

SL. No.37

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Video Conference

**CORAM: HON'BLE BHASKARA PANTULA MOHAN-MEMBER JUDICIAL
CORAM: HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 01.03.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.733/2021 in IA No.861/2020 & IA (IBC)/77/2022 in IA No.861/2020 in CP (IB) No.372/7/HDB/2020
NAME OF THE COMPANY	Indu Projects Ltd
NAME OF THE PETITIONER(S)	Bank of India
NAME OF THE RESPONDENT(S)	Indu Projects Ltd
UNDER SECTION	7 of IBC

ORDER

IA No. 733/2021:

This Application is disposed vide separate orders.

IA (IBC) 77/2022 in IA No. 861 of 2021:

This Application is dismissed vide separate orders.



MEMBER (T)

Nilesch



MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No.77/2022

In

IA No.861/2020

In

C.P.No.372/7/HDB/2018

Under Section 60(5) of the IB Code, 2016

Read with rule 11 of the NCLT Rules, 2016

In the matter of
M/s. Indu Projects Limited

M/s Earthin Projects Ltd with
M/s K. Ramachandra Rao Transmission-
and Projects Private Limited,
D.No.1-1867-B, Velampalem,
Srikalahasti (M) – 517644,
Chittoor (Dist), Andhra Pradesh.

... Applicant

Date of Order: 01.02.2022

Coram: Shri Bhaskara Pantula Mohan, Member Judicial
Dr. Binod Kumar Sinha, Member Technical

Parties/Counsels present:

For the Applicant: Mr. Bikki Raveendra Babu, Advocate

For the RP: Mr. VVSN Raju, Advocate

For the CoC: Mr. S. Ravi, Senior Advocate

Per: Bench

ORDER

1. The instant petition is filed under Section 60(5) of IB Code, 2016 read with rule 11 of the NCLT Rules, 2016 seeking the following reliefs:



- a) To allow the present Application and grant an extension of 60 days from 23 January 2022 for implementation of the Applicant's Resolution Plan dated 7 August 2020.
- b) To pass an order directing the Resolution Professional not to encash and/or forfeit the Applicant's Bank Guarantee No.52760IGL0003421 for INR 5,00,00,000 valid from 24 July 2021 until 23 January 2022 issued by Union Bank of India in favour of the Resolution Professional, pending the present application.

2. Brief facts of the case as stated by the Applicant are as under:-

- a. That the Resolution Applicant herein has submitted its Resolution Plan dated 07.08.2020 and the same was approved by the CoC in its 16th CoC with 97.34% of CoC vote and the Applicant herein has also provided Bank Guarantee for Rs. 5,00,00,000/- as Earnest Money Deposit along with the said Resolution Plan. The said BG is extended from time to time and the same is still alive.
- b. That the said Resolution Plan was approved by this Adjudicating Authority vide IA No. 861/2020 on 01.10.2021. That the said Resolution Plan was uploaded on 25.10.2021.
- c. That the Resolution Professional has filed an Application seeking direction that the period of 90 days for implementation of the Resolution Plan may be reckoned from the date on which the order of Resolution Plan was uploaded on the website of NCLT i.e., on 25.10.2021 and for rectification of the inadvertent

errors. The said matter is pending adjudication by this Adjudicating Authority.

- d. That the Applicant herein has addressed a letter dated 22.12.2021 to the RP stating that the Applicant is entitled to pay the entire Resolution Plan amount on or before 23.01.2022, since the news of approval of the Resolution Plan was communicated to the Applicant on 27.10.2021. Thus, it was requested to the Resolution Professional that the Resolution Professional permits Applicant to pay the entire resolution fund amount on or before 23.01.2022.
- e. That the Applicant has unfortunately not been able to implement the Resolution Plan even during this 90days period mainly on account of the challenges and difficulties arising as a result of the resurgence of the Covid-19 pandemic globally, because of which the Applicant's Global Investors also delayed disbursement of the funds which were earmarked for the purpose of implementation of the Resolution Plan. That though the funds for the Resolution Plan have now being sanctioned by the investors, due to the resurgence of Covid – 19 Pandemic and the resultant effects of the 3rd wave, the necessary formalities which were to be completed for the purpose of transfer of funds from the foreign investors of the applicant to applicant's account in India have been delayed.
- f. That the Applicant managed to open escrow account on 04.12.2021 with Bank of India, Hyderabad Branch, as such, the Applicant remains committed and is taking all the necessary steps to arrange the funds through its investor in order to expeditiously implement the Resolution Plan. However, given the resurgence of the Covid-19 pandemic and the consequent difficulties and disruption in conducting





business, particularly with overseas investors, the Applicant is constrained to file the present Application, praying for an additional period of 60 days from 23.01.2022 for implementation of the Resolution Plan.

- g. That in view of the delay in implementation of the Resolution Plan and consequent prayer of extension of time, it is imperative that the CoC/RP is restrained from forfeiting the EMD Bank Guarantee submitted by the Applicant along with the Resolution Plan, in terms of Clause 1.9.4 of the RFRP. This is necessary since the Applicant is already in the process of implementation of the Resolution Plan and is merely seeking an additional time period of 60 days.
- h. That any forfeiture of the Applicant's EMD at this stage is not only unwarranted but will also severely prejudice the Applicant as well as the other stakeholders in the Corporate Debtor's CIRP.
- i. That the Applicant has already applied for a further extension of the Bank Guarantee in advance of its scheduled expiry.
- j. That this Adjudicating Authority may be pleased to grant an additional period of 60 days for implementation of the approved resolution plan, as this additional time period of 60 days is extremely critical and necessary for revival of the Corporate Debtor and in the interest of all the stakeholders in the Corporate Debtor's CIRP inasmuch as the approved Resolution Plan sought to be implemented provides for a resolution fund of approximately INR 501 Crore and a further amount of INR 77.59 Crores, being provided towards counter guarantee/100% fixed deposit against the outstanding bank guarantee and an amount of INR 40 Crores for working capital of the Respondent Company.



- k. That if the directions as sought by the Applicant are not passed, then the Applicant will suffer irreparable loss and serious prejudice, despite being the Successful Resolution Applicant and would not be able to implement the Resolution Plan.
3. Counsel for the Respondent filed counter, *inter-alia*, denying the allegations made in the Application and has further prayed to dismiss the instant Application.
 4. Heard and perused the record.
 5. The Record is clear and the amount required to be paid is Rs. 501 Crores, which remains unpaid till date. The successful Resolution Applicant, even though sought several extensions for the implementation of Resolution Plan, failed to stick to his commitment in any manner. The Application filed by the Successful Resolution Applicant citing various reasons for granting extension of time for the payment of the necessary amount cannot be accepted at this stage for the reason that practically a period of more than 50 days had already passed off and even though we grant the prayer, the net effect is that the Applicant has got more than sufficient time for the implementation of the Resolution Plan. The counsel appearing for the Successful Resolution Applicant submitted that the money was in the pipeline and will come shortly but to no avail and when the matter came up for hearing on last occasion i.e., on 21.02.2022, it has been made clear that in the event, the Resolution Professional does not file a memo, stating that money has been completely paid, the Application will be dismissed and this Adjudicating Authority, will take appropriate steps in accordance with law. Even though this Adjudicating Authority had approved the Resolution plan on 01.10.2021 and the Successful Resolution Applicant was required to pay the amounts within 90 days, no steps have been taken by the Resolution Professional/ Monitoring Committee, to bring into the



knowledge of the Adjudicating Authority the failure on the part of the Successful Resolution Applicant in bringing the money. We are very upset with the manner in which the Monitoring Committee had given a very very long rope to the Applicant in making the payment. We get a doubt on the fairness of the Monitoring Committee with regard to the implementation of the Resolution Plan.

6. This Adjudicating Authority, is not convinced in any manner to grant any further time. Hence, this Application is rejected. CoC is directed to take appropriate steps in the light of the dismissal of this Application, within a week.
7. Further the prayer for restraining the Resolution Professional from encashing the EMD cannot be acceded to, in view of the fact that the stipulated time has already elapsed long back.
8. Accordingly, the amount paid as the EMD by the Applicant shall have to be forfeited and proceedings under Section 74(3) of the IB Code, 2016 have to be initiated as per Law.
9. With the above, Application bearing IA No. 77/2022 stands dismissed.

Dr. Binod Kumar Sinha
Member Technical

Bhaskara Pantula Mohan
Member Judicial