

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH- I**

IA No. 2828 of 2021

IN

CP (IB) No. 4360/MB/C-I/2018

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the resolution plan under the provisions of Section 31(1) of the code.

In the Application of

Vishram Narayan Panchpor,

Resolution Professional of “ Blue Frog Media Private Limited.”

...Applicant/Resolution Professional

In the matter of

M/s Blue Frog Media Private Limited

...Petitioner

Order Delivered on :-18.08`.2023

Coram:

Hon’ble Member (Judicial) : Mr. Kishore Vemulapalli

Hon’ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Applicant

/Resolution Professional : Mr. Avinash Khanolkar

ORDER

Per: Anu Jagmohan Singh, Member (Technical)

1. The present application is moved by Resolution Professional **Mr. Vishram Narayan Panchpor** (hereinafter called as “the Applicant”) under section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the resolution plan of Mr. Mahesh Mathai (hereafter called as the “**Successful Resolution Applicant/SRA**”) under the provisions of Section 31(1) of the code, for the Corporate Debtor **Blue Frog Media Private Limited** (hereinafter called as the “**Corporate Debtor**”) and for passing order/appropriate direction that this Tribunal may deem fit in the present matter.
2. The CIRP was initiated against the Corporate debtor vide Order dated 19.05.2021 and the Applicant herein was appointed as the IRP. The Applicant made a public announcement on 22.05.2021. The IRP constituted the Committee of Creditors (hereinafter referred to as the CoC). Subsequently, the First CoC meeting took place on 16.06.2021 wherein the IRP was appointed as the Resolution Professional.
3. Subsequently, the Applicant received one further claim of a financial creditor which got admitted on 11.07.2021 comprising of 6 (six)

Financial Creditors. The Applicant has submitted its report consequent to the revision in the composition of the CoC. The list of the creditors is placed as “Annexure 3” of the Application.

4. The Applicant submits that till date 7 meetings of the CoC were held since the commencement of CIRP. A brief about the meetings being held is reproduced in the tabular chart herein below:

Sr. No.	CoC Meeting	Business Transacted
1.	First CoC Meeting 16.06.2021	Constitution of CoC, Appointment of RP, Action taken report, CIRP Schedule.
2.	Second CoC Meeting 07.07.2021	Status of claims, Professional Fees of Registered Valuers
3.	Third CoC Meeting 30.07.2021	Revised composition of CoC, Criteria for Prospective Resolution Applicants, Publication of Form G & Cost of Publication
4.	Fourth CoC Meeting 27.08.2021	Decision about publication of Form G for second time
5.	Fifth CoC Meeting 22.09.2021	Update of second round of invitation of EOI

6.	Sixth CoC Meeting 27.09.2021	Evaluation Matrix and Request for Resolution Plan
7.	Seventh CoC Meeting 08.11.2021	Updated CIRP Costs, Approval of Resolution Plan

5. Form G was published in two newspapers on 02.08.2021 for the first time. Subsequently, the Applicant received only one EOI, which rejected since it did not meet the eligibility criteria.
6. Since, publication of Form G for the first attempt did not yield any result, the CoC in the fourth meeting decided to publish form G again. Accordingly, Form G was published again on 29.08.2021.
7. Pursuant to the fresh Form G, the Applicant received 3 EOI's. Out of which 2 parties qualified the revised eligibility criteria and 1 was rejected as did not meet the eligibility criteria.
8. The two Prospective Resolution Applicants were Mr. Mahesh Mathai and Mr. M.S. Raksha Ramaiah. In the Sixth CoC meeting held on 27.09.2021, the CoC approved the Request for Resolution Plan and the evaluation Matrix.

9. However, the Applicant received only one Resolution Plan of Mr. Mahesh Mathai on 28.10.2021, who is also a financial creditor of the Corporate Debtor, submitted the plan in his individual capacity.
10. The Applicant submits that he examined the plan accordingly to the relevant provision of the Code and upon being satisfied with plan submitted by Mr. Mathai placed the said plan for consideration before the CoC.
11. The Applicant submits that in the CoC meeting held on 08.11.2021 and some modifications and revisions were suggested in the plan, Mr. Mathai being a Financial Creditor was part of the meeting requested for some time to carry out the suggested changes.
12. Mr. Mahesh Mathai submitted a revised Resolution Plan and the Applicant upon examining the same, placed the revised plan before the CoC for consideration. The adjourned meeting was resumed and the CoC considered the revised plan and resolved to approve the plan by a majority vote of 91.86%.
13. The Resolution Professional has annexed Form H to the Application under Regulation 39(4) of the CIRP Regulations to certify that the resolution plan approved by the CoC meets all the requirements of the IBC and its Regulations.
14. The SRA proposes to make the following payments

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Amount in Rupees.

