

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No.301

IA/733(AHM)2022

in

CP(IB)/70(AHM)2021

Order under Section 30(6) r.w 31 IBC r.w Regulation 39(4) of IBBI Regulations, 2016

IN THE MATTER OF:

Dhaval Jitendrakumar Mistry RP for Gajanand Corporation**Applicant**
Private Limited

.....**Respondent**

Order delivered on 02/11/2023

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.

-Sd-

-Sd-

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

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH (COURT - II)**

INTERLOCUTORY APPLICATION NO.733 OF 2022

IN

C.P.(IB) NO.-(IB)-70/NCLT/AHM/2021

[Application under Section 30 (6) with Section 31 OF THE IBC, 2016 r.w. REGULATION 39(4) OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROCESS OF CORPORATE PERSONS) REGULATIONS, 2016.]

IN THE MATTER OF: -

CA Dhaval Jitendrakumar Mistry,

Resolution Professional of
Gajanand Corporation Pvt. Ltd,
Having a Registered office at:
9-B, Vardan Complex,
Near Vimal House, Lakhudi Circle,
Navrangpura, Ahmedabad,
Gujarat-380014

...Applicant

Order Pronounced on:02.11.2023

Coram:

**MRS. CHITRA HANKARE,
HON'BLE MEMBER (JUDICIAL)
DR. VELAMUR G. VENKATA CHALAPATHY,
HON'BLE MEMBER (TECHNICAL)**

Appearance:

For the Applicant/RP: Mr. Atul Sharma a.w. Mr. Arjun
Padhiyar Adv.

For the Respondent: None

For the State Tax Department: Ms. Kinjal Trivedi Adv. for
Maithali Mehta, Adv.

For SRA: Ms. Aditi Sharma, Adv.

ORDER

1. The present application is filed under Section 30(6) read with Section 31 of the Code, 2016 and other relevant provisions of the Code, seeking for approval of the resolution plan in the matter of Gajanand Corporation Private Limited (IN CIRP).
2. The facts as narrated in the application and explained by the Ld. Counsel for the Applicant/RP is summarized hereunder :
 - 2.1 The company petition came to be filed by the Operational Creditor i.e. Eco Green Products Private Limited under Section 9 of the Code seeking inter alia, initiation of Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') against Gajanand

Corporation Pvt. Ltd. (hereinafter referred to as “Corporate Debtor”).

2.2 This Hon’ble Tribunal vide its order dated 22.02.2022 was pleased to admit the petition filed by the operational creditor and appointed Mr. Dhaval Jitendrakumar Mistry, the applicant herein as an Interim Resolution Professional (hereinafter referred to as ‘IRP’) of the corporate debtor.

2.3 The applicant made a public announcement as contemplated under the provision of Section 15 of the code and invited claims from all the creditors. The applicant submits that the said announcement was published in the newspapers viz. Business Standard English (Ahmedabad Edition) and Sandesh Gujarati (Ahmedabad Edition) on 28.02.2022 in prescribed Form A.

2.4 Pursuant to the public announcement dated 28.02.2022, the IRP has inter alia received claims from the creditors of the Corporate Debtor and constituted the Committee of Creditors (“CoC”) as

required in Section 21(1) of the Code and the report certifying the constitution of CoC as per Regulation 17 (1) of IBBI (Insolvency Process of Corporate Persons) Regulations, 2016 (“CIRP Regulations”) on 17.03.2022. Subsequently, the IRP received several claims after constituting the Committee of Creditors hence the IRP filed the report of re-constitution of the Committee of Creditors on 25.04.2022, 17.06.2022 and 17.08.2022.

2.5 The applicant convened 1st meeting of the Committee of Creditor (hereinafter referred to as ‘CoC’) on 25.03.2022 wherein the CoC Members inter alia resolved to appoint Mr. Dhaval Jitendrakumar Mistry as Resolution Professional (hereinafter referred to as ‘RP’) of the Corporate Debtor and further resolved to reduce the notice period for inviting the CoC Meeting from five (5) days to two (2) days.

2.6 The applicant convened the 2nd Meeting of the CoC on 11.05.2022 wherein the members of CoC inter alia resolved to initiate the process of Expression of

Interest (hereinafter referred to as 'EoI'); further, the CoC also approved minimum eligibility criteria and evaluation matrix and draft Request for Resolution Plan.

