

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO:II**

SPECIAL BENCH(Video Conference)

**CORAM: HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL
HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 08.07.2021 AT 12:30 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Miscellaneous Application/3/2021 in IA No.1110/2020 in CP(IB) No.262/7/HDB/2018
NAME OF THE COMPANY	Transstroy Tiruthani Chennai Tollways Pvt Ltd
NAME OF THE PETITIONER(S)	Allahabad Bank
NAME OF THE RESPONDENT(S)	Transstroy Tiruthani Chennai Tollways Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

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

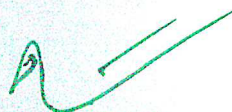
Counsel for Respondent(s):

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

ORDER

MA 3/2021 in IA 1110/2020 in CP 262/7/HDB/2018 is listed for orders. Orders pronounced vide separate Order.


MEMBER (T)


MEMBER(J)

Syamala

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

MA No.3 of 2021 in
IA No.1110 of 2020 in
CP (IB) No.262/7/HDB/2018
under section 60(5) of the I&B Code, 2016
r/w Rule 11 of NCLT Rules, 2016

In the matter of:

Allahabad Bank
6-3-850/3, 1st Floor
Main Road, Ameerpet
Hyderabad

... Financial Creditor

Vs.

Transstroy Tirupati-Tiruthani-Chennai Tollways Pvt. Ltd.
Plot No.201, 202A & 202B, Guttala Begumpet
Kavuri Hills, Hyderabad
Telangana – 500 081

... Corporate Debtor

Between:

International Asset Reconstruction Company Private Limited,
R/o. 709, 7th Floor, Ansal Bhawan,
16, Kasturba Gandhi Marg,
New Delhi, 110 001.

... Applicant / Resolution Applicant

And

Mr. Sanjay Kumar Mishra
(IBBI Regn. No.IBBI/IPA-001/IP-P01047/2017-2018/11730.
Resolution Professional of
M/s Transstroy Tirupati Thiruthani Chennai Tollways
Private Limited

...Respondent / Resolution Professional

Date of Order: 08.07.2021

**Coram: Hon'ble Shri Madan B. Gosavi, Member (Judicial)
Hon'ble Shri Dr.Binod Kumar Sinha, Member (Technical)**

Parties/Counsel(s) Present:

For the Applicant : Mr. Vinod Kumar, Rajesh Kumar and Srinivasan
Advocates

For the Respondent: --

Heard on : 11.06.2021





[Per: Bench]

ORDER

1. Under consideration is an Application bearing MA No.3 of 2021 filed by the Resolution Applicant (RA)/M/s. International Asset Reconstruction Company Private Limited in the matter of M/s. Transstroy Tirupati Thiruthani Chennai Tollsways Private Limited, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (I&B Code, 2016) r/w Rule 11 of NCLT Rules, 2016, inter-alia seeking the following reliefs:
 - a. To pass an order clarifying that any and all claims against the Corporate Debtor (whether submitted or not submitted or admitted or rejected in the CIRP, and whether statutory or non-statutory, crystallised or contingent or otherwise) that relate to any and all actions or causes (of or relating to the Corporate Debtor) occurring before the closing date, shall stand extinguished or settled as provided for in the Successful Resolution Plan.
 - b. To pass an order clarifying that any and all claims that do not form part of the successful Resolution Plan and relate to any and all actions or causes (of or relating to the Corporate Debtor) occurring before the Closing Date, shall stand extinguished.
 - c. To pass an order clarifying that no actions or proceedings relating to any and all actions or causes (of or relating to the Corporate Debtor) occurring before the Closing Date, can be continued or brought against the Corporate Debtor and/or the Resolution Applicant at any time in the future by any person whosoever;
 - d. To pass an order clarifying that the Order will be operative and binding on all parties from the date of receipt of the final orders in the Application;



