

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

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 01.10.2021 AT 10:30 AM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.804,1019&1082/2019 & IA No.1073/2020 & IA(IBC)/423/2021 in CP(IB) No.416/7/HDB/2018
NAME OF THE COMPANY	Kumar's Metallurgical Corporation Ltd
NAME OF THE PETITIONER(S)	IFCI Ltd
NAME OF THE RESPONDENT(S)	Kumar's Metallurgical Corporation 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

IA No.804 of 2019:

Order is pronounced. Resolution Plan is approved and the IA is allowed and disposed of.

IA No.1019 of 2019 :

Order is pronounced. This IA is disposed of vide separate order.

IA No.1082 of 2019 :

Order is pronounced. This IA is disposed of vide separate order.

IA No.1073 of 2020 :

Order is pronounced. This IA is disposed of vide separate order.

IA (IBC) No. 423 of 2010 :

Heard learned counsel for the parties. This IA has become infructuous and stands disposed of.

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MEMBER (TECHNICAL)

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MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-2**

**IA No.804/2020
IN**

CP (IB)No.416/07/HDB/2018

*Application under section 31(1) of the IB Code, 2016
Read with Regulation 39(4) of the IBBI (Insolvency
Resolution Process for Corporate Persons) Regulations, 2016.*

In the matter of

M/s. KUMAR METALLURGICAL CORPORATION LIMITED

Filed by:

Mr. Raghu Babu Gunturu,
Resolution Professional of
Kumar Metallurgical Corporation Limited

...Applicant/
Resolution Professional

Date of Order: 01.10.2021

**Coram: Madan B. Gosavi, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.**

Parties/ Counsels Present:-

Mr. V.V.S.N. Raju, Advocate for Applicant

[Per Bench]

1. The present Application bearing IA No. 804/2019 is filed by the Resolution Professional under section 31(1) of the IB Code, 2016, R/w regulation 39(4) of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, seeking approval of resolution plan of **M/s Mahalakshmi Profiles Private Limited** as duly approved by the Committee of Creditors.
2. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order on 28.11.2018 and the Applicant was appointed as Interim Resolution Professional (IRP). The Committee of Creditors (CoC) comprising the following Financial Creditors, in its 1st meeting had confirmed the Applicant as Resolution Professional (RP).

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The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

Financial Creditors (CoC)

Sl. No	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Stressed Assets Stabilisation Funds (SASF)	45.94 %	Voted for Resolution Plan
2	Prudent ARC Ltd (Prudent Trust 32/19)	52.50 %	Voted for Resolution Plan
3	International Asset Reconstruction Co. Ltd	0.96 %	Voted for Resolution Plan
4	Central Bank of India	0.60 %	Voted for Resolution Plan

3. During the period of CIRP 06 EOIs were received which were deliberated in the 4th Committee of Creditors (CoC) meeting held on 02.05.2019. Out of six, the following five were qualified to the final list of Prospective Resolution Applicants:-
 1. Vinayak Steels Limited
 2. Somani Ispat Pvt Ltd
 3. Mahalakshmi Profiles Private Limited
 4. Amaravathi Textiles Limited
 5. Prudent ARC Limited
4. The 180 days CIRP period ended on 26.05.2019. This Bench passed orders extending 90 days period beyond 180 days on 18.06.2020.
5. In the 10th CoC meeting held on 19.08.2019, the resolution plan submitted by **Mahalakshmi Profiles Private Limited** (successful Resolution Applicant) was deliberated upon and the CoC asked the Resolution Applicant to enhance their offer as suggested by the CoC and submit their revised resolution plan. The CoC after several rounds of negotiations evaluated the Resolution Plan submitted by **Mahalakshmi Profiles Private Limited** as per the Evaluation Matrix and in terms of Section 29 (A) of the Code which was put for e-voting from 21.08.2019 to

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22.08.2019 as per the decision taken in the 15th CoC meeting held on 20.05.2021.

