

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO:II

SPECIAL BENCH(Video Conference)

CORAM: HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL
HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 05.08.2021 AT 12:30 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.764/2021 in CP(IB) No.364/9/HDB/2018
NAME OF THE COMPANY	EPower Energy (India) Pvt Ltd
NAME OF THE PETITIONER(S)	Keshan Trading Corporation
NAME OF THE RESPONDENT(S)	EPower Energy (India) Pvt Ltd
UNDER SECTION	9 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 764/2020 in CP 364/9/HDB/2018 is listed for orders. Orders pronounced vide separate Order.


MEMBER (T)

Syamala


MEMBER(J)

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

IA No. 764 of 2020
In CP (IB) No.364/9/HDB/2018
Under section 30(6) of the IB Code, 2016
Read with Regulation 39(4) of the IBBI (Insolvency Resolution
Process for Corporate Persons) Regulations, 2016.

In the matter of:-
M/s. Epower Energy (India) Private Limited

Mr. Mahadev Tirunagari,
(IBBI Regn. No.IBBI/IPA-002/IP-N00320/2017-2018/10925
Resolution Professional of
M/s Epower Energy (India) Private Limited

...Applicant/
Resolution Professional

Date of Order: 05.08.2021

Coram: Shri Madan B. Gosavi, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.

Parties/Counsel Present:

For the Applicant : Mr. Y. Suryanarayana, Counsel.

Per: Bench

ORDER

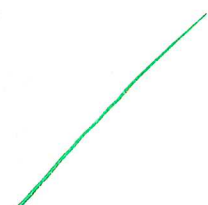
1. Under consideration is an interlocutory Application bearing IA No.764 of 2020 filed by the Applicant/Resolution Professional (in short RP) in the matter of M/s. Epower Energy (India) Private Limited, u/s. 30(6) of the Insolvency and Bankruptcy Code, 2016, seeking approval of the Resolution Plan.
2. Brief facts leading to filing of the Instant Application are as under:-
 - a. That this Adjudicating Authority admitted the Application filed under section 9 of the IBC, 2016 vide its order dated 12.07.2019 in CP (IB) No.364/9/HDB/2018 and appointed Mr. Mahadev Tirunagari as Interim Resolution Professional (IRP). Subsequently, he was appointed as Resolution Professional (RP).
 - b. That on 17.10.2019, Invitation for the Expression of Interest (EoI) was published in Newspapers with last date for submission of EoI as 01.11.2019. RP received 1 (one) resolution plan from M/s.

Progressive Power Solutions LLP, before the last date of submission of EoI i.e. 01.11.2019.

- c. That on 13.02.2020, 9th CoC meeting was conducted wherein the said Resolution Plan was approved with a majority of 97.5% voting share.
- d. That the liquidation value and fair value were also placed before the 09th CoC after obtaining necessary undertakings from the CoC members in order to ensure the conformity of the plan with respect to the provisions of IBC.
- e. That the Resolution Plan submitted by Progressive Power Solutions LLP meets all the requirements of the Insolvency & Bankruptcy Code, 2016 and CIRP Regulations and does not contravene any of the provisions of law and the same is also approved by the CoC with majority and suggested the Applicant/Resolution Professional to communicate the decision of the CoC in approving the Resolution Plan of M/s. Progressive Power Solutions LLP, and suggested the Resolution Professional to make an application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 before this Adjudicating Authority and seek approval of the Resolution Plan.
- f. That as per the direction made by the Committee of Creditors, the Applicant herein filed the present IA for approving the Resolution plan by this Adjudicating Authority under section 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016.
- g. That the Resolution Applicant had furnished the Performance Security for an amount of Rs.2,00,00,000/- as approved by the CoC in the RFRP in the form of Demand Draft bearing No.511273 dated 07.03.2020 drawn on ICICI Bank, in favour of Corporate Debtor.
- h. That the CoC had decided and passed a Resolution for Approval of the Resolution Plan submitted by M/s. Progressive Power Solutions LLP.
- i. That the Resolution Applicant confirmed by way of an affidavit that there is no disqualification U/s. 29A of the IB Code.
- j. That the amounts proposed by the Resolution Applicant for various Stakeholders under regulation 38(1A) of the CIRP Regulations is as under:







