

SL.No.102

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

**SPECIAL BENCH (Video Conference)**

**CORAM: HON'BLE DR.VENKATA RAMAKRISHNA BADARINATH NANDULA-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 11.11.2021 AT 12:30 AM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/510/2021 in CP (IB) No.672/7/HDB/2018
NAME OF THE COMPANY	R V K Energy and Infrastructure Ltd
NAME OF THE PETITIONER(S)	L & T Infrastructure Finance Company Ltd
NAME OF THE RESPONDENT(S)	R V K Energy and Infrastructure Ltd
UNDER SECTION	7 of IBC

**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 (IBC) 510/2021 in CP (IB) No.672/7/HDB/2018** is listed for orders today. Orders pronounced recorded vide separate sheets. In the result, Resolution Plan is approved.

  
**MEMBER (T)**

  
**MEMBER(J)**

Syamala

**NATIONAL COMPANY LAW TRIBUNAL  
BENCH-2, HYDERABAD**

**IA No. 510/2021**

**In**

**CP (IB) No. 672/7/HDB/2018**

*Application under Section 30 (6) & 31 (1) of IBC, 2016*

*In the matter of M/s RVK Energy Private Limited*

**Filed by -**

**Mr. Krishna Komaravolu**

Resolution Professional for M/s RVK Energy Private Limited

7-1-214, Flat No. 409

Vamsikrishna Apartments

Dharam Karan Road Ameerpet

Hyderabad - 500016

...Applicant/  
Resolution Professional

**Date of order: 11.11.2021**

**Coram:**

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

Dr. Binod Kumar Sinha, Hon'ble Member (Technical)

Appearance:

For Applicant: Resolution Professional (Party in person)

**PER: BENCH**

**ORDER**

1. The present Application bearing IA No. 510/2021 is filed by the Resolution Professional of the Corporate Debtor, namely M/s R.V.K. Energy Private Limited, under section 31(1) of the IB Code, 2016, R/w regulation 39(4) of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, seeking approval of resolution plan submitted by the Resolution Applicant, M/s **KVK INFRA PRIVATE LIMITED** as duly approved by the Committee of Creditors.

2. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated **06.01.2020** and Shri Koteswara Rao Karuchola was appointed as Interim Resolution Professional (IRP). However, he was later replaced by Applicant herein as Resolution Professional vide order dated 29.01.2020.
3. Pursuant to above order, the Applicant made public announcement of Commencement of CIRP. In response to the public announcement, claims were received from 4 Financial Creditors and five Operational Creditors, Basing on the claims, the Applicant formed Committee of Creditors comprising of following Financial Creditors.

S.No.	Name of the Financial creditor	Voting share
1	L&T Infrastructure Finance Company Limited	52.16%
2	ICICI Bank Limited	39.96%
3	SREI Equipment Finance Ltd	3.09%
4	UCO Bank	4.79%
	Total	100%

4. Further in response to publication of Expression of Interest by Resolution Professional, two resolution plans were received from the prospective resolution applicants and the same were rejected by the CoC in its 9<sup>th</sup> CoC Meeting held on 11.02.2021 as they did not muster the requisite 66% of votes.
5. The CIRP commenced with effect from 06.01.2020 and after exclusion of 153 days owing to covid induced lockdown and extension granted the term of 330 days period came to an end on 02.05.2021.
6. Aggrieved by the decision of CoC in rejecting the resolution plans, one of the prospective resolution applicants i.e KVK Infra Private Limited preferred IA No. 204/2021 to this Adjudicating Authority pleaded for providing another chance for re-negotiating with the CoC Members, which was allowed vide order dated 24.06.2021.

7. Accordingly, the Applicant convened 11<sup>th</sup> CoC meeting on 02.08.2021 and placed before the CoC the two plans received i.e. ASACO Private Limited and KVK Infra Private Limited. Subsequently, ASACO Private Limited withdrew from the fray and informed the same to the RP vide their mail dated 29.07.2021. Therefore, the resolution plan submitted by KVK Infra Private Limited only was deliberated upon in the adjourned 11<sup>th</sup> CoC meeting on 03.08.2021 and put for e-voting from 06.08.2021 to 25.08.2021. Further at the request of one of the CoC Members/ICICI the e-voting was extended till 10.09.2021 and the resolution plan was approved with 100% votes in favour of the resolution plan.
8. The Resolution Applicant vide their letter dated 14.09.2021 has informed the Resolution Professional about deposit of Rs. 25 Lakhs in lieu of performance Bank guarantee, thereby complying the terms of "Request for Resolution Plan" as required under sub-regulation (4A) of Regulation 36B.

9. **CONTOUR OF THE RESOLUTION PLAN:-**

(A) **M/s KVK Infra Private Limited (herein referred to as Resolution Applicant)**, which submitted the resolution plan is a private limited Company incorporated under the Companies Act, 1956 on 29.10.2007, having its registered office at 6-3-1109/A/1, 3<sup>rd</sup> Floor, Navbharat Chambers, Rajbhavan Road, Somajiguda, Hyderabad - 500082. The Company is involved in the production, collection and distribution of electricity.

(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	L&T Infrastructure Finance Company Limited	52.16%
2	ICICI Bank Limited	39.96%
3	SREI Equipment Finance Ltd	3.09%

4	UCO Bank	4.79%
	Total	100%

(C) **Financial proposal:** The amount provided to the stakeholders of the Corporate Debtor is tabulated below:

(Amount in Lakhs)

(Amou nt in Lakhs) Sl. No.	Category Stakeholder*	Sub-Category Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub- section (2) of section 21	-	-	-	-
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	6393.97	6393.97	670.00	10.47%
		Total[(a) + (b)]	6393.97	6393.97	670.00	10.47%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub- section (2) of section 21	-	-	-	-
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan	4028.43	4028.43	-	-
		(ii) who voted in favour of the resolution plan	-	-	-	-
		Total[(a) + (b)]	-	-	-	-
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above: (i) Government	1350.04	919.98	70.00	5.18%
		(ii) Workmen	-	-	-	-
		(iii) Employees	-	-	-	-
(iv) .....	-	-	-	-		
Total[(a) + (b)]	1350.04	919.98	70.00	5.18%		
4	Other debts and dues	CIRP Expenses	40.00	40.00	10.00	25%
<b>Grand Total</b>			11812.44	11382.38	750.00	6.35%

*Abhi*

*J*

The break-up of the resolution amount of INR 750 lakhs brought in by the Resolution Applicant for various purposes are detailed as under:

S. No	Name of the Creditor	Amount Proposed by RA Rs in lakhs
01.	CIRP Cost *	10
02.	Financial creditors	670
03.	Operational Creditors	70
	<b>Total</b>	<b>750</b>
Distribution of plan amount to financial creditors		
	L&T Infra Finance	200
	ICICI Bank Limited	430
	UCO Bank	15
	SREI	25
	<b>Total</b>	<b>670</b>

- \* The Resolution Applicant has proposed Rs. 10,00,000/- towards CIRP Costs since the CIRP costs are being paid through operational cash flows of the CD. If the CIRP cost is more than Rs. 10 lakhs, the same shall be reduced from the amount proposed to the financial creditors.

The fair value is Rs. 9,11,86,867/- and Liquidation value is Rs. 6,58,98,935/-.

**(D) Management of Corporate Debtor**

The Plan provides for the Management of the affairs of Corporate Debtor after approval of the Resolution Plan in accordance with Section 30(2)(c). It provides for the constitution of a Management Committee consisting of one representative of Resolution Professional and one representative from the Resolution Applicant. The Plan also provides for the Implementation and Supervision of Resolution Plan in accordance with Section 30(2) (d).



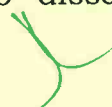


**(E) Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:-**

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 the Resolution Applicant has declared that the resolution plan is in compliance with the Section 30 (2) (e) of the Code and the Regulations. The Resolution Applicant at part-C, para 7 (page 27 of the resolution plan) has filed an Affidavit vide memo dated 21.10.2021 declaring that it is eligible to submit the plan under Section 29A of the Code.

10. Further the Applicant confirms that the Resolution Plan takes care of the interest of the stakeholders concerned which includes Financial Creditors, Operational Creditors and payment of CIRP costs is being taken care on priority over payment to the other creditors.
11. In the above backdrop we heard the 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. The Plan provides for the priority payment of CIRP costs estimated to the extent of Rs.10 lakhs and the same shall be paid in full and in priority to any other payment as per provisions of the Code as per Section 30 (2) (a) of the Code. If the CIRP cost is more than Rs. 10 lakhs, the same shall be reduced from the amount proposed to the financial creditors.
  - 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.70 lakhs to operational creditors on pro-rata basis which has been given priority in payment over financial creditors. There is no dissenting





Financial Creditor and the plan has been approved with 100% votes in favour of it.

C. 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 (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 (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)).

12. It is further submitted that the Plan value of Rs. 750 lakhs is higher than the Liquidation value of Rs. 658.99 lakhs and the Resolution Plan has been approved by the CoC in the 11<sup>th</sup> CoC meeting with 100% votes in favour of it.

13. ***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".***

14. 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.***

15. 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"*.
16. 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:-
17. 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) 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.
- (v) Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- (vi). The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (vii). 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.
- (viii). The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- (ix). 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.

(DR BINOD KUMAR SINHA)  
MEMBER (TECHNICAL)

(DR N.V. RAMAKRISHNA BADRINATH)  
MEMBER (JUDICIAL)