6. The Applicant has received Performance Bank Guarantee bearing No. 021GT02192420001 dated 30.08.2019 for an amount not exceeding Rs. 4,29,60,000/- (Rupees Four Crores Twenty Nine Lakhs Sixty Thousand only) which is annexed as Annexure-1 to the Additional Affidavit dated 27.09.2019. The same was extended and valid till 30.10.2021 as intimated vide memo dated 08.07.2021.
7. The plan was approved by the CoC with 100% votes in favour of the Resolution Plan submitted by **Mahalakshmi Profiles Private Limited** under Section 30(4) of IBC and the Applicant further submits that all the requirements envisaged under the Code and Rules/Regulations made there under have been met.
8. **CONTOUR OF THE RESOLUTION PLAN:**
- (A) The Resolution Plan is submitted by **Mahalakshmi Profiles Private Limited (herein after referred to as Resolution Applicant/ MPPL)**. It is a Company engaged in business of manufacturing a variety of Iron and Steel Products, led by Mr. Vinod Kumar Agarwal and Mr. Ramniranjan Agarwal promoters/shareholders.
- (B) The CoC comprised of the following financial creditors and the distribution of voting share among them is as under:-

Sl. No	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Stressed Assets Stabilisation Funds (SASF)	45.94 %	Voted for Resolution Plan
2	Prudent ARC Ltd (Prudent Trust 32/19)	52.50 %	Voted for Resolution Plan
3	International Asset Reconstruction Co. Ltd	0.96 %	Voted for Resolution Plan
4	Central Bank of India	0.60 %	Voted for Resolution Plan

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(C) The Resolution Plan dated 19.08.2019 for an amount of **Rs. 42.96 crores** provided for the stake holders under the Resolution **Plan as** under:-

(Amount in lakhs)

Sl. No.	Category of stakeholder	Amount claimed	Amount admitted	Amount provided under the plan	Amount provided to the amount claimed
1.	Dissenting secured financial creditors	-	-	-	-
2	Other secured creditors	561363.69	560667.70	4175.00	0.74%
3	Dissenting unsecured financial creditors	-	-	-	-
4	Other unsecured financial creditors	-	-	-	-
5	Operational Creditors	856.48	856.48	-	-
	Government	2550.01	2356.27	15.00	0.64%
	Workmen	116.64	3.22	3.22	100%
	Employees	5.87	0.32	0.32	100%
	Workers/employees	-	-	*37.46	
6	Other debts and dues	621.32	-	-	-
	Total	565514.01	563883.99	4231.00	

(D) **SOURCE OF FUND:**

(Rs. In Crores)

Time period	Equity	Unsecured loan/ inter corporate deposit/term loan from Banks/ FIs/ other loan	Bank Borrowing	Utilisation
Within 1 month of vesting period	2.00	40.96	-	Towards creditors/ existing liability/ stakeholders/ CIRP cost
Within 12 months of vesting period	-	10.00	-	Refurbishment, repairs & maintenance, deposits and start-up expenses
Within 12 months of	-	3.00	-	Working capital Margin

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vesting period					
Within 12 months of vesting period	-	-	9.00	Working borrowings expansion	capital /

The Resolution Plan shall be implemented through a special purpose vehicle (MPL Galva Tubes Private Limited) which will subscribe to the capital of KMCL. Fund will be infused by MPPL (Resolution Applicant) from their own fund and borrowing. The net worth of the company is Rs. 3537.82 lakhs as on 31.03.2018. The cash profit earned in FY 2017-18 is Rs. 502.38 lakhs. The MPPL may also borrow the fund directly in KMCL. The existing business assets of Kumar's Metallurgical Corporation Ltd continue to be charged to Secured Financial Creditor till final payment under the Resolution Plan. After final payment the security will be released by Secured Financial Creditor and the Resolution Applicant shall be free to create fresh charge in favour of new bankers/financial institution.

