



IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201
IA/55(MP)2023

in
TP 126 of 2019 [CP(IB) 240 of 2019]

Proceedings under Section 30(6) of IBC, 2016 r.w. Regulation 39(4) of IBBI Regulations, 2016

IN THE MATTER OF:

Navin Khandelwal, RP of Premshree Devcon Pvt Ltd
V/s
Mukesh Agrawal

.....Applicant

.....Respondent

Order delivered on 06/07/2023

Coram:

Mahendra Khandelwal, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

IA/55(MP)2023

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

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**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

A. Bhadauria

-sd-

**MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)**



**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

**IA No.55 of 2023
In
TP 126 of 2019 [CP(IB) 240 of 2019]**

IA 55 of 2023

[An application under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 for approval of resolution plan]

In the matter of:

Navin Khandelwal
Resolution Professional of
Premshree Devcon Private Limited
206, Navneet Plaza
5/2, Old Palasia
Indore-452018

Applicant

Versus

Mukesh Agrawal
E-13, Lav Kush Avaas Vihar
Sukhliya
Indore-452010

Respondent

In the matter of TP 126 of 2019 [CP(IB) 240 of 2019]:

[An application under Section 9 of the Insolvency & Bankruptcy Code, 2016]

Mukesh Agrawal

Operational Creditor

Versus

Premshree Devcon Private Limited

Corporate Debtor

**Order Reserved on: 16.06.2023
Order Pronounced on: 06.07.2023**

Coram: Mahendra Khandelwal, Member (Judicial)
Kaushlendra Kumar Singh, Member (Technical)

Appearance:

For the Applicant:

Ld. Adv. Mr. Abhinav Malhotra

For the IRP/RP

Mr. Navin Khandelwal

ORDER

1. This application is filed on 14.02.2023 under Section 30(6) of Insolvency & Bankruptcy Code, 2016 by Mr. Navin Khandelwal Resolution



Professional (RP) of the corporate debtor-M/s Premshree Devcon Private Limited for approval of the Resolution Plan submitted by M/s Land Nest Developers.

2. The facts of the case as noted from the present application as well as from the records are as under:

(i) The corporate debtor was admitted in Corporate Insolvency Resolution Process (CIRP) on 26.06.2019. Mr. Navin Khandelwal was appointed as Insolvency Resolution Professional (IRP). The IRP made a public announcement of the CIRP of the corporate debtor thereby calling upon its creditors to submit their claim with requisite proof. The Committee of Creditors (CoC) was constituted with the following financial creditors having voting percentages based on their debt value as follows:

Sr.	Financial Creditor	Voting percentage
(i)	Madhya Pradesh Financial Corporation	29.30 %
(ii)	Authorized Representative of Home Buyers CA Ashutosh Gokhale	70.70%
Total		100%

The CoC resolved to appoint the IRP as the RP and the same was approved by this Adjudicating Authority.

(ii) The RP published Form-G on 22.10.2019 in local newspapers calling upon the prospective resolution applicants to submit the EoI/Resolution Plans for the corporate debtor. In response thereto, no resolution plans were received by the RP. Subsequently, the CoC in its 6th meeting dated 09.12.2019 resolved to liquidate the company with 80.53% therefore the RP filed an application bearing number IA 25 of 2020 before this Adjudicating Authority for liquidation of the corporate debtor.

(iii) During the pendency of the said liquidation application the Hon'ble NCLAT vide its order dated 23.12.2021 in Company Appeal (AT)



(Insolvency) No.1073 of 2021 directed the Adjudicating Authority not to pass any order on liquidation application on 06.01.2022 i.e. the date on which th said liquidation application was listed before this Adjudicating Authority.

(iv) Following that, two prospective resolution applicants namely M/s Land Nest Developers and M/s Malwa Realities Private Limited filed their applications before this Adjudicating Authority with a view to submit their respective resolution plans even at that stage of CIRP.

