

S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
17-02-2023 AT 10:30 AM**

**IVN.P (IBC) 6/2022 in 1209/2022, IA (IBC) 1492 & 1209/2022 in
Company Petition IB/225/2021
u/s. 7 of IBC, 2016**

IN THE MATTER OF:

Mr. K. Venkata Ratna Prasad

...Financial Creditor

Vs

Hindustan Magnesium Products Pvt Ltd

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

IA (IA) 1209/2022

Order in IA (IA) 1209/2022 pronounced. Recorded vide separate sheets. In the result, this application is allowed as per the terms and conditions mentioned in the order.

IA (IA) 1492/2022

Order in IA (IA) 1492/2022 pronounced. Recorded vide separate sheets. In the result, this IA is disposed of. No costs.

Inv. P (IBC) 6/2022 in 1209/2022

Order in Inv. P (IBC) 6/2022 in 1209/2022 pronounced. Recorded vide separate sheets. In the result, this IA is dismissed without costs.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

**COMPANY APPLICATION 1209 OF 2022
IN
CP (IB) NO. 225/7/HDB/2021**

*Application under Section under Section 30(6) & 31 of IBC, 2016 R/W Regulations
39(4) of The IBBI (Insolvency Resolution Process for Corporate Persons), R/W Rule
11, 13, 32 Of NCLT Rules, 2016*

**IN THE MATTER OF HINDUSTAN MAGNESIUM PRODUCTS
PRIVATE LIMITED**

Filed by

Mr. V. Shankar
Resolution Professional,
Hindustan Magnesium Products Private Limited,
(CIN: U27100TG2011PTC072228)
Having registered office situated at
Plot No .98/1, Phase II , IDA ,Cherlapalli,
Hyderabad - 500051

...Applicant

Date of order: 17.02.2023

Coram

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member
(Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant: Shri S. Ravi, Senior Advocate assisted by Shri
Mithun Shashank, Advocate

PER: BENCH

ORDER

1. **IA No. 1209/2022** is filed by the Resolution Professional under Section 30(6) & 31 of IBC, 2016 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 the resolution plan submitted by Mr. K. Venkata Ratna Prasad (**Resolution Applicant**) as duly approved by the Committee of Creditors with 98.11% votes.
2. To put concisely, the main petition filed by Financial Creditor Mr. K. Venkata Ratna Prasad u/s 7 of IBC, 2016 was admitted by the Adjudicating Authority vide Order Dated 19.04.2022 and ordered commencement of CIRP against the Corporate Applicant. The Applicant herein was appointed as Interim Resolution Professional (IRP), who continued as Resolution Professional.
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 24.04.2022 inviting claims from the creditors of Corporate Debtor. The IRP, after collating and verifying the same, admitted Claims and constituted Committee of Creditors as under.

Sl. No.	Name of Creditor	Voting Share (%)
1	Manda Srinivas	0.74%
2	State Bank of India	13.37%
3	Konudula Venkata Ratna Prasad	76.48%
4	Y Vijay Kumar	8.26%
5	Ashish Jain	1.15%
	TOTAL	100

Subsequently, the Resolution Professional had to admit few claims that were rejected initially and had re-constituted the CoC accordingly with the following members currently.

1. Mr. Manda Srinivas
 2. State Bank of India
 3. Konudula Venkata Ratna Prasad
 4. Subha Charan Nukathoti
 5. Y Vijay Kumar
 6. Ashish Jain
 7. Jimmy Rani
4. The Form-G inviting Expression of Interest (EOI) from Prospective Resolution Applicants for submission of Resolution Plan of the Corporate Debtor RP was made on 18th July, 2022 and the last date for submission of EOI was 18th September, 2022. In response, the Resolution

Professional has received two expression of interest as under:-

- i. Mr. K. Venkata Ratna Prasad
- ii. M/s. Venuka Engineering Private Limited and Mr. Punnaiah Peda Peddireddi as a consortium.

