

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERBAD BENCH-1 AT HYDERABAD

I.A. No. 91 OF 2021
IN
CP (IB) NO. 235/7/HDB/2020

IN THE MATTER OF

MR PUDHOTA MAHENDRA KUMAR CHOUDHARY

vs.

M/S SANKHYA INFOTECH LIMITED

Filed by

FREE OF COST COPY

Mr Jagadees Kumar Morri,
RP of M/s Sankhya Infotech Limited
Regd. No. IBBI/IPA/001/IP-P00398/2017-2018/10716
Address: 10-5-7, Sri Sai Surya Complex, Sevasadan School,
Ramnagar, Visakhapatnam, Andhrapradesh-530013
cajagadeesh@gmail.com

.... Applicant /
Resolution Professional

Date of order: 15.06.2022

Ceram:

Dr. N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Applicant: Shri S. Ravi, Senior Advocate assisted by
Ms. MS Mano Ranjani, Advocate

PER: BENCH

1. **IA No. 91/2022** is filed by the Resolution Professional under Section 30(6) 2016 r/w regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations.

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2016 & Rule 11 of NCLT Rules, 2016, seeking approval of resolution plan along with the scheme of Arrangement provided in the resolution plan of **Mr. PRASANNA SAI RAGHUVVEER (Resolution Applicant)** as duly approved by the Committee of Creditors.

2. To put concisely, the main petition filed by MR PUDHOTA MAHENDRA KUMAR CHOUDHARY u/s 7 of IBC, 2016 was admitted by the Adjudicating Authority vide Order Dated 28.07.2021 and ordered commencement of CIRP against M/s Sankhya Infotech Limited/ Corporate Debtor. The Applicant herein was appointed as Interim Resolution Professional (IRP), who continued as Resolution Professional.

3. In terms of Regulation 6 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, public announcement in Form-A was made by IRP on 04.08.2021 inviting claims from the creditors of Corporate Debtor. The IRP, after collating and verifying the same, admitted Claims from financial creditors and constituted Committee of Creditors comprising of following Financial Creditors.

SNo	Name of the Financial Creditor	Claim Admitted Rs.	Voting Share %
1	IDBI Bank Ltd	33,39,85,824/-	92%
2	Mr P Mahendra Kumar	2,59,37,825/-	7%



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	Choudhary		
3	Mr Aluru Jagadish Prasad	25,00,000/-	1%
	Total	36,24,23,649/-	100%

4. The Form-G inviting Expression of Interest ("EOI") from Prospective Resolution Applicants for submission of Resolution Plan of the Corporate Debtor was published on 11.10.2021 and the last date for submission of EOI was fixed as 26.10.2021. In response, the final list of the prospective Resolution Applicants (PRAs), as released by the RP on 20.11.2021 are as under:-

- 1) Mr Prasanna Sai Raghuv eer
- 2) Mr Tadimalla Raj Kishore
- 3) M/s Shree Krishna Enterprises (P Venkateswara Reddy)
- 4) Mr P. Mahendrakumar Chowdary and Ms P Varalakshmi
- 5) M/s Kundan Care Products Ltd
- 6) Mr JV Tirupathi Rao & Ms Shaik Haseena
- 7) M/s Asphalt Roadworks Pvt Ltd & Ms K Ramalakshmi
- 8) M/s Bommidala Enterprises Pvt Ltd
- 9) M/s Cyfuture India Pvt Ltd
- 10) Mr Vivek Kumar
- 11) Mr Alok Mittal & Mr Vedant Mittal
- 12) M/s Sahasra Feeds & Industry Company

5. Thereafter the Resolution Professional issued IM, EM and Request for Resolution Plan(RFRP) in accordance with Regulation 36B(1) and the last date for submission of the







Resolution Plan by the prospective Resolution Applicants was 10.12.2021. However, at the request of the prospective Resolution Applicants, the last date for receipt of the Resolution Plan was extended to 17.12.2021 and the RP received 4 Resolution plans along with EMD from the following Resolution Applicants as on 17.12.2021:

- 1) Mr Prasanna Sai Raghuv eer
- 2) Mr P. Mahendrakumar Chowdary and Ms P Varalakshmi
- 3) Mr JV Tirupathi Rao & Ms Shaik Haseena
- 4) Mr Vivek Kumar (with M/s Lord's Mark Industries Pvt Ltd as Co-applicant).

