

**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD**

IA No.78 of 2021
In
CP (IB) No. 461/7/HDB/2019

*Application under Section 30 (6) and 31 of IBC, 2016 R/w Regulations
39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons)*

IN THE MATTER OF:

STATE BANK OF INDIA (SBI)

Muscat, Post Box No.268
Ruwi, PC:112
Sultanate of Oman

Regd.Office:
State Bank Bhavan
Madame Cama Road
Mumbai- Maharashtra

...Financial Creditor

VERSUS

GKC PROJECTS LIMITED

Sy. No. 9 (P), CII Green Building Lane
Hitech City, Kondapur
Hyderabad -TG 500 084

...Corporate Debtor

Application filed by:

Mr. Madhusudhan Rao Gonugunta
(IBBI Registration No.
IBBI/IPA-001/IP-P00181/2017-2018/10360)
GKC PROJECTS LIMITED

...Applicant/Resolution Professional

Date of order: 30.03.2021

Coram:

Hon'ble Shri Bhaskar Pantula Mohan, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Appearance:

For Applicant: Shri P Ravi Charan along with Ms. Niharika Agarwal,
Advocates.

Heard on: 24.02.2021



**PER: SHRI BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)**

1. This is an Application under 30 (6) of the Insolvency & Bankruptcy Code, 2016 (the Code) by the Resolution professional seeking approval of the Resolution Plan submitted by Resolution Applicant i.e. **SMC Infrastructures Private Limited.**
2. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order on 21.11.2019 and the Applicant was appointed as Interim Resolution Professional (IRP). The Committee of Creditors (CoC) comprising the following Financial Creditors, in its 1st meeting had confirmed the Applicant as Resolution Professional (RP). The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

S. No	Name of Financial Creditor	Voting share (%)	Result of voting
1.	State Bank of India (SBI)	43.19	Voted for
2.	IDBI Bank	18.83	Voted for
3.	ICICI Bank	13.05	Voted for
4.	Bank of Baroda Bank	11.35	Voted for
5.	Kotak Mahindra Bank	4.80	Voted for
6.	Standard Chartered Bank	6.44	Voted for
7.	YES Bank	0.96	Voted against
8.	Canara Bank	0.35	Voted for
9.	SBI, Muscat Branch	0.49	Voted for
10.	Syndicate Bank	0.27	Voted for
11.	IIFCL	0.27	abstained
	Total	100%	

- 2.2 During the period of CIRP two Resolution Plans were received, one from **Fortuna Engi. Tech and Structural (India) Private Limited** and another from **SMC Infrastructures Private Limited**. The CoC after several rounds of negotiations with the Resolution Applicants evaluated both the Resolution Plans as per the Evaluation Matrix. It accepted the Resolution Plan submitted by **SMC Infrastructures Private Limited** of the successful Resolution Applicant in terms of Section 29 (A) of the Code and the CoC in its 14th Meeting held on 28.10.2020 considered the Resolution Plan of M/s **SMC Infrastructures** and approved the plan with the voting share of 98.77%.

3. **The contour of the Resolution Plan:**

- A. The Resolution Applicant i.e. SMC Infrastructures Private Limited is an unlisted Private Limited Company incorporated under the Companies Act 1956 and having its registered office in Mumbai. The Company is an ISO 9001-2000 certified infrastructure Company promoted by Mr. Arun Ramchandra Sheth, Mr. Anirudha Arun Sheth, Mr. Suhas Narayan Mehta and Mr. Prashant Madhusudhan Mahagaokar are promoters of the said Company.

