100% of Amount Claim	Upfront within 30 days of Implementation date subject to verification	Upfront funding
Operational Creditor, other than workman & Employees and Govt Dues	10% of Amount Claim	Upfront within 30 days of Implementation date subject to verification	Upfront funding
Financial Creditors And Financial Creditors in a class	Rs. 5000 Lakhs pro rata basis (Presently 57.61% of Principal Amount collated)	Within 21 months from the effective date of implementation of Resolution.	Realisation of surplus items, finished inventories & Other Recoveries
Operational Creditor: Govt. dues for PF and ESI	100% of Principal Amount Claim	Within 15 months from the effective date of implementation of Resolution	Realisation of surplus items, finished inventories & Other Recoveries
Other Creditors	10% of Amount Claim	In fourth quarter from the effective date of implementation of Resolution	Realisation of surplus items, finished inventories & Other Recoveries
Payment to shareholders	NIL	No amount will be paid to them.	NIL

13. It is added that the Applicant vide letter dated 03.07.2021 issued a Letter of Intent (LOI) declaring that the Resolution Applicant M/s Sarthi Constructions, as the Successful Resolution Applicant and asked him to submit performance Guarantee of Rs. 2,00,00,000/- (Rupees Two Crores) only i.e. 10% of the SRA's contribution to the account of Corporate Debtor. Subsequently on 07.07.2021, the Successful Resolution Applicant had provided a Performance Guarantee, amounting to Rs. Rs. 2,00,00,000/- (Rupees Two Crores), through RTGS No. CBINR52021070710006100 dated 07.07.2021, credited in the Bank Account held with Yes Bank Ltd, at Rajender Place Branch, New Delhi for the Corporate Debtor Company M/s. M-tech Developers Pvt. Ltd.
14. It is submitted by the Successful Resolution Applicant with respect to the funding plan, in para 7.3 of Chapter VII, at page 181 of the Resolution Plan which is as follows:

"It is a very essence of the project lies in construction and selling of the flats to the home buyers in the market. The resolution applicant will initially deposit an amount of Rupees six crore within 30 days of the approval of the plan and no application is filed against the order of NCLT".

15. That as per Form 'H' placed on record, the Liquidation value of the Corporate Debtor is disclosed as Rs.4819/- Lacs and the

Fair Market Value of the Corporate Debtor is disclosed as Rs. 3507/- Lacs. The size of the Resolution Plan is higher than the liquidation value of the Corporate Debtor and satisfies the claims of creditors to the extent of 6979.4 Lacs.

16. That the details of payments proposed to be made, as per the Resolution Plan to the various stakeholders of the Corporate Debtor, are given in the Information Memorandum provided, the estimated CIRP cost upto the end of CIRP period will be INR 125 Lacs. The scanned copy of the relevant extracts of the same are reproduced hereunder:

8. Payment & Settlement proposed by Resolution Applicant: (Page Nos. 183 – 187 of the Application)

S.No.	Particulars	Remark
1	Investment By Resolution Applicant (RA) for Revival of Company	Rs. 20.00 Crore out of which Rs. 6.00 Crore to be paid upfront and balance in Seven Quarterly installments
2	CIRP Cost	Estimated CIRP Cost of Rs. 125.00 Lacs to be paid 100% by RA
3.	Amount due to workmen / employees	To be paid 100% by RA
4	Other Operational Creditors	After distribution in accordance with Section 53 of the Code, the liquidation value is NIL for operational creditors other than workmen employee but the RA has agreed to pay 10% of admitted claims
5.	Financial Creditors (Home buyers, Surrendered their units)	Agreed to pay 57.61 % of principal amount of Rs. 6556 Lacs amounting to Rs. 3776 Lacs
6.	Financial Creditors	Agreed to pay 57.61 % of principal amount of

	(Unsecured)	Rs.2123 Lacs amounting to Rs. 1223 Lacs
7.	Operational Creditors (Government Dues)	After distribution in accordance with Section 53 of the Code, the liquidation value is NIL for operational creditors, however the RA has proposed to pay 100% of claims of employees, PF and ESI fund amounting Rs. 54.82 Lacs
8.	Fair Value	4819 Lacs
9.	Liquidation Value	3507 Lacs
10.	Amount offered by RA	5190 Lacs

