

COMPANY LAW TRIBUNAL
HYDERABAD BENCH

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL

PRESENT: HON'BLE SHRI BINOD KUMAR SINHA –MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 17.10.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA NO. 577/2019 in CP(IB) NO. 462/7/HDB/2018
NAME OF THE COMPANY	ICOMM Tele Ltd
NAME OF THE PETITIONER(S)	L&T Infrastructure Finance Company Ltd
NAME OF THE RESPONDENT(S)	ICOMM Tele Ltd
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
<i>Yuh</i> ALAY RAZVI COUNSEL FOR R.P	<i>Arundh</i> ADVOCATE	9885003330	<i>Alay Razi</i>

Counsel for Respondent(s):

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

ORDER

IA No.577/2019

Order pronounced in open court. IA allowed vide separate order.

Arundh
MEMBER TECHNICAL

Binod
MEMBER JUDICIAL

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No.577 of 2019
In CP (IB) No.462/7/HDB/2018
Application u/s. 31 of the IB Code, 2016.

In the matter of :- ICOMM Tele Limited

Between:

Bhrugesh Amin,
Resolution Professional
Having Office at the Ruby-Level 9,
NW Wing, Senapati Bapat Marg,
Dadar (West),
Maharashtra, India.

...Applicant/
Resolution Professional

And

M/s. L & T Infrastructure Finance Company Limited

...Petitioner

Vs

M/s. ICOMM Tele Limited
Having its registered office at Plot No. 40-46, Phase -, IDA,
Cherlapally, HCL Post, Hyderabad,
Telangana, India – 500051.

...Respondent/
Corporate Debtor

Date of Order: 17.10.2019.

Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.

Parties/Counsel Present:

For the Applicant/Corporate Debtor:

Mr. R. Raghunandan Rao, Senior Counsel along with Mr. Alay Rizvi,
Advocate.

Mr. Bhrugesh Amin, RP





PER: Dr. Binod Kumar Sinha, Member Technical.

ORDER

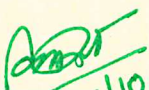
1. The Present Application bearing IA No. 577 of 2019, is filed by Resolution Professional appointed in the matter of M/s. ICOMM Tele Ltd, under Section 31 of the Insolvency and Bankruptcy Code, 2016, inter-alia, seeking for approval of the resolution plan of the Corporate Debtor as approved by the members of committee of creditors.
2. Brief facts of the CIRP of the Present Corporate Debtor are as under:
 - a) That this Adjudicating Authority vide its order dated 04.10.2018, admitted an application U/s.7 of the IB Code, 2016 for initiation of CIRP in respect of the present Corporate Debtor i.e., ICOMM Tele Limited and appointed an IRP.
 - b) That upon order of admission, the IRP has issued Public Announcement inviting the claims on 07.10.2018 and pursuant to receipt of claims, constituted Committee of Creditors on 29.10.2018.
 - c) That the 1st COC meeting was held on 02.11.2018 and COC has resolved to appoint the Applicant herein as Resolution Professional of the Corporate Debtor. Subsequently, this Adjudicating Authority vide its order dated 19.11.2018, upon recommendation of COC appointed the present Applicant herein as Resolution Professional of the Corporate Debtor.
 - d) That there were total 11 COC meetings, one conducted by IRP and subsequently upon change of RP, the Resolution professional has called upon total 10 COC meeting as stated under:
 - i) 2nd Meeting of the COC held on 05.12.2018;

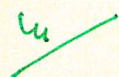
- ii) 3rd Meeting of the COC held on 16.01.2019;
 - iii) 4th Meeting of the COC held on 28.02.2019;
 - iv) 5th Meeting of the COC held on 13.03.2019
 - v) 6th Meeting of the COC held on 02.04.2019
 - vi) 7th Meeting of the COC held on 16.04.2019
 - vii) 8th Meeting of the COC held on 08.05.2019
 - viii) 9th Meeting of the COC held on 14.05.2019
 - ix) 10th Meeting of the COC held on 07.06.2019
 - x) 11th Meeting of the COC held on 24.06.2019
- e) That, as per the process document and after various clarifications, deliberate discussions, and addendums, the Final Resolution Plan was examined, evaluated and scored based on Evaluation Criteria. The scoring of the Final Resolution Plan as per the Evaluation Criteria was 65.17.
- f) That in the 11th COC meeting the Final Resolution Plan submitted by the Resolution Applicant read with all the Addendums thereto was considered by the members of COC.
- g) Subsequently, the Final Resolution Plan was put to vote before the COC at the 11th COC meeting held on 24.06.2019. The e-voting window commenced at 7.00 PM., on 25.06.2019 and completed at 5.00 PM on 29.06.2019.
3. The Final Resolution Plan submitted by the Resolution Applicant was approved by 83.89 % of the members of COC.
4. The RP stated that two registered valuers were appointed for the determination of the fair value and the liquidation value of the Corporate

