# NATIONAL COMPANY LAW TRIBUNAL
# HYDERABAD

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRIMADAN BHALCHANDRA GOSAVI– MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 13.08.2021 AT 10:30 AM

| | |
|---|---|
| TRANSFER PETITION NO. | |
| COMPANY PETITION/APPLICATION NO. | IA (IBC) No. 1094/2020 in CP (IB) No.153/ 7/HDB/2019 |
| NAME OF THE COMPANY | Samyu Glass Pvt Ltd |
| NAME OF THE PETITIONER(S) | Andhra Bank |
| NAME OF THE RESPONDENT(S) | Samyu Glass Pvt 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 1094/2020 in CP(IB)No. 153/7/HDB/2019** is listed for orders. Orders pronounced vide separate orders.

MEMBER (T)

MEMBER(J)

Syamala

# NATIONAL COMPANY LAW TRIBUNAL
# HYDERABAD BENCH-1

**IA NO. 1094 OF 2020**

**IN**

CP (IB)/153/07/HDB/2019

**IN THE MATTER OF SAMYU GLASS PRIVATE LIMITED**

*Application under Section 30 (6) of IBC, 2016 R/W Regulation 39 (4) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*

Filed by:-

MR. SREENIVASA RAO RAVINUTHALA
RESOLUTION PROFESSIONAL
FOR SAMYU GLASS PRIVATE LIMITED

................. APPLICANT

**Date of order: 13.08.2021**

**Coram:**

Hon'ble Shri Madan B. Gosavi, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

**Appearance:**

For Applicant: Shri Shabeer Ahmed, Advocate along with Shri V. Aneesh, Advocate

**PER: BENCH**

**1.** . The present Application bearing IA No. 1094/2020 is filed by the Resolution Professional under section 30 (6) of the Insolvency and B Code, 2016, R/w regulation 39(4) of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, seeking approval of resolution plan of **M/s Renganayaki Agencies** as duly approved by the Committee of Creditors.

SD/-

**2.** The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order on 18.10.2019 and the Applicant was appointed as Interim Resolution Professional (IRP). The Committee of Creditors (CoC) comprising the following Financial Creditors, in its 1st meeting had confirmed the Applicant as Resolution Professional (RP). The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

**Financial Creditors**

| Sl. No. | Name of Creditor | Voting Share (%) | Voting for Resolution Plan (Voted for / Dissented / Abstained) |
|---|---|---|---|
| 1 | Union Bank of India (e-Andhra Bank) | 44.42% | Voted for Resolution Plan |
| 2 | Swedish Export Promotion Guarantee Board | 41.68% | Voted for Resolution Plan |
| 3 | Emhart Glass SA | 13.90% | Voted for Resolution Plan |

**3.** The CIRP period of 180 days had ended on 14.04.2020. This Tribunal granted 45 days extension and exclusion of lockdown period from 25.03.2020 to 30.06.2020 on 10.05.2020. This Tribunal had granted further extension of 30 days CIRP period beyond 45 days and excluded covid induced lockdown from 01.07.2020 to 31.07.2020 vide order passed in IA No. 699/2020 on 22.09.2020. After extension and exclusion, the extended period ended on 06.09.2020.

**4.** During the period of CIRP 03 EOIs were received. Out of three, the following two were qualified to the final list of Prospective Resolution Applicants:-

i) Mr. Chava Suresh Babu

ii) M/s Sri Vijetha Engineering & Infrastructure Private Limited.

