

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, (BENCH IV)
IA No. 243/(ND)/2021
IN
COMPANY PETITION NO. (IB) 394/(ND)/2019**

{Under Section 30,31 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India for approval of Resolution Plan}

IN THE MATTER OF:

MR. UMESH GARG (Resolution Professional)

.... APPLICANT

And

In the matter of:

FINE GROUP CORPORATION LIMITED

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

LEMON ELECTRONICS LIMITED

...RESPONDENT/ CORPORATE DEBTOR

ORDER PRONOUNCED ON: 13.05.2020

Coram:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)**

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*Umesh Garg **And** Fine Group Corporation Limited Vs. Lemon Electronics Ltd.*

MEMO OF PARTIES

MR. Umesh Garg

Resolution Professional

For Lemon Electronics Limited (under CIRP)

HAVING OFFICE AT:

115, First Floor, Devika Tower,

Nehru Place, New Delhi - 110019

...APPLICANT

Present:

For Applicant -
For the Respondent -
For RP - Mr. Ashish Makhija,
Mr. Anurag Bhatt, adv.

ORDER**Per-Dr. Deepti Mukesh, Member (Judicial)**

1. The present application has been filed by the Resolution Professional, Mr. Umesh Garg for approval of Resolution Plan under Section 30 (6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereafter referred to as Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereafter referred to as Regulations) seeking approval of the Resolution Plan. The Resolution Plan was duly approved in the eighth meeting of committee of creditors (CoC), with 99.61% of voting share. The minutes of the said meeting along with the voting result has been annexed.
2. An application bearing C.P. No. IB-243/(ND)/2019 was filed by Fine Group corporation Limited/ Operational Creditor under Section 9 of the Code for initiating Corporate Insolvency Resolution Process against Lemon Electronics Limited/ Corporate Debtor. This Bench vide order dated 27.02.2020 admitted the Section 9 application and appointed Mr. Umesh Garg as the Interim Resolution Professional (IRP) (hereinafter referred to as the “Applicant”) with necessary directions and to file regular reports of events. The applicant made a public announcement in Form A dated 29.02.2020 as prescribed under Regulation 6 (1) of the Regulations and on 02.03.2020 published the same in Business Standard (English) Edition and Dainik Jagran (Hindi) both at Delhi NCR location intimating the commencement of Corporate Insolvency Resolution Process of the Corporate Debtor and for calling the creditors to submit their claims along with the proof in the prescribed format.

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3. The applicant states that the First meeting of the COC was scheduled to be held on 26.03.2020. However, due to covid -19 pandemic, the government of India with effect from 25th March 2020 declared a nationwide lockdown and hence the COC meeting was postponed.

The Insolvency and Bankruptcy Board of India vide notification dated 29.03.2020 inserted Regulation 40C, which prescribes relaxations with respect to the CIRP timelines under the IBC and the rules/regulations framed thereunder, in view of the difficulties being faced due to the outbreak of the COVID-19 pandemic. The said regulation is reproduced below:

“40C. Special provision relating to time-line: Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”

4. The first CoC meeting was held through Video conferencing on 11.05.2020 and the applicant was appointed as Resolution Professional of the Corporate Debtor and the appropriate intimation was filed with the Adjudicating Authority. The 2nd meeting of CoC was held on 22.06.2020. In the said meeting the agenda for invitation of expression of interest in prescribed Form – G and eligibility criteria was put forth before the members of CoC. The applicant in 3rd meeting of CoC held on 11.08.2020, intimated the CoC that pursuant to the public announcement, one resolution applicant had submitted his interest. Accordingly, the applicant issued provisional list of prospective resolution applicants on 08.08.2020. Thereafter, in the CoC meeting it was decided to extend the period for invitation of expression of interest accordingly the resolution to publish an addendum to Form-G was approved. Thereafter, the addendum to invitation for EOI in Form -G was published on 14.08.2020, wherein the last date for submission of EOI was extended from 29.07.2020 to 20.08.2020.

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5. It was also resolved in the 3rd meeting of the CoC, that an application needs to be filed for seeking exclusion of 82 days of CIRP period for the reason of lockdown as well as the borders of Delhi being sealed. The Adjudicating Authority vide order dated 09.09.2020, excluded a period of 82 days from calculation of CIRP period.
6. The applicant states that pursuant to publication of addendum, EOI from 2 prospective resolution applicants was received and the final list of prospective Resolution applicants was published on 14.09.2020 on the website of corporate debtor maintained by the applicant. The applicant states that the last date for submission of Resolution Plan was 04.10.2020, however, none of the prospective resolution applicant submitted the resolution plan and the resolution applicants were seeking extension of time.
7. Thereafter in the 4th CoC meeting it was resolved to amend Form - G and extend the last date of submission of Resolution Plan from 04.10.2020 to 14.10.2020. The sole resolution applicant submitted its resolution plan with the RP. The said plan submitted by Resolution Applicant was placed before CoC members for consideration.
8. The CIRP period of 180 days excluding the lockdown period was ending on 15.11.2020, accordingly, in the 6th CoC meeting, it was resolved to extend the CIRP for a further period of 60 days. The resolution was passed with 99.61% voting share. This Bench vide order dated 20.11.2020 extended the CIRP period by 60 days.
9. On 06.01.2021, the proposed resolution applicant submitted the revised resolution plan dated 03.01.2021. The said revised plan was discussed by the CoC in the 8th meeting dated 08.01.2021. The Resolution Applicant submitted the 1st Addendum and 2nd Addendum to the Resolution Plan on

