

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (VEDIO CONFERENCE)

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 26.04.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 652/2020 in CP (IB) No. 133/7/HDB/2019
NAME OF THE COMPANY	Lanco Hoskote Highway Ltd
NAME OF THE PETITIONER(S)	Edelweiss Asset Reconstruction Company Ltd
NAME OF THE RESPONDENT(S)	Lanco Hoskote Highway 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

Orders passed in IA NO.652/2020, vide separate orders.


Member(Technical)


Member(Judicial)

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**NATIONAL COMPANY LAW TRIBUNAL
BENCH-I, AT HYDERABAD**

I.A. NO. 652 OF 2020

IN

C.P. NO. (IB) 133/7/HDB/2019

*APPLICATION UNDER SECTION 30(6) OF IBC, READ WITH
REGULATION 39(4) OF IBBI (IRPCP) REGULATIONS, 2016, R/W RULE
11 OF NCLT RULES, SEEKING APPROVAL OF RESOLUTION PLAN*

**In the matter of M/s Edelweiss Asset Reconstruction Company
Limited versus M/s Lanco Hoskote Highway Limited**

Mr. Raghu Babu Gunturu

Resolution Professional
M/s Lanco Hoskote Highway Limited
Plot No.4, Software Units Layout,
HITEC City, Madhapur,
Hyderabad - 500081, Telangana

**... Applicant/
Resolution Professional**

AND

Kalyan Toll Infrastructure Limited

Vidya Deep, 15/3, Manorama Ganj
Indore, Madhya Pradesh - 452001

... Resolution Applicant

Date of order: 26.04.2021

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

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

Appearance:

For Applicant:

Shri G.P. Yash Vardhan, Ms. Grishma
Acharya, Shri Keshav Rao Saini,
Advocates

For Resolution Applicant:

Shri D. Narendar Naik, Advocate

For NHAI

:

Shri SS Varma & Shri Vimal Varma
and Shri K.V. Raman, Advocates

For CoC

:

Shri VVSN Raju, Advocate

Heard on: 04.09.2020, 01.03.2021

PER: SHRI BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

1. Under consideration before us is the interlocutory application filed by the Resolution Professional for M/s Lanco Hoskote Highway Limited, the Applicant herein, under section 30(6) of Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, r/w rule 11 of NCLT rules, seeking approval of resolution plan **of M/s. Kalyan Toll Infrastructure Limited.**
2. When this IA was pending before the Tribunal, IA No. 909 of 2020 is filed by Successful Resolution Applicant / Kalyan Toll Infrastructure Limited seeking to implead them in IA No. 652/2020 that is filed for approval of the Resolution Plan. There was no objection reported from any party for allowing the application and the said application was allowed on 16.12.2020. Accordingly, the successful Resolution Applicant is arrayed as Respondent in the instant IA.
3. **Facts of the Case:-**
The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order on 17.10.2019 and the Applicant was appointed as Interim Resolution Professional (IRP). The Committee of Creditors (CoC) comprising of the following Financial Creditors, in its 1st meeting 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.

List of Financial Creditors

S.No.	Name of the Financial Creditors	Amount of Claim	Amount of Claim Admitted	Voting share %
1.	Edelweiss Asset Reconstruction Company Limited	Rs.210,31,82,966	Rs.204,87,51,142	32%
2.	State Bank of India	Rs.477,50,00,000	Rs. 443,40,58,129	68%

3.	Kotak Mahindra Bank Limited	Rs.134,38,60,348	NIL	
		Rs. 822,20,43,314	Rs. 648,28,09,271	100.00%

4. During the period of CIRP three Resolution Plans were received, one from (i). **Amurtha Constructions** (ii). **ILabs Technology Centre Private Limited** and (iii). **Kalyan Toll Infrastructure Limited**. The CoC after several rounds of negotiations with the Resolution Applicants evaluated both the Resolution Plans as per the Evaluation Matrix. It accepted the Resolution Plan submitted by Kalyan Toll Infrastructure Limited in terms of Section 29 (A) of the Code.
5. The Resolution Plan submitted by M/s Kalyan Toll Infrastructure Limited ("Resolution Applicant") was approved by CoC with 100% voting in favour of it. The minutes of the 9th meeting of the COC held on 30.07.2020 is filed at page Nos 156-168.
6. The contour of the Resolution Plan is as under:-
- (A) The Resolution Applicant i.e **Kalyan Toll Infrastructure Limited (KTIL/RA)** is a Company incorporated in the year 2002 and is a flagship company of Kalyan Group based out of Indore. The Group is engaged in infrastructure construction and led by Shri Tikamchand Garg, Mr Rajesh Kumar Garg and Mr. Amit Garg.
- (B) The CoC comprised of two financial creditors viz State Bank of India and Edelweiss Asset Reconstruction Company Ltd and the distribution of voting share among them is as under:-
1. State Bank of India : 68%
 2. Edelweiss Asset Reconstruction Company Ltd : 32%
- (C) The term of the proposed resolution plan is till the date on which the final payment to the financial creditors is made i.e. 15.03.2022. The Resolution Plan dated 24.07.2020 for an amount of **Rs. 201.89** crores provided for the stake holders under the Resolution Plan is as under:-

(Amount in Lakhs)

S.No.	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan #	Amount provided to the amount claimed (%)
1.	Secured Financial Creditors				
A	Edelweiss Asset Reconstruction Company ltd.(Edelweiss)	210,31,82,966	204,87,51,142	33,63,00,000	15.99
B	State Bank of India (SBI)	477,50,00,000	443,40,58,129	152,48,00,000	31.93
2.	Unsecured Financial Creditors	--	--	--	--
3.	Operational Creditors				
A	Vishwakarma Scales Private Limited	46,24,292	46,24,292	16,67,035	36.04
B	National Securities Depository Ltd	2,21,250	2,21,250	79,760	36.04
C	National Highway Authority of India	55,53,84,558	41,38,13,597	5,00,53,258	9.01
D	IDBI Trusteeship Services Limited	7,07,515	5,31,000	1,91,420	27.05

D. Time Line for making Payments to the creditors:-

S.No.	Particulars	Amount in Crores		
		Within 15 days of approval of Resolution plan by NCLT	Mar-21	Mar-22
A.	<u>Source of Funds from internal accruals and amount infused by KTIL</u>	60.00	64.71	77.18
B.	<u>Proposed Payments to Creditors</u>			

I	<u>Financial Creditors</u>			
1	State Bank of India	44.94	53.07	63.29
a	Principal Amount	44.94	49.20	59.04
b	Interest (@ 2 year MCLR rate - 7.20%)	-	3.86	4.25
2	Edelweiss Asset Reconstruction Company Limited	9.87	11.65	13.89
a	Principal Amount	9.87	10.80	12.96
b	Interest (@ 2 year MCLR rate - 7.20%)		0.85	0.93
II	<u>Operational Creditors</u>	5.19	-	-
	Total	60.00	64.71	77.18

(E) **Management of Corporate Debtor**

Pursuant to approval of the Resolution Plan, the suspended Board of Directors shall stand dissolved and the Directors of the Corporate Debtor immediately prior to the completion date, shall be deemed to have resigned and shall vacate their office. Further the persons nominated by the Resolution Applicant shall be appointed as the Directors of the Corporate Debtor. The Resolution Plan proposes to appoint a Monitoring Committee consisting of one nominee each of the Financial Creditors, three nominees of Resolution Applicant and the Resolution Professional and the said Committee shall monitor the implementation of the Resolution Plan and will continue to operate until all the dues to the Financial Creditors are settled in terms of the Resolution Plan.

7. **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) 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.

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8. 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.
9. The Resolution Applicant has furnished the Performance Bank Guarantee of Rs. 2,50,00,000/ dated 17.08.2020 obtained from State Bank of India, Indore in accordance with the requirements of RFRP, copy of which is annexed and marked as ANNEXURE-14.
10. The Applicant 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 in full. It is stated that the ongoing internal accruals of the SPV are more than enough to cover the above expenditure and no amount is proposed to be infused by the Resolution Applicant towards the same.
 - 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. 110.78 crores and Fair Market value is Rs. 181.44 crores. In view of the fact that the minimum liquidation value attributable to the Operational Creditors would be Nil in the event of liquidation, no amount would be payable to any operational creditor in the event of liquidation.
11. The Resolution Applicant has inter-alia, sought certain reliefs and waivers under the plan from National Highways Authority of India (NHAI) as under:-
 1. For according approval to change the shareholding and management of Corporate Debtor so as to enable the Resolution Applicant, viz M/s. Kalyan Toll Infrastructure

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Limited to take up the ownership and control of the Corporate Debtor and continue to carry out obligations and enjoy rights as per the concession agreement, for the full concession period i.e. till 5th January, 2028.

2. Appropriate directions for approval to provide routine overlay/major maintenance as specified in schedule L clause 33.7 of the concession agreement, only twice in the balance concession period, as against 3 times which is currently required as per the concession agreement. Resolution Applicant, viz Kalyan Toll Infrastructure Limited shall undertake pending overlay / major maintenance immediately after taking control of the project.
3. To accord waiver of one overlay/major maintenance.
4. To waive and extinguish any claims (except to the extent provided in this Plan) of The National Highways Authority of India for liabilities, charges, fees, compensation or any other amount against the Corporate Debtor that is payable, claimable or accrued to The National Highways Authority of India till the date of Hon'ble Tribunals Order approving the Plan, shall stand waived and extinguished (except to the extent provided in this Plan).
5. Considering waiving of any other liabilities which haven't been claimed under the relevant forms and which are not a part of the list of creditors shared with Resolution Applicant by the RP.

12 We heard the Counsel appearing for the Resolution Professional. 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. 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.**
14. 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 through e-voting held from 03.08.2020 to 14.08.2020 with 100% votes.
15. 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.

16. 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.***
17. 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.
18. The Applicant/Resolution Professional has submitted that the Resolution Applicant has sought certain waivers and reliefs at para (N) of 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. With regard to specific reliefs and waivers sought by the Resolution Applicant from National Highway Authority of India (NHAI), during the hearing of the Application, we requested the Counsel appearing for NHAI to favourably consider the request of the Resolution Applicant on merits taking into consideration the special circumstances under which the Resolution of the

Corporate Debtor ensued and we direct NHAI to consider the same for smooth implementation of Resolution Plan.

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. The same deserves favourable consideration and accordingly IA No. 652/2020 is allowed with the following directions.

ORDER

20. The Resolution plan dated 24.07.2020 submitted by **M/s KALYAN TOLL INFRASTRUCTURE LIMITED** ("Resolution Applicant") 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. 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.
22. 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.

23. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in para 6 (c) supra.
24. The moratorium under Section 14 of the Code shall cease to have effect from this date.
25. 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.
26. 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.


(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)


(BHASKARA PANTULA MOHAN)
MEMBER (JUDICIAL)

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