

CORRIGENDUM ORDER

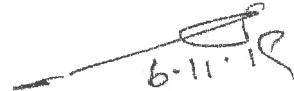
1. An email dated 01.11.2019 is received from the Counsel for Resolution Professional requesting for modification in the order passed by this Tribunal on 30.10.2019 approving the Resolution Plan of M/s Suryachakra Power Corporation Limited.
2. The following modifications are made to the above order as under:-

FOR	READ
<u>Para 2(10) page 5</u> This Tribunal approved the extension of CIRP by further 90 days beyond 180 days vide order dated 06.03.2019.	<u>Para 2(10) page 5</u> This Tribunal approved the extension of CIRP by further 90 days beyond 180 days vide order dated 01.04.2019.
<u>Para 2(15) page 7</u> It is submitted that the First Capital Finance with voting of 0.21% voted against the said resolution Plan.	<u>Para 2(15) page 7</u> It is submitted that the First Capital Finance abstained from voting for the said resolution Plan.



This corrigendum order to be read with the original order dated 30.10.2019.


(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)


(RATAKONDA MURALI)
MEMBER (JUDICIAL)

Binnu


Dy. Regr./Asst. Regr. Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY JA No-608/2019.
केस संख्या
CASE NUMBER (P/18) No-4217/1003/2018
निर्णय का तारीख
DATE OF JUDGEMENT 6/11/19
प्रति तैयार किया गया तारीख
COPY MADE READY ON 12/11/19

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

I.A. NO. 608 OF 2019

IN

CP (IB) NO. 421/7/HDB/2018

U/s 31(1) OF INSOLVENCY AND BANKRUPTCY CODE, 2016

IN THE MATTER OF
STATE BANK OF INDIA VS. SURYACHAKRA POWER
CORPORATION LIMITED

Mr. Anup Kumar Singh
SURYACHAKRA POWER CORPORATION LTD
Represented by its Resolution Professional
Suryachakra House, Plot No. 304-L-III
Road No.78, Jubilee Hills
Hyderabad, Telangana- 500003

... Applicant/
Resolution Process

Date of order: 30.10.2019



Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Narendra Kumar Bhola, Member (Technical)

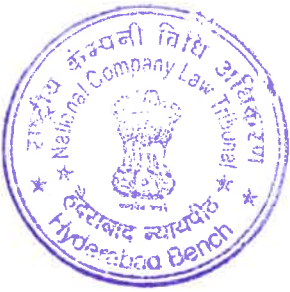
Appearances:

For the Applicant: Shri V.V.S.N. Raju, Advocate

Heard on: 17.10.2019

**PER: SHRI RATAKONDA MURALI
MEMBER (JUDICIAL)**

1. Under consideration before us is the Interlocutory Application bearing IA No. 608/2019 filed by the Resolution Professional of Suryachakra Power Corporation Limited, ("Corporate Debtor"), under Section U/s 31(1) of Insolvency & Bankruptcy Code, 2016, seeking directions to approve the Resolution Plan.
2. The facts apropos to the Application in brief are:-
 - (1) This Tribunal vide order dated 03.10.2018 admitted the Petition filed under Section 7 of IBC, 2016 by Financial Creditor / State Bank of India and initiated Corporate Insolvency Resolution Process (CIRP) against Suryachakra Power Corporation Limited/ Corporate Debtor and appointed Shri Anup Kumar Singh as Interim Resolution Professional.
 - (2) In compliance of Sections 13, 15 & other applicable provisions of IBC, 2016, R/w Regulation 6 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a public announcement dated 06.10.2018 was made in Form "A" inviting claims from the creditors of Suryachakra Power Corporation Limited to submit proof of claims and last date of submission of claims was 17.10.2018.
 - (3) The Applicant herein was confirmed as Resolution Professional for the Corporate Debtor, as approved by the Committee of Creditors in the First Meeting of Committee of Creditors by 100% votes in favour of the resolution dated 02.11.2018.
 - (4) Based on the claims received, Committee of Creditors was constituted and report was filed in this Tribunal on 25.10.2018 in compliance with Regulation 17(1) of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,



