

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.302

IA(Plan)/5(AHM)2024
in CP(IB)/268(AHM)2022
&

ITEM No.303

IA/523(AHM)2024 in IA(Plan)/5(AHM)2024
in CP(IB)/268(AHM)2022

Order under Section 30(6) r.w 31 of IBC 2016.w.Reg 39(4)

IN THE MATTER OF:

Sumit R Mehta Resolution Professional of Asya Infosoft
Limited

.....Applicant

Order delivered on: 11/07/2024

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 order.

The order is pronounced in 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(Plan) No.05 of 2024

IN

CP(IB) No. 268 of 2024

(Filed under Section 30(6) r.w Section 31 of IBC, 2016 and read along with the Regulations 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Process of Corporate Persons) Regulations, 2016)

IN THE MATTER OF:

Mr. Sumit R Mehta

RP of Asya Infosoft Limited

Having address at

712, Addor Aspire,

Nr. Jahnvi Restaurant,

Panjrapole, Ahmedabad-380015

... Applicant

AND

IA No.523 of 2024

IN

IA(Plan) No.05 of 2024

IN

CP(IB) No. 268 of 2024

(Filed under Section 60(5) of the IBC, 2016)

IN THE MATTER OF:

Fiat Accord Fabric Pvt. Ltd.

Having its registered office at

Plot No. 517, GIDC Odhav,

Nr. Adinathnagar,

Ahmedabad-382415

... Applicant

V/s

Sumit Rajnikant Mehta

RP of Asya Infosoft Limited

Having address at

712, Addor Aspire,

Nr. Jahnvi Restaurant,

Panjrappole, Ahmedabad-380015

... Respondent

Order pronounced on 11.07.2024

Coram:

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

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

Present:

For the State Tax : Mr. Navin Pahwa, Sr. Adv. a.w Mr. Sumit
Parikh, Adv.

For the Respondent : Mr. Jaimin Dave, Adv.

JUDGEMENT

1. This is an application filed for approval of the resolution plan alongwith scheme of amalgamation u/s 30(6) r.w. 31 of the IBC, 2016 readwith Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Process of Corporate Persons) Regulations, 2016.
2. Brief facts of the case are as under:
 - 2.1 Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) was initiated u/s 7 of IBC, 2016 on 17.05.2023 against the Corporate Debtor (hereinafter referred to as CD) M/s. Asya Infosoft Limited at the instance of Financial Creditor M/s Fiat Accord Fabric Pvt. Ltd. Mr. Sumit Rajnikant Mehta, was appointed as IRP. He has started procedure of CIRP by making public announcement, convening meetings of CoC etc. The last date for receipt of resolution plan was 5.1.2024. In the 6th meeting of COC the RP placed one resolution plan received from prospective resolution applicant (4). All the resolution plans were examined with a request to enhance the financial bid.

2.2 In 7th meeting of CoC held on 23.01.2024, two resolution plans were considered of Axis Solutions Pvt Ltd and Manoj Jagdish Prasad Choudhry. Two resolution plans found feasible and viable was put for e-voting. Resolution plan alongwith scheme of amalgamation submitted by Ms. Asya Infosoft Ltd. dated 22.01.2024 was approved by the CoC members with 68.48% voting results.

2.3 Key features of the resolution plan are summarized as under:

Category of the creditor	Claims admitted (Rs.)	Resolution amount Rs. (upfront)	Equity allotment	(%)	Total Settlement amount (Rs.)
CRIP Cost	15,00,000	15,00,000	-	100%	15,00,000
Secured Financial Creditor	11,31,27,306	3,55,00,000	10,00,000	32.26	3,65,00,000
Unsecured Financial Creditor	5,59,80,000	2,79,900	-	0.5%	2,79,900
Employees	92,367	23,092	-	25%	23,092

Operational Creditor (including government dues and regulatory dues)	69,10,113	69,101	-	2%	69,101
Total	17,76,09,786	3,73,72,093	10,00,000		3,83,72,093

