



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT – II**

**I.A. No. 1740 of 2021  
In  
C.P.(IB)/1347 (MB) 2019**

Under Section 31 of the Insolvency and  
Bankruptcy Code, 2016.

**Mr. Arun Kapoor,**  
Resolution Professional of Peacock  
Construction Private Limited residing at G-  
601, Army Co-operative Housing Society,  
Sector-09, Nerul (East), Navi Mumbai,  
Maharashtra- 400 706.

.....Applicant

*In the matter of*

**Good Value Financial Services Private  
Limited**

.....Financial Creditor

**Vs.**

**Peacock Construction Private Limited**

.....Corporate Debtor

**Order delivered on: 09.06.2023**

***Coram:***

**Hon'ble Member (Technical)**

**Shri Shyam Babu Gautam**

**Hon'ble Member (Judicial)**

**Shri Kuldip Kumar Kareer**

***Appearances:***

For the Resolution Professional : Advocate Amir Arsiwala

**ORDER**

*Per: Shyam Babu Gautam, Member Technical*

1. This is an Application filed under Section 31 of the Insolvency & Bankruptcy Code, 2016 (“the Code”) for seeking approval of this Bench in respect of the Resolution Plan submitted by the Resolution Applicant i.e. LA Kozy Builders LLP (“RA”) which was passed by the Committee of Creditors (“CoC”) with requisite majority under Section 30(4) of the Code.
2. The Corporate Debtor is engaged in the business of acquisition of construction projects for residential as well as commercial projects. By an Order of this Tribunal dated **31<sup>st</sup> December 2019**, Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor and the Applicant was appointed as the Interim Resolution Professional (IRP) and was later confirmed as the Resolution Professional (RP) of the Corporate Debtor in the **First Meeting of CoC held on 30<sup>th</sup> January 2020**. The CoC was constituted on 22<sup>nd</sup> January 2020 in compliance of Regulation 17(1) of CIRP Regulations. However, the CIRP came to a standstill soon after its commencement on account of nationwide lockdown due to the pandemic. Later, the CIRP progressed and the Applicant received Expression of Interest (EOI) from four Prospective Resolution Applicants before the last date for submission of EOI on 5<sup>th</sup> September 2020. The Applicant states that the SRA submitted a **Resolution Plan dated 24<sup>th</sup> October 2020** which was last revised on 22<sup>nd</sup> March 2021 for the purpose of curing certain defects. Subsequently, the Plan was

put to vote and was approved by the CoC with **75.35% majority voting** share in the **Sixth Meeting of the CoC held on 26<sup>th</sup> April 2021** and 27<sup>th</sup> April 2021.

***Observations about the plan***

3. The RA are Builders having their registered office in Mumbai and sources its funds from the sale of flats and shops. On perusal of the **Resolution Plan and Form-H** filed by the RP, the following facts appear to be relevant:

- a. The Resolution Plan lays down that the **“Effective Date”** for initiation of the payments envisaged under the provisions of the Plan shall occur on the date on which the Resolution Plan is approved by this Tribunal.
- b. The **Fair Value** of the Corporate Debtor is estimated as **Rs. 70.19 Lakhs** only and the **Liquidation Value** is calculated as **Rs. 7.18 Lakhs**. The Admitted claim value is stated as **Rs. 7,12,64,982/- (Rs. 7.12 Crores only)**. It is thus observed that the admitted claim value against the Corporate Debtor is more than the liquidation value of the company. The value of liquid assets available with the Corporate Debtor is **nil**.
- c. The Resolution Plan contemplates a total investment of **Rs. 35,29,520/- only** (Rupees Thirty-Five Lakhs Twenty-Nine Thousand Five Hundred and Twenty only) which consists of the following components:

<b>Category of Creditors</b>	<b>Claim filed (Rs.)</b>	<b>Claim admitted (Rs.)</b>	<b>Amount proposed (Rs.)</b>
CIRP Cost			28,16,871/-
Secured Financial Creditors	Nil	Nil	Nil
Workmen/ Employee dues	Nil	Nil	Nil
Employees other than workmen	Nil	Nil	Nil
Unsecured Financial Creditors	43,31,37,149	7,09,99,982	7,09,999
Statutory dues	Nil	Nil	Nil
Operational Creditors	Nil	Nil	Nil
Unsecured Financial Creditors- related party (claim received from promoter)	2,65,000	2,65,000	2,650
Equity shareholders/ partners	Nil	Nil	Nil
Contingent liabilities	Nil	Nil	Nil
<b>Total</b>	<b>43,34,02,149</b>	<b>7,12,64,982</b>	<b>35,29,520</b>

- d. With regard to **Financial Creditors**, no claims were received from any secured Financial Creditors. An aggregate amount of Rs. 7,09,999/- is proposed to be paid to the Unsecured Financial Creditors, namely Good Value Financial Services Private Limited (Rs. 5,35,000/- only) and DBS Properties (Rs. 1,74,999/- only). Further, an amount of Rs. 2,650/- is proposed to be paid to the Unsecured Financial Creditors- related party i.e. claim received from the Promoter/Director of the Corporate Debtor, Mr. Nishit B

Patel. Regarding payment to all creditors, the SRA will pay 1% of the admitted claim amount over and above the CIRP costs. With regard to dissenting Financial Creditors, the RA proposes to make payment in accordance with Section 30(2) read with Section 53(1) of the Code which shall not be less than the amount payable to such creditors in the event of liquidation of the Corporate Debtor. The payments of such Financial Creditors shall be made in priority over those Financial Creditors who voted in favour of the Plan.

- e. With regard to the **Operational Creditors**, no claims were received. However, in case of admission of any such claims after the date of the Resolution Plan, the same shall be paid in priority to payments to Financial Creditors as per Regulation 38(1)(a) of the CIRP Regulations.
- f. With regard to **Statutory dues**, no claim has been received during the CIRP period from any statutory authority, however, if any claim is admitted after the date of the Resolution Plan, the RA proposes to pay 1% of the admitted amount over and above the CIRP cost. Any unclaimed or non-admitted amount claimed by the statutory authorities shall stand extinguished from the date of approval of the Resolution Plan by this Tribunal.
- g. With regard to **Workmen and Employee dues**, no claim has been received during the CIRP period from workmen or employees of the Corporate Debtor, however, if any claim is admitted after the approval of the Resolution Plan, the RA proposes to pay 1% of the admitted amount over and above the CIRP cost.

- h. With regard to **CIRP costs**, the RA proposes to pay the total budgeted CIRP costs amounting to Rs. 28,16,871/- in full and in priority to all other debts within 30 days from the date of the approval of the Plan by this Tribunal. Additionally, the entire proposed payment under this Resolution Plan shall be made within 30 days from the date of approval of the Plan by this Tribunal.
4. A perusal of Form-H as filed by the Resolution Professional also posits the fact that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30 of the Code read with Regulations 37 to 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The RA has enclosed an Affidavit wherein, *inter alia*, it unconditionally and irrevocably confirms and declares that as on the date of submission of the Resolution Plan, it is not disqualified from submitting a Resolution Plan under Section 29A of the Code and other applicable laws. The Applicant also submits that the Plan is not subject to any contingency and the RA shall operate the Corporate Debtor on a going concern basis and also undertakes to infuse funds, if any, required to improve such operation.
5. The Applicant further states that in compliance with Section 30(2)(d) of the Code, the Resolution Plan provides for the constitution of a Monitoring Committee which shall be appointed by the RA in consultation with the CoC for supervision and implementation of the Resolution Plan. The appointment shall be at the mutually agreed terms with CoC members for the period effective from the date of

approval of the Plan by this Tribunal till the payments proposed under the Plan have been finally settled. The Monitoring Committee shall consist of one nominee each of the RA, CoC and the RP and shall have similar functions, powers and protections as ascribed to the RP under the Code.

6. The Applicant states that pursuant to Regulation 38(2)(d) of the CIRP Regulations, it is submitted no Applications related to Preferential transactions under Section 43, Undervalued transactions under Section 45, Extortionate credit transactions under Section 50 and Fraudulent transactions under Section 66, have been filed against the Corporate Debtor.
7. Regarding the Reliefs and Concessions stated in Clause 19 of the Resolution Plan, the exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted. As regards the other reliefs and concessions as sought for, which exempts the Corporate Debtor from holding it liable for any offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016 are hereby granted to the Resolution Applicant. With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions, if any, sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted. Further in terms of the Judgement of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited vs. Edelweiss*

*Asset Reconstruction Company Limited*, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan. In view of the foregoing, this Plan is hereby **approved**.

8. The Resolution Professional is further directed to handover all records, premises / documents to the RA to finalise the further line of action required for starting of the operations of the Corporate Debtor as contemplated under the Resolution Plan.
9. The RA shall have access to all the records, premises / documents through the Resolution Professional to finalise the further line of action required for starting of the operations of the Corporate Debtor.
10. Accordingly, the Resolution Plan in **I.A. No. 1740 of 2021** is hereby allowed in the aforesaid terms.

**Sd/-**

**SHYAM BABU GAUTAM**  
**MEMBER (TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER**  
**MEMBER (JUDICIAL)**