

S.No.108

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
07-02-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

IA(IBC)/534/2021
CP(IB) No.27/7/HDB/2019
U/s 7 of IBC, 2016

IN THE MATTER OF:

CH.Mani Kumar

...Financial Creditor

Vs

Shiva Medicare Ltd

...Corporate Debtor

CORAM:-

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

ORDER

Orders in IA(IBC)534/2021 in CP(IB) No.27/7/HDB/2019 pronounced vide separate sheets. In the result, this IA(IBC)534/2021 is allowed. Consequently, resolution plan stands approved.

Sd/-

MEMBER (T)

Srinivas

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERBAD BENCH AT HYDERABAD**

**I.A. No.534 OF 2021
IN
CP(IB) NO. 27/7/HDB/2019**

IN THE MATTER OF M/S SHIVA MEDICARE LIMITED

In the matter of:

Mr Kari Venkateswarlu
RP of M/s Shiva Medicare Limited
Regd. No. IBBI/IPA-001/IP-P00052/2017-2018/10126
Flat 406, Everest Block, Aditya Enclave, 7-1-618,
Ameerpet, Hyderabad 500038

.... Applicant /
Resolution Professional

Date of order: 07.02.2022

Coram:

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

Appearance:

For applicant : Ms Manoranjani, Advocate

PER: BENCH

ORDER

1. IA No. 534/2021 is filed by the Resolution Professional under section 30(6) and 31 of Insolvency & Bankruptcy Code 2016 (herein after referred to as Code), r/w regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)



Regulations, 2016 & Rule 11 of NCLT Rules, 2016, seeking approval of resolution plan of **Shri B. Munirathnam Reddy (Resolution Applicant)** as duly approved by the Committee of Creditors.

2. To put concisely, the main petition filed by Mr CH Mani Kumar u/s 7 of IBC, 2016 was admitted by the Adjudicating Authority vide Order Dated 14.12.2020 and ordered commencement of CIRP against **M/s Shiva Medicare Limited / Corporate Debtor**. **Shri Kranthi Kumar Kedari** was appointed as Interim Resolution Professional (IRP) who was replaced by Mr Kari Venkateswarlu as per the decision taken in the 1st CoC meeting held on 22.01.2021.
3. In terms of Regulation 6 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, public announcement in Form-A was made by IRP on 21.12.2020 in Financial Express (English) & Nava Telangana (Telugu) inviting claims from the creditors of Corporate Debtor. The IRP, after collating and verifying the same, admitted Claims from the Creditors and constituted Committee of Creditors comprising of the following creditors.

S No	Name of the Creditor	Amount of Claim (Rs.)	Provisionally Admitted (Rs.)	Details of Security Interest	Voting Share
1.	Indu N Bhurat	19,05,883	19,05,883	NIL	14.37%
2.	Nirmal Bhurath	19,20,903	19,20,903	NIL	14.48%

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3.	Nirmal Chand Jain – HUF	19,20,903	19,20,903	NIL	14.48%
4.	Vikas Bhurath Jain	17,14,989	17,14,989	NIL	12.93%
5.	Vikas Jain HUF	8,57,494	8,57,494	NIL	6.46%
6.	Vishal	19,20,903	19,20,903	NIL	14.48%
7.	Bharat Kusum	1,277,469	1,277,469	NIL	9.63%
8.	Ch.Manikumar	1745573	1745573	NIL	13.16%
	TOTAL	1,32,64,117	1,32,64,117	NIL	100%

4. Subsequently, the List of creditors was regularly updated and its status as on 16.08.2021 is as follows:

Financial Creditors:

S No.	Name of the Creditor	Amount of Claim (Rs.)	Provisionally Admitted (Rs.)	Details of Security Interest
1.	Indu N Bhurat	19,05,883	19,05,883	NIL
2.	Nirmal Bhurath	19,20,903	19,20,903	NIL
3.	Nirmal Chand Jain-HUF	19,20,903	19,20,903	NIL
4.	Vikas Bhurath Jain	17,14,989	17,14,989	NIL
5.	Vikas Jain HUF	8,57,494	8,57,494	NIL
6.	Vishal	19,20,903	19,20,903	NIL
7.	Bharat Kusum	12,77,469	12,77,469	NIL
	TOTAL	1,15,18,544	1,15,18,544	NIL

Financial Creditors – Related Party Transactions:

SNo.	Name of the Creditor	Amount of Claim (Rs.)	Provisionally Admitted (Rs.)	Details of Security Interest
1.	Ch Mani Kumar	17,45,573	17,45,573	NIL
2.	Palayapu Kishan Prasad	59,81,605	59,81,605	NIL
	TOTAL	77,27,178	77,27,178	

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Operational Creditors:

SNo	Name of the Operational Creditor	Amount of Claim Rs.	Amount Admitted Rs.
1	Cameo Corporate Services	1,02,734	1,02,734
2	Central Depository Services (I) Ltd	24,120	24,120
3	BSE	66,05,640	66,05,640
4	AGA Publications Ltd	13,32,435	8,76,609
5	CYE One Media Services	1,25,725	90,000
	Total	81,90,654	76,99,103

5. It is stated that the Resolution Professional in the 2nd COC Meeting held on 08.03.2021 had briefed the COC that the Company is not in operations for past few years and that due to non-cooperation he received audited balance sheet for the FY 2017-18 and unaudited balance sheets for the FY 2018-19 and 2019-20 only, and further there is no cooperation from the Suspended Board. This Tribunal vide orders passed in IA No. 180/2021 dated 22.07.2021 directed the Suspended Board to cooperate with the RP by handing over all documents and papers as sought by him.
6. It is stated that the resolution plan submitted by M/s Kundan Care Products Limited pursuant to 1st EOI published on 17.03.2021 was not satisfactory and hence rejected by the CoC in the 5th meeting held on 31.05.2021, as such fresh EOI was issued by the RP on 20.06.2021, pursuant to which 6 EOIs were received and ultimately only four resolution plans were in fray as under:-

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- (i) Shri B. Munirathnam Reddy – Bangalore
- (ii) M/s Kundan Care Products Ltd- New Delhi
- (iii) Shri Santhosh Kumar Agarwal – Hyderabad
- (iv) Shri Sarveswar Reddy

7. The above resolution plans were placed before the CoC in the 9th CoC meeting held on 20.08.2021 and CoC after evaluating in terms of both qualitative and quantitative criteria and aggregate the resolution plan was put for voting and COC approved the resolution plan submitted by **Shri B. Munirathnam Reddy (Successful Resolution Applicant (SRA))** with 100 % votes in favour of it. The Applicant further submits that all the requirements envisaged under the Code and Rules/Regulations made there-under have been met.
8. The Applicant submitted that Performance Bank Guarantee of Rs. 20,00,000/- as required under sub regulation (4A) of Regulation 36(B) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2021 is furnished by the Successful Resolution Applicant which was initially valid up to 28.02.2022 was extended till 31.08.2022 as **stated** by the Learned Counsel for the RP vide memo dated 03.02.2022.
9. **Contour of the Resolution Plan submitted by**
- (A) Shri B. Munirathnam Reddy, (herein referred to as Resolution Applicant/ SRA), who submitted the resolution plan is a resident of 47D, Seetharam Building, JC Road,

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Bengaluru, Karnataka 560002 and Chartered Accountant by profession with over 40 yrs of experience in managing overall financial functions in conceptualising and control. The SRA proposes to infuse Rs.2,93,77,650/- by issuing 29,37,765 shares of Rs.10/- each to new promoters and strategic financial investors and all shares will be listed on BSE. The SRA proposes to change the name of the CD Company to Bandaram Pharma Packtech Limited or such other name as may be approved by the Registrar of Companies. The SRA further proposes to change the registered office of Company to Unit No 601, 5th Floor, Oxford Towers, Opp Leela Palace Hotel, Old Airport Road, Kodihalli, Bengaluru - 560008, Karnataka State. The SRA as a part of revival of the Company intends to change and pursue its objects into manufacturing of paper products and packing materials with more focus on catering to the needs of the pharma, food and beverages industry apart from undertaking logistics business.

- (B) The CoC comprised of the following financial creditors and the distribution of voting share among them is as under:-

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Indu N Bhurat	16.5462%	Voted for
2	Nirmal Bhurath	16.6766%	Voted for

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3	Nirmal chand jain Bhurath huf	16.6766%	Voted for
4	Vikas Bhurat Jain	14.8889%	Voted for
5	Vikas Jain HUF	7.4445%	Voted for
6	Vishal	16.6766%	Voted for
7	Bhurat Kusum	11.0905%	Voted for

(C) **FINANCIAL PROPOSALS:** The amount provided to the stakeholders of the Corporate Debtor is Rs.77,96,082/- within 60days of the effective date

(Rs. in lakhs)

Sl. No.	Category of Stakeholder *	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	Nil	NA	NA	NA
		(b) Other than (a) above:	Nil	NA	NA	NA
		(i) who did not vote in favour of the resolution Plan	Nil	NA	NA	NA
			Nil	NA	NA	NA

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		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	Nil	NA	NA	NA
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	77.27	77.27	NA	NA
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	Nil	NA	NA	NA
		(ii) who voted in favour of the resolution plan	115.19	115.19	Nil	69.11
		Total[(a) + (b)]	192.46	192.46	Nil	69.11
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL			
		(b) Other than (a) above:				
		(i) Government	nil	nil	Nil	
		(ii) Workmen	Nil	Nil	Nil	
	(iii) Employees	Nil	Nil	Nil		
	(iv) others.....	100.34	76.99	Nil	3.85	
	Total[(a) + (b)]	100.34	76.99		3.85	
4	Other debts and dues		Nil	NA	NA	NA
Grand Total			292.80	269.45	Nil	72.96

The break-up of the resolution plan amount of Rs. 77,96,082/- brought in by the Resolution Applicant for various purposes are detailed as under:

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Resolution Plan Amount Disbursement

(Amount in Rs.)

SNo	Particulars	Amount claimed	Amount Admitted	Amount proposed for settlement
1	CIRP Costs			500000
2	Financial Creditors	11518544	11518544	6911126
3	Related party Transactions - FC	7727178	7727178	0
4	Operational Creditors	8190654	7699103	384956
5	Operational Creditors (Statutory/ Govt dues)	0	0	0
6	Workmen	0	0	0
7	Employee	0	0	0
8	Other Debts – Related Parties	0	0	0
		2,74,36,376	2,69,44,825	77,96,082

(D) Management of the Corporate Debtor

For effective implementation and supervision, the plan provides for the constitution of a Monitoring Committee consisting of the Resolution Professional, one representative each from the lender's side and a nominee from the Resolution Applicant in terms of Section 30(2) (c). Shri B. Muniratham Reddy (SRA) would be on the Board to manage the Company. All existing directors are deemed to be resigned and new directors would be appointed by SRA within 60 days from the date of approval of the Resolution Plan. Further SRA would identify and appoint suitable

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professionals to manage the affairs of the Company with the support of key managerial personnel of the Company, reconstituting the Board and the Resolution Applicant shall be entitled to exercise sole and absolute control over the affairs of the Corporate Debtor in accordance with applicable law in terms of Section 30(2)(d) of the Code.

(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 Resolution Applicant has filed an Affidavit declaring that they are eligible to submit the plan under Section 29A of the Code and that the contents of the said affidavit are in order. This Tribunal on 23.11.2021 directed the Resolution Professional to get valuation done for the financial assets as per the books of accounts of Corporate Debtor. Accordingly, the valuation was done by two IBBI Registered valuers and their report is filed vide memo dated 15.12.2021. As per the memo, the fair value and Liquidation value are Rs. 1476/- and Rs. 1265/- respectively.

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10. In the above backdrop we heard the Learned Counsel for the Resolution Professional. The Learned Counsel 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.5 lakhs (Rupees five lakhs only) or as may be on actual basis and the same shall be paid in priority to payment to other debts of the CD in terms of Section 30(1)(a) of the code.
 - (b) The Resolution Plan does not propose any priority payment to Operational Creditors as the liquidation value is NIL. However, the operational creditors will be paid along with the financial creditors simultaneously and within 60days of the approval of the Resolution Plan by the Adjudicating Authority. There are no dissenting Financial Creditors and the plan has been approved with 100% votes in favour of it.
 - (c) The admitted dues of Operational Creditors is Rs. 76,99,103/-. The liquidation value is expected to be nil but the SRA proposes to pay 5% of the admitted amount i.e. Rs. 3,84,956/- within 60 days from the date of approval of the resolution plan.
11. The Resolution Plan in compliance of Regulation 38 of the Regulations in the following manner:
- (a) The Resolution Plan does not propose any priority payment to Operational Creditors as the liquidation value is NIL.

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However, the operational creditors will be paid along with the financial creditors simultaneously and within 60 days of the approval of the Resolution Plan by the Adjudicating Authority.

- (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 {Chapter-11, III-(b)} (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)).
12. It is further submitted that the Resolution Plan value of Rs. 77,96,082/- is higher than the Liquidation value of Rs. nil and the Resolution Plan has been approved by the CoC in the 9th CoC meeting with 100% votes in favour of it.
13. *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".*
14. The Hon'ble Supreme Court has further held at para 35 of the above judgement that *the discretion of the adjudicating*

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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.

15. 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*”.
16. Therefore, the resolution plan, when tested on the touch stone of the aforesaid facts and the rulings, we are of the view that the instant 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 Applicant is eligible to submit the Resolution Plan under Section 29A of the Code. We therefore, hereby **approve** the Resolution Plan submitted by the Resolution Applicant annexed to the Application and order as under:-
- (i) The Resolution Plan shall be binding on the Corporate Debtor, its employees, members, creditors, including the

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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 as held 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.
- (iv) It is hereby ordered that until the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented, the Performance Bank Guarantee shall remain intact.
- (v) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad for

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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.

- (vi) Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- (vii) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (viii). 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.
- (ix). The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- (x). 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. Venkata Ramakrishna Badrinath)
MEMBER (JUDICIAL)

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