amw

Creditors for an extension of date for submission of Expression of Interest till 15.01.2019 vide email dated 28.12.2018, which was approved by the CoC on 29.12.2018. Subsequently, revised Form-G Version 2 was uploaded on the website of the Corporate Debtor. The Applicant / Resolution Professional also stated that CoC members on 14.01.2019 approved extension of time for submitting EoI till 25.01.2019 vide mail dated 11.01.2019 on the request of M/s Vinamratha Industries Limited, prospective Resolution Applicant who submitted the same on 16.01.2019. On scrutiny of the books of accounts of the Prospective Resolution Applicant, it came to the notice of the Applicant that Prospective Resolution Applicant was ineligible to submit Resolution Plan under Section 29A of the Code, 2016. Based on the same, the Applicant rejected the EOI submitted by the Prospective Resolution Applicant.

- (7) The above extension was ratified in the 3rd CoC meeting of the Suryachakra Power Corporation Limited held on 28.01.2019 by the members of the CoC and they further extended the date for submission of Expression of Interest till 09.02.2019. Pursuant to the said approval, revised Form G-Version 4 was uploaded on the official website of the Corporate Debtor and was sent to IBBI to upload the same on its website.
- (8) Pursuant to above, the Applicant received a claim in Form C from JBF Industries Limited vide email dated 04.02.2019. However, the same was rejected by the Applicant in compliance of Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, pursuant to which this Tribunal condoned the delay in submitting the Claim by the Creditor and directed the Resolution Professional to decide the same according to the Law. Complying the order of this Tribunal, the Applicant filed a report on the third re-constitution of the Committee of Creditors (CoC) along with the updated List of Creditors in this Tribunal on 17.06.2019.



Handwritten signature/initials

Handwritten signature

- (9) In the 4th CoC meeting held on 21.02.2019 the Applicant informed the CoC that prospective Resolution Applicant namely, M/s. Vamana Energy Private Limited (Lead Applicant) alongside co-applicant namely Apple Advertising and Marketing Private Limited (Co-Applicant) submitted Expression of Interest on 07.02.2019. Further, the Draft Evaluation Matrix and Request for Resolution Plan ("RFRP") was approved with 100% votes in favour of the Resolution. The Copy of the Minutes of the 4th CoC Meeting is attached herewith marked as "Annexure E".
- (10) This Tribunal approved the extension of CIRP by further 90 days beyond 180 days vide order dated 06.03.2019. Complying the Regulation 36A(10) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the Applicant issued a Provisional List of Prospective Resolution Applicants vide email dated 19.02.2019 to all the members of the committee and to all the prospective resolution applicants who submitted their Expression of Interest. Subsequently on 25.02.2019, complying with Regulation 36A (12) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the Applicant issued the final list of prospective resolutions applicants to the committee which comprised of only one Prospective Resolution Applicant namely, Vamana Energy Private Limited along with Apple Advertising & Marketing Private Limited together called "**Vamana Bhagya Private Limited (Special Purpose Vehicle)**" and the last date for submission of Resolution Plan was on 26.03.2019. However, no resolution plan was received from the Prospective Resolution Applicant till 25.03.2019. CoC members approved for extension of last date for submission of Resolution Plan from 26.03.2019 to 25.04.2019. In response to the same, SBI Global Factors Limited, SREI Equipment Finance Limited and First Capital Finance had given their concurrence to the same vide e-mail dated 25.03.2019 and accordingly last date



Handwritten signature/initials

for submission of the Resolution Plan was extended to 25.04.2019 (17:00 hours). The extension of time was ratified through E-Voting with 99.728% votes in favour of the said Resolution. The Copy of the Minutes of the 5th CoC Meeting is annexed and marked as "Annexure G". Last date for submission was further extended up to 20.05.2019 after approval of CoC members which was again extended till 31.05.2019. The same was ratified by the members in the Sixth Meeting of Committee of Creditors with 100% votes in favour of the said resolution.