2.4 As per the resolution plan approved, the salary and wages of employees was Rs 92,397 of which the dues were settled only to the extent of Rs 23,092 which will be paid upfront within 30 days and an amount of Rs 69,101 was paid to operational creditors against a claim of Rs 69,10,113. The secured financial creditors were paid 32.26% of the total resolution plan amount approved. The resolution plan also proposes to allot 1 lakh shares at Rs 10 on preferential basis to the secured financial creditor without any consideration. It also confirms that the dissenting financial creditor/s if any will be paid in priority over the assenting financial creditors the liquidation value in terms of (Sec 53 of

the IBC). In the 5th COC meeting Stephanotis finance Limited (Formerly Vora Construction) had submitted a claim of Rs 4,35,25,260 (which had a corporate guarantee of the CD (Asya Infosoft Limited). It is also mentioned in the agenda NO.7 that there were 3 resolution plans received which include of Axis Solution P Ltd.

2.5 In the 6th COC meeting dated 9 January 2024, Shivom Investment & Consultancy Ltd was present (debt assigned by Stephanotis Finance Limited) but the other financial creditors (unsecured) Fiat Accord Fabric P Ltd and AP Tripathi HUF were not present including the suspended management. Further it is stated in Agenda No.5 that on 1 January 2024, Styephanotis Finance Ltd have submitted revised claim of Rs 11,31,27,306, and the applicant based on books of account and proof of documents submitted, accepted the claim. Further based on an email from Stephanotis Finance Ltd, the RP noted that an assignment agreement between Shivom Investment & Consultancy Ltd for assignment of entire secured debt

receivable from Asya Infosoft Ltd was to the extent of their share in COC. Thereby the reconstitution of committee of creditors was taken placed. The CD had issued a corporate guarantee to M/s Stephanotis Finance limited which on assignment was transferred to Shivom Investment Pvt Ltd. By way of creating a security interest by corporate guarantee, the corporate debtor has ceded the claimant a security as secured creditor under Sec3(31) of IBC. However, this meeting did not have representation of other creditors. Also, the Financial Creditor applicant who has moved the Sec 7 application and the other financial creditors could have voted for or against the resolution plan which was not done, thereby the Resolution Plan approval cannot be stalled at this stage after approval by the COC.

2.6 Further, the resolution plan offers a higher value than the liquidation and fair value. Resolution plan provides for the payment of debts to such Financial Creditors, who do not vote in favour of this Resolution Plan, which shall not be less than the amount of liquidation value due to them in terms of Section 53(1) of the IBC.

The provisions are made for payment of CIRP cost, secured, unsecured and Operational Creditor as well as to the employees. Funds infusion and schedule of payment is also given.

2.7 As per Form-H, the Liquidation Value of the CD is arrived at Rs. 14,49,903.95/- and the corresponding Fair Value is arrived at Rs.16,09,903.95/-. SRA has proposed to pay Rs.368.73/- Lakhs against the total admitted claim of Rs.1761.08/- Lakhs. Resolution plan is not subject to any contingency. Details of pending avoidance application is also given. The resolution applicant has also filed an affidavit as per order dated 29.04.2024.

2.8 The plan includes mandatory contents. Compliance check list as per Section 30(2) of IBC, 2016 & Regulation 38(3A) of the CIRP Regulation is also provided. The resolution plan along with the scheme of amalgamation is in-accordance with the mandatory provision of IBC, 2016 and IBBI Regulations. The resolution plan contains basic stipulation with regard to the payment to the statutory authority as well as

employees. It is approved by requisite majority of CoC by 68.48% votes and performance security has been deposited by the Resolution Applicant.

2.9 The provisions are made for payment of CIRP cost, secured, unsecured and Operational Creditor as well as to the employees. Funds infusion and schedule of payment is also given. It is mentioned in the RFRP that within 7 days of date of approval of the resolution plan by the CoC, SRA should provide a sum equivalent to 10% of the total financial outlay as provided in the resolution plan, other performance guarantee or transfer by way of RTGS. Resolution Applicant have in total deposited 42 lakhs.

