

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (PHYSICAL HEARING)


PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

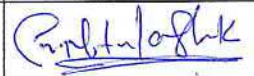

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 16.03.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC) No. 70, 77/2021 and IA No. 90/2021 inCP (IB) No. 563/9/HDB/2019
NAME OF THE COMPANY	V S Lignite Power Pvt Ltd
NAME OF THE PETITIONER(S)	Refex Industries Ltd
NAME OF THE RESPONDENT(S)	V S Lignite Power Pvt Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

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

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Keethna C.V. Gendur C.V. Nitin Kovelik	Adv. for Respondent 11, 12, 13 & 16	8978573939	
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Adv for 14, 15, 17, 18, 20

VUSNRaji
IA No. 77/21

Adv

9866446467



Devangi Karuia
(for Y. Srinivasayana)

PCS

9704630066

D.J. Karuia

Rahul Thomas
(for Mayur Munda)

Adv for
R. 4-7

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ORDER

IA 70/2021 – Allowed.

IA 77/2021 – Dismissed.

Orders pronounced vide separate orders.

List the matter on 20.04.2021.


MEMBER (T)


MEMBER(J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

IA No. 70/2021

In

CP (IB) No. 563/9/HDB/2019

*Application under Section 30 (6) Read with Section 31 (1) of Insolvency
& Bankruptcy Code, 2016, Read with Regulation 39 (4) of IBBI (IRPCP)
Regulations, 2016*

In the matter of

M/s Refex Industries Limited

Versus

VS Lignite Power Private Limited

Filed by:

Dr. Govindrajula Venkata Narasimha Rao
(Resolution Professional of VS Lignite Power Private Limited)
B/1201 Lansum Etania,
Puppalguda, Opp: My Home Avatar
Hyderabad - 500075

...Applicant
Resolution Professional

VERSUS

Sherisha Technologies Private Limited
Having Registered office at No. 1/171,
Old Mahabalipuram Road,
Thiruporur, Chengalpattu Dist.
Tamilnadu, India 603110

...Resolution Applicant

Date of order: 16.03.2021

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Appearance: Shri Suman Batra, Senior Advocate and
Dr. Govindarajula Venkata Narasimha Rao, RP

Heard on: 17.02.2021

**PER: SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

1. This is an Application filed under Section 30(6) Read With Section 31 (1) of Insolvency And Bankruptcy Code, 2016 Read With Regulation 39(4) of the Insolvency and Bankruptcy Board Of India (Insolvency Resolution Process Of Corporate Persons) Regulations, 2016 seeking approval of the Resolution Plan for the Corporate Debtor / VS Lignite Power Private Limited, as approved By Committee Of Creditors.
2. Brief facts leading to filing of the present application are that:-
 - 2.1 The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 18.09.2019 and Dr. Govindarajula Venkata Narasimha Rao was appointed as an Interim Resolution Professional ("IRP"). The Committee of Creditors (CoC) comprising the following Financial Creditors, in its 1st meeting held on 18.10.2019 had confirmed the Applicant as Resolution Professional (RP). The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

Sr. No	Name of Financial Creditor	Amount of Debt Admitted (INR Crs)	% Voting share
1.	Prudent ARC Limited (is CoC member since 01.10.2020 wherein debt has been assigned to Prudent ARC Ltd. by Edelweiss ARC & L&T Infrastructure Finance Co. Ltd vide assignment deed dated 1.10.20 & 02.12.2020 respectively)	398.55	45.29%
2.	Housing and Urban Development Corporation Ltd. (HUDCO)	156.03	17.73%

3.	State Bank of India	147.62	16.77%
4.	REC Limited	76.59	8.70%
5.	IFCI Limited	64.23	7.30%
6.	Axis Bank Ltd. (Assigned its entire exposure to Prudent ARC Ltd. dated 06.01.2021)	24.65	2.80%
7.	Bank of Baroda (Assigned its entire exposure to Prudent ARC Ltd. dated 06.01.2021)	12.42	1.41%
	Total	880.1	100.00%

