

SL.No.5

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

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 28.08.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1317/2023 in CP (IB) No.324/7/HDB/2020
NAME OF THE COMPANY	A.L.. Sudershan Constructions Company Ltd
NAME OF THE PETITIONER(S)	Syndicate Bank
NAME OF THE RESPONDENT(S)	A.L.. Sudershan Constructions Company Ltd
UNDER SECTION	7 of IBC

ORDER

This application is allowed and disposed of vide separate order.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

VL

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

**IA No.1317 of 2023
in
CP(IB) No. 324/07/HDB/2020**

[Under Section 33(1) of the Insolvency & Bankruptcy Code, 2016]

**In the matter of
M/s.A.L.Sudershan Construction Company Limited**

Between :

K.Murali Krishna Prasad,
Resolution Professional of Corporate Debtor,
H.No.8-72, Plot No.106,
Mythripuram Colony, Jillegudda,
Vyshalinagar PO,
Hyderabad – 500 079.
Telangana.

.... Applicant/Resolution Professional

In the matter of :

Canara Bank (Erstwhile Syndicate Bank)

.... Financial Creditor

And

M/s.A.L.Sudershan Construction Company Limited

.... Corporate Debtor

Date of Order: 28.08.2023

Coram:

Hon'ble Justice , Telaprolu Rajani, Hon'ble Member (Judicial)
Hon'ble Shri Charan Singh, Member (Technical)

Counsels/Parties Present :

For the Petitioners : Ms.JVL.Bharati, Counsel

[PER : BENCH]

ORDER

- 1) This, Application is filed by the Resolution Professional of M/s.A.L.Sudershan Construction Company Limited (Corporate Debtor) under Section 33(1) of the Insolvency and Bankruptcy Code, 2016 (IBC Code) seeking to liquidate the Corporate Debtor M/s.A.L.Sudershan Construction Company Limited under Section 33(1) of the Insolvency and Bankruptcy Code, 2016;
- 2) This Tribunal vide Order dated 09.05.2022 in CP No.CP(IB) No.324/HDB/2019 appointed the Applicant Sri Kalvakolanu Murali Krishna Prasad as Interim Resolution Professional.
- 3) The Applicant submits that a Public Notice was issued in Financial Express (English all over India), Nava Telangana Telugu, (Telangana) and Varatha Bharati, Kannada (Bengalore) inviting claims from Creditors on or before 24.05.2022. In response to the advertisement published, one claim from a financial creditor, Canara Bank, ARM Branch, Hyderabad was received. No claims were received from the Operational Creditors before the due date.
- 4) A Committee of Creditors (CoC) was constituted with the sole Financial Creditor, Canara Bank, with 100% voting share, on 01.06.2022, in compliance with Regulation 17(1) of CIRP. The first meeting of CoC was convened on 08.06.2022.
- 5) In the first meeting of the CoC, the Interim Resolution Professional was appointed as Resolution Professional(RP) and a memo to this effect has been filed before the Hon'ble Tribunal seeking approval of the Adjudicating Authority. On his appointment as RP, the following Committee of Creditors was constituted:

S.No	Name of the Financial Creditor	Claim amount in INR	Claim admitted in INR	% of Claim to the total amount of debt
1	Canara Bank, ARM Branch, Ground Floor, 10-3-163 & 10-3-163/4, Besides Rail Nilayam, Secunderabad	354,24,89,959	354,24,89,959	100%

6) The Resolution Professional has not received any Resolution Plan inspite of extending the date twice and the RP, as directed by CoC in its 10th meeting held on 07.01.2023, published extended Form G on 09.01.2023, but still no resolution plans were received. In the 14th meeting held on 27.06.2023, the CoC reviewed the status of pending litigation and resolved to initiate liquidation of the Corporate Debtor based on the following factors:

a) NHAI filed Com Appeal No. 176/2021 dated 02-07-2021, in High Court of Karnataka, against the arbitration award, passed by Arbitration Tribunal on 06-09-2014 and Lower Court LXXXII ADDL CITY CIVIL & SESSIONS JUDGE, Bangalore, order dated 06-03-2021 dismissing the NHAI Appeal.

