

161/Chd/Hry/2018 under Section 7 of the Code before this Adjudicating Authority seeking initiation of CIRP against the said corporate debtor. This Adjudicating Authority vide its order dated 29.10.2018 admitted the said CP and declared moratorium. Further, Mr. Jalesh Kumar Grover was appointed as the Interim Resolution Professional vide its order dated 02.11.2018 in the said CP (IB) No. 161/Chd/Hry/2018.

2. It is stated that the IRP made a public announcement in Form A as required under Regulation 6 of CIRP Regulations on 03.11.2018 in Financial Express (English) and Dainik Bhaskar (Hindi) edition for intimation of the commencement of Corporate Insolvency Resolution Process of Corporate Debtor and for calling creditors to submit their claims along with the proofs in the prescribed format. Copies of the Public Announcement made in the Newspapers dated 03.11.2018 are attached as Annexure A-3 of the application.

3. It is submitted that as on date, claims from 1 secured financial creditor, 6 unsecured financial creditors including one Corporate Guarantor, 94 financial creditors in the class of home-buyers, 3 operational creditors and 2 Statutory Departments i.e. Town and Country Planning, Haryana & Income Tax Department, Karnal Circle have been received by the Applicant.

4. It is further stated that as per Section 21(6) of the code read with Regulation 16 A of the CIRP Regulations, the financial creditors in the class of home-buyers appointed Mr. Tarun Batra as their authorized representative and the same was approved by this Tribunal vide order dated 07.12.2018 in CA No. 568/2018.

5. It is submitted that the IRP was confirmed as the RP in the 1st meeting of CoC dated 29.11.2018 with 69.94% of the voting share.

6. It is stated that the CoC in its 3rd meeting dated 11.02.2019, finalized the eligibility criteria for prospective Resolution Plan and the Evaluation Matrix in the matter of the Corporate Debtor. It is also stated that the CoC members also approved the appointment of Mr. Sachin Goel and M/s Creative Consortium for conducting the valuation of land and Building of the Corporate Debtor with 61.52% vote in favor of the resolution. Further, M/s A.K.G. and Associates were also approved as Transaction Auditor of the Corporate Debtor with 56 % vote in favor of the resolution.

7. It is submitted that the Form G for the first time was published on 16.01.2019 and since no Expression of Interest (EOI) and resolution plans were received within the last date, Form G was republished second time on 05.03.2019 and as 180 days of CIRP were expiring on 30.04.2019, an application before this bench seeking extension of time period for completing the CIRP of the Corporate Debtor for another 90 days was filed. Further, this bench was pleased to pass an order dated 02.05.2019, thereby extending CIRP by further period of 90 days. It is stated that since no EOI and no plans were received/ submitted even in response to the second Form G before the last date, the Form G was republished again third time on 10.06.2019 and the last date for submission of the resolution plans was extended till 20.07.2019 and out of the 09 EOI's received, 04 resolution plans were submitted within the said extended time.

8. It is also stated that since 270 days of CIRP were to expire on 29.07.2019, CA No. 569/2019 was filed before this Tribunal seeking exclusion of litigation period and extension of the CIRP period by 90 days. Further, this bench was pleased to provide an extension of 90 days from the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019 i.e. 16.08.2019 as

provided for in the third proviso to Section 12(3) of the Code to complete the entire including filing of an application under Section 31 or under Section 33, as the case may be.

9. It is submitted that as per the directions of this bench, the RP convened a meeting of the CoC (13th meeting dated 11.11.2019) and placed the Resolution Plan of H1 Ms. Seema Rana & also the Resolution Plan of M/s INR Constructions before the CoC for consideration, discussion and approval of the CoC members. It is stated that M/s INR Constructions emerged as the H1 resolution applicant and the agenda for the approval of the Resolution Plan and authorization of the RP to file an application under Section 31 of the Code was approved by 100% voting rights in favor of the resolution.

