



**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 16.08.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.74/7/AMR/2021	IA(IBC)/133/2022, IA(IBC)/85/2022	31(1) of IBC	Rajesh Chillale (RP of M/s Laxme Saai Steel Private Limited) Vs. Dovefin Microfinance Private Limited (Financial Creditor)

Counsel for Petitioner(s):

Ries

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

Counsel for Respondent(s):

Ries

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

ORDER

IA(IBC)/133/2022 is allowed, vide separate orders.

IA(IBC)/85/2022:

List the matter on 07.09.2022.

**Sd/-
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

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**I.A (IBC) No. 133/2022
IN
CP (IB) No. 74/7/AMR/2021**

Under Section 31(1) of Insolvency and Bankruptcy Act, 2016

**In the matter of
M/s. LAXME SAAI STEEL PRIVATE LIMITED**

Between:

Mr.Rajesh Chillale,
Resolution Professional of
M/s. Laxme Saa Steel Private Limited,
Registered office at D.No.3-156 A, Old Garividi,
Sriram Nagar, Garividi Mandalam,
Vizianagaram, Andhra Pradesh – 535101.

... Applicant/Resolution Professional

Date of pronouncement of Order: 16.08.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant/RP: Mr.V.V.S.N.Raju, Advocate.

Per:

Justice Telaprolu Rajani, Member Judicial

Sd/-

ORDER

1. The Resolution Professional (in short the RP) in respect of M/s. Laxme Saai Steel Private Limited (the Corporate Debtor) seeks approval of the Resolution Plan (in short the Plan) in this Application under Section 31 (1) of Insolvency and Bankruptcy Act, 2016.
2. The brief facts leading to the Application are as under.
 - i) This Bench, vide its order dated 18.01.2022 directed initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and Mr.Rajesh Chillale, Applicant herein, was appointed as Interim Resolution Professional (IRP).
 - ii) In the CoC meeting held on 17.02.2022, CoC approved the appointment of Insolvency Resolution Professional (IRP) as Resolution Professional (RP) and approved the appointment of two registered valuers for valuing the assets of the Corporate Debtor.
 - iii) In the 2nd CoC meeting held on 12.03.2022, CoC approved the Information Memorandum (IoM), draft publication for inviting Expression of Interest (EoI), time lines for various steps, including evaluation matrix.

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- iv) The Applicant/RP made a public announcement in the newspapers, inviting EoI in Form-G on 25.03.2022 and the last date for submission of EoI was fixed as 09.04.2022. Later, the last date for submission of EoI was extended to 16.04.2022 and again to 28.04.2022 with the approval of the CoC. The Applicant received EoI from 10 Prospective Resolution Applicants (PRAs). After verification, all the PRAs were found to be eligible as per the evaluation matrix.
- v) In the 3rd CoC meeting held on 05.05.2022, approved for Request for Resolution Plan (RFRP). The Applicant vide email dated 07.05.2022 issued a provisional list of PRAs to the CoC and PRAs. On 16.05.2022 the CoC submitted the final list of PRAs and requested the Resolution Applicants to submit their Resolution Plans on or before 07.06.2022. Out of 10 PRAs only one Resolution Plan was received from Naval Kishore Khaitan.
- vi) In the 4th CoC meeting held on 10.06.2022, discussion about the Resolution Plan submitted by Naval Kishore Khaitan was taken up and it was decided to return the earnest money deposits of the other PRAs who have not submitted the Resolution Plans.
- vii) In the 5th CoC meeting held on 20.06.2022, discussion about the proposed Resolution Plan was done and the CoC felt that

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the Resolution Plan needs revision and improvements. Accordingly, the Resolution Applicant agreed to revise the plan with improvements. Later, he submitted his revised Resolution Plan on 22.06.2022.

- viii) In the 6th CoC meeting held on 23.06.2022, discussion about the revised Resolution Plan was done.
- ix) In the 7th CoC meeting held on 25.06.2022, the revised Resolution Plan dated 22.06.2022 was placed before the CoC for voting and in the same CoC meeting, the Resolution Plan submitted by Mr. Naval Kishore Khaitan, Successful Resolution Applicant was approved with 100% voting. The Letter of Intent (LoI) was sent to the Successful Resolution Applicant (SRA) on 25.06.2022 which clearly mentions that as per RFRP report dated 07.05.2022, the SRA was advised to deposit an amount of Rs.3 Crores within a period of seven days and the same was complied by the SRA on 01.07.2022.
- x) The Applicant/RP submitted the Compliance Certificate in Form-H under Regulation 39(4) of the Regulations showing the compliances of the Plan with mandatory requirements under the Code and Regulations and the Plan was approved by the CoC.