Debtor. The registered valuers have determined the fair value and liquidation value as per Regulation 35 of the CIRP Regulations. The average of the value determined by the Registered Valuers is as stated below:

Registered Valuer	Fair Value (INR in crores)	Liquidation Value (INR in crores)
Rakesh Narula & Company	506.23	370.29
Mott Macdonald India	586.98	426.70
Average	546.61	398.50

5. Resolution Applicant herein is M/s. Megha Engineering and Infrastructure Limited (“hereinafter to be referred as Resolution Applicant”).
6. The RP stated that the Resolution Applicant was established in 1989 and is a major infrastructure company located at Hyderabad. The Resolution Applicant executes infrastructure projects on an engineering, procurement and construction basis in irrigation, drinking water supply, sewage treatment, roads, power and other areas. The Resolution Applicant has electrified more than 250 villages in Karnataka, 800 villages in Telangana and is supplying power to more than 2 lakhs households in Madhya Pradesh.
7. It is stated that, as per the Final Resolution Plan, the Resolution Applicant proposes to make the payments to the Creditors, which is more particularly described in Chapter IV of the Final Resolution Plan.


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8. It is further stated that, as per the terms of the Final Resolution Plan, the payment schedule along with the amount to be paid to different categories of stakeholders is as follows:

Stakeholder	Estimated Admitted Claims (INR in Crores)	Total Payment (INR in Crores)	Upfront Payment (INR in Crores)	Balance Payment (INR in Crores)
CIRP Costs				
CIRP Costs	24.90	24.90	24.90 <i>(Within 60 days of the NCLT Approval Date, prior to any other payments). CIRP costs will be paid at actuals.</i>	-
Financial Creditors				
Financial Creditors	1907.97	603.52	130 <i>(Within 60 days of the NCLT Approval Date, towards the fund-based claims of the Financial Creditors, as mentioned in the Resolution Plan.)</i>	<p>i. 30 <i>(Within a period of 3 months from the Effective Date, towards the fund-based claims of the Financial Creditors, as mentioned in the Resolution Plan.)</i></p> <p>ii. 30 <i>(Within a period of 6 months from the Effective Date, towards the fund-based claims of the Financial Creditors, as mentioned in the Resolution Plan.)</i></p> <p>ii. 413.52 <i>(On and from the Effective Date,</i></p>

Stakeholder	Estimated Admitted Claims (INR in Crores)	Total Payment (INR in Crores)	Upfront Payment (INR in Crores)	Balance Payment (INR in Crores)
				<i>towards the non-fund-based claims of the Financial Creditors, by taking over the obligations under the Existing Bank Guarantees in accordance with Clause 7.3 of this Chapter IV.)</i>
Operational Creditors				
Employees & Workmen	4.57	4.57	4.57 <i>(within 60 days of the NCLT Approval Date)</i>	-
Operational Creditors (other than Employees & Workmen)	121.85	<i>5% of the actual amounts admitted under Applicable Law, subject to a maximum of 6 Crores</i>	<i>5% of the actual amounts admitted under Applicable Law, subject to a maximum of 6 Crores</i> <i>(within 60 days of the NCLT Approval Date)</i>	-
Other Creditors (filed through Form F)	33.61	<i>5% of the actual basic amount admitted under Applicable Law, without any interest, penalty, charges or any claims of similar nature, after having</i>	<i>5% of the actual basic amount admitted under Applicable Law, without any interest, penalty, charges or any claims of similar nature, after adjustments of tax credits, if any</i> <i>(within 60 days of the NCLT Approval</i>	

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Stakeholder	Estimated Admitted Claims (INR in Crores)	Total Payment (INR in Crores)	Upfront Payment (INR in Crores)	Balance Payment (INR in Crores)
		<i>carried out adjustments of tax credits, if any</i>	<i>Date)</i>	
TOTAL	2092.91	639.003	165.47	473.52

9. It is stated by the RP that he has examined the Final Resolution Plan received from the Resolution Applicant, which is approved by the members of COC. As per the provisions of Section 31(1) of the Code, the Final Resolution Plan as approved by the COC is binding on all the stakeholders, employees, members, creditors and guarantors of the Corporate Debtor.
10. RP further stated that the Final Resolution Plan is in compliance with the provisions of the Code.
11. It is stated that that the Resolution Plan includes a statement under regulation 38 (1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.
12. It is stated by the RP that the Resolution Plan is subject to the contingencies that the concessions, waivers, exemption, and/or other

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conditions / approvals sought under the Final Resolution Plan are an integral part of the Final Resolution Plan and critical to ensure the successful implementation of the Final Resolution Plan.