2.10 The scheme also proposes an amalgamation with the entity owned by the resolution applicant which is enclosed as part of resolution plan i.e., merger of Axis Solutions Pvt. Ltd. into CD M/s Asya Infosoft Limited. Board Directors of M/s. Axis Solutions Pvt. Ltd. in their meeting have approved the merger with the CD. Scheme of arrangement ensures the continuity of the CD which preserves going concern valuation of the CD

and generate adequate cash flow as compared to the assets under liquidation. Some other benefits are to facilitate revival of CD and larger expansion etc. Reduction of equity share capital is also proposed in the plan. Resolution Applicant also furnished performance security amounting to Rs.15,50,000/- It is stated that if the resolution plan is rejected, the CD would go into the liquidation which would seriously prejudice the interest of all the stake-holders and hence, prayed for approval of resolution plan.

3. One of the unsecured creditor namely Fiat Accord Fabric Pvt Ltd (who had initiated the application for CIRP under Section 7 of the IBC 2016), has filed an application bearing IA No.523 of 2024 objecting to the resolution plan approved by the CoC. The applicant stated that it has financial claim against the corporate debtor which was considered. However, he has stated that in 5th CoC meeting dated 22.02.2023, Resolution Professional appraised CoC that he has received a late claim of Stephanotis Finance Ltd. amounting to Rs.4,35,25,260/- to be considered. Further, Resolution Professional has admitted the claim of Shivam

Investments & Consultancy Ltd amounting to

Rs.11,31,27,306/- and it is stated that Shivam Investments & Consultancy Ltd had assigned the debt to Stephanotis Finance Ltd. formerly known as Vora Construction. Resolution Professional has not approached the Tribunal requesting to admit the claim due to the delayed submission, but himself admitted belated claim. It raises serious question to the due process followed by Resolution Professional. This claim is admitted without any documentary proof, therefore, constitution of CoC is also not proper. The main grievance of the petitioner is that it has significant implications for the constitution of the CoC, the claimant with the disputed claim, has become the member with the majority voting share, thereby altering the entire constitution of the CoC.

4. Further, the Applicant received mail from Resolution Professional on 25.01.2024 in which resolution plan was shared but it was password protected. Resolution Professional did not provide password so applicant could not vote for the plan. Opportunity to vote is denied to the applicant. He has further stated that authorization for

assignment of Resolution Professional was expired and he has not having valid authorization. Applicant filed complaint before IBBI, hence prayed for rejecting the resolution plan and declare that the admission of claim of Shivam Investments & Consultancy Ltd. is illegal and replacement of Resolution Professional etc.

5. As against this, the RP submitted that claim of Shivom Investment & Consultancy Limited was noted in the 5th meeting of CoC wherein applicant was also present. Thereafter, RP received updated claim from Stephanotis Finance Ltd assigned from Shivom Investment & Consultancy Limited. In view of Regulation 14(2) of the IBBI (CIRP) Regulation, 2016 the RP is duty bound to revise the claim amount, accordingly, he has revised interest amount. It further submitted that the CoC was reconstituted only after filing of the report when no resolution plan was passed. The RP further submitted that the objector did not raise any objection in the meeting and he has verified claim of Shivom Investment and then based on supported documents like Loan Agreements etc., and classified it as Secured Financial Creditor.

6. RP stated that it convened the Seventh Meeting of the CoC on 23.01.2024 wherein discussion on the Value, Feasibility and viability of the Revised Resolution Plan as submitted by the Prospective Resolution Applicants) took place, however, the Applicant once again chose not to participate in the said CoC Meeting. Thereafter, vide email dt. 24.01.2024, the RP sought Confidentiality Undertaking from all the CoC Members to share the Resolution Plan and again no such Confidentiality Undertaking was ever received from the Applicant leading to non-sharing of password. It further stated that the voting link for casting votes on the revised resolution plan was also sent to the Applicant on 25.01.2024. However, the Applicant did not take any step to send confidentiality undertaking or even write anything to the RP with respect to the Resolution Plan.
7. RP submitted that that this Tribunal had passed an order for the initiation of CIRP Process against the CD on 17.05.2023, while the AFA ("Authorization for Assignment") of the RP was expired on 20.12.2023. The AFA of the RP was valid at the time when this Tribunal had passed an Admission Order for the initiation of CIRP process. It

further submitted as per Regulation 7A of the IBBI (Insolvency Professionals) Regulations 2016, an Insolvency Professional can continue his ongoing assignments even if his AFA got expired.

8. **ANALYSIS AND FINDINGS OF THIS TRIBUNAL**

- I. The RP had constituted the committee CoC and issued Form G inviting expression of interest on 21 August 2023. He received 10 applications of EOI from prospective Resolution Applicants. The Resolution Plans received were not placed for approval, but the CIRP was extended and fifth meeting of CoC was convened on 22.12.2023 wherein there were 3 prospective resolution plans. The date of submission of resolution plans was extended to 5.1.2024 and it is observed that there were 4 plans received. Further in the COC meeting dated 23.1.2024, it was appraised to the COC that 2 of the plans were not in terms of RFRP and only two were considered and voted on 25.1.2024. It is submitted that the resolution plan was voted by 68.48% of the COC members and Axis Solution Private

Limited was approved as Successful Resolution Applicant.

- II. Further the RP has given a detailed affidavit dated 11 May 2024 on claims due and payable to the Income Tax Department and considered the same in the Information Memorandum and Resolution Plan approved, hence has stated that Sec 238 of IBC prevails over any other enactment including the Income Tax.
- III. There is an IA 210 of 2024 and 227 of 2024 filed on avoidance transaction which is pending. On its adjudication the corporate debtor shall have a right to continue pursuing any litigation or claim being pursued by the corporate debtor and the beneficiary of avoidance transaction, if any, found at any time shall be to all financial creditors and proceeds of avoidance application shall be distributed to all financial creditors after deducting expenses of the same. The cost of litigation initially shall be borne by the corporate debtor and will be adjusted or reimbursed from the proceeds of the avoidance transaction, if any.

- IV. From the catena of judgments rendered by the Supreme Court such as in ***K. Sashidhar –Vs– Indian Overseas Bank [(2019) 12 SCC 150]*** and ***Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors. [Civil Appeal no. 3395 of 2020]*** and on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.
- V. The explanation given by the RP appears to be satisfactory, therefore, no illegality is done by the RP while accepting claim of Shivom Investment and Consultancy. RP received the claim of the Stephonotis Finance Limited (formerly known as Vora Constructions) on 28.10.2023 which is prior to the date of issue of request for resolution plans under regulation 36B and is in consonance with Regulation 12 of the IBBI (CIRP) Regulation 2016. Thereafter, the

RP received updated claim of 11,31,27,306/- from Stephonotis Finance Limited on 01.01.2024 by adding interest portion from 2017-2023 based on loan agreement dated 13.06.2018 and extension-cum-addendum to the loan agreement dated 19.06.2019. As per Regulation 14(2) of the IBBI (CIRP) Regulation 2016, the RP is duty bound to revise the claim amount as and when it come across any additional information warranting such changes. The RP had shared all the minutes of the CoC to their respective CoC Members. It is the objector, Fiat Accord Fabric Private Ltd.'s discretion whether to participate or not to participate in the CoC meetings. The Objector chose not to participate in 6th and 7th CoC Meeting convened by the RP wherein Resolution plans were discussed. The objector also did not participate in the e-voting and at the belated stage raised the baseless allegation against the RP and approached the bench after 45 days for the submission of Resolution Plan before this tribunal. Thus objections are not sustainable.

