

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

IA. No. 2712/2021

In

CP(IB)No. 4106/MB/C-II/2018

**Application filed under section 30(6), r/w
Regulation 39(4) of the IBBI (Insolvency
Resolution Process for Corporate Persons)
Regulations, 2016.**

Filed by

Mr. Anuj Bajpal,

Resolution Professional

...Applicant

In the matter of

Bank of Baroda

...Financial Creditor

Versus

Topworth Tollways (Ujjain) Private Limited

...Corporate Debtor

Order Pronounced on :- 09.02.2023

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances (through video conferencing)

For the Resolution Professional : Sr. Counsel, Mr. Vikram Nankani

ORDER

Per: Shyam Babu Gautam, Member Technical

1. The present Interlocutory application is filed by **Mr. Anuj Bajpal** the Applicant, Resolution Professional of **Topworth Tollways (Ujjain) Private Limited**, the Corporate Debtor by submitting a resolution plan under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking approval of the Resolution Plan submitted by Consortium of Arpit Dubey, Tahir Khan and Neeraj Singh. The Plan was duly approved by the requisite majority of the Committee of Creditors (CoC).
2. The Applicant submits that the Financial Creditor, Bank of Baroda initiated the Corporate Insolvency Resolution process (CIRP) against the Corporate Debtor under Section 7 of the Code on 09.10.2020 and appointed the Applicant herein as the Interim Resolution Professional (IRP) of the Corporate Debtor. The Public announcement regarding the initiation of CIRP was made on 13.10.2020.
3. The first CoC meeting was held on 03.02.2021. The second CoC meeting was held on 11.11.2020 wherein CoC members with 100% votes agreed for continuing the existing IRP as Resolution Professional (RP).

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4. Pursuant to the provisions of Section 21 of the Code, CoC was constituted on 03.11.2020.
5. Further, as per provisions of Section 25(2)(h) of the Code, Expression of Interest (EoI) was called from Potential Resolution Applicants for the purpose of submission of the resolution plan. The advertisement for inviting EoI was published on 03.02.2021 wherein the last date for submission of EoI was 18.02.2021 and last day for submission of Resolution Plan was 23.03.2021. After releasing EoI, the Applicants received EoI from 10 participants.
6. All ten Prospective Resolution Applicants (PRA'S) were found eligible. Also, Rs. 20 Lakhs were received from each of the said applicants as a refundable participation fees as per the terms of the EoI. Till last date only one Resolution Plan from consortium of Mr. Arpit Dubey, Mr. Tahir Khan and Mr. Neeraj Singh, had been received but the same was without the required Bank Guarantee of Rs. 5 crores and hence was considered as unresponsive and the same was communicated to the Resolution Applicant. Later the Applicant had received request from 8 to 10 PRA's for extension of time for submission of the Resolution Plan and the time was extended till 20.05.2021 and further till 10.06.2021.
7. In the 9th CoC meeting held on 15.06.2021, the Applicant had received Resolution Plan from three PRA's and was shared with the COC members for their perusal. The members of the CoC had a discussion with the representatives of the respective PRA's and accordingly requested the PRA's to submit the revised Resolution Plan. The CoC

requested the Resolution Applicants to provide their final Resolution Plan with a distribution pattern against each stakeholder.

8. In the 17th CoC meeting held on 21.09.2021, the Applicant placed before the COC a revised Resolution Plans from (a.) Mr. Arpit Dubey, Mr. Tahir Khan & Mr. Neeraj Singh (Consortium of Individuals) (b.) Shanti GD Ispat & Power Pvt. Ltd. and (c.) R K Chavan Infrastructure Pvt. Ltd. after due deliberation the RA's were requested to incorporate necessary clarifications and amendments.
9. In the 19th CoC meeting held on 12.10.2021, the Applicant submitted final copy of the Resolution Plan received from the respective RA's and also shared certificate of RP certifying that all three plans conforms the provisions of IBC. The members of the CoC evaluated the Plans received as per the evaluation matrix and subsequently, the Resolution Plan received from Mr. Arpit Dubey, Mr. Tahir Khan & Mr. Neeraj Singh (Consortium of Individuals) stood approved by the members of the CoC.

SALIENT FEATURES OF THE APPROVED RESOLUTION PLAN

A. The payment as proposed under the Plan is as under :-

1. The Corporate Insolvency Resolution Process (CIRP) cost from 09.10.2020 till 31.10.2022 is Rs. 16,09,74,999/-. The CIRP costs on actual basis shall be paid by the Net Current Assets/Liquid Assets available with the Corporate Debtor until 30.09.2021.