(E) Management of Corporate Debtor

The Resolution Plan proposes to appoint a Monitoring Committee consisting of Resolution Professional, one nominee of the Resolution Applicant, 02 nominees of the current CoC to oversee the implementation of the Successful Resolution Plan. Post the Transfer Date, the supervision of the Corporate Debtor will be in complete control and supervision of the Board of Directors appointed by the Resolution Applicant.

(F) Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:-

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (herein after referred to as Regulation)

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and has submitted his Form H under Regulation 39 (4). It is submitted that the Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the Resolution Applicant is not ineligible under Section 29A of the Code.

9. Further the Learned Counsel for the Applicant stated that the Resolution Plan takes care of the interest of the stakeholders concerned which includes Financial Creditors, Operational Creditors and payment of CIRP costs is being taken care in priority to payment to the other creditors.
10. We heard the Counsel for Applicant. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code in the following manner:
 - A. Plan provides for the priority payment of CIRP costs estimated to the extent of Rs. 0.65 crores along with CIRP costs incurred till approval of the Plan at actuals is proposed to be infused by the Resolution Applicant towards the same. If the expenses incurred towards CIRP costs is less than the amount proposed, then the surplus shall be paid to financial creditors in proportion to their admitted claim. If the expenses incurred is more than the proposed, the shortfall will be adjusted against the fund available to financial creditors.
 - B. To pay the amount due to Operational Creditors of the Corporate Debtor in the manner indicated supra. It is submitted that the Liquidation value of the Corporate Debtor is Rs.15.78 crores and Fair Market value is Rs. 24.04 crores. In the event the Liquidation value of the aforesaid operational claims is not more than the said proposed payment, the same is in compliance with the IBC requirement.

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11. The Resolution Applicant has inter-alia, sought certain directions to the statutory and regulatory bodies to grant necessary approvals
12. The Resolution Applicant proposed to appoint Directors to the Board of Directors as stated above in terms of Section 30 (2) (d). The Plan also provides for the implementation and supervision of the Resolution Plan. The Resolution Plan has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of Regulation 38 of the Regulations.
 - (a) The payment due to operational creditors will be made in priority over Financial Creditors (Regulation 38 (1) (a)).
 - (b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38 (1A)).
 - (c) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38 (1B)).
13. The Resolution Plan has been approved by CoC by 100% votes in its favour. In ***K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018)*** 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. On receipt of such 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.

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14. Further, the Hon'ble Court has further held at para 35 of the said judgement that ***the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 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.***
15. As held by Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors*** "the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved as held in para 42 of the said judgement.
16. It is clarified that under the Insolvency and Bankruptcy Code, 2016, all crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan. We refer to para 67 of the Judgement of Hon'ble Supreme Court in the matter of ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors (MANU/SC/1577/2019)***, which is as under, for better appreciation:- "**67: A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by the successful resolution applicant**".

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17. In view of the above ruling of Hon'ble Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein.
18. The Applicant/Resolution Professional has submitted that the Resolution Applicant has sought certain waivers and reliefs in 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. The same has also been held by Hon'ble Supreme Court in ***Ghanashyam Mishra and Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited.***
19. In the light of above and settled position of law, the instant Resolution Plan meets 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.

ORDER

20. The Resolution plan submitted by **M/s Mahalakshmi Profiles Private Limited** ("Resolution Applicant") for Kumar's Metallurgical Corporation Limited (Corporate Debtor) annexed to the Application is hereby approved. 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.
21. It is clarified under the Insolvency and Bankruptcy Code, 2016, all crystallized liabilities and unclaimed liabilities of

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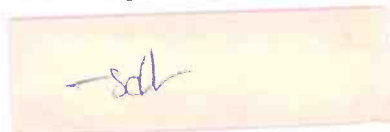
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the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.

22. 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.
23. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad 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.
24. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
25. The moratorium under Section 14 of the Code shall cease to have effect from this date.
26. 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.
27. The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
28. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.



Dr Binod Kumar Sinha
Member Technical



Madan B. Gosavi
Member Judicial