

IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, NEW DELHI

COURT-III

CA-751/2019 filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in **CP (IB)-401 (ND)/2017**.

In the matter of **Earth Infrastructures Limited**.

Mr. Deepak Khanna

Versus

...Financial Creditor

Earth Infrastructures Limited.

.... Corporate Debtor

In the matter of **CA-751/2019**

Earth Infrastructure Limited
Through its Resolution Professional
Akash Shinghal

.....Applicant

Order delivered on 5th of April, 2021

CORAM:

CH. MOHD. SHARIEF TARIQ, MEMBER (JUDICIAL)
SHRI NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

For RP: Mr. Ashish Makhija, Mr. Anurag Bhatt (Advocates)

For RA: Mr. Atul Sharma, Ms. Arveena Sharma (Advocates)

For HDFC Bank: Ms. Gurmeet Bindra (Advocate)

For F/C: Mr. Shashank Raghav (Advocate)

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. The Resolution Professional viz., Mr. Akash Shinghal has filed the instant Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC") read with Regulation 39 (4) of Insolvency and Bankruptcy Board of India, (Insolvency Resolution Process for Corporate Person) Regulations, 2016 in CA-751/2019 for seeking the approval of '*Resolution Plan*' under Section 31(1) of IBC in the matter of *Earth Infrastructures Limited* (hereinafter referred to as "Corporate Debtor").
2. The Resolution Professional viz., Mr. Akash Singhal has submitted that the Resolution Plan was duly approved by the Committee of Creditors (hereinafter referred as "CoC") in the 14th CoC Meeting held on 26.08.2019 with 100% voting share, which is accompanied by the Compliance Certificate in the prescribed Form-H.

Factual Matrix:

3. It reveals from the record that vide Order dated 06.06.2018, (IB)-401 (ND)/2017 filed by the Financial Creditor viz., *Mr. Deepak Khanna* (hereinafter referred as "Financial Creditor") was admitted, and Corporate Insolvency Resolution Process (hereinafter referred as "CIR Process") was initiated against the Corporate Debtor and Interim Resolution Professional viz., *Mr. Surinder Kumar Juneja* was appointed (hereinafter referred as "IRP").

4. The IRP constituted CoC and the 1st CoC Meeting was convened on 27.07.2018. The 3rd Meeting of the CoC was convened on 05.12.2018, the Applicant was appointed as the Resolution Professional of the Corporate Debtor which was confirmed by this Authority vide Order dated 18.03.2019. This Authority vide Order dated 04.10.2018 excluded a period of 57 days from 09.08.2018 to 04.10.2018 and thereafter vide Order dated 15.05.2019 a period of 127 days was excluded.
5. This Authority vide Order dated 18.07.2018 appointed Mr. Gulshan Gaba as the Authorized Representative. It is stated that the valuers for valuation of Land and Building were appointed by the IRP on 30.12.2018 and the Transaction auditor was appointed on 28.1.2019.
6. The Form G i.e., invitation of Expression of Interest from Prospective Resolution Applicants was published on 19.04.2019 and 22.05.2019, pursuant to which the Resolution Professional issued the provisional list of Resolution Applicants on 15.06.2019. The final list of Resolution Applicants was issued on 25.06.2019. The Resolution Professional received 2 Resolution Plans from RAs out of the 11 Prospective Resolution Applicants i.e., one from BPT Infra Projects Private Limited and other from Roma Unicon Designex Consortium after the Request for Resolution Plan was issued.
7. It is submitted that the Resolution Plan submitted by the Prospective Resolution Applicant viz., BPT Infra Projects Private Limited was rejected, as it was not in compliance with the conditions laid down under the code and no

earnest money was deposited, which was the pre-condition for submitting a Resolution Plan. It is further stated that the Prospective Resolution Applicant viz., Roma Unicon Designex Consortium (hereinafter referred as "RUD") submitted the resolution plan for the Earth Towne project of CD on 31.07.2019 and the amended Resolution Plan was submitted on 17.08.2019. The Resolution Plan was put before the CoC on 17.08.2019 in its 12th CoC Meeting for discussion. Thereafter, RUD submitted Addendum-01 and Addendum-02 to the Resolution Plan on 20.08.2019 and 23.08.2019 respectively. The revised Resolution Plan with addendum was placed before the members of CoC in its 14th CoC meeting held on 26.08.2019 and was put to vote. The Resolution Plan was approved by 100% voting share and accordingly the following resolution was passed: -