iii) M/s Renganayaki Agencies

Sd/-

Sd/-

5. In the 9th CoC meeting held on 13.08.2020, the resolution plans submitted by above three Resolution Applicants were deliberated upon and the CoC asked the Resolution Applicant to enhance their offer as suggested by the CoC and submit their revised resolution plans. The CoC after several rounds of negotiations evaluated the Resolution Plans submitted by **Mr. Chava Suresh Babu (later on M/s. Devi Innoventures LLP made a JV with Mr. Chava Suresh Babu**) and **M/s Renganayaki Agencies** as per the Evaluation Matrix and in terms of Section 29 (A) of the Code which was put for e-voting from 28.09.2020 to 29.09.2020 as per the decision taken in the 11th CoC meeting held on 16.09.2020. The voting pattern of the approval of the Resolution Plans are as under:-

| Name of the Financial Creditor | Share in voting rights (% in CoC) | Approval of Resolution Plan by M/s Renganayaki Agencies | Approval of Resolution Plan by M/s Chava Suresh Babu |
|---|---|---|---|
| Union Bank of India (e-Andhra Bank) | 44.42% | Approved | Rejected |
| Swedish Export Promotion Guarantee Board | 41.68% | Approved | Approved |
| Emhart Glass SA | 13.90% | Approved | Approved |
| Total | 100% | | |

6. The plans submitted by M/s Renganayaki Agencies and Mr. was approved by the CoC with 100% votes in favour of the it under Section 30(4) of IBC and the Applicant further submits that all the requirements envisaged under the Code and Rules/Regulations made there under have been met.

7. The Resolution Applicant has deposited Rs. 10.00 crores (Rupees Ten Crores only) into the Bank account of the Corporate Debtor towards performance deposit in lieu of Performance Bank Guarantee. A memo dated 03.08.2021 is filed by Resolution Professional stating that the performance deposit will not be refunded to the Successful Resolution Applicant till completion of the implementation

of Resolution Plan ( till 100% payment to stake holders as proposed in the Resolution Plan).

8. **CONTOUR OF THE RESOLUTION PLAN:**

(A) The Resolution Plan is submitted by **M/s Renganayaki Agencies (herein after referred to as Resolution Applicant).** It is a Company engaged in business of developing and supply of flavours/recipe for liquor manufacturing companies. The Resolution Applicant is a group Company of **KALS Group**, a premium manufacturer of alcoholic beverages in India. The Registered office of the Resolution Applicant is at No. 25. Aachi Nagar, P.K. Salai, Kovilpathu, Karaikal- 609602, Pondicherry.

(B) The CoC comprised of the following financial creditors and the distribution of voting share among them is as under:-

| Name of the Financial Creditor | Share in voting rights (% in CoC) | Approval of Resolution Plan by M/s Renganayaki Agencies |
|---|---|---|
| Union Bank of India (e-Andhra Bank) | 44.42% | Approved |
| Swedish Export Promotion Guarantee Board | 41.68% | Approved |
| Emhart Glass SA | 13.90% | Approved |
| Total | 100% | |

(C) The Resolution Plan provided an amount of **Rs. 34,36,33,354/-** for the stakeholders as under:-

(Amount in lakhs)

| Sl. No. | Category of Stakeholder* | Sub-Category of 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:<br><br>(i) who did not vote in favour of the resolution Plan | 4828.29 | 4723.68 | 2102.04 | 44.50% |

Sd/-  Sd/-

| | | | | | | |
|---|---|---|---|---|---|---|
| | | (ii) who voted in favour of the resolution plan | | | | |
| | | Total[(a) + (b)] | 4828.29 | 4723.68 | 2102.04 | 44.50% |
| 2 | Unsecured Financial Creditors | (a) Creditors not having a right to vote under sub-section (2) of section 21 | 3871.93 | 3871.93 | ---- | 0.00% |
| | | (b) Other than (a) above:<br><br>(i) who did not vote in favour of the resolution Plan<br><br>(ii) who voted in favour of the resolution plan | 5910.15 | 5910.15 | 1329.78 | 22.50% |
| | | Total[(a) + (b)] | 9782.08 | 9782.08 | 1329.78 | 13.59% |
| 3 | Operational Creditors | (a) Related Party of Corporate Debtor | | | | |
| | | (b) Other than (a) above:<br><br>(i)Government<br>(ii)Workmen<br>(iii)Employees<br>(iv) Sundry Creditors | 1086.06<br><br>849.23 | 1086.06<br><br>612.63 | 1.38<br><br>3.12 | 0.13%<br><br>0.51% |
| | | Total[(a) + (b)] | 1935.29 | 1698.69 | 4.50 | |
| 4 | Other debts and dues | | ---- | ---- | ---- | ---- |
| Grand Total | | | 16545.66 | 16204.45 | 3436.32 | 21.20% |

