

**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.176- IA/843(AHM)2021 AND  
ITEM No. 177- IA/420(AHM)2022 in  
CP(IB) 287 of 2019

**Order under Section 30(6) r.w 31 IBC,2016 in IA/843(AHM)2021**

**IN THE MATTER OF:**

Ramchandra Dalaram Choudhary RP of Anil Mega Food Park Pvt Ltd .....Applicant

**AND**

**Order under Section 60(5), 30 & 31 r.w Rule 11 of NCLT,2016 in IA/420(AHM)2022**

**N THE MATTER OF:**

M2K Developers Pvt Ltd .....Applicant  
V/s  
Ramchandra D Choudhary RP of Anil Mega Food Park Pvt Ltd .....Respondent

**Order delivered on ..06/07/2022**

**Coram:**

Madan B. Gosavi, Hon'ble Member(J)  
Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

**IA/843(AHM)2021 AND IA/420(AHM)2022 in CP(IB) 287 of 2019**

Both cases are fixed for pronouncement of the order. The order is pronounced in open court vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

-SD-

**MADAN B. GOSAVI  
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-I**

**IA/843(AHM)2021**

**AND**

**IA/420(AHM)2022**

**IN**

**CP(IB) No. 287/NCLT/AHM/2019**

**IA/843(AHM)2021**

[An application under section 30(6) r.w. 31 of the Insolvency and Bankruptcy Code, 2016]

**Ramchandra Dallaram Choudhary**

**Resolution Professional of**

**Anil Mega Food Park Private Limited**

Having its address at:

9B, Vardan Tower, Lakhudi, Circle,

Navarangpura, Ahmedabad-380014

**....Applicant/Resolution  
Professional**

**AND**

**IA/420(AHM)2022**

[An application under sections 60(5), 30 & 31 of the Insolvency and Bankruptcy Code, 2016].

**M2K Developers Pvt. Ltd.**

Having its address at:

E-34, IInd Floor, Connaught Circus,

New Delhi-110001,

And having its corporate office at:

4<sup>th</sup> Floor, M2K Corporate Park, Block N,

Mayfield Gardens, Sector-51,

Gurugram-122003

**....Applicant/Resolution**

**Applicant**

**Versus**

**Mr. Ramchandra D. Choudhary**

**Resolution Professional of**

**Anil Mega Food Park Pvt. Ltd.**

Having address at:

9-B, Vardan Complex, Near Vimal House,

Lakhudi Circle, Navrangpura,

Ahmedabad-380014, Gujarat.

**....Respondent/Resolution**

**Professional**

**IN THE MATTER OF**

**CP(IB) No. 287/NCLT/AHM/2019**

[An application under section 7 of the Insolvency and Bankruptcy Code, 2016]

**IFCI Ltd.**

Having its address at:

IFCI, Tower,  
61 Nehru Place,  
New Delhi-110019

.....**Financial Creditor**

**Versus**

**Anil Mega Food Park Pvt. Ltd.**

Having its address at:

Anil Starch Premises,  
Anil road, Ahmedabad-380025

To be served through

Mr. Manish Girishchandra Shah,  
Director of Anil Mega Food Park Pvt. Ltd.

G-8, Shayona City Part-4,  
Nr. R. C. Technical Road,  
Ghatlodia, Ahmedabad-380061.

....**Corporate Debtor**

**Order reserved on: 28.06.2022**  
**Order pronounced on: 06.07.2022**

**Coram: MADAN B. GOSAVI (MEMBER JUDICIAL)**

**KAUSHALENDRA KUMAR SINGH (MEMBER TECHNICAL)**

**Appearance:**

For the Resolution Professional : Ld. Sr. Adv. Mr. Navin Pahwa, along  
with Ld. Adv. Mr. Arjun Padhiyar,  
Ld. Adv. Mr. Atul Sharma  
For the Resolution Applicant : Ld. Adv. Mr. Pavan S. Godiawala

**ORDER**

**[PER: MADAN. B. GOSAVI, MEMBER (J)]**

1. IA/843(AHM)2021 is an application filed by the Resolution Professional (“RP”) under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) for approval of the Resolution Plan submitted by M/s. M2K Developers Pvt. Ltd. (Applicant in IA/420(AHM)2022) for the Corporate Debtor-M/s. Anil Mega Food Park Pvt. Ltd.