*"**RESOLVED THAT** Resolution Plan read with addendum submitted by M/s. Roma Unicon Designex Consortium for the project Towne be and is hereby approved in terms of Section 30(4) of the Insolvency & Bankruptcy Code, 2016 by the Committee of Creditors."*

Brief Background of the R A and the Project Towne;

8. The Resolution Applicant viz., RUD is a consortium of three companies' viz., M/s. Roma Builders and Promoters Pvt. Ltd, M/s. Unicon Buildtech and M/s. Designex Engineering Services Pvt. Ltd. The operational office is situated at 412, 4th floor Manglam Paradise, Sector 3, Rohini, New Delhi -110085. The project Earth Towne was floated in 2010 by the CD namely, Earth Infrastructures Limited on a leased land allotted by Greater NOIDA Authority. The land is situated at GH-Plot no. 4, Sector no.1, Greater Noida. The

Authority has allotted the land admeasuring 73942 sq. mtr. vide allotment no BRS01/1000012 in 2010 to the Company, Earth Towne Infrastructures Pvt Ltd, a wholly owned subsidiary of EIL.

Agreement between EIL and ETIPL:

9. It is stated that as per the assessment carried out by RUD the Earth Infrastructure Limited (hereinafter referred as "EIL") has entered into a Development agreement with the wholly owned subsidiary viz., Earth Towne Infrastructures Pvt Ltd (hereinafter referred as "ETIPL"), which is holding land, to construct the real estate units on the parcel of land allotted to ETIPL and as per the agreement entered between the parties, EIL will carry on the construction activities and ETIPL shall be entitled to 18% of developed real estate units. EIL has partially constructed 12 towers of various sizes and units, and foundation work of 5 towers has been partially completed by EIL. No construction activity has been carried out since ending of 2016. The project comprises of total 34 residential towers + commercial units.

10. The **salient features** of the Resolution Plan are summarized as follows: -

I. Financial and Operational Creditors:

Sl No	Particulars	Claim amount admitted as on 12-08-2019		
		Principal	Interest/ Assured Return/ Others	Total
1.	<u>Financial Creditors</u>			
i	Advance received from Buyers (Earth Infrastructures Limited)	2,873,027,176	1,133,640,606	4,006,667,782
ii	Advance received from Buyers (Earth Towne Infrastructures Limited)	-	-	-
2.	Operational Creditors	-	-	-
3.	Workmen & Employees	-	-	-
	Total	2,873,027,176	1,133,640,606	4,006,667,782

II. OTHER FINANCIAL CREDITORS AND OPERATIONAL CLAIMS FOR EARTH INFRASTRUCTURES LIMITED:

The List of Other Financial Creditors and Operational Claims (not project specific) of the company viz., Earth Infrastructures Limited is summarized as under: -

Sl No.	Particulars	Claim amount admitted as on 12-08-2019
1.	Operational Creditors	112,39,13,773
2.	Other Claims	NIL
3.	Workmen & Employees	2,95,63,763
4.	List of creditors other than FC, OC, & Workmen & Employees	NIL
Total		115,34,77,536

III. CIRP Cost Payable as per the Resolution Plan:-

It is submitted that the CIRP cost has been assumed by RUD at an approximate amount of Rs. 50 lacs comprising of the fees of the IRP/RP as approved by the CoC, fees of the Valuers who have carried out the valuation and such other fees and expenses as approved by the CoC in accordance with the IBC as eligible fees and expenses under this head. In case the actual CIRP cost is higher than the estimated CIRP cost, RUD will pay the higher amount. RUD will make the payment of the insolvency resolution process cost in accordance with the priority of the payments, as set forth in this proposed plan.

IV. Claims of the Financial Creditors and settlement thereof:-

The RUD proposes to complete the construction of such minimum number of towers to accommodate the financial creditors, thus the settlement amount proposed to be paid to the Financial Creditors viz., *the flat buyers* are proposed to be settled by handing over possession of completed Real estate units on such terms and conditions as mentioned in the plan. The detailed timeline of deliverables to satisfy the claims of the financial creditors is annexed with the Plan.

V. Claims of the Operational Creditors/Workmen/Employees and Settlement thereof:-

The Resolution Professional submits that RUD proposes to make payment of Rs. 4,20,731/- towards the Operational Creditors within a period of sixty days from the effective date, with a provision for contingency for Rs. 1 crore. As per the list of claims filed by employees and workmen, the admitted claims stand at Rs. 2,95,63,763/- for the company. Further, it has been observed from the IM that there are 61 court cases with regards to claims filed by the employees. The amount as per IM with regards to these cases is Rs 3,78,65,989/-. The claims as admitted by the Resolution Professional *inter-alia* may or may not be including the amounts for which the employees have filed the cases resulting into overlapping of amounts admitted as well as pending before the courts. The RUD has an understanding that the share of project Towne comes to 28% of the total liability of the corporate debtor i.e., EIL. Thus, the share attributable to project Towne works out at Rs 82,77,854/-. RUD proposes to dispose of the said liability of Rs 82,77,854/- without any haircut, thereby the amount proposed to be paid to such operational creditors is Rs. 82,77,854/-. Further, RUD proposes to make the provision for contingency towards workmen compensation at Rs. 50 lacs.

VI. Claims of the Statutory Authorities and settlement thereof:-

The RUD does not intend to make any payments towards statutory dues for the reasons that discharge of such liabilities will burden the RA and it is not possible to complete the project to hand over the units to the Home buyers allotted to them. However, the detail about the Claims of the Statutory Authorities is given by the Resolution Professional as follows; -

Claimant	Amount admitted
Assistant Commissioner of Income Tax	64,05,45,281
Dy. Excise and Taxation Officer, Gurgaon	32,60,07,312
Office of the Tax Recovery Officer (TDS-1)	8,02,39,063
Total	1,04,67,91,656

VII. Shareholding Pattern of Corporate Debtor post Resolution Plan:-

The Resolution Plan provides that RUD has proposed to take over the project Earth Towne on standalone basis on such terms and conditions as detailed in this plan. Further, RUD proposes neither to take over the entire company nor the land-owning company; hence, there will be no requirement of transfer of any shares either from Earth Infrastructures limited or from Earth Towne Infrastructures Private Limited (i.e., the land-owning company) except the project land and receivables/recoveries to the extent of the project.

VIII. Priority of payments and payment summary:-

The summary of priority of payments and Payment summary as per the Resolution Plan in accordance with the code is as follows: -

Priority No.	Head	Amount (Rs.)
1	CIRP cost or actual (Approximate)	50,00,000
2.1	Workmen dues	82,77,854

2.2	Payments to Financial Creditors being Unit buyers.	By way of construction of Units for unit holders
2.3	Statutory Dues	Value as per Section 53 of IBC
3	Other Operational Creditors	4,20,731

IX. Schedule for Implementation of Resolution Plan.

It is stated in the Resolution Plan that the implementation of the Plan shall be subject to satisfaction of all the conditions set out in the Plan. It is stated that the RUD will complete the project within 5 (five) years from the effective date and will not stop project on account of non-payment by unit holders. In case of any shortfall of funds on account of non-payment by the buyers, RUD will fund from own sources to complete the project.

X. Supervision of implementation of the plan, acquisition of management control & reconstitution of the management of the project:

The Resolution Plan provides that for the purpose of completion of the Resolution Plan by incorporating a body corporate. The members/equity holders of the incorporated body corporate will be the same as the consortium members of RUD. Accordingly, RUD proposes to reconstitute the management of the project with professional managers/agencies having relevant industrial expertise to be inducted in the following organizational level within the body corporate: -

- A. Key managerial persons (KMPs)
- B. Monitoring and audit committee with functional heads (operational and financial)
- C. Other organizational managers as will be necessary.

The Professionals of KMPs and designated persons will be appointed to the above-mentioned roles for implementing the Resolution Plan/turnaround plan of the company and are identified by RUD. The details of the relevant personnel identified for the aforesaid purpose are not being provided under the Plan. Further, it is stated that the promoters of RUD will primarily be responsible for the management of operations of the project on and from the effective date. The existing promoter group of the company i.e., EIL and or its Associate/Related parties shall not have control over the project in any manner whatsoever. The reconstituted management of the project as above shall be primarily responsible for the supervision of the implementation of the plan.

XI. Sources of Funds:

The requirement of the funds is proposed to be financed through equity infusion of Rs. 31 crores. The equity infusion will be carried out in a phased manner as per requirement. The balance receivable from existing buyers, who have agreed to be serviced under this Resolution Plan, shall be demanded as per the PAYMENT PLAN under which the buyer has made the booking with EIL/ETIPL or such modified terms and conditions as may be decided and agreed upon under the plan for resolution.