Admitted Claims	Admitted Claim	Resolution amount Proposed	% of total claim	Upfront Cash Payment (within 90 days)	Allotment of Equity Shares	Total Settlement Amount
CIRP Cost	The cost has been incurred from the Corporate Debtor account as the CD is a going concern entity					
Secured Financial Creditors						
KVB	9,22,61,926	8,26,29,780	89.56	8,26,29,780	0	8,26,26,926
Asset Reconstruction Company India Limited (ARCIL)	46,19,291	41,37,037	89.56	41,37,037	0	41,37,037
Unsecured Financial Creditors						
Progressive Power LLP	7,14,32,008	6,07,17,207	85	1,24,29,126 (Note 1)	4,82,88,080	6,07,17,207
Indus Ind Bank Limited	21,57,536	18,33,906	85	18,33,906	0	18,33,906
Bajaj Finance Limited	24,60,598	20,91,508	85	20,91,508	0	20,91,508
IDFC First Capital Limited	45,61,632	38,77,387	85	38,77,387	0	38,77,387
Operational Creditors Including Statutory Dues	16,75,00,113	16,75,000	1.00	16,75,000	0	16,75,000
Total Liabilities	34,49,93,104	15,69,61,825		10,86,70,889	4,82,88,080	15,69,61,825

Note 1: Progressive Power LLP will continue as unsecured financial creditor for the said amount.

- k. The Financial Proposal made by the Resolution Applicant subject to the terms and conditions are:
- That since the Corporate Debtor is going concern and all the cost incurred towards CIRP has been incurred from the CD account and as on date there is no outstanding of CIRP cost and it is undertaken and confirmed that if any outstanding CIRP cost till the date of passing of order of the Adjudicating Authority, to pay to the RP on the basis of the statement from him.
 - That the Resolution Applicant is proposing to pay the Secured Financial Creditors an amount of Rs.8,67,66,817/- (Rupees Eight Crores sixty seven lakhs sixty six thousand eight hundred and seventeen only) in proportion of their admitted claims. Upfront payment of 25% shall be paid within 90 days from the approval of







resolution plan by the NCLT and balance as full and final settlement of their Claims within 180 days from the approval of resolution plan by the NCLT.

- iii. That the Resolution Applicant is proposing to pay the Un-Secured Financial Creditors except Progressive Power Solutions LLP an amount of Rs.78,02,801/- (Rupees Seventy Eight Lakhs Two Thousand Eight Hundred and One only) in proportion of their admitted claims. Upfront payment of 25% shall be paid within 90 days from the approval of resolution plan by the NCLT and balance as full and final settlement of their Claims within 180 days from the approval of resolution plan by the NCLT.
- iv. That the unsecured financial debt of Progressive Power Solution LLP shall be proposed to settle an amount of Rs.6,07,17,207/- by way of issuance and allotment of 48,28,808 equity shares of Rs.10 each at par of the Corporate Debtor for an amount of Rs.4,82,88,080/- (Rupees Four Crore Eighty Two Lakhs Eighty Eight Thousand and Eighty only) and an amount of Rs.1,24,29,126/- by way of unsecured financial creditor which will be continued as unsecured financial creditor in the books of Corporate Debtor.
- v. That pursuant to Section 30(2)(b) of the Code, the dissenting Financial Creditors who vote against, or abstain from voting for, the Resolution Plan approved by the CoC shall be paid an amount which shall not be less than the amount to be paid to such creditor in accordance with Section 53(1) of the IBC Code in the event of Liquidation of the Corporate Debtor in priority over the financial creditors who have voted in favour of the resolution.

Reiterating the above, the counsel for the Applicant prayed to allow the instant Applicant.

3. Heard counsel for the Resolution Professional/Applicant and perused the Resolution Plan and other documents submitted along with Application.
4. Section 30(2) of the Code as amended w.e.f. 06.08.2019 enjoins upon the resolution professional to examine each resolution plan received by him to confirm that such plan –
 - a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

- b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-
- i. the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
 - ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the Corporate Debtor.
- c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- d) the implementation and supervision of the resolution plan;
- e) does not contravene any of the provisions of the law for the time being in force
- f) Conforms to such other requirements as may be specified by the Board.

5. Section 30(4) of the Code as it stands at present after the amendment reads as follows: -

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.”

6. Section 30(6) of the Code enjoins the resolution professional to submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority. Section 31 of the Code deals with the approval of the resolution plan by the Adjudicating Authority, if it is satisfied that the

Admitted

A

/

resolution plan as approved by the committee of creditors under section 30(4) meets the requirements as referred to in section 30(2).