From 01.10.2021 (cut off date) all such costs shall be borne by the Resolution Applicant.

2. Proposed Payments to Workers & Employees'

The RA proposes the following payment to the Workers & Employees –

(Rs. In Lacs)

Sr. No.	Particulars	Claim Admitted (Rs.)	Proposed Settlement (%)	Settlement Amount (Rs. In Lacs)
1	Ankita Jain	0.38	100%	0.38
2	Ankush Bora	1.08	100%	1.08
3	Ronak Patni	0.87	100%	0.87
	Total	2.33		2.33

The RA proposes 0% waiver in payment to the claims admitted of the workers & employees.

The payments to the worker and employees will be discharged within 30 days if the receipt of a certified copy of the order from the Adjudicating Authority approving the Resolution Plan.

The RA shall continue to employ the worker and employees under their management after the receipt of a certified copy of the order of the Adjudicating Authority approving the Resolution Plan under the employment terms of the said employees.

3. Proposed Payments to Operational Creditors

The RA proposes the following payment to the Operational

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Creditors –

(Rs. In Lacs)

Sr. No.	Particulars	Category	Claim Admitted	Proposed Settlement (%)
1	Next Vision Infra Solution LLP	Operational Creditor	8.00	5%
2	SBICAP Trustee Company Limited	Operational Creditor	8.00	5%
3	Rajmal Gorecha & Sons	Operational Creditor	166.00	5%
4	M P Road Development Corporation Ltd	Operational Creditor	1,127.00	5%
5	Topworth Infra Pvt Ltd	Related Party Operational Creditor	4,726.00	0%
	Total		6,035.00	

As per the Information Memorandum, the RP has received claims from Operational Creditors and admitted their claims as summarised in the table above. The RA proposed a uniform payment of 5% of the admitted claims for all the operational creditors except for related party claim by Topworth Infra Private Limited.

In other words, RA proposed a waiver of 95% on the admitted claims of the operational creditors.

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RA proposes 100% waiver of claim admitted from Topworth
Infra Private Limited

The proposed timeline for payment to operational creditors is
given hereunder –

Sr. No.	Particulars	Settlement Amount (Rs. In Lacs)	T+30 Days*
1	Next Vision Infra Solution LLP	0.40	0.40
2	SBICAP Trustee Company Limited	0.40	0.40
3	Rajmal Gorecha & Sons	8.30	8.30
4	M P Road Development Corporation Ltd	56.35	56.35
5	Topworth Infra Pvt Ltd	0.00	0.00
	Total	65.45	65.45

“T” stands for the Date of Receipt of the certified copy of the order from the Adjudicating Authority approving the Resolution Plan.

*in priority to Financial Creditors

The RA proposes a payment of Rs. 65.45 Lacs within 30 days of the receipt of the certified copy of the order from the Adjudicating Authority approving the Resolution Plan.

4. Proposed Payment to Financial Creditors

As per Information Memorandum secured Financial Creditors of the Corporate Debtor are State Bank of India and Bank of Baroda (Formerly Dena Bank). The Resolution Plan lists in detail the amount proposed for them.

The RA proposes the following payments to the financial creditors –

Sr. No.	Particulars	Claim Admitted	Proposed Settlement (%)	Settlement Amount (Rs. In Lacs)
1	Bank of Baroda (37.82%)	7,790.00	21%	1,604.79
2	State Bank of India (62.18%)	12,809.00	21%	2,638.43
	Total	20,599.00		4,243.22

The RA proposes a payment of 21% of the admitted claims of Financial Creditors by the RP as per the information memorandum.

In other words, the RA proposes a waiver of 79% on the admitted claims of these financial creditors. The payment to such financial creditors shall be made within a period of 90 (ninety) from the Effective Date.

On completion of the payment to the financial creditors, the Ra proposes discharge of all charges of the Financial Creditors on the assets, guarantees and receivables of the Corporate Debtor. The financial creditors on payment of the amount will thereby accept the payment as settlement of all their present and future

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claims from the Corporate Debtor.

The Proposed timeline for payment to Financial Creditors is as under:-

(Rs. In Lacs)

Sr. No.	Particulars	Settlement Amount (Rs. In Lacs)	T+30 Days*	T+90 Days
1.	Bank of Baroda (37.82%)	1,604.79	756.40	848.39
2.	State Bank of India (62.18%)	2,638.43	1,243.60	1,394.83
	Total	4,243.22	2,000.00	2,243.22

- “T” stands for the effective date
- “Effective date” means the date of receipt of a certified copy of the order of the Adjudicating Authority approving the Resolution Plan (unless the operation of the order has been stayed by a court of competent authority, in which event the Effective Date shall be the date on which any such stay has been vacated by a court of competent authority).