2.2 During the period of CIRP ten Expression of Interests from Prospective Resolution Applicants (PRA) were received and in terms of the eligibility norms, the CoC shortlisted nine PRAs and apprised the CoC. The Request for Resolution Plan (RFRP) dated 09.12.2019 was approved by the CoC in its 4th Meeting held on 10.01.2020. This Tribunal extended vide order dated 13.03.2020 extended the CIRP period by 90 days beyond 180 days. The CoC at the request of PRAs extended the date of submission of Resolution Plans till 27.03.2020. However due to Covid induced lockdown the timeline could not be met. The 270 days CIRP after exclusion of lockdown period was reckoned as 28.08.2020 and the last date for submission of Resolution Plans was extended till 08.07.2020. This Tribunal further extended the CIRP period by another 60 days up to 27.10.2020 after excluding the period of lockdown wef from 25.03.2020 to 07.06.2020 followed by exclusion of 23 days lockdown period from 330 days, vide order dated 17.11.2020. Further this Tribunal vide order dated 16.12.2020 granted extension of 30 days additional time beyond 330 days of CIRP. The CoC received three Resolution plans as under:-

- i. Sherisha Technologies Pvt. Ltd. ("**Resolution Applicant I**")
- ii. Consortium of Manikaran Power Limited & ACB (India) Power Pvt. Ltd. ("**Resolution Applicant II**").
- iii. Ilabs Hyderabad Technology Centre ("**Resolution Applicant III**").

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2.3 The CoC after several rounds of negotiations with the Resolution Applicants evaluated the Resolution Plans of Resolution Applicants I & III as per the Evaluation Matrix and the same were put to vote from 03.12.2020 to 30.12.2020. The CoC through e-voting accepted the Resolution Plan submitted by Sherisha Technologies Pvt. Ltd. ("**Resolution Applicant I**") with amendments in terms of Section 29 (A) of the Code, and approved the plan with the voting share of 100%. It is further stated that while 06 out of 07 FCs have voted in the online voting platform, one FC viz, Housing Urban Development Corporation (HUDCO) submitted a letter dated 05.01.2021 voting in favour of Resolution plan -I. Copy of results of voting have been confirmed through scrutinizer report & letter from HUDCO dated 05.01.2021 are annexed and marked as ANNEXURE P. Pursuant to approval of the said Resolution Plan, a Letter of Intent (LOI) has been issued to **Sherisha Technologies Pvt. Ltd** on 31.12.2020 which has been accepted by Sherisha Technologies Pvt. Ltd. Copy of LOI dated 31.12.2020 is annexed and marked as **ANNEXURE Q**.

2.4 The Resolution Applicant has provided the performance security for an amount of INR 8,52,27,618/- (Indian Rupees Eight Crore Fifty Two Lakhs Twenty Seven Thousand Six Hundred Eighteen Only) (as per clause 14.B1 of Process Memorandum) through an unconditional and irrevocable performance bank guarantee ("PBG") as required under Regulation 36B 4(A) of the CIRP Regulations. Copy of PBG is annexed and marked as ANNEXURE R.

3. **The Contour of the Resolution Plan I of Sherisha Technologies Pvt. Ltd. approved by COC are as follows:-**

i. **Total Consideration:**

The total consideration brought under the Resolution Plan -I is Rs. **233.68 Crores** (Rupees Two Hundred Thirty-Three Crores Sixty Eight Lakhs Only). This is the highest offer amongst the three Resolution plans.

ii. **Credit worthiness of the Applicant:**

The Applicant's has Net worth of INR 127.5 Crore as on 31st March 2020. Majority of CoC having opined that the Resolution Applicant -I has the financial capability and demonstrates its creditworthiness, approved the plan.

iii. **Proposed payment to various stakeholders under the Resolution Plan are as follows:**

INR Crore

Creditors	Proposed payment under Resolution Plan -I
Unpaid CIRP Costs	60.85*
Workman Claims	0.83
Operational Creditors	1.00
Financial Creditors (Other than related parties)	170.00
Other Creditors	1.00
Total	233.68