9. Timeline for payments: (Page no. 195 of Application)

Particulars	Admitted claim	Settlement amount	Timeline	% recovery
Financial Creditors in a class	6,826.12	3776.73	Within seven quarter from the implementation date	57.61%
Financial Creditors others (interest also included)	3,681.21 of which principal amount is Rs.2123 Lacs	1223.37	Within seven quarter from the implementation date	57.61%
Employees and workmen	8.19	8.19	Within first quarter from the implementation date	100%
Operational Creditors	5.45	0.55	Within first quarter from the implementation date	10%
Government Dues (PF +ESI)	55.82	55.82	Within five quarter from the implementation date	100%
Other creditors	8.03	0.80	Within four quarter from the implementation date	10%

17. That as a part of the Resolution Plan, the Resolution Applicant has also enclosed his Affidavit dated 11.02.2021, stating that he is not barred under Section 29A of IBC, 2016, to submit the Resolution Plan. The scanned copy of the same is reproduced overleaf:

DECLARATION-CUM-UNDERTAKING

Place: Delhi

Date: 11.02.2021

To,

Mr. Rakesh Kumar Gupta
Resolution Professional
of M-Tech Developers Private Limited
New Delhi

Dear Sir,

Re: Declaration-cum-Undertaking by the Applicant (as defined hereinafter) in respect of Section 29A of the Insolvency and Bankruptcy Code, 2016 ("IBC"), inserted vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 and further amended by Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 dated 06.06.2018.

A. BACKGROUND:

A.1

We, **Sarthi Construction** (hereinafter referred to as the "Applicant", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors), are engaged in Real Estate / Constructions activities.

A.2 Pursuant to the provisions of Section 25(2)(h) of IBC, the Resolution Professional had invited Expression of Interest ("EOI") from prospective

resolution applicants for seeking a resolution plan for M-TECH DEVELOPERS PRIVATE Limited ("Corporate Debtor") during the corporate insolvency resolution process ("CIRP"). Further to the same, we submitted our EOI on 11.02.2021.

A.3 We are aware that, in terms of Section 29A of IBC (as inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 and further amended), certain persons/category of persons have been specified as ineligible for the purposes of submission of resolution plan.

A.4 In view of the terms stipulated in Section 29A of IBC and as required by the Resolution Professional, we, the Applicant, agree to execute this Declaration-cum-Undertaking in the form and manner set out hereinafter.

B. DECLARATION:

B.1 We, the Applicant, hereby, irrevocably and unconditionally declare to the Resolution Professional in relation to myself/ our-self or any other person acting jointly or in concert with me/us, that:

- a) We am/are not an undischarged insolvent;
- b) We have not been identified as willful defaulter in accordance with the guidelines of the Reserve Bank of India ("RBI") issued under the Banking Regulation Act, 1949 (the "BR Act");
- c) My/our account(s) has/have not been classified as non-performing asset in accordance with the guidelines of the RBI issued under the BR Act such that a period of 1 (one) year or more has lapsed from the date of such classification and I/we have not failed in making payment of any overdue amounts with interest thereon and charges relating to non-performing asset as of the date of this Declaration-cum-Undertaking;

- d) We have not been convicted for any offence punishable with imprisonment for 2 (two) years or more under any act specified under the Twelfth Schedule; or for seven years or more under any other law for the time being in force;
- e) We have not been disqualified to act as a director under the Companies Act, 2013;
- f) We have not been prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- g) We have not been a promoter or in the management or control of corporate debtor in which any preferential transaction or undervalued transaction, extortionate credit transactions or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority (Hon'ble National Company Law Tribunal) under the IBC;
- h) We have not executed enforceable guarantee in favour of creditor(s), in respect of a corporate debtor which is under insolvency resolution process or liquidation in terms of the IBC;
- i) We are not subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India.
- j) We have a connected person not eligible under clauses (a) to (i)

C. UNDERTAKING

C. We, hereby, irrevocably and unconditionally undertake that, I/we shall, promptly notify the Resolution Professional, as and when any of the declarations set out in Clause B.1 is violated/ does not hold good, in respect of the Applicant/ connected persons or if the Applicant/ connected person becomes subject to any disability stipulated in terms of Section 29A of the IBC, during the CIRP of M-Tech Developers Private Limited.

D. GOVERNING LAW AND JURISDICTION

D.1 In respect to any dispute, action, suit or proceeding relating to this Declaration cum-Undertaking, the Applicant agrees to submit to the exclusive jurisdiction of the courts at New Delhi.

E. INTERPRETATION

E.1 In this Declaration-cum-Undertaking, unless the context requires otherwise: (i) the words importing singular shall include plural and vice versa; (ii) words importing a gender shall include all genders; and (iii) capitalized terms not defined herein shall have the meaning ascribed to such terms in the IBC.

