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NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

SPECIAL BENCH (URGENT HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRI RATAKONDA MURALI– MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI—MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 27.08.2020 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 549/2020CP (IB) No. 357/7/HDB/2019
NAME OF THE COMPANY	Sri Sai Lilagar Power Generation Ltd
NAME OF THE PETITIONER(S)	Axis Bank Ltd
NAME OF THE RESPONDENT(S)	Sri Sai Lilagar Power Generation 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.549/2020 vide separate orders.

Member(Technical)

Member(Judicial)

Pavani

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1

IA 549 of 2020

In

CP (IB) No. 357/7/HDB/2018

Application under Section 30 (6) and Section 31 of IBC R/w Regulation 39 (4) of IBBI (IRPCP) Regulations, 2016 and Rule 11 of NCLT Rules, 2016

In the matter of

Axis Bank versus Sai Lilagar Power Generation Limited

Mr. Ram Singh Setia
Interim Resolution Professional
Sai Lilagar Power Generation Limited
Flat No. 203, Tower-2, Crescent Bay
Jerbi Wadia Road, Parel
Mumbai, Maharashtra-400012

...Applicant/
Resolution Professional

Date of order: 27.08.2020

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

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

Appearances:

For Applicant: Shri A. Sanjay Kishore, Shri T.G. Rajesh Kumar and Shri K. Mohan Kumar, Advocate

Heard on: 17.08.2019

PER: SHRI RATAKONDA MURALI
MEMBER (JUDICIAL)

1. Under consideration before us is the Interlocutory Application filed under Section 30 (6) and Section 31 of Insolvency and Bankruptcy Code **("CODE")**, 2016 R/w Regulation 39 (4) of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), 2016 **("CIRP Regulations), 2016** by Applicant / Resolution Professional for **Sai Lilagar**

Power Generation Limited (Corporate Debtor) seeking approval of the Resolution Plan submitted by **Indermani Mineral (India) Private Limited (IMIPL).**

2. The averments germane to the Application in brief are:-

2.1 That this Tribunal admitted the petition filed by **Axis Bank** (Financial Creditor) under Section 7 of the Code, R/w Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 on **11.07.2019** and Corporate Insolvency Resolution Process (CIRP) commenced against **Sai Lilagar Power Generation Limited / Corporate Debtor** by appointing Mr. Ram Singh Setia, the Applicant herein as Interim Resolution Professional who was later confirmed as Resolution Professional in the 1st meeting of Committee of Creditors (CoC) held on 09.08.2019.

2.2 After assuming charge of Interim Resolution Professional, the Applicant herein issued public announcement on 13.07.2019 in terms of Regulation 6 (1) of CIRP Regulations inviting claims from creditors of the Corporate Debtor. After collating and verifying the claims received up to 25.07.2019, the Applicant constituted CoC on 02.08.2019, comprising of only one Financial Creditor i.e. Axis Bank Limited. The report certifying CoC was filed with this Tribunal on 02.08.2019.

2.3 Pursuant to constitution of CoC, **1st meeting of CoC** was held on **09.08.2019** where in the Applicant was confirmed as Resolution Professional (RP) and CoC resolved to appoint Edelweiss Resolution Advisors LLP for providing support services to the Resolution Professional. It is submitted, the CoC further resolved to maintain the plant in power-up mode by drawing man power support from the group entity, KMCL.

2.4 In the **2nd CoC meeting** held on **04.09.2019**, the CoC ratified appointment of Kakode Associates and Rakesh Narula & Co. as valuers for determining fair value and liquidation value of the assets of the Corporate Debtor as required under Regulation 35 of CIRP Regulations. The valuations reports were submitted by Kakode Associates and Rakesh Narula & Co. on 14.02.2020 and 10.02.2020 respectively, which were submitted to the CoC on 30.04.2020. Further, after seeking of approval from CoC, invitation for Expression of Interest (EOI) was published by Applicant in Form-G on 06.09.2019 in Financial Express, Namaste Telangana and Nav Bharat in accordance with Section 36A of the Code.

2.5 In the **3rd CoC meeting** held on **04.10.2019,** the CoC ratified the approval of extension of time for submission of EOI from 30.09.2019 to 07.10.2019. The revised EOI besides uploading on the website of Corporate Debtor, was also published in Financial Express, Namasthe Telangana and Nav Bharat on 02.10.2019. In this CoC meeting, Raj Niranjan Associates, was appointed as Transaction Reviewer for carrying out transaction review and forensic audit, who filed the report on 12.06.2020.

2.6 In the **4th CoC meeting** held on **18.10.2019**, the CoC accorded approval for releasing Information Memorandum (IM), Evaluation Matrix (EM) and Request for Resolution Plan (RFRP) in compliance with Regulation 36 (B) of CIRP Regulations. Further the CoC requested the Applicant to prefer an application seeking extension of 90 days CIRP.