(v) In view thereof the RP also filed an application i.e. IA 227 of 2022 for withdrawal of the liquidation application. Meanwhile, 300 days had already passed since the initiation of CIRP. However, the learned counsel for the RP had submitted that during the said period various litigations were pending at various stages and it also includes the pandemic period which the Hon'ble Supreme Court had suo moto excluded. In view of the submission of the learned counsel for the RP this Adjudicating Authority vide order dated 18.11.2022 had further granted 90 days to consider those pending plans and to file the required application immediately upon conclusion of the process.

(vi) Following that the CoC considered the Resolution Plans submitted by M/s Land Nest Developers and M/s Malwa Realities Private Limited in the 16th CoC meeting held on 25.01.2023 and decided to put the proposed resolution plans to vote (from 31.01.2023 to 01.02.2023). The resolution plan from M/s Land Nest Developers was approved by the CoC with 100% votes.

(vii) Subsequently the RP filed the present application for approval of the plan under section 30(6) of the Code. Meanwhile, the unsuccessful resolution applicant filed an application IA 70 of 2023 seeking direction to the RP for putting its revised plan before the CoC which was already submitted through email on 26.01.2023 itself. In the context the



Adjudicating Authority vide its order dated 12.05.2023 directed the RP as under:

“5. Though the approach and attitude of the RP is not found above Board, but also the fact that the Applicant herein had sent his revised plan to all the members of CoC along with his e-mail dated 26.01.2023 and during the period of voting the plan was within knowledge of members of CoC may also be not ignored. In the wake, no positive direction can be issued to RP to call the meeting of CoC for the purpose of considering the revised plan of the Applicant herein, but in view of the peculiar facts and circumstances involved in the present application, particularly the fact that the Resolution Plans were received during extended period after 300 days from the date of commencement of CIRP, it would be in the interest of fairness and transparency to direct the RP and members of CoC to amplify and indicate that, whether at the time of voting or during 16th and 17th meeting of CoC, they were consciously clear in their mind not to consider the revised plan submitted by the Applicant herein. For such amplification, the RP would call a meeting of CoC. Needful shall be done within one week from the date of uploading a copy of this order on DMS/e-portal of this Adjudicating Authority. Ordered accordingly.”

(viii) In compliance to the said order dated 12.05.2023, the RP has filed an affidavit stating that the RP convened the 18th CoC meeting on 19.05.2023, wherein the CoC members submitted not to consider any revised plan and therefore the resolution plan of M/s Land Nest Developers as approved by the CoC with 100% votes is placed on record.

3. The averments made by the applicant/ resolution professional in the present application and as argued by the learned counsel are summarized as under:

i. The resolution applicant- M/s Land Nest Developers proposed to infuse a sum of Rs.1103.12 lacs. Thereafter, the said resolution applicant through a separate affidavit dated 16.06.2023 has proposed to pay an additional amount of Rs.1,45,000/- to the operational creditors. Thus the total amount of infusion of funds is Rs.1104.57 lacs. The details of the proposed payment to the stakeholders are as follows:

(Rs. in lacs)



SI No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount admitted %	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	
1.	CIRP cost	The plan provides for payment of unpaid CIRP costs by the resolution applicant on an actual basis in full in priority to the repayment of other debts of the corporate debtor.					
2.	Secured Financial Creditor	(a) Creditors not having a right to vote under sub-section (2) of section 21	319.23	Nil	Nil	Nil	
		(b) Other than (a) above:					
		(i) who did not vote in favour of the resolution plan	-	-	-	-	
		(ii) who voted in favour of the resolution plan [MPFC]	323.19	323.19	323.19	100%	
		Total [(a)+(b)]	642.42	323.19	323.19	50.31%	
3.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	Nil	Nil	Nil	Nil	
		(b) Other than (a) above:					
		(i) who did not vote in favour of the resolution plan	Nil	Nil	Nil	Nil	
		(ii) who voted in favour of the resolution plan [Home buyers]	734.88	779.93	779.93	100%	
		Total [(a)+(b)]	734.88	779.93	779.3	100%	
4.	Operational Creditors	(a) Related Party of Corporate Debtor	Nil	Nil	Nil	Nil	
		(b) Other than (a) above:					
		(i) Government	Nil	Nil	Nil	Nil	