6. The Prospective Resolution Applicants were asked to improve their plans a couple of times and the same were deliberated upon in the 8th meeting of COC dated 10.01.2022, and were ready to be put for e-voting, when the representative of IDBI Bank Ltd apprised the CoC that approval from their competent authority before participating in the e-voting was required and hence, the e-voting was postponed till the internal approvals are taken by the IDBI Bank Ltd. The CoC after several rounds of negotiations evaluated the Resolution Plan submitted by aforesaid resolution applicants as per the Evaluation Matrix and Section 29A of the Code. After evaluating in terms of both qualitative and quantitative criteria and



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aggregate, the resolution plan was put for voting on the Claim Bridge Technologies E-voting platform on 24.01.2022 as per the resolution passed in the 9th meeting of COC held on 17.01.2022. The Resolution Plan submitted by **MR PRASANNA SAI RAGHUVVEER** (Resolution Applicant) was considered and approved by the CoC with **92% voting share** in favour of it under Section 30(4) of IBC. The Applicant further submits that all the requirements envisaged under the Code and Rules/Regulations made there-under have been met. The e-voting result for the Resolution plan of Mr Prasanna Sai Raghuvveer is as under:-

Name of the Financial Creditor	Voting share (%)	Voted in favor/ against
IDBI Bank Ltd	92%	Favor
Mr P Mahendra Kumar Chowdary	7%	Against
MR Alluri Jagadish Prasad	1%	Abstained

7. The Applicant averred that as per the RFRP, the Successful Resolution Applicant In lieu of Performance Bank Guarantee as required under sub regulation (4A) of Regulation 36(B) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2021, has transferred an amount of Rs.1.5 Crores (30% of bid amount) on 24.01.2022 thru NEFT into Corporate Debtor's bank

Alkand

Account no. 0426103000000091, IDBI Bank, Ameerpet Branch.

8. **Contour of the Resolution Plan**

(A) **MR PRASANNA SAI RAGHUVeer KANDULA**, the Successful Resolution Applicant (SRA) is a resident of # 2-29/3, First Floor, flat C, Hideaway Apartments, Street No 4, Habsiguda, Hyderabad Telangana 500007, who is specialized in Business Intelligence, Artificial Intelligence, Fin Tech, etc and currently serving as Managing Director of Bheema Cements Ltd, and the promoter of Fortuna Engi. Tech, ABI Datalabs, Munara Agro, Sahara Feeds, VNR Infrastructures and is on the board of several other companies.

(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	Voting share (%)	Voted in favor/ against
IDBI Bank Ltd	92%	Favor
Mr P Mahendra Kumar Chowdary	7%	Against
MR Alluri Jagadish Prasad	1%	Abstained

(C) **FINANCIAL PROPOSALS:** The amount provided to the stakeholders of the Corporate Debtor is Rs.5.00 crores



which is tabulated below which shall be paid within 30 days from the effective date.

(Amount in Rs.)

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	Nil	Nil	Nil	Nil
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	33,39,85,824	33,39,85,824	440,00,000 Plus 2,00,000 equity shares of the Corporate Debtor of INR 10 Each	13.77%
		Total[(a) + (b)]	33,39,85,824	33,39,85,824	460,00,000	13.77%
		(a) Creditors not having a right to vote under sub-section (2) of section 21	Nil	Nil	Nil	Nil
Unsecured Financial Creditors		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	6,39,34,055	2,84,37,825	2,84,378	0.44%

