

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

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 05.01.2022 AT 10.30 AM

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.157/10/AMR/2019	IA No.05/2021, IA No.109/2020	10 of IBC	Nithin Grains And Mills Pvt Ltd

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 No.05/2021 is allowed, vide separate orders.

IA No.109/2020:

The Counsel for the Applicant does not press on the first prayer, since, he states that the Resolution Professional who was appointed subsequently has restored 100% voting shares. For hearing on other reliefs, list the matter on 10.01.2022.

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**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

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

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IA No. 05/2021
IN
CP (IB) No. 157/10/AMR/2019

**Under Section 33(1) (a) of the Insolvency and Bankruptcy Code,
2016**

**In the matter of
M/s. NITHIN GRAINS AND MILLS PRIVATE LIMITED**

Between:

Mr. Naga Bhushan Bhagawati
Resolution Professional
For M/s. Nithin Grains and Mills Private Limited
H.No.1-1-380/38, Ashok Nagar Extension
Hyderabad – 500 020.

... **Applicant/ Resolution Professional**

Date of Pronouncement of Order: 05.01.2021

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant: Mr. Naga Bhushan Bhagawati, RP.

Per: Justice Telaprolu Rajani, Member Judicial

ORDER

1. This is an Application filed by the Resolution Professional under Section 33(1) (a) of the Insolvency and Bankruptcy Code, 2016 (the Code) seeking orders for Liquidation of the Corporate Debtor i.e. M/s. Nithin Grains and Mills Private Limited and for appointment of new liquidator and not to appoint B. Naga

Bhushan, Resolution Professional as Liquidator due to his other prior commitments.

2. The brief facts of the Application are that:

I. The NCLT, Amaravati vide order dated 15.11.2019 admitted the Petition i.e. CP (IB) No.157/10/AMR/2019 under Section 10 of the Insolvency Bankruptcy Code, 2016 initiating Corporate Insolvency Resolution Process (CIRP) of M/s. Nithin Grains and Mills Private Limited and appointed Mr. Pavan Kankani, as the Interim Resolution Professional (IRP) and directed him to take charge of the Corporate Debtor and take necessary steps in furtherance of CIRP. There are five companies in the group, including M/s Ramanasree Consumer Products Private Limited and all the five companies were admitted for Corporate Insolvency Resolution Process on the same day. The names of the other four companies are Nithin Nutritions Private Limited, Ramana Sri Logistics Private Limited and Nithin Proteins Private Limited, Ramansree Consumers Products Pvt.Ltd., Except in respect of M/s Ramana Sri Logistics Pvt. Ltd. where State Bank of India is also a lender along with Bank of India, in respect of the other four companies, Bank of India is the sole lender and financial creditor.

II. The Interim Resolution Professional has issued Public Announcement in Financial Express (English) and Praja Sakthi (Telugu) Newspapers on 18.11.2019 in terms of Regulation 6(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate Persons) Regulations, 2016, inviting claims from creditors. On

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receiving the claims from Creditors, the IRP has constituted Committee of Creditors on December 08, 2019 and filed a report certifying the constitution of Committee of Creditors of the Corporate Debtor in compliance to Regulation 17(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on December 09, 2019. The details of CoC are as follows:

Constitution COC as On 08th December 2019				
Sl. No.	Name of the Financial Creditor	Amount of Claim Submitted	Amount of Claim Admitted	%
1	Bank of India	25,28,14,921.63	25,28,14,921.63	100.00
	TOTAL	25,28,14,921.63	25,28,14,921.63	100.00

- III. In the 1st CoC meeting held on 14.12.2019 by the IRP, apart from suspended Board of Directors, no CoC member was present. As such, the meeting was adjourned to 15.12.2019 during which also no CoC member was present. No agenda items were taken up for discussion as the required quorum of CoC was not present. The IRP filed his 1st Progress Report with the Tribunal on 18.12.2019.
- IV. In the 2nd CoC meeting held on 24.01.2020, the only CoC member (Bank of India) informed that it wants to appoint new Insolvency Professional as RP in place of Mr. Pavan Kankani, IRP.
- V. In the 3rd CoC meeting held on 08.02.2020, Bank of India proposed the appointment of Mr. B Naga Bhushan as Resolution Professional (RP) and the same was accepted by the COC. Subsequently, Bank of India filed an application

for replacement of Mr. Pavan Kankani, IRP with Mr. B Naga Bhushan as RP and the same was rejected by the Tribunal vide its order dated 20.02.2020. Aggrieved by the said order, Bank of India appealed against the impugned order. In the meantime, the IRP had received two more claims as financial creditors and the same were accepted and CoC was reconstituted on 25.02.2020 and was filed before the Tribunal.