- (11) The Applicant received Resolution Plan from M/s. Vamana Bhagya Pvt Ltd on 25.05.2019. Since the said plan provided by the Prospective Resolution Applicant was incomplete and not accompanied with Bank Guarantee, in the 6th Meeting of Committee of Creditors held on 20.06.2019 the Prospective Resolution Applicant namely, M/s. Vamana Bhagya Pvt Ltd was requested to submit the Revised Resolution Plan by 22.06.2019.
- (12) In the Sixth Meeting of Committee of Creditors one of the Creditors i.e. SBI Global Factors Limited requested for revision of claim from INR 84,72,45,078.92 to INR 90,03,44,048.27 and the same was admitted by the Applicant followed by submission of report on fourth re-constitution of the Committee of Creditors (CoC) along with the updated List of Creditors to this Tribunal 20.06.2019. The copy of the Fourth Reconstitution of the Committee of Creditors is attached herewith marked as "Annexure H". Complying with Regulation 35(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, in shared the Valuation Reports post receipt of Confidentiality Undertaking with the Financial Creditors in the said meeting.
- (13) In the 7th Meeting of Committee of Creditors held on 24.06.2019, the Revised Resolution Plan was deliberated upon and requested the Resolution Applicant to make certain changes in the Resolution Plan and submit the



[Handwritten signature]

[Handwritten signature]

same for approval by the members of the CoC. Since CIRP period of 270 days for the Corporate Debtor was ending on 30.06.2016, the CoC passed a Resolution for exclusion of 30 days from the overall period 270 days. The Applicant also stated that on 06.07.2019, he received Final Forensic Audit/Due Diligence Report of the Corporate Debtor from the Auditor namely, M/s. B. Narsing Rao & Co, Chartered Accountants wherein one transaction under Section 43 of the Insolvency and Bankruptcy Code, 2016 against Suryachakra Energy (Chhattisgarh) Private Limited and various other transactions outside the purview of IBC, 2016 were noticed for which the Applicant stated that he would be filing a separate petition.

- (14) It is submitted that in the Eighth Meeting of Committee of Creditors, the Final Resolution Plan dated 06.07.2019 was discussed after taking into consideration the observations and considerations of the Committee of Creditors and directed the Resolution Applicant to further modify the Resolution Plan, as proposed by the CoC members.
- (15) The Resolution Plan of M/s. Vamana Bhagya Pvt Ltd was put for Voting through the E-voting mechanism after taking into considerations the modifications, the same was circulated to the members of the Committee of Creditors vide email dated 09.07.2019. The said resolution Plan from M/s. Vamana Bhagya Pvt Ltd was approved by voting of 99.79% where JBF Industries Limited, SBI Global Factors Limited, SREI Equipment Finance Limited and State Bank of India voted in favour of the referred plan. It is submitted that the First Capital Finance with voting of 0.21% voted against the said resolution Plan. The Approved Resolution Plan is annexed and marked as "Annexure I".
- (16) The break-up of the total amount payable by the Resolution Applicant /M/s. Vamana Bhagya Pvt Ltd, are as follows:



AM

(Amount in Rs. Crores)

Sl. No.	Category of Stakeholder *	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1.	Secured Financial Creditors	62.770	47.290	3.955	6.30%
2.	Unsecured Financial Creditors* -Not Related Parties	122.240	122.052	5.045	4.13%
	-Related Parties	3.713	0.62	-	0.00%
3.	Operational Creditors				
	Government	23.503	-	-	-
	Workmen & Employees	-	-	0.269	-
	Other than Workmen & Employee	0.184	0.184	0.031	16.85%
4	Equity Shareholders under "Public Shareholding"	-	-	0.120	-
Total		212.41	170.146	9.42	

(17) The Applicant filed compliance certificate in Form-H of the schedule as per Regulation 39(4) of the CIRP Regulations. The contents of the Resolution Plan meet all the requirements of the Insolvency & Bankruptcy Code and the Regulations therewith. The said certificate is annexed and marked as "Annexure J".

(18) It is also stated that the Resolution Applicant, M/s Vamana Bhagya Private Limited furnished an affidavit complying Section 30 (1) of the Code confirming its eligibility under Section 29A of the Code.