IN WITNESS WHEREOF, the Applicant has caused these presents to be executed on this 11th day of February 2021 at New Delhi

Signed and sealed,

Signature:

Name: Mohd. Sharif

Designation Authorised Representative
of M/s Sarthi Construction

11 FEB 2021

In Presence of

Witness 1: Signature:

Name Raj Kumar (RK Tripathi), Age 35 Years,
Address 155/2, Hrikish Nagar, Okhla, New Delhi

Witness 2: Signature:

Name Raj Kumar, Age 30 Years,
Address Anand Vihar, New Delhi



ATTESTED
DEBAJYOTI BEHURIA
NOTARY
GOVT. OF INDIA
CENTRAL DELHI
Regn. No. 19716

NOTARIAL REG. No. 19716
Sr. No. 1099 Page No. 208
Date 11 FEB 2021

18. With regards to the compliances under Resolution Plan, the Applicant has stated in the Form 'H', which are as follows:

9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Chapter IV part C	YES
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Clause 5.6 Chapter V	YES
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		YES
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Clause 5.1	YES
	(b) provides for the payment to the operational creditors?	Clause 5.2, 8.7 and 8.8	Yes
	(c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Clause 8.6(I)	YES
	(d) provides for the management of the affairs of the corporate debtor?	Chapter X	YES
	(e) provides for the implementation and supervision of the resolution plan?	Chapter XI	YES
Section 30(4)	(f) Contravenes any of the provisions of the law for the time being in force?	Clause 5.8	NO
	Whether the Resolution Plan		
	(a) is feasible and viable, according to the CoC?		a. Yes
	(b) has been approved by the CoC with 66% voting share?		b. Yes approved by 100%

			(on present and voting basis)
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?		No As per the books of accounts, no such transaction has been found by RP
Regulation 38 (1)	Whether the amount payable under the resolution plan.		
	a) to the operational creditor has been given priority in payment over financial creditors?	Clause 8.3 and 8.4	Yes
	b) to the financial creditors, who have a right to vote under sub section(2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the claim		Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	clause 5.3 and Chapter VIII	YES
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	clause 5.9	No
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?		NA
Regulation 38(2)	Whether the Resolution Plan provides:		
	(a) the term of the plan and its implementation schedule?	Chapter XI and Chapter XII	YES
	(b) for the management and control of the business of the corporate debtor during its term?		YES
38(3)	(c) adequate means for supervising its implementation?		YES
	Whether the resolution plan demonstrates that -		
	(a) it addresses the cause of default?		YES
	(b) it is feasible and viable?		YES
	(c) it has provisions for its effective implementation?		YES
	(d) it has provisions for approvals required and the timeline for the same?		YES
	(e) the resolution applicant has the capability to implement the resolution plan?		YES
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		No
[Regulation 39(4)]	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]		Yes

19. That further, the Resolution Plan provides for the Basis of Settlement of claims and settlement of claims and settlement

amount to take care of all the stakeholders, their order of priority and their respective settlement amount is provided as under:

Order of Priority	Nature of Creditor	Basis of settlement & indicative amount
1 st	CIRP Cost	The unpaid CIRP cost is estimated to be INR 125 lacs till approval of plan. The Resolution Applicant shall pay the unpaid CIRP cost, at actual, in priority to any other creditors.
2 nd	Dues to workmen/ Employees (other than related parties of CD)	As on date of submission of the Resolution Plan, admitted dues of workman/employees is INR 8.19 lakh. The entire amount shall be paid Subject to verification of their currency in employment which shall be considered to be 24 months immediately preceding the CIRP commencement date for Workmen and 12 months immediately preceding the insolvency commencement date in case of employees.
3 rd	Operational Creditors	Liquidation value for dues to operational creditors other than workmen employee is considered as NIL of the amount due of the value of claims after their distribution in accordance with section 53 of the code. However, as per resolution plan, the RA proposes to pay 10% of admitted claim i.e. Rs 0.55 lakh in first month from the effective date.
4 th	Financial Creditors (unit buyers surrendered their units)	The admitted claims (including any interest, penal interest, penalty, legal cost & other cost) in respect of unit allottees who have surrendered their units is Rs. 6,826.12 lakh, which includes the Principal amount of Rs. 6,556.12 Lakhs. RA propose to pay 57.61% of Principal amount of Rs 6,556.12 lakh, admitted by the RP in the claimant list as on 08.04.2021 i.e. Rs 3,776.73 lakh within seven quarter from the effective date. However, financial

