

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

**PHYSICAL HEARING**

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)  
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 13.10.2023, At 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>IA (IBC)/1368/2023 in Company Petition IB/320/2021</b>
<b>NAME OF THE COMPANY</b>	<b>Srikanth International Pvt Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>Pattabi Enterprises</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Srikanth International Pvt Ltd</b>
<b>UNDER SECTION</b>	<b>9 of IBC</b>

**ORDER**

**IA (IBC)/1368/2023**

**Present :** Ld. Counsel Mr.Jubeer Hussain for the applicant.

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed and disposed of.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**HYDERABAD BENCH – II**

**IA No.1368 of 2023 in**  
**CP(IB) No.320/9/HDB/2021**  
**u/s. 30(6) of IBC, 2016**

**In the matter of**

**M/s. Srikanth International Private Limited, Corporate Debtor**

Mr. Immaneni Eswara Rao,  
Resolution Professional

.... Applicant /  
Resolution Professional

**Between:**

M/s. Pattabi Enterprises

.... Operational Creditor

Vs.

M/s. Srikanth International Private Limited

.... Corporate Debtor

**Date of Order: 13.10.2023**

**CORAM:**

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sri Sanjay Puri, Member (Technical)

**Counsels present:**

For the Applicant : Mr. S.A. Juber Hussain, Advocate

Heard on : 27.09.2023

**PER: BENCH**

**ORDER**

1. This is an application filed by the Resolution Professional of the Corporate Debtor (**CD**) M/s Srikanth International Private Limited under Section 30(6) of IBC, 2016 r/w Regulation 39(4) of the IBBI (Insolvency Resolution

Process for Corporate Persons) Regulations, 2016, seeking approval of the Resolution Plan submitted by the Resolution Applicant (**RA**) M/s. Summit Marine Exports Private Limited, duly approved by the Committee of Creditors (CoC) with 100% voting.

**Briefly, the facts mentioned in the application, are as follows:**

2. The Corporate Insolvency Resolution Process (**CIRP**) was initiated against CD by virtue of the Order of this Tribunal dated 30.06.2022 and Mr. Mayur Rajendra Kumar Popat was appointed as Interim Resolution Professional (**IRP**). In due course, the IRP made public announcement on 14.07.2022 inviting claims and constituted the Committee of Creditors (**CoC**) comprising of single member i.e. State Bank of India.
3. The CoC in its 1<sup>st</sup> meeting held on 12.08.2022 appointed the present Applicant as the Resolution Professional (**RP**)<sup>1</sup> and the same was affirmed by this Tribunal vide order dated 30.08.2022.<sup>2</sup>
4. It is stated that, since the order dated 30.08.2022 was received by the Applicant RP after 39 days i.e. on 19.09.2022, as per the directions of CoC, the Applicant RP had filed an Application in IA 1416 of 2022 for exclusion of 51 days from CIRP period of 180 days and the same was allowed by this Tribunal vide order dated 12.04.2023.<sup>3</sup>
5. The Applicant RP published Form-G on 09.11.2022 as well as on 04.12.2022 inviting the Expression of Interest (**EoI**)<sup>4</sup> from the Prospective Resolution Applicants (**PRAs**) for submission of Resolution Plan.
6. It is stated that the Applicant RP informed the CoC regarding the receipt of EoI from an individual PRA and since the due date of submission of EoI was extended, the said PRA proposed to submit a fresh EoI along with

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<sup>1</sup> Page 23 of the Application (Annexure-A).

<sup>2</sup> Page 26 of the Application (Annexure-B).

<sup>3</sup> Page 32 of the Application (Annexure-C).

<sup>4</sup> Page 38 of the Application (Annexure-E).

another Applicant as a consortium and requested to adjust the EMD of Rs.15 lakhs which was deposited earlier in an individual capacity to the new application by consortium. The same was permitted by the CoC in its 4<sup>th</sup> meeting held on 15.12.2022.<sup>5</sup>

7. It is stated that the Applicant RP informed the CoC in its 5<sup>th</sup> meeting held on 21.12.2022 regarding the hindrance caused by the suspended management in the preparation of information memorandum and Request For Resolution Plan (**RFRP**) due to non-submission of books of accounts etc. as well as other issues faced by the Applicant RP and also informed that the representative of the suspended management was also one of the PRAs. The provisional list of eligible PRAs was issued by the Applicant RP on 28.12.2022 and certain objections were received regarding the eligibility criteria.<sup>6</sup>
8. It is submitted that in the 7<sup>th</sup> CoC meeting held on 12.01.2023, it was concluded that relaxation of eligibility criteria cannot be permitted to anyone, as it amounts to discrimination against the participants.<sup>7</sup>
9. It is stated that the Applicant RP issued final list of PRAs on 13.01.2023 after which some of the PRAs requested for extending the date of submission of Resolution Plans for further 10 days and the same was granted after receiving appropriate approval from the CoC. Since, the period of CIRP was coming to an end while in the process of verifying the Resolution Plans received, the Applicant RP filed an Application in IA 443 of 2023, seeking further extension of CIRP period for 90 days before this Tribunal and the same was allowed vide its Order dated 15.03.2023.<sup>8</sup>

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<sup>5</sup> Page 59 of the Application (Annexure-F).