10. Having heard the learned counsels for the Resolution Professional and the Resolution Applicant, we find that it would be first necessary to ascertain whether the requirements of the Code and Regulations made thereunder, have been complied with or not.

11. In view of the mandatory requirements of Section 30(2) of the Code, and the peculiar facts of this case, we examine the resolution plan of INR Constructions dated 11.11.2019 along with its Addendum dated 17.01.2020 as approved by the Committee of Creditors.

12. As per Section 30 (2) (a) of the Code, the Resolution plan approved by the Committee of Creditors must provide for payment of insolvency resolution process cost in a manner specified by the Board in priority to the payment of other debts of the corporate debtor. In Part II, Clause 6 of the Resolution Plan (Page 546 of the application), it is stated that the total expected CIRP cost amounts to Rs. 1.00 crore or as actual. It is also stated that the

Resolution Applicant has proposed to pay the entire CIRP cost of Rs. 1.00 crore within 30 days from the effective date. It is further stated that the above said CIRP cost is the estimated one and actual CIRP cost can differ and the additional CIRP cost if any shall be borne by resolution applicant. It is further stated in Revised Form H (Page 15 of Diary No. 01295/01) that the CIRP cost shall be paid in priority to all other payments proposed in the resolution plan. Therefore, the condition as stated under Section 30 (2) (a) stands satisfied.

13. As per Section 30(2)(b) of the Code, the resolution plan must provide for payments of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of liquidation of the corporate debtor under Section 53 or 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 under Section 53(1) whichever is higher. It is stated that as per the Addendum submitted by the Successful Resolution Applicant (Annexure C of Diary No. 478 dated 17.01.2020), that in Clause 2.6, it is proposed that the Department of Town and Country Planning (**DTCP**) shall be paid Rs. 1.88 Crores, which is 100% of the admitted amount without interest, if any on the renewal fee and Composition fee (with interest). The payment of Rs. 1.88 Crores will be made within 2.5 years (starting from 18th month in 5 quarterly instalments after effective date). It is also stated that the operational creditors other than **DTCP** (including statutory claims) shall be paid an aggregate amount of Rs. 21.33 lakhs ("Operational Creditors Amount") as liquidation value payable to the operational Creditors under Regulation 38 (21) (b) of the CIRP Regulations is NIL. It is further stated that the payment of Rs. 21.33 lakhs shall be made within

30 days from the Effective Date. It is mentioned in the Revised Form H that the Resolution Applicant also intends to pay in full Workmen Dues and Employee Dues which are admitted by the RP as on date of COC approval, within 30 days from the Effective date and all related Claims shall stand irrevocably and unconditionally satisfied and extinguished.

14. As per Section 30(2) (c) the resolution plan must provide for the management of the affairs of the corporate debtor after its approval. There is specific provision made for the management and control of the company after the approval of the resolution plan. A detailed mechanism regarding the management and control is discussed in Clause 3 (Part II of the Resolution Plan) under the heading 'Management and Control of the Business of the Corporate Debtor during its term'. It is stated therein that upon the approval and after the effective date, the existing directors of the corporate debtor shall resign, and the new directors shall be appointed to manage the affairs of the Company. It is also stated that the management of the affairs of the corporate Debtor after the approval of the Resolution Plan shall be done by the newly constituted board of directors of the Corporate Debtor.

15. Section 30(2) (d) of the Code envisages that it must provide for implementation and supervision of the resolution plan. Clause 9 of part II of the Resolution Plan read with Schedule 4 of the resolution plan provides for a detailed mechanism for effective implementation of the resolution plan.

16. Section 30 (2) (e) of the Code requires that the resolution plan does not contravene any of the provisions of the law for the time being in force. In Revised Form H, filed as Annexure A of Diary No. 01295/01 dated 10.06.2021, submitted by the RP as per the requirement of Regulation 39(4) of the CIRP

Regulations, he has certified that the resolution plan did not contravene any of the provisions of the law for the time being in force and is in compliance with the provisions of the Code and the CIRP Regulations.

