

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

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 21.04.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/480/2023 In CP (IB) No.260/9/HDB/2020
NAME OF THE COMPANY	Jeevan Polymers Pvt Ltd
NAME OF THE PETITIONER(S)	Shruti Impex
NAME OF THE RESPONDENT(S)	Jeevan Polymers Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

Heard. Orders pronounced, vide separate order.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

**I.A. No.480 OF 2023
in
CP(IB) NO. 260/9/HDB/2020**

*[U/s. 30(6) and U/s. 31(1) of the I&B Code, 2016 r/w Regulation 39(4) of
the IBBI (IRPCP) Regulations, 2016]*

**In the matter of:
M/s. JEEVAN POLYMERS PRIVATE LIMITED**

Mr. Gullapalli Kishore Babu
Resolution Professional
M/s. Jeevan Polymers Pvt. Ltd.
H.No.11-11-169, Sowbhagyapuram
Road No.1, Kothapet
Hyderabad – 500 035

.... Applicant /
Resolution Professional

Date of Order: 21.04.2023

Coram:

**Hon'ble Justice Smt. Telaprolu Rajani, Member, Judicial
Hon'ble Sri Charan Singh, Member, Technical**

Parties / Counsels Present:

For the Applicant : Mr.Gullapalli Kishore Babu, RP
Mrs. JVL Bharati, Advocate

[PER : BENCH]

ORDER

- I. The instant Application bearing IA No. 480/2023 is filed by the Resolution Professional of M/s. Jeevan Polymers Private Limited/ for short 'Corporate Debtor' under Section 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016, r/w regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking approval of the Resolution Plan submitted by M/s.Radiant Corporation Pvt. Ltd. for short 'Resolution Applicant' as duly approved by the Committee of Creditors with 91.823% voting share.
- II. The Company Petition CP(IB) No. 260/9/HDB/2020 filed by M/s.Shruti Impex Private Limited u/s. 9 of IBC, 2016 was admitted by the Adjudicating Authority, vide Order dated 19.04.2022 and commencement of CIRP against the Corporate Debtor/M/s. Jeevan Polymers Private Limited was ordered by appointing Mr. Gullapalli Kishore Babu as the Interim Resolution Professional (IRP). Later, in the 1st COC Meeting held on 21.05.2022, the IRP confirmed as Resolution Professional, as Resolution Professional 'RP'.
- III. On receipt of claims from the Creditors pursuant to public announcement dated 23.04.2022, the RP constituted the Committee of Creditors, for short 'COC' comprising of the following financial creditors of the Corporate Debtor/M/s. Jeevan Polymers Private Limited.

S.No.	Name of the Creditor	Voting %
1.	M/s.Union Bank of India	75.98
2.	M/s.Radiant Interconnect Solutions India Pvt. Ltd.	15.84
3.	Mrs. Aarthi Sameer Maheswari	0.43
4.	Mrs. Sharda Sachin Maheswari	0.32
5.	Mr. Suresh Kumar Jhawar	0.15
6.	Sheetal Jhawar	0.20
7.	Vijay Kumar Baheti	0.25
8.	Anuradha Baheti	0.30
9.	Preeti Baheti	0.30
10.	Rajesh Narayan Somani	0.29
11.	Sarvesh Narayan Somani	1.36
12.	Arpana Somani	0.94
13.	Sunita Somani	0.10
14.	Rashmi Somani	3.52

IV. It is averred that the RP conducted a total of Fourteen (14) meetings of the COC during the CIRP. The Applicant issued Form-G on 15.07.2022. In response, Expression of Interests were received from the following three Prospective Resolution Applicants on 23.09.2022.

- i. M/s.Rockwell Industries Ltd.
- ii. M/s.Radiant Corporation Pvt. Ltd.
- iii. M/s.Bluesky Dealers Ltd.

- V. The Resolution Plans were scrutinised by RP and presented to COC on 10.11.2022 along with valuation details received from the two (2) Registered Valuers.
- VI. In the 7th & 8th CoC Meetings held on 30.11.2022, 09.12.2022, the CoC conducted negotiations with the three Resolution Applicants and advised them to further improve their offer and gave time upto 03.12.2022 and 15.12.2022 respectively to revise their offer and submit their improved offer.
- VII. In the 9th COC meeting held on 19.12.2022 and adjourned meeting held on 21.12.2022, COC decided to advise all three resolution applicants to submit their revised plans by 24.12.2022, which will be taken for voting.
- VIII. The Applicant had filed an application with the Adjudicating Authority seeking extension of CIRP period by 60 days beyond 270 days, which was allowed vide order dated 17.01.2023 by virtue of which, the date of CIRP was extended upto 15.03.2023.
- IX. In the 11th COC Meeting held on 02.01.2023, the RP informed to the CoC that one of the Resolution Applicants, M/s. Radiant Corporation Pvt. Ltd. vide email dated 30.12.2022 proposed to revise their offer from Rs.20.56 crores to Rs.22.60 crores, which is significantly high. For giving equal opportunity to the Resolution Applicants, the COC advised all three resolution applicants to submit their revised Resolution Plans by 09.01.2023.
- X. The valuation of the land & buildings of the Corporate Debtor has been valued by the two Registered Valuers appointed as per the provisions of the Code and the average fair value and liquidation