B. Financial Terms:

The Resolution Applicant proposes resolution amount of Rs. 429.82 Crores plus unpaid CIRP costs towards Resolution of the Corporate Debtor as per the following details:

S. No.	Particulars	Amount Claimed	Amount admitted as on 28.10.2020	Proposed Resolution Amount	Tenor (in year) from NCLT Approval Date
1.	CIRP Costs (to the extent unpaid)	2.28	2.28	2.28	Upfront Payment
2.	Secured Financial Creditors	1926.72	1636.46	428.34	Partly Upfront and partly within 48 months by way of redemptions of NCDs

					and return of Bank Guarantees
3.	Unsecured Financial Creditors	221.29	35.19	0.35	Upfront Payment
4.	Unsecured Financial Creditors (related parties)	10.35	10.35	—	NA
5.	Operational Creditor other than Workmen & Employee dues and Statutory dues	122.57	93.47	0.93	Upfront Payment
6.	Workmen & Employee dues including Authorized Representative	5.00	4.52	0.06	Upfront Payment
7.	Statutory Dues	14.45	14.45	014	Upfront Payment
8.	Others	206.71	---	---	NA
	Total	2507.09	1794.44	429.82	

1. **Payment to Secured Financial Creditor:**

- The Resolution Plan provides for payment of INR 428.34 Crores to Secured Financial Creditors by way of upfront payment of INR 20 Crores and issue of non- convertible debentures of INR 62 crores to Secured Financial Creditors within 90 days from NCLT Approval Date, and further BGs aggregating to INR 346.34 Crores being protected from invocation thereof by the respective beneficiaries of these bank Guarantees and to be returned within 48 months from the NCLT Approval Date.
- Dissenting Financial Creditors shall be paid the Liquidation Value due to them before any payment to the Financial Creditors who vote in favour of the Resolution Plan.
- The pay out to the Secured Financial Creditors is subject to reduction on account of the amount payable to dissenting Financial Creditors.

2. **CIRP Cost:**

- As per the information provided by the Resolution Professional, the CIRP cost is estimated at INR 2.28 Crores.
- Actual unpaid CIRP cost would be paid in full in priority over payment to any Creditor.
- However, the Resolution Professional shall pay in full, at actuals, the total unpaid CIRP costs out of the Upfront Capital Infusion. It is further agreed by the RA that it shall pay all outstanding payments from Insolvency Commencement Date of the Corporate Debtor to NCLT Approval Date.

3. **Payment to Unsecured Financial Creditors:** The Resolution Applicant proposes to pay 1% of admitted claims of unsecured financial creditors i.e. INR 0.35 Crores as full and final settlement of all their claims out of Upfront Capital Infusion proposed under the Resolution Plan.

4. **Payment to Unsecured Financial Creditors (being related parties to Corporate Debtor):** No payment is proposed by Resolution Applicant to unsecured Financial Creditors being related parties to Corporate Debtor.

5. **Payment to Operational Creditors other than Workmen & Employees, statutory dues and others:** The Resolution Applicant proposes to pay 1% of the admitted claims as full and final settlement of the claims of Operational Creditors (other than workmen, employees, statutory dues and other) from the Upfront Capital Infusion proposed under this Resolution Plan.

6. **Workmen and Employees:**

- The Resolution Applicant proposes to pay INR 0.06 Crores towards full and final settlement of admitted claims of Workmen and Employees.
- Basis the information received, the dues for Workmen (in accordance with the provisions of Section 53 of the Code) is INR 0.5, which shall be paid from the Upfront Capital Infusion proposed under this Resolution Plan and balance shall be paid to the Employees.

7. **Statutory Dues:** The Resolution Applicant proposes to 1% of the admitted claims as full and final settlement of the statutory dues/ liabilities of the Corporate Debtor from the Upfront Capital Infusion proposed under this Resolution Plan.
8. **Other:**
- The claim filed under the 'others' category aggregating to INR 206.71 crores pertains to the claims filed by Financial Creditors on account of equity shares and redeemable cumulative optionally convertible preference shares held by such Financial Creditors in the Company Debtor.
 - The Resolution Applicant proposes cancellation and extinguishment of the outstanding equity shares and redeemable cumulative optionally convertible preference shares of the Corporate Debtor with effect from the date of Upfront Capital Infusion or 90 days from the NCLT Approval Date, whichever is earlier.
9. **Unidentified Potential Liabilities:**
- The Resolution Professional may have received claims for certain liabilities of the Corporate Debtor as of the Insolvency Commencement Date whether arising on account of any contractual obligation or otherwise and which are also not identified as liabilities/ contingent in financial statements provided in Information Memorandum. Such liabilities are unidentified Potential Liabilities.
 - The Resolution Plan does not provide for payment towards/ on account of any "Unidentified Potential Liabilities" and no claims shall ever lie against the Resolution Applicant or the Corporate Debtor pertaining to the period prior to Insolvency Commencement date at any time in future.
- D. **Supervision and implementation of the Resolution Plan**
- The Resolution Plan provides to appoint a Monitoring Committee comprising of the Resolution Professional, a representative of the Resolution Applicant and a representative of the CoC to be constituted within 10 days from the date of