2.7 Pursuant to approval accorded by CoC on 22.10.2019 for extending the timeline for submission of EoI to 28.10.2019 based on the request received from one of the Resolution Applicants, the Resolution Professional published the modified EOI in Financial Express, Namasthe Telangana and Nav Bharat on 23.10.2019. Consequently, the Resolution Professional received six (06) EOIs from prospective Resolution Applicants as under:-

i) **Indermani Mineral (India) Private Limited**

ii) **Indus Udyog and Infrastructure Private Limited**

iii) **IND Synergy Limited**

iv) **Megha Engineering and Infrastructure Limited**

v) **Spin Packaging Limited**

vi) **Prudent ARC Limited**

2.8 After evaluating the Resolution Plans submitted by above Resolution Applicants and after seeking clarification / additional information / documents, the Applicant in accordance with Regulation 36(A) (10) of CIRP Regulations, released provisional list of eligible prospective resolution applicants on 31.10.2019 to the CoC. It is submitted out of 06 Resolution Applicants, 05 (five) qualified the eligibility criteria. Indus Udyog & Infrastructure Private Limited / unsuccessful resolution applicant raised objection to the provisional list dated 31.10.2019, which was again considered by the CoC and final list was issued by the Applicant on 15.11.2019.

2.9 At the request of Resolution Professional, the CoC extended the last date for submission of Resolution Plans from 19.12.2019 to 03.01.2020 and authorised the Resolution Professional to further extend up to 18.01.2020 if necessary vide circular resolution dated 17.12.2019. The CoC subsequently accorded approval to extend the date for receipt of resolution plans to 03.02.2020. However, at the request of two prospective Resolution Applicants, the CoC ratified extension of last date for submission of resolution plan for an additional period of 15 days from 18.01.2020 to 03.02.2020. The time was again extended till 24.02.2020 on the request of prospective resolution applicants which was ratified in the 5th CoC Meeting.

2.10 In the meantime, at the request of CoC, the Applicant moved an application bearing IA No. 2/2020 seeking 90 days extension of CIRP with effect from 08.01.2020, which was allowed by the Tribunal on 02.01.2020.

2.11 The CoC in its **5th and 6th CoC meetings** held on **04.03.2020** and **09.03.2020** respectively, deliberated upon the Resolution Plan submitted by IMIPL and asked IMIPL to submit a revised resolution plan taking into consideration the detailed discussion held between the CoC, the Applicant herein and IMIPL by 12.03.2020. However, on 18.03.2020, IMIPL requested additional time to submit the revised plan which was ultimately submitted on 24.03.2020.

2.12 The Applicant submits, owing to outbreak of Covid-19, Central Government imposed nation-wide lockdown which hindered the ongoing discussions. However, IMIPL submitted the final resolution plan dated 03.06.2020 duly complying the requirements of RFRP and the provisions of the Code on 04.06.2020, which was approved by the CoC in its **7th CoC**

meeting held on **17.06.2020,** which is however subject to the prior receipt of Addendum to the resolution plan confirming that any liabilities against Corporate Debtor, which might arise in relation to certain bank guarantees aggregating to Rs. 2,53,61,336/- issued by Axis Bank Limited, will be discharged by the Corporate Debtor / Resolution Applicant. The same was later submitted by the IMIPL on 19.06.2020.

2.13 The Resolution Professional also preferred an Application seeking extension of time beyond 270 days which was allowed by this Tribunal vide order dated 07.08.2020.

3. CONTOUR OF THE RESOLUTION PLAN:

The Resolution Plan approved by CoC in favour of Indermani Mineral (India) Private Limited in a nutshell is as follows:-

3.1 Summary of claims to be addressed under the Plan

Sr. No	**Claimant**	**Claim Admitted (In INR crores)**
1	Financial Creditors (excluding related parties)	387.89
2	Operational Creditors other than Employees and Workmen	25.71
3	Employees and Workmen	0.80
4	Financial Creditors who are related party	164.99
5	Other Creditors	587.71
	Total	1167.10

The above claims include the amounts which have been admitted by the Resolution Professional and the claims that are contingent to pending legal proceedings. Any other claim not admitted by the Resolution Professional do not form part of the Resolution Plan.

3.2 The amounts provided for the stakeholders under the Resolution Plan are as under:-

Sl. No.	Category of Stake-holder	Sub-Category of Stakeholder	Amount Claimed (Rs. In lakhs)	Amount Admitted (Rs. In lakhs)	Amount Provided under the Plan#	Amount Provided to the Amount

					(Rs. In lakhs)	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	0	0	0	0%
		(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	3,90,42.36	3,87,88.75	8,500.00	21.77%
		Total[(a) + (b)]	3,90,42.36	3,87,88.75	8,500.00	21.77%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub- section (2) of section 21	1,65,03.21	16498.89	0.00	0.00%
		(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	NA	NA	NIL	NA
		Total[(a) + (b)]	1,65,03.21	16498.89	0.00	0.00%
3	Operational Creditors	(a) Related Party of Corporate Debtor	4.31	4.31	0.13	3.02%
		(b) Other than (a) above:				
		(i) Government	12,82.62	12,42.98	38.72	3.02%
		(ii) Workmen	0.00	0.00	0.00	--
		(iii) Employees	83.71	80.11	80.11	95.70%
		(iv) Other Operational Creditors	20,25.51	13,23.84	61.15	3.02%
		Total[(a) + (b)]	33,96.16	26,51.26	180.11	5.30%
4	Other debts and dues		58770.87	58770.87	100.00	0.17%
Grand Total			1,17,712.60	1,16,709.77	8,780.11	7.46%

3.3 Terms of the Plan

(i) The total outstanding financial debt of the Corporate Debtor admitted towards its Financial Creditors (including financial creditors who are related parties), as of May 14, 2020, is INR 552,87,64,952 (Indian Rupees Five Hundred and Fifty Two Crore Eighty Seven Lakhs Sixty Four Thousand Nine Hundred and Fifty Two). ("**Outstanding Financial Debt**").