*Note: INR 60.85 crs pertains to unpaid CIRP costs as on 31.10.2020. In the event the unpaid CIRP Costs on the Hon'ble NCLT's plan approval date ("**Effective date**") are lower than the provisional estimate provided by RP, i.e lower than Rs.60.85 Crores, the balance provision allocated towards CIRP Costs, shall result in corresponding reduction in the fund infusion by the Applicant, and without any change in the allocation of Resolution Plan amounts to Financial Creditors, Operational Creditors, Other Creditors and in vice versa situation, the increment would be met from additional fund infusion by the Resolution Applicant.

iv. **Financial Proposal:**

Sr. No.	Details	Amount/Description																		
1.	Amount of upfront payment to financial creditors	Rs. 15 Cr																		
2.	Balance payment obligations to financial creditors - other than related parties (other than upfront payment)	The residual debt of INR 155 Cr would be repaid as per repayment schedule below, item no. 3																		
3.	Repayment schedule for payment of balance amount to financial creditors	Term loan of residual debt of INR 155 Cr. Loan/Debt instruments: <table border="1"> <thead> <tr> <th>Year</th> <th>Q2*</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>1st</td> <td>3.5%</td> <td>3.5%</td> </tr> <tr> <td>2nd</td> <td>9%</td> <td>9%</td> </tr> <tr> <td>3rd</td> <td>12%</td> <td>12%</td> </tr> <tr> <td>4th</td> <td>12.5%</td> <td>12.5%</td> </tr> <tr> <td>5th</td> <td>13%</td> <td>13%</td> </tr> </tbody> </table> *At the end of each six months with Q2 referring to 180 days from the date of plan approval from NCLT	Year	Q2*	Q4	1 st	3.5%	3.5%	2 nd	9%	9%	3 rd	12%	12%	4 th	12.5%	12.5%	5 th	13%	13%
Year	Q2*	Q4																		
1 st	3.5%	3.5%																		
2 nd	9%	9%																		
3 rd	12%	12%																		
4 th	12.5%	12.5%																		
5 th	13%	13%																		
4.	Interest rate/coupon and frequency of payment of finance creditors	Loan/Debt Instruments: Term loan- Residual Debt- Interest rate payable on monthly basis @ 9 % p.a.																		
5.	Security Note: RA initially proposes to create first charge on current assets (CA) in favour of FCs provided that FCs shall agree to release the first charge on CA and second charge on Fixed Assets of the Corporate Debtor (CD) in favor of any bank / NBFC or any other entity whenever CD raised fresh working capital. In such an eventuality, FCs will have 2 nd charge on CA during term of resolution plan. RA confirmed that the new security structure to be created and perfected within 60 days from the date of release of all the existing security by the existing charge holders.	i. First charge on the Fixed Assets, including movable and immovable assets of the Corporate Debtor; ii. Second charge on the Current Assets of the Corporate Debtor iii. Assignment of project documents and contracts. iv. pledge of 51% of the equity shares of the Corporate Debtor to Financial Creditors (other than related parties)																		
6.	Payment to stakeholders other than financial creditors	a. Operational creditors- INR 1 CR on upfront basis																		

Sr. No.	Details	Amount/Description
		<p>with full and final settlement;</p> <p>b. Workman/Employees- INR 0.83 Cr on upfront basis with full and final settlement;</p> <p>c. Govt Dues- Govt dues admitted if any constitute as part of Operational creditors. Hence the settlement of dues would form part of Operational creditors;</p> <p>d. Other creditors (if any)- INR 1 cr as full and final settlement;</p> <p>e. Shareholders- Nil</p>
7.	Timeline for payment to stakeholders other than financial creditors	All payments to stakeholders other than financial creditors are proposed to be paid within 60 days from the date of approval of the Resolution Plan by Adjudicating Authority

v. **Funding/Total Equity/Quazi-Equity infusion:**

Common Equity shares:

- a. Purpose- Upfront payments;
- b. Amount-INR 5 Cr;
- c. Timing of infusion- Within 60 days from Effective Date;
- d. Terms: Issuance of shares favoring RA with 100% voting rights of Corporate Debtor, subsequent to cancellation of existing Equity/Preference shares;

Debentures/Quasi Equity:

