

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 16.02.2022 AT 10.30 AM

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
TCP(IB)No.71/7/AMR/2019	IA(IBC)/12/2022	30(6) of NCLT	Sai Ramesh Kanuparthi (RP) of Coastal Oil & Gas Infrastructure Private Limited

Counsel for Petitioner(s):

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Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA(IBC)/12/2022 is allowed, vide separate orders.

7/16/22
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

NCLT Amaravati Bench
IA(IBC) No. 12/2022
IN
TCP (IB) No. 71/7/AMR/2019

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

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**IA(IBC) No. 12/2022
IN
TCP (IB) No. 71/7/AMR/2019**

**Under Section 30(6) of the Insolvency and Bankruptcy Code,
2016 Read with Regulation 39(4) of the IBBI (Insolvency
Resolution for Corporate Persons) Regulations, 2016**

In the matter of

M/s Costal Oil & Gas Infrastructure Private Limited

Between:

Mr. Sai Ramesh Kanuparthi,
Resolution Professional of
Costal Oil & Gas Infrastructure Private Limited,
Office at Plot No.6-B, Besides TDP Office,
Road No.2, Banjara Hills, Hyderabad - 500034.

... Applicant

Date of pronouncement of Order: 16.02.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant/RP : Ms.Mano Ranjani & Mr.M.Rama
Rao, Advocates

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Per:

Justice Telaprolu Rajani, Member Judicial

ORDER

1. This application is filed seeking for approval of the Resolution Plan which is approved by the CoC in its 22nd meeting. The Interim Resolution Professional (IRP) after being appointed, issued public announcement and took custody and control of the assets of the Corporate Debtor. Pursuant to the notice inviting Expression of Interest (EoI) published on 26.05.2021, the Resolution Professional (RP) received Expression of Interest (EoI) from two Perspective Resolution Applicants (PRAs) i.e., BOMS Private Limited (BOMS) & Haldia Petrochemicals Limited (HPL). After necessary due diligence the Resolution Professional issued list of PRAs and final list on 27.06.2021 & 08.07.2021 respectively. On 02.07.2021 request of Resolution Plan, Evaluation Matrix and Information Memorandum have been issued to the PRAs to submit the Resolution Plan on or before 06.08.2021. The Resolution Professional (RP) received Resolution Plan from both the Resolution Applicants within last date of submission. Various rounds of

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discussions and negotiations between the CoC and the Resolution Applicants took place. The Interim Resolution Professional (IRP) after satisfying herself with the compliance of both the Resolution Plans finalized after discussions and negotiations, put them for final discussion and voting in the 20th CoC meeting held on 09.12.2021 wherein the CoC discussed scoring of each of the RAs as per the Evaluation Matrix feasibility and viability of the plans and other mandatory items required to be approved along with the approval of the Resolution Plans. They were put to voting in the next CoC after internal approvals and procedures by the CoC. In the 22nd meeting of the CoC, the Resolution Plans along with other mandatory matters were put up for e-voting which resulted in approval of the Resolution Plan submitted by the Haldia Petrochemicals Limited (HPL) with 68.68% votes in its favour. Hence, this application to approve the plan.

2. The minutes of the 22nd meeting of the Committee of Creditors held on 20.01.2022 at 4.30 p.m. show that the CoC discussed about the relaxation sought for by the both the Resolution Applicants from the terms of performance security required to be provided as per the provisions of RFRP BOMS has sought relief of PBG of Rs.15 Crores on

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prorata basis on payment of each instalment of the Resolution Plan amount, while Haldia Petrochemicals Limited (HPL) sought to provide higher amount of performance security of Rs.35.625 Crores after approval of the Resolution Plan by the NCLT. Demerger and transfer of undertaking of the Corporate Debtor from the Corporate Debtor to Haldia Petrochemicals Limited (HPL) or SPV nominated by Haldia Petrochemicals Limited (HPL) for consideration of Rs.37.50 crores was resolved and the first tranche of consideration of Rs.1.875 Crores was resolved to be paid in the three working days of the sanction of the Resolution Plan proceeds as per the Resolution Plan or resolved to be utilized by the Resolution Professional (RP) for distribution as per the provisions of Section 30(4) read with Section 53 of the IBC. It was resolved that the Resolution Professional (RP) shall continue to carry out the assignment as monitoring agent from the date of approval of the Resolution Plan by the Adjudicating Authority. It was resolved that the Resolution Professional (RP) shall file an application seeking for approval of the Resolution Plan of the Haldia Petrochemicals Limited (HPL).

3. Heard the Resolution Professional (RP). When the RP was questioned about the haircut which was provided only at

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3.01%, RP submits that the amount offered by the Resolution Applicant is more than the liquidation value which is Rs.36,46,67,134/-, while the Resolution amount allocated is Rs.37,50,00,000/-.

3. Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such plan –
- a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;
 - b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-
 - i. the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
 - ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour

of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation - For the purpose of this section –

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and
(ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

- c) Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- d) The implementation and supervision of the resolution plan;
- e) Does not contravene any of the provisions of the law for the time being in force;

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f) Confirms to such other requirements as may be specified by the Board.

4. Section 30(4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.”

5. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.

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6. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
 - e) The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code.
7. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through registered valuers and the Liquidation value is Rs.36,46,67,134/- and the Resolution Plan offers Rs.37,50,00,000/-.
8. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(A), 38

Plan

(1B) 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations. The Plan also provides for keeping the Company as a going concern and operates in its normal course of business upon implementation of Resolution Plan. No objection has been filed by any other person in this regard.

9. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of the Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.
10. The Resolution Plan has been approved by the CoC in its meeting held on 20.01.2022 with 68.68% votes.
11. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) 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 (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role

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of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is 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.

12. **In CoC of Essar Steel** (Civil Appeal No.8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra)."

13. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the

Code and Regulations 37, 38, 38(1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

ORDER

- i. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order. 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. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Andhra Pradesh 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.



- iii. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- iv. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- v. 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.
- vi. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant.

Accordingly, IA(IBC) No.12/2022 is allowed.

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**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

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