Sr. No.	Particulars of proposed payment	Tenure	Amount (In Rs.)
1.	CIRP Costs	Within 15 days	11,26,394/-
2.	To Operational Creditors		
2.1	Operational Creditors (other than statutory dues including 1 claim towards past employee dues), pro rata basis	Admitted claims within 15 days	5.128
2.2	Operational Creditors (Other than statutory dues)	No claims received	NIL
2.3	Regulatory dues (Statutory dues)	As per books of Corporate Debtor	18,478/-
2.4	Workmen and employees, if any	No claims received	Nil
2.5	Employees, PF & state insurance and other statutory and regulatory authorities etc.	No claims received	Nil
3.	Payment to Financial Creditors		
3.1	Unsecured Financial Creditors	Admitted claims within 15 days	4,00,000/-

	(including related parties), pro-rata basis		
Total proposed payment			15,50,000.00

15. In the present case, the SRA has proposed to infuse funds after approval of Resolution plan by this Tribunal and against this infusion the SRA i.e. Mr. Mahesh mathai will get 1,54,999 equity shares of Rs.10/- each and 1 equity share of Rs.10/- each will be allotted to Ms. Srila Chatterjee.

16. The SRA has proposed to make the entire payment from its own sources. The Successful Resolution Applicant has deposited an amount of Rs.50,000/- towards performance guarantee (security deposit). It is submitted that towards the balance the SRA has handed over a bank cheque for an amount of Rs.15,00,00,000/- drawn in favour of Blue Frog Media Private Limited under CIRP dated 28.10.2021 drawn on Standard Chartered Bank, Kemps Corner, Mumbai.

Findings:

17. Upon perusal of the plan submitted by the SRA i.e. Mr. Mahesh Mathai, it is observed that in addition to being the financial creditor of the Corporate Debtor, he founded the company i.e. Blue Frog Media

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Private Limited in the year 2007. In view of the said fact coming to light, the matter was listed for clarification on 21.07.2023 for want of 29A affidavit and clarification on the nature of relationship between the SRA and the Corporate Debtor. The Applicant has placed on record affidavit dated 26.07.2023 clarifying that that the SRA was the shareholder of the Corporate Debtor. A tabular chart of equity shareholding of Mr. Mathai is reproduced herein below:

Date	Remark	Particulars	Addition/Deletion	Equity Shares
20-07-2006		Date of Incorporation of Blue Frog		NIL
30-08-2006	Date of Allotment	Allotment of Equity Shares	5000	5000
15-09-2006	Date of Allotment	Allotment of Equity Shares- Bonus Issue	202920	207920
10-09-2007	Date of AGM	Mahesh George Mathai		207920
29-09-2008	Date of AGM	Mahesh George Mathai		207920
2008-2012		Equity Shares sold during 2008-2012	-11163	

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29-09-2012	Date of AGM	Mahesh George Mathai		196757
27-09-2013	Date of AGM	Mahesh George Mathai		196757
27-05-2014	Date of Allotment	Allotment of Equity Shares	240000	436757
31-03-2015	End of Financial Year	Mahesh George Mathai		436757
31-03-2016	End of Financial Year	Mahesh George Mathai		436757
31-03-2017	End of Financial Year	Mahesh George Mathai		436757
31-03-2018	End of Financial Year	Mahesh George Mathai		436757
31-03-2019	End of Financial Year	Mahesh George Mathai		436757
10-07-2019	Date of Transfer	Acquired by way of Transfer	76701	
31-03-2020	End of Financial Year	Mahesh George Mathai		5,13,458

31-03-2021	End of Financial Year	Mahesh George Mathai		5,13,458
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18. A mere perusal of chart makes it clear that the SRA as on 31.03.2021 holds 5,13,458 equity shares in the company. At this juncture, it is important to mention that the SRA (Mr. Mathai) was a director of the company from 20.07.2006 to 01.03.2018. Subsequently, he resigned as a director on 01.03.2018 and Section 10 petition to initiate CIRP of the Corporate Debtor was filed on 30.10.2018. It is apposite to note that he has acquired 76701 shares by transfer on 10.07.2019 which is after filing of the main company petition. Hence, his ownership of equity shares increased from 4,36,757 (as on 31.03.2018) when he was a director of the company to 5,13,458 as on date.
19. Since, the facts of the case are peculiar, it is important to revisit the genesis of the matter the main Company Petition No. 4360 of 2018. The company petition came to be filed under Section 10 of the Code, since the company was not in a position to honor its commitments for repayment of the unsecured loans and interest thereon.
20. The Corporate Debtor in the main company petition has placed on record recall letters from financial creditors namely Mahesh Luthria,

Sanjay Kripalani and Chaparral Housing Private Limited starting from 28.03.2017 to 03.06.2018 (i.e. during the period when the SRA was the director of the company) demanding repayment of loans. It would not be wrong to say that there was mismanagement of financial affairs of the company thereby leading the creditors to recall their loans. Therefore, from the aforesaid backdrop it can be clearly deduced that Mr. Mathai was the director of the Corporate Debtor when the company was no longer in a position to repay the loans availed and started defaulting in repayment of loans.