**(D)** **Schedule of payment of Resolution amount (in lakhs):**

| Stakeholders | T+30 days | T+60 days | T+90 days | T+120 days | T+180 days | T+360 days | Total |
|---|---|---|---|---|---|---|---|
| CIRP cost | 75.00 | | | | | | 75.00 |
| Secured Financial Creditor | 470.13 | 470.13 | 313.42 | 848.35 | - | - | 2,102.04 |
| Unsecured Financial Creditor | 254.48 | 190.86 | 63.62 | 127.24 | 693.58 | - | 1,329.78 |
| Operational Creditor : Goods and Services | 3.12 | | | | | | 3.12 |
| Operational Creditor : Statutory dues (Claimed) | 0.47 | | | | | | 0.47 |
| Operational Creditor : Statutory dues (unclaimed) | 0.91 | | | | | | 0.91 |
| **Total** | **804.12** | **660.99** | **377.04** | **975.59** | **693.58** | **-** | **3,511.33** |

Terms of payment to Secured Creditor i.e., Union Bank of India (e-Andhra Bank)

- The Secured financial creditor shall release the charges on Current Assets, including but not limited to inventory and debtors, upon releasing the first tranche of payment to Union Bank of India (e-Andhra Bank).

- The secured financial creditor shall release the charges on fixed assets including but not limited to land, building, plant & machinery, upon full settlement of the provisioned dues to Union Bank of India (e-Andhra Bank).
- Union Bank of India (e-Andhra Bank), the secured financial creditor, shall issue a no dues certificate to SGPL and also file satisfaction of charges with Registrar of Companies, upon receipt of full and final settlement of provisioned dues from the RA.
- The limitation of liability of the SGPL towards Union Bank of India (e-Andhra Bank) to the settlement amount provided above shall be without prejudice to rights of Union Bank of India (e-Andhra Bank)to recover the balance dues from the personal guarantees and other assets mortgaged by the promoters/guarantors. Any amount recovered by Union Bank of India (e-Andhra Bank) from the guarantors/mortgaged assets shall not vest guarantors/mortgagors with any right to recover such amount from SGPL

**(E) CANCELLATION AND REDUCTION OF EXISTING SHARE CAPITAL:**

SGPL has a paid up share capital of 21,70,70,941 shares, each having a face value of ₹ 1/-, all of which shall stand fully written off on approval of this resolution plan by this Tribunal. The existing Shares Certificate shall be deemed to have been cancelled on approval of the Resolution Plan. The corporate debtor, SGPL shall issue a fresh **15,80,10,054 (Fifteen Crore Eighty Lakhs and Ten Thousand and Fifty Four)** shares each of a face value of ₹ 1/- to the Resolution Applicant (Renganayaki Agency) which shall constitute 100% of the paid up equity share capital post restructuring of equity under the Resolution Plan.