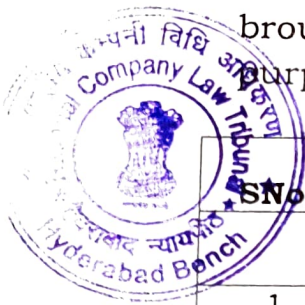


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3	Operational Creditors	Total [(a) + (b)]	6,39,34,055	2,84,37,825	2,84,378	0.44%
		(a) Related Party of Corporate Debtor	Nil	Nil	Nil	Nil
		(b) Other than (a) above:				
		(i) Government	93,17,420	26,64,920	26,649	0.29%
		(ii) Workmen	0	0	0	
	(iii) Employees	26,95,030	24,67,674.	24,677	0.92%	
	(iv) Operational creditors (other than Workmen and Employees and Government Dues)	6,44,58,945	6,35,20,308	6,35,203	0.99%	
	Total [(a) + (b)]	7,64,71,395	6,86,52,902	6,86,529	0.9%	
4	Other debts and dues	0	0	0	0	
Grand Total			47,43,91,274	43,10,76,550	4,69,70,930	9.9%

The break-up of the resolution amount of Rs. 5.00 crores brought in by the Resolution Applicant for various purposes are detailed as under:



S.No	Category of Creditor	Claims admitted		Amount offered	%
		No	Amount in Rs		
1	CIRP Costs			3183770	100.00
2	Secured financial creditors	1	333985824	46000000 (Including 2 lakh equity shares of Rs.10/- each)	13.77
3	Unsecured financial creditors	3	44144876	441448	1.00%
4	OCs (Employees)	4	2467674	24700	1.00%
5	OCs (Govt Dues)	2	2664920	26649	1.00%

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6	OCs (others)	7	63520308	635203	1.00%
	Total	16	446783602	50311771	10.90 %

(D) TERM OF THE PLAN

The term of the plan envisaged is one month from the date of approval of the Resolution Plan by the Adjudicating Authority.

(E) SHAREHOLDING PATTERN PRE/POST APPROVAL OF THE PLAN

Equity Shareholding Pattern of the Existing Shareholders post the CIRP:

S.No	Category of Shareholders	No. of Shares Held Before CIRP	No. of Shares Held after CIRP	Voting Shares (%) held before CIRP	Voting Shares (%) held after CIRP
	Promotor and Promotor Group	30,28,818	0	20.75	0
	Public Shareholders	1,15,68,239	578412	79.25	1.19
	TOTAL	1,45,97,057	578412	100	-

(F) Management of the Corporate Debtor

For effective implementation and supervision, the plan provides for Monitoring Committee comprising of a representative of financial creditors (COC), a representative of Resolution Applicant and Resolution Professional to oversee the activities of the Corporate

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Debtor and to take all necessary corporate action required to implement the plan till the hand over date. The Plan further provides for managing the affairs of Corporate Debtor by reconstituting the Board and the Resolution Applicant shall be entitled to exercise sole and absolute control over the affairs of the Corporate Debtor in accordance with applicable law in terms of Section 30(2) (d) of the Code. The new management team of the Company shall be constituted by the Resolution Applicant, in accordance with the plan.

(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 37, 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 Resolution Applicant has filed an Affidavit declaring that they are eligible to submit the plan under Section 29A of the Code and that the contents of the said affidavit are in order. The fair value and Liquidation value as submitted in Form-H is Rs. 10,66,930.00 and Rs. 9,87,515.50 respectively.



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9. The Resolution Applicants contemplate Corporate Restructuring through merger/Acquisition of Gwebitsol Private Limited ("Transferor Company") with Sankhya Infotech Limited ("Transferee/Resulting Company") and allotment of shares of Corporate Debtor to the shareholders of the Transferor Company in such manner as prescribed in the Resolution Plan, as part of this Insolvency Resolution Process of the Corporate Debtor as per the terms and conditions as envisaged in the Resolution Plan; and the Scheme of Arrangement forming part of this plan.

10. In the above backdrop we heard Learned Senior Counsel Shri S. Ravi for the Resolution Professional. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-

(a) The Plan provides for the priority payment of CIRP costs at actuals and the same shall be paid in full and in priority. The CIRP cost till 13.05.2022 is reckoned as Rs.31,83,770/-.

(b) The Plan provides for payment of 1% of the admitted claims of all operational creditors including workmen, employees & Government in priority to payment of financial creditors, albeit the liquidation value of these creditors is NIL.