11. OBSERVATIONS/APPROVAL: -

The parameters for approval of Resolution Plan are set out in Section 30 and 31 of the IBC, 2016. The Resolution Plan has to fulfil certain mandatory requirements under the Code and CIRP Regulations and the Resolution Plan has complied with such mandatory compliance, which are briefly set forth herein below: -

Section / Regulation	Compliance made
Section 29A of the IBC, 2016	The Resolution Applicant is not barred under this Section.
Section 30(1) of the IBC, 2016	Resolution Applicant has submitted an affidavit stating that he is not disqualified under the provisions of Section 29A.
Section 30(2)(a) of the IBC, 2016 <i>And</i> Regulation 38(1A) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016	The Resolution Plan provides payment of the CIRP Cost, in priority to the payment of other debts of the Corporate Debtor. The Resolution Plan also deals with the interest of all the stakeholders.
Section 30(2)(b) of the IBC, 2016 <i>And</i> Regulation 38(1) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016	The Resolution Plan provides for the payment of Rs. 4,20,731 to the Operational Creditor within a period of 60 days from the effective date, with a provision for contingency for Rs. 1 Crore. The sources of funds required, and the manner of sourcing is through equity infusion.
Section 30(2)(c) and Section 30(2)(d) of the IBC, 2016, <i>And</i> Regulation 38(2) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016	The Resolution Plan provides that the promoters of RUD will primarily be responsible for managing the operations of the project on and from the effective date. The Resolution Applicant proposes to complete the minimum number of towers as mentioned in the Plan within a span of five years from the effective date.

Section 30(2)(e) of the IBC, 2016	The Resolution Plan does not contravene any of the provisions of law for time being in force.
Section 30(4) of IBC, 2016, <i>And</i> Regulation 38 (3) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016.	The Committee of Creditors, after considering the feasibility and viability of the Resolution Plan have approved the same by 100% voting share. The Resolution Plan addresses all the conditions.

12. Thus, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of IBC and Regulations 37, 38, and 38(1A) of IBBI (CIRP) Regulations, 2016. The Resolution Professional has also certified that the "Resolution Plan" approved by the CoC does not contravene any of the provisions of the law for the time being in force. A separate affidavit shall be filed by the RA namely, RUD with regard to performance Guarantee along with extension letter/documents in the Registry with in three days from the date of the order. The performance Guarantee shall remain valid till completion of the project and shall be over and above of the amount to be infused by the RA in the project, as per the Resolution Plan.

13. The Resolution Professional has also filed Compliance Certificate in **Form H** as required under Regulation 39(4) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016.

14. In view of the above, the 'Resolution Plan' annexed with CA-751/2019 filed in CP (IB)/401(ND)/2017 is hereby **approved**, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, other stakeholders

including statutory authorities involved in the Resolution Plan and the Resolution Applicants.

15. All waivers, Reliefs, Concessions and exemptions as prayed for in the Resolution Plan by the Resolution Applicant(s) fall within the parameters of I&B Code, 2016, and other applicable laws. Therefore, to the extent of Earth Towne project with effect from the plan approval date, all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor and its related subsidiary, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand withdrawn, satisfied and discharged including that of Greater Noida Authority. From the date of approval of the 'Resolution Plan', the Resolution Applicant(s) shall be legally authorised to seek transfer of project land, title, interest including all rights from Greater Noida Authority, and appropriate orders from respective authorities/courts/tribunals for renewal of licences/withdrawal/dismissal or abatement of the proceeding as the case may be. Further, from the date of approval of the Resolution Plan, except as provided in the Resolution Plan, all the pending statutory dues including taxes/cess /interest/ penalty and other liabilities due to the operational creditors shall stand discharged/satisfied/ waived off.

16. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution Applicants shall pursuant to the Resolution Plan approved under Sub-section (1) of Section 31 of the IBC, obtain all the necessary approval as may be required under any law for the time being in force within a period of 1 (one) year from

the date of approval of the Resolution Plan by this authority or within such period as provided for in such law or the regulations.

17. The Resolution Applicants or the Monitoring Committee, as the case may be, are at liberty to approach this Authority for seeking appropriate directions for effective implementation of the Resolution Plan.

18. The order of moratorium dated 06.06.2018 passed by this Adjudicating Authority under Section 14 of IBC shall cease to have effect from the date of passing of this Order.

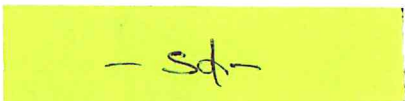
19. The Resolution Professional shall forward all record relating to the conduct of the CIR Process and the 'Resolution Plan' to the IBBI, so that the Board may record the same on its database.

20. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.

21. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicants.

22. The Order is pronounced through video conferencing.


(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)


(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)