

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

I.A. No. 214 of 2021

in

C.P. (IB) No.143/7/HDB/2019

*Application U/s 30(6), 31(1) and 31(3) of Insolvency and  
Bankruptcy Code, 2016*

In the matter of: **A.P. GEMS & JEWELLARY PARK PRIVATE LIMITED**

**Filed by**

**Dr. K. V. Srinivas**

Resolution Professional,

A.P. Gems & Jewellery Park Private Limited

1-8-304 to 307, 4th Floor,

“Kamala Towers”, Patigadda Road,

Begumpet, Hyderabad - 500 003

Applicant /  
Resolution Professional

Date of order: 03.01.2022

**Coram:**

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

**Appearance:**

For Applicant: Resolution Professional in person.



**PER: BENCH**

**ORDER**

1. IA No. 214/2021 is filed by the Resolution Professional under section 30(6) 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 resolution plan of **ACE Urban Developers Private Limited (Resolution Applicant)** as duly approved by the Committee of Creditors.
2. To put concisely, the main petition filed by M/s Phoenix Tech Tower Private Limited u/s 7 of IBC, 2016 was admitted by the Adjudicating Authority vide Order Dated 04.06.2019 and ordered commencement of CIRP against **M/s A.P. Gems & Jewellery Park Private Limited / Corporate Debtor**. The Applicant herein was appointed as Interim Resolution Professional (IRP), who continued as Resolution Professional.
3. Pursuant to his taking over of the Corporate Debtor, the Applicant learnt that the Company's name (corporate debtor) was struck off from the register of Registrar of Companies, Hyderabad. Subsequently, on an appeal preferred by the IRP under Section 252 of the Companies Act, 2013, this Tribunal vide order dated **07.11.2019** ordered for restoration of the name of the Company in the register of companies.





4. 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 21.11.2019 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 financial creditors and constituted Committee of Creditors comprising of (1) Phoenix Tech Tower Private Limited- 41% (2) APSTPC – 59% Voting Share.
5. The Applicant has assailed the Directors (Suspended Board) for non-cooperation during the CIRP process and the snags that he encountered in the discharge of this duties. The Applicant submits that he had relied mostly on the data / information that is available in the public domain.
6. The Form-G inviting Expression of Interest ("EOI") from Prospective Resolution Applicants for submission of Resolution Plan of the Corporate Debtor was published and the last date for submission of EOI was fixed as 16.02.2020. In response, the RP received EOIs from 4 (Four) prospective resolution applicants (PRA) which are as follows
  - i. ACE Urban Developers Private Limited
  - ii. SBPL Infrastructure Limited
  - iii. Vensor Construction Company Limited
  - iv. Chikkala Chowdarayya (Individual)



7. It is stated by the Applicant that, out of the four participants in the EOI, 03 PRAs made it to the final list and remained in the fray i.e. ACE urban Developers Private Limited, Vensor Construction Company limited and Chikkala Chowdarayya (Individual).
8. Thereafter, on March 08, 2020, the RP issued the 'Request for Resolution Plans' ("RFRP") and the 'Evaluation Matrix' to the prospective resolution applicants and the last date for submission of the resolution plan from the PRA's was initially fixed as April 01, 2020, which was subsequently extended time to time at the request of PRAs and eventually the last date for submission was fixed as August 06, 2020.
9. In the 7<sup>th</sup> CoC meeting held on June 15, 2020, the RP has, based on the evaluation, admitted TSTPC into the CoC as financial creditor and revised the voting powers of CoC. Phoenix Tech Tower Private Limited (CoC Member) preferred an IA challenging the decision of RP to admitting TSTPC in CoC and not considering it as related party. This Tribunal vide orders passed in IA 555/2020 dated 04.01.2021 declared APSTPC as related party. Aggrieved by the aforesaid order of this Tribunal, the Telangana State Trade Promotion Corporation (TSTPC) preferred an appeal before Hon'ble NCLAT. Hon'ble NCLAT while upholding the order of this Tribunal dated 04.01.2021 declaring APSTPC as related party, has directed the Resolution Professional to reconstitute the CoC without TSTPC. Accordingly, the CoC was reconstituted with sole member



