

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON 09.11.2021 AT 10:30 AM
THROUGH VIDEO CONFERENCE

IA (IBC)/43/2021 in CP (IB) No.651/7/HDB/2018
U/s 7 of Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

Bank of India

...Applicant

Vs.

Sainath Estates Pvt Ltd


...Respondent


CORAM:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER JUDICIAL
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER TECHNICAL**

ORDER

Orders passed in IA NO.43/2021 vide separate orders.


MEMBER (T)


MEMBER (J)

Pavani

**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1 AT HYDERABAD**

I.A. No. 43 of 2021
in
C.P. (IB)No.651/7/HDB/2018

*Application under section 30(6) and section 31 of Insolvency and
Bankruptcy code 2016*

In the Matter of

M/s. Bank of India versus M/s. Sainath Estates Private Limited

Filed by

Dr. K. V. Srinivas
Resolution Professional,
Sainath Estates Private Limited
1-8-3-4 to 307, 4th Floor, "Kamala Towers"
Patigadda Road, Begumpet – 500 003.

...Applicant /
Resolution Professional

Date of order: 09.11.2021

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Applicant: Resolution Professional in person

PER: BENCH

ORDER

1. The present Application bearing IA No. 43/2021 is filed by the Resolution Professional under section 31(1) of the IB Code, 2016, R/w regulation 39(4) of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, seeking approval of resolution plan of **Mr K. Prem Sagar Rao** as duly approved by the Committee of Creditors.

2. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated **08.07.2019** and the Applicant herein was appointed as Interim Resolution Professional (IRP).
3. Pursuant to above order, the Applicant made public announcement of Commencement of CIRP on 11.07.2019. In response to the above public announcement, claims from 4 Financial Creditors and 1 Operational Creditor were received. Subsequently, the Applicant received an email from the Counsel of the Corporate Debtor, enclosing a copy of Order of the Hon'ble NCLAT wherein the Hon'ble NCLAT allowed to settle the matter before the next date and posted the matter on 21.08.2019 and directed the IRP not to constitute Committee of Creditors, if not yet done. Later, the Hon'ble NCLAT disposed of the appeal vide Order dated 13.11.2019 upholding the admission order of this Tribunal.
4. Subsequently, the Committee of Creditors ("COC") which was constituted on September 18, 2019 comprising of the following creditors, in its first meeting held on September 26, 2019, confirmed the Applicant as Resolution Professional ("**RP**").

Sl. No.	Name of Creditor	Voting Share (%)
1.	Bank of India	47.09 %
2.	Syndicate Bank	08.59 %
3.	Punjab National Bank	33.30 %
4.	Andhra Bank	11.02 %
TOTAL		100.00%

5. As seen from the records, the term of 180 days CIRP came to an end on 26.02.2020. After granting extensions and exclusion of covid induced lockdown by this Tribunal, the date of expiry of extended period of CIRP was 04.11.2020.
6. In response to publication of Form-G (Invitation for Expression of Interest (EOI)) on 05.12.2019, the Applicant received expression of interest from the following parties.
 - (i) Group of Individuals – Sunil Kumar Jain, Udit Jain, Apporv jain.

- (ii) M/s Radha Smelters Private Limited
(iii) Xponentia Capital Partners
7. In the 4th CoC meeting held on 24.12.2019, the CoC unanimously decided to call for fresh EOIs as very few applications were received. Accordingly, fresh Form-G was published on 29.12.2019. However, only two fresh EOIs were received, hence Form-G was published once again for the third time on 29.01.2020, pursuant to which the Resolution Professional received five EOIs from the following parties.
- (i) Lansum Properties LLP
(ii) Group of Individuals – Sunil Kumar Jain, Udit Jain, Apporv jain.
(ii) M/s Radha Smelters Private Limited
(iii) Xponentia Capital Partners
(iv) SRR Projects Private Limited
- Out of the five prospective resolution applicants, only three have qualified in the final list and out of the three, one prospective resolution applicant withdrew from the fray. Ultimately only two prospective resolution applicants were shortlisted i.e. Lansum Properties LLP and SRR Projects Private Limited.
8. The “Request for Resolution Plans” (RFRP) and the Evaluation Matrix were issued to the two prospective resolution applicants, however no plans were received from the shortlisted PRAs till the last date of submission of the plans.
9. The Resolution Professional further submits that in the meantime the promoter of Sainath Estates Private Limited **Mr. K Prem Sagar Rao**, who earlier had not responded to the EOI, had submitted a resolution plan to the Resolution Professional on 23.07.2020 claiming his eligibility under MSME category. The same was deliberated upon by the CoC in its 16th CoC meeting held on 19.09.2020 and the COC unanimously resolved as under:-
- “since the resolution applicant has become eligible to submit the plan subsequent to the last date for submission of EOI, due to amendment to the MSME criteria and maximum period of 270 days is coming to an end, no plan was submitted by any of the short-**