		creditors whose claims have not been collated in the list provided to R.A. as on 08.04.2021 or received after 8 th April, 2021 but before approval of resolution plan by Hon. Adjudicating Authority, then all the Financial Creditors in a class and Financial Creditors other than belonging to a class will get pro-rata payment from Rs 5,000 lakh earmarked for the financial creditors.
5 th	Financial Creditors(Unsecured)	The admitted claims for borrowings including interest is Rs 3,681.21 lakh, the principal amount of loan included wherein is Rs.2123.51 lakh.The RA proposes to pay Rs 1,223.27 lakh which is 57.61% of admitted principal amount of Rs 2,123.51 lakh in the claimant list as on 08.04.2021 within seven quarter from the effective date. However, financial creditors whose claims have not been collated in the list provided to RA as on 08.04.2021 or are received after 8 th April, 2021 but before approval of resolution plan by Hon. Adjudicating Authority, then all the Financial Creditors in a class and Financial Creditors other than belonging to a class will get pro-rata payment from Rs 5,000 lakh earmarked for the financial creditors.
6 th	Dues to Operational Creditors as Government Dues	Liquidation value for dues to operational creditors other than workmen employee is considered as NIL after their distribution in accordance with section 53 of the code. However, the RA proposes to pay 100% of principal amount of claim submitted as the amount relates to employee PF and ESI fund i.e. Rs 55.82 lakh to be paid in five quarter from the effective date.
7 th	Dues to Other Creditors	Liquidation value for dues to operational creditors other than workmen employee is considered as NIL after their distribution in accordance with section 53 of the code.

		However, the RA proposes to pay 10% of claim admitted i.e. Rs 0.80 lakh in fourth quarter from the effective date.
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20. It is further submitted by the Successful Resolution Applicant in the Resolution Plan at page 196 that:

"The Resolution Applicant proposes to pay to financial creditors in a class, who have submitted their claim to RP, the admitted principal amount subject to the overall limit of Rs. 5,000 Lakh.

Further, if any liabilities and/claim of financial creditors are received and admitted by RP till the approval of the plan by this Adjudicating Authority, then all the financial creditors shall be paid on pro-rata basis from the aforesaid amount of Rs 5,000 Lakh. Any claim received after the approval of plan by the Adjudicating Authority shall stand extinguished”.

21. That with regard to the management of the Corporate Debtor upon approval of the Resolution Plan, to ensure that the Resolution Plan is implemented, Mr. Rakesh Kumar Gupta (RP) shall be appointed as the Supervisor and chairperson of Monitoring Committee to monitor and supervise the implementation of the Resolution Plan. The period of the implementation of the Plan to be monitored by the Monitoring Committee is within 24 months. However, the scanned copy of the relevant extracts of Resolution Plan is reproduced overleaf:

CHAPTER-X-MANAGEMENT OF M-TECH AFTER RESOLUTION PLAN ACCEPTANCE

1. MANAGEMENT CONTROL OF M-TECH BY RESOLUTION APPLICANT

- 1.1 The control and management of the CD shall be acquired, pursuant to the Proposed Transaction, by the Resolution Applicant on an "as is where is" basis.
- 1.2 The Resolution Applicant and its associates together shall hold 100% shareholding in the restructured share capital of M-Tech, as elaborated in Chapter IX (Restructuring of capital).
- 1.3 On the effective date the board of directors of M-Tech shall be deemed to have resigned and new directors as nominated by RA will be deemed to have been appointed to the Board of Directors of M-Tech, as required by the Resolution Applicant. The new directors will have the authority to do all the necessary filings with the ROC and other authorities for getting the needful recorded.
- 1.4 After the effective date, the Resolution Applicant shall be in control and management of affairs of M-Tech and the business of M-Tech shall be carried on by the new management as appointed by the Resolution Applicant. The new Board will be professionally managed by experienced persons, which will be decided by the RA.
- 1.5 Further, whole-time key managerial personnel, if required, will be appointed as per the requirements of the Companies Act.
- 1.6 The Resolution Applicant/ new Board shall appoint new statutory and internal auditor, subject to Applicable laws.
- 1.7 In order to successfully derive the operations, the team of experts of relevant field will work under the direct supervision and control of the new management.

2 EXISTING EMPLOYEES

There are eight existing employees as per the Information Memorandum and same will continue during the resolution plan period on same employment term. However, if any employee is unable to continue than he will be discharged with proper notice.

3 FUTURE DIRECTORS OF THE M-TECH AFTER RESOLUTION PLAN BEING ACCEPTED

The persons nominated by RA would deem to compose the board of the CD on the Effective Date. Other directors may be appointed as per the requirement in future.