(c) The Plan provides for payment of debts to dissenting financial creditors, who did not vote in favour of the Resolution Plan, which shall not be less than the amount of liquidation value due to them in terms of Section 53 (1) of IBC.

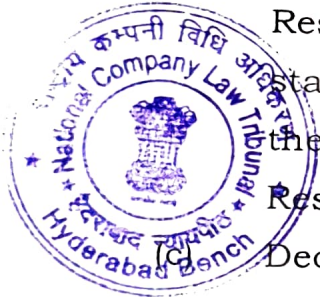
11. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:

(a) The amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors which is detailed at clause F-1 & G-2 and Clause-1 of the Resolution Plan.

(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 {Chapter-IV, Clause G of the Resolution Plan} (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 [Chapter VI, Clause 1(3) of the Resolution Plan] (Regulation 38 (1B)).

12. It is further submitted that the Resolution Plan value of Rs. 5.00 crores is higher than the Liquidation value of Rs. 9,87,515.50 and the Resolution Plan has been



approved by the CoC in the 9th CoC meeting with 92% votes in favour of it.

13. This Tribunal on 04.04.2022 vide order passed in IA 523/2021 has approved the claim of Mr. Siva Kumar to the tune of Rs. 1,57,07,051/-and directed the Resolution Professional to consider his claim as per rules. Pursuant to the said order, the Resolution Professional informed Mr. Siva Kumar that his claim has been admitted. The Resolution Professional informed that Bench that the SRA shall adjust this amount from the miscellaneous account without affecting the resolution plan as approved by the CoC.

14.

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".



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15. The Hon'ble Supreme Court has further held at para 35 of the above 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.**
16. The Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors**, held that "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".
17. The Hon'ble Supreme Court of India, in the recent ruling in re **Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors**, has held as under:-

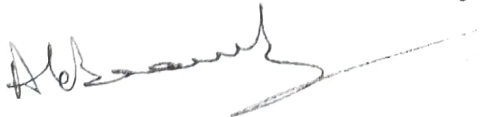




21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of **K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.**

27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:**

"95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also



been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

18. Therefore, the resolution plan, when tested on the touch stone of the aforesaid facts and the rulings, we are of the view that the instant resolution plan satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. We also found that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.

19. We therefore, hereby **approve** the Resolution Plan along with addendum, annexure, schedules forming part of the Resolution Applicant annexed to the Application and order as under:

The Resolution Plan along with addendum, annexures and schedules forming part of the plan 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.



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- (ii) 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.
- (iii) 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 held by Hon'ble Supreme Court in the matter of **Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited** in CIVIL APPEAL NO.8129 OF 2019 dated 13.04.2021.
- (iv) It is hereby ordered that Performance Bank Guarantee furnished by the Resolution Applicant shall remain as performance Bank Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented.
- (v) 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.



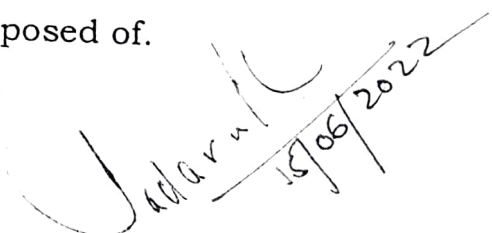
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- (viii) Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- (ix) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (x). The Applicant 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.
- (xi). The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- (xii). The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.
- (xiii). Accordingly, IA 91/2022 stands disposed of. Consequently, IA 497/2022 being clarificatory application to IA 91/2022 also stands disposed of.




CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL


(Veera Brahma Rao Arekapudi)
MEMBER (TECHNICAL)


(DR N.Venkata Ramakrishna Badrinath)
MEMBER (JUDICIAL)

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प्रमाणित प्रति
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केस संख्या
CASE NUMBER... CP (IB) No. 235/7/HDB/2020
निर्णय का तिथि
DATE OF JUDGEMENT... 15/6/22
प्रति तैयार किया गया तिथि
COPY MADE READY ON... 16/6/22


16/6/2022
Deputy Registrar / Assistant Registrar / Court Officer,
National Company Law Tribunal, Hyderabad Bench