VI. The proposal included in the RP for merger of the corporate debtor with the Resolution applicant Axis Solutions Pvt Ltd is not allowed as the Adjudicating Authority has considered the application filed under section 30 of the IBC, 2016. Such a proposal, if any, to be considered can only be adjudicated after successful implementation of the resolution plan and obtaining the necessary no objection from the monitoring committee of the CoC. Further, any such approval to be considered would be in terms of the relevant provisions of the companies act for which the resolution applicant can take steps after compliance to the orders passed in this plan submitted to take over the assets and liabilities of the corporate debtor and discharge the liabilities according to the plan approved.

9. We have satisfied that the resolution plan as approved by the CoC meets the requirements of Section 30(2). Hence the resolution plan can be approved. Accordingly, we pass the following order:

ORDER

- I. Application IA (Plan) 5 of 2024 in CP(IB) 268 of 2022 is partly allowed.
- II. Application IA 523 of 2024 in IA (Plan) 5 of 2024 in CP(IB) 268 of 2022 is rejected.
- III. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- IV. The order of moratorium passed by this Adjudicating Authority under Section 14 of IBC, 2016 shall cease to have effect from the date of this order.
- V. The Resolution Plan so approved shall be binding on the CD and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.
- VI. The monitoring committee as proposed in the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan.
- VII. The Resolution Professional, Mr. Sumit Rajnikant Mehta, shall be released from the duties of the Resolution Professional of the CD as per the provisions

of the IBC, 2016 and rules/regulations made thereunder from the date of this order.

- VIII. The Resolution Professional shall forward all records relating to the conduct of the CIRP and approved Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.
- IX. As regards various reliefs and concessions which are being sought, we hereby grant the following reliefs and concessions only as against reliefs and concessions claimed by the resolution applicant.
- X. After the payment of the dues to the creditors, as per the resolution plan, all the liabilities/claims of the said stakeholders shall stand extinguished and other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after approval of the resolution plan.
- XI. From the date of this order, all claims against the CD, except those provided in the plan of the CD stand extinguished.
- XII. From the date of this order, all encumbrances on the assets of the CD before the Resolution Plan shall stand

extinguished. No reliefs and concessions are granted to guarantee if any issued by the suspended management in an individual capacity to any of the creditors.

- XIII. For reliefs and concessions sought from the Government / Statutory Authorities, we direct the resolution applicant to approach the concerned Authorities. The concerned Authorities are to consider and decide the matter as per applicable provisions of law for effective implementation of the Resolution Plan.
- XIV. As regards reliefs prayed under various provisions of the Income Tax Act, 1961, the CD/ Resolution Applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the resolution applicant in accordance with the provisions of the Income Tax Act, 1961.
- XV. The Resolution Applicant shall be entitled to review, revise or terminate any appointments / agreements / understanding entered into by or on behalf of the CD in accordance with the terms and conditions of such agreements / MoUs / contracts.

- XVI. The management of the CD shall be handed over to the Board of Directors as may be nominated by the SRA for the proper running of the operations /business of the CD.
- XVII. The Board of Directors of the CD shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution.
- XVIII. The SRA shall, pursuant to the Resolution Plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan vide this order or within such period as provided for in such law, as the case may be.
- XIX. All the approvals of shareholders/members of the CD shall be deemed to have been obtained and the provisions made in the Resolution Plan as regards the restructuring of capital shall be binding on them. The reliefs sought by way of approval of the Resolution Plan along with merger of the CD with the SRA under Section 230-232 of the Companies Act, 2013 will be

filed a separate application after obtaining necessary approvals in this Plan.

XX. No approval is given at this stage regarding to merger of the CD with SRA. It has to file a separate application with Audited Financial Statements of both Companies.

XXI. With respect to the grant of license/ Government approval, if the license or approval is terminated, suspended or revoked, the resolution applicant may approach the concerned Department/ Authorities for such approval/ renewal and Government Authorities may consider the request of the resolution applicant as per applicable provisions of law for effective implementation of the resolution plan.

XXII. A certified copy of this order be issued to all concerned parties upon compliance of all requisite formalities.

XXIII. Accordingly, IA No. 05 of 2024 in CP (IB) No. 268 of 2022 is disposed of.

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

PS

CHITRA HANKARE
MEMBER (JUDICIAL)