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xi) The following is the summary of the Plan/Restructuring Proposal:

- a) In terms of the RFRP, the Resolution Applicant submitted Bank Guarantee (BG) of Rs.1,00,00,000/- towards Earnest Money Deposit (EMD).
- b) The Resolution Applicant undertook that on approval of the Resolution Plan by the CoC and on receipt of LoI, he would furnish the required performance security of Rs.3 Crores in the form of BG.
- c) The Plan offers an amount of Rs.20,27,61,239/- (Rupees Twenty Crores Twenty Seven Lakhs Sixty One Thousand Two Hundred and Thirty Nine only) as detailed below:

S. No.	Category of Claimants	Amount admitted by the RP (Rs.)	Amount provided under the Resolution Plan (Rs.)
1	CIRP costs	51,00,000	51,00,000
2	Operational Creditors	6,00,000	5,61,239
	a. Operational Creditors (Towards workmen and employees)		
	b. Operational Creditors (Other than workmen and employees)	13,99,00,000	84,00,000
	Total Operational Creditors	14,05,00,000	89,61,239

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3	Financial Creditor	16,47,00,000	10,87,00,000
4	Working Capital requirements	6,00,00,000	6,00,00,000
5	Capital expenditure towards repairs	2,00,00,000	2,00,00,000
Total			20,27,61,239

The timelines for the payment of the above mentioned debts of the Corporate Debtor are as follows:

S. No.	Particulars	Terms and amount
1	Upfront Cash Recovery	Upfront payment of Rs.4,24,61,239/-
2	Fresh Equity infusion for improving operations	<p>a. An estimated amount of Rs.6,00,00,000/- towards working capital requirements of the Corporate Debtor during the CIRP period with 25% equity infusion and 75% debt.</p> <p>b. An estimated amount of Rs.2,00,00,000/- proposed towards the repairs and capital expenditure requirements of Corporate Debtor during CIRP period with 25% equity infusion and 75% debt.</p>
3	Balance repayment obligations to creditors (other than upfront cash	Rs.8,03,00,000/-

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	recovery)	
4	Repayment schedule	<p>a. Rs.51,00,000/- or the amount as per actuals towards the CIRP costs within 7 days of the NCLT approval date.</p> <p>b. Rs.5,61,239/- towards the workmen dues within 7 days of the NCLT approval date.</p> <p>c. Rs.84,00,000/- towards the Operational Creditors other than workmen and employees within 15 days of the NCLT approval date.</p> <p>d. Rs.1,84,00,000/- towards the Financial Creditors within 30 days of the NCLT approval date.</p> <p>e. Rs.1,00,00,000/- towards the Financial Creditors within 45 days of the NCLT approval date.</p> <p>f. Rs.8,03,00,000/- towards the Financial Creditors within 120 days of the NCLT approval date.</p>

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d) The RA is proposing to constitute Monitoring Committee consisting of Four (4) members for implementation of the Resolution Plan, as given below:-

- i. Mr.Rajesh Chillale, Resolution Professional, shall be the Chairman of the Monitoring Committee.
- ii. One Authorised Representative appointed by Financial Creditors.
- iii. Two Authorised Representatives appointed by Resolution Applicant.

xii) Hence this Application.

3. I have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application. The Resolution Plan submitted by the Resolution Applicant is found to be meeting all the requirements of the IBC, 2016 and more importantly Section 30 (2) of the IBC Code and Regulation 38 (1A) and applicable CIRP Regulations. It does not contravene any of the provisions of law. It caters to the interest of all the Stakeholders.
4. Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such plan :-

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- a) provides for the payment of insolvency resolution process costs in the manner specified by the Board in priority to the payment of other debts of the corporate debtor;
- b) provides for the payment of debts of the operational creditors in such manner as may be specified by the Board, which shall not be less than-
 - i. the amount to be paid to such creditors, in the event of liquidation of the corporate debtor under section 53; or
 - ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation - For the purpose of the above provision is as under:

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- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and
 - (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).
- c) Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
 - d) The implementation and supervision of the resolution plan;
 - e) Does not contravene any of the provisions of the law for the time being in force;
 - f) Conforms to such other requirements as may be specified by the Board.
5. Section 30(4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the

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order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.”

6. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan, as approved by the CoC, meets the above requirements.
7. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
 - a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.

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- d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
- e) The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code.
8. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through registered valuers and the Liquidation value is Rs.4.21 Crores and the Resolution Plan offers Rs. 20,27,61,239/-.
9. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1-A), 38 (1-B) 38(2) & 38(3) of the Regulations. The Plan also provides for keeping the Company as a going concern and to operate in its normal course of business upon implementation of Resolution Plan. No objection has been filed by anyone in this regard.
10. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal, the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of the Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.

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11. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) 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 (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by CoC, meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is 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.

12. **In CoC of Essar Steel** (Civil Appeal No.8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

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“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).”

13. In view of the discussion and the law thus settled, the instant Resolution Plan is found to be meeting 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 needs to be approved. Hence ordered.

ORDER

- i. The Resolution Plan annexed to the Application is hereby 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.

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- ii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Andhra Pradesh 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.
- iii. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- iv. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- v. 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.
- vi. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant.

Accordingly, I.A.No.133/2022 in CP (IB)
No.74/7/AMR/2021 is disposed of.


JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL