

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 15.12.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB)No.60/9/AMR/2020	Main Case	9 of IBC	Chevuri Enterprises Vs Sindhura Paper Pvt Ltd
	IA(IBC)/367/2022	30(6) of IBC	Mr. B. Naga Bhushan, RP of M/s Sindhura Paper Private Limited

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

IA(IBC)/367/2022:

Mr.B.Naga Bhushan, RP present. IA(IBC)/367/2022 is allowed, vide separate orders.

Sd/-
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

NCLT Amaravati Bench
IA(IBC)/367/2022
IN
CP (IB) No. 60/9/AMR/2020

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

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**IA(IBC)/367/2022
IN
CP (IB) No. 60/9/AMR/2020**

**Under Section 30(6) and 31(1) of Insolvency and Bankruptcy
Code, 2016 Read with Regulation 39 (4) of Insolvency and
Bankruptcy Board of India (Insolvency Resolution for Corporate
Persons) Regulations, 2016.**

**In the matter of
M/s. SINDHURA PAPER PRIVATE LIMITED**

Between:

Mr.B.Naga Bhushan,
Resolution Professional of
M/s. Sindhura Paper Private Limited,
#1-1-380/38, Ashok Nagar Extension,
Hyderabad – 500020.

... Applicant/Resolution Professional

Date of pronouncement of Order: 15.12.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant/RP: Mr. B.Naga Bhushan, RP

Per:

Justice Telaprolu Rajani, Member Judicial

ORDER

1. The Resolution Professional (in short the RP) in respect of M/s. Sindhura Paper Private Limited (the Corporate Debtor) seeks approval of the Resolution Plan (in short the Plan) in this Application under Section 30(6) & 31(1) of Insolvency and Bankruptcy Code, 2016 Read with Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016.

2. The brief facts leading to the Application are as under.
 - i) This Bench, vide its order dated 07.03.2022 directed initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and Ms.Narala Varalakshmi was appointed as Interim Resolution Professional (IRP).

 - ii) The IRP made a public announcement on 10.03.2022 in the newspapers, inviting claims from different creditors/stakeholders of the Corporate Debtor. IRP Received the claims from three (03) creditors amounting to Rs.90,38,79,328/- and after verification of claims an amount of Rs.90,38,79,328/- was admitted. The IRP constituted CoC with three members i.e., State Bank of India (48.60%), Union Bank of India (26.77%) & India Bank (24.63%).

- iii) The 1st Committee of Creditors (CoC) meeting held on 04.04.2022, decided to replace the IRP with Mr.B.Naga Bhushan, as Resolution Professional (RP), Applicant herein with 73.21% voting and the same was approved by this Tribunal vide order dated 27.04.2022.
- iv) In the 2nd CoC meeting held on 19.05.2022, the CoC approved the eligibility criteria for Prospective Resolution Applicants. The Applicant made public announcement in Form G for inviting Expression of Interest (EoI) on 27.05.2022. In the 3rd CoC meeting held on 27.06.2022, the Applicant appraised the CoC that in response to the Form-G, two (2) EoIs were received from the Prospective Resolution Applicants (PRAs). The Applicant issued the final list of PRAs on 08.07.2022.
- v) In the 4th CoC meeting held on 05.07.2022, the CoC approved the criteria for Performance Guarantee, Bid Bond Amount and Evaluation Matrix and fixed the last date for receipt of Resolution Plan as 26.07.2022. Accordingly, the Applicant circulated the Request for Resolution Plan (RFRP), Evaluation matrix along with Information Memorandum to the PRAs.

- vi) In the 5th CoC meeting held on 27.07.2022, the Applicant informed the CoC that M/s.Binjusaria Papers Pvt. Ltd., sent a mail for his expression of interest after the last date for submission of EoI. The said request was rejected by the CoC, hence the Binjusaria Papers Pvt Ltd filed an IA(IBC)/145/2022 seeking for condonation of delay in submission of EoI and for submission of his Resolution Plan.
- vii) In the 6th CoC meeting held on 03.08.2022, the CoC conveyed its approval with 100% voting in respect of issue of revised Form G for maximization of value of the assets of the CD and directed the Applicant to file an application seeking for extension of CIRP period by 90 days. On 08.08.2022, M/s.Trinox Infrastructure and Developers Pvt Ltd, submitted the Resolution plan. The Applicant filed an application before the Tribunal seeking for extension of CIRP period by 90 days and the same was allowed by this Tribunal vide order dated 19.08.2022 and IA(IBC)/145/2022 filed by the Binjusaria Papers Pvt Ltd became infructuous. An opportunity to participate in the process was given.
- viii) On 12.08.2022, the Applicant published the revised Form-G inviting EoIs from interested parties and the last date for

submission of Resolution Plans stood on 11.10.2022. In response to the revised Form-G, five (5) EoIs were received. The CD is an MSME. The suspended director of the CD, being the promoter of MSME, submitted EoI in the name of the CD and has not furnished the refundable deposit amount and net worth certificate. However, the EoI received from the suspended director was rejected by the CoC in the 7th CoC meeting held on 02.09.2022. The Applicant published the final list of PRAs on 21.09.2022.

- ix) In the 8th CoC meeting held on 13.10.2022, the Resolution Plans received from the PRAs were opened. After verification of the Resolution Plans, the Applicant submitted a detailed report to the CoC for consideration of the Resolution Plans submitted by the PRAs and in the 9th CoC meeting held on 18.10.2022, the CoC members tried to negotiate for the better terms and clauses to be incorporated in the Resolution Plan.
- x) In the 10th CoC meeting held on 29.10.2022, the Applicant conducted further negotiations with the PRAs and advised to submit the Revised Resolution Plans by 05.00 PM of 31.10.2022. However, three PRAs i.e., 1. Pemmasani Solar Power Private Limited, 2. Sanghvi Cylinders Private Limited and 3. Trinox Infrastructure & Developers Private

Limited submitted their Revised Resolution Plans by 31.10.2022. On 02.11.2022, M/s.Binjusaria Papers Private Limited submitted their Revised Resolution Plan and the same was accepted by the Applicant.

- xi) In the 11th CoC meeting held on 04.11.2022, the Applicant presented the details of the plans submitted along with the Comparative Chart of Resolution Plans and also score as per Evaluation Matrix. The CoC perused the documents presented by the Applicant and upon detailed deliberations and application of their commercial wisdom, the CoC declared that the Resolution Plan submitted by M/s.Trinox Infrastructure and Developers Private Limited as H1 bidder. The Applicant placed the Resolution Plans for voting and the voting window was kept open from 07.00 PM of 04.11.2022 to 02.00 PM of 14.11.2022 and further voting time was extended upto 06.00 PM of 28.11.2022.
- xii) In the E-voting held on 04.11.2022, 7 PM to 28.11.2022, 6 PM, the Resolution Plan submitted by M/s. Trinox Infrastructure and Developers Private Limited, Successful Resolution Applicant (SRA) was approved with 100% voting. The Letter of Intent (LoI) dated 29.11.2022 was sent to the Successful Resolution Applicant (SRA) and he was asked to submit the Performance Bank Guarantee (PBG)

Amount of Rs.4,08,00,000/-. In pursuance of the same, the SRA furnished PBG for an amount of Rs.4,10,00,000/- in the form of a Demand Draft bearing No.434617, dated 29.11.2022 issued by Axis Bank Limited, Hyderabad Main Branch.

xiii) The Applicant/RP submitted the Compliance Certificate in Form-H under Regulation 39(4) of the Regulations showing the compliances of the Plan with mandatory requirements under the Code. The Regulations and the Plan were approved by the CoC.

xiv) The following is the summary of the Plan/Restructuring Proposal:

a) The Plan offers an amount of Rs.40,80,40,210/- as detailed below:

S. No.	Category of Claimants	Amount admitted (Rs.)	Amount proposed to be paid under the Plan (Rs.)
1	CIRP costs	-	42,00,000
2	Employees	1,04,807	1,04,807
3	Employees Provident Fund Organization		16,40,780
4	Employees State Insurance Corporation	27,93,25,235	94,623

5	Operational Creditors Government (GST & Central Tax)		10,00,000
6	Secured Financial Creditors	90,38,79,328	40,05,00,000
7	Operational Creditors (Others)	4,75,00,417	5,00,000
Total		123,32,74,384	40,80,40,210

The timelines for the payment of the above mentioned debts of the Corporate Debtor are as follows:

S. No.	Particulars	Estimated Timeline
1	CIRP Expenses	Within 15 days from the date of NCLT Order
2	ESI & PF amount	Within 15 days from the date of NCLT Order
3	Employees Dues	Within 15 days from the date of NCLT Order
4	Operational Creditors (Others)	Within 15 days from the date of NCLT Order
5	Operational Creditors Government	Within 15 days from the date of NCLT Order
6	Financial Creditors	<ol style="list-style-type: none"> 1. Payment of Rs.1,50,00,000/- to be paid within 15 days from the date of NCLT Order 2. Payment of Rs.14,52,00,000/- to be within 30 days from the date of NCLT order. 3. Payment of Rs.24,03,00,000/- to be paid within 90 days from the NCLT Orders.

b) The RA is proposing to constitute Monitoring Committee consisting of Five (5) members for implementation of the Resolution Plan, as given below:-

- i. Mr.B.Naga Bhushan, Resolution Professional, shall be the Chairman of the Monitoring Committee.
- ii. Two Authorised Representatives appointed by the Financial Creditors.
- iii. Two Authorised Representatives appointed by Successful Resolution Applicant.

xv) Hence this Application.

3. I have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application. The Resolution Plan submitted by the Resolution Applicant is found to be meeting all the requirements of the IBC, 2016 and more importantly Section 30 (2) of the IBC Code and Regulation 38 (1A) and applicable CIRP Regulations. It does not contravene any of the provisions of law. It caters to the interest of all the Stakeholders.

4. Section 30 (2) of the Code, as amended up to date, enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such plan –
- a) provides for the payment of insolvency resolution process costs in the 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 the 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 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.

Explanation - For the purpose of the above provision is as under:

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and
- (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

- 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.

5. Section 30(4) of the Code reads as follows:

“(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.”

6. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan, as approved by the CoC, meets the above requirements.
7. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
 - a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.

- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
 - e) The RP has certified through affidavit that 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 the Code.
8. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through registered valuers as Rs.44,35,42,539/- while the Resolution Plan offers Rs.40,80,40,210/-.
9. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1-A), 38 (1-B) 38(2) & 38(3) of the Regulations. The Plan also provides for keeping the Company as a going concern and to operate in its normal course of business upon implementation of Resolution Plan. No objection has been filed by anyone in this regard.

10. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal, the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of the Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.

11. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) 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 (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by CoC, meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further 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.

12. **In CoC of Essar Steel** (Civil Appeal No.8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

*“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar (supra)**.”*

13. In view of the discussions and the law thus settled, the instant Resolution Plan is found to be meeting the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

ORDER

- i. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order. It 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.
- ii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Andhra Pradesh 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.
- iii. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- iv. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.

- v. 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.
- vi. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant.

Accordingly, IA(IBC)/367/2022 in CP (IB) No.60/9/AMR/2020 is disposed of.

Sd/-
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu