

SL. No.3

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

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 01.02.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1772/2023 in Company Petition IB / 102/2022
NAME OF THE COMPANY	Kling Enterprises India Limited
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	10 of IBC

ORDER

IA (IBC)/1772/2023

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

SL. No.4

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, COURT - II**

**IA No.1772 of 2023
in
CP(IB) No. 102/10/HDB/2022**

[Under Section 33(2) r/w Section 34 of the Insolvency & Bankruptcy Code, 2016]

**In the matter of
M/s. KLING ENTERPRISES INDIA LIMITED**

In the matter of:

Mr. Bathina Venka Reddy
Resolution Professional of
M/s. Kling Enterprises India Limited.
Reg. No. IBBI/IPA-002/IP-N00645/2018-2019/12032
Sri Venkateswara Nilayam, Plot No-10, II Floor,
Krishnapuram, Road No-10, Banjara Hills,
Hyderabad-500034, India

.... Applicant/Resolution Professional

Order Pronounced on: 01.02.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Mr. Bathina Venka Reddy, RP

[PER: BENCH]

ORDER

1. The instant Application is filed by the Resolution Professional of M/s.Kling Enterprises India Limited/Corporate Applicant under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, seeking –
 - i. To liquidate M/s. Kling Enterprises India Limited (Corporate Applicant); and
 - ii. To appoint Mr. Bathina Venka Reddy as the Liquidator of the Corporate Applicant.

2. This Adjudicating Authority, vide Order dated 27.10.2022 admitted the Company Petition bearing CP (IB) No.102/10/HDB/2022 filed by M/s.Kling Enterprises India Limited/Corporate Applicant under Section 10 of the IBC and initiated CIRP process by appointing Mr. Bathina Venka Reddy as Interim Resolution Professional (IRP), who was later confirmed as Resolution Professional (RP) at the 1st CoC Meeting held on 01.12.2022.

3. On assuming charge as Interim Resolution Professional, the Applicant issued public Announcement in Form-A on 07.11.2022 in Financial Express (English Newspaper) and Nava Telangana (Telugu Newspaper) in all editions of Telangana. In response, IRP received one claim from the

operational creditor i.e. Income Tax Department claiming an amount of Rs.48,61,80,780/-.

4. In the 3rd CoC Meeting, RP had placed the list of prospective resolution applicants who have submitted enquiries pursuant to the issue of Expression of Interest and also placed before the CoC the list of resolution applicants who have submitted their EOI to participate in submitting the resolution plans. In the same meeting, the RFRP along with the evaluation matrix was also approved by the CoC. In the said CoC meeting, based on the receipt and consequent verification of the claims, the CoC was reconstituted. The existing operational creditor i.e., Income Tax Department voting percentage was reduced to 96.88% and new operational creditor M/s. Barret Commodity Traders Pvt Ltd has joined the CoC with voting percentage of 3.12%.
5. In the 5th CoC Meeting, RP had placed the Resolution Plans received from two resolution applicants who have actually submitted the plans out of the three final prospective resolution applicants for the approval of the CoC members. There is huge difference between valuations received from the appointed two valuers, the RP had obtained valuation from third registered valuer also. RP informed the committee that the mandatory CIRP period of 180 days is going to get completed by 03.05.2023. He informed the CoC that to extend the CIRP period for another 90 days by making an application to the Adjudicating Authority, since two resolution plans were received and

are pending for the approval by the CoC and accordingly the CoC granted approval for making an application for seeking extension of 90 days beyond the 180 days CIRP period which will conclude by 1st August 2023. This Tribunal granted the extension vide order dated 3rd May 2023.

6. In the 7th CoC Meeting held on 26 July 2023, the RP had finally placed the resolution plan for approval of CoC. However, the representative of Income Tax Department informed that due to non-receipt of any internal approval owing to transfers within the department to accord their approval on the resolution plan and requested for further extension of another 90 days beyond 270 days which will be concluded by 30 October 2023. This Tribunal granted the second extension also vide order dated 07 August 2023.
7. In the 8th CoC Meeting held on 10 October 2023, RP had finally placed both the resolution plans for approval of the CoC. RP had opened the e-voting window upto 16 October 2023. However, one resolution plan submitted by Mr. Ratakonda Vivek, Resolution Applicant had received the approval from one operational creditor who is holding 3.12% and the second resolution plan submitted by Mr. Durgesh Malepati was rejected by one of the operational creditor who is holding 3.12%. The other operational creditor i.e., the Income Tax Department holding 96.88% had abstained from voting on both the resolution plans.

8. RP had informed the CoC about the consequences of the resolution plans not receiving the requisite majority of voting as per the provisions of IBC in the said meeting of 8th COC at item no.3 itself which is reproduced hereunder:

“Where two or more resolution plans are put to vote simultaneously, pursuant to the second provision to sub-regulation 3B of regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations, 2016), where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes”

9. RP had again opened the e-voting window upto 20th October 2023 and placed the resolution plan which has received majority votes for voting, in order to receive the requisite majority of votes as required under IBC Provisions i.e., 66% approving the resolution plan. Even in the second opening of e-voting window, the plan has not received the requisite majority and accordingly the resolution professional is bound to make an application for commencement of liquidation of the corporate applicant. Hence, this application.
10. We have heard the Learned RP and perused the record.

11. In view of the facts and circumstances mentioned above, **since, this Adjudicating Authority did not receive any Resolution Plan under Sub-Section (6) of Section 30 of the I&B Code, 2016**, this Adjudicating Authority deems it proper to allow the Application bearing IA No.1772 of 2023. Accordingly, in exercise of powers conferred under Sub-Clause (i), (ii) and (iii) of Clause (a) of Sub-Section (1) of Section 33 of the I&B Code, 2016, we proceed to pass the Order as follows:—
- i. This Adjudicating Authority hereby order for Liquidation of M/s.Kling Enterprises India Limited, which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;
 - ii. This Adjudicating Authority hereby appoint Mr. Bathina Venka Reddy as Liquidator as resolved by CoC. He has given his consent in Form-2 and holds AFA which is valid upto 26.09.2024. He shall issue a public announcement stating therein that the Corporate Applicant is in Liquidation;
 - iii. The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of Liquidation;
 - iv. Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Applicant. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Applicant, with the prior approval of this Authority.

- v. We make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- vi. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Applicant, except when the business of the Corporate Applicant is continued during the Liquidation process by the Liquidator.
- vii. All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Applicant, as the case may be, shall cease to have effect and shall be vested in the Company Liquidator viz., Mr. Bathina Venka Reddy. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- viii. The personnel of the Corporate Applicant shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Applicant.
- ix. The Liquidator shall keep in view of the provisions of Regulation 32A of IBBI (Liquidation Process) Regulations, 2016 and shall endeavour to first sell the Corporate Applicant or its business as a going concern. However, if he is unable to sell the Corporate Applicant or its business within 90 days from liquidation commencement date, Liquidator shall proceed to sell the assets of the Corporate Applicant under clauses (a) to (d) of Regulation 32 of IBBI (Liquidation Process) Regulations, 2016.

- x. The Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in accordance with the decision taken by the COC under Regulation 39D of IBBI (Insolvency Resolution Process Corporate Persons) Rules, 2016 r/w Regulation 4(1) of IBBI (Liquidation Process) Regulations, 2016.
- xi. Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Applicant and Company Liquidator viz., Mr. Bathina Venka Reddy for information and compliance.
 - (i) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.
 - (ii) Accordingly, Application bearing IA No. 1772/2023 is allowed and stands disposed of.

SD/-
(SANJAY PURI)
MEMBER (TECHNICAL)

SD/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

Apoorva