

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRIMADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.10.2021 AT 13:00 HRS

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/242/2021 in IA No. 652/2020 in CP (IB) No. 133/7/HDB/2019
NAME OF THE COMPANY	Lanco Hoskote Highway Ltd
NAME OF THE PETITIONER(S)	Edelweiss Asset Reconstruction Company Ltd
NAME OF THE RESPONDENT(S)	Lanco Hoskote Highway 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

Orders passed in **IA (IBC)/242/2021**, vide separate orders.


MEMBER (TECHNCIAL)


MEMBER (JUDICIAL)

Pavani

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

**IA (IBC) No.242 of 2021
In
IA No.652 of 2020
In
C.P (IB) No.133/7/ HDB/ 2019**

**Application under section 60(5) of the
Insolvency & Bankruptcy Code, 2016, read
with Rule 11 of the NCLT Rules, 2016.**

Kalyan Toll Infrastructure Limited
Having its registered office at:
Vidya Deep, 15/3, Manorama Ganj
Indore, Madhya Pradesh – 452 001
Rep. by its authorised signatory

**.. Applicant
Successful Resolution Applicant**

AND

1. Mr. Raghu Babu Gunturu
Resolution Professional
M/s Lanco Hoskote Highway Limited
Plot No.4, Software Units Layout
Hightec City, Madhapur
Hyderabad – 500081, Telangana.
2. Committee of Creditors
M/s Lanco Hoskote Highway Limited
Plot No.4, Software Units Layout
Hightec City, Madhapur
Hyderabad – 500081, Telangana.
3. National Highway Authority of India
G 5&6, Sector-10, Dwarka
New Delhi – 110 075.

**.. Respondents
No.1: Resolution Professional**

DATE OF ORDER: 6th October 2021

Coram:

**HON'BLE SHRI MADAN BHALCHANDRA GOSAVI
MEMBER (JUDICIAL)**

and

**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

Parties / Counsels Present:

For the Applicant : Shri S. Ravi, learned senior counsel.

For Resolution Professional : Shri Shri L. Ravichander

For NHAI : Shri Rajesh Ranjan.

PER BENCH

Heard on: 04.08.2021, 27.08.2021 and 17.09.2021.

ORDER

This application is filed by successful Resolution Applicant/ Kalyan Toll Infrastructure Limited under section 60(5) of the Insolvency & Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016, praying this Adjudicating Authority to clarify certain portion in paragraphs 18 and 21 of order dated 26.04.2021, passed in IA No.652 of 2020 in C.P (IB) No.133/7/ HDB/ 2019, wherein and whereunder the applicant's Resolution Plan was approved by this Adjudicating Authority.

2. In para 18 it has been observed by this Adjudicating Authority that,

“18. The Applicant/Resolution Professional has submitted that the Resolution Applicant has sought certain waivers and reliefs at para (N) of the Resolution Plan. We are, however, not inclined to grant such concession or waivers. The Resolution Applicant needs to approach the authorities concerned for permits, if required, and the same will be considered by the authorities concerned in accordance with law. With regard to specific reliefs and waivers sought by the Resolution Applicant from NHAI, during the hearing of the Application, we requested the Counsel appearing for NHAI to favourably consider the request of the Resolution Applicant on merits taking into consideration the special circumstances under which the Resolution of the Corporate Debtor ensued and we direct NHAI to consider the same for smooth implementation of Resolution Plan.”

3. Further, in para 21 it has been ordered that,

“21. 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 regards to the reliefs sought, the Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful.”

4. The applicant states that one of its creditors, namely, National Highway Authority of India ('NHAI' for short) by taking advantage of a part of the order reproduced hereinabove, wherein it has been mentioned that,

“18. With regard to specific reliefs and waivers sought by the Resolution Applicant from NHAI, during the hearing of the Application, we requested the Counsel appearing for NHAI to favourably consider the request of the Resolution Applicant on merits taking into consideration the special circumstances under which the Resolution of the Corporate Debtor ensued and we direct NHAI to consider the same for smooth implementation of Resolution Plan.”

has been asking the Resolution Applicant the past dues in the form of penalty imposed by it against the Corporate Debtor for not maintaining the road properly as per the Agreement entered into between them. The applicant submits that this Adjudicating Authority may clarify its order clearly indicating that NHAI being one of its creditors is bound by the terms of the Resolution Plan, whereby all the past dues payable by the Corporate Debtor stood paid and extinguished as per section 31(1) of the I&B Code, 2016.

5. We called upon NHAI to file reply to this application. Accordingly, reply is filed contending that the application is not maintainable on two grounds, viz.

- (i) That the order is clear and there is no ambiguity whatsoever and thus, it requires no clarification.
- (ii) Under the garb of clarification, the applicant requested this Adjudicating Authority to review its own order, which jurisdiction is not available with this Adjudicating Authority.

6. We have heard Shri S. Ravi, learned senior counsel for the applicant and Shri Rajesh Ranjan, learned counsel for NHAI at length.

7. As far as para 18 of the above order is concerned, we make it clear that it requires no clarification for the simple reason that in the said para this Adjudicating Authority has made certain observations and given some reasons on the basis of which final order is passed. Such reasons need not be clarified. What is required to be clarified is the final order. Hence we restrict ourselves to clarify the part of the order which appears in para 21 of the above order.

8. Before proceeding further we make it clear that this application cannot be considered under section 60(5) of the Insolvency & Bankruptcy Code, 2016, because as on today, no insolvency process is pending against the Corporate Debtor before this Adjudicating Authority. We cannot even consider this application under Rule 11 of the NCLT Rules, 2016, because we cannot invoke our inherent jurisdiction under Rule 154 of NCLT Rules, 2016, which is available to us to carry out correction/rectification in any order passed by us. Rule 154 of NCLT Rules, 2016 is reproduced hereunder:

“154. Rectification of Order.- (1) Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of rectification.”

9. Coming back to the controversy between the parties we note that section 31 (1) of the I&B Code, 2016 states that,

“31. Approval of resolution plan. - (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, 2 [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.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.”

10. In this case, it is not in dispute that NHAI had submitted its claim before the Resolution Professional. That claim includes the fee and penalty as imposed against the Corporate Debtor by NHAI. Section 31(1) of the I&B Code makes it clear that the provisions of the Resolution Plan are binding on all the creditors including the Central Government, State Government, and local authorities.

11. In this regard, the Hon'ble Supreme Court in its judgment dated 13.04.2021 rendered in Civil Appeal No.8129 of 2019 in the matter of **GHANSHYAM MISHRA AND SONS Vs. EDELWEISS ASET RECONSTRUCTION COMPANY** observed that,


"27. once a Resolution Plan is accepted, if any additional liability is thrust upon the Resolution Plan, the entire plan would become unworkable, resulting into the frustration of the very purpose of the enactment i.e. revival of the Corporate Debtor."

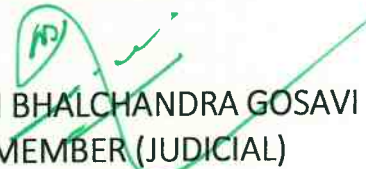
"44. Insofar as the second ground of the High Court is concerned, he submitted, that if such a view is accepted, it will frustrate the entire object of I&B Code and the revival of the Debtor Companies would be impossible if the successful resolution applicants are sprung with the surprise debts, which are not part of the Resolution Plan."

"86. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable."

NHAI being Central Government undertaking, it is bound by the terms of the Resolution Plan. We make it clear that the NHAI cannot claim the past dues, may be in the form of fee, penalty, etc. Nonetheless, they may raise future debts against the Resolution Applicant in view of the provisions of law and since law is very clear irrespective of what has been stated in para 21 of the order. We clarify that all the past dues of all the creditors of the Corporate Debtor including NHAI stand extinguished.

12. With this, IA (IBC) No.242 of 2021 stands disposed of.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


MADAN BHALCHANDRA GOSAVI
MEMBER (JUDICIAL)