

S.No.101

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
10-01-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

IA (IBC)/393/2021 in CP(IB) No. 115/9/HDB/2020
U/s 9 of IBC, 2016

IN THE MATTER OF:

Coleta Software Solutions Pvt Ltd

...Operational Creditor

Vs

Covidh Technologies Ltd

...Corporate Debtor

CORAM:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in IA (IBC)/393/2021 vide separate sheets.


MEMBER (T)

Srinivas


MEMBER (J)

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

I.A. No. 393 of 2021
in
C.P. (IB)No.115/9/HDB/2020

*Application under section 30(6) and section 31 of Insolvency and
Bankruptcy code 2016*

In the Matter of

**M/s. Coleta Software Solutions Private Limited versus M/s. Covidh
Technologies Limited**

Filed by

Mrs. Narala Varalakshmi
Resolution Professional
Unit 113, 1st Floor
Manjeera Trinity Corporate
KPHB Phase-3, Kukatpally
Hyderabad – 500072

...Applicant /
Resolution Professional

Date of order 10.01.2022

Coram:

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

Appearance:

For Applicant: Shri M. Viswaraj, Advocate



PER: BENCH

ORDER

1. IA No. 393/2021 is filed by the Resolution Professional under section 30 (6) 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 of **Mr Ganapa Narsi Reddy**, as duly approved by the Committee of Creditors.
2. To put concisely, the main petition filed by **Coleta Software Solutions Private Limited** u/s 9 of IBC, 2016 was admitted by the Adjudicating Authority vide Order dated **05.01.2021** and ordered commencement of CIRP against M/s **Covidh Technologies Limited**. 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 08.01.2021. The IRP, after collating and verifying the same, admitted Claim from operational creditor and constituted Committee of Creditors comprising of M/s Coleta Software Solutions Private Limited on 27.01.2021.





4. It is further stated that, an amount of Rs. 1,01,54,030/- claimed by Financial Creditors were not admitted by the Applicant as they were treated as related party.
5. As seen from the records, the term of 180 days CIRP came to an end on 11.03.2021. The Resolution Professional has convened 04 CoC meetings.
6. In response to publication of Form-G (Invitation for Expression of Interest (EOI)) on 22.03.2021, the Applicant received one expression of interest from Mr Ganapa Narsi Reddy (Resolution Applicant).
7. The CoC after deliberations, evaluated the Resolution Plan submitted by the Resolution Applicant as per the Evaluation Matrix and Section 29A of the Code. After evaluating in terms of both qualitative and quantitative criteria, the resolution plan submitted by **Mr. Ganapa Narsi Reddy** was put for e-voting following the decision taken in the 4th CoC meeting held on 06.07.2021. The final voting results of the members of COC for approval of the aforesaid Resolution Plan is tabulated below.

Name of the Financial/ Operational Creditor	Voting share (%)	Voted in favor/ against
M/s Coleta Software Solutions Private Limited	100%	Favor

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8. The Resolution Plan submitted by **Mr. Ganapa Narsi Reddy** (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.
9. The Resolution Professional, 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, has received refundable deposit of Rs. 1,00,000/- vide DD No. 511685 and Rs. 5,00,000/- vide DD No. 511686 from the Resolution Applicant.
- 10. Contour of Resolution Plan:-**
- (A) **Mr Ganapa Narsi Reddy**, (herein referred to as Resolution Applicant), who submitted the resolution plan is an individual having 12 years' experience in education sector/consultancy for IT.
- (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 Operational creditor	Voting share
1	Coleta Software Solutions Private Limited	100%
	Total	100%





(C) Financial proposal: The amount of Rs. 30 lakhs provided to the stakeholders of the Corporate Debtor is tabulated below:

(Rs. in lakhs)

S.No	Category of stakeholder	Amount claimed	Amount admitted	Amount provided under the plan#	Amount provided to the Amount claimed (%)
1	Secured Financial creditors		0	0	0
2	Unsecured financial creditors	20154030	0	0	0
3	Operational creditors	16599798	16599798	2000000	12.05%
	Government	0	0	0	0
	Workmen	0	0	0	0
	Employees	0	0	0	0
4	Other debts and Dues	0	0	0	0
	Total	36753828	16599798	2000000	12.05%

The break-up of the resolution amount of INR 30 lakhs brought in by the Resolution Applicant for various purposes are detailed as under:

a. **Resolution Plan Amount Disbursement**



S. NO	Creditors/Expenses	Amount (in Rs.)
1	CIRP Expenses	10,00,000
2	Operational Creditors and Other Creditors	20,00,000
3	Financial Creditor	nil
4.	Employees and workmen	nil
5.	Operational creditors other than Sl. No. 2 & 4	nil
Total		30,00,000

b. Payment timeline:

Step	Activity	Time
Presenting Resolution plan to CoC	Approval of Resolution Plan by CoC	T
Filing of CoC Approved Resolution plan to AA	Filing IA with AA by Resolution Professional for approving the plan	T+15
Approval of plan	Approval of Plan by AA	T+15+P*
Reconstitution of Board	Upon approval of the plan by AA	T+15+P*+30
Repayment of priority dues	Final payment	T+15+P*+30

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*P is the number of days taken by AA for approval of the plan from submission by Resolution Professional

(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 from the CoC and one authorized representative appointed by the Resolution Applicant in terms of Section 30(2) (c). Post approval, the Plan provides for managing the affairs of Corporate Debtor by the Resolution Applicant 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. 94,023/-/- and Rs. 76,773/- respectively.



11. In the above backdrop we heard the Learned Counsel for Resolution Professional and 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. 10 lakhs and the same shall be paid in full and in priority 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 creditors other than financial creditors.
 - (b) The Plan provides for payment of Rs. 20 lakhs to Operational Creditors (other than workmen and employees), towards full and final settlement on priority in accordance with Section 30(2) (b). There is no dissenting Financial Creditor and the plan has been approved by the sole operational creditor with 100% votes in favour of it.
12. 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)).
13. It is further submitted that the Resolution Plan value of Rs. 30 lakhs is higher than the Liquidation value of Rs. 76,773/- and the Resolution Plan has been approved by the CoC in the 4th CoC meeting with 100% votes in favour of it.
14. *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".*
15. 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.*
16. 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*

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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”.

17. 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 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)

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(DR N.Venkata Ramakrishna Badrinath)
MEMBER (JUDICIAL)