13. The RP further stated the Application for approval of the Final Resolution Plan was filed immediately on the expiry of the period of CIRP as provided under section 12 of the Code
14. It is stated by the RP that, under Regulation 39 (4) of the CIRP Regulations, the RP was required to submit a compliance certificate in Form H at the time of filing the present application and he has filed the same.
15. It is further stated by the RP that the Final Resolution Plan has been prepared in compliance with the provisions of the Code and all regulations thereunder and thereafter approved by majority of the COC. Further, the Resolution Applicant had not furnished a Performance Bank Guarantee as of date of submission of the Plan, but has undertaken to furnish a Performance Bank Guarantee on or before 03.07.2019.
16. Reiterating above, the Counsel for Resolution Applicant prayed to approve the Resolution plan as approved by COC.
17. Heard Resolution Professional and perused the Resolution Plan and other documents submitted along with Application.
18. 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 –

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- 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) confirms to such other requirements as may be specified by the Board.
19. Section 30(4) of the Code as it stands at present after the amendment reads as follows: -

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“(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.”

20. 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 resolution plan as approved by the committee of creditors under section 30(4) meets the requirements as referred to in section 30(2).
21. 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.
22. 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.
 - b) Repayment of Debts of Operational Creditors as specified U/s 30(2)(b) of IBC, 2016.
 - 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.
 - 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.
 - 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.

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- f) The Resolution plan conforms to such other requirements specified by the Board.
23. In terms of Regulation 27 of CIRP Regulations, Liquidation Value was ascertained through two registered valuers and the amount proposed in the Resolution Plan is 60% higher than that of the average of Liquidation Values, and even 16% higher than the average of Fair Values submitted by the two registered valuers.
24. During the hearing held on 12.09.2019, the RP was asked to certify that the Resolution Plan was fully compliant with the amended provisions of the Code and regarding undertaking by RP to be part of the implementation and monitoring Committee etc.,
25. Subsequently, the RP has filed an Affidavit on 25.09.2019, stating as under:
- 'I say that the Resolution Applicant has submitted an undertaking stating that it shall ensure compliance with the provisions of Section 30 of the Code as amended till August 6, 2019. Further, I say that the Resolution Professional hereby expresses his consent to be a member of the monitoring and Implementation Committee till such time the Resolution Plan is implemented completely.....'*
- 'Further in compliance with the provisions of the Code, the Resolution Applicant has issued a Performance Bank Guarantee dated July 1, 2019 in favour of Corporate Debtor.'*
26. Copies of the undertaking by the Resolution Applicant, the Valuation Reports from the two registered valuers, and of the Performance Bank Guarantee issued by Indian Overseas Bank for Rs.25 Crores with validity upto 30.06.2020 and claim validity upto 30.06.2021 have also been filed by the RP along with Affidavit dated 25.09.2019, and have been perused.
27. 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

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the Resolution Applicants stating that it is not ineligible U/s 29A of the IB Code, 2016.

28. The Financial Proposal made by the Resolution Applicant as tabulated in para 8 above, has been perused.
29. 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.
30. It is also evident that the Resolution Plan placed before this Adjudicating Authority, was approved by the Committee of Creditors in its 11th COC meeting dated 24.06.2019 with 83.89% votes cast in favour of approval of Resolution Plan.
31. 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.
32. 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.

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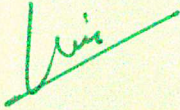
33. In view of the aforesaid, it is observed that the RP has complied with the code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of CIRP regulations.
34. In view of the foregoing discussion, the 'Resolution Plan' filed with the Application 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. 577 of 2019 filed in CP(IB) 462/7/HDB/2018 is hereby approved and forms part of this order. The said Resolution plan 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 including Resolution Applicant in terms of provisions of Section 31(1) of the Code.
35. 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 approval as may be required under any law for the time being in force within the period as provided for in such law.
36. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.
37. This Adjudicating Authority orders for the Constitution of Implementation and Monitoring Committee consisting of Mr. Bruges Amin, RP, one representative nominated by the Resolution Applicant and one representative nominated by the Financial Creditors to supervise the implementation of the Resolution Plan and further Resolution Professional



is directed to file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.

38. 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.
39. 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.
40. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
41. Accordingly, IA No. 577 of 2019 is disposed of as allowed.


17.10.19
Dr. Binod Kumar Sinha
Member Technical


K. Anantha Padmanabha Swamy
Member Judicial