listed PRAs and in consideration of spirit of IBC, decided to consider the deviations” which are detailed at para No. 5 (page No. 2 & 3) of the memo dated 05.10.2021.

In this regard, reliance is placed on the decision of *Hon’ble NCLAT in Company Appeal (AT) (Ins) No. 903 of 2019 in the matter of Amit Gupta Promoter/shareholder of Varanasi Auto Sales Pvt Ltd Vs Yogesh Gupta, Resolution Professional*, wherein it is held as under

28. There is no reason why, looking to the nature of proceedings under the IBC the prospective Resolution Applicant who claims eligibility on the basis that the Corporate Debtor is MSME, should not provide necessary Memorandum Certificate. The Resolution Professional cannot be going into investigations and enquiries and findings whether or not a Corporate Debtor falls under the classifications of MSME and Adjudicating Authority is also not expected to make such investigations, enquiries on such evidence or give findings on such issues, which may not be accurate without assistance of an opposite side or Government Counsel bringing forth which or the other Notification etc. applies. Under Sections of MSME Act, even if getting Memorandum Certificated for a given enterprise may be optional, if advantage is to be taken of MSME Act, the Applicant must take pains to get the Memorandum Certificate to seek benefits under IBC.

A copy of the Order of Hon’ble NCLAT is annexed and marked as Annexure – 28.

10. The Resolution Plan was revised four times and was re-submitted to the Resolution Professional on 08.09.2020. The 4th revised resolution plan along with the addendum thereto dated 11.09.2020 submitted by Mr K. Prem Sagar Rao was put for e-voting till 01.10.2020. However, the said resolution plan was rejected by the CoC as it did not muster the requisite 66% of votes in its favour. Consequentially an IA was preferred to this Adjudicating Authority for passing liquidation order.
11. While it was so, one of the Financial Creditors had approached the Resolution Professional intimating him about the change in their decision to vote in favour of the resolution plan. Consequently, this Tribunal passed orders on 04.01.2021 directing the Resolution Professional to convene a fresh CoC meeting and obtain fresh voting on the Resolution Plan. Accordingly, the 17th CoC meeting was convened by the Resolution Professional on 07.01.2021 and after considering the

deviations, the CoC approved the Resolution Plan submitted by Mr K. Prem Sagar Rao (Resolution Applicant) with 100% voting in favour of it under Section 30(4) of IBC.

12. The Applicant also declared that all the requirements envisaged under the Code and Rules/Regulations made there-under have been met. In all the Applicant convened 17 CoC meetings. The final voting results of the members of COC for approval of Resolution Plan submitted by Mr. K. Premsagar Rao is tabulated below.

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	Bank of India	47.09 %	Voted for
2.	Syndicate Bank	08.59 %	Voted for
3.	Punjab National Bank	33.30 %	Voted for
4.	Andhra Bank	11.02 %	Voted for
TOTAL		100.00%	

13. The Learned Resolution Professional filed a memo dated 18.10.2021 enclosing receipts of fixed deposit amounting to Rs. 10.00 crores in lieu of performance bank guarantee as required under sub-regulation (4A) of Regulation 36B.

14. **CONTOUR OF THE RESOLUTION PLAN:-**

- (A) **Mr Prem Sagar Rao (herein referred to as Resolution Applicant)**, who submitted the resolution plan is the majority shareholder holding 87.63% of equity share capital and founder of M/s Sainath Estates Private Limited/Corporate Debtor, which is an MSME registered unit.
- (B) The CoC comprised of the following financial creditors and the distribution of voting share among them is as under:-distribution of voting share among them is as under:-



Sl. No.	Name of Creditor	Voting Share (%)
1.	Bank of India	47.09 %
2.	Syndicate Bank	08.59 %
3.	Punjab National Bank	33.30 %
4.	Andhra Bank	11.02 %
TOTAL		100.00%

- (C) **Financial proposal:** The Resolution Applicant proposes to infuse the funds into the Corporate Debtor, directly or indirectly, ~~through equity and / or debt.~~ through equity and / or debt. The amount provided to the stakeholders of the Corporate Debtor is as under:

Sl. No	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Dissenting Secured Financial Creditors				
2	Secured Financial Creditors				
2.1	Bank of India	108,78,56,688	108,78,56,688	40,48,06,677	37.21
2.2	Syndicate Bank	19,83,80,371	19,83,80,371	7,38,20,108	37.21
2.3	Punjab National Bank	76,93,93,317	76,93,93,317	28,63,02,006	37.21
2.4	Andhra Bank	25,45,81,664	25,45,81,664	9,47,33,395	37.21
3	Dissenting Unsecured Financial Creditors	-	-		
4	Other Unsecured Financial Creditors	-	-		
5	Other creditors				
5.1	Syndicate Bank	78,02,38,941	78,02,38,941	29,03,37,814	37.21
5	Operational Creditors	2,55,78,001	1,89,93,981	55,00,000	28.95
	Government	-	-		

	Workmen	-	-		
	Employees	-	-		
	-	-		
6	Other Debts and Dues	-	-		
Total		311,60,28,981	310,94,44,961	115,55,00,000	

(a) The break-up of the amount INR 117.59 Crores to be brought in by the Resolution Applicant for various purposes are detailed as under:

S. No	Name of the Creditor	Amount Proposed by RA Rs. Cr
	CIRP Cost (A)	2.04
	Financial Creditors	
1	Bank of India	40.48
2	Punjab National Bank	28.63
3	Syndicate Bank	36.42
5	Syndicate Bank (CG)	
4	Andhra Bank (AB)	9.47
	Subtotal - Financial Creditor (B)	115.00
	Operational Creditors	
1	Sarwottam Ispat Limited	0.55
	Subtotal - Operational Creditor (C)	0.55
	Grand Total (A)+(B)+(C)	117.59

b. Resolution Plan Key Milestones

S.No	Particulars	Key Terms / Amount in Rs.
1.	Payment of deposit / 1 st tranche	Rs. 1.00 Crore along with resolution plan submission
2.	Payment of 2 nd tranche - Upfront payment to proposed creditors	9.00 crores - Immediately within Two weeks upon the Receipt of Official Communication from COC and Resolution Professional about the Approval of Resolution Plan.
3.	Payment of 3 rd tranche - Balance payment (other than amount specified in S. No. 2 &3) obligation to creditors	107.59 crores - Within 60 days from the final order passed by the Hon'ble NCLT, therein approving the instant Resolution Plan

4.	Proposed instruments for repayment	Cheque / Through banking system out of the amount infused by the Resolution Applicant
5.	Amount of fresh equity proposed to be infused for revival and improvement of operations of Corporate Debtor	The total amount of Rs. 117.59 crores (including deposit) will be infused with a combination of equity, quasi equity and/ or debt instruments.
	Implementation proposed by Applicant	Schedule Resolution Within 60 days from the approval date of resolution plan by AA

(D) Management of Corporate Debtor

The Plan provides for the Management of the affairs of Corporate Debtor after approval of the Resolution Plan in accordance with Section 30(2)(c). It provides for the constitution of a Management Committee consisting of Resolution Professional, one representative from the Resolution Applicant and one from the Financial Creditors. The Plan also provides for the Implementation and Supervision of Resolution Plan in accordance with Section 30(2) (d).

