

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

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 21.11.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
TCP(IB)No.87/7/AMR/2019	IA(IBC)/321/2022	30(6) of IBC	Niranjan Miriyala, RP of Sarita Synthetics & Industries Limited

Counsel for Petitioner(s):

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

Counsel for Respondent(s):

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

ORDER

IA(IBC)/321/2022 is allowed, vide separate orders.

Sd/-

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**



NCLT Amaravati Bench
IA(IBC) No. 321/2022
IN
TCP (IB) No. 87/7/AMR/2019

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

*** **

**I.A (IBC) No. 321/2022
IN
TCP (IB) No. 87/7/AMR/2019**

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

**In the matter of
M/s. SARITA SYNTHETICS & INDUSTRIES LIMITED**

Between:

Mr.Niranjan Miriyala,
Resolution Professional of
M/s. Sarita Synthetics & Industries Limited,
#1st Floor, H.No.7-1-28/1/A/21,
Shyamkaran Road, Ameerpet,
Hyderabad - 500016

... Applicant/Resolution Professional

Date of pronouncement of Order: 21.11.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant/RP: Mr. Y.Suryanaryana, Advocate

Per:

Justice Telaprolu Rajani, Member Judicial



ORDER

1. The Resolution Professional (in short the RP) in respect of M/s. Sarita Synthetics & Industries Limited (the Corporate Debtor) seeks approval of the Resolution Plan (in short the Plan) in this Application under Section 30(6) of Insolvency and Bankruptcy Code, 2016 Read with Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016.

2. The brief facts leading to the Application are as under.
 - i) This Bench, vide its order dated 01.10.2019 directed initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and the Applicant herein was appointed as Interim Resolution Professional (IRP). An appeal was filed before the NCLAT against the CIRP admission passed by this Tribunal. NCLAT vide order dated 07.02.2020 passed an order setting aside the order dated 01.10.2019. Hence, the Financial Creditor i.e., Stressed Assets Stabilisation Fund, Mumbai filed an appeal before Hon'ble Supreme Court vide Civil Appeal No.3228/2020. The Hon'ble Supreme Court vide order dated 15.04.2021 remanded the matter back to NCLAT for fresh



consideration. Considering the same the NCLAT vide order dated 11.04.2022 confirmed the validity of the CIRP order dated 01.10.2019 passed by this Tribunal, as a result of which the CIRP of the CD was resumed w.e.f. 11.04.2022.

- ii) The IRP made a public announcement in Form A in newspapers, inviting claims from different creditors/stakeholders of the Corporate Debtor on 05.10.2019 and the last date of receiving the claims from the creditors being 17.10.2019. IRP Received the claims from different creditors/stakeholders amounting to Rs.181,63,09,450/- and after verification of claims an amount of Rs. 181,63,09,450/- has been admitted. The Applicant constituted CoC with two members i.e., Stressed Assets Stabilisation Fund (93.54%) and PEC Limited (6.46%).
- iii) The 1st Committee of Creditors (CoC) meeting held on 30.10.2019, decided to appoint the Applicant as Resolution Professional (RP) with 100% voting.
- iv) A total period of 794 days was lost during the CIRP period from 07.02.2020 to 11.04.2022 due to pendency of an appeal before the NCLT and Hon'ble Supreme Court. The Applicant filed an application I.A.No.77/2022 seeking for



exclusion of 794 days from the CIRP period and the same was allowed by this Tribunal vide order dated 13.05.2022, based on which, the 180 days period of CIRP ought to have expired on 01.06.2022 and further another I.A.No.99/2022 filed for seeking extension of 90 days to complete the CIRP process and the same was allowed by this Tribunal vide order dated 17.06.2022. Due to said extension, the CIRP period shall expire on 16.09.2022. In the meantime, the Applicant published Form G on 04.08.2022 for invitation of Expression of Interest (EoI) from the Prospective Resolution Applicants (PRAs) and last date for submission of the EoI was 19.08.2022.

- v) In response to the invitation for EoI in Form-G, the RP received EoI from 04 (Four) PRAs viz. 1. Bommidala Enterprises Private Limited, 2. Mr.Sivachaitanya Saikam, 3.Mr.Mohan Reddy Bhumi Reddy & 4. Consortium of Individuals (Mrs.Bharti Agarwal, Mrs.Pushpalata Bhai & Mr.Shiv Charan). Further, the Resolution Professional issued Information Memorandum and RFRP request for Resolution Plan to all the PRAs, for submission of Resolution Plans on 01.10.2022. Only 3 Resolution Plans were received from 3 PRAs. However, the Resolution Plan



received from Mr.Mohan Reddy Bhumi Reddy was rejected due to 29A non-compliance.

- vi) In the CoC meeting held on 03.10.2022, the Resolution Plans received from the 2 PRAs were opened. After verification of the Resolution Plans, the Applicant submitted a detailed report to the CoC for consideration of the Resolution Plans submitted by the PRAs and in the subsequent CoC meetings held, the CoC members tried to negotiate for the better terms and clauses to be incorporated in the Resolution Plan. Thus the original Resolution Plan was under consideration subject to significant modifications in the terms contained therein and extended some time for submitting the Revised Resolution Plans.
- vii) The 270 days CIRP period of the Corporate Debtor was closed on 16.09.2022. The Applicant filed an application seeking for extension of 60 days i.e., from 16.09.2022 to 15.11.2022 and the same was allowed by this Tribunal vide order dated 20.10.2022.
- viii) In the 16th CoC meeting held through video conference on 27.10.2022, the Applicant submitted the final Resolution Plans received from the 2 PRAs (i.e., 1.M/s. Bommidala Enterprises Private Limited & 2. Mr.Shiva Charan & others)



before the CoC members, for voting. In the E-voting held on 07.11.2022, 6 PM to 08.11.2022, 6 PM, the Resolution Plan submitted by M/s.Bommidala Enterprises Private Limited, Successful Resolution Applicant (SRA) was approved with 93.54% voting. The Letter of Intent (LoI) was sent to the Successful Resolution Applicant (SRA) on 08.11.2022 which clearly mentions that as per RFRP, the SRA was advised to furnish a Performance Bank Guarantee (PBG)/ Bank Deposit for an amount of Rs.1,80,90,000/- within 3 days from the issuance of LOI.

- ix) The Applicant/RP submitted the Compliance Certificate in Form-H under Regulation 39(4) of the Regulations showing the compliances of the Plan with mandatory requirements under the Code and Regulations and the Plan had been approved by the CoC.
- x) The following is the summary of the Plan/Restructuring Proposal:
 - a) The Plan offers an amount of Rs.18.09 Crores apart from working capital and capex expenditure as detailed below:



S. No.	Category of Claimants	Amount admitted (Rs.)	Amount proposed to be paid under the Plan (Rs.)
1	CIRP costs	-	35,00,000
2	Secured Financial Creditors	168,04,00,000	16,92,00,000
3	Unsecured Financial Creditors	11,60,00,000	62,00,000
4	Operational Creditors Government – PF Dues	1,98,00,000	20,00,000
5	Employees and Workmen	NIL	NIL
	Total	181,62,00,000	18,09,00,000

The timelines for the payment of the above mentioned debts of the Corporate Debtor are as follows:

S. No.	Particulars	Estimated Timeline
1	Infusion of Rs.18.09 Crores by the Successful Resolution Applicant for payment towards CIRP Cost and Creditors	Rs.18.09 Crores within 3 months days from the date of the order of the Adjudicating Authority.
2	(i) Cancellation of existing Equity shares (ii) Conversion of share capital subscription	Immediately upon payment of Rs.18.09 crores.



	amount by Resolution Applicant into equity capital and preference capital	
3	Reclassification of existing promoters as non-promoters /public shareholder in the CD	Within 90 days from the from the date of the order of the Adjudicating Authority.

b) The RA is proposing to constitute Monitoring Committee consisting of Three (3) members for implementation of the Resolution Plan, as given below:-

- i. Mr.Niranjan Miriyala, Resolution Professional, shall be the Chairman of the Monitoring Committee.
- ii. One Authorised Representative appointed by the Financial Creditor.
- iii. One Authorised Representative appointed by Successful Resolution Applicant.

xi) Hence this Application.

3. I have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application. The Resolution Plan submitted by the Resolution Applicant is found to be meeting all



the requirements of the IBC, 2016 and more importantly Section 30 (2) of the IBC Code and Regulation 38 (1A) and applicable CIRP Regulations. It does not contravene any of the provisions of law. It caters to the interest of all the Stakeholders.

4. 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 the 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 the 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 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 the above provision is as under:

- (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;



- f) Confirms to such other requirements as may be specified by the Board.
5. 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.”
6. 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.



7. 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.
8. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through registered valuers and the Liquidation value is Rs.8,31,00,000/-and the Resolution Plan offers Rs.18,09,00,000/-.
9. 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 (1-B) 38(2) & 38(3) of the Regulations. The Plan also provides for keeping the Company as a going concern and to operate in its normal course of business upon implementation of Resolution Plan. No objection has been filed by anyone in this regard.

10. 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.
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 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 is found to be meeting 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.



*NCLT Amaravati Bench
IA(IBC) No. 321/2022
IN
TCP (IB) No. 87/7/AMR/2019*

- 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)/321/2022 in TCP (IB) No.87/7/AMR/2019 is disposed of.

**Sd/-
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

Swamy Naidu