5. The Resolution Applicant in compliance with the RFRP (Request for Resolution Plan) Regulation 39 (4) of CIRP regulations, 2016 and the letter of intent dated 01.11.2021, the successful resolution applicant has provided Bank Guarantee amounting to Rs. 15 Crores towards his performance guarantee as acknowledged by SBI.

6. The Resolution Applicant will pay an Upfront payment of Rs. 20,00,00,000/- to be paid to the Financial Creditors, after making all priority payments including Insolvency Resolution Process

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Cost as required under the Code.

7. The Resolution Applicant have constituted a partnership firm i.e. “M/s. Ujjian Jaora Tollways” which will serve as Special Purpose Vehicle for completing the legal formalities for acquisition of the Corporate Debtor.
8. The Resolution Plan submitted by the Resolution Applicant is in compliance with the provisions of the Code, the CIRP Regulations and does not contravene any of the provisions of law. The Resolution Plan consists of a financial outlay of Rs. 43.11 Crores.
9. The Resolution Applicant proposes to source the funds with a finance mix of equity investment, debt and investments from committed investors.

Means of Finance	Amount (Rs. In Lacs)
Infusion by RA- By way of Equity	1000.00
Infusion by RA – By way of Unsecured Loan with an option of conversion into equity	300.00
Internal Accruals (from toll collection after effective date and to be allocated towards	309.53

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capital expenditure on the road)	
Borrowings from Banks/Financial Institutions	3,500.00
TOTAL	5,109.53

10. Any recoveries from the avoidance transactions under the Code, shall be distributed to the Financial Creditors in ratio of their claims admitted by the Resolution Professional. The entire cost of litigation and related expenses for pursuing such recoveries shall be funded by the Financial Creditors in ratio of their admitted claims. The Resolution Applicant shall suitably assist the Resolution Professional and the legal team representing the Resolution Professional and the Financial Creditors, in the avoidance Application matters.

11. The Applicant further submits that the Resolution Plan submitted is in compliance **with Section 30 (2) of the Code and Regulation 38 (A) of the CIRP Regulations**. The RP has provided a compliance certificate in “**FORM H**” as mandated under the Code for seeking approval of the Resolution Plan from this Hon’ble Bench.

OBSERVATIONS OF THE ADJUDICATING AUTHORITY

12. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.
13. As referred to the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law for the time being in force appears to have been contravened.
14. Further, it is observed that Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such plan,
 - a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;
 - b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than,
 - i. the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
 - ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been

distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation - For the purpose of this section –

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and
 - (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).
- c) Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- a) The implementation and supervision of the resolution plan;
 - b) Does not contravene any of the provisions of the law for the time being in force;

- c) Confirms to such other requirements as may be specified by the Board.

15. Section 30 (4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.

16. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.

17. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.

- a) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
- b) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified u/s 30(2)(c) of the Code.
- c) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

18. The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through two registered valuers. The aggregate of the average of Fair Value of all the assets is Rs. 48,71,09,837/- and that of the Liquidation Value of all the assets is Rs. 39,44,28,123/-.

19. One of the justifications for approval of this resolution plan is that the amount proposed under the plan is higher than liquidation value of the Corporate Debtor.

20. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.

21. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of The Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.

22. The Resolution Plan has been approved by the CoC in the with 100% votes in terms of Section 30(4) of the Code.
23. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is 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.
24. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

*“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

25. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. We are thus inclined to dispose of the Application in the following terms. Hence Ordered.

ORDER

(i) **The Application IA No. 2712 of 2021 in CP 4106 of 2018 be and the same is allowed.** The Resolution Plan submitted by Consortium of Arpit Dubey, Tahir Khan and Neeraj Singh is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due,

guarantors and other stakeholders involved in the Resolution Plan.

- (ii) 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.
- (iii) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- (iv) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (v) Further from the effective date and until the transfer date, a 3-member Monitoring Committee to be constituted. The Committee shall consist of one member nominated by each Financial Creditor, one member from the Resolution Applicant and the Resolution Professional.
- (vi) The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.

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- (vii) The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

**SHYAM BABU GAUTAM
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE P.N. DESHMUKH
MEMBER (JUDICIAL)**