

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

I.A/4383/ND/2021
IN

CP IB-2039/ND/2019

[Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

IN THE MATTER OF

SURAKSHA ASSET RECONSTRUCTION LIMITED

... Applicant/ Financial Creditor

VERSUS

M/s NOIDA MEDICARE CENTRE LIMITED

...Respondent/Corporate Debtor

AND

IN THE MATTER OF

MR. CHANDRA PRAKASH
RESOLUTION PROFESSIONAL OF
M/S NOIDA MEDICARE CENTRE LIMITED

... Applicant

VERSUS

SUMIT KUMAR KHANNA & ORS.

...Respondents

MEMO OF PARTIES

MR. CHANDRA PRAKASH
RESOLUTION PROFESSIONAL OF
M/S NOIDA MEDICARE CENTRE LIMITED

... Applicant

VERSUS

1. SUMIT KUMAR KHANNA

D-153, Sector 40, Noida,
Uttar Pradesh-201303

...Respondent No. 1

2. SURAKSHA ASSET RECONSTRUCTION LIMITED

A Wing, 20th Floor, Naman Midtown,
Senapati Bapat Marg, Elphinstone Road,
Mumbai-400013

...Respondent No. 2

**3. SURAKSHA ASSET RECONSTRUCTION LIMITED
(TRUSTEE OF SURAKSHA ARC 012 TRUST)**

A Wing, 20th Floor, Naman Midtown,
Senapati Bapat Marg, Elphinstone Road,
Mumbai-400013

...Respondent No. 3

4. DHANLAXMI BANK LIMITED

Branch Office: E-108, 109
Lajpat Nagar-1,
New Delhi-110024

Registered Office:
Dhanlaxmi Bank Ltd., Dhanlaxmi Buildings,
Naickanal, Thrissur,
Kerala-680001

...Respondent No. 4

5. MR. NAVEEN CHAUDHRI

D-6, Sector-31, Noida,
Uttar Pradesh-201305

...Respondent No. 5

Order Delivered on: 30.04.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant

: Mr. Abhishek Anand, Mr. Sumit Kumar Vats, Adv. for Dhan Laxmi Bank Mr. UK Chaudhary, Sr. Adv. with Mr. Mansumer Singh, Mr. Chitranshul Sinha, Mr. Sagar Bansal, Mr. Shivam Shorewala for SARL (Member of CoC)

For the Respondent

: Dr. Sandeep Reddy

For the Suspended Director : Mr. GP Madaan, Mr. Aditya Madaan,
Adv. Director
For the RP : Mr. Eshna Kumar, Mr. Akshat
Maheshwari, Adv. in IA/4383/2021
For the SRA : Mr. Sumesh Dhawan, Ms. Vatsala Kak,
Adv.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The Present application i.e., I.A/4383/2021 has been filed under Section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') on behalf of Mr. Chandra Prakash, Resolution Professional ('Applicant') of M/s Noida Medicare Centre Limited ('Corporate Debtor'), seeking approval of the Resolution Plan approved by the Committee of Creditor ('CoC') in its 15th meeting held on 12.07.2021, however, during course of arguments, sought rejection of the Resolution Plan.

2. Submissions made by the Learned Counsel appearing on behalf of the Applicant

- a) The Corporate Insolvency Resolution Process was initiated against M/s Noida Medicare Centre Limited ('Corporate Debtor') by this Adjudicating Authority vide order dated 27.05.2020 in C.P IB-2039/ND/2019, wherein, Mr. Chandra Prakash was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor.
- b) The Applicant submits that the Public Announcement was made on 01.06.2020 inviting claims. from the Creditors of the Corporate Debtor in terms of Section 15 of the Code. After receiving claims from the Financial Creditors of the Corporate Debtor, the Committee of Creditors ("COC") was constituted and the first meeting of the CoC was convened on 24.08.2020. The

IRP was confirmed to act as the Resolution Professional of the Corporate Debtor vide order dated 18.12.2020.

- c) The Applicant submits that two IBBI Registered Valuers, Future Value and Team Crest (for fair and liquidation value) of the Corporate Debtor were appointed by the IRP. Thereafter, an Invitation for Expression of Interest (EoI) as discussed on 2nd CoC meeting was published on 19.10.2020 in the Financial Express and Jansatta and detailed Request for Resolution Plans (RFRP) along with Form G, Evaluation Matrix, and the Information Memorandum were finalized in 4th CoC meeting dated 07.12.2020.
- d) The Applicant submits that pursuant to publication of Form G, the Applicant received EoIs from 8 Prospective Resolution Applicants (PRAs). However, only one Resolution plan was submitted. Therefore, a revised invitation in Form G was published in both the Financial Express and Jansatta on 02.03.2021 pursuant to which the Applicant received EoIs initially from 3 and subsequently from one PRA along with one Plan filed as per first publication of invitation of EoI.
- e) The Applicant submits that in the 10th CoC meeting held on 13.05.2021, the plans submitted by 3 PRAs i.e., Galaxy Group, Meditrina Hospitals Private Limited and Mr. Sumit Kumar Khanna were discussed.
- f) The Applicant submits that one of the Prospective Resolution Applicant, Galaxy Group requested for withdrawal of the Resolution Plan, which was discussed at length and finally approved by the CoC by 69.6% of voting share in 12th CoC Meeting held on 08.06.2021 and the discussion on remaining two plans submitted by Meditrina Hospitals Private Limited and Mr. Sumit Kumar Khanna, respectively continued in 12th and 13th CoC meeting.
- g) The Applicant submits that in the 15th CoC meeting held on 12.07.2021, the Dhanlaxmi Bank Limited (Respondent No. 4) voted in negative for both the Resolution Plans, whereas, Suraksha Asset Reconstruction Limited voted against the Resolution Plan submitted by M/s Meditrina Hospitals Private Limited but approved the Resolution Plan of Mr. Sumit Khanna.

- h) Subsequently, the present application under Section 30(6) for approval of Resolution Plan was filed before this Adjudicating Authority vide IA No. 4383 of 2021 on 14.07.2021 by the erstwhile Resolution Professional, wherein, certain objections were obtained against the approval of the Resolution Professional.
- i) This Adjudicating Authority vide its order dated 17.01.2023 appointed Ms. Ritu Rastogi as the new Resolution Professional since the erstwhile Resolution Professional stood suspended by the competent authority.
- j) The Resolution Plan was submitted by the Successful Resolution Applicant (SRA) before the CoC on the premise that the Corporate Debtor shall continue to be a going concern. However, during the Course of time, the Fire NOC of the Corporate Debtor expired and the same could not be obtained afresh unless the entire hospital building runs through certain structural changes. Consequently, the Corporate Debtor ceased to be a going concern. Therefore, this Adjudicating Authority vide its order dated 12.05.2023 directed the Resolution Professional to consider the matter afresh pursuant to which the 18th meeting of CoC was held on 18.06.2023.
- k) In the 18th CoC meeting held on 18.06.2023, it was decided that the Resolution Professional shall take techno-viability report about the timeline/cost/licences required to make the hospital operational. Therefore, SLIP-TEC provided its technical report dated 30.06.2023, wherein, it was stated that it is compulsory to get FIRE NOC without which the hospital cannot be set operational and all the registrations like NABL, NAHL shall stand cancelled.
- l) Pursuant to the findings of the SLIP-TEC report, the representatives of Suraksha ARC, one of the Financial Creditors of the Corporate Debtor proposed sending the Corporate Debtor into liquidation, however, representatives of the Dhanlaxmi Bank Limited proposed its unwillingness to send the Corporate Debtor into liquidation.
- m) Vide order dated 03.08.2023 passed by this Adjudicating Authority, the Resolution Applicant was directed to file an affidavit as to the viability of the

implementation of the plan. The Resolution Applicant, in compliance of the order dated 03.08.2023, filed an affidavit dated 12.08.2023 stating that in view of the technical report dated 30.06.2023, the Resolution Plan is not effectively implementable as the Corporate Debtor has ceased to be a going concern.

n) Hence, after filing of application for approval of Resolution Plan, now the Applicant seeks before this Adjudicating Authority the rejection of the Resolution Plan, on the ground of unimplementation.

3. We have heard the submissions made by the Learned Counsel on behalf of the Resolution Professional, the Successful Resolution Applicant and the members of CoC. We have further perused the documents on record.

4. It is observed that the present application was initially filed before this Adjudicating Authority for approval of the Resolution Plan, however, during the course of CIRP, it was submitted that the Corporate Debtor has ceased to be a going concern and the Successful Resolution Applicant expressed its willingness to take over the Corporate Debtor only as a going concern. Further, the Resolution Plan was submitted by the Successful Resolution Applicant on the premise that the Corporate Debtor shall be a going concern. The relevant extract of the Resolution Plan submitted by the Successful Resolution Applicant is reproduced hereunder as: -

*“Clause 4.1.2..... The Resolution Professional and Committee of Creditors should make an endeavour to protect and preserve the value of assets including running the Corporate Debtor as a **going concern**.*

*Clause 7.1.2. The Resolution Applicant has devised a resolution strategy to take over the Corporate Debtors as a **going concern** and rebuild and revamp the existing infrastructure which is necessary to make the ongoing business viable.*

*Clause 12.1.1. The Resolution Applicant has also considered that by virtue of the order of the Hon'ble NCLT approving this Resolution Plan and since the Resolution Applicant would acquire the Corporate Debtor on a '**going***

concern' basis, all consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license or any registration, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to or accustomed to shall, notwithstanding any provision to the contrary in their terms and notwithstanding that they may have already lapsed or expired due to any non-compliance or efflux of time, be deemed to continue without disruption for the benefit of the Corporate Debtor and the Resolution Applicant for a period of 48 months from the Effective Date or until the period mentioned in such Business Licenses, whichever is later;

Assumption 4 and 5 of Appendix 1. On and from the Approval Date, any internal accruals of the Corporate Debtor, cash balance with the Corporate Debtor, shall not be utilised or appropriated by the Resolution Professional or the CoC ("Accrued Amounts"). On the Approval Date, the Corporate Debtor/Resolution Applicant shall be free to utilise these amounts without any Encumbrance, litigations, proceedings, attachment or deductions whatsoever, in order to continue the operations as a **going concern.**"

5. It is observed that the Corporate Debtor had Fire NOC in the beginning, however, subsequently, the Fire NOC got expired due to which the Corporate Debtor has ceased to be a going concern. Therefore, this Adjudicating Authority vide its order dated 12.05.2023 directed the Resolution Professional to convene a meeting of the CoC and consider the matter afresh in light of the fact that the Corporate Debtor has ceased to be a going concern. The order dated 12.05.2023 is reproduced hereunder as:

"This is an application for approval of the Resolution Plan under Section 30(6) of IBC. We have heard Ld. Counsel for the Resolution Professional and Ld. Counsel for Successful Resolution Applicant and Ld. Counsel for the Members of the Committee of Creditors. Ld. Counsel for the Successful Resolution Applicant submitted that the Resolution Plan was submitted on the premise that the Corporate Debtor will continue to be a going concern. However, due to the changed circumstances, it has ceased to be a going concern now. Ld. Counsel for the RP also confirms the same. In view of this, RP may convene a meeting of CoC to consider the matter afresh and take appropriate decision regarding further course of action to be taken in the matter."

Pursuant to the order dated 12.05.2023 passed by this Adjudicating Authority, the 18th meeting of CoC was convened on 18.06.2023 whereby, it was decided that a techno viability report be sought as to the timeline/cost/licenses required to make the Hospital operational and to further frame an opinion as the assets of the Corporate Debtor are deprecating day by day. Further, in the 18th CoC meeting, the Successful resolution Applicant reaffirmed the fact that he can only take the Corporate Debtor if handed over to him as a running concern. The relevant extract of the 18th CoC meeting is reproduced hereunder as: -

“Mr. Sumit Khanna again wanted the RP to show the order, therefore the RP again showed the Order dated 12.05.2023 and read the same again. Mr. Sumit Khanna informed the COC that he has already filed an application / affidavit that he can take the company if handed over to him as a running concern. He further stated that he can implement the resolution plan only if the hospital/company is handed over to him as running concern. After that RA left the meeting.”

Subsequently, SLIP-TEC submitted its report dated 30.06.2023 wherein, it was stated that in the absence of Fire NOC, the hospital cannot be set operational. Moreover, in the absence of Fire NOC, all the other licences and registrations such as NABL and NAHL shall stand cancelled. It is further observed that earlier Fire NOC was there which has expired subsequently and the same cannot be applied afresh until the entire hospital is gone through major structural changes to make it compliant with the rules to obtain fresh Fire NOC and other licences.

6. It is further observed that in the 19th CoC meeting held on 13.07.2023, the representative of Suraksha ARC made the following observation: *“The resolution plan given and approved by the CoC cannot be implemented in view of the techno-viability report received and the conditions put by the SRA. Therefore, Suraksha ARC wants to go for liquidation of the Corporate Debtor”*, whereas, Dhanlaxmi Bank Limited vide email dated 17.07.2023 communicated its refusal to consent to liquidation. Therefore, vide an order dated 03.08.2023 passed by this Adjudicating Authority, the Successful Resolution Applicant was directed to file an affidavit as

to the viability of the implementation of the plan. The Successful Resolution Applicant, in compliance of the order dated 03.08.2023, filed an affidavit dated 12.08.2023 stating that since the Corporate Debtor has ceased to be a going concern, therefore, the Resolution Plan has become unimplementable and hence, cannot be approved. The relevant extract of the affidavit dated 12.08.2023 is reproduced hereunder as: -

“Therefore, in light of the abovementioned facts and circumstances, and also the observations made by the Resolution Professional basis the Technical report dated 30.06.2023 of SLIP-TEC, the Resolution Plan is not effectively implementable in terms of the proviso to Section 31(1) of the Code as the Corporate Debtor has ceased to be a going concern and thus, the same cannot be approved, being non-compliant in terms of the provisions of the Code.”

The present situation violates the statutory requirement laid down under Section 30(2)(d) of the Code which requires the Resolution Professional to examine that the Plan contains the effective provisions as to the implementation and supervision of the plan. Hence, the Applicant is seeking rejection of the Resolution Plan before this Adjudicating Authority.

7. At this juncture, it is pertinent to refer to Section 31 of the Code which lays down as under: -

“Section 31. Approval of Resolution Plan

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and 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, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy

that the resolution plan has provisions for its effective implementation.]

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan....”

It is observed that in the present case, the Corporate Debtor is a hospital having Fire NOC in the beginning, however, subsequently, the Fire NOC expired and the Applicant in its written submissions has stated that to obtain the fresh Fire NOC, the entire hospital building has to run through major structural changes. The same is affirmed by the technical report dated 30.06.2023 submitted by the SLIP-TEC. The report highlighted that the Fire NOC for the Corporate Debtor is an essential requirement for making the hospital operational. Furthermore, the report emphasized that the lack of FIRE NOC would lead to the automatic cancellation of registrations such as NABL and NAHL, rendering the hospital ineligible to be open and operate. It is further observed that the SRA has expressed its willingness to take over the Corporate Debtor only as a going concern. Furthermore, in view of the affidavit dated 12.08.2023 filed by the SRA, it is evident that since the Corporate Debtor has ceased to be a going concern, the plan has become unimplementable and hence, cannot be approved. Therefore, the SRA has expressed its unwillingness to take over the Corporate Debtor being inoperative.

8. It is further observed that as per the mandate of Section 30(2) of the Code, the plan shall contain provisions as to the effective implementation of the plan. However, in the present case, the plan has become unimplementable due to expiration of the Fire NOC and for getting the fresh Fire NOC, major structural changes in the building would be required. Hence, the plan being non-compliant with the express provisions of the Code is liable to be rejected. Further, a conjoint reading of proviso to Section 31(1) and Section 31(2) of the Code imposes a statutory duty on the Adjudicating Authority to reject the Resolution Plan if it does not contain provisions as to its effective implementation. Hence, in light of the observations made herein, and the statutory provisions of the Code, this Adjudicating Authority **deems it fit**

to reject the Resolution Plan submitted by Mr. Sumit Kumar Khanna and earlier approved by the CoC. Hence, **I.A./4383/ND/2021 stands dismissed** on the aforesaid terms.

9. It is further observed that the Hon'ble Supreme Court in the case of **Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni & Anr. (2024) 2 SCR 258**, pertaining to the facts of that case has observed that the resolution plan did not meet all the parameters laid down in sub-section (2) of Section 30 of the IBC. Consequently, the Hon'ble Supreme Court has remanded back the matter to CoC for re-submission after satisfying the parameters set out by the Code. Therefore, in line of the decision of the Hon'ble Supreme Court in the **Prabhjit Singh (supra)**, this Adjudicating Authority deems it fit to send the matter back to the CoC to determine whether a fresh plan could be called up for the resolution of the Corporate Debtor, if possible, or to decide upon the further course of action for the effective resolution of the Corporate Debtor.

Accordingly, **I.A./4383/ND/2021 stands disposed off** in light of the aforesaid observations and directions.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)