Purpose- Upfront payments and also funding for 1st installment of term debt, during first year of operations;

- a. Amount-INR 66 Cr;
- b. Timing of infusion-The amount would be infused progressively over a period of 1 year from the Effective Date as per the requirement under the Resolution Plan;

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- c. Terms: Subscription of optionally convertible debentures carrying a coupon of 9% per annum payable on cumulative basis subsequent to the payment of Residual debt
- d. Equity/Quazi- Equity infusion for improvement of business operations: Resolution Applicant ("RA") proposed to infuse total amount of Rs. 71 Cr as detailed above, towards settlement of unpaid CIRP Costs, upfront payments to creditors and other payments. RA clarified that the source of aforementioned funds are from his internal sources.
- vi. **Restructuring of the share capital of the Corporate Debtor**
- The Shareholding pattern of the Company on the Effective Date, upon completion of the steps set out above, will be as follows:

Name of Shareholder	Number of Class BB Shares held	INR in crores	Shareholding pattern
Applicant or its affiliates	50,00,000 (issued with face value of INR 10 each)	5.00	100%

The entire shareholding of the Corporate Debtor shall be held by the Applicant or its Affiliates or such entities (LLPs) as proposed to be incorporated under the Resolution Plan, upon completion of the above steps. The Applicant reserves the right to change the capital structure/instruments proposed herein, without affecting the payouts proposed to stakeholders or timelines for such payments, in a manner which best suits its business strategy.

- In the event the unpaid CIRP Costs on the Effective Date are lower than the provisional estimate provided by Resolution Professional, the balance provision allocated towards CIRP Costs, shall result in corresponding reduction in the fund infusion by the Applicant and without any change in the allocation of Resolution Plan amounts to Financial Creditors, Operational Creditors, Other Creditors.
- The Resolution Applicant would infuse an amount of Rs.71 Crores in a combination of equity & quasi equity (as defined above) for effective implementation of the Resolution Plan. However, at the

time of implementation of the Resolution Plan, any shortfall of funds for meeting the Upfront Payment requirements will be addressed by infusion of additional capital. The Resolution Applicant shall ensure that it meets the Upfront Payment obligations as proposed in this Resolution Plan towards Unpaid CIRP Costs, Financial Creditors, Operational Creditors (including workmen) & Other Creditors.

- Upon approval of the Resolution Plan, the Applicant shall identify/incorporate a separate company/LLP, and then such entity shall enter into definitive agreements and implement the resolution plan. The Applicant shall hold majority share capital and ownership interest in such entities. The Resolution Applicant shall sign sponsor undertaking document to this effect.
- The Resolution Applicant proposes to incorporate two LLP's whereby each would in turn hold 50% stake in the Corporate Debtor.
- LLP A: (Shareholder 1 of Corporate Debtor) : 50% Shareholding in the Corporate Debtor
 - ✓ Shareholder 1 of LLP A : Sherisha Technologies Private Limited with 51% Shareholding
 - ✓ Shareholder 2 of LLP A: Mr. Anil Jain (Individual) : with 49 % shareholding
- LLP B (Shareholder 2 of Corporate Debtor): 50% Shareholding in the Corporate Debtor
 - ✓ Shareholder 1 of LLP B: Sherisha Technologies Private Limited: 51% Shareholding
 - ✓ Shareholder 2 of LLP B: Mr. Tarachand Jain (Individual): 49% shareholding
- The Resolution Applicant has agreed to pledge 51% of the shares of the Corporate Debtor with the Financial Creditors.

vii. **Change in Management**

The Resolution Applicant has undertaken to ensure that the existing directors of the Corporate Debtor shall vacate post of Directorship and pursuant thereto, a new Board of Directors and manager shall manage and control the affairs of the Corporate Debtor.

viii. **Management and Control of the Corporate Debtor**

From the date of Approval of the Resolution Plan till the complete takeover of the Corporate Debtor (the "Interim Period"), the day to day functioning of the Corporate Debtor will be carried out under the instructions, control and management of Monitoring Committee, comprising of one representative of the Resolution Applicant, one representative nominated by Financial Creditors and one representative appointed by the Resolution Professional. The Monitoring Committee shall manage the Corporate Debtor in trust and shall appoint the Resolution Professional to manage the day-to-day the Corporate Debtor under its supervision, until the full hand-over of assets of the Corporate Debtor including business records and all statutory records, tax filings, account books and account records taken into custody by the Resolution Professional under Section 17 and 18 of the Code read with Sections 23 of the Code.

ix. **Reliefs and Concessions:**

The Resolution Applicant in Clause 5 of the Plan has sought for various reliefs and concessions as detailed therein.

x. **That the Resolution Plan -I complies with the mandatory requirement under the Code and Regulations in the following manner:**

- a) The Resolution Plan -I provides for the payment of insolvency resolution process costs in priority to the repayment of other debts of the corporate debtor. Payment of debt of the operational creditor is more than the amount that would be payable to operational creditor in the event of liquidation of the Corporate Debtor and provision is made to pay the operational creditors in priority over financial creditors in





terms Section 30 (2)(a) and (b) of the Code read with Regulation 38 (1).

- b) Resolution Plan -I provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan -I. It is noted that management of the affairs of the Corporate Debtor shall be with the Resolution Applicant after approval of the Resolution Plan -I. (Section 30 (2)(c)).
 - c) Resolution Plan -I provides for implementation and supervision of the Resolution Plan. (Section 30 (2)(d)).
 - d) Resolution Plan -I does not contravene any of the provisions of the law for the time being in force. (Section 30 (2)(e)).
 - e) Resolution Plan -I conforms to such other requirements as may be specified by the Board, i.e.:
- 4.
- 1. Paragraph 16 A of the Resolution details as to how it has dealt with the interest of all stakeholders including financial creditors and operational creditors of the Corporate Debtor (Section 38(1A))
 - 2. Resolution Plan -I provides for term of the plan and its implementation schedule; (Regulation 38(2)(a)).
 - 3. Resolution Plan -I provides for the management and control of the business of the corporate debtor during its term; (Regulation 38(2)(b)).
 - 4. Resolution Plan -I provides for adequate means for supervising its implementation (Regulation 38(2)(c)).
 - 5. The Applicant/Resolution Professional has submitted that, the Resolution Applicant has sought certain reliefs and concessions as are mentioned in Clause-5 of the Resolution Plan annexed to the application. The Resolution Applicant needs to approach the authorities concerned for permits, if required, and the same will be considered by the concerned authorities in accordance with law.
 - 6. The Resolution Applicant proposes to appoint Directors to the Board of Directors as stated above in terms of Section 30 (2) (d).

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The Plan also provides for the implementation and supervision of the Resolution Plan. The Resolution Applicant 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))
- 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)).

7. For better appreciation 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:-

“. 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.

8. 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. The Resolution Plan has been approved by the CoC by e-voting on 30.12.2020 with 100% votes in favour of the Resolution Plan.

9. 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

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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.

10. Further, the Hon'ble Court has 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.***
11. By relying on the judgement of the 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.
12. 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. The same deserves favourable consideration and accordingly IA No. 1025/2020 is allowed with the following directions.



ORDER

13. The Resolution Plan submitted by **SHERISHA TECHNOLOGIES PRIVATE LIMITED** annexed to the Application stands 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.
14. 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 by the appropriate Authorities in accordance with law. The Corporate Debtor to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful.
15. 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.
16. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in para 3 (B) supra.
17. The moratorium under Section 14 of the Code shall cease to have effect from this date.
18. The Applicant and Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority every quarterly.



19. 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.
20. The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
21. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.