2.7 The applicant convened the 3rd Meeting of the CoC on 11.07.2022 wherein the RP apprised the members of the CoC that he has received three (3) EoI from the Prospective Resolution Applicants (hereinafter referred to as 'PRA') namely M/s. Shlok Enterprise, M/s. Thakurji International Private Limited and M/s. Avadh Infra. From the aforementioned PRA, Two prospective Resolution Applicants had submitted the Resolution Plans namely i.e. M/s. Shlok Enterprise and M/s. Thakurji International Private Limited and the same was opened in the said meeting in the presence of the members of the CoC.

2.8 The applicant convened the 4th Meeting of the CoC on 10.08.2022 wherein members of the CoC had a detailed discussion on the Resolution Plan received from PRA i.e. M/s. Shlok Enterprise and M/s.

Thakurji International Private Limited. In the said meeting, RP as well as CoC members had requested the PRA to increase their Financial Bid and submit a revised Resolution Plan on or before 16.08.2022. The applicant further submits that in the said meeting, the RP apprised the CoC members that he had received the Transaction Audit Report on 20.07.2022 for the period between 01.04.2017 till 22.02.2022 from the Forensic Auditor.

2.9 The applicant convened the 5th Meeting of the CoC on 18.08.2022 wherein the RP apprised the members of the CoC that he has received two Revised Resolution Plans from Prospective Resolution Applicants i.e. M/s. Shlok Enterprise and M/s. Thakurji International Private Limited. In the said meeting, the RP had a detailed discussion on the feasibility and viability of the Revised Resolution Plan with the members of the CoC.

2.10 The Revised Resolution Plan dated 16.08.2022 submitted by M/s. Thakurji International Private

Limited came to be approved by a member of the CoC with 67.88% votes in favour. A copy of the Revised Resolution Plan dated 16.08.2022 submitted by M/s. Thakurji International Private Limited Successful Resolution Applicant. The payment structure in the Revised Resolution Plan dated 16.08.2022 is as below: -

Application of Funds	Amount of claim/Balance Outstanding	Amount proposed
Liabilities to be resolved/settled		
a. Insolvency Resolution Process Cost	10,00,000	10,00,000
b. Financial Creditors (Secured)	5,80,12,685	11,00,000
c. Financial Creditors (Unsecured	3,61,61,549	93,000
d. Workmen/Employees	3,18,000	1,000
e. Statutory dues	36,000	1,000
f. operational creditors	21,41,65,657	5,000
g. Other Creditors including Related Parties	NIL	NIL
h. Equity Share Capital	NIL	NIL
i. Contingent Liabilities*	NIL	NIL
Total Cost of Resolution Plan	30,96,93,891	22,00,000

[The Applicant submits that the Effective date shall be considered from the date of order of this Hon'ble Tribunal approving the resolution plan.]

2.11 The said payment is categorized as under: -

PART A: COST OF CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

- The Resolution Applicant has proposed an amount of Rs 10 Lakhs towards CIRP cost. The CIRP Costs as estimated at Rs. 10 Lakh will be paid on an actual basis in full and priority to any other creditors of the company within 90 days from the Effective Date. In case any additional cost of CIRP is there as approved by RA, the same shall be adjusted from secured financial creditors.

PART B: SETTLEMENT OF CORPORATE FINANCIAL DEBTS AND OPERATION DEBT (WORKMEN OR EMPLOYEES DUES) AND STATUTORY DUES:**SECURED FINANCIAL CREDITORS**

- As per the Information Memorandum, under “List of Financial Creditors” total outstanding of Secured Financial Creditors of the Company is ₹ 5,80,12,685/- who has submitted the claims and also verified and admitted by Resolution Professional are as follows:

List of Secured Financial Creditors

Name of the financial Institutions	Claims received by RP (₹)	Claims admitted by RP (₹)
ICICI Bank	5,50,20,794	5,50,20,794
TVS Credit Services Ltd.	29,91,891	29,91,891
Total	5,80,12,685	5,80,12,685

Terms of Settlement:

- The amount claim received & admitted for Secured Financial Creditor is ₹ 5,80,12,685.
- The Resolution Plan proposed a Consolidated sum of ₹ 11,00,000/- inclusive interest for all the dues and all claims of Secured Financial Creditors over a period of 90 days from the effective date as specified in accordance with Repayment Schedule in the Resolution Plan; (Principal Amt.: ₹ 11,00,000/-)

WORKMEN & EMPLOYEES DUES

- The aggregate amount of claims received from employees is Rs. 4,37,529 of which RP has admitted a claim of Rs. 3,17,806/- RA has

proposed to pay Rs. 1000/- towards Employees dues within 90 days from effective date

WORKMEN & EMPLOYEES DUES

- The aggregate of the claims received from the Operational Creditors (Other than Statutory Authorities) by the RP amounts to ₹ 28,64,85,213/- whereas RP has admitted a claim of Rs. 21,41,65,657/- RA has proposed ₹ 5,000/- within 90 days from the effective date without any interest.