(E) Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:-

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (herein after referred to as Regulation) and has submitted his Form H under Regulation 39 (4). It is submitted that the Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the Resolution Applicant is not ineligible under Section 29A of the Code. The fair value is Rs. 170,77,48,375/- and Liquidation value is Rs. 122,26,04,415/-.

15. Further the Applicant stated that the Resolution Plan takes care of the interest of the stakeholders concerned which includes Financial Creditors, Operational Creditors and payment of CIRP costs is being taken care in priority to payment to the other creditors.




16. In the above backdrop we heard the Resolution Professional, who appeared in person. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-
- A. The Plan provides for the priority payment of CIRP costs estimated to the extent of Rs.2.04 crores and the same shall be paid in full and in priority to any other payment as per provisions of the Code as per Section 30 (2) (a) of the Code. If the CIRP cost is less than the allocated amount, then the same shall be adjusted in payment to the Financial Creditors. If the CIRP cost up to the effective date is more than the allocated amount, then the same shall be borne by the Resolution Applicant.
- B. The Plan provides priority of dues to Operational Creditors over Financial Creditors in accordance with Section 30(2)(b) which is not less than the amount to be paid to such creditors in the event of liquidation of the Corporate Debtor and provides for payment to the financial creditors who have a right to vote under sub-section (2) of Section 21. The financial creditors who did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan. However, the Resolution plan has provided for payment of Rs. 55 lakhs to Trade Creditors who have made their claim under Operational Creditors.
17. The Resolution Applicant has inter-alia, sought certain reliefs and concessions and a specific order from this Adjudicating Authority.
18. The Plan provides for the management of the affairs of the Corporate Debtor in accordance with Section 30 (2)(c). It provides for the constitution of a Management Committee consisting of Resolution Professional, one representative from the Resolution Applicant and one from the Financial Creditors. Post approval of the plan the existing board shall retire and the Resolution Applicant will appoint three Directors to take over the Management of the Company for better operations. The Plan also provides for the implementation and supervision of the Resolution Plan. The Resolution Professional has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force.

19. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:
- (a) The payment due to operational creditors will be made in priority over Financial Creditors (Regulation 38 (1) (a)).
 - (b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38 (1A)).
 - (c) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38 (1B)).
20. The Resolution Plan has been approved by the CoC in the 17th CoC meeting held on 07.01.2021, with 100% votes in favour of the said Resolution Plan.
21. ***In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018) the Hon'ble Apex Court*** held that, "if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per Section 30 (6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less".
22. The Hon'ble Supreme Court has further held at para 35 of the above judgement that ***the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements.***
23. The Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors***, held that "the limited

judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved”.

24. The Hon'ble Supreme Court at para 67 of the above judgment has further held as under:

“ . 67: A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by the successful resolution applicant”.

25. The Applicant/Resolution Professional has submitted that the Resolution Applicant has sought certain waivers/concessions and reliefs in the Resolution Plan. We are, however, not inclined to grant such concessions or waivers. As regards to the reliefs sought, the Corporate Debtor has to approach the authorities concerned and we trust the authorities concerned will do the needful. The same view has been taken by Hon'ble Supreme Court in the matter of **Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited** in CIVIL APPEAL NO.8129 OF 2019 dated 13.04.2021.

26. Therefore, the resolution plan, when tested on the touch stone of the aforesaid facts and the rulings, we are of the firm view that the resolution plan satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. We also found that the Resolution Plan submitted by the Resolution Applicant vide Section 240A of the Code is in accordance with the Code. We therefore, hereby **approve** the Resolution Plan submitted by the Resolution Applicant annexed to the Application and we pass the following orders:-

- (i) It shall be binding on the Corporate Debtor, its employees, members, creditors, 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 is due, guarantors and other stakeholders involved in the Resolution Plan.

- (ii) All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.
- (iii). The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.
- (iv). The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- (v) Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- (vi). The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (vii). The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.
- (viii). The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- (ix). The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.


(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)


(DR N.V. RAMAKRISHNA BADRINATH)
MEMBER (JUDICIAL)