Reconstitution of CoC as on 25.02.2020				
Sl. No.	Name of the Financial Creditor	Amount of Claim Submitted	Amount of Claim Admitted	%
1	Bank of India	25,28,14,921.63	25,28,14,921.63	42.86
2	P Sudhir Reddy	20,07,70,000.00	19,87,05,074.00	33.69
3	T Sahith Reddy	13,97,53,000.00	13,83,15,189.00	23.45
	TOTAL	59,33,37,921.63	58,98,35,184.63	100.00

VI. Bank of India, aggrieved by the act of IRP in reducing their stake in claims, filed an I.A No.109/2020 before this Tribunal seeking declaration of the voting rights allotted to the two new Financial Creditors as arbitrary, illegal and against the provisions of IBC and also seeking restoration of their voting rights.

VII. In the 4th CoC meeting held on 15.03.2020, the CoC approved the Information Memorandum prepared by the IRP as per Section 21 (1) of IBC, 2016, eligibility criteria for Prospective Resolution Applicants and publishing of Form-G inviting Expression of Interest (EOI) and Appointment of valuers for valuation of various assets of the CD.

- VIII. The Interim Resolution Professional published Form G in two newspapers on 15.03.2020 and invited Expression of Interest (EOI) from Prospective Resolution Applicants (PRAs) for submission of Resolution Plan of the Corporate Debtor. The last date for receipt of EOI was 31.03.2020 and in response application was received from only one PRA viz., M/s. VenAgro, Hyderabad.
- IX. On 03.06.2020, the NCLAT, New Delhi passed an order appointing Mr.B.Naga Bhushan, as the Resolution Professional (RP) in the place of Mr. Pavan Kankani, IRP. Subsequently, on 24.06.2020 the Applicant/RP took over charge from Mr. Pavan Kankani, IRP as Resolution Professional.
- X. The Resolution Professional, has reverified the claims and has reconstituted the Committee of Creditors on 24.07.2020. The reconstituted Committee of Creditors was filed with the Tribunal on 24.07.2020 and the reconstituted CoC is as follows:

constitution of COC as on 24.07.2020				
Sl. No.	Name of the Financial Creditor	Amount of Claim Submitted	Amount of Claim Admitted	%
1	Bank of India	25,28,14,921	25,28,14,921	100.00
	TOTAL	25,28,14,921	25,28,14,921	100.00

- XI. In the 5th CoC meeting held on 05.08.2020 by the RP informed the CoC that some of the provisions of IBC have not been complied with, while issuing Request for Resolution plan (RFRP) as evaluation matrix has not been

submitted and also in the time lines specified in Form G which necessitates publishing of revised Form-G seeking EOI from new Prospective Resolution Applicants (PRA). It was also agreed to by the CoC that giving a fresh advertisement for EOI enables any other person / entity to participate in the process who would have missed the advertisement due to lockdowns earlier. It was also decided that the EOI received in response to earlier issued Form – G would also be considered along with any new EOIs received and CoC members have approved extension of time by 90 days and have also advised the Resolution professional to seek exclusion of 115 days lost due to lockdown.

- XII. The Resolution Professional filed an application before the Tribunal on 24.08.2020 seeking exclusion of 115 days lockdown period from CIRP time period and extension of CIRP time period by 90 days beyond 180 days and the same was approved by the Tribunal vide its order dated 04.09.2020 and the last date of CIRP got extended up to 16.11.2020.
- XIII. The Resolution Professional filed his 1st Progress Report with the Tribunal on 29.07.2020.
- XIV. In the 6th CoC Meeting approved the Evaluation Matrix and Draft Request for Resolution Plan (RFRP) and advised the Resolution professional to issue the Information Memorandum, Evaluation Matrix and RFRP to every PRA. Accordingly, the RP published the Revised Form-G on 17.08.2020 duly extending the last date of receipt of EOI to 01.09.2020. In response to the Revised Form-G, the Resolution Professional had received two more EOIs from

PRAs. Thereafter, the Resolution Professional had issued the Information Memorandum, Request for Resolution Plan (RFRP) and Evaluation Matrix to all the Resolution Applicants as per the revised Form G timelines and informed them that the last date for submission of Resolution Plan stands at 10.10.2020. However, only one Resolution Applicant submitted the Resolution Plan on 03.10.2020.