<sup>6</sup> Page 69 of the Application (Annexure-H).

<sup>7</sup> Page 77 to 80 of the Application (Annexure-I).

<sup>8</sup> Page 84 of the Application (Annexure-J).

10. It is submitted that the Resolution Plans received from the Resolution Applicants were submitted to CoC members and the same were deliberated by CoC in its 8<sup>th</sup> meeting held on 16.02.2023.<sup>9</sup>
11. It is submitted that while the CoC was amidst evaluating the Resolution Plans, Stay Orders were received from this Tribunal vide order dated 07.03.2023 in IA 393 of 2023 filed by one of the representatives of the suspended directors, directing the CoC to stop voting on the approval of Resolution Plans till the disposal of IA 328 of 2023.<sup>10</sup>
12. It is submitted that the representative of the suspended directors who had preferred IA 393 of 2023 as well as IA 328 of 2023 filed a withdrawal memo to withdraw aforesaid applications and the same was recorded by this Tribunal vide order dated 26.06.2023 and the applications were dismissed as withdrawn.<sup>11</sup>
13. It is stated that the Applicant RP had received two Resolution Plans from viz; M/s The Waterbase Limited & M/s. Summit Marine Exports Private Limited. The CoC voted on the aforesaid Resolution Plans in its 13th meeting held on 04.08.2023 and approved the Resolution Plan at Rs.50 Crores submitted by M/s Summit Marine Exports Private Limited, Successful Resolution Applicant (**SRA**).<sup>12</sup>
14. It is stated that the Applicant RP had issued a Letter dated 09.08.2023 regarding the declaration of SRA, Submission of Performance Bank Guarantee and submission of unconditional acceptance for the Letter of Intent and the same was unconditionally accepted by the SRA on 12.08.2023.<sup>13</sup>

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<sup>9</sup> Page 85 to 95 of the Application (Annexure-K).

<sup>10</sup> Page 118 & 119 of the Application (Annexure-N).

<sup>11</sup> Page 141 of the Application (Annexure-P).

<sup>12</sup> Page 155 to 173 (in Page 168) of the Application (Annexure-R).

<sup>13</sup> Page 174 & 175 of the Application (Annexure-S).

15. It is submitted that the Resolution Plan as approved by the CoC<sup>14</sup>, Compliance Certificate Form-H<sup>15</sup> under Regulation 39(4) of the Regulations and the Performance Guarantee<sup>16</sup> by the SRA duly evidencing receipt of performance security required under sub-regulation (4A) of regulation 36B are submitted by the Applicant RP.
16. It is submitted that the fair value and liquidation value of the CD, as adopted by the CoC, are Rs. 10,31,03,327/- and Rs. 8,24,46,509/- respectively.
17. It is submitted by the Applicant RP that the following three IAs are pending adjudication before this Tribunal:
- a. IA 1404 of 2022 – This IA is disposed of as infructuous vide Order of this Tribunal dated 04.09.2023.
  - b. IA 916 of 2023 – This IA on Avoidable Transactions filed by Resolution Professional and it is adjourned to 02.11.2023 vide Order of this Tribunal dated 21.09.2023.
  - c. IA 789 of 2023 - This IA is filed by M/s. Sai Ayyapa Aqua Traders to admit their claim of Rs.9.70 crores, which was discussed in 15<sup>th</sup> meeting of CoC held on 23.09.2023 as Item No.3 and allocation to Operational Creditors was approved keeping in view the claim made therein. The matter is posted for hearing on 02.11.2023 vide Order of this Tribunal dated 21.09.2023.
18. The Summary of the proposed payments towards various stake holders of the Corporate Debtor pursuant to the implementation of the proposed Resolution Plan is set out below:<sup>17</sup>

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<sup>14</sup> Page 176-472 of the Application (Annexure-T).

<sup>15</sup> Page 473-480 of the Application (Annexure-U).

<sup>16</sup> Page 481-484 of the Application (Annexure-V).

<sup>17</sup> Page 8 of the Application.

<b>S.No.</b>	<b>Particulars</b>	<b>Amount (Rs.)</b>
1	CIRP cost ( <b>Note 1</b> )	40,00,000
2	Secured Financial Creditors ( <b>Note 2</b> )	21,00,00,000
3	Operational Creditors other than S.No.4 *	70,27,851
4	Operational Creditors other than S.No.3 (Statutory Dues)	89,72,149
	<b>Payment to outside parties (A) :</b>	<b>23,00,00,000</b>
5	Repairs and Maintenance / Overhauling	1,00,00,000
6	Working Capital	10,00,00,000
7	Capital Expenditure	16,00,00,000
	<b>Infusion of Funds for Going Concern (B) :</b>	<b>27,00,00,000</b>
	<b>Total Amount to be invested by RA for Revival of the CD (A+B) :</b>	<b>50,00,00,000</b>

\* Allocation to be made as per the resolution in Item No.3 of 15<sup>th</sup> meeting of CoC held on 23.09.2023, minutes of which were submitted through Memo dated 27.09.2023 to NCLT.

**Note 1:** The outstanding Corporate Insolvency Resolution process costs have been estimated at Rs.40 Lakhs. If the actual outstanding amount exceeds the estimated amount, then such excess amount will be proportionately reduced from the creditors other than financial creditors. If the actual outstanding amount is less than the estimated amount, then such surplus amount will be paid to the operational creditors proportionately.

**Note 2:** The balances remaining in the bank account of the CD as on the vesting date shall be handed over to the financial creditor. All balances after the vesting date will be handed over to the RA.

**Note 3:** Any claim admitted by the Tribunal or any other appellate authorities subsequent to submission of the resolution plan for

approval u/s 31 of IBC, such claim, upon verification and admission by the Resolution Professional, will also be paid from the amount specifically allocated to operational creditors in the plan, proportionately.

19. It is submitted by the Applicant RP that pursuant to approval of this Resolution Plan by the Adjudicating Authority (**AA**) and upon payment of the upfront amount, the following shall apply:
  - i. The physical possession of the assets will be transferred to the RA.
  - ii. The present directors and KMP of the CD who have been suspended upon admission of the CD under CIRP shall be retired/resigned/terminated unconditionally upon approval of the Plan.
  - iii. The dues to all financial creditors, to all workmen/employees, to all operational creditors (including statutory, electricity, excise, export, EPCG dues, etc.) and any other dues of the company whether acknowledged or not, admitted or not or otherwise, shall be deemed to be fixed to the amounts shown in the financial plan in Chapter VI of Resolution Plan. All and any other dues are deemed to be extinguished.
20. It is submitted that upon the completion date, the charge on all the assets shall be released and the title deeds will be transferred to the Resolution Applicant or any other person authorized by the Resolution Applicant.
21. It is submitted that from the date of the upfront payment until the date of the final payment, on any petitions filed against the CD in any class of higher tribunal/ court, the RA expects the CoC and the RP to take lead on addressing and resolving the same. The RA expects the CD to be free of any legal issues on the date of final payment.
22. It is submitted that in case the AA rejects the Resolution Plan as proposed by the Resolution Applicant, in such a scenario:



- Any amount paid by Resolution Applicant shall be refunded to the Resolution Applicant.
- Further, for any amount paid towards the CIRP cost or for any other amount that has not been refunded to the Resolution Applicant, the said amounts shall form part of the CIRP/Liquidation cost and shall be paid in priority of all the other payments from the liquidation proceeds as mentioned in Section 53 of the Code.

23. The Schedule of implementation of the Plan:

<b>Task</b>	<b>Activity</b>	<b>Timeline</b>
Resolution Plan to CoC	Approval of Resolution Plan by CoC.	T
Filing of CoC approved Resolution Plan with AA.	Filing of IA with AA by RP for approving the Plan.	T+5
Approval of Plan	Approval of Plan by AA.	T+5+P*
Constitution of Monitoring Committee	Upon approval of Plan by AA, Resolution Professional shall constitute Monitoring Committee which will continue as Monitoring Agency until the last payment is made by RA.	T+5+P*+1
Reconstitution of Board	Upon approval of the plan by AA.	
Payment Schedule	Upfront payment of Rs.5 Crores.	T+5+P*+7
	Final payment	T+5+P*+90

**P\*: Number of days taken by AA for approval of the plan from submission by Resolution Professional.**

24. It is submitted that RA is proposing to constitute a Monitoring Committee which shall comprise of the below members:

- a) Resolution Professional of CD, if consent for Appointment is given or any other professional qualified to act as such proposed by RA.
- b) Key Managerial Personnel (KMP) of the RA.

c) Member Representing CoC.

25. It is submitted that in the light of the Disciplinary Committee order in the case of Mahendra Kumar Khandelwal, the Applicant expressed the confusion pondering over this matter before the CoC and the CoC had expressed their comfort had the Applicant becomes member of the Monitoring Committee, as he is aware of total facts and circumstances of the CD. The CoC has argued that in all the other CIRP cases handled by the State Bank of India, the Resolution Professional was the member of the Monitoring Committee. Therefore, on the orders of this Tribunal, the Applicant is willing to be a member of the Monitoring Committee.
26. With the above submissions, the Applicant RP states that the Resolution Plan approved by the CoC complies with the provisions of the Code and Regulations, hence the present application under section 30 (6) of the Code r/w Regulation 39 (4) of the Regulations, seeking following reliefs:
- a. To approve the Resolution Plan submitted by the Resolution Applicant which was approved by the CoC in its 13<sup>th</sup> meeting.
  - b. To pass a direction to the Applicant to be the member in the Monitoring Committee.

**Decision:**

27. We have carefully considered the submissions made by the Counsel for the Applicant RP and also gone through the entire record.
28. On close scrutiny of the record, we come to this conclusion that the Resolution Plan meets all the mandatory requirements of law and accordingly the Resolution Plan is approved.
29. As a result, the Application is allowed as prayed for.

**Sd/-**  
**(SANJAY PURI)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(RAJEEV BHARDWAJ)**  
**MEMBER (JUDICIAL)**

**VL**