3. MONITORING AND SUPERVISION

3.1 In order to ensure that the Resolution Plan is implemented in accordance hereof and that the obligations undertaken herein are adhered to in letter and spirit, an appropriate monitoring & supervision agency shall be appointed for the term of the Plan.

3.2 On the Effective Date Mr Rakesh Kumar Gupta, the present Resolution Professional shall be appointed as the Supervisor and Chairperson of Monitoring Agency or as the "Monitoring Professional" to monitor and supervise the implementation of the Resolution Plan on such fee as will be settled between him and RA. The period of implementation of the Plan to be monitored by the Monitoring Professional is a period of 24 months. The Fee for the monitoring and supervision shall be agreed for the term of his appointment as per mutual agreement of the Monitoring Professional and the RA and it shall be duly paid by the RA/CD.

3.3 The RA may at its discretion extend the time of Monitoring and Supervision period beyond the term of the plan as stated above for effective revival of the CD.

3.4 The monitoring and supervision agency/ committee, so appointed, shall have inter alia the following responsibilities:

- a) To supervise the implementation of The Resolution Plan and ensure that the Resolution Plan is implemented as approved.
- b) To ensure timely disbursement of funds to the financial and operational creditors, as per the payment terms set out above;
- c) To ensure that approvals, to the extent required for implementation of the resolution Plan, are applied for and obtained in a timely manner.

22. That pursuant to the said Application, no objections were received by this Adjudicating Authority.

23. After going through the Application and documents placed on record, we observe that the CoC has approved the Resolution Plan, submitted by the Resolution Applicant M/s. Sarthi Constructions, by 100% votes declared on 28.06.2021. We also observe that no objection whatsoever challenging the Resolution Plan were filed before this Adjudicating Authority at any stage. The role of the Adjudicating Authority has been examined by the Hon'ble Supreme Court in a catena of decisions. The relevant portion of the decision of the Hon'ble Supreme Court in CIVIL APPEAL NO.10673 OF 2018, in the matter of K. Sashidhar Vs. Indian Overseas Bank & Ors. is



reproduced below:

"35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor,

(ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code."

"38. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with 31(1) of the I&B Code. No other inquiry would be



permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.

24. In view of the decision referred to supra, it is a settled principle of law that the Adjudicating Authority shall not interfere with the decision taken by the CoC in its commercial wisdom, save and except the circumstances referred to in Section 30(2) of the IBC, 2016.
25. Thus, the Resolution Plan filed with the application IA-3261/2021, meets the requirements of Section 30 and 31 of IBC, 2016 and Regulations 37,38, 38(1A) and 39(4) of the CIRP Regulations. The provisions of Section 29A of IBC, 2016 are not attracted and the Resolution Professional has also verified that the "Resolution Plan" approved by the CoC, does not contravene any of the provisions of the law for the time being in force. The Resolution Professional has filed compliance certificate in Form H as required under the Regulation 39(4) of the CIRP Regulations.
26. The SRA has prayed for the reliefs and concessions as enumerated under the Resolution Plan approved by the CoC. From the plan approval date all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes,



interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this Resolution Plan, shall stand withdrawn, satisfied and discharged. From the date of approval of the 'Resolution Plan', the Resolution Applicant shall be legally authorized to seek appropriate orders from respective authorities/courts/tribunals for renewal of licenses/withdrawal/dismissal or abetment of the proceedings as the case may be.

27. In view of the above the 'Resolution Plan' annexed with IA-3261/2021 in CP (IB)-1665 (PB)/2018, is hereby approved, shall be binding on the corporate debtor and its employees, member, creditors, guarantors, other stakeholders including statutory authorities and the Resolution Applicant.

28. We hereby approve this Resolution Plan, as approved by the CoC, placed by the Applicant before this Adjudicating Authority. We, therefore, approve the Resolution Plan submitted by the Applicant along with the following directions in respect of the Corporate Debtor:

- i. The order of the moratorium passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order.
- ii. The Resolution Professional shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to the IBBI for its record and database.
- iii. The approved Resolution Plan shall become effective from the date of passing of this Order.
- iv. The Monitoring Committee, as provided in the Resolution Plan, shall be setup within 07 days of



passing of this Order which shall take all necessary steps for implementation of the Resolution Plan.

29. The Resolution Professional shall forthwith send a copy of this Order to the CoC and the Successful Resolution Applicant.

With the above, IA-3261 of 2021 stands allowed.

11
- sd ✓

RAMALINGAM SUDHAKAR

✓
PRESIDENT

- sd ✓

HEMANT KUMAR SARANGI

MEMBER (TECHNICAL)