value of the land and buildings of the Corporate Debtor are as follows:

S.No.	Description of class of asset	Average Fair Value (Rs.)	Average Liquidation Value (Rs.)
1.	Land and Buildings	26,78,52,000/-	21,15,00,000/-

- XI. After receiving the revised Resolution Plans from the three Resolution Applicants, during the 13th COC Meeting held on 08.03.2022, RP kept the revised Resolution Plans before the COC for approval. The CoC evaluated the Resolution Plan submitted by the Prospective Resolution Applicant as per the Evaluation Matrix and Section 29A of the Code. After evaluating in terms of both qualitative and quantitative criteria and aggregate the revised resolution plan submitted by M/s.Radiant Corporation Pvt. Ltd. was put for e-voting.
- XII. The Resolution Plan submitted by M/s.Radiant Corporation Pvt. Ltd. (Resolution Applicant) was considered and approved by the CoC with a voting share of 91.823% in favour of it under Section 30(4) of IBC. The Applicant further submits that all the requirements envisaged under the Code and Rules/Regulations made there-under have been met. After obtaining approval from COC, RP submitted an application before the Hon'ble Adjudicating Authority for approval of the Resolution Plan of M/s.Radiant Corporation Pvt. Ltd.
- XIII. The salient features of the Resolution Plan submitted by the Successful Resolution Applicant, M/s.Radiant Corporation Pvt. Ltd. are as follows:

The total Resolution Plan Amount of Rs.23,28,46,739/- to be paid to various stakeholders is as follows:

- a) Rs.30,00,000/- towards 100% IRP expenses. (In case the actual IRP expenses exceed Rs.30,00,000/- the same shall be met from out of the amount payable to the Secured Financial Creditor i.e. Union Bank of India. In case the actuals are less than Rs.30,00,000/- the surplus will be paid to the Secured Financial Creditor. i.e. Union Bank of India in addition to the amount offered to them under the Plan.
- b) Rs.27,70,00,000/- to Union Bank of India, Secured financial Creditor.
- c) Rs.1,00,000/- to Unsecured Financial Creditors to be distributed in accordance with the amount of claim admitted.
- d) Rs.26,46,739/- to Government dues ESI.
- e) Rs.60,000/- to Government dues, GST
- f) Rs.40,000/- to other Operational Creditors.

A copy of the Resolution Plan along with its annexures is filed as **Annexure – 1** at page nos.37 to 46 of the application.

- XIV. In the 14th COC Meeting held on 28.02.2022, inter alia, the Committee agreed to accept minor corrections in the Financial Projections submitted by M/s.Radiant Corporation Pvt. Ltd., as a result of which, the internal rate of return is modified from 5.25% to 14.59%. A copy of the Minutes of the 14th COC meeting is filed as Annexure-4 of the application.

- XV. The RP determined PUF E Transaction with respect to missing of machinery from the premises of Corporate Debtor and filed IA 940/2022 before the Adjudicating Authority, which is pending for adjudication.
- XVI. RP appointed M/s.Raju & Associates as Forensic auditors for conducting a Forensic Audit for the transactions that effected the stake holders of the Corporate Debtor during the period from 01.04.2017 to 31.03.2022. The report submitted by the Forensic Auditor filed before the Adjudicating Authority on 09.03.2022, is also pending for adjudication.
- XVII. On 09.03.2023, the RP issued 'Letter of Intent' (LoI) to the SRA and advised to remit Rs.5,00,00,000/- towards Financial Guarantee. Accordingly, the SRA furnished a Bank Guarantee of Rs.5,00,00,000/- (Rupees Five crores only), which is valid upto 09.06.2023 with acceptance of LOI. Copies of the LOI and Bank Guarantee are filed as Annexures 7 & 8 **at page nos.169 to 171 and 172 to 178 of the application respectively.**
- XVIII. **Contour of the Resolution Plan:**
- i. The Resolution Plan is submitted by **M/s. Radiant Corporation Pvt. Ltd., for short 'Resolution Applicant'**. The Resolution Applicant is engaged in manufacturing of Engineered and Customised Electric and Electronic Speciality Wires & Cables, including molded Cables & Assemblies, High Precision Machined Components. The RA shall subscribe to the capital of M/s.Jeevan Polymers Private Limited. The required funds will be infused by the Resolution Applicant & Associates from their own funds.
 - ii. The Resolution Plan Amount provided for the stakeholders is tabulated below.