approval of the Resolution Plan by the Tribunal till the implementation of the Resolution plan

E. Management of Corporate Debtor

Post approval of the Resolution Plan, the existing board shall be replaced by a new Board of Directors consisting of members of SMC and independent Directors.

F. Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:-

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (herein after referred to as Regulation) and has submitted his Form H under Regulation 39 (4). It is submitted that the Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the Resolution Applicant is not ineligible under Section 29A of the Code.

G. Performance Security:

The Resolution Applicant has furnished a Bank Guarantee bearing No. 2007831BGP00245 dated 16.12.2020 from IDBI Bank for an amount of Rs. 15,00,00,000/- (Fifteen Crores) valid up to 15.12.2024. The same is annexed and marked as Annexure-A5.

4. We heard the Counsel for Resolution Professional/ Applicant herein. The Applicant submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code in the following manner:

A. Plan provides for the priority payment of CIRP costs in full from the fund to be infused by the Resolution Applicant.

B. To pay the amount due to Operational Creditors of the Corporate Debtor in the manner indicated supra.

5. The Applicant/Resolution Professional has submitted that, the Resolution Applicant has sought certain reliefs and concessions in the Resolution Plan as are mentioned in Para 17 of the application. We are however, not inclined to grant such concessions or waivers. The Resolution Applicant needs to approach the authorities concerned for permits, if required, and the same will be considered by the authorities concerned in accordance with law. However, the Authorities are directed to consider the applications of the Successful Resolution Applicant taking into consideration the special circumstances under which the resolution of the Corporate Debtor happened.
- 6 The Resolution Applicant proposes to replace the existing suspended Board by a new Board of Directors to be constituted with adequate representation from the members of SMC and independent Directors in terms of Section 30 (2) (d). The Plan also provides for the implementation and supervision of the Resolution Plan. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of Regulation 38 of the Regulations.
- a) The payment due to operational creditors will be made in priority over Financial Creditors (Regulation 38 (1) (a))
 - b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A).
 - c) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38(1B).
7. For better appreciation we refer to para 67 of the Judgement of Hon'ble Supreme Court in the matter of **Committee of Creditors**

of Essar Steel India Limited vs. Satish Kumar Gupta & Ors (MANU/SC/1577/2019), which is as under:-

“ . 67: A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by the successful resolution applicant.

8. In view of the above ruling of Hon'ble Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. The Resolution Plan has been approved by the CoC in its meeting held on 28.10.2020 with 98.77% votes.
9. In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018) 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. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less.
10. Further, the Hon'ble Court has further held at para 35 of the said judgement that ***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.***
11. As held by Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors*** ***“the limited judicial review available to AA has to be***

within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved as held in para 42 of the said judgement.

12. In the light of above and settled position of law, 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. The same deserves favourable consideration and accordingly IA No. 78/2021 is allowed with the following directions.

ORDER

- 12.1 The Resolution Plan submitted by **SMC Infrastructures Private Limited** annexed to the Application 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.

- 12.2 The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. As regards to the reliefs sought under para 5 (a) to (d) ^{17 (Seventeen) of the application.} is concerned, the Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful.



- 12.3 The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad 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.
- 12.4 Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in para 3 (B) supra.
- 12.5 The moratorium under Section 14 of the Code shall cease to have effect from this date.
- 12.6 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.
- 12.7 The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- 12.8 The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.

(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)

(BHASKARA PANTULA MOHAN)
MEMBER (JUDICIAL)

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