b) IA No.1 /2022 filed by RP in Com. Appeal No.176/2021 for the release of 50% of the Arbitration amount deposited by the appellant in the court was allowed and an amount of Rs.37,09,45,767/- was released to the CD against the indemnity of Canara Bank and the RP. The said amount is kept in a fixed deposit with Canara Bank, Rail Nilayam Branch marking it as a Court Deposit and the original FDR was handed over to AGM, Canara Bank, ARM Branch for safe custody.

c) IA No.2 /2022 filed by RP in Com. Appeal No.176/2021, for early hearing is pending.

d) Sri A. L Sudarshan, suspended director of the Board of CD filed an appeal in NCLAT challenging the order of admission of CIRP by NCLT. The matter was heard on 25-04-2023 and order was reserved with a direction to file status report and the same was filed accordingly.

e) Com O.S No.0007734/2014 jointly filed by, (1) Dolomite Berhard (2) A.L. Sudarshan Construction Company Limited (CD), with reference to Chitra Durga Road works, against NHAI, is pending in the Court of CCH-84 LXXXIII Addl., City and Sessions Judge, Bengalore. RP filed an IA informing the commencement of CIRP and to consider RP as CD's representative, in view of the CIRP and the same was taken on record. Subsequently, Dolomite Berhard has withdrawn, since liquidation proceedings were initiated against them and the CD became the sole petitioner.

f) The committee noted that the NHAI has filed written statements challenging the Jurisdiction of the Court. The same have been forwarded to the suspended director of the Board for his comments, which is awaited. It is ascertained that since Regional Office of the NHAI is situated at Bengalore, the above applicants have filed the OA at Bengalore.

g) CMA/264 of 2007 was filed by the Government of AP in the High Court of AP challenging the decree of III Additional Chief Judge City Civil Court, Hyderabad vide its order dated 31.07.2006, (which has approved the arbitration award passed by Arbitration Tribunal) in respect of road project done by the CD and its JV partner in East Godavari District. In this matter, the Hon'ble High Court vide its order dated 23.12.2008 granted an interim stay as prayed for, subject to the condition that the petitioners/appellants deposit 50% of the decretal amount within 10 weeks. Further ordered that on such deposit, the respondents(CD) are at liberty to draw 50% of the amount so deposited, without furnishing any security and balance 50% amount upon furnishing security to the satisfaction of the court.

After deliberations, the Committee suggested filing IA with Hon'ble High Court of Telangana, which is pending and a request to get it listed was made, for taking further necessary action for transferring the Case to the AP High Court, if necessary.

7) **Present Status of CIRP:**

a) The committee noted that CIRP was ordered by Hon'ble NCLT Hyderabad on 6-5-2022 (order copy received on 09- 05-2022).

b) The 330 days period expired on 01-04-2023 and a further period of 90 days extension was sought from Hon'ble NCLT in view of pending litigations, as decided by COC and the NCLT has granted a further extension of 90 days, vide its order dated 18-04-2023 in IA No. 601 of 2023.

d) *Resolution was passed in favour of liquidation under sec. 33(1) of IBC 2016 as follows, "The committee, after detailed deliberations, resolved, with 100% voting share, to recommend to the adjudicating authority, Hon'ble NCLT Hyderabad Bench, for liquidation of the Corporate debtor, under Sec 33(1) of IBC, 2016 in view of the following:*

i. The Com. Appeal No. 176/2021 dated 02-07-2021, filed by NHAI, pending in Hon'ble High Court of Karnataka, can be pursued effectively during liquidation, as advised by the RP's Advocate.

ii. No resolution plan has been received by the RP in spite of publication of Form G twice, due to the fact that there are no significant tangible assets, except the award amounts/amounts locked up in various courts, including the main Arbitration award pending in the Karnataka High Court.

iii. *The committee also resolved to pray the Adjudicating Authority for according approval to the liquidator, under proviso to Sec 33(5), for pursuing the pending litigations filed by and against the Corporate debtor in various courts including the Com Appeal No. 176/2021 dated 02-07-2021 filed by NHAI in High Court of Karnataka at Bengaluru against the arbitration award granted to the CD in 2014." Resolution regarding Liquidation cost under Regulation 39(B) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2019.*

iv. The CoC advised the RP to open a designated account, within 7 days of the liquidation order, for transferring the amounts of Rs.17,10,490.46. available in State Bank of India, Patny Branch, Secunderabad: Account No. 35144400563, IFSC CODE: SBIN0000916 and Rs. 6,302.84/- available in Union Bank of India, Marredpally Branch: Account No. 035611011001571 and utilizing the same for meeting the liquidation cost. The excess liquidation cost arising during the course of liquidation process shall be contributed by Canara Bank which is

the sole secured creditor and COC member. The committee passed this resolution with 100% voting.

v. The committee recalled that the OTS proposal submitted by the promoters have been rejected by the Canara Bank earlier. The committee further noted that RP served the notice of the instant COC meeting to the suspended directors of the Board and none were present at the meeting. As such, Committee felt that there is no possibility of compromise or arrangement under sec 230 of Companies Act, 2013.

vi. In the instant case, there are no significant tangible asset available, except office furniture and equipment in the registered office. The amounts locked in various court cases and arbitration amounts pending disposal of NHAI appeal are the only assets.

"After detailed deliberations, the Committee of Creditors Resolved, with 100% voting, to recommend to the liquidator to first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, along with the claims/amounts receivable from various ongoing litigations if an order for liquidation is passed under section 33."

vii. The CoC noted that RP has agreed to continue as liquidator and is agreeable to give the written consent to Adjudicating Authority as may be required. The committee decided to take up the following resolution for voting:

"The committee, after detailed deliberations, resolved, with 100% voting share, to recommend to the Adjudicating Authority, that Sri. Kalvakolanu Murali Krishna Prasad, Resolution Professional, RP, be appointed as Liquidator if Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Sec 33".

Further resolved that the liquidator shall be eligible to draw his remuneration as per regulation 4 of IBBI Liquidation Process Regulations 2016, in addition to the reimbursement of Liquidation Expenses to be incurred from time to time. The CoC passed the above resolutions under sec.33(1) of IBC 2016 and Regulations 39(B).39 C. and 39 D Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate

Persons) Regulations, passed with 100 % voting in favour. (Minutes of 14th CoC enclosed as Annexure-1 and Voting sheet enclosed as Annexure-2 Page Nos.25-28).

- 8) In view of the above, the applicant prays the Tribunal for:
- a) Initiation of liquidation of Corporate debtor as recommended by the CoC under sec 33(1) of the Insolvency and Bankruptcy Code;
 - b) To grant permission to continue with the ongoing legal disputes under Section 35 of IBC, 2016;
 - c) To approve the other resolutions passed under 39B,39C and 39D; and
 - d) Issue any other direction deemed fit in view of the circumstances of the case.
- 9) In view of the facts and circumstances as recorded by RP in IA No. 1317 of 2023 filed in CP(IB) No. 324/07/HDB/2020, since this Adjudicating Authority did not receive any Resolution Plan under Sub-Section (6) of Section 30 of the I&B Code, 2016, and this Adjudicating Authority deems it proper to allow the Application bearing IA No.1317/2023. Accordingly, in exercise of powers conferred under Sub-Clause (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, we proceed to pass the Order as follows:
- i) This Adjudicating Authority hereby order for Liquidation of M/s. A.L.Sudershan Constructions Company Limited, which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;
 - ii) This Adjudicating Authority hereby appoints Mr.K.Murali Krishna Prasad as Liquidator as resolved by CoC. He has given his consent in Form-2 and holds valid AFA. He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;
 - iii) The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of Liquidation, subject

to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.

iv) We make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

v) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the Liquidation process by the Liquidator.

vi) All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Company Liquidator viz., Mr.K.Murali Krishna Prasad. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

vii) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

viii) The Liquidator shall keep in view the provisions of Regulation 32A of IBBI (Liquidation Process) Regulations, 2016 and shall endeavour to first sell the Corporate Debtor or its business as a going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from liquidation commencement date, Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of IBBI (Liquidation Process) Regulations, 2016.

ix) The Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in accordance with the decision taken by the COC

under Regulation 39D of IBBI (Insolvency Resolution Process Corporate Persons) Rules, 2016 r/w Regulation 4(1) of IBBI (Liquidation Process) Regulations, 2016.

x) Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz., Mr. K.Murali Krishna Prasad for information and compliance.

(i) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.

(ii) Accordingly, Application bearing IA No.1317/2023 is allowed and stands disposed of.

Sd/-

**CHARAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**TELAPROLU RAJANI
MEMBER (JUDICIAL)**

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