- i.e. Phoenix Tech Tower Private Limited with 100% voting rights in the CoC.
10. The RP received the Resolution plans from **M/s. ACE Urban Developers Private Limited** and Mr. **Chikkala Chowdaryya** on August 06, 2020 which were placed before the CoC for their deliberations in the **12<sup>th</sup> CoC Meeting** held on February 08, 2021. The same were returned to PRAs for rectifying certain deviations. The PRAs made changes to the resolution plans and finally submitted their revised resolution plans which were laid before the CoC in the **14<sup>th</sup> CoC Meeting** held on March 18, 2021. Further **15<sup>th</sup> CoC Meeting** was held on March 25, 2021, as per the request of CoC, RP has invited both the PRA's in the meeting. The PRAs were again asked to improvise the Plan amount and reduce the payment tenure. In response to the same, Mr. T Sai Murli Vasista (representative of Mr. Chikkala Chowdaryya) expressed his inability to improve the resolution plan amount any further.
11. The CoC after several rounds of negotiations evaluated the Resolution Plans submitted by aforesaid resolution applicants as per the Evaluation Matrix and Section 29A of the Code. After evaluating in terms of both qualitative and quantitative criteria and aggregate the resolution plan was put for voting in the 16<sup>th</sup> CoC meeting held on 03.04.2021. The Resolution Plan submitted by **M/s. ACE Urban Developers Private Limited** (Resolution Applicant) was considered and approved by the CoC with 100% voting in favour of it under Section 30(4) of IBC. The Applicant further submits that all the



requirements envisaged under the Code and Rules/Regulations made there-under have been met. The scanned copy of the voting sheet is reproduced below:-

**RESOLVED FURTHER THAT** the Committee of Creditors hereby authorize Dr. K. V. Srinivas, Resolution Professional to do all acts, deeds and matters as may be necessary to give effect to this resolution.

VOTING REGISTER						
In reference to Regulation 21(4) and 29(4) of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2021						
18 <sup>th</sup> Meeting of the Committee of Creditors (CoC) of AP Gems & Jewellery Park Private Limited						
Date - 03.04.2021 - Time - 10:00 AM - Venue - Office of the Resolution Professional						
Name of the Member	Represented by	% of Voting rights	Physical Voting/e-Voting	Votes		
				For	Against	Abstained
Phoenix Tech Tower Pvt Ltd	Sridhar Rao	100	Physical	Attend		

*Sridhar Rao*  
Sridhar Rao  
Phoenix Tech Tower Private Limited

12. The Applicant submitted that in lieu of Performance Bank Guarantee as required under sub regulation (4A) of Regulation 36(B) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2021, an amount of Rs. 15.39 crores has been remitted on 19.04.2021. It is added by the Resolution Professional that he was directed by the Adjudicating Authority to seek clarification from the Successful Resolution Applicant about utilization of the amount remitted by it in lieu of performance bank guarantee (PBG) towards the payment

of the installment amounts proposed in the Resolution Plan. The Applicant filed memo dated 03.12.2021 enclosing the letter dated 30.11.2021 received from the Successful Resolution Applicant clarifying that the amounts remitted by SRA in lieu of the PBG which is 20% of the Resolution Plan Amount shall not be adjusted against any of the payment trenches proposed by it and that the same shall remain as PBG till the amounts proposed to be paid to the creditors is fully paid off and plan is fully implemented.

13. **Contour of the Resolution Plan submitted by**

- (A) **ACE Urban Developers Private Limited** (herein referred to as Resolution Applicant), who submitted the resolution plan is a Company incorporated in the year 2015 under the Companies Act, 2015, having its Corporate Office at #1071, Road No. 44, Jubilee Hills, Hyderabad – 500 033. The Company has been focusing on providing integrated sustainable smart urban cities and urban zones using latest technologies.
- (B) The CoC comprised of the following financial creditors and the distribution of voting share among them is as under:-

S.No.	Name of the Financial creditor	Voting share
1	Phoenix Tech Tower Private Limited	100%
	Total	100%

*AK*

*J*

(C) Financial proposal: The amount provided to the stakeholders of the Corporate Debtor is Rs. 107.10 crores which is tabulated below:

(in lakhs)

S. No.	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Claimed (%)
1	Dissenting Secured Financial Creditors	-	-		
2	Secured Financial Creditors	-	-		
3	Dissenting Unsecured Financial Creditors	-	-		
4	Other Unsecured Financial Creditors	-	-		
4.1	Phoenix Tech Tower private limited	19,22,93,871	19,22,93,871	8,33,29,173	43.33%
4.2	Telangana State Trade Promotion Corporation (TSTPC)	38,64,42,140	38,46,16,545	16,66,70,827	43.33%
5	Other creditors	-	-		
6	Operational Creditors	-	-	5,00,000	
	Government	-	-		
	Workmen	-	-		
	Employees	-	-		