2. IA/420(AHM)2022 is an application filed by the Successful Resolution Applicant- M/s. M2K Developers Pvt. Ltd. for bringing on record certain facts relating to its Resolution Plan more particularly pointing out that its Resolution Plan is subject to certain conditions which the RP and Committee of Creditors (“CoC”) have to comply with.

3. We heard Learned Senior Counsel Mr. Navin Pahwa for the RP and Learned Counsel Mr. Pavan S. Godiawala for the Resolution Applicant.

4. The Corporate Debtor was admitted in Corporate Insolvency Resolution Process (“CIRP”) vide order dated 29.01.2021. The Applicant in IA/843(AHM)2021 was appointed as the IRP. On 03.02.2021, he made a public announcement of the CIRP of the Corporate Debtor. He collated the claims of the creditors of the Corporate Debtor. He constituted the CoC consisting of only one Financial Creditor i.e., IFCI Ltd. having its 100% voting shares. In the first CoC meeting dated 03.02.201 the appointment of the IRP was confirmed as the RP.

5. On 09.03.2021, the RP published Form-G based on the Information Memorandum of the assets and liabilities of the Corporate Debtor. The RP invited the Expression of Interest (“EoI”)/ Resolution Plan from Prospective Resolution Applicant for the Corporate Debtor. It

appears from the record that initially there was no response from any Proposed Resolution Applicant. Hence, the CoC directed the RP to publish Form-G once again. Accordingly, on 30.07.2021, the RP published Form-G (at page no. 108 of IA/843(AHM)2021). This Form-G was supported by the Information Memorandum produced by the Resolution Applicant (at page no. 28 of IA/420(AHM)2022). This Information Memorandum has relevance for considering the fact “whether Resolution Plan as approved by the CoC with the requisite majority, can be approved by this Adjudicating Authority?”.

6. We examined the Resolution Plan in the light of provisions of section 30(2) of the IBC, 2016. We noted that in the Resolution Plan, a provision is made for payment of the CIRP cost as contemplated under section 30(2)(a) of the IBC, 2016. A certain amount is also earmarked for payment of the Operational Creditors on a priority basis thereby the provisions of section 30(2)(b) of the IBC, 2016 are complied with. There is no dissenting Financial Creditor. In para 9.1 (at page 191 in IA/843(AHM)2021), there is a mechanism provided for appointing a Monitoring Committee to look after the assets of the Corporate Debtor pending approval of the Resolution Plan. It is to be noted that the Corporate Debtor was not a running unit at all since its inception. It is also mentioned in the Resolution Plan that the same Monitoring Committee was given the task of the implementation of the Resolution Plan and thereby provision of sections 30(2)(b),(c), (d), and (e) are complied with. The term of the Resolution Plan is fixed for two years. The following is the financial outlay stated in the Resolution Plan which would show that equal treatment is given to all stakeholders:

<b>S. No.</b>	<b>Nature of Payment</b>	<b>Category</b>	<b>Particulars</b>	<b>Amount [Rs.]</b>
1	Financial Creditors	Upfront Payment	As per details set out in Note No. 6	1,35,00,000

		<i>EMD</i>	<i>in the table below.</i>	
2	<i>CIRP Cost</i>	<i>Upfront Payment 1<sup>st</sup> Installment</i>	<i>Part of 1<sup>st</sup> Installment</i>	<i>45,00,000</i>
3	<i>Operational Creditors in the nature of goods or services</i>	<i>Upfront Payment 1<sup>st</sup> Installment</i>	<i>Part of 1<sup>st</sup> Installment</i>	<i>31,916</i>
4	<i>Operational Creditors in the nature of Government Authorities</i>	<i>Upfront Payment 1<sup>st</sup> Installment</i>	<i>Part of 1<sup>st</sup> Installment</i>	<i>2,85,156</i>
5	<i>Financial Creditors</i>	<i>Upfront Payment 1<sup>st</sup> Installment</i>	<i>15% of Offer Price as reduced by the amount appearing in S. No. 2, 3 &amp; 4 above, within 30 days from the date of approval of the Resolution Plan by the Adjudicating Authority</i>	<i>3,56,82,928</i>
6	<i>Financial Creditors</i>	<i>Deferred Payment 2<sup>nd</sup> Installment</i>	<i>Balance amount of Offer Price within 2 Years after expiry of 30 days from the date of approval of the Resolution Plan by the Adjudicating Authority. [Note-2]</i>	<i>21,60,00,000</i>
			<b>Total OFFER PRICE</b>	<b>27,00,00,000</b>

As such this Resolution Plan is complied with all the provisions of law and has been approved by the requisite majority of the CoC, generally it has to be approved by us also.