STATUTORY DUES

- The aggregate of the claims received from the Operational Creditors (Statutory Authorities) by the RP amounts to ₹ 35,716/- and RA has proposed ₹ 1,000/- within 90 days from the effective date without any interest

EXTINGUISHMENT OF OPERATIONAL CREDITORS

INCLUDING STATUTORY OPERATIONAL CREDITORS

- All outstanding dues of operational Creditors shall stand waived against the Corporate Debtor immediately upon sanction of this resolution plan subject to payment reserved and allocated for them.
- Operational Creditors will have no right to seek any remedy under any law for recovery of Principal Amount, Unpaid interest, damages, charges, claims and/or any form of recompense upon sanction of the Resolution Plan by Adjudicating Authority.

PART – C –UNSECURED FINANCIAL (UNSECURED-NON-RELATED)

- As per the Information Memorandum, under “List of Financial Creditors” total outstanding of Unsecured Financial Creditors (Non-Related) of the Company is Rs. 2,30,46,376/- who has submitted the claims and also verified and admitted by Resolution Professional are as follows:

- **List of Unsecured Financial Creditors**

Name of the Financial Institutions	Claims received by RP (INR)	Claims admitted by RP (INR)
Deutsche Bank AG	24,93,172	24,93,172
S M Iron Traders Pvt. Ltd	32,50,000	32,50,000
Indiraben Patel	16,94,714	-
Vasudha Corporation Pvt. Ltd	1,73,03,204	1,73,03,204
Total	2,47,41,090	2,30,46,376

PROPOSAL FOR UNSECURED FINANCIAL CREDITORS

(NON-RELATED)

- The amount claim received & admitted for Unsecured Financial Creditor is ₹ 2,47,41,090/- and ₹ 2,30,46,376/- respectively.
- The Resolution Plan proposed a Consolidated sum of ₹ 93,000/- within 90 days from the effective date without any interest
- The valuation report does not contain any assessment on the expected cash flows of the JV contract agreement in the project

with 2 parties namely P R Patel & Vidhata Associates presently the only source of income for the Corporate Debtor nor the Resolution Professional has confirmed the contract which is contradicted by ICICI to be existing.

- There is a demand of Rs 13.02 lakhs from the Income Tax Department which was sought clarification on 1 August 2023 which does not figure as a liability to be paid. The total number of operational creditors is mentioned as Rs 2366.39 lakhs of which the due to the Government is only shown as 0.36 lakhs. The Resolution Professional has in clarification stated that there is a claim of the IT Department being the operational debt, however, vide email dated 19.08.2023 will be settled the outstanding dues of the IT department in terms of settlement as proposed for the

operational creditor (statutory dues) in its Resolution Plan in the respective ratio.

- Only ICICI Bank with 67.88% of the voting share has approved the plan.

**PART D: PROPOSAL FOR CONTINGENT LIABILITIES
AND OTHER OPERATIONAL CREDITOR OF
CORPORATE DEBTOR:**

- As per the Audited financial statements as of 31.03.2021, there is no contingent liability outstanding with Corporate Debtor. Hence no amount has been proposed by the Resolution Applicant.
3. The fair value of the corporate debtor is Rs. 24,22,749/- and the liquidation value is Rs. 20,01,621/-. A copy of a summary of valuation and valuation reports of all valuers is attached with the present.
4. The Applicant has also received an EMD of Rs. 5,00,000/- along with the submission of the EOI and an EMD of Rs. 2,20,000/- along with a Resolution plan.

5. We have heard the Learned Counsels and perused the material available on record. The Resolution Plan does not address the cash flows and value of the Assets enumerated and the Operational Debt claims received from Statutory Authorities. The valuation report(only a summary is submitted) of the assets is not satisfactory. The Resolution Plan presupposes approval and ignores the claim that has been received from the Income Tax Department of dues to be paid. It also proposes to pay only Rs 1000 to employees in 90 days after the approval of the Plan. The Resolution Plan is rejected as it does not satisfy the provisions of Section 31(2) of IBC 2016 and Regulations 36 of the Act of the Code.
6. In view of the above, the present application IA 733 of 2022 in CP (IB) 70 of 2021 is rejected and disposed off.

S/d-

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

S/d-

CHITRA HANKARE
MEMBER (JUDICIAL)