

NATIONAL COMPANY LAW TRIBUNAL

**AMARAVATI BENCH
(Video Conference)**

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 02.11.2021 AT 10.30
AM**

TRANSFER PETITION NO.	IA(IBC)/33/2021 in TCP(IB) NO. 101/7/AMR/2019
COMPANY PETITION/APPLICATION NO.	CP (IB) NO. 320/7/HDB/2019
NAME OF THE COMPANY	RVR Marine Products Ltd
NAME OF THE PETITIONER(S)	IDBI Bank Ltd
NAME OF THE RESPONDENT(S)	RVR Marine Products Ltd
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Ries

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) No.33/2021 is allowed, vide separate ^{order} sheets.

Rajani
**(JUSTICE TELAPROLU RAJANI)
MEMBER JUDICIAL**

NCLT Amaravati Bench

IA No. 33/2021

IN

TCP (IB) No. 101/7/AMR/2019

IN

[CP (IB)No.320/7/HDB/2019]

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

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IA No. 33/2021

IN

TCP (IB) No. 101/7/AMR/2019

IN

[CP (IB)No.320/7/HDB/2019]

**Under Section 30 & Regulation 39 of the CIRP Regulations, IBC,
2016**

**In the matter of
M/s RVR Marine Products Limited**

Between:

Mr. TSN Raja,
Resolution Professional
For M/s. RVR Marine Products Limited,
Plot No.16, Shop cum Flat,
HUDA Complex, Kothapet,
Hyderabad -500035.

... Applicant

Date of pronouncement of Order: 02.11.2021

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant/RP : Mr. TSN Raja, & Mr. Amir Bavani,
Advocate

Per:

Justice Telaprolu Rajani, Member Judicial

ORDER

The Resolution Professional (in short the RP) in respect of
M/s.RVR Marine Products Limited (the Corporate Debtor) seeks

approval of the Resolution Plan (in short the Plan) in this Application under Sections 31 (1) of the Insolvency and Bankruptcy Code, 2016 (the Code in short) read with Regulation 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the Regulations in short).

2. The brief facts leading to the Application as under.

- i) The Hon'ble Bench vide its order dated 24.12.2019 directed initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and appointed Mr. Rajesh Chhaparia, as Interim Resolution Professional and the IRP made a publication in newspaper on 05.11.2019. With regard to his appointment and invited claims from the Creditors. The Committee of Creditors (CoC) in its meeting held on 30.11.2019, decided to replace IRP with Mr.TSN Raja as Resolution Professional and the same is approved by this Hon'ble Bench vide its order dated 24.12.2019.
- ii) The Applicant submits that the IRP executed certain duties of the Resolution Professional and got valued the assets of the Corporate Debtor through M/s. AAA Valuers & M/s. Resolute Valuers, due to delay of his appointment dated 20.12.2019. Further the Resolution Professional prepared Information Memorandum and the Committee of Creditor (CoC) in its 3rd meeting held on 02.01.2020, approved stipulating the minimum net worth criteria at Rs.3.5 Crores and minimum performance guarantee of Rs.10 Lakhs was also fixed along with the Resolution Plan.

- iii) Subsequently, invitation of Expression of Interest (EoI) in Form-G under Regulation 36A(1) of the Regulations was invited by the Applicant. In response to invitation for EoI in Form-G dated 11.01.2020, the RP received EoI from Resolution Applicants and Applicant further submits that M/s.KKMK & Associates, was entrusted with the job of conducting due diligence on the eligibility or ineligibility of the Resolution Applicants from whom the EoI has been received by RP and handed over their report on 17.02.2020.
- iv) The Applicant submits that the Committee of Creditors in its 4th meeting held on 22.01.2020, approved the Evaluation Matrix and Request for Resolution Plan document or the process document and the Applicant issued the said documents to the eligible candidates on 17.02.2020.
- v) The Applicant submits that he prepared and circulated the Request for Resolution Plan by stipulating the condition of performance guarantee of 10% of Bid amount, subject a minimum of Rs.1 Crore being offered by successful Resolution Applicant by way of BG/FD/DD, favouring the M/s.RVR Marine Products Limited. Subsequently, the Applicant received resolution plans from two Resolution Applicants i.e., M/s.Sunbitess and M/s. Sri Vinayaka Fish Feeds. Further submits that the Resolution Plan of M/s. Sri Vinayaka Fish Feeds was opened in the CoC meeting held on 22.05.2020 and the CoC opined that the plan was conditional and not acceptable as per IBC, 2016 and advised them to resubmit the revised plan.

- vi) The Applicant submits that the CoC in its 6th meeting held on 19.01.2020, opened the Resolution Plan of M/s.Sunbitess and offered Rs.9.75 Crores to the Financial Creditors and Rs.25 Lakhs towards CIRP cost.
- vii) The Applicant submits that the Hon'ble Bench passed order dated 11.08.2020 excluding the period between 21.03.2020 to 31.07.2020 from the CIRP and the CIRP period last date got extended up to 09.09.2020.
- viii) The Applicant further submits that the CoC in its 8th meeting held on 18.08.2020, conducted negotiations with the Resolution Applicant and Resolution Applicant agreed to:
- Enhance the plan consideration, to the assets to Rs.12 Crores(Including CIRP cost)
 - To pay 40% of the plan value as down payment within 30 days of getting approval from this Bench.
 - To pay the balance 60% within 4 months from the date of approval by this Bench.
- ix) The Applicant submits that the Committee of Creditors approved the plan with 100% majority in the 9th CoC meeting held on 26.08.2020 and they requested for two weeks' time for approval from their higher management. Further, the CIRIP period was extended by 45 days upto 23.10.2020 and the CoC communicated its approval for the Resolution Plan of M/s.Sunbitess vide mail dated 21.10.2020.

- x) The Applicant submits that the promoters of the Suspended Board deliberately did not hand over the Books of Accounts of the Corporate Debtor to the IRP or RP and he sent several notices and reminders but there is no response from them. As per directions of this Bench the Applicant filed a Petition before Special Court.
- xi) The Applicant submits that the registered office of the Corporate Debtor is a closed abandoned building but they had not changed the address of the Registered Office. Further, the Financial Creditor appointed a professional to conduct Transaction Audit and Forensic Audit, but the same could not be completed since Books of Accounts were not available to the Auditor.
- xii) The Applicant submits that the promoter of Suspended Board furnished copies of accounts but those are fabricated. The DRAT Court passed order dated 28.03.2017 directing the Appellant/Financial Creditor to take physical possession of the factory and to put the factory for sale. But the Promoters of Corporate Debtor were allowed to run the factory and deposit the sum of Rs.5 Lakhs every month. Then the promoters leased the factory initially to M/s.Supreme Exports vide lease deed dated 06.12.2017 and then to the Resolution Applicant i.e., M/s.Sunbitess vide lease deed dated 10.04.2019. As per DRAT order, the lessee continued to deposit the lease rentals with the Financial Creditor and since initiation into CIRP to the RP and thus

the entire CIRP cost is met out of lease rental of the Corporate Debtor.

- xiii) The Applicant submits that as per the directions of this Tribunal the Applicant was in receipt of Performance Guarantee by way of DD for Rs.1.20 Crores and the same was converted into a fixed deposit with Financial Creditor.
- xiv) The Applicant submits that as per directions of this Hon'ble Tribunal, the Applicant vide mail dated 13.03.2021 advised him to submit their revised plan which shall be better than that of M/s.Sunbitess. But there is no reply or plan received from M/s.Sri Vinayaka Fish Feeds. Further M/s.Sunbitess gave mail confirmation that they are abiding by their Revised Resolution Plan submitted on 05.10.2021. The Applicant further submits that the M/s.Sunbitess, was recommended by the CoC with 100% majority.
- xv) 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 that the Plan had been approved by the CoC.
- xvi) The following is the summary of the Plan/Restructuring Proposal:
- a) The Plan offers an amount of Rs.38 crores as detailed below:

S. No.	Particulars	Amount (in Rs.)
1	CIRP Costs	25,00,000
2	Secured Financial Creditor	11,75,00,000
3	Operational Creditors other than the employees and directors	nil
4	Employees and Workmen	Nil
	Sub Total (A)	12,00,00,000
5	Infusion of working Capital	2,00,00,000
	Sub Total (B)	2,00,00,000
6	Acquisition of land	10,00,00,000
7	Addtl.Civil Works /ETP etc.	4,00,00,000
8	Additional Equipments	4,00,00,000
9	Infusion of Addtl. Working Capital	6,00,00,000
	Sub Total of Expansion Amount (C)	24,00,00,000
	Total amount of the Resolution Plan (A+B+C)	38,00,00,000

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

S. No.	Particulars	Terms and amount
1	Performance Guarantee Amount	Performance Guarantee to Rs.1.20 Crores(Including Rs.1 Crore deposited with the RP) being 10% of the plan consideration as stipulated in RFRP
2	Upfront amount	By deposit Rs.4.80 Crores (including performance guarantee deposit) being down payment within one month from the date of approval of the Resolution plan approved by this Hon'ble Bench.
3	Balance Amount	Balance amount of Rs.7.20 Crores will be deposited within 4 months from the date of approval of the Resolution Plan approved by this Hon'ble Bench..

4	Infusion of working capital	Infusion of working capital is Rs.2.00 Crores will be deposited within 4 months from the date of approval of the Resolution Plan approved by this Hon'ble Bench.
The total Rs.14,00,00,000/- shall be paid as per the schedule above.		
5	Expansion Amount for improving the operations of the Company	<ul style="list-style-type: none"> i. Expansion in 1 to 3 years Rs.10,00,00,000/- will be paid for Acquisition of land; ii. Expansion in 1 to 3 years Rs.4,00,00,000/- will be paid for Additional Civil works/ETP etc.,; iii. Expansion in 1 to 3 years Rs.4,00,00,000/- will be paid for Additional Equipment's; iv. Expansion in 1 to 3 years Rs.6,00,00,000/- will be paid for Infusion of Additional working capital.

b) The RA is proposing to constitute Monitoring Committee consisting of two (2) members for implementation of the Resolution Plan, as given below:-

- i. Resolution Professional as one member
- ii. Key Managerial Personnel of the Resolution Applicant

xvii) Hence this Application.

3. I have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.

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 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;
- 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

Adjudicating Authority shall not approve the Resolution Plan 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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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.5.04 Crores and the Resolution Plan offers Rs.38,00,00,000/-.

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 (1B) 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations. The Plan also

10. The RP has certified through affidavit that the Corporate Debtor is 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.

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. The Resolution Plan has been approved by the CoC in its meeting held on 26.08.2020 with 100% votes.
12. 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.

13. **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).”*

14. 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 No.33/2021 IN TCP (IB) No. 101/7/AMR/2019 is disposed off.



JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL