

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL**

**PRESENT: HON'BLE SHRI BIOND KUMAR SINHA – MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 03.09.2019 AT 10.30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA NO. 516/2019 in CP(IB) NO. 272/9/HDB/2018
NAME OF THE COMPANY	Swapna Infracon Pvt Ltd
NAME OF THE PETITIONER(S)	Dalmia Cements (Bharat) Ltd
NAME OF THE RESPONDENT(S)	Swapana Infracon Pvt Ltd
UNDER SECTION	9 OF IBC

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
M S Mono Ranjani	Adv	984855932	MR

**Counsel for Respondent(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
P. Shreevar Reddy for Rameshchandra Rao Gustam	Adv	8977252945	PSR

**ORDER**

Orders pronounced in open court. IA allowed vide separate order.

  
**MEMBER TECHNICAL**

AS

  
**MEMBER JUDICIAL**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

IA No.516/2019  
In  
CP(IB) No.272/9/HDB/2018

**In the matter of M/s. Swapna Infracon Private Limited**

**Between :-**

M/s Dalmia Cement (Bharat) Ltd  
Regd. Office: Dalmia Puram,  
Tiruchirapalli District,  
Tamil Nadu – 621651.

... Applicant Company /  
Operational Creditor

**VS**

M/s Swapna Infracon Pvt Ltd  
D.No.8-2-674/2/B/8, Flat No.8,  
Road No.13, Krishna Nagar,  
Banjara Hills,  
Hyderabad – 500034.

... Respondent Company /  
Corporate Debtor

S V Satyanarayana  
Reg. No. IBBI/IPA-003/IP-N00063/2017-18/10549  
Flat -201, Pearl Block,  
Sri Sairam Manor Apartments,  
Yousufguda, Hyderabad-500045.

... Interim Resolution  
Professional/Applicant

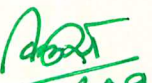
**Order pronounced on: 03.09.2019**

**Coram: Shri. K. ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL  
Dr. BINOD KUMAR SINHA, MEMBER TECHNICAL**

**Parties/Counsel Present:**

For the Applicant:

Ms. Mano Ranjini, Advocate for IRP



**Per: K. ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL**

**ORDER**

1. The present Application bearing IA No. 516 of 2019 is filed U/s 33 read with Section 54 of the IBC, 2016, seeking the following reliefs :-
  - a. To direct Bank of Baroda, the sole financial creditor in CoC, to release the pending IRP fee of Rs.6.00 lakhs accrued from 18<sup>th</sup> January 2019 (i.e., after 1<sup>st</sup> CoC meeting) to 17<sup>th</sup> May 2019 immediately.
  - b. To direct the Bank of Baroda to release the balance IRP fees and all other expenses to be accrued from 18<sup>th</sup> May 2019 and upto the date of dissolution order immediately after the said order.
  - c. To pass the dissolution order u/s 54 (1) (a) or any other provisions of Insolvency and Bankruptcy Code, 2016.
  - d. To pass such order (s) as may be deemed fit and proper by this Adjudicating Authority in the interest of justice.
2. Brief facts of the present Application are as under:
3. That this Adjudicating Authority vide its order dated 18.12.2018 has passed an order of admission and commencement of Corporate Insolvency Resolution Process and Mr. S V Satyanarayana was appointed as Interim Resolution Professional (IRP).
4. That the IRP gave the public announcement on 25<sup>th</sup> December 2018 in two news papers Business Standard and Nava Telangana at Hyderabad and also a copy of the public announcement has been published in IBBI website.



5. That in compliance with Section 21(1) of the Code, the IRP has constituted the Committee of Creditors (CoC) on 8<sup>th</sup> January 2019 as under:

SNo	Name of the Financial Creditor	Voting Percentage
1	Bank of Baroda	100.00
	<b>Total</b>	<b>100.00</b>

6. That the members of CoC noted the claims received by the IRP and are as mentioned below:

SNo	Nature	Name	Claim Amount	Verified Amount	Sub-Total	Percent
1	FC	Bank of Baroda, Visakhapatnam	76,949,565.16	76,949,565.16	76,949,565.16	75%
2	OC	Office of Asst. Commissioner of State Tax, Gandhidham, Gujarat	21,136,826.00	21,136,826.00	25,237,829.00	25%
3		Dalmia Cement (Bharat) Ltd., Chennai.	4,101,003.00	4,101,003.00		
		Total	102,187,394.16	102,187,394.16	102,187,394.16	100%

7. That the IRP has expressed his willingness to continue as Resolution Professional (RP) but the CoC represented by the sole member, Bank of Baroda decided to defer the appointment of RP as they were yet to receive their Head Office approval. After discussions, being aware that the IRP shall have to carry the functions of RP from the 40<sup>th</sup> day from the Admission Date as per Section 17(3) of the CIRP Regulations, Sole CoC member considered the proposal given by the IRP resolved as under;

*“RESOLVED to defer the appointment of Resolution Professional till the next meeting and the current IRP shall continue*



*till such time a new RP is appointed. During the intervening period, the IRP shall be paid a Fee of Rs.1.5 lakh per month on actual number of days' basis from the date of 1<sup>st</sup> COC Meeting to the date new RP takes charge”.*

8. During the Second CoC meeting held on 10.04.2019, CoC has resolved as under;

*“RESOLVED to ratify the costs incurred on or by the IRP including the IRP Fee (Rs.3,00,000/-) and OPE for IRP (Rs.12,418/-). Further the COC RESOLVED to request the Applicant-OC (Dalmia Cement) to release the balance IRP fee of Rs.50,000/- to IRP and also resolved to release the pending IRP fee (for the extended period beyond 1<sup>st</sup> COC) to IRP without any further delay”*


9. That the CoC discussed the need for appointment of two valuers from the list of IBBI Registered Valuers. The Chairperson has indicated that the Valuer has indicated a fee of Rs.1.00 lakh for the valuation and also sought the availability of Audited/Provisional Balance of recent Date. The COC has ratified the decision taken earlier for not appointing Valuers in view of NIL assets of the CD. Similarly, the COC has decided not to proceed with Expression of Interest from other interested parties for revival of the company, as they were contemplating liquidation/Dissolution of the CD as there are no factory/assets/employees in the CD and the operations were suspended since October 2016.
10. That third and the last meeting of CoC members was held on 10.06.2019, the claims received remained the same as those mentioned above.
11. That the last date for CIRP was 16.06.2019, as provided for in the Form A and since the CIRP was getting concluded shortly, CoC decided to maintain the status-quo i.e., to defer the appointment of Resolution Professional and to continue the CIRP with the IRP, with the powers of RP as per the provisions of the

code from the 40<sup>th</sup> day of the CIRP commencement date and further resolved as under

*“RESOLVED to ratify the costs incurred on or by the IRP including the IRP Fee (Rs.3,00,000/-) and OPE for IRP (Rs.12,232/-). Further the COC RESOLVED to release the pending IRP fee (for the extended period beyond 1<sup>st</sup> COC) to IRP without any further delay”.*

12. It is stated that, with regard to the future of the Company as per the promoters, the CD has completely stopped operations since October, 2016. As per the latest Balance sheet of 31/03/2018, the company has reported NIL income. It has tangible assets of Rs.20.90 lakhs as on 31/03/2018. There are some non-current investments, current investments, inventory and trade receivables. It is further stated that, the sole Financial Creditor is also aware that there may not be any realizable assets based on its regular interaction with the Corporate Debtor, regular Inspections, periodical stock statements, Stock audit reports etc.
13. That as per IRP and COC, prima-facie, there are no realizable assets and hence no Valuation was conducted and the same was taken on record during the 2nd COC meeting.
14. That as per promoter Director, the realizability of the assets is also NIL. Upon insistence and further follow-up, the Director of CD has further submitted (on 10/06/2019) a signed provisional Balance sheet as on 31/12/2018, indicating NIL assets.
15. It is stated that the Bank/Financial Creditor with its vast credit management experience over many decades, felt it was impossible to revive the Corporate Debtor and that no meaningful purpose would be served by invitation for Expression of Interest (EOI). Accordingly, the COC after recording that the CD has no future and no viability, decided not to take-up EOI due to the following strong reasons:
  - a. It has no registered office (non-operational & closed).
  - b. No administrative office,
  - c. No factory



- d. Nil employees,
  - e. NIL work orders in hand,
  - f. NIL Tangible & intangible assets
  - g. Nil Intellectual property
  - h. No operations since Oct 2016.
  - i. NIL income recorded in 2017-18 as per IT Returns submitted on 05/04/2019.
16. It is stated that Mr. Bonam Surya Prakash, Director of the Suspended Board, has expressed that it is impossible to revive the Corporate Debtor, that it has no future and hence he has no objection in liquidation of the CD. It is also stated that its promoter Directors have given some collateral securities mortgaged to the Bank and the bank may settle a part of its dues by sale of those collateral securities. It is further stated that it is seen from the observation of bank account statement, that the promoters of the CD have already repaid approximately Rs.497 lakhs during the last one-year upto November 2018, by sale of some collateral securities given by Promoter Directors of the CD and its claim post that payment stands at Rs.769.50 lakhs.
17. It is stated that as there are no tangible or intangible assets in the CD and the operations were fully stopped since Oct 2016, the COC has decided to recommend for Liquidation of the Corporate Debtor and passed the following Resolution:
- “RESOLVED as the company has no future as it has nil tangible & intangible assets, no operations for the last four years, nil Employees, nil Work orders in hand, it is decided to recommend for Liquidation of the Corporate Debtor with 100% voting rights. It has further discussed, when there are no tangible & intangible assets in the corporate debtor, it is felt that there is no point in going for liquidation and has further resolved to recommend for the Dissolution of Corporate Debtor directly without the need for recommending the Liquidation.”*
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18. The CIRP costs ratified by the CoC and the payments done till date are as below:

- |   |   |               |      |
|---|---|---------------|------|
| a. Public Announcement                                    | : | Rs.18900/-    | Paid |
| b. OPE ratified in 1 <sup>st</sup> CoC                    | : | Rs.3000/-     | Paid |
| c. OPE ratified in 2 <sup>nd</sup> CoC                    | : | Rs.12,418/-   | Paid |
| d. OPE ratified in 3 <sup>rd</sup> CoC                    | : | Rs.12,232/-   | Paid |
| e. IRP Fee (18 <sup>th</sup> Dec to 17 <sup>th</sup> Jan) | : | Rs.2,00,000/- | Paid |

IRP fees after 1<sup>st</sup> CoC:

- |   |   |               |  |
|---|---|---------------|--|
| f. IRP Fee (18 <sup>th</sup> Jan to 17 <sup>th</sup> Feb)   | : | Rs.1,50,000/- |  |
| Pending of payment  |   |               |  |
| g. IRP Fee (18 <sup>th</sup> Feb to 17 <sup>th</sup> Mar)   | : | Rs.1,50,000/- |  |
| Pending of payment  |   |               |  |
| h. IRP Fee (18 <sup>th</sup> Mar to 17 <sup>th</sup> Apr)   | : | Rs.1,50,000/- |  |
| Pending of payment  |   |               |  |
| i. IRP Fee (18 <sup>th</sup> Apr to 17 <sup>th</sup> May)   | : | Rs.1,50,000/- |  |
| Pending of payment  |   |               |  |
| j. <u>Plus</u> , the IRP fee to be accrued upto the date of liquidation/dissolution order + Out of Pocket expenses if any and |   |               |  |
| k. Legal Counsel Fee of Rs.30,000/- + GST if any, to Advocate MS Mano Ranjani.  |   |               |  |

19. It is stated that section 33(1) (a) of the IBC 2016 states as under:

*Section 33 (1) where Adjudicating Authority: -*

- (a) *Before the expiry of the Insolvency resolution process period or the maximum period permitted for completion of corporate Insolvency resolution process under section 12 or the fast tract corporate insolvency resolution process under section 56, as the case may be does not receive a resolution plan under sub-section (6) of section 30;*
- (b) *Rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,*

*It shall-*



- (i) *Pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this chapter;*
  - (ii) *Issue a public announcement stating that the corporate debtor is in liquidation; and*
  - (iii) *Require such order to be sent to the authority with which the corporate debtor is registered*
20. It is stated that the members of the CoC & IRP have categorically opined that there is no valuable resolution to continue the company as a going concern and proposes to seek for liquidation of the Corporate Debtor. Reliance has been placed on this Adjudicating Authority's order in IA No.146/2019 in CP(IB)No.132/9/HDB/2018 in the matter of Phillips Lighting India Limited vs Avani Energy Solutions Private Limited in which Liquidation was ordered without seeking the Resolution Plans through the process of EOI.
21. It is stated that having recommended for Liquidation, since the Corporate Debtor has no tangible and intangible assets, the members of the CoC and the IRP (with the powers of RP) request this Adjudicating Authority to approve for the dissolution of the Corporate Debtor u/s 54(1) which states *"Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor"*.
22. Reliance has been placed on NCLT Chennai Bench's order in MA/237/IB/2018 in CP/189/IB/2018 in the matter of DDS Steel Rolling Mills Pvt Ltd and wherein para 7 of the said order it has been held as under:
- "In view of the above, and the other details provided in the Company Application under consideration, and the record placed on file, this Authority in exercise of the powers conferred under Sub-section (2) of Section 54 of the I&B code 2016, hereby order*

*Adarsh*

*the dissolution of the Corporate Debtor, viz., M/s DDS Steel Rolling Miss Private Limited from the date of this Order, and the Corporate Debtor stand dissolved. Therefore, the Resolution professional is relieved.*

23. Reiterating above, the counsel for the Applicant prayed to allow the Application as prayed for.
24. Heard both the sides and perused the record.
25. In view of the facts and circumstances as stated supra and considering the Commercial wisdom of the CoC coupled with the fact that the Corporate Debtor does not have any tangible or intangible assets, including any Intellectual Property Rights as reported by IRP (with the powers of RP), this Adjudicating Authority in exercise of the powers conferred under Section 54(2) of the I&B Code, 2016, deems it fit and proper to pass an Order of the dissolution of the Corporate Debtor i.e., Swapna Infracon Pvt Ltd and the Corporate Debtor herein stands dissolved, from the date of this order. The IRP also stands relieved.
26. The Financial Creditor/CoC is further directed to make payment of the pending Fees of the IRP upto date.
27. Further, the Registry and the IRP are directed to communicate the Copy of this Order within 7 days from receipt of this order.

  
**Dr. BINOD KUMAR SINHA**  
**MEMBER (TECHNICAL)**

  
**K.ANANTHA PADMANABAHA SWAMY**  
**MEMBER (JUDICIAL)**