*Alkand*

*J*

	.....	-	-		
7	Other Debts and Dues	-	-		
<b>Total</b>		<b>57,87,36,011</b>	<b>57,69,10,416</b>	<b>25,05,00,000</b>	<b>43.33%</b>

The break-up of the resolution amount of INR 107.10 crores brought in by the Resolution Applicant for various purposes are detailed as under:

a. **Resolution Plan Amount Disbursement**

		<b>ACE Urban Developers Private Limited</b>
<b>S. NO</b>	<b>Creditors/Expenses</b>	<b>Amount (in Rs.)</b>
1	CIRP Expenses	2,05,00,000
2	Operational Creditors and Other Creditors	5,00,000
3	Financial Creditor – Telangana State Trade Promotion Corporation (TSTPC)	16,66,70,827
4.	Financial Creditor – Phoenix Tech Tower Private Limited ("Phoenix")	8,33,29,173
5.	Working capital infusion	80,00,00,000
<b>Total</b>		<b>107,10,00,000/-</b>

*Handwritten signature in green ink.*

*Handwritten signature in green ink.*

b. ACE Urban Developers Payment Timeline: -

Step		Time
Step 1	<b>Submission of Resolution Plan:</b> Payment of security deposit of Rs. 1 Crores	
Step 2	<b>Approval Date:</b> Approval of the plan by the COC	<b>X</b>
Step 3	<b>Acceptance of LOI</b> Demand Draft of 10% of the value of Resolution Plan i.e., Rs. 10.71 Crores*	<b>X+3 days</b>
Step 4	<b>Performance Guarantee</b> Performance Guarantee/ amount equivalent to 20% resolution plan amount i.e. Rs. 21.20 Crores	<b>X + 2 weeks</b>
Step 5	<b>Effective Date [Of NCLT Approval]:</b>	<b>T</b>
Step 6	<b>Rs. 26 Crore will be paid in Two Tranche</b>	<b>T+90 Days</b>
Step 7	<b>Infusion of Working Capital: Rs. 50 Crore</b>	<b>Within a period of 24 Months from NCLT Approval date, as and when</b>
Step 8	<b>Additional infusion of Rs.30 Crore in the form of debt based upon requirement</b>	<b>From time to time</b>

(c) The Resolution Applicant had, remitted an amount of Rs. 10.71 Crores on 07.04.2021 as per the terms of the resolution plan approved by the CoC.

(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 Financial Creditor side and the Resolution Applicant in terms of Section 30(2)





(c). Post approval, the Plan provides for managing the affairs of Corporate Debtor by 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. The fair value and Liquidation value as submitted in Form-H is Rs. 114,18,58,817/- and Rs. 91,34,87,154/- respectively.

14. In the above backdrop we heard the Learned Resolution Professional. He 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. 2.03 crores and the same shall be paid in full and in priority (within 30 days) to any other payment as per provisions of Section 30 (2) (a) of the Code. Any excess or shortfall shall be



adjusted with the payment of financial creditor. It is stated that against the said infusion of Rs. 2.03 crores, the Resolution Applicant shall issue a total of 20,30,000 equity shares at a face value of Rs. 10/- each of the restructure Corporate Debtor.

- (b) The Plan provides priority of dues to Operational Creditors over Financial Creditors in accordance with Section 30(2) (b). The Plan provides for payment of Rs.3,00,000/- to Workmen and Employees, Rs. 3,00,000/- to Operational Creditors (other than workmen and employees) and Rs. 1,00,000/- to other creditors, towards full and final settlement. There is no dissenting Financial Creditor and the plan has been approved with 100% votes in favour of it.
15. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:
- (a) The payment due to operational creditors will be made in priority over Financial Creditors to the extent of liquidation value due to them (if any) within 30 days from the date of approval of the Plan by the Adjudicating Authority through upfront capital infusion. Shortfall to meet the liquidation value of these creditors, if any, shall be made good by the Resolution Applicant (Regulation 38 (1) (a)).
- (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)).
16. It is further submitted that the Resolution Plan value of Rs. 107.10 crores is higher than the Liquidation value of Rs. 91.35 crores and the Resolution Plan has been approved by the CoC in the 16<sup>th</sup> CoC meeting with 100% votes in favour of it.
17. *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".*
18. 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.*



19. 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*”.
20. 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 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 20% cash deposit made in lieu of submission of Performance Bank Guarantee 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 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)

*Binnu*