XV. In the 7th CoC meeting held on 12.10.2020, the sealed envelope containing the Resolution Plan submitted by the only Resolution Applicant viz. M/s VenAgro was opened. The resolution applicant has given an offer for: Proposal I: For Rs.7.00 crores with collaterals of the promoters; Proposal II: for Rs.4.00 crores without collaterals of the promoters. In the same meeting, the committee and RP informed the applicant to improve the offer. Accordingly, the Resolution Applicant vide email dated 04.11.2020 informed the revised resolution plan amount for: Proposal I: For Rs.7.50 crores with collaterals of the promoters; Proposal II: for Rs.3.80 crores without collaterals of the promoters.

RA provided the Company wise break up details of the Resolution Plan amount as follows:

Name of the Company	Existing Proposal		Revised Proposal	
	Proposal I	Proposal II	Proposal I	Proposal II
Nithin Grains and Mills Pvt Ltd	3.50	2.00	3.80	2.00
Nithin Nutritions Pvt Ltd	0.80	0.50	1.40	0.60
Nithin Proteins Pvt Ltd	1.10	0.60	1.30	0.60

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Ramanasree Consumer Products Pvt Ltd	1.10	0.60	0.50	0.30
Ramana Sri Logistics Pvt Ltd	0.50	0.30	0.50	0.30
Total	7.00	4.00	7.50	3.80

XVI. The Committee deliberated on the same in detail and expressed its view that the said offer needs further improvement and requested the Resolution applicant to improve the same. In the said meeting, the authorized Representative of the RA requested the committee to give some time to consider and to give a further improved amount. The CoC decided to meet again in the afternoon and adjourned the meeting after discussing the other agenda items. The Committee met again at 5.40 PM. The Resolution Applicant orally informed that the offer will be improved to Rs.7.85 Cr which will be paid upfront i.e. within 45 days of order of the Tribunal. Alternatively, an amount of Rs.7.50 Cr will be paid upfront and another Rs.1 Cr will be paid within a period of one year. In this connection, RP informed the RA that the following matters are to be addressed:

- i. CIRP Expenditure to the extent unpaid – RP informed that IRP fees, Valuers Fees are pending. Approximate expenditure of CIRP expenditure unpaid will be Rs.25 lacks which is to be specifically addressed by the Resolution Applicant.

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- ii. Break up details of amount to be paid to Bank of India and State Bank of India where both the Banks are financial Creditors.
- iii. In the event of SBI not voting in favour of the Resolution Plan amount, the action plan for satisfying the debt of the Dissenting Creditor is addressed.

RA requested to give time to address the above mentioned issues and the 8th meeting of CoC was concluded.

XVII. That since the deliberations were going on a positive note, RP / COC felt that it may take few more days for arriving at a conclusion. Accordingly, CoC has approved extension of CIRP by another 60 days. The Resolution Professional filed an application before the Tribunal seeking extension of CIRP time period by 60 days beyond 270 days (From 17.11.2020 till 15.01.2021) on 16.11.2020 and the same was allowed by the Tribunal vide its order dated 03.12.20020.

XVIII. In the 10th CoC meeting held on December 16, 2020, interaction in the form of mails that took place between the Resolution applicant and the Resolution professional as regards improvement of the offer, were placed before the members of the CoC. As per the mail dated 26.11.2020 received from the applicant, the following are the offers:

Option 1: This is in continuation to our earlier discussion post submission of Resolution Plan, we here with concur to take over the Companies (Nithin Group as well as Ramanasree group of companies) for a total resolution plan

consideration of Rs.5.90 Crore with all inclusive, once approved, Resolution Applicant expects the Financial Creditors to release the Security interest and hand over the assets of the Corporate Debtor to us. To be specific the Land Admeasuring Acr.5 which houses the Plant and machinery, together with the Acs.5 of adjacent land which is required for storage purpose and to run the factory effectively, the total Acr.10 which consist of the Factory premises and all other movable assets /hypothecated assets, pledged assets as well as Tangible/ Intangible assets of the respective Corporate debtor(s). This revised offer to be treated as full and final.

The following are the Payment terms (within 45 days of the plan being approved and ordered as such by the Tribunal)

- 1) Rs.31 lakhs to be appropriated in the respective accounts from the performance security provided to the RP
- 2) Rs.4 Crore by way of RTGS/DD
- 3) Rs.1.59 Crores on the day and date of execution of the mortgage Release Deed (total 10 Acs) from the respective SRO and handing over of the Title Deed(s) of the 10 Acs of Factory /land premises to us (we will be holding the DD for the above amount of Rs.1.59 crore and hand over the same on the day and date this is concluded)

Option 2:

RA concur to take over the Companies (Nithin Group as well as Ramanasree group of companies) for a total resolution plan consideration of Rs.8.50 Crore with all inclusive, once approved RA expects the Financial

Creditors to release the Security interest on all the properties Including 3 Collateral properties as well as the Factory premises, with movable, immovable, Tangible and intangible assets to RA. This revised offer to be treated as full and final.

The terms Payment are (within 45 days of the plan being approved and ordered as such by the Tribunal)

- 1) Rs.31 lakhs to be appropriated in the respective accounts from the performance security provided to the RP
- 2) Rs. 4 Crore by way of RTGS/DD
- 3) Rs.4.19 Cr. on the day and date of execution of the mortgage Release Deed of all the properties including the Collateral securities and hand over of the Title deeds of all the Properties after execution of the Mortgage release deed from the respective SRO's (sub registrar offices) at Tirupathi (Andhra Pradesh), Hyderabad (Telangana) & Bangalore (karnataka). The Financial Creditors shall also issue No Due certificate along with the handover, to enable the Resolution applicant to seek financial assistance from a financial Institution by offering the assets so released.

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On payment of the above amount no other amount shall be payable to any individual, Institution or organization for any claim of whatsoever nature.

- XIX. In the same meeting, RP informed the members that the breakup of the plan amount amongst the five companies has not been provided by RA nor any clarity given as regards to payment outstanding to SBI in respect of Ramana Sri Logistics Pvt. Ltd. RP submitted to the CoC members that both the options are worth considering as the entire amount is expected to be realized within 45 days from the time of the order of the Tribunal. On the other hand, if the company goes into liquidation, the chances of recovery of the amount through liquidation are not very bright in view of location of the factory unit is in remote area, legal issues associated with the land on which the factory is situated, the unit is not in a working condition for the last several years, other legal matters relating to OTS raised by the promoter on which there is no absolute clarity and case filed against the decision of the Resolution professional for rejection of claims of few of the creditors who claimed to be financial creditors. The Resolution Professional has got valid grounds for rejection.
- XX. RP also informed the members that if the company is allowed to go into liquidation, the expenses till the time of liquidation such as liquidator fees would also pile up which effectively would bring down the net amount to be realized by Financial Creditor. Taking all these things into account and also the fact that the object of IBC is resolution and not

liquidation, RP strongly recommended for acceptance of the resolution plan by CoC.

- XXI. The CoC had given a sincere, careful and commercial thought to the economic viability of the Resolution Plan and its observations are as under:
- a. The CoC felt that the offer of the resolution applicant is not to their satisfaction as the proposed Resolution amount is much lower than the contractual dues to the Bank
 - b. The Resolution Plan amount in case of Option 2 is far less than the liquidation value of the assets of Corporate Debtor together with the value of Collaterals.
 - c. CoC also felt that the resolution plan is conditional as the same is linked to the release of the collateral securities.
3. On the above reasons, CoC felt that the resolution plan received is not commercially viable and hence not acceptable to them. The CoC members participated and voted in favour of Liquidation.
4. Hence the Applicant came up with this application and has given written consent of Mrs.G.Kalpna (IBBI/IPA-001/IP-P00756/2017-2018/11288) and prayed to appoint her as Liquidator.

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5. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not receive any viable proposal for revival of the Company. The CoC in its wisdom has resolved with 100% voting share in favour of the Liquidation of the Corporate Debtor.

ORDER

6. Heard. In view of the facts stated in the Application, this Tribunal allows the Application with the following directions.

- a) Mrs. G. Kalpana (IBBI/IPA-001/IP-P00756/2017-2018/11288), Office at H.No.16-11-19/4, G-1, Sri Laxmi Nilayam, Saleem Nagar Colony, Malakpet, West-Marredpally, Hyderabad, Telangana-500036, email: kalpanagonugunta1@gmail.com, Mobile No. 9962568858 is appointed as the Liquidator. No disciplinary proceeding is pending against her as per the IBBI website.
- b) She shall issue public announcement stating that Corporate Debtor is in Liquidation.
- c) The Moratorium declared under Section 14 of the IBC, 2016 shall cease to operate here from.
- d) Subject to section 52 of the IBC 2016 no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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- e) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
 - f) The liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.
 - g) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
 - h) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.
 - i) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the Liquidation process by the Liquidator.
 - j) Copy of the Order shall be furnished to the IBBI, to the Regional Director (South Eastern Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Andhra Pradesh, the Registered Office of the Corporate Debtor; and the Liquidator.
7. With the above directions I.A.No.05/2021 in CP (IB) No.157/10/AMR/2019 is disposed of. Hence this Order.

7/Nov
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL