



S.No.2

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1**  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
27-06-2023 AT 10:30 AM

**IA (IBC) 542/2023 & Intervention Petition (IBC) 23/2023 in  
CP (IB) No. 39/10/HDB/2022**  
u/s. 10 of IBC, 2016

**IN THE MATTER OF:**

M/s. Enaar Steel & Alloy Private Limited

...Petitioner

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**O R D E R**

**Intervention Petition 23/2023**

Orders pronounced. Recorded vide separate sheets. In the result, this Application is dismissed without costs.

**IA542/2023**

Orders pronounced. Recorded vide separate sheets. In the result, the Resolution Plan approved.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – I**

**Inv.P.No.23 OF 2023  
IN  
IA.NO. 542 OF 2023  
IN  
CP (IB) No. 39/10/HDB/2022**

*Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with rule  
11 of the National Company Law Tribunal Rules, 2016.*

**IN THE MATTER OF M/S. ENNAR STEEL & ALLOY PRIVATE  
LIMITED**

M/s.Gurupreeth Galvanizing Private Limited  
Representing by its Authorized Signatory  
Mr. Balaram Agarwal  
Having its registered office situated at  
4-1-970, C-403 & 404, 4<sup>th</sup> Floor,  
Upasana Ahuja Estate, Abids,  
Hyderabad – 500001, Telangana  
Email: [rsrn.steel@gmail.com](mailto:rsrn.steel@gmail.com)

... Applicant

V/s.

1. Artham Someswara Rao  
RP-M/s. Ennar Steel & Alloy Pvt. Ltd.,  
Plot No. 23 & 24, Flat No.301, H.No.12-1-508/70,  
Shanthi Nagar, North Lalaguda, Next to SFS School,  
Hyderabad – 500017  
Email: [cirp.ennar@gmail.com](mailto:cirp.ennar@gmail.com)

... Respondent/Resolution Professional

2. Southern Power Distribution Company of Telangana Limited  
(TSSPDCL)  
Represented by its CMD  
Operation Circle: Mahabubnagar,



Padmavathi Colony, Mahabubnagar, Telangana – 509001

Email: [cmd@tssouthernpower.com](mailto:cmd@tssouthernpower.com)

3. Vinayak Steels Ltd.

Representing by its Director,

#5-4-83 to 85, TSK Chambers,

1<sup>st</sup> Floor, M.G Road, Secunderabad – 500003

Email: [dhatu@hotmail.co.in](mailto:dhatu@hotmail.co.in)

[infor@vinayksteels.com](mailto:infor@vinayksteels.com)

... Respondents

**Date of Order: 27.06.2023**

**CORAM:-**

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri. Charan Singh, Hon'ble Member (Technical)

**PARTIES/COUNSELS APPEARANCE:-**

For the Applicant : Shri VK Sajith & V Ravi Kumar, Counsel

For Respondent No.1 : Shri Srikanth G (Pravara Legal), Counsel

For Respondent No.3 : Shri Amir Bavani, Counsel

**PER: BENCH**

**ORDER**

1. This Application is filed by the Applicant Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016 prays :

- a. To permit the Applicant to participate in the proceedings and to be heard on all issues concerning the approval of the Resolution Plan by the



Committee of Creditors who has fraudulently approved it under the guise of exercising Commercial Wisdom.

- b. To direct the Respondent resolution professional to provide all relevant information and documents related to the approval of the resolution plan by the committee of creditors and place the same before the Tribunal for its scrutiny.
- c. To stay the proceedings until the intervenor has had the opportunity to participate and present its case.
- d. To order a forensic audit/ Transaction Audit/ Inquiry or investigation into the ongoing Corporate Insolvency Resolution Process of the Corporate Debtor to identify any fraudulent or illegal activity.
- e. To seek relief from oppressive or unfair treatment by the resolution professional and the committee of creditors (which has the nature and character of “State” being the arm of the state, which has apparently exercised its statutory powers as committee of creditors in an arbitrary and colorable exercise of power), or any other parties involved in the present proceedings.
- f. To challenge the decision of the committee of creditors if the decisions of them it is found to be biased or unfair to the intervenor.

**2. The averments put forth by the Applicant are:**

- 2.1 It is averred that this Company Petition was filed under section 10 of IBC, 2016 for the initiation of Corporate Insolvency Resolution Process against



the Corporate Debtor to resolve the insolvency situation arises due to the difficulty in payment of arrears to the Telangana State Power Distribution Company Limited and the petition admitted on 01.07.2022 by appointing Mr.Pavan Kankani as an Interim Resolution Professional and he was replaced by the Committee of Creditors with the Respondent as Resolution Professional. As per provisions the Respondent had carried out the paper publication of Form-G for invitation for Expression of Interest post approval of the Committee of Creditors.

- 2.2 It is averred that the Applicant expressed its interest to place a resolution plan for the revival of the corporate debtor. The Respondent after obtaining the undertaking and declarations served the Request for Resolution Plan (RFRP) along with the Information Memorandum to this Applicant.
- 2.3 It is averred that the Respondent Resolution Professional has placed the draft RFRP before the CoC and the CoC after going through the same and finding that the eligibility criteria fixed in the RFRP are feasible and if any resolution plans received on those criteria that are viable and feasible for the revival of the corporate debtor.
- 2.4 It is averred that along with this Applicant Seven Prospective Resolution Applicants had submitted their proposals for the revival of the Corporate Debtor. The Committee of Creditors in their 8<sup>th</sup> Meeting of CoC held on



09.12.2022 declared the following Prospective Resolution Applicants are in the final list of prospective resolution applicants:

Sl.No.	Name of the Prospective Resolution Applicant	Evaluation Matrix Marks	Rank
1.	Shree Shyam Enterprises & Others	98.00%	H1 Bidder
2.	Gurupreth Galvanizing Private Limited	84.83%	H2 Bidder (Even though the CoC declared the Applicant as an H3 bidder in view of the Proposal of the H2 bidder got disqualified this Applicant became an H2 Bidder)
3.	Vinayaka Steel Limited	73.93%	H3 Bidder (In view of H3 became H2 so H4 became H3 Bidder)

2.5 It is averted that the Committee of Creditors with an intention other than the resolution or liquidation of the corporate debtor has decided to reject all the resolution plans without opening the same and directed the respondent to seek an extension of CIRP by showing the reason for the issuance of fresh expression of interest by hiding the fact that the resolution plans received by the CoC were rejected by showing the reason that those plans are not competent (After finalizing the plans) which is against the law and its objective.

2.6 It is averred that the Respondent Resolution Professional failed to provide the minutes of the meeting of the committee of creditors where the



resolution plans were opened and discussed. The Resolution Plan proposed by the Applicant herein has opened in the CoC and discussed the same along with the Respondent to take a decision on its viability and feasibility.

2.7 It is averred that applicant knows a reason why M/s. Vinayak Steel Limited is very particular about this resolution process that is the corporate debtor I having a unit situated at Sy.No.92, 97 & 98, Jangeer Peer Darga Road, Kothur, Mahabubnagar to an extent of Ac.7.00 Gts. Wherein the land of M/s.Vinayak Steel Limited is next to that of the land of the corporate debtor and the above company is having the land to an extent of Ac.15.00 Gts in that area. The intention behind proposing the Resolution Plan by M/s. Vinayak Steels Limited is to get of the corporate debtor and merge the same in their business entities.

2.8 It is averred that the CoC has decided to direct the Resolution Professional to issue a fresh expression of interest in their 9<sup>th</sup> meeting of the Committee of Creditors held on 17.12.2022 by rejecting all the resolution plans placed before them for taking appropriate action. The Resolution Professional had carried out the paper publication of New Form-G dated 06.01.2023.

2.9 It is averred that the Committee of Creditors consists of only one i.e., TSPDCL without giving any proper reason or without allowing the Applicant herein to evaluate the plan proposed by them in the view of the members of CoC and simply rejected the plan and directed the respondent



herein is the resolution professional to issue a fresh expression of interest by carrying out a fresh paper publication for the invitation of fresh resolution plans by taking extension of CIRP period from this Tribunal which is illegal and arbitrary.

2.10 It is averred that as per the request for Resolution Plan shared with this applicant after receipt of its expression of interest on page no.6 it is stated that *“The Resolution Professional may have asked to do by the committee of creditors, re-issue RFRP, of the resolution plans received in response to the earlier request, are not satisfactory.....”*. It is clear that there is no concept of giving a New Expression of Interest as informed by Respondent to this applicant and hence the decision taken by the committee of creditors to issue a New Expression of Interest and hence the illegal as per the RFRP issued to this applicant and hence the decision of issuing new Expression of Interest need to be set aside.

2.11 It is further averred that in response to the alleged fresh expression of interest M/s. Vinayak Steels Limited and two individuals filed their expression of interest wherein without any reason the two individuals backed out from the process and as per the plan of the respondent herein the Resolution Plan of M/s. Vinayak Steels Limited got approval from the CoC and accordingly the Respondent has moved the captioned interlocutory application for the Judicial consent on the resolution plan.



**3. The Respondent No.1 counsel filed written submissions, inter-alia stating that :**

3.1 It is stated that the present intervention petition is filed by the applicant only with an intent to delay the CIRP process of the “Corporate Debtor” and by hiding the fact that he being a stranger to the entire proceedings of the IA.No. 542 of 2023 in CP(IB).No., 39/10/HDB/2022 filed for approval of Resolution Plan as approved by the Committee of Creditor (CoC), the applicant’s claims fraudulently that he is a Prospective Resolution Applicant as on date of this Intervention Petition.

3.2 It is stated that the Hon’ble Supreme Court in Saraswati industrial Syndicate Ltd. Vs. CIT, (1999) 3 SCC 141 : 1999 SCC OnLine SC 254 at page 144 held, as to the role of intervenor, that:

*“12. Learned counsel for the interveners submits that he is entitled to the same order as we have just passed. We cannot pass such an order in an intervention application. **The only purpose of granting an intervention application is to entitle the intervener to address arguments in support of one or the other side.** Having heard the arguments, we have decided in the assessee’s favour. The interveners may take advantage of that order (Emphasis Supplied)*



- 3.3 It is further stated that in “*Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta (2019) 16 S.C.R.344*”, the law is well laid down as to the approval of the Resolution Plan by Adjudicating Authority.
- “22. *If the CoC had approved the resolution plan by requisite percent of voting share, then as per Section 30(6) of the I&B 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 (NCLT) is required to satisfy that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less...(Emphasis Supplied).*”
- 3.4 It is stated that the present application was hit by the “Doctrine of Res Judicata”. In the Intervention Petition the grounds arrayed are eminent from the Request for Resolution Plans (RFRP) issued in pursuance to the EOI dated 13.09.2022 wherein the applicant had participated to the EOI dated 13.09.2022 wherein the applicant had participated and his plan was got rejected along with all other plans. The applicant had already filed an IA.No. 46/HDB/2023 in CP(IB).39/10/HDB.2022 on the same cause of action and the same was held against him by this Tribunal.
- 3.5 It is stated that the similar grounds and seeking fresh reliefs for which he was not entitled as the cause of action was already decided against the



applicant. The Respondent No.1 states that the Relief's as sought under the present Intervention petitioner are liable to be rejected.

**4. The Respondent No.3 counsel filed written submissions, inter-alia stating that :**

4.1 It is stated that Respondent issued Form-G (first extension) on 06.01.2023, wherein the last date for receipt of EOI was fixed on 22.01.2023. Thereby, the Answering Respondent herein, submitted its EoI along with the Earnest Money Deposit ('EMD') amount on 19.01.2023, which was well acknowledged by Respondent No.1 on 21.01.2023. Thereby, Respondent No.1 shared the provisional list of eligible PRAs on 24.01.2023, wherein only 4 PRAs appeared amongst which one was again the Answering Respondent herein.

4.2 It is stated that the answering Respondent again submitted the Resolution Plan on 25.02.2023. It is imperative to state herein that many discussions took place on the plan by the CoC, wherein the CoC opined for further enhancement in the Resolution Plan. Accordingly, the Answering Respondent submitted a revised Resolution Plan on 10.03.2023.

4.3 It is stated that CoC voted on the Resolution Plan submitted by the Answering Respondent and the same was approved by 100% majority of the CoC members. Thereby, the Answering Respondent was declared as the Successful Resolution Applicant on 10.03.2023. In furtherance to such



declaration, the Answering Respondent herein accepted the letter of intent dated 10.03.2023 and duly paid the performance guarantee (PBG) of Rs.53,00,000/- on 16.03.2023. Accordingly, an Application has been preferred by Respondent No.1, before this Tribunal bearing IA. No. 542 of 2023, for approval of Resolution Plan, which is pending adjudication as on date.

4.4 It is averred that the applicant without availing the opportunity of participating in the second round even after the communication by Respondent No.1 chose not to participate, cannot at this belated stage when the plan of Answering Respondent stands approved by the CoC and is currently pending the judicial scrutiny of this Tribunal.

4.5 It is stated that if the applicant had serious and genuine interest it could have very well participated in the second round but after not availing the said opportunity any allegation of the Answering Respondent manipulating Respondent No.1 and 2 is total misconceived. Further, the Applicant itself admits in the instant Application that the intention of Answering Respondent behind proposing the Resolution Plan is to merge the business of Answering Respondent with the Corporate Debtor, which can very well be the justified reason for the Answering Respondent filing the Resolution Plan.



4.6 It is stated that the Applicant is a PRA as far as the first round is concerned and has preferred this Application out of mere vengeance and has no basis at all, since the resolution plan stands approved by the CoC under their commercial wisdom. Similarly, in the matter of *“Brijesh Singh Bhadauriya Vs. Pinakin Shah, IRP of Sintex Industries Ltd. & Ors (Company Appeal (AT) (Insolvency) No. 456 of 2023) – Para 5*, the Hon’ble National Company Law Appellate Tribunal, Principal Bench, New Delhi, categorically stated that, when the RP conducts the entire process with the approval of CoC wherein the Resolution Plan is also approved by the CoC in the commercial wisdom of the CoC, such Resolution Plan cannot be easily interfered with. Therefore, this Application at hand is not maintainable and at this threshold itself, it deserves to be dismissed outrightly.

5. Therefore, the point that arises for our consideration is:

**Whether an unsuccessful resolution Applicant is entitled to participate in the proceedings and be heard on all issues concerning approval of resolution plan by the Committee of Creditors?**

6. We have heard Shri VK Sajith & V Ravi Kumar, Learned Counsel for the Applicant, Shri Srikanth G (Pravara Legal), Learned Counsel for the Respondent No.1 and Shri Amir Bavani, Learned Counsel for the Respondent No.3. Perused the record and case laws.



7. At the outset it is to be stated that the Applicant, herein is one among the Prospective Resolution Applicants who have submitted their proposals for revival of the Corporate Debtor. In so far as the approval of the resolution plan is concerned the IB Code, left it to the wisdom of the members of the Committee of Creditors in which the Applicant cannot be a member.
8. The Applicant's resolution plan has been rejected by the Committee of Creditors, since in the commercial wisdom of the Committee of Creditors, the Resolution plan submitted by the Applicant did not find acceptable. It is also on record that resolution plan submitted by another prospective applicant i.e., Respondent No.3 has been voted and the same is placed before us for approval.
9. In terms of Section 31 of IB Code, if the Adjudicating Authority is satisfied that the resolution plan as approved by the Committee of Creditors under Sub-Section 4 of Section 30 of the IB Code meets the requirements as referred to in Sub-Section 2 of Section 30 of the Code, the same shall be approved by the Adjudicating Authority.
10. It is also the settled law that the commercial wisdom of the Committee of Creditors in voting or rejecting the resolution plans cannot be ordinarily interfered with by this Tribunal. The so called grounds pleaded by the Applicant, if require can be taken not of by this Tribunal, at the time of considering the prayer of the Resolution Professional for approval of the



Resolution Plan voted by the Committee of Creditors. The Code had not provided any role whatsoever for taking part in the decision making process of the Committee of Creditors. The Prospective Resolution Applicant cannot be allowed to participate in the decision making process by the Committee of Creditors. Thus, the application is thoroughly misconceived besides the applicant has no locus standi, to seek intervention.

11. Therefore, for these reasons the Application is not maintainable and the same is liable to be dismissed. Accordingly, this Application is hereby dismissed.

**Sd/-**

(Sh.Charan Singh)  
Hon'ble Member (Technical)

**Sd/-**

(Dr.Venkata Ramakrishna Badarinath Nandula)  
Hon'ble Member (Judicial)

*Sridher*