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- e. To pass an order clarifying that the timeframe and the manner of implementation of the Successful Resolution Plan will be in accordance with the terms of the Successful Resolution Plan.
2. The averments made in the application filed by the Resolution Applicant in brief are as under:
- a. This Tribunal vide Order dated 03.06.2019 admitted the Company Petition bearing CP (IB) No.262/7/HDB/2018 filed by the Financial Creditor / Allahabad Bank against the Corporate Debtor / M/s. Transstroy Tirupati-Tiruthani-Chennai Tollways Pvt. Ltd. and initiated CIRP process.
- b. It is averred that the Resolution Plan dated 06.08.2020 submitted by the Applicant was approved by the COC at their 22nd meeting held on 10.09.2020 with 83.89% voting share, which was subsequently approved by this Hon'ble Tribunal vide Order dated 05.03.2021 in IA No.1110 of 2020. A copy of the Successful Resolution Plan and the Order of Adjudicating Authority are annexed as **Annexure-A & Annexure B at page nos. 14 to 208 and 209 to 223** respectively.
- c. It is averred that the present application is filed for seeking clarifications in respect of certain aspects of paragraph nos. 19 and 21 of the Order, which are necessary to implement the Successful Resolution Plan and resolve the Corporate Debtor as a going concern, in accordance with the terms and conditions of the Successful Resolution Plan.

Clarifications in respect of Paragraph 19 of the Order dated 05.03.2021:

- d. Paragraph 18 of the Order dated 05.03.2021 reads as follows -

"The Resolution Plan filed with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations





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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.1110 of 2020 filed in CP(IB) No.262/7/HDB/2018 is hereby approved, which forms part of the Order and which 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, guarantees and other stakeholders involved in the Resolution Plan.

e. Paragraph 19 of the Order dated 05.03.2021 reads as follows -

However, the Resolution Plan approved shall not construe any waiver to any statutory obligations / liabilities arising out of the approved Resolution Plan and same shall be dealt in accordance with the appropriate Authorities as per relevant Laws. We are of the considered view that if any waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities. The same view has also been held by Hon'ble Principal Bench, NCLT in the case of **Parveen Bansal vs. Amit Spinning Industries Ltd. in CA NO.360 (PB) 2018 in CP No.(IB) 131 (PB)/2017.**

f. It is averred that a combined reading of paragraph nos.18 and 19 of the Order dated 05.03.2021 signifies that the only statutory obligations / liabilities for which the Applicant would be required to approach the concerned authority for seeking waivers are only those that may arise in the future and arising out of actions or causes occurring after the Closing Date.



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- g. It is averred that the second sentence of the paragraph no.19 if read without the appropriate context of paragraph no.18 and the first sentence of paragraph no.19 of the order, can be misinterpreted such that (a) liabilities / obligations whether non-statutory or statutory arising on account of actions or causes that relate to the period prior to the Closing Date ("Pre-Implementation Claims") are not extinguished or settled pursuant to the Hon'ble NCLT's approval of the Successful Resolution Plan, and that the Applicant and/or Corporate Debtor is required to approach concerned authorities for such extinguishment or settlement which would be subject to their approval; and/or (b) any claims or proceedings in respect of Pre-Implementation Claims, can be continued or brought by any person against the Corporate Debtor in the future. Notably, potential for such misinterpretation will leave the Corporate Debtor exposed to risk of repeated bankruptcy during the entire pendency of the concession. Such misinterpretation jeopardizes the resolution of the Corporate Debtor as a going concern as envisaged under Successful Resolution Plan and would frustrate the core object of I&B Code.
- h. It is averred that the Applicant / Corporate Debtor is entitled to claim the benefits and concessions as available under the applicable laws, such as carry forward of losses that is permissible under the income tax laws; or deemed approval of shareholders for the implementation of actions under the approved Resolution Plan.
- i. It is averred that as per the Successful Resolution Plan, the Resolution Applicant intends to further approach the National Highway Authority of India ("NHAI") in respect of reaching a supplementary agreement incorporating the conditions precedent as per the terms of the Successful Resolution Plan which must be executed by NHAI before the Long Stop Date, failing which, the Successful Resolution Plan shall not be implemented, shall not be effective or operative against the applicant.

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- j. It is averred that the Applicant's understanding of the Order, including paragraph nos. 18 and 19 are also in line with the provisions of I&B Code which have been upheld by the Hon'ble Supreme Court in the matter of ***Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (2021 SCC OnLine SC 313)***.
- k. It is averred that in view of the above facts, para no.18 and para no.19 of the Order, the Applicant is seeking clarification as follows:
- i. any and all claims against the Corporate Debtor (whether submitted or not submitted or admitted or rejected in the CIRP, and whether statutory or non-statutory, crystallised or contingent or otherwise) that relate to any and all actions or causes (of or relating to the Corporate Debtor) occurring before the closing date, shall stand extinguished or settled as provided for in the Successful Resolution Plan, and consequently, the Applicant and/or Corporate Debtor is not required to approach any authority for extinguishment or settlement of such claims. Furthermore, the claims of the Corporate Debtor against any person including any authority shall continue, as provided for in the Successful Resolution Plan.
 - ii. any and all claims that do not form part of the successful Resolution Plan and relate to any and all actions or causes (of or relating to the Corporate Debtor) occurring before the Closing Date, shall stand extinguished and consequently the Applicant and/or corporate Debtor is not required to approach any authority for extinguishment of such claims; and
 - iii. no actions or proceedings relating to any and all actions or causes (of or relating to the Corporate Debtor) occurring before the Closing Date, can be continued or brought against the Corporate Debtor and/or the Resolution Applicant at any time in the future by any person whatsoever;

1. Clarifications in respect of Para 21 of the Order dated 05.03.2021:

i. It is averred that the Corporate Debtor is a company engaged in the business of laying and operating highway road infrastructure between Chennai and Tirupati and its revenue is solely generated from the tolls collected and related services. In view of various disputes and claims, the rights under the concession agreement were suspended by NHAI prior to the Corporate Debtor being admitted to CIRP.


ii. It is averred that the Insolvency resolution of the Corporate Debtor as a going concern is based on various factors and conditions including the restoration of its concession rights by NHAI. Accordingly, certain conditions precedent are incorporated in the Successful Resolution Plan that are necessary for the valid resolution of the Corporate Debtor in accordance with the I&B Code to be fulfilled prior to the Long Stop Date. Accordingly, the term 'Effective Date' has been defined under the Successful Resolution Plan.

iii. It is averred that COC approved the Successful Resolution Plan in its entirety. However, the word 'Effective' relating to a date is used in paragraph No.21 of the Order, which reads as follows:

"The approved Resolution Plan shall become effective from the date of passing of this Order". This may lead to ambiguity in the interpretation of the term 'Effective Date' as defined in the Successful Resolution Plan.

m. It is averred in view of the above facts, paragraph no.21 of the Order, the Applicant is seeking clarifications as follows:

Arora



Date of Order: 08.07.2021

- a) the Order will be operative and binding on all parties from the date of receipt of the final orders in the Application;
- b) the timeframe and the manner of implementation of the Successful Resolution Plan will be in accordance with the terms of the Successful Resolution Plan.
- n. It is averred that the RP had communicated the Order to the Applicant vide e-mail dated 23.04.2021 and received the certified copies on 26.04.2021. Further, RP called for a 1st meeting on 30.04.2021 after the approval of the Resolution Plan. The Applicant vide its emails dated 28.04.2021, 30.04.2021 and in the meeting held on 30.04.2021 informed the RP that the Applicant would be seeking clarifications as mentioned in the application and for the interim period proposed constitution of an Interim Monitoring Committee to manage the affairs of the Corporate Debtor.
- o. It is averred that as the Successful Resolution Plan cannot be executed / implemented without the clarifications sought in the application, the RA seeking the Interim Relief as follows:

Interim Order directing / authorizing the Resolution Professional to carry out the operations of the Corporate Debtor until the Application is disposed of;

(Or)

Interim Order for the constitution of an Interim Monitoring Committee to supervise the affairs of the Corporate Debtor until the Application is disposed of.

Arora

[Handwritten signature]

Date of Order: 08.07.2021

3. The instant M.A.No.3/2021 is filed by Successful Resolution Applicant for clarification of our Order dated 05.03.2021. We have gone through the Order itself. We heard the submissions made by the Learned Counsel. We perused the entire record. We sincerely felt that no more clarifications is required. Our order is itself speaking as well as reasoned and there is no ambiguity at all. Despite that, we further make it clear that Para 18 ensures that all the claims prior to CIRP including claims of Government Authorities stand extinguished. Through our Order approving the Resolution Plan Para 19, we intend to convey that if Resolution Applicant requires any license or permit or waiver to keep the Corporate Debtor as going concern, he has to approach the Authority / Department concerned.
4. As per Section 31 of IBC, the Plan shall come into effect on the date of the Order i.e. when the Adjudicating Authority approves the Plan and no other date. This is directed by Para 21 of our Order.
5. With this direction, M.A.No.3/21 stands disposed of.

DR. BINOD KUMAR SINHA
MEMBER TECHNICAL

MADAN B. GOSAVI
MEMBER JUDICIAL

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