

NATIONAL COMPANY LAW TRIBUNAL

**AMARAVATI BENCH
(Video Conference)**

PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 10.05.2021 AT 10.30 AM

TRANSFER PETITION NO.	IA NO. 176/2020 (AMR) in TCP(IB) No. 106/9/AMR/2019
COMPANY PETITION/APPLICATION NO.	CP (IB) NO. 382/9/HDB/2019
NAME OF THE COMPANY	ISR Infra Pvt Ltd
NAME OF THE PETITIONER(S)	CMR Transport Contractors Company Pvt Ltd
NAME OF THE RESPONDENT(S)	ISR Infra Pvt Ltd
UNDER SECTION	9 OF IBC

Counsel for Petitioner(s):

Ries

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

Counsel for Respondent(s):

Ries

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

ORDER

IA No. 176/2020 (AMR) in TCP (IB) No. 106/9/AMR/2019 is allowed. Vide separate orders.


MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
AT HYDERABAD
*** ****

**IA No. 176 of 2019
TCP (IB) No.106 /9/AMR/2019
[CP (IB) No. 382/9/HDB/2019]**

**In the matter of Liquidation of ISR Infra Limited
(Corporate Debtor)
and**

In the matter of Petition under Sec. 33 (1)(a) of I & B Code 2016

Mr. Pradeep Kumar Sravanam
Resolution Professional
for ISR Infra Private Limited
6-40, Plot No.101, Suprabhat Township, Venture -2
Near Nalla Mallareddy Engineering College,
Kachavani Singaram,
Hyderabad – 500 088.

... Applicant

Date of pronouncement of Order: 10.05.2021

CORAM:

Hon'ble Bhaskara Pantula Mohan, Member Judicial

Appearance:

For Applicant

... Mrs. JVL Bharati, Advocate.

ORDER

1. This is an Application by the Resolution Professional under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016 (the Code) seeking orders for liquidation of the Company/Corporate Debtor.
2. The NCLT, Hyderabad vide order dated 09.09.2019 admitted the Petition (TCP (IB) No. 106/9/AMR/2019) under Section 9 of the Code initiating Corporate Insolvency Resolution Process (CIRP) of the Company and

appointed the present Applicant as the Interim Resolution Professional (IRP). The IRP constituted a Committee of Creditors (CoC) and its first meeting was conducted on 09.10.2019. The CoC in its first meeting appointed the IRP as the Resolution Professional (RP) of the Corporate Debtor Company. Due to non-cooperation from the erstwhile Directors of the Corporate Debtor, the Applicant sent several mails to the erstwhile Directors regarding present status of assets and liabilities of the CD. Subsequently filed an Application before this Hon'ble Adjudicating Authority for issue of direction to CD to cooperate with RP. Considerable time lost in this exercise. Since there was delay in publishing EoI and appointment of valuers due to non-availability of books and recorded and non-cooperation of CD, put the same before 3rd CoC meeting. The CoC directed this RP to take steps for publication of EoI and also directed RP to get extension of CIRP from Hon'ble Tribunal since many things were yet to be finalised. Accordingly, RP filed an Application for extension of CIRP period. The Hon'ble Adjudicating Authority vide its Order dated 26.02.2020 extended CIRP period by 60 days from 07.03.2020 to till 05.05.2020. At this juncture, the Central Government had imposed "Lock Down" from 25.03.2020 due to pandemic COVID-19 and hence the process of CIRP was hauled for a period 72 days and revised schedule of transaction process of EoI was communicated to all the stake holders stipulating the last date for submission of resolution plans as 15.07.2020, which was placed before the 5th CoC meeting dated 13.07.2020.

3. However, no resolution plan received by 15.07.2020 i.e., the last date to receive Resolution Plans. The CD offered to make One Time Settlement (OTS) for Rs.8 Crores for which he requested for 90 days' time. The CD settled the claim of one operational creditor who moved Section 9 Petition in NCLT and also requested CoC for withdrawal of petition under Section 12A of Code. The CoC in its 2nd CoC meeting dated 26.11.2019, declined the request of the operational creditor and his application for withdrawal was kept in abeyance, as the CD has not settled the amount outstanding to

Financial Creditor and CIRP process was further continued. Now the CD offered to make an OTS for Rs.8 crores for which he requested 90 days' time, the CoC agreed to allow time to CD for OTS in 6th meeting and also directed to file an IA before Adjudicating Authority for extension of CIRP period for further period of 90 days excluding lock down period from 17.07.2020. The Adjudicating Authority vide order dated 09.09.2020 further extended the CIRP period. Subsequently, the CD failed in meeting his commitment, the 7th CoC Meeting was convened on 13.10.2020, wherein after comprehensive deliberations, at the request of the CD, to allow another 2 days upto 4.00 PM of 15.10.2020 to pay 25% of the total OTS amount i.e. 2 crores. The CoC considered the pleading of CD and against joined through video conference on 15.10.2020 at 4.00 PM. Since, the CD could not keep his commitment and not paid any amount till 4 PM on 15.10.2020, the CoC resolved to recommend liquidation under Section 33(1)(a) of IBC, 2016 in 7th CoC Minutes held on 13.10.2020 and 15.10.2020 and instructed the RP to file a petition before Adjudicating authority for liquidation. Accordingly, RP conducted e-voting on 19.10.2020 and 20.10.2020, got 100% voting in favour of liquidation. The CIPR period also ended on 15.10.2020 and the CoC decided to move petition for initiation of liquidation. Hence the RP came up with this application on 03.11.2020.

4. The directors of the company have not filed any counter to the application. Application has been heard.
5. The Hon'ble Apex Court in **K. Sashidhar v. Indian Overseas Bank and Others: (2019) 148 LA 497 (SC)** *inter alia* held that,

“The Adjudicating Authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under section 33 (1) of I & B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial

decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors”.

6. From the above, it would appear that despite all possible steps as required under the Code taken during the CIRP, the CoC did not receive any viable resolution plan/proposal for revival of the Company. The CoC in its wisdom has resolved with 100% voting share in favour of the liquidation of the Company. This Authority has no reason before it to take a contrary view in terms of Section 33(1)(a) of the Code. Therefore, it has no option than to pass an order for liquidation of the Company in the manner laid down in Chapter III of the Code. Hence ordered.

ORDER

The application be and the same is allowed on contest. The Application is accordingly allowed with the following directions.

- a) The Corporate Debtor i.e. M/s ISR Infra Private Limited shall be liquidated in the manner as laid down in Chapter-III of the Code.
- b) The present Applicant Mr. Pradeep Kuma Srvanam, presently RP of the ISR Infra Private Limited is appointed as the Liquidator.
- c) He shall issue public announcement stating that Corporate Debtor is in liquidation.
- d) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- e) Subject to section 52 of the IBC 2016 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.



- f) 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.
- g) 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 and Bankruptcy Board of India (Liquidation Process) Regulations 2016.
- h) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- i) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.
- j) 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.
- k) Copy of the Order shall be furnished to the IBBI, to the Regional Director (South Eastern Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Andhra Pradesh, the Registered Office of the Corporate Debtor; and the Liquidator.



**BHASKARA PANTULA MOHAN
MEMBER JUDICIAL**