21. Further, in the director's report dated 20.09.2018 observations that the company is not in a position to repay the unsecured loans borrowed from various parties were made and it was recorded that Board of Directors should explore the possibility of CIRP under section 10 of the Code. Further, in said report it was also mentioned that Mr. Mahesh Mathai was one of the directors of the company in 2018. It is also recorded that he resigned on 01.03.2018.
22. It is very clear that Mr. Mathai was a director of the company when the company was under financial distress. He resigned as a director of the company on 01.03.2018 and immediately within few months a section 10 petition was filed. We hold that this is nothing but misuse of the provisions of the Code. The SRA after contributing as a director in the

mismanagement of the company is now coming forth as a Resolution Applicant, trying to gain a backdoor entry into the company.

23. In the aforesaid backdrop of facts, this bench needs to examine whether the Successful Resolution Applicant meets the eligibility criteria stipulated under Section 29A of the Code. Section 29A of the Code, provides list of persons who are ineligible to submit a Resolution Plan from clauses (a) to (j). The relevant clause for consideration in the facts of present case is clause (c) of section 29A, which is reproduced herein below:

“29A (c) - at the time of submission of the resolution plan has an account,] or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) 3 [or the guidelines of a financial sector regulator issued under any other law for the time being in force,] and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to nonperforming asset accounts before submission of resolution plan:

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.”

24. The Insolvency and bankruptcy Code, 2016 as it stood prior to the Insolvency and Bankruptcy Code (Amendment) Act, 2017 No. 8 of 2018 finds no mention of any specific criteria or qualification, due to which any party including the directors/promoters of the corporate debtor or any related party could propose a resolution plan. Therefore, a need was felt to insert a provision to prevent persons who have contributed to downfall of the company from gaining back the control of the company. Accordingly, section 29A was inserted in the code in order to prevent the promoters to gain back-door entry into the management of the company.
25. The statement of objects and reasons of the Insolvency and Bankruptcy Code (Amendment) Bill, 2017 (Amendment Bill) expressed concern about leaving a distressed company to persons whose misconduct contributed to the company's financial distress. Statements made in Parliament also refer to "unscrupulous promoters" taking advantage of the IBC to regain control of companies that they have mismanaged.
26. As a consequence of inclusion of section 29A in the Code, persons who have contributed to the defaults of the corporate debtor or are undesirable due to incapacities as specified in the section or are a 'related party' to another defaulting party, are prevented from gaining control of

the corporate debtor by being declared ineligible to submit a resolution plan under the Code. This provision asserts protection to the creditors of the company by safeguarding them against unscrupulous persons who irrespective of their earlier defaults are trying to reward themselves by undermining the whole objective of the Code and do not aim to contribute to the revival of the corporate debtor.

27. The Resolution Professional has the responsibility to conduct Section 29A due diligence. A prospective Resolution Applicant submitting an affidavit stating that he/she is eligible under Section 29A to submit resolution plan will not suffice. Adequate due diligence on the prospective Resolution Applicants and its connected persons needs to be conducted effectively and within the requisite timeline to identify ineligibility, if any. The Resolution Professional should seek clarifications or additional information or document from the prospective Resolution Applicants, if needed for conducting the due diligence. Section 29A in its entirety not only restricts promoters but also the people related/connected with the promoters. It is obvious that the intention behind inserting Section 29A is to restrict those persons from submitting a resolution plan who could have an adverse effect on the entire corporate insolvency resolution process.

28. Further, a common theme across all decisions of the NCLAT and the Supreme Court is an underlying notion that the incumbent management and promoters of a corporate debtor should not be allowed to regain control of their company. This notion is based on the reasoning that those who have contributed to the downfall of the corporate debtor should not be allowed to play a continuing role in its future. The assumption that resonates through all of these decisions is that a corporate debtor's downfall is due to the actions of its management.
29. Therefore, we are of the view that Mr. Mahesh Mathai is not eligible to submit a Resolution Plan as he was a former promotor/director of the company and has contributed to the downfall of the company. Further, it appears from his shareholding pattern that he was always involved in the company, in fact after his resignation and whilst the company was under financial distress, his shareholding went up from 4,36,757 equity shares to 5,13,458 shares equity shares in the year 2019-2020. The said Resolution Plan cannot be allowed as it is in violation of rationale behind insertion of Section 29A, which was to protect the interest of creditors, from persons who have contributed to the mismanagement and defaults committed by the Corporate Debtor.

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30. Considering the aforesaid backdrop of facts, the Resolution Plan submitted by the SRA Mr. Mahesh Mathai is not tenable in law as he is not eligible to submit Resolution Plan under section 29A of the Code.
31. Accordingly, **IA No. 2828 of 2021** in CP(IB) No. 4360 of 2018 is disposed of as **rejected**.

Sd/-

ANU JAGMOHAN SINGH

Member (Technical)

18.08.2023

Priyal

Sd/-

KISHORE VEMULAPALLI

Member (Judicial)