

SL No. 1

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 14.10.2021 AT 11:00 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.1114/2020 in Company Petition/IB/ 679/7/HDB/2018
NAME OF THE COMPANY	Neueon Towers Ltd
NAME OF THE PETITIONER(S)	IDBI Bank Ltd
NAME OF THE RESPONDENT(S)	Neueon Towers Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

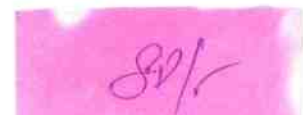
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

The IA for approval of Resolution Plan is rejected and Liquidator is appointed vide separate order.



**MEMBER (TECHNICAL)**



**MEMBER (JUDICIAL)**

karim

**NATIONAL COMPLAYN LAW TRIBUNAL  
BENCH-1, HYDERABAD**

**I.A. No. 1114 OF 2020**  
IN  
C.P (IB) No. 679/7/HDB/2018

**IN THE MATTER OF**

**IDBI BANK LIMITED  
VERSUS  
M/S NEUEON TOWERS LIMITED**

**Filed by:-**

Dr. Madurai Sundaram Sankar  
Resolution Professional  
M/s. Neueon Towers Limited  
Survey No. 321, Turkala Khanapur Village  
Hatnur Mandal, Medak District  
Hyderabad – 502201

...Applicant/  
Corporate Debtor

**Date of order: 14.10.2021**

**Coram:**

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

**Appearance:**

For Applicant: Shri B. Harinath Rao and Ms N. Sridevi Advocates

**PER: BENCH**

1. The present Application is filed by the Resolution Professional under section 31(1) 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 submitted jointly by **M/s Longview Resources (HK) Limited and M/s Invent Assets Securitisation & Reconstruction Private Limited (Resolution Applicants)** as duly approved by the Committee of Creditors.
2. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order on

03.06.2019 and Dr Madurai Sundaram Sankar, the Applicant herein was appointed as Interim Resolution Professional (IRP), who was confirmed as Resolution Professional in the 1<sup>st</sup> CoC meeting held on 01.07.2019. The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor. The CoC comprise of the following Financial Creditors.

Sl. No	Name of Financial Creditors	Claim received and admitted (Rs)	Voting Share (%)
1	<b>IDBI BANK LIMITED</b>	934,76,14,894.72	27.43
2	<b>CENTRAL BANK OF INDIA</b>	865,49,43,579.30	25.40
3	<b>PUNJAB NATIONAL BANK</b>	712,33,70,842.33	20.91
4	<b>UCO BANK, FCC (IBB)</b>	306,83,59,244.99	9.01
5	<b>ANDHRA BANK</b>	293,40,33,388.95	8.61
6	<b>EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED</b>	109,41,75,736.00	3.21
7	<b>INVENT ASSET SECURATISATION AND RECONSTRUCTION PRIVATE LIMITED</b>	95,81,23,751.00	2.81
8	<b>EXPORT IMPORT BANK OF INDIA</b>	44,85,78,899.48	1.32
9	<b>SREI EQUIPMENT FINANCE LIMITED</b>	44,33,26,309.00	1.30
	<b>TOTAL</b>	<b>3407,25,26,645.77</b>	<b>100.00</b>

3. As seen from the records, after granting extensions and exclusions, the term of CIRP came to an end on 06.09.2020. A total of 27 meetings of CoC were convened by the Resolution Professional.
4. During the period of CIRP, 02 Expression of Interest were received from the following prospective Resolution Applicants through

SD/-

SD/-

their Indian Advisors, pursuant to publication of Form-G as under:-

- (i) Longview Resources (HK) Limited. Hong Kong
- (ii) Agritrade Commodities Pte Limited., Singapore

5. The two resolution plans were deliberated in the 10<sup>th</sup> CoC meeting held on 23.01.2020 and the prospective resolution applicants were asked to enhance their offer by the CoC. In the 11<sup>th</sup> CoC meeting held on 12.02.2020, M/s Agritrade Commodities Pte Limited, Singapore vide email dated 29.01.2020 apprised the Resolution Professional that they would not be in a position to improve the offer.
6. In the 14<sup>th</sup> Meeting of CoC held on 27.04.2020, the CoC has considered the alternative option of security receipt of invent ARC in place of NCD of Longview Resources (HK) Limited and apprised the resolution applicant of the decision of CoC about the prorated release of securities arrived at. It is submitted that in the 17<sup>th</sup> CoC meeting held on 09.06.2020, the CoC wanted to enter into an agreement to assign the securities with the Resolution Applicant.
7. In the 22<sup>nd</sup> CoC meeting held on 11.08.2020, the Resolution Applicant **Longview Resources (HK) Limited** is declared as eligible under Section 29A of the Code basing on the diligence done by M/s Kroll Associated (India) Private Limited. M/s **Longview Resources (HK) limited and M/s Invent Assets Securitization and Reconstruction Private Limited** jointly was declared as final resolution applicant. The final resolution plan dated 07.10.2020 filed jointly by the Resolution Applicants was put for e-voting from 28.10.2020 to 04.11.2020 as per the decision taken in the 27<sup>th</sup> CoC held on 19.10.2020. The same was approved by the CoC with 98.70% voting in favour of it.
8. The Applicant has received a deposit amount to Rs. 5,40,93,314/- into Bank of India account no. 862420110000957 in lieu of performance bank guarantee on 12.11.2020 by way of foreign remittance from its sister concern M/s SAWP Steels Limited, Hong Kong.

SP/

9. We heard the Learned Counsel for the Applicant. After the case was reserved for passing orders, this Adjudicating Authority observed that co-resolution Applicant is an ARC and had sought clarification on the issue. In response, the Learned Counsel for the Applicant filed memo dated 22.09.2021 stating that ARC viz, Invent Assets Securitization and Reconstruction Private Limited is only the Co-Resolution Applicant and the main Resolution Applicant is M/s Longview Resources (HK) Limited Hong Kong. He further stated that ARC i.e. Invent Assets Securitization and Reconstruction Private Limited does not own any equity rights and it is used only for limited purpose of payment for assignment of Assignable Financial debt by Financial Creditors i.e. they only debt the funds of the Resolution Plan and shall not participate in the equity of the Corporate Debtor and as such the resolution plan is not hit by Section 29A of IBC, 2016.
10. In the instant case before us, **M/s Invent Assets Securitisation & Reconstruction Private Limited** cannot submit resolution plan as co-Applicant along with **M/s Longview Resources (HK) Limited Hong Kong**, without the prior approval of RBI under Section 10 (2) of SARFAESI Act. Therefore, we are of the view that prima facie even though the entry point under Section 29A is satisfied, the Successful Resolution Applicant has to satisfy that they are capable of submitting the resolution plan, without the prior permission of the RBI as contemplated under the law. We hold that the Resolution Plan is in contravention of Section 30 (2) (e) of I&B Code, 2016.
11. This Bench earlier in the matter of ARCIL Vs Viceroy Hotels Limited has taken a view that the resolution plan submitted by an ARC requires prior approval from the Reserve Bank of India (RBI) under SARFAESI Act. This Bench rely on para 85 of Hon'ble Supreme Court judgement in the matter of **Manish Kumar vs Union of India [(2021) SCC Online SC 30]**, which is reproduced hereunder:-

SD/-

SD/-

*"The resolution professional has to examine each resolution plan received by him on the basis of the invitation made by the resolution professional under Section 25(h) and ascertain whether the plan is in conformity with the various criteria mentioned in Section 30(2) of the Code. The matter is thereafter put up by the resolution professional before the committee of creditors. All resolution plans which conform to the conditions in sub-section (2) of Section 30 are, in fact, to be placed before the committee of creditors. The committee of creditors may approve the resolution plan after considering its feasibility and viability, the manner of distribution proposed, which may take into account the hurdles, priority amongst creditors as laid down in sub section (1) of Section 53 including the priority and the value of security interest of secured creditors and such other requirements as may be specified by the Board".*

12. The Hon'ble High Court of Delhi in the matter of **UV Asset Reconstruction Company Vs Union of India** on the issue whether ARC without prior approval of RBI can submit the resolution plan or otherwise, after verifying the provisions of Section 29A of Code and Section 10 of the SARFAESI Act has held that

*"This issue has arisen in the context of the Petitioner Company which is an asset reconstruction company, participating in the Corporate Insolvency Resolution Process of Aircel entities i.e. Aircel Limited, Dishnet Wireless Limited and Aircel Cellular Limited, before the NCLT. The resolution plan submitted by the Petitioner is stated to have already been approved by the NCLT, vide order dated 9th June, 2020 in CP (IB) No.298/MB.II/2018 and connected applications. The NCLT had, vide the said order, directed the Petitioner to obtain an approval of the Reserve Bank of India. The order of the NCLT reads:*

*"6.6.2. The RA is an asset reconstruction company, having been licensed to act as such by RBI. Hence, RA will require approval of RBI to acquire shares in the corporate applicants. The RA submits that it shall apply for such approval after the Resolution Plan is approved by this Adjudicating Authority."*

*The Reserve Bank India denied the approval and a show cause notice has been issued on 12th November, 2020, as to why action ought not to be taken for violating section 10 of the SARFAESI Act. It is this show cause notice, issued by the Reserve Bank of India, which has been challenged by the Petitioner in the present petition. Vide order dated 27th November 2020, the show cause notice dated 12th November 2020 was stayed by this Court".*

SD/-

SD/-

13. We also feel the resolution plan submitted by the CoC before the Adjudicating Authority has become a conditional resolution plan subject to the approval of RBI as Regulator of ARCs. As such, we are not inclined to consider such conditional resolution plan for resolution of the Corporate Debtor.
14. The Resolution Plan submitted in I.A. **No.1114 OF 2020** is rejected under Section 31 (2) of the Code. The Corporate Debtor / **Neueon Towers Limited** shall be liquidated in the manner laid down in Chapter III of the Code.
15. Shri Ramachander Rao Bikumalla having Registration No. IBBI/IPA-001/IP-P00740/2017-18/11261 is hereby appointed as Liquidator as per Section 34(4) (a) of the Code. He shall file his consent in Form AA within two days of receipt of this order.
16. He shall issue public announcement stating that the Corporate Debtor is in liquidation in terms of Regulation 12 of IBBI (Liquidation Process) Regulations, 2016.
17. The Moratorium declared under Section 14 of the code shall cease to have its effect.
18. Subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
19. All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
20. The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

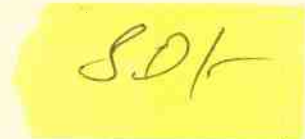
SD/

SD/

21. Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.
22. The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.
23. 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.
24. The Applicant herein is directed to serve a copy on the Liquidator appointed herein above.
25. Copy of the order shall be furnished to IBBI, to the Regional Director, Ministry of Corporate Affairs, Registrar of Companies & Official Liquidator, Hyderabad, the Registered Office of the Corporate Debtor and the Liquidator.



(VEERA BRAHMA RAO AREKAPUDI)  
MEMBER (TECHNICAL)



(MADAN B GOSAVI)  
MEMBER (JUDICIAL)