AMH

[Signature]



(19) The Applicant filed Affidavit dated 03.10.2019 stating that certain legal cases was not reflected in the Resolution Plan under Section-I: Details of litigation viz. CP No. 757 of 2017, 490 of 2017 and 760 of 2017 which are filed before Hon'ble High Court of Bombay between Suryachakra Power Corporation Limited and JBF Industries Limited for quashing the order dated 31.07.2017 issued by Sole Arbitrator. M/s Arya Industries, Mumbai availed Rs. 2,00,00,000/- in the year 2010 but the same was not claimed during CIRP. Likewise an amount of Rs. 3,00,000/- towards security deposit contract for purchase of waste oil from the power plant remitted by M/s Ecofine Lubricants, Theni was also not claimed. As such the aforesaid amount stands extinguished on approval of the Resolution Plan. Applicant requested this Tribunal to place these facts on record as part of addendum to the Resolution Plan, duly ratified in the 9th CoC meeting held on 10.10.2019.

3. We have heard the Counsel for Resolution Professional. This Application is filed under Section 31 (1) of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "CODE") for approval of the Resolution Plan submitted by M/s Vamana Bhagya Private Limited ("Resolution Applicant").



4. The Learned Counsel for Applicant stated that, two Registered Valuers viz, M/s Intech Insurance Surveyors and Loss Assessors Pvt Ltd and Crest Capital Group Private Limited were appointed on 09.11.2018 to determine the fair value and liquidation value of the Corporate Debtor. The Learned Counsel stated that LSI Engineering & Consultants Limited was appointed as third valuer due to huge difference in the valuation of the properties of Corporate Debtor on 22.02.2019. The Fair value was fixed at Rs.5.14 crores and the Liquidation value at Rs.1.94 crores. In all the Applicant conducted 08 CoC meetings. The CIRP ended on 30.06.2019. However, 15 days period was excluded from the CIRP vide orders passed on 01.07.2019.

ans

5. The Resolution Plan submitted by M/s Vamana Bhagya Private Limited ("Resolution Applicant") which was approved by CoC with 99.79% voting in favour of it. The minutes of the eighth meeting of the COC held on 11.07.2019 is marked as Annexure "K" & "K1". The list of Financial Creditors of the Corporate Debtor and their distribution of voting share is as under:-

Sl.No.	Name of Creditor	Voting share (%)	Voting for / against / abstained
01	State Bank of India	21.86	Voted for
02	SREI Equipment Finance Limited	6.07	Voted for
03	SBI Global Factors Limited	53.17	Voted for
04	First Capital Finance	0.21	Abstained
05.	JBF Industries Limited	18.70	Voted for

6. The Resolution Professional has furnished certificate in Form-H as per Regulation 39 of CIRP Regulations, 2016. The amounts provided for the stakeholders under the Resolution Plan is as under:-

(Amount/Rs in crores)

Sl. No.	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1.	Secured Financial Creditors	62.770	47.290	3.955	6.30
2.	Unsecured Financial Creditor				
	-Not related	122.240	122.052	5.045	4.13
	-Related parties	3.713	0.62		0.00
3.	Operational creditors				
	Government	23.503	-	-	-

Handwritten signature

Handwritten signature

	Workmen & Employees	-	-	0.269	-
	Other than workmen and employee	0.184	0.184	0.031	16.85
4.	Equity Shareholders under "public shareholding"	-	-	0.120	-
Total		212.41	170.146	9.42	-

7. It is also stated by the Resolution Professional that the interests of existing shareholders were altered by the Resolution Plan as under:-

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	14,96,32,960	Nil	100%	Nil
2	Preference	NA	NA	NA	NA

8. The Resolution Applicant furnished a Bank Guarantee bearing No. OGT1479190033162 for Rs. 75,00,000/- issued by IndusInd Bank Limited, Kakinada valid up to 23.05.2021.



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.

10. The Resolution Applicant M/s Vamana Bhagya Private Limited ("Resolution Applicant") has submitted an affidavit through Advocate 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.