7. However, the responsibility of this Adjudicating Authority does not end there only. While considering the Resolution Plan, this Adjudicating Authority has to consider the relevant provisions stated in section 31(1) of the IBC, 2016. It states that:

**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, <sup>1</sup>[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:*

*<sup>2</sup>[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 conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.*

*(3) After the order of approval under sub-section (1), -*

*(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and*

*(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.*

*<sup>2</sup>[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval 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 by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:*

*PROVIDED that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the Committee of Creditors.]*

8. Proviso to the above sections makes it clear in uncertain terms that before approving any Resolution Plan, we have to see “whether Resolution Plan can be effectively implemented?”. As far as the Resolution Plan at hand is concerned, we have reservations about the same. On going through the Resolution Plan, we hold that this particular Resolution Plan cannot be effectively implemented.

9. The Resolution Applicant in its application i.e., IA/420(AHM)2022 has produced on record the Information Memorandum dated 21.08.2021 prepared by the RP (page no. 30 is relevant to look into). A layout of the plot of lands owned by the Corporate Debtor and other lands surrounding too has been prepared. There are dotted lines shown by the RP giving an impression to Resolution Applicants in general that there is an existence of the road connecting to the main road and the plots of land owned by the Corporate Debtor. However, in fact, such road is not in existence at all. It is not in dispute that the Corporate Debtor’s unit is a landlock unit from all sides. The Resolution Applicant cannot approach that unit for want of connectivity road.

10. There is enough material on record to show that the RP was well aware of the fact that the Corporate Debtor’s unit is the landlock unit. This fact was discussed in detail in the CoC meeting. The minutes of 5<sup>th</sup> CoC meeting dated 07.09.2021 are on record (Annexure-J of IA/843(AHM)2021). The CoC specifically asked the RP “whether the

Resolution Applicant was aware of the fact about the entry/access to the land of the Corporate Debtor because the land is blocked due to Bharatmala Project?”. The RP apprised the CoC stating that the communication is done with the Highway Authority which may provide the access etc. It shows that the CoC and RP were well aware that there is no access to the unit of the Corporate Debtor from the main road. In spite of that, the RP in Information Memorandum tried to show the dotted lines giving impression that the approach road can be made available to the Prospective Resolution Applicant. If there is no approach road connecting to the main road and unit of the Corporate Debtor, we fail to understand how the Resolution Applicant will be able to run that unit. The Resolution Applicant in the Resolution Plan has stated in uncertain terms in para 6.8(e) that:-

*“...6.8(e) That the access and approach road of 24 meters to the subject land as clearly indicated on page no. 11 of IM shall exist at site and be made available to the RA without any condition, condition or any additional costs whatsoever, so as to ensure that the free access/entry exist to the subject land of 3,53,291 Sq. Mtr. Is made available to the RA.....”.*

11. It is not in dispute that due to the National Highway in between the main road and unit of the Corporate Debtor, there exists no approach road. It is not possible for the RP, and the CoC to make available such an approach road leading to the unit of the Corporate Debtor which the Resolution Applicant is demanding through the Resolution Plan as approved by the CoC.

12. In our considered opinion, such Resolution Plan, if at all approved, cannot be effectively implemented by anyone. The proviso to section 31(1) does not permit us to approve such conditional Resolution Plan. Hence, we reject the Resolution Plan submitted along with IA/843(AHM)2021. IA/420(AHM)2022 is filed by the Resolution

Applicant bringing on record the situation about the non-existence of the approach road. No specific prayer is made therein. Hence, that IA also stands disposed of. Accordingly, we proceed to pass the following orders:

**ORDER**

- I. The Resolution Plan of M2K Developers Pvt. Ltd. for the Corporate Debtor-M/s. Anil Mega Food Park Pvt. Ltd. submitted for our approval along with IA/843(AHM)2021 is rejected for the reason that it cannot be effectively implemented.
- II. We direct the Resolution Professional to return the Earnest Money Deposit (“EMD”), if any, to the Resolution Applicant forthwith.
- III. Both applications stand disposed of.
- IV. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

-SD-

**MADAN B. GOSAVI**  
**MEMBER (JUDICIAL)**

Rajeev Kr. Sen/Stenographer