

**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**  
**COURT - 2**



ITEM No.307

**IA/759(AHM)2021 in CP(IB) 686 of 2019**

**Order under Section 30(6) r.w 31 IBC**

**IN THE MATTER OF:**

Chetan B Patel RP of Nidhi Impotrade Pvt Ltd  
V/s  
COC of Nidhi Impotrade Pvt Ltd & Ors

**.....Applicant**

**.....Respondents**

**Order delivered on 09/01/2024**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**  
**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**ORDER**

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

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**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

-sd-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**AHMEDABAD (COURT - II)**

**IA No. 759 / NCLT / AHM / 2021**

**IN**

**CP(IB) No. 686 / NCLT / AHM / 2019**

*(Application Under Section 30(6) r w 31 of the IB Code, 2016 r.w.  
Reg 39(4) of IBBI Regulations 2016)*

**IN THE MATTER OF**

Chetan B Patel,

RP of Nidhi Imports P Ltd

.... Applicant

Versus

CoC of Nidhi Impotrade Pvt. Ltd. & Ors ... Respondents

Order pronounced on 09.01.2024

**Coram:**

**MRS. CHITRA HANKARE  
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY  
HON'BLE MEMBER (TECHNICAL)**

**MEMO OF PARTIES**

Chetan B. Patel,

RP of Nidhi Impotrade Pvt. Ltd,

Having Registered Office At:

301, Akhsar Stadia, Opp. Symphony House,

B/H. Armedia Cosmetic Center,



Off. S.G. Highway, Bodakdev,  
Ahmedabad- 380059

... Applicant

Versus

1. Committee of Creditors of  
Nidhi Impotrade Pvt. Ltd,  
Having Registered Office At:  
104, Indrlock Appartment,  
Opp. Sub Jail, B/H. Prime Co. Op. Bank,  
Hanuman Street, Ring Road,  
Surat- 395002

2. Nibhu Healthcare LLP  
303/304, Om Mangalam Complex  
Opp. Central Bank, Nanpura  
Surat-395001

...Respondent

**Present:**

For the Applicant : Mr. Harmish K Shah, Adv  
For the RP : Mr. Chetan B Patel, PCS  
For the Respondent : Mr. S. Suriyanarayana, Adv.  
For the RA : Mr. Arjun Padhiyar

**JUDGEMENT**

1. This application under Sec 30(6) read with section 31 of the Insolvency and Bankruptcy Code (IBC) 2016 is filed by Mr Chetan B Patel, Resolution Professional (RP) of Nidhi



Impotrade Private Limited, Surat – the Corporate Debtor in Corporate Insolvency Resolution Process (for short CIRP) for approval of the resolution plan submitted by Resolution Applicant i.e. M/s Nibu Health Care LLP, Surat.

2. The relevant facts in short are as under:

- a) M/s Nidhi Impotrade Private Limited, having its office situated at 104, Indrlock Apartment, Opp Sub Jail, B /H Prime Coop Bank, Hanuman Street, Ring Road, Surat 395002 was admitted in CIRP vide order dated 12.03.2021 on an application by one operational creditor namely, Mohit Minerals Limited. Mr Saaurabh Jhaveri was appointment as Interim Resolution Professional vide the order dated 12.03.2021 in CP(IB) 686/9/NCLT/AHM/2019. He made the public announcement in prescribed Form A and called for claims from all creditors on 19.03.2021. Accordingly, on receipt of claims, he constituted the Committee of Creditors as required in Sec 21(1) of the Code and regulation 17(1) of the IBBI on 06.04.2021. Upon receipt of fresh claims, the CoC was again reconstituted on 30.09.2021.



- b) In its first CoC meeting on 15.04.2021, the applicant Mr Chetan B Patel was appointed as RP which was approved by this Tribunal vide order dated 26.04.2021. The RP published the Form G on 25.05.2021 and informed the CoC on 29.05.2021 which approved the evaluation matrix and draft request for resolution plan. The CoC was again informed by the RP on 11.06.2021 seeking to extend the last date for submission of the resolution plan as no plan was received by the cut-off date. The members of CoC in the said meeting approved the criteria, invitation for EOI and draft RFRP in the same meeting and pursuant to publication of Form G on 11.06.2021, one prospective Resolution Applicant i.e. Nibhu Healthcare LLP submitted a request with expression of interest for extension of 5 days further of the cut-off date for submission of plan. The same was approved by CoC on 24.07.2021. Further, the applicant again published Form G on 25.07.2021 to submit fresh applications till 31.07.2021 on approval of COC (in its



meeting on 24.07.2021) and the Resolution Applicant (RA), M/s Nibhu Healthcare LLP.