(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL) 16/03/2024


(BHASKARA PANTULA MOHAN)
MEMBER (JUDICIAL)

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**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD**

IA No. 77/2021

In

CP (IB) No. 563/9/HDB/2019

*Application under Section 60 (5) of IBC, 2016 read with Rule 11 of NCLT
Rules, 2016*

In the matter of
Refex Industries Limited vs Lignite Power Private Limited

Filed by

IFCI Limited

61, Nehru Place, New Delhi-110019

Office at 8th Floor,
Taramandal Complex
No. 5-9-13, Saifabad
Hyderabad - 500004

...Applicant

VERSUS

Dr. Govindrajula Venkata Narasimha Rao

Resolution Professional of
VS Lignite Power Private Limited

...Respondent
Resolution Professional

Date of order: 16.03.2021

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Appearance:

For Applicant : Shri V.V.S. N. Raju, Advocate
For Respondent : Shri Suman Batra, Senior Counsel
Dr. Govindarajula Venkata Narasimha Rao,
Resolution Professional in person

Heard on: 03.03.2021

**PER: SHRI BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)**

ORDER

1. Under consideration before us is the interlocutory application filed under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016, read with Rule 11 of NCLT Rules, 2016, by IFCI Limited (Financial Creditor / Member of CoC) seeking directions to Resolution Professional for VS Lignite Power Private Limited for appointing two independent valuers for conducting valuation of the land parcels admeasuring 238.65 acres situated in Gadiyala and Hirai Villages, Bikaner District, Rajasthan mortgaged by the Corporate Debtor in favour of the Applicant herein.
2. It is the case of the Applicant that IA No. 70/2021 is filed by the Resolution Professional / Respondent herein seeking approval of the Resolution Plan which has been approved by the Committee of Creditors (CoC) through e-voting held from 07.12.2020 to 24.12.2020.
3. The Applicant herein is the member of CoC having 7.30% of voting share and the Resolution Professional has admitted the claim to the tune of Rs. 64.23 crores of the Applicant. It is the case of Applicant therein that it provided financial assistance to KSK Energy Ventures Ltd (KEVL) wherein the Corporate Debtor has extended Corporate Guarantee to KEVL amounting to Rs. 50.00 crores against securities of Corporate Debtor in the form of mortgage of the properties detailed at para 7 (1) & (2) of the instant Application. The further case of the Applicant is that the valuation of the properties situated in Gadiyala and Hirai villages were done in the month of April 2019 and according to the valuation report, the distress sale value of the said properties is Rs. 43.20 crores as against the fair valuation of Rs. 2.38 crores and Rs. 0.57 crores respectively done by two valuers during CIRP process. The Applicant alleges that Respondent herein



has submitted the Resolution Plan based on the meagre value assigned to the asset by the valuers appointed by the RP and that the same is the case with Liquidation value as well.

4. The Applicant alleges that despite taking its objection before the CoC and having sought for valuation report from the Resolution Professional, the Respondent did not pay any heed to the objections and shared the valuation report with Applicant only on 07.12.2020 at the stage when the final resolution plans were put for e-voting of the CoC and the Applicant voted in favour of the Resolution Plan.
5. The reason stated by the Applicant for voting in favour of the resolution plan despite significant variation in the valuation of the properties conducted in CIRP process, is that it would fetch an amount of Rs. 15.75 crores (including interest) over a period of 5 years under the resolution plan. Had the Applicant dissented then, it would be eligible only for an amount of Rs. 1.48 crore on priority basis. The Applicant submits, it would suffer irreparable loss if the said valuations are taken for the purpose of CIRP of the Corporate Debtor and hence prayed the Adjudicating Authority to direct the Resolution Professional to appoint two independent valuers for conducting valuation afresh of the land admeasuring 238.65 acres in Bikaner District Rajasthan.
6. Per contra, it is the case of Respondent / Resolution Professional that the resolution plan submitted by "**Sherisha Technologies Private Limited**" (STPL) was approved by all the members of the CoC including the Applicant herein with 100% voting. The Resolution Professional vehemently opposed the allegations made in the Application and submits that at the stage when the resolution plan is reserved by the Adjudicating Authority for passing orders on 01.03.2021, the belated intervention by the Applicant would inhibit the entire CIRP when the Applicant has itself voted in favour of the Resolution Plan. It is further the case of Resolution Professional that two registered valuers namely, "GAA Advisory LLP" and

"Kakode Associates" were appointed in compliance with Regulation 27 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016. The valuation reports have been deliberated upon by the CoC members which includes the Applicant herein in the 11th CoC meeting held on 19.09.2020 and that the clarifications sought by the Applicant were provided. The Resolution Professional is questioning the delay in challenging the valuation reports secured by the Resolution Professional and it is the failure on the part of the Applicant not to raise any objection on the aspect of valuation either before the CoC or the Adjudicating Authority at that point of time. It is further submitted by the Resolution Professional that the entire exercise of CIRP starts after conducting the valuation and the Resolution Professional has to adhere to the timelines.