Date of Order: 21.04.2023

(Rs. in crores)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21				
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	5409.57	5409.57	2270.00	41.96
		Total[(a) + (b)]	5409.57	5409.57	2270.00	41.96%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	--	--	--	--
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	935.58 1127.54	582.15 1127.54	0.34 0.66	0.04 0.06
		Total[(a) + (b)]	2063.12	1709.70	1.00	0.05
3	Operational Creditors	(a) Related Party of Corporate Debtor	--	--	--	--
		(b) Other than (a) above:				

		(i)Government - ESIC - GST	26.47 144.18	26.47 144.18	26.47 0.60	100 0.42
		(ii)Workmen &	251.25	--	--	--
		(iii)Employees	947.33	947.33	0.40	0.04
		(iv) Others				
		Total[(a) + (b)]	1369.23	1117.98	27.47	2.00
4	Other debts and dues	CIRP Expenses	At actuals	At actuals	At actuals	100%
Grand Total			8841.92	8237.25	2298.47	25.99

iii. The Successful Resolution Applicant proposes to distribute the Resolution Plan amount to different stakeholders in the following manner:

S.No.	Category of Creditor/Stakeholder	Claimed Amount	Admitted Amount	Final Settlement Amount
1.	CIRP Costs	30,00,000	30,00,000	30,00,000
2.	Secured Financial Creditors	54,09,56,860	54,09,56,860	22,70,00,000
3.	Unsecured Financial Creditors	0	0	0
	A.Related Parties	0	0	0
	B. Other unsecured Financial Creditors	20,63,12,277	17,09,69,711	1,00,000
4.	Operational Creditors			
	A. Employees	0	0	0
	B. Govt. Dues - ESI	26,46,739	26,46,739	26,46,739
	C. Govt. Dues - GST	1,44,18,464	1,44,00,000	60,000
	D. Other Operational Creditors	9,47,33,390	9,47,33,390	40,000
5.	Shareholders - Promoters	5,75,66,600	5,75,66,600	0
6.	Contingent Liabilities	0	0	0
Total		91,96,34,330	88,42,73,300	23,28,46,739

- iv. The Applicant confirmed that the Successful Resolution Plan is in compliance with the provisions of Section 30 (2). **A copy of the Resolution Plan along with its annexures is filed as Annexure – 6 at page nos. 60 to 168 of the application.**
- v. **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, for short 'Regulation and has submitted Form-H under Regulation 39 (4). A copy of the Form-H is filed at page nos. 37 to 46 of the application. It is averred that the Resolution Applicant has filed Certificate of compliance under Section 29A and 30 of the Code confirming that they are eligible to submit the plan under Section 29A of the Code and that the contents of the said Certificate are in order. The fair value and Liquidation value as submitted in Form-H are Rs.26,78,52,000/- and Rs.21,15,00,000/- respectively.

- XIX. In the above backdrop, we heard Learned Counsel for RP. She submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-

Section 30(2)(a) – Order of priority for payments under the Resolution Plan:

Priority	Payment to
1.	CIRP Costs
2.	Amount payable to Operational Creditors

3.	Amount payable to Dissenting Financial Creditors
4.	Amount payable to Financial Creditors for Settlement

Section 30(2)(b) & (c)-

- Provides for the payment of the debts of Operational Creditors, with such payment being equal to an amount which is higher of the amount payable in terms of Section 30(2)(b) (i) and Section 30(2)(b) (ii) of IBC due to such Operational Creditors in priority to payment of Financial Creditors.
- Provides for the payment of debts to such Financial Creditors, who do not vote in favour of this Resolution Plan, which shall not be less than the amount of liquidation value due to them in terms of Section 53 of the IBC (as amended from time to time).

➤ **Section 30(2)(d)- Monitoring Committee -**

The Monitoring Committee will be constituted with 1 representative from COC, RP or independent IP and two representative of Resolution Applicant and supervise the implementation of the approved Resolution Plan from the date of approval of Resolution Plan by Adjudicating Authority until completion of the payment to creditors as envisaged under approved Resolution Plan.

All key managerial personnel of the Corporate Debtor would be deemed to have resigned and new Key managerial personnel shall be appointed by the Resolution Applicant.

- iv. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:

Regulation 38(1) of the CIRP Regulations 2016: Whether the amount due to the Operational Creditors under the Resolution Plan has been given priority in payment over financial creditors?

Priority	Payment to
1.	CIRP Costs
2.	Amount payable to Operational Creditors
3.	Amount payable to Dissenting Financial Creditors
4.	Amount payable to Financial Creditors for Settlement

Regulation 38(1A): A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders?

The total settlement amount offered under the CIRP to various stakeholders, including the CIRP costs is Rs.23,28,46,739/- only. While the Resolution Plan states the amount proposed to be paid by it to various stakeholders, however, the final call rests with the RP & COC as to the apportionment/distribution of the above offered settlement amount, subject to compliance with provisions of the Code and the Regulations thereunder.

Regulation 38(1B): Whether the Resolution Applicant or any of its related parties have failed to implement or have contributed to the failure of implementation of any resolution plan approved under the Code?

Neither the Resolution Applicant nor any of his related parties have failed to implement or have contributed to the failure of implementation of any other resolution plan approved by an adjudicating authority at any time in the past.

XX. **Source of Funds:** The Resolution Applicant is proposing to infuse the Equity in form of Equity Preference Shares/Compulsorily Convertible Debentures of Rs.5,00,00,000/- and Rs.22.30 crores by way of interest free unsecured loans/Intercorporate Deposits aggregating to Rs.27.30 crores towards Plan payments from its own resources /group companies/associates and its nominees. This amount would be paid as per the terms of payments proposed supra. RA is proposing to obtain a Bank Loan of Rs.7.50 crores to meet part of the funds requirement after the take over of the Corporate Debtor. As such, the Resolution Applicant through its associates and nominees will contribute the Equity and will hold 100% shareholding in the restructured share capital of the Corporate Debtor.

XXI. **Accounting Treatment: (Page nos.10 to 11 Clause G.10 of Chapter III of the Resolution Plan)**

Upon approval of the Resolution Plan by the Hon'ble NCLT, the Resolution Applicant shall be permitted to draw up financial statements of the Corporate Debtor for a period ending on the Approval date (or any other date closest to that date as may be practicable) in compliance with applicable IND-AS/Accounting Standards such that it truly reflects the fair value of the assets as may be determined by the Board of Directors of the Corporate Debtor/Resolution Applicant.

XXII. ***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”.

XXIII. The Hon’ble Supreme Court has further held at para 35 of the above 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.***

XXIV. The Hon’ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors**, held that *“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”.*

XXV. The Hon’ble Supreme Court of India, in the recent ruling in re **Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors**, has held as under:-

21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the

*proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of K. **Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.***

*27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:***

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

XXVI. Therefore, the resolution plan, when tested on the touch stone of the aforesaid facts and the rulings, we are of the view that the instant resolution plan satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. We also found that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.

XXVII. With regard to the Valuation Report being for a higher value and the Resolution Plan being submitted for a lesser value, the Counsel for the RP filed a Memo stating that Property-I is a leasehold property, hence at the time of Resolution Plan submissions, it is not included. If Property-I is excluded, then the values submitted alongwith the Plan would match. Hence, we are satisfied with the above explanation.

XXVIII. We therefore, hereby approve the Resolution Plan dated 09.01.2023 submitted by M/s.Radiant Corporation Private Limited along with annexure, schedules forming part of the Resolution Applicant annexed to the Application and order as under:

- i. The Resolution Plan along with annexures and schedules forming part of the Plan 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. 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.
- iii. According to the Ld. Resolution Professional, the Resolution Applicant has sought the reliefs/concessions & waivers as mentioned at page Nos. 60 to 65 of the Resolution Plan. We have carefully examined the same. 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 held by Hon'ble Supreme Court in the matter of **Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited** in CIVIL APPEAL NO.8129 OF 2019 dated 13.04.2021.

- iv. It is hereby ordered that the Performance Bank Guarantee furnished by the Resolution Applicant shall remain as performance Bank Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented.
- v. 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.
- vi. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- vii. The moratorium under Section 14 of the Code shall cease to have effect from this date.

- viii. 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.
- ix. The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- x. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- xi. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.
- XXIX. Accordingly, **IA 480/2023 in CP(IB) No.260/9/HDB/2020** stands disposed of.

Sd/-

CHARAN SINGH
MEMBER (TECHNICAL)

Sd/-

JUSTICE TELAPROLU RAJANI
MEMBER (JUDICIAL)

Syamala