(ii) The details of the total outstanding operational debt of the Corporate Debtor admitted and not contingent, towards its Operational Creditors, as of May 14, 2020, is INR 26,51,26,141 (Indian Rupees Twenty Six Crores Fifty One Lakhs Twenty Six Thousand One Hundred and Forty One) ("Admitted Outstanding Operational Debt") and the total outstanding operational debt of the Corporate Debtor which is contingent on pending legal proceedings towards its Operational Creditors, as of May 14, 2020, is INR 5,89,81,203 (Indian Rupees Five Crores Eighty Nine Lakhs Eighty One Thousand Two Hundred and Three) ("Contingent Outstanding Operational Debt"). The Admitted Outstanding Operational Debt and Contingent Outstanding Operational Debt are hereinafter collectively referred to as the Outstanding Operational Debt. Operational Creditor Settlement Amount means an amount equal to (i) amount envisaged in the plan; or (ii) Liquidation Value due to Operational Creditors, whichever is higher.

(iii) As per the terms of the Resolution Plan, a total amount of INR 85,00,00,000 (Rupees Eighty Five Crores Only) is proposed to be paid to the financial creditors (excluding financial creditors who are related party who are proposed to be paid NIL amount) of the Corporate Debtor. Out of such amount, an upfront payment of INR 2,00,00,000 (Rupees Two Crores Only) ("Upfront Payment Against FC Debt") is proposed to be made within 60 days of the Resolution Plan being approved by this Tribunal ("Effective Date"). The residual surviving debt of INR 83,00,00,000 (Rupees Eighty Three Crores Only) ("Residual Debt") shall be serviced, along with an interest of 9% (nine percent) per annum payable on monthly basis as per the following schedule:

Year*	Q1	Q2	Q3	Q4	Total
1	0%	10.12%	0%	0%	10.12%
2	0%	1%	0%	1%	2%
3	0%	1%	0%	1%	2%
4	0%	1.94%	0%	1.94%	3.88%
5	0%	2.0%	0%	2.0%	4%
6	0%	3.5%	0%	3.5%	7%
7	0%	3.75%	0%	3.75%	7.5%
8	0%	4.75%	0%	4.75%	9.50%
9	0%	5%	0%	5%	10%
10	0%	4.75%	0%	4.75%	9.5%
11	0%	4.75%	0%	4.75%	9.5%
12	0%	4%	0%	4%	8%
13	0%	3.625%	0%	3.625%	7.25%
14	0%	2.875%	0%	2.875%	5.75%
15	0%	2.0%	0%	2.0%	4.00%

Details of Payment to Financial Creditors

Particulars	**Total Admitted Claim Value (INR crores)**	**Debt Serviced (INR crores)**			**Percentage Debt Serviced to the Total Admitted Claim Value**
		Upfront Payment (A)	**Residual Payment (B)**	**Years of Servicing Residual Payment (C)**	
Secured (Non related Parties)	387.88	2.00	83.00	15	21.40%
Unsecured (Non related parties)	NA	NA	NA	NA	NA
Related Parties	164.00	0.00	0.00	NA	NA
Total	551.88	2.00	83.00	NA	15.37%

(iv) As per the Resolution Plan, INR 2,32,00,000 (Rupees Two Crores and Thirty-Two Lakhs Only) is proposed to be earmarked for payment of the insolvency resolution process cost ("CIRP Cost"). In case the CIRP Cost exceeds the said amount, the cost will be paid at actuals.

(v) The Workmen and Employees are proposed to be paid in full to the extent of the admitted claims for INR 80,11,809/- (Rupees Eighty Lakhs Eleven Thousand Eight Hundred and Nine only), on or prior to the Effective Date.

(vi) An amount of Rs.1,00,00,000/- (Rupees One Crore only) is proposed to be paid to the operational creditors on or prior to the Effective Date, in priority to payments to any other creditor. If the liquidation value payable to the operational creditors in the event of a liquidation of the Corporate Debtor ("Operational Creditor Liquidation Value") is determined to be higher than such amount, the entire Operational Creditor Liquidation Value will be paid to the respective Operational Creditors.

(vii) Some of the operational creditors' claims (other than workmen/employees & other creditors) have not been crystallized as they are contingent till the outcome of legal proceedings pending in various forums (including arbitration) and would be subsequently revised depending on the final determination of such legal proceedings. The resolution plan contemplates situations where some of these contingent claims or rejected claims or under verification claims, get crystallized after the date of submission of the Resolution Plan. In order to prevent any additional liabilities from affecting the Corporate Debtor, the plan proposes to distribute the Operational Creditors amount in the following manner:

(a) Operational Creditors with admitted claims shall be paid an amount in proportion to their share of overall claims i.e. admitted, rejected as well as contingent claims (**"Overall Claims"**).

(b) Balance amount shall be kept in an escrow for a period of 12 months. As and when such additional claims get admitted/crystallized, such operational creditors shall be paid in proportion to their share of the Overall claims.

(c) At the end of the 12-month period, the balance amount, if any, shall be distributed amongst all operational creditors with admitted claims.

(d) An amount of Rs.1,00,00,000/- (Rupees One Crore only) is proposed to be paid to Other Creditors (as per the Code) as full and final settlement against the total claims (admitted/rejected/contingent) on or prior to the Effective Date.

3.4 **Implementation of the Resolution Plan**:-

The Resolution Applicant intends to undertake the resolution of the Corporate Debtor in the following manner and order (the timelines mentioned, being indicative in nature), as set out in the Resolution Plan, in accordance with, and subject to, the provisions of the Resolution Plan, upon approval of the Resolution Plan by this Tribunal ("**Adjudicating Authority**"):

Step	Action Point	Indicative Timeline
1.	Upon approval of this Resolution Plan by the Adjudicating Authority, the Supervisory Committee ("**SC**") comprising of Monitoring Agent, Secured Financial Creditors & Successful Resolution Applicant shall be appointed as members as indicated in the Resolution Plan.	Within 3 Business Days from the approval of this Resolution Plan by the Adjudicating Authority
2.	Upon approval of this Resolution Plan by the Adjudicating Authority, the constitutional documents of the Company shall stand amended in the manner notified by the Resolution Applicant. The Company will undertake all steps and filings as are required by the Companies Act, 2013 to give effect to the amendment to the constitutional documents.	Within 5 Business Days from the approval of this Resolution Plan by the Adjudicating Authority
3	The Supervisory Committee shall issue a notice of termination to the existing plant operations contractor and/ or its affiliates for termination of all operational agreements, except for existing Power Purchase Agreements & Fuel Supply Agreements and other agreements as required for implementation of resolution plan, to facilitate transition between existing site contractors and the new proposed O&M contractor.	On the Effective Date
4.	The Resolution Applicant will, pursuant to the discussion with the COC execute definitive agreements as may be necessary to implement this Resolution Plan and the parties thereto shall comply with the conditions set out therein from the date of their execution.	Within 45 days from the date of approval of this Resolution Plan by the Adjudicating Authority

5.	Pursuant to the approval of the Resolution Plan by the Adjudicating Authority, the Company shall open a Capital Trust & Retention Account with Axis Bank least fifteen days prior to the Effective Date. The Entire Capital proposed to be infused by the Resolution Applicant to be brought in by the Resolution Applicant under this Resolution Plan shall be routed through this Independent designated Capital TRA Account. The New Resolution Applicant proposes to subscribe to fresh issue of equity shares through subscription of 1,00,00,000 equity shares with face value of Rs 10 (Rupees Ten each) aggregating to amount of Rs.10 Crores/- (Rupees Ten Crores only).	On the Effective Date
6.	On completion of the above steps, the Resolution Applicant will cause the Company to pay and discharge in full the CIRP Costs.	On the Effective Date
7.	On completion of Step 6, the Resolution Applicant will cause the Company to pay Workmen and Employees, Operational Creditors& Other Creditors as per the amount proposed in the Resolution Plan	On the Effective Date
8.	On the completion of Step 7, the Company will pay the Upfront Payment Against FC Debt to the Financial Creditors (other than related parties) as per agreed terms, of the Resolution Plan	On the Effective Date
9.	On the completion of Step 8, the residual serviceable debt is restructured into Term Loan for an amount of Rs. 83 Crores repayable as per the repayment schedule serviceable with interest rate of 9% per annum, interest payable on monthly basis. Necessary agreements are signed by the Company and Financial Creditors. The Financial Creditors and the Company shall take all steps, including undertaking all regulatory filings in this regard.	On the Effective Date
10.	The existing Board and the SC would be replaced by a new Board constituted with representatives nominated by the Resolution Applicant.	On the Effective Date
11	Subsequent to the fund infusion to the extent of Rs.10 Crores towards subscription of equity shares of Corporate Debtor, the Resolution Applicant would infuse an amount of INR 5.52 Crores under the first tranche through subscription optionally convertible debentures (**"OCD's"**) issued by Corporate Debtor.	Within 6 months for OCDs

12	The balance amount of INR 10.48 Crores, would be infused, through subscription to OCDs issued by Corporate Debtor in multiple tranches, based on the actual capital requirement for completion of overhauling	Progressively
13	The Resolution Applicant proposes to infuse the amount towards working capital demand loan for Rs.34 Crores	Progressively

3.5 **Resolution Amount**

The following are the details of the resolution amount:

For	**In Amount (INR crores)**		**Details**	
	Upfront Payment Amount (in INR crores)	**Residual Payment (in absolute terms)**	**Terms for payment of Residual Payment**	**Participation offered in Corporate Debtor through Shares (if any, mention the instrument involved with the amount and percentage)**
- Insolvency Resolution Process Cost	2.32			
- Liquidation Value to Operational Creditors	NA			
Financial Creditor	2.00	83.00	**Tenor-** 15 years from NCLT approval date **Interest-** 9% p.a. payable on monthly basis	NA
Operational Creditor, Workmen and Employees and Other Creditors	2.80	NA	NA	NA
Working/Fresh Capital Infusion (Fresh Infusion for improvement of business operations, working capital etc)	NA	44.48	Rs.10.48 Cr towards Capex expenditure & Rs. 34.00 Cr towards working capital	
Total	7.12	127.48		

3.6 Additional Security for Residual Payment

The term loan of INR 83,00,00,000 (Rupees Eighty Three Crores) shall be restructured into a 15 year term loan secured by first charge on fixed assets and second charge on current assets of the Corporate Debtor; and such restructured term loan shall carry interest @ 9% per annum payable monthly.

3.7 Effects of the Plan

3.7.1 Infusion into the Corporate Debtor

(a) The Resolution Applicant proposes to infuse a total of INR 60,00,00,000 (Rupees Sixty Crore) as part of the Resolution Plan as a combination of, inter alia, equity shares, optionally convertible debentures as well as working capital loan. The working capital loan of INR 34,00,00,000 (Rupees Thirty Four Crore) to be infused by the Resolution Applicant has been estimated based on immediate level of operations of the Corporate Debtor. However the Resolution Applicant reserves the right to re-finance/replace the fund infusion by way of working capital loan after a period of 6 months from the Effective Date, with an equivalent funding by new bank or financial institution, with the terms and conditions as applicable for such working capital sanction, including but not limited to, interest rate as applicable, and security of first charge on current assets of the Corporate Debtor. Additionally, the Resolution Applicant reserves the right to re-pay/reduce the working capital loan, depending on the availability of surplus cash as per the cash flow waterfall set out in the resolution plan, from the Resolution Applicant's share of 40% of surplus cash, subject to compliance with conditions stipulated herein above.

(b) The Resolution Applicant has reserved the right to infuse its funds, either directly or through one or more incorporated limited liability partnerships or such other entities controlled by Resolution Applicant and has undertaken that such entities would not be ineligible under Section 29 A of the Code.

(c) The Resolution Applicant also proposes to infuse additional funds of INR 35 Crores (based on preliminary estimate) to fund the capital expenditure requirement for meeting the FGD requirements of MoEF, through additional equity/quasi equity infusion by Resolution Applicant. The actual additional fund infusion by Resolution Applicant would be based on the actual requirement of the capital expenditure for meeting the required norms as stipulated.

3.7.2 No Liabilities to Related Parties.

All amounts due or payable by the Corporate Debtor to the financial creditors who are related parties under section 29A of Code, whether admitted as claims or not, shall stand cancelled, waived, and remitted by the respective financial creditor, and upon approval of the resolution plan, the financial creditors who are related parties under section 29A of Code shall have not claim whatsoever against the Corporate Debtor, and any and all such claims shall stand waived.

3.7.3 Employees:

The Resolution Applicant has reserved the right to make suitable changes to the existing employee base and also recruit additional manpower, for effective implementation of the Resolution Plan.

3.7.4 Third party security / guarantee

The security/guarantees provided by third party security providers, including but not limited to erstwhile promoters or any of their affiliate entities, will continue to be valid and in force, provided however, such third party security providers shall have no right of subrogation against the Corporate Debtor, and shall have no right or claim against the Corporate Debtor, and without prejudice to the foregoing, and such alleged right or claim against the Corporate Debtor/Resolution Applicant shall stand cancelled, and be deemed to be have been waived, and remitted by such third party security provider.

3.7.5 Trust and retention account for working capital loans

(a) A trust and retention account ("TRA – Operations Account") is proposed to be established, to be operated in the following manner:

- All cash flows relating to power sales receivables accruing post the Insolvency Commencement Date shall be routed through the TRA – Operations Account;
- Inflows and outflows of the TRA - Operations Account shall be monitored and controlled through a monthly cash budget submitted by the Corporate Debtor for the financial year (**"Cash Budget"**) (for operational expenditure only) as submitted by the Resolution Applicant in accordance with the Resolution Plan.
- End use of funds will be controlled and supervised by the Operations TRA Account banker based on the Cash Budget.
- The surplus cash shall be derived after the following payments (**"Cash Surplus"**):
  - First, payment towards statutory dues;
  - Secondly, payment towards fuel expenses, including transportation;
  - Thirdly; towards operations and maintenance expenses;
  - Fourthly, towards the interest and repayment instalments pertaining to the Residual Debt;
  - Fifthly, towards servicing of working capital dues; and
  - Sixthly, towards servicing of the coupons on the OCDs.
- The Cash Surplus which is derived after settling the above payments in the TRA Operations Account, would be utilized in the ratio 60:40 (the financial creditor shall be entitled to 60% and the Resolution Applicant shall be entitled to 40% of the Cash Surplus), wherein 60% would be utilized by financial creditors towards repayment of Residual Debt without prepayment penalty and the balance 40% would be utilized by

Resolution Applicant, at its sole discretion, subject to no pending events of default and applicable law. The share available towards Secured Financial Creditors would be utilized for advance payment for adjustment of future instalments, without any pre-payment penalty. The Resolution Applicant has also reserved the right to utilize its share of the Cash Surplus, for pre-payment of outstanding Residual Debt, without any prepayment penalty. Thereafter, the surplus cash, if available, would be adjusted under cash sweep on annual basis or as may be mutually agreed between the financial creditor and the corporate debtor i.e. quarterly/half-yearly basis etc.

(b) The Resolution Plan proposes that a trust and retention account (**"Capital TRA Account"**) be opened with the Axis Bank Limited at least fifteen days prior to the Effective Date. All funds proposed to be infused by the Resolution Applicant shall be routed through this new designated Capital TRA Account and the account shall be operated in the following manner:

- During the period of implementation of the Resolution Plan, the Capital TRA Account would also be utilized for all receipts from realizations relating to advances/cash margins/receivables including the deposits made by Corporate Debtor with various entities pertaining to cash realizations from assets of Corporate Debtor pertaining to the period prior to the Insolvency Commencement Date / and/ or any cash flows against claims with respect to past period (whether recorded in the books or otherwise) received from any agency or governmental authority, more specifically the procurer. The Resolution Applicant has agreed that all the cash flows emanating from realization pertaining to a period prior to the Insolvency Commencement Date, would be deposited into Capital TRA, and such funds would be distributed amongst the RA and the secured financial creditor (i.e. Axis Bank Limited) in the ratio of 80:20, wherein Resolution Applicant would be permitted to utilize up-to 80% of such cash flows pertaining to realizations from the period prior to the Insolvency Commencement Date and 20% of the such portion being available for the secured financial creditors, to utilize to pre-pay the outstanding Residual Debt, without any prepayment premium.

- The Resolution Applicant may utilize his share of 80% under the Capital TRA, for the purposes of meeting the capital expenditure requirements of the Corporate Debtor and/or working capital requirements of Corporate Debtor or for making pre-payment of the Residual Debt, for which no explicit approval of the secured financial creditor is required. The balance 20% of the cash flows deposits/cash margins would be available for pre-payment of Residual Debt of the secured financial creditors, without any prepayment penalty.
- However in the event, the Resolution Applicant proposes to utilize his 80% share of funds deposited in the Capital TRA account, for the purposes of redemptions of capital (including OCD's) and/or repayment of the working capital loan provided by the Resolution Applicant, such utilization for such redemption/repayment shall be subject to no pending events of default under the financial agreement and applicable law.

3.7.6 Treatment of existing bank guarantees:

The Addendum mentions certain un-invoked bank guarantees issued by Axis Bank Limited on behalf of the Corporate Debtor in favour of South Eastern Coalfields Limited and confirms that any liabilities which may arise in relation to such bank guarantees shall be paid and discharged by the Corporate

Debtor and any related loss or damage suffered by Axis Bank Limited shall be immediately reimbursed and/or compensated by the Corporate Debtor.

3.8 The Resolution Professional would contend that the interests of existing shareholders were altered by the Resolution Plan as under:-

Sl. No	Category of Share holder	No. of shares held before CIRP	No. of shares held after the CIRP	Voting share (%) held before CIRP	Voting share (%) held after CIRP
1	Equity	7,55,00,000	NIL	100%	Nil
2	Preference	Nil	Nil	Nil	Nil

3.9 The Resolution Applicant has sought certain reliefs and concessions as stated hereunder and further clarified that they are not conditions to implementation of the Resolution Plan.

(a) To exempt levying of stamp duty and fees applicable in relation to the Resolution Plan and its implementation including any stamp duty applicable on the issue of shares by the Company by the Collector of Stamps, Revenue Department, of any state government and the Ministry of Corporate Affairs.

(b) To waive any past claims in respect of any liabilities that has accrued prior to date of completion of resolution process by any Government Authority both State & Centre, Chhattisgarh State Power Distribution Company Limited, Chhattisgarh State Power Trading Company Limited or its associates and/or subsidiary companies, arising out of non-compliance by the Corporate Debtor under the existing Power Purchase Agreements (PPAs) signed with CSPTCL / Power Delivery Agreement signed with KMPCL, including but not limited to claims arising out of Electricity Duty / Generation Tax and/or Supply or Pay obligations for supply of guaranteed power under or any such levies related to supply of power or any other such levies arising out of the existing Power Purchase

Agreements and/or Power Delivery Agreement of the Corporate Debtor.

(c) The continuance of the existing Tripartite Agreement, along with Power Purchase Agreement with CSPTCL and Power Delivery Agreement with KMPCL for supply of 75 MW, with complete waiver on account of any penalties for non-supply for the period prior to the implementation of the Resolution Plan.

(d) The right to renegotiate the terms of all agreements or terminate all agreements executed by the Company with any third parties, in its sole discretion, without any additional liabilities, penalties or other onerous obligations, whether past, present or future, accruing to the Company or the Resolution Applicant. It is clarified that such third parties will not have the right to terminate their agreements with the Company.

(e) That all the financial claims against the Corporate Debtor and all pecuniary liabilities and obligations of the Corporate Debtor arising out of: (i) business transactions of the Corporate Debtor; (ii) any litigation or proceedings (including litigations or proceedings pending before any judicial or regulatory authority) against the Corporate Debtor; and (iii) any orders against the Corporate Debtor passed by any judicial or regulatory authority shall stand abated, quashed and/or be disposed off, and be deemed to have been abated, quashed and/or disposed off, without any obligations, liabilities, or penalties to, or on, the Company or the Resolution Applicant, and all obligations, whether past, present or future, of, or accruing to, the Company or the Resolution Applicant thereunder shall stand cancelled and waived by the other parties to the litigations.

(f) The relevant State Pollution Control Boards to approve renewal of the consents to establish/operate obtained by the Company under applicable provisions of the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981.

(g) The Central Board of Direct Taxes ("CBDT") or any other relevant governmental authority to exempt the Resolution Applicant and the Company from the applicability of and payment of all Taxes under the Income Tax Act, 1961 (including Section 115JB) or Central Goods and Services Tax Act, 2017, including any liability under the Minimum Alternate Tax which may arise on account of the transactions envisaged under the Resolution Plan either on the Resolution Applicant or the Company.

(h) All licenses and government approvals held by the Company (including Consent to Operate/ Establish/ Factory License / Boiler License etc., as applicable for ensuring operations of the Corporate Debtor), which have expired on or prior to the Effective Date or within period of 1 year thereafter, shall be renewed / extended by the relevant governmental authorities, and the Company shall be permitted to continue to operate its business and assets in the manner operated prior to submission of this Resolution Plan until renewal / extension of such licenses and approvals. The relevant governmental authorities will provide a reasonable period of time after the Effective Date in order for the Resolution Applicant to assess the status of the licenses and governmental approvals required by the Company and to procure that the Company applies for the same.

(i) Approval in respect of all the claims of stakeholders (including but not limited to State Government Authorities, including but not limited to Chhattisgarh State Power Distribution Company Limited or its affiliates, Superintending Engineer ES Government of Chhattisgarh) prior to insolvency commencement date are to be resolved as per the resolution plan and no such claim can be adjusted towards any future receivables.

(j) All rights, titles and benefits relating to the movable and immovable properties of the Corporate Debtor after receipt of full Resolution Amount by Other Creditors shall be vested in the Corporate Debtor free of any title defects or Encumbrances, in order to facilitate new security creation favoring the Secured Financial Creditors as per the Resolution Plan.

(k) Other than as stated in this Resolution Plan, all the contracts executed by the Company which were valid subsisting as on each of the insolvency commencement date in respect of the Company shall be renewed/extended, including but not limited to continuation of the existing Fuel Supply Agreement signed with M/s South Eastern Coalfields Limited ("SECL") under Shakti Scheme for supply of coal for the power plant.

(l) All the existing agreements and arrangements between the Corporate Debtor and Promoter Related Parties shall stand terminated without any additional liabilities, penalties or other onerous obligations accruing to the Corporate Debtor or Resolution Applicant, except the agreements relating to the Power Purchase Agreement with KMPCL for supply of power of 75 MW capacity.

(m) The Resolution Applicant is aware that "KSK Mahanadi Power Company Limited" (hereinafter referred to as "KMPCL") has been admitted into NCLT vide order dated 3rd October 2019. The Resolution Plan is based on the continuity of the Power Purchase Agreement PPA signed by Corporate Debtor with KMPCL. The Resolution Applicant hereby requires that the PPA continues to be effective for supply of power of 75 MW up-to the period of the implementation of the Resolution Plan at the prevalent tariff.

FINDINGS

4. We have heard the Counsel for Resolution Professional. This Application is filed under Sections 30 (6) and 31 of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "CODE") read with Regulation 39(4) of CIRP Regulations, for approval of the Resolution Plan submitted by Indermani Mineral (India) Private Limited ("IMIPL /Resolution Applicant").

5. The Learned Counsel for Applicant stated that, two Registered Valuers were appointed on 22.08.2019 to determine the fair value and liquidation value of the Corporate Debtor. The Fair

value was fixed at Rs.255.62 crores and the Liquidation value at Rs.94.14 crores. In all, the Applicant conducted 07 CoC meetings. After granting extension of 90 days and exclusion of lockdown period during to Covid-19, the CIRP came to an end on 06.07.2020.

6. The Resolution Plan submitted by Indermani Mineral (India) Private Limited ("Resolution Applicant") was approved by CoC with 100% voting in favour of it. The minutes of the 7th meeting of the COC held on 17.06.2020 is filed at page Nos 91-95.

7. The CoC comprised of sole Financial Creditor /Axis Bank Ltd. The amounts provided for the stakeholders under the Resolution Plan is given at para 3.2 above. The implementation of the Resolution Plan is stated at para 3.4 supra.

8. The Resolution Professional filed Form-H, which is annexed and marked as Anneuxre-II-20 and further certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India)Insolvency Resolution Process for Corporate Persons(Regulations, 2016)CIRP Regulations(and does not contravene any of the provisions of the law for the time being in force.

9. We perused the Performance Bank Guarantee of Rs. 10 Crores obtained from Union Bank of India, Chhattisgarh furnished by the Successful Resolution Applicant i.e. Indermani Mineral India Private Limited (IMIPL) in accordance with the requirements of RFRP, copy of which is annexed and marked as ANNEXURE-II-21. The same is to be renewed from time to time to the satisfaction of the monitoring committee.

10. It is mentioned in Form-H that the Resolution Applicant submitted an affidavit in terms of section 30)1(of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are stated to be in order.

11. The implementation of the plan until the final payment shall be jointly supervised by the Supervisory Committee comprising

of Monitoring Agent, Members of Secured Financial Creditors and Successful Resolution Applicant.

12. The Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

13. 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 as well as workmen and employees of Corporate Debtor and a provision is made for payment of CIRP costs.

14. The Resolution Professional has enumerated at para 9.10 of the Application, the reliefs and concessions which are sought by the Resolution Applicant. It is the contention of the Resolution Professional that Regulation 37 (1) of CIRP Regulations provides a resolution plan for the measures required for implementing it including but not limited to obtaining necessary approvals from the Central and State Governments and other authorities. Therefore, the reliefs stated above are sought for effective implementation of the resolution plan. The concessions are shown as (ii) (a) to (m) which are described above.

(a) The relief sought in paragraph (a) is with regard to exemption from payment of stamp duty and fee applicable in relation to the resolution plan and its implementation including any stamp duty applicable on the issue of shares by the Company. The Resolution Applicant is at liberty to approach concerned authorities and the concerned authorities to consider the request, if any, made by the Resolution Applicant.

(b) In para (b), the Resolution Applicant seeks waiver for any past claims in respect of liabilities that are accrued prior to date of completion of resolution process by any

Government Authority. This is also with reference to exemption of duties payable to various authorities enumerated therein. Section 31 (1) of Code provides that resolution plan as approved by the CoC, if approved by the Adjudicating Authority shall bind on the Corporate Debtor, its employees, creditors including Central Government, any State Government or any local authority to whom the debt in respect of payment of duties arising under any law for the time being in force, such as authorities to whom statutory dues are owed. Therefore, when once plan is approved by the Adjudicating Authority, it binds on all the authorities stated above. The Resolution Applicant is at liberty to seek relief from the concerned authorities basing on the binding nature of the plan on the authorities.

(c) In paragraph (c), the Resolution Applicant is seeking for continuing existing Tripartite Agreement along with Power Purchase Agreement with CSPTCL and Power Delivery Agreement with KMPCL for supply of 75 MW and waiver of any penalties for non-supply. The Resolution Applicant is at liberty to approach the concerned above companies and seek waiver and the above companies are also directed to consider favourably for giving waiver to the penalties, if any.

(d) In para (d), the Resolution Applicant reserves the right to renegotiate the terms of all agreements and terminate all agreements entered by 3rd parties etc. It is open to the Resolution Applicant as per terms of the contract to take appropriate decision which were entered by the Corporate Debtor. The Resolution Applicant is seeking exemption from the liabilities. The Resolution Applicant is at liberty to claim exemption as enumerated in Clause (e)

(e) In para (f), the necessary renewals by State Pollution Control Boards to be granted. Section 31 provides taking approvals for renewals within one year from the date of approval of the Resolution Plan. So, it is open to the Resolution Applicant to get renewal by virtue of Section 31 (4) of IBC. This also covers para (h) which also deals with necessary licenses.

(f) Regarding para (i), the Resolution Applicant is at liberty to approach the concerned and seek waiver.

(g) As far as reliefs sought in paragraphs (k) to (m), it is always open to the Resolution Applicant to approach the concerned and seek appropriate reliefs. We direct the concerned to favourably consider the request made by the Resolution Applicant in terms of reliefs sought in paras (k) to (m).

15. The Resolution Plan has been approved by CoC with 100% voting share. The Resolution plan is in conformity with Section 30(2) of IBC which provides for payment to Operational Creditors, provides for the management of the affairs of the Corporate Debtor and supervision of the resolution plan. The resolution plan is thus in conformity with the requirements of Section 30 (2) of the Code.

ORDER

16. As a sequel to above, the, Resolution plan DATED 03.06.2020 submitted by **INDERMANI MINERAL INDIA PRIVATE LIMITED ("Resolution Applicant")** which is approved by members of CoC having 100% voting share stands **approved** as per Section 31 (1) of the Code. In other words we are satisfied with the Resolution Plan as approved by Committee of Creditors under Section 30 (4) of the Code and it meets the requirement as referred to in Section 30 (2) of IBC, 2016. Accordingly, the Resolution Plan stands **approved** and the same is binding on 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, such as authorities to whom statutory dues are owed, Guarantors and stakeholders involved in the Resolution Plan in terms of Section 31 (1) of the Code.

17. The moratorium order passed under Section 14 shall cease to have effect from today.

18. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.

19. The Resolution Applicant shall obtain necessary approval required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan or within such period as provided for in such law.

20. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.

21. In terms of above, **IA 549/2020** filed by Resolution Professional under Section 30 (6) and 31of IBC, for approval of Resolution Plan submitted by **INDERMANI MINERAL (INDIA) PRIVATE LIMITED** stands disposed of.

27/08/2020	27-8-2020
VEERA BRAHMA RAO AREKAPUDI	**RATAKONDA MURALI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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