5. Out of the above two Prospective Resolution Applicants, only one Prospective Resolution Applicant i.e. Mr. K. Venkata Ratna Prasad submitted the Resolution Plan, which was deliberated upon in the 5th CoC meeting held on 21.09.2022. The Members of the Committee of Creditors evaluated the said Resolution Plan strictly as per the evaluation matrix and Section 29A. After evaluating in terms of both qualitative and quantitative criteria and aggregate, the said resolution plan was put for voting. The Resolution Plan submitted by Mr. K. Venkata Ratna Prasad was approved by members of CoC with 98.11% voting share in the CoC meeting held on 21.09.2022. Thus submitting, prayed the Tribunal to approve the Resolution plan submitted by Mr. K. Venkata Ratna Prasad.

6. Contours of the Resolution Plan

(A) **Mr. Konudula Venkata Ratna Prasad**, is one of the Financial Creditors of the Corporate Debtor and is currently the Managing Director of Janapriya Liquids and Janapriya Constructions Pvt Ltd and seed investor and Managing

Director for a bulk drug manufacturing Unit JPR Labs Private Limited, Visakhapatnam.

(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	Manda Srinivas	0.74%	Abstained
2	State Bank of India	13.37%	Voted For
3	Konudula Venkata Ratna Prasad	76.48%	Voted For
4	Y Vijay Kumar	8.26%	Voted For
5	Ashish Jain	1.15%	Abstained
	TOTAL	100	

(C) **FINANCIAL PROPOSALS**: The amount provided to the stakeholders of the Corporate Debtor is Rs. 1,50,00,000/- which is tabulated below:-

Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Percentages (%)
1	Dissenting Secured Financial Creditors	NA	NA	NA	NA
2	Other Secured and unsecured Financial Creditors:				
	i) Mr. Manda Srinivas	15,25,000	9,70,000	37,582	3.87%
	ii) Mr. K V R Prasad	12,38,28,503	10,00,35,671	38,75,831	3.87%
	iii) Mr. N. Subha Charan	76,00,000	60,98,035	2,36,263	3.87%

	iv) Mr. Y Vijay Kumar	4,40,17,000	1,08,00,000	4,18,439	3.87%
	v) Mr. Ashish Jain	51,00,000	15,00,000	58,117	3.87%
	vi) Ms. Jimmy Rani	38,00,000	15,00,000	57,872	3.85%
	vii) State Bank of India	1,79,01,357	1,74,90,238	6,74,099	3.85%
3	Dissenting Unsecured Financial Creditors	NA	NA	NA	NA
4	Other Unsecured Financial Creditors:		Already covered above		
5	Operational Creditors:				
	i) Metascan Electronics & Communications Pvt Ltd	38,23,600	38,23,600	17,224	0.45%
	ii) Chiranjeevi Raju-Sri Sai Maintenance Works	2,06,767	1,72,767	778	0.45%
	iii) Milman Thin Film Systems Pvt Ld	10,81,557	10,81,557	4,872	0.45%
	iv) P V Enterprises	97,950	97,950	441	0.45%
	v) Gamma Weld Inspection Services	81,275	81,275	366	0.45%
	vi) Reitu Metals and Alloys Limited	21,48,351	18,50,702	8,337	0.45%
	vii) Deutsch Quality Systems India Pvt Ltd	1,91,599	1,83,750	828	0.45%
	viii) Ecocut Machining Solutions	8,04,295	5,68,974	2,563	0.45%
	ix) ESIC, Regional Office, Hyderabad	2,48,743	2,48,743	1,121	0.45%
	x) Electricity Due- SPDC Telangana	2,83,647	2,83,647	1,278	0.45%
	xi) Quality Inspection Services	1,51,893	1,03,554	466	0.45%
	Workmen	-	-	-	-

	Employees:				
	i) Mr. N. Subha Charan	48,00,000	48,00,000	10,83,948	22.582%
	ii) Mr. Y. Vijay Kumar	52,00,000	52,00,000	11,74,277	22.582%
6	Other Debts and Dues:				
	Security Charges	-	-	-	-
Total			15,68,90,463	76,55,000	