7. By placing reliance on Hon'ble Supreme Court judgement in the matter of ***Maharashtra Seamless vs Padmanabhan Venkatesh (Civil Appeal No. 4242 of 2019)***, the Resolution Professional submits that the Liquidation valuation is not binding on the CoC and that the same is only for guidance of the CoC to consider the Resolution Plan.
8. The Resolution Professional is questioning the large distinction and inflation between the valuation of the same land done by the independent valuer appointed by the Applicant who has valued the fair value of the land at Rs. 0.23 crores per acre in April 2019, while both the valuers appointed by the RP have valued the land at Rs. 24,000/- per acre and Rs. 1 lakh per acre respectively in June 2020. It is further submitted by the Resolution Professional that the payout currently to the Applicant as per approved resolution plan by CoC would be higher and benefit the Applicant. Hence prayed the Adjudicating Authority to dismiss the Application.
9. We have heard the Counsel for Applicant and the Resolution Professional and perused the documents filed by both the parties.

IA No. 70/2021 which is filed for approval of the Resolution Plan was listed on 01.03.2021 for pronouncement of orders. When the matter came up, the Bench was apprised another IA No. 77/2020 is filed by IFCI Ltd questioning the valuation done by the RP and in the light of serious omissions pointed out in the valuation report by IFCI Ltd which is a responsible Government Organisation, the pronouncement of order in IA No. 70/2021 was deferred. The Counsel appearing for the RP in IA No. 70/2021 took serious objection stating that instant IA is filed at a belated stage by the Applicant who voted in favour of the Resolution Plan and posted IA No. 77/2021 for further hearing on 03.03.2021.

10. It is not in dispute that Applicant is a member of CoC having 7.30% voting share in the CoC and voted in favour of the Resolution Plan with 100% votes in favour of it. The objection raised by the RP is that it is unprecedented abuse of the process of the court by questioning the valuation and the Resolution plan that too after a year by a party which is signatory to the approval of the Resolution Plan.
11. The objection raised by the Applicant in IA assuming for a moment is taken on record, the fact remains that their entitlement for voting is only 7.30%. If the same percentage is taken as dissent, still 92.70% of the Members of CoC have not questioned the same and voted in favour of the Resolution Plan. Apart from that the Applicant in IA cannot blow hot and cold and being the member of CoC who voted in favour of the Resolution Plan cannot suddenly turn around and file this Application at the juncture when the Resolution Plan is being considered for the approval by this Bench. However, taking into consideration the objection raised by the Applicant, this Application is disposed of on merits by following the judgement as stated below.

12. For better appreciation para 26 and 27 of Hon'ble Supreme Court judgement in the matter of "**Maharashtra Seamless vs Padmanabhan Venkatesh (Civil Appeal No. 4242 of 2019)**" are reproduced below:-

Para 26: No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match the liquidation value arrived at in the manner provided in Clause 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in the case of Essar Steel (Supra). We have quoted above the relevant passages from this judgement.

Para 27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31 (1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per-se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the Resolution Plan".

13. The Hon'ble NCLAT in the matter of **JMF ARC vs Welldo Holdings and Export Private Limited** has clearly held that ***no interlocutory applications before the Adjudicating Authority would be maintainable during the period of submissions of a CoC approved Resolution Plan by the RP before the Adjudicating Authority for final determination of that proposed Resolution Plan as approved by CoC.***

~~14.~~ In view of the above discussion, we find no substance in the arguments advanced by the Learned Counsel for the Applicants as they are not in line with the Code and Regulations. The Application sans merits and liable to be rejected.

15. In the result, IA No. 77 of 2020 is dismissed.


(Veera Brahma Rao Arekapudi)
Member (Technical) 16/08/2024


(Bhaskara Pantula Mohan)
Member (Judicial)