7. Thus, before approving the Resolution plan, it is the duty of the Adjudicating Authority that it should satisfy itself that the Resolution plan as approved by the COC meets the requirements as referred to in sub-section (2) of Section 30.
8. On perusal of the Resolution Plan, this Adjudicating Authority has observed that the Resolution plan placed for consideration provides for the following:
 - a) Payment of CIRP Cost as specified U/s 30(2)(a) of IBC, 2016. (Clause 5(a) – Pg 15 of Plan).
 - b) Repayment of Debts of Operational Creditors as specified U/s 30(2)(b) of IBC, 2016 (Clause 5(d) – Pg 18 of Plan).
 - c) Provides for management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of IBC, 2016 (Clause 24 – Pg 27 of Plan).
 - d) The implementation and supervision of Resolution Plan shall be done by Insolvency Resolution Professional and by the COC as specified U/s 30(2)(d) of IBC, 2016 (Clause 22 – Pg 27 of Plan).
 - e) The Resolution Plan is not in contravention to any of the provisions of Law, for the time being in force, as specified U/s 30(2)(e) of IBC, 2016.
 - f) The Resolution plan conforms to such other requirements specified by the Board.
9. In terms of Regulation 27 of CIRP Regulations, Liquidation value was ascertained through registered valuers. The Fair value 14,89,49,758/- & the Liquidation value of the Corporate Debtor is Rs. 11,87,89,814/- and the Resolution Plan offers more than the average liquidation value.
10. The RP has complied with the code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of CIRP regulations.
11. The identity of the Resolution Applicants have been duly verified by the RP and affidavit as per section 30(1) of the Code has been obtained from the Resolution Applicants stating that it is not ineligible U/s 29A of the IB Code, 2016.
12. The Plan also provides for keeping the Company as a going concern and operate in its normal course of business upon implementation of

Resolution Plan. There is no objection filed by any other person in this regard.

13. Copy of Form-H (Compliance Certificate) filed by the RP along with the Plan has been perused and considered. The RP *inter-alia* has certified as under:

I. The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

II. The Resolution Applicant, M/s. Progressive Power Solutions LLP, has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

III. The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 97.5% of voting share of CoC after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

IV. RP Sought vote of members of the CoC by electronic voting system which was kept open atleast for 24 hours as per the Regulation 26.

14. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and Regulations thereunder.

15. It is also evident that the Resolution Plan placed before this Adjudicating Authority, was approved by the Committee of Creditors in its 9th meeting dated 13.02.2020 with 97.5% votes cast in favour of Approval of Resolution Plan.

16. In ***K Sashidhar Vs. Indian Overseas Bank & Others***, decided on 05.02.2019 in Civil Appeal No.10673/2018 with CA Nos.10719/2018, 10971/ 2018 and SLP(C) No.29181/2018, the Hon'ble Supreme Court, noticing the provisions of section 30(4), 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 (NCLT). On receipt of such a 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.

17. In the said judgment, in para 35, the Hon'ble Supreme Court held that the discretion of the adjudicating authority is circumscribed by Section 31 and is 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.
18. In the recent judgement in Essar Steel (Civil Appeal No.8766-67 of 2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority will not have power to modify the Resolution Plan as approved by the CoC in their Commercial Wisdom. In para 42 of the said judgment, Hon'ble Apex Court has observed as under:

Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Shashidhar (supra).

19. In view of the discussions in the foregoing paragraphs, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A. Hence, this Adjudicating Authority is satisfied that the Resolution Plan is in accordance with Law. Therefore, the 'Resolution Plan' annexed with Application bearing IA No. 764 of 2020 filed in CP (IB) No.364/9/HDB/2018 is hereby approved, which forms part of this Order and which shall be binding on the corporate debtor and 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, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

20. However, the Resolution Plan approved shall not construe any waiver to any statutory obligations/liabilities arising out of the approved Resolution Plan and same shall be dealt in accordance with the appropriate Authorities as per relevant Laws. We are of the considered view that if any waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities. The same view has also been held by Hon'ble Principal Bench, NCLT in the case of *Parveen Bansal Vs. Amit Spinning Industries Ltd.* in CA No.360 (PB) 2018 in CP No (IB) 131 (PB)/2017.
21. Accordingly, the MoA and AoA shall be amended and filed with the RoC for information and record as prescribed. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution Applicant shall pursuant to the Resolution Plan approved under Sub-Section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for in such law.
22. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.
23. This Adjudicating Authority hereby directs the RP to supervise the implementation of the Resolution plan and file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.
24. The order of moratorium passed by this Adjudicating Authority under Section 14 of the I&B Code, 2016 shall cease to have effect from the date of passing of this Order.
25. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI along with Copy of this Order, so that the Board may record the same on its data-base.
26. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
27. Accordingly, this Application bearing IA No.764 of 2020 hereby stands disposed of.

Dr. Binod Kumar Sinha
Member Technical

Madan B. Gosavi
Member Judicial