09.01.2021 and 14.01.2021 respectively. The resolution plan in terms of Section 30(2) of the Code was verified by the RP and it was found that resolution applicant had sought relief and concessions mentioned in Schedule II of the resolution plan. Upon satisfaction of the plan being complete and after considering the concession sought by the resolution applicant CoC in its 8th meeting deliberated and voted for approval of plan. Accordingly, the CoC resolved to approve the Resolution Plan with 99.61% voting share and passed the following Resolution: -

“RESOLVED FURTHER THAT the approval of Committee of Creditors (COC) be and is hereby accorded to the attached Resolution Plan submitted by the Resolution Applicant M/s Mridul Tobie Inc.”

Compliance certificate in Form H in terms of Regulation 39(4) has been filed by the RP and the same is annexed with the application.

10. The applicant filed written submission and stated the following:

- a) The liquidation value of the corporate debtor as determined by the registered valuer is Rs. 95,58,833/-. Whereas, the Resolution Applicant is offering a total payment of Rs. 19,78,00,000/- which is much more than the liquidation value. The payment plan as provided by the Resolution Applicant under the resolution plan has been annexed.
- b) Regulation 38 of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016, has been complied with.
- c) The parameters for approval of resolution plan are set out in the IBC, 2016 read with IBBI (CIRP) Regulations, 2016. Which are briefly set forth herein below:

Section/Regulation	Compliance made
Section 30(2)(a)	the CIRP cost will be paid in full on priority as per the payment proposed to be made to the operational creditors of the corporate Debtor.

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<p>Section 30(2)(b) read with Regulation 38 of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016</p>	<p>a) The two Financial creditors will be paid Rupees Nineteen Crore Five Lakhs proportionately.</p> <p>b) No payment shall be made to Starorama Technology Private Limited since it's a related party and to Brisk Communication as they are unsecured Financial Creditor. (The proposed liquidation value for distribution is nil.)</p> <p>c) The operation creditors (including govt. dues) will be paid Rupees seven Lakhs on gratia basis against full and final settlement of their admitted claims.</p> <p>d) There is no claim from workmen and employee.</p> <p>Resolution Plan provides for the interest of all stakeholders, including Financial Creditors and Operational Creditors, of the Corporate Debtor.</p>
<p>Section 30(2)(c)</p>	<p>the corporate Debtor shall stand dissolved and all the director and management of the corporate debtor shall demit their office on the date of approval of Resolution Plan by Adjudicating Authority. The management of affairs of the corporate debtor shall stand transferred in the hands of the resolution applicant</p> <p>For supervision of Resolution Plan, a</p>

	monitoring committee comprising of 4 persons out of which 1 will be Mr. Umesh Garg, Resolution Professional, 1 to be nominated by the Financial Creditors, and 2 nominees of the Resolution Applicant will be appointed as members of monitoring committee. The said committee shall be dissolved upon payment of the total settlement amount.
Section 30(2)(d)	The resolution plan will be implemented within 15 days from the date of approval of resolution plan by Adjudicating Authority.
Section 30(2)(e)	The proposed relief provided in the resolution plan does not contravene any of the provisions of law for the time being in force.
Section 30(4) of the IBC, 2016	Resolution Plan is approved by 99.61%

11. In view of the above discussion that the resolution plan, as approved by the CoC, is in accordance with the sub-section 2 of Section 30 read with Section 31 of the Code and as the Resolution Applicant is not disqualified under Section 29A of the Code; we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.
12. It is hereby declared that the Resolution Plan is binding on the corporate debtor, members, workmen and employees as well as creditors and other stakeholders in general.
13. It is also declared that the moratorium order passed by this bench under Section 14 of the Code shall cease to have effect.

14. The Resolution Professional shall forward all records relating to the CIRP process and the resolution plan to IBBI to be recorded at its data base in terms of Section-31(3)(b) of the Code.
15. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
16. I.A. No. 243/2021 is allowed and disposed off accordingly.

Let the copy of the order be served to the parties.

Sd/-
SUMITA PURKAYASTHA
MEMBER (TECHNICAL)

Sd/-
(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)