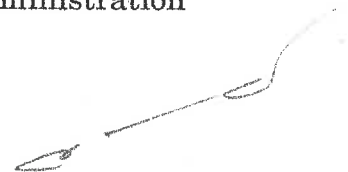
[Handwritten signature]

[Handwritten signature]

11. The Monitoring Committee comprising of Resolution Applicant, representative of CoC and Implementing Agency (Resolution Professional) will monitor the implementation of the plan after the effective date and until closing date.
12. The 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 99.79% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
13. 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, Operational Creditors as well as workmen and employees of Corporate Debtor and a provision is made for payment of CIRP costs. The bid amount is above the Liquidation Value- .
14. The Learned Counsel for Applicant further stated that the Resolution Applicant sought certain exemptions/or reliefs in the Resolution Plan which are essentially required for effective implementation of the Resolution Plan. In this connection, we are of the view that these exemptions can be granted in view of Insolvency & Bankruptcy Code (Amendment) Act 2019 which came into effect from 06.08.2019. As per the amendment of Section 31 (1), the Resolution Plan is binding on the central Government, any State Government or any Local Authority to whom a debt in respect of the payment of due arising under any law for time being in force such as authorities to whom statutory dues are owed. So, the exemptions sought in the Resolution Plan are subject to the provisions of Section 31 (1) of the Code as amended wherever applicable.
15. With regard to the reliefs sought for at para 7 (vii) pertaining to extension of Power Purchase Agreement (PPA), we direct the Andaman and Nicobar administration



APW



to consider feasibility of extension of the same initially for 5 years in accordance with PPA. The Andaman & Nicobar Administration may extend next two terms of 5 years as deemed fit after evaluating the performance of Resolution Applicant.

16. With regard to relief sought for at para No. 7 (viii)- to approve the extension of the Land Lease Agreement dated 11.08.1999 between the Corporate Debtor and Andaman & Nicobar Administration, we direct the Andaman & Nicobar Administration to consider the request of the Resolution Applicant in extending the lease.
17. As far as relief sought at para 7 (ix) is concerned, this Tribunal vide order dated 14.08.2019 passed in IA 78/2019 dismissed the Application filed by Resolution Professional with observation that occupation of the premises by Express Gensets Consortium Private Limited cannot be held as illegal because it is legally put in possession of land and started execution of the work in the said land for supply of power to the administration. Hence, the relief prayed cannot be granted.
18. The Resolution Applicant is seeking relief in the Resolution Plan that the amount covered by CP No. 757, 490 and 760 of 2017 pending before Hon'ble Mumbai High Court stands extinguished on approval of the Resolution Plan. Since cases are pending before the High Court, it is always open to the Resolution Applicant to make appropriate submissions before Hon'ble High Court after approval of the Resolution Plan and seek exemptions. In the alternative, the claims are subject to the resolution plan where under separate amount is allocated for payment to Financial Creditors/ Operational Creditors. The claim are to be dealt with reference to the allotment made to the Operational Creditors in case Operational Creditors succeed in the Hon'ble High Court.



AMW

ORDER

19. Thus, Resolution plan submitted by Resolution Applicant M/s Vamana Bhagya Private Limited (“Resolution Applicant”) which is approved by members of CoC having 99.79% voting share stands **approved** as per Section 31 (1) of the Code. In other words we are satisfied with the Resolution Plan as approved by Committee of Creditors under Section 30 (4) of the Code and it meets the requirement as referred to in Section 30 (2) of IBC, 2016. Accordingly, the Resolution Plan stands approved and the same is binding on 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, such as authorities to whom statutory dues are owed, Guarantors and stakeholders involved in the Resolution Plan in terms of Section 31 (1) of the Code.

20. The moratorium order passed under Section 14 shall cease to have effect from today.

21. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.

22. The Resolution Applicant shall obtain necessary approval required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan or within such period as provided for in such law.



NK
30-10-19
(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

30.10.19
(RATAKONDA MURALI)
MEMBER (JUDICIAL)

BINN5U

[Signature]
Dv. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY I.A. No. 608 of 2019.
केस संख्या
CASE NUMBER. (CP) No. 421/7/HDB/2018
निर्णय का तारीख
DATE OF JUDGEMENT..... 30/10/19
प्रति नैयार किया गया तारीख
COPY MADE READY ON..... 11/11/19