		(ii) Workmen	Nil	Nil	Nil	Nil
		(iii) Employees	Nil	Nil	Nil	Nil
		(iv) Operational Creditor other than workman & Employees	1.45	1.45	1.45	100%
		Total [(a)+(b)]	1.45	1.45	1.45	100%
5.	Other debts and dues		Nil	Nil	Nil	Nil
Grand Total			1378.75	1104.57	1104.57	100%

ii. The RP has examined the resolution plan and the compliances required. For ready reference, the compliances examined by the RP are reproduced hereunder:

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	According to the EOI eligibility criteria the PRAs along with group must have 3 years old fir, RERA registration certificate, Experience of Real Estate, & Positive Networth. Based on the documents submitted by SRA, the SRA complied with the EOI conditions.	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?	Affidavit under 29A	Yes
Section 30 (1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit under 29A	Yes
Section 30 (2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process cost? (b) provides for the payment to the operation creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) provides for the implementation and supervision of the resolution plan?	Clause 3.1/point a read with page 28 point 1 Clause 3.5/point 5 read with page 28 point 2 Page28/point 3 Clause 3.7 read with page 28 point 3 Clause 3.8 read with page 28/point 4 Page 28/point 5	Yes Yes Yes Yes Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	The CoC member in the 16 th CoC meeting held on 25-01-2023 confirmed that the plan feasible and viable & the same has been approved through e-voting.	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Page30/point24	Yes
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Page30/point 19	Yes



Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Page 20/point20	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. (ii)If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation	Clause 3.1/point v	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a)the term of the plan and its implementation schedule? (b)for the management and control of the business of the corporate debtor during its term (c)adequate means for supervising its implementation?	Clause3.1 Clause3.7 Clause3.8	Yes Yes Yes
38(3)	Whether the resolution plan demonstrates that- (a)it addresses the cause of default? (b)it is feasible and viable? (c)it has provisions for its effective implementation? (d)it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Page28/point24	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No such application filed	-
Regulation39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Demand Draft amounting Rs 25 lakhs has been received from Successful RA on 03.02.2023	Yes

4. We heard the learned counsel for the RP and on perusal of records it is noted that the CoC approved the resolution plan of M/s Land Nest Developers by 100% voting and it is not necessary for us to go into details of the commercial aspect of the plan. We proceed to examine the plan in view of sections 30(2) and 31 of the IBC r.w. Regulation 38 of the IBBI (CIRP of the Corporate Debtor Regulation, 2016). The RP has placed on record the compliance certificate in Form H. It shows that the fair value of the assets of the corporate debtor i.e. Premshree Devcon Private Limited is Rs.7,15,94,475/- whereas, the liquidation value is Rs.5,26,12,475/-. The successful resolution applicant has proposed payment of Rs.1104.57 lacs in the resolution plan.

5. In order to obtain the approval of the Adjudicating Authority the resolution plan should adhere to the following requirements as per Section 30(2) of the Code r.w. CIRP Regulation 38:



(i) It should provide for the payment of insolvency resolution process costs in priority to the repayment of other debts of the corporate debtor.

[Section 30(2)(a)]

(ii) The repayment of the debts of operational creditors should not be less than the amount to be paid to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code, or the amount that would have been paid to the said creditors if the amount to be distributed under the resolution plan had been distributed in accordance of section 53(1) of the Code.

Moreover, the payment to the operational creditor is to be made in priority over the financial creditor;

Further the repayment of the debts of dissenting financial creditors should not be less than the amount that would have been paid to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code and the payment to the said dissenting financial creditor is to be made in priority to the consenting financial creditors.

[Section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b)];

(iii) Provides for the management of the affairs of the corporate debtor after approval of the resolution plan.

[Section 30(2)(c) read with CIRP Regulation 38(2)(b)];

(iv) The implementation and supervision of the resolution plan.

[Section 30(2)(d) read with CIRP Regulation 38(2)(c)];

(v) It does not contravene any of the provisions of the law for the time being in force.

[Section 30(2)(e)];

(vi) It conforms to such other requirements as may be specified by the Board.

[Section 30(2)(f)]



Such other requirements of the resolution plan as detailed in IBBI (Resolution Process for Corporate Persons) Regulations, 2016 which are not covered above, are as under:

- (a) The resolution plan should include statement as to how it has dealt with the interests of all stakeholders including financial creditors and operational creditors of the corporate debtor.

[CIRP Regulation 38 (1A)]

- (b) The resolution plan should include a statement giving details as to whether the resolution applicant or any of its related parties has at any time failed to implement or caused to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority.

[CIRP Regulation 38 (1B)]

- (c) The resolution plan should contain the term of the plan and its implementation schedule.

[CIRP Regulation 38(2)(a)]

- (d) The resolution plan should also demonstrate that it addresses the cause of default; is feasible and viable; has provisions for its effective implementation; has provisions for approvals required and timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan.

[CIRP Regulation 38(3)]

6. In view of the above provisions of the Code, the resolution plan submitted before us has been examined as follows:

- (i) As per the minutes of the 17th CoC meeting, the CIRP cost was estimated at Rs.38.43 lakhs. The resolution plan provides for the



payment of unpaid CIRP costs in full in priority to the repayment of other debts of the corporate debtor and the same is stated to be borne by the resolution applicant (over and above the proposed payment to the financial creditors & the operational creditors). Thereby, section 30(2)(a) has been complied with.

(ii) There are no dissenting financial creditors. Further, the plan provides payment to the operational creditors amounting to Rs.1,45,000 which is 100% of their admitted claim.

As such the provisions of section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b) are complied with.

(iii) The mechanism for management and control of the affairs of the corporate debtor after approval of the resolution plan has been provided in the resolution plan itself whereby the Resolution Applicant will look after the business of the corporate debtor after approval of the resolution plan and pending its implementation. We hold that thereby provisions of Section 30(2)(c) read with CIRP Regulation 38(2)(b) are complied with.

(iv) The resolution plan contains a provision wherein, the implementation of the said plan will be supervised by the Monitoring Committee consisting of RP- Mr. Navin Khandelwal, two representative of CoC, one representative of RA & one representative of operational creditor. Thereby, Section 30(2)(d) read with CIRP Regulation 38(2)(c) has been complied with.

(v) The RP has submitted that the plan does not contravene any provisions of law. We also noted that the plan does not contravene any provisions of the law for the time being in force. Thereby, Section 30(2)(e) has been complied with.

(vi) The resolution plan also conforms to other IBBI Regulations as given hereunder:



- a) The resolution plan adequately deals with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor. Thereby, the plan is in compliance with CIRP Regulation 38 (1A).
- b) It is submitted that neither the resolution applicant nor any of its related parties have at any time failed to implement or contributed to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority. Thereby, the plan is in compliance with CIRP Regulation 38 (1B).
- c) The term of the Plan is 30 days and its implementation schedule is as under:

Implementation of Resolution Plan	Proposed Timeline
Payment of insolvency Resolution Cost	Within 09 days from NCLT approval of Resolution Plan
Payment of Financial Creditors and Home Buyers	Within 09 days from NCLT approval of Resolution Plan
Appointment of 2 directors in the Board of company	Within 09 days from NCLT approval of Resolution Plan
Supervisory/Monitoring Committee	To be constituted within 09 days of approval of RP by Hon'ble NCLT
Pending Registries of Defense Colony	To be completed within 30 days of approval of RP by Hon'ble NCLT
Subscription of Share of the Corporate Debtor to the New Shareholders	Within 30 days from the approval of Resolution Plan by NCLT.
Appointment of suitable management professionals to run the operations of corporate debtor	Within 30 days from the approval of Resolution Plan by NCLT.
Dissolution of Monitoring Committee	After 30 days from the approval of Resolution Plan by NCLT.

Thereby CIRP Regulation 38(2)(a) has been complied with.



- d) The resolution plan addresses the cause of default; is feasible and viable; has provisions for its effective implementation; contains provisions for approvals required and the timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan. Thus CIRP Regulation 38(3) has been complied with.

7. The resolution applicant M/s Land Nest Developers is a partnership firm engaged in real estate activities. Sources of funds is stated to be from (a) internal accruals of the consortium; (b) by bringing down its level of assets; and (c) if required, by way of temporary borrowings from banks and other lenders. As per the term of the plan, the proposed payment to stakeholders would be done within 9 days from the approval of the plan by this Adjudicating Authority.

8. It is also noted that the resolution applicant has sought certain reliefs & concessions such as (i) Power connection by respective DISTCOMS where plant and office of the CD are located; (ii) Permission to modify/construct/furnish/expand/extend the construction of the properties under corporate debtor; (iii) Sale of part of the properties in case resorted to by the RA for raising funds subsequently; (iv) Bank Guarantee, if any; (v) Electricity dues waiver; (vi) water supply requirement; (vii) Pollution Control Consent; (viii) Ability to utilize Cenvat credit, Service Tax credit, etc. in the books of the company; (ix) Issuance/Renewal of all kinds of License/Permissions/approval required for the operation of the Business/Factory Operations; (x) Grace period to comply with various future statutory/regulatory environments; (xi) Extinguishing of existing Onerous contracts by the corporate debtor; (xii) Termination of all existing Negotiable Instruments; (xiii) Revocation of Power of Attorney's; (xiv) Waiver/ Exemption form requirement of No Objection Certificate under section 281 of the Income Tax Act. 1961; (xv) Waiver of Valuation of Pricing of Shares by Registered Valuer; (xvi) Liabilities that may occur under various Corporate Laws and Acts, Rules, and Regulations; (xvii) Liabilities accrued/may accrue under



various Acts and Laws; (xviii) Liability which may accrue to provisions of MAT and other sections of Income Tax Act, 1961; (xix) Claims by Government Authorities; (xx) extinguishment/revocation of workman contract; (xxi) Liability of earlier promoters/recourse against the person or corporate guarantees/Right to subrogation; (xxii) VAT/Income Tax/Customs Duty.

However, the approval of the resolution plan is not conditional to the grant of reliefs & concessions sought by the resolution applicant.

9. As far as reliefs and concessions claimed by the resolution applicant with respect to the unpaid liabilities after approval of the plan and the claims not filed at all with the RP during the CIRP, 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:

86. *“.....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.*

87. *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 I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief.....”*

10. It is noted that the plan has proposed 100% payment to the financial creditors and the operational creditors and as such there remains no such unpaid liabilities and claims liable to be extinguished on approval of the plan. However, as far as other reliefs and concessions as sought by the resolution applicant, we direct the said successful resolution applicant to approach the



concerned statutory authority for those concessions and those authorities will consider the same as per their established procedure.

11. The proviso to section 31 of the Code, 2016, states that before passing any order for approval of the resolution plan, the Adjudicating Authority should also satisfy that the resolution plan has provisions for its effective implementation.

12. We being satisfied, approve the resolution plan submitted by M/s Land Nest Developers for Corporate Debtor i.e., M/s Premshree Devcon Private Limited and in addition to the above directions, proceed to pass the following order:

- (i) Application is allowed.
- (ii) The resolution plan of M/s Land Nest Developers for Corporate Debtor i.e., M/s Premshree Devcon Private Limited stands allowed as per Section 30(6) of the IBC, 2016.
- (iii) The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- (iv) The order of moratorium dated 26.06.2019 passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this order.
- (v) The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).
- (vi) 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.
- (vii) Accordingly, IA 55 of 2023 in TP 126 of 2019 [CP(IB) 240 of 2019] is allowed and stands disposed of in terms of the above directions.



- (viii) 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-
Mahendra Khandelwal
Member (Judicial)

Swati Khandelwal