17. The successful resolution applicant confirmed by way of the affidavit (Annexure E of Diary No. 478 dated 17.01.2020) that they are not disqualified under Section 29A of the Code to submit a resolution plan or under any other law applicable, which further shows that the resolution plan conforms to the provisions of the law for the time being in force and did not contravene any such provision. The RP in the Revised Form H referred above, has certified the same.

18. The Resolution Plan should conform to all such requirements which may be specified by the IBBI. A statement to this effect has been made by the RP in the Revised Form H referred above.

19. With regard to compliance of Regulation 39 (4) in relation to submission of the Performance Bank Guarantee by the successful resolution applicant is concerned, the resolution applicant has submitted a performance bank guarantee of ₹ 75 lakhs (5% of the amount proposed to the Secured Financial Creditor) in favor of Allahabad Bank and the same is attached as Annexure No. A-35 of the Application.

20. With regard to the compliance of the second proviso to Section 31 (4) of the Code i.e. obtaining the approval of the Competition Commission of India, it is observed that there is no statement made anywhere in this application.

21. With regard to the compliance under Regulation 35A, it is stated that the Resolution Professional has identified and formed his opinion regarding three transactions, which fall under Section 66 of the Code and has

filed CA No.1143/2019, which is pending before this Adjudicating Authority and the same is to be continued even after approval of the Resolution Plan.

22. Further, the resolution plan fulfills all the requirements of Regulation 38 and 39 of the CIRP Regulations. A perusal of Regulation 38 would clearly show that by virtue of mandatory contents of resolution plan as discussed in the preceding paragraphs in relation to Section 30 and Section 31 of the Code, the requirement of Regulation 38 also stands fulfilled. Even the requirement of Regulation 39 has been satisfied, as the RP has submitted that the resolution plan of Resolution applicant, as approved by the Committee of Creditors, to this Tribunal along with the compliance certificate in Revised Form H, as per the requirements of Regulation 39(4) of the CIRP Regulations meets all the requirements of the Code and the CIRP Regulations and that the resolution plan has been duly approved by the Committee of Creditors.

23. In respect of the reliefs and concessions as set-forth in Schedule 2 of the resolution plan dated 11.11.2019 along with its Addendum dated 17.01.2020, it is not possible for us to issue any direction except to say that the resolution applicant may take appropriate steps in accordance with law, in respect of the said reliefs and concessions. It is needless to say that the public authorities/government authorities/any other party would duly consider the requests/applications of the resolution applicant in accordance with law. We make it clear that we are not expressing any opinion on the claim concerning reliefs and concessions nor any part of this order shall be understood in that spirit. Moreover, these reliefs and concessions/prayers are also not condition precedent for the acceptance of resolution plan. It would not be any impediment for us to accept the resolution plan.

24. In view of our finding that the resolution plan dated 11.11.2019 along with addendum dated 17.01.2020, as approved by the COC satisfies all the requirements of the Code and Regulations made thereunder. We pass the following orders:-

- a. The Resolution Plan, as approved by the Committee of Creditors and submitted by INR Constructions (**Successful Resolution Applicant**) is approved and the same is 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 is due 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 the other stakeholders involved in the Resolution Plan.
- b. The Resolution Applicant is directed to obtain the approval of the Competition Commission of India within a period of one year of approval of this resolution plan by this Tribunal as stated under Section 31 (4) of the Code, as the plan does not provide for any combination, in terms of Section 5 of the Competition Act, 2002.
- c. The moratorium order passed by the Adjudicating Authority under Section 14 shall cease to have effect.
- d. The RP shall forward all records relating to the CIRP and the resolution plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code.

25. Accordingly, IA No.1085/2019 is disposed of.

Sd/-
(Raghu Nayyar)
Member (Technical)

October 06th, 2021
YP

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)