The Applicant proposes to infuse the Financial Commitment (detailed in the Table A below) into the Corporate Debtor, directly or indirectly, through equity or through equity and /or debt. The break-up of the amount INR 1,50,00,000 to be invested by the Resolution Applicant for various purposes are detailed as under:

Particulars	Amounts (INR)
1. Financial creditors' dues.	53,58,500
2. Operational creditors' dues.	22,96,500
3. CIRP expenses	23,45,000
4. Repairs/Deposits/startup costs	20,00,000
5. Working capital	30,00,000
Financial Commitment	1,50,00,000

(D) TERM OF THE RESOLUTION PLAN AND IMPLEMENTATION SCHEDULE:

Particulars	Time from vesting date (The vesting date is the date of approval of Resolution Plan by NCLT (Adjudicating Authority) under section 5(1) of Insolvency Bankruptcy Code 2016)
Upfront cash payment (Initial/Down payment) Rs.1 Crore	Within 30 Days
Payment for Insolvency Resolution Process Cost- Rs. 23.45 lakhs	Within 30 Days
Initial Payment to Financial /operational creditors*- Rs. 76.55 lakhs	Within 30 Days
Further Payment for refurbishment, repairs & maintenance, Deposits and start-up expenses (Rs.20 lakhs)	Within 12 months
Working capital Margin Rs.30 lakhs.	Within 12 months

(E) Management of the Corporate Debtor

The implementation of the plan until the final payment shall be supervised by the Monitoring Committee till the final payment of Resolution. The Monitoring Committee shall comprise of (i) a representative or an advisor of the Financial Creditors (COC) (other than related party), (ii) representative of the resolution applicant (iii) Resolution Professional. On and from the Effective Date, the Reconstituted Board shall constitute the Board of the Company/ CD. The Reconstituted Board shall be responsible for daily affairs and operations of the Company/Cd.

(F) 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. The fair value and Liquidation value as submitted in Form-H is Rs. 2,52,54,914/- and Rs. 1,42,04,094/- respectively.

7. The Ld. Counsel submitted that the Resolution Professional has received from the Resolution Applicant a Letter of Guarantee No. 328901GL00084222 dated 11.11.2022 from Union Bank of India, Visakhapatnam towards performance guarantee as required under Regulation 36 (B) (4A) of CIRP Regulations, a copy of which has been filed along with memo dated 28.11.2022.
8. In the above backdrop we heard Shri Santosh Jadhav, Learned Counsel for the Resolution Professional. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-

- (a) Provides for payment of Rs. 23.45 lakhs towards CIRP Cost within 30 days of the NCLT Approval Date.
 - (b) The Plan provides for payment of amount provided under the Resolution Plan of the operational creditor on priority in terms of Section 30 (2)(b).
 - (c) There are no dissenting financial creditors as such the plan does not provide for payment to the dissenting Financial Creditors.
9. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:
- (a) The Plan provides for payment of claim amount restricted only to the extent specified in the resolution plan to the operational creditor on priority
 - (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 (Regulation 38 (1A)).
- 10. 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”.

11. The Hon’ble Supreme Court has further held at para 35 of the above judgement that ***the discretion of the adjudicating 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.***
12. 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”.***
13. The Hon’ble Supreme Court of India, in the recent ruling in re ***Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors,*** has held as under:-

21. *This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of **K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.***

27. *This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:***

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure

that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

14. 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.
15. We therefore, hereby **approve** the Resolution Plan submitted by Mr. Konudula Venkata Ratna Prasad, along with annexure, schedules forming part of the Resolution Applicant annexed to the Application and order as under:
 - (i) The Resolution Plan along with annexures and schedules forming part of the plan 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) 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 the Performance Bank Guarantee furnished by the Resolution Applicant shall remain as performance Bank Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented.
- (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 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 furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- (xi) 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.
- (xii). Accordingly, IA 1209/2022 stands disposed of.

SD/-

(Charan Singh)
MEMBER (TECHNICAL)

SD/-

(Dr. Venkata Ramakrishna Badrinath Nandula)
MEMBER (JUDICIAL)

Binnu