- c) The CIRP period was further extended (beyond 180 days) on approval by the CoC on 29.08.2021 and the Tribunal approved the same on 13.09.2021. Further, the members of CoC in its meeting on 17.09.2021 further extended the last date for submission of Resolution Plan. After hearing the resolution plan submitted by the Resolution Applicant M/s Nibhu Healthcare LLP jointly with Mrs Pina Atul Sanghavi and Mrs Bhumika Nehalkumar Rana, CoC on 01.10.2021 in its 7<sup>th</sup> meeting approved the resolution plan through e-voting which was approved by 82.17% majority and the remaining (17.83%) abstained from voting. Accordingly, the applicant submitted the final Resolution Plan approved by the CoC for consideration of this Tribunal.
- d) It is further observed from the application that there were 13 Unsecured Financial Creditors of the Corporate Debtor with an admitted Debt of Rs.1,19,28,524/- who had 100% voting share in the



CoC and the applicant Operational Creditor M/s Mohit Minerals Limited had a debt amount of Rs.1,20,55,597/- with Nil Voting share.

- e) As per the Information Memorandum, the CIRP cost even though not provided has been estimated at Rs.9,00,000/- to be provided by the Resolution Applicant, including short fall if any and surplus would be taken to working capital of the CD on resolution.
- f) There are no claims received from workmen and employees and no amounts are due as per the Audited Financial statements as liabilities towards them. Resolution Plan has not proposed any amount in the plan. The plan also states that all disputes or agreements, if any with workmen or Government authorities will come to an end and the plan also gives discretion further to the Resolution Applicant to re-appointment any of the workmen or employees.
- g) As regards Unsecured Financial Creditors, an amount of Rs.1,66,92,054/- is the total financial claim and on verification an amount of Rs.1,57,43,592/- has been



admitted by the RP. Further, an amount due to unsecured financial creditors amounting to Rs.63,00,000/- has not been filed. Claims received from related parties and admitted by RP amounted to Rs.36,85,893/- of which Rs.30,50,000/- has been admitted. Claims not submitted by non-related parties but outstanding from 5 financial creditors were Rs.28,00,000/- and 1 claim of related party but claim not submitted amounted to Rs.35,00,000/-. The total claims received by the RP was Rs.2,29,92,054/- of which an amount of Rs.2,20,43,592/- was admitted.

- h) On a perusal of the Form H submitted by the RP, the fair value of the Assets of the CD was at Rs.94,175/- and Rs.1,08,520/- (2 valuations) and liquidation value was Rs.79,830/- and Rs.1,08,520/- respectively. The Resolution Plan proposes to pay 100% of the principal amount admitted to the unrelated unsecured financial creditors of an amount of Rs.1,13,00,000/- from the effective date (upfront) by an amount of Rs.25,00,000/- in the ratio of 22.13% and at the end of 180 days from effective date of an amount of





Rs.88,00,000 (77.87%). All the outstanding principal amount as on date of CIRP towards unsecured financial creditors would stand extinguished. No rights would occur to them on any future date and would discharge all pending claims, before any forum.

- i) As regards Operational Creditors, an amount of Rs.2,04,32,631/- of claims was received from 3 operational creditors of which the RP had admitted an amount of Rs.1,90,85,046/- and the Resolution Plan only provides an amount of Rs.95,430/- (0.5%) of the amount admitted which is equivalent to the amount to be paid in the event of liquidation of the CD under Sec 53. The plan also states that all dues and claims of the Operational Creditors against the CD if any arise in future due to past performance, shall stand waived/satisfied in terms of Regulation No. 37(f) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and discharge the CD of any liability. It also proposes that all cases filed under various laws, all the creditors shall withdraw the cases on approval of the Resolution Plan.



- j) The plan also states that as per Information Memorandum no dues have been claimed by the Statutory Authorities and there are no contingency claims. The claim of share- holders is treated as NIL and not provided for. Further of the claims received from operational creditors amounting to Rs.2,04,32,631/- an amount of Rs.12,75,325/- of claims has been kept under verification and not provided.
- k) The Corporate debtor had 2 directors namely Mr. Kandarp Piyush Shukla and Mr. Atul Jayantilal Sanghvi. As per the Information Memorandum, it is stated that Mr Atul J Sanghvi resigned on 10.10.2018 and has filed DIR-11, however the CD has not filed DIR-12 for the said resignation and there is only one director of the company Mr Kandarp Piyush Shukla as on date.
- l) From the Information Memorandum, Resolution Applicant proposes to fund Rs.37,00,000/- from his own funds by investment and bring in Rs.85,95,430/- through business operations of the RA, CD, loans



from the Directors and their relatives. As against the total amount of claims admitted of all creditors an amount of Rs.1,22,95,430/- has been proposed in the Resolution Plan. A monitoring committee has been proposed. Further, it proposes to provide 5% as performance security of the total financial bid as envisaged in Resolution Plan as decided by CoC within 15 days of the approval of the CoC.

3. The resolution plan has been objected by one of the Ex-Directors of the CD. It stated that Mrs Pina Atul Sanghvi (wife of Ex-Director who resigned in 2018) and Mrs Bhumika Nehalkumar Rana have committed various illegal acts and omissions and filed DIR-11 with the ROC to escape from illegal acts and omissions. It is also alleged that Mrs Bhumika Nehalkumar Rana, ex-employee had aided Mr Atul Sanghvi to commit all these malpractices in the affairs of the CD. He has also stated that the CD was undertaking the activities of trading in coal and valves while the Resolution applicant proposes to do business in health care. He has filed a separate IA 609 of 2021 under Sec 43, 45 and 66 before this Tribunal alleging various malpractices with



intent to default creditors of CD. He has also alleged that the ex-director whose wife is the Resolution Applicant had allegedly diverted funds, misappropriated through firm opened in the name of Nidhi Impotrade in the name of his wife. He has also stated that the resolution plan brought in through his wife and approval by CoC is to enable his escape from future legal repercussions. It also has alleged that the operational creditor has been paid only 0.5% and violates the legal provisions of Sec. 30(2) and 31(1). If the resolution plan is to collect from debtors and pay the creditors it states it is not a resolution plan.

4. Further, the RP has vide his letter dated 25.09.2021 to the CoC has brought to the notice that various Preferential and Fraudulent Transactions were done by Mr Kandarp Piyush Shukla and their relatives and these transactions resulted in diversion of funds, of the assets of the company and syphoning off and misappropriation of funds. It was suggested to the CoC that these transactions fall under the category of fraudulent transaction as defined under Sec. 66 of the Code. The same has been mentioned in the Form H by the RP and are still pending for adjudication. The Ex-



Director of the CD had disputed the invoices and payments made to the operational creditor vide his letter dated 11.07.2019. It is also stated that the cheques were issued by the other Director who has opposed the Resolution Plan which had all bounced.

**Observations:**

- i. The Resolution Plan approved with requisite majority of the CoC (82.17%) has considered a plan submitted by one of the Ex-Director's family member;
- ii. The stated Resolution Plan has considered the Claims of Unsecured Creditors and the amount payable to the operational creditor and complies with all the provisions and in terms of the Sec 30(6) of the IBC 2016 and Regulations of IBBI;
- iii. The Resolution Plan also includes a statement under Regulation 38(1A) of the CIRP Regulations to the manner in which the interests of all stake holders are dealt in the plan;



- iv. The Resolution Plan has been provided of the CIRP costs and does not provide for any employee liabilities as none exists;
- v. The RP has identified transactions under Sec 43, 45, 50 and 66 before the 150<sup>th</sup> day and the IAs are pending adjudication against the suspended management (one of the Directors) who has objected to the Resolution Plan, however has not made the Ex-Director Mr Atul Sanghavi party as he was not part of suspended management. The IA NO. 609 of 2021 is still pending adjudication;
- vi. A declaration by the Resolution Applicant (one of the partners is wife of Ex-Director of the suspended management) has been filed pursuant to Sec 30(1) of the code confirming eligibility under Sec 29A; and
- vii. The Resolution Plan has considered the cause of default, at the same, further proceedings on the Preferential and Fraudulent Transactions are to be pursued as they are still pending for adjudication. Accordingly the IA filed by the suspended management which has also been made a respondent on the fraudulent transaction have to be disposed off by the tribunal;



- viii. It is observed that very poor Fair value and liquidation assessed. By this resolution plan there is a proposal for paying financial creditors (unsecured) and Operational Creditor as per liquidation value.
- ix. After examining resolution plan it appears that the provisions are made for payment of dues, CIRP cost etc. The resolution plan has satisfied that the plan does not contravene any provisions of the law. There is no reason to reject the resolution plan. Hence we approve the plan and pass following order:

### **ORDERS**

- i. Application is allowed.
- ii. The Tribunal approves the Resolution Plan without prejudice to the adjudication in the matter of IA 609/2021.
- iii. The order of moratorium dated 12.03.2021 passed by this Adjudicating Authority under Section 14 of IBC, 2016 shall cease to have effect from the date of this order.
- iv. The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors,



guarantors and other stakeholders involved in the Resolution Plan.

- v. The monitoring committee as proposed in the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan.
- vi. The Resolution Professional, Mr. Chetan B Patel, shall be released from the duties of the Resolution Professional of the Corporate Debtor as per the provisions of the IBC, 2016 and rules/regulations made thereunder from the date of this order.
- vii. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

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**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**