Sd/- Sd/-

| Sl. No | Category of Share Holder | No. of Shares held before CIRP | No. of Shares held after the CIRP | Voting Share (%) held before CIRP | Voting Share (%) held after CIRP |
|---|---|---|---|---|---|
| 1 | Equity | | | | |
| | a) Existing Promoters | 21,70,70,941 | 0 | 100% | N.A |
| | b) Pubic | Nil | Nil | 0.00% | 0% |
| | **Total Equity** | **21,70,70,941** | **0** | **100%** | **0%** |
| 2 | Preference | Nil | Nil | Nil | Nil |
| | **Total Equity** | **21,70,70,941** | **0** | **100%** | **0%** |

**(F) Management of Corporate Debtor**

The Resolution Plan proposes to appoint a Monitoring Committee consisting of one representative of Union Bank of India (e-Andhra Bank), one representative of Resolution Applicant, and Representation from Unsecured Financial Creditor to oversee the implementation of the Successful Resolution Plan. The supervision of the Corporate Debtor will be in complete control and supervision of the Board of Directors appointed by the Resolution Applicant.

**(G) 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 Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the Resolution Applicant is not ineligible under Section 29A of the Code.

9. Further the Learned Counsel for the Applicant stated that the Resolution Plan takes care of the interest of the stakeholders concerned which includes Financial Creditors,

Sd/-

Sd/-

Operational Creditors and payment of CIRP costs is being taken care in priority to payment to the other creditors.

10. We heard the Counsel for Applicant. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code in the following manner:

    A. Plan provides for the priority payment of CIRP costs estimated to the extent of Rs. 75 lakhs along with CIRP costs incurred till approval of the Plan at actuals is proposed to be paid by the Resolution Applicant towards the same.

    B. To pay the amount due to Operational Creditors of the Corporate Debtor in the manner indicated supra.

11. The Resolution Applicant has inter-alia, sought certain directions to the statutory and regulatory bodies to grant necessary approvals

12. The Resolution Applicant proposed to appoint Directors to the Board of Directors as stated above in terms of Section 30 (2) (d). The Plan also provides for the implementation and supervision of the Resolution Plan. The Resolution Plan has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of Regulation 38 of the Regulations.

    (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).

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Sd/-

13. For better appreciation we refer to para 67 of the Judgement of Hon'ble Supreme Court in the matter of ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors (MANU/SC/1577/2019), which is as under:-***

**"67: A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by the successful resolution applicant.**

14. In view of the above ruling of Hon'ble Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. The Resolution Plan has been approved by the CoC through e-voting held from 28.09.2020 to 29.09.2020 with **100%** votes in favour of the said Resolution Plan.

15. 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.***

16. Further, the Hon'ble Court has further held at para 35 of the said 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.***

17. As held by Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors "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 as held in para 42 of the said judgement.

18. The Applicant/Resolution Professional has submitted that the Resolution Applicant has sought certain waivers and reliefs. We are, however, not inclined to grant such concession or waivers. The Resolution Applicant needs to approach the authorities concerned for permits, if required, and the same will be considered by the authorities concerned in accordance with law. The instant Resolution Plan meets the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law.

19. As seen from the records, this Tribunal on 24.02.2021 passed orders in this Application directing the Committee of Creditors to invite fresh bids from the existing Resolution Applicants. Aggrieved by the said order, the Successful Resolution Applicant preferred an appeal before Hon'ble NCLAT against the said impugned order. Hon'ble NCLAT while disposing of the appeal on 19.04.2021 directed this Adjudicating Authority to approve the Resolution Plan submitted by **Renganayaka Agencies** (KALS Group) as approved by the Committee of Creditors with 100 % voting in favour of it. Accordingly, we pass the following order:-

SD/-

SD/-

## ORDER

20. The Resolution plan submitted by **M/s Renganayaki Agencies** (KALS Group/"Resolution Applicant") annexed to the Application is hereby approved. It 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.

21. It is clarified under the Insolvency and Bankruptcy Code, 2016, 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.

22. 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 regards to the reliefs sought, the Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful.

23. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in para 8 (C) supra.

24. 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.

25. The moratorium under Section 14 of the Code shall cease to have effect from this date.

26. 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.

27. The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.

28. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.

SD/-

SD/-

(Veera Brahma Rao Arekapudi)
Member (Technical)

(Madan B. Gosavi)
Member (Judicial)

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