

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, 4th Floor,
Upasana Ahuja Estate, Abids,
Hyderabad – 500001, Telangana
Email: 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

... 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

3. Vinayak Steels Ltd.

Representing by its Director,

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

1st Floor, M.G Road, Secunderabad – 500003

Email: dhatu@hotmail.co.in

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 8th 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 9th 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)

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

IA (IBC) NO.: 542/2023
IN
CP (IB) NO. 39/10/HDB/2022

*U/S. Section 30(6) of Insolvency & Bankruptcy Code, 2016 r/w. Regulation
39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution
Process for Corporate Persons) Regulations, 2016*

**IN THE MATTER OF M/S ENAAR STEEL AND ALLOY PRIVATE
LIMITED**

Between:

Enaar Steel and Alloy Private Limited

(Company under CIRP), 3-6-122, 2nd Floor, Street No.18,

Himayath Nagar, Hyderabad -500029

Represented by Resolution Professional

.... Applicant /
Corporate Debtor

Versus

Southern Power Distribution Company of Telangana Limited

("TSSPDCL"), Authorised by its Superintending Engineer, Operations,

Rajendranagar, Nanal Nagar X Road,

Mehdipatnam, Hyderabad -500028, Telangana

...Respondent/
Operational Creditor

Date of order: 27.06.2023

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member Judicial

Shri Charan Singh, Hon'ble Member Technical

Appearance:

For Applicant: Shri G. Srikanth, Advocate

**PER: BENCH
ORDER**

- 1. IA No. 542/2022** is filed by the Resolution Professional under Section 30(6) & 31 of IBC, 2016 r/w regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 & Rule 11 of NCLT Rules, 2016, seeking approval of the resolution plan submitted by Vinayak Steels Limited (**Resolution Applicant**) as duly approved by the Committee of Creditors with 100% votes in respect of the Corporate Debtor i.e. **ENAAR STEEL AND ALLOY PRIVATE LIMITED**.
2. To put precisely, this Tribunal vide order dated 01/07/2022 admitted the Corporate Applicant/ Enaar Steel and Alloy Private Limited into Corporate Insolvency Resolution Process (CIRP). Mr. Pavan Kankani was appointed as Interim Resolution Professional. Consequent to issuance of “Public Announcement” in “Financial Express” and “Nava Telanagana” in Hyderabad editions on 07/07/2022, two claims were received from Operational Creditors. The claim from Southern Power Distribution Company of Telangana Limited (TSSPDCL) was admitted, however the claim from ESI Corporation was rejected by the IRP. Pursuant thereto, the IRP constituted the Committee of Creditors (COC) with the sole operational creditor and convened the 1st CoC meeting on 29.07.2022. In the 1st CoC meeting, Mr. A. Someshwara

Rao was appointed as Resolution Professional upon approval of this Tribunal dated 25.08.2022 passed in IA 818/2022.

3. The Resolution Professional carried out Form-G publication on 14.09.2022 inviting Expression of Interest (EOI) from Prospective Resolution Applicants (PRAs) on or before 13.11.2022.
4. The valuers were appointed for Land & Building valuers and Securities or Financial Assets had given the valuations as below:

Name of the Valuer	Fair Market Value (in.Rs)	Liquidation Value (In.Rs)
Dr. Venkateshwara Rao MV	6,40,90,000	4,48,63,000
M/s BE Reddy & Associates	6,14,46,000	4,30,12,000

As per the valuation received, the Fair Value and Liquidation Value determined by the registered Valuer are as follows:

Fair Value	Rs. 6,27,68,000/-
Liquidation Value	Rs. 4,39,37,500/-

5. In response to the “Expression of Interest”, the Resolution Professional received four Resolutions Plans. However, only three met the basic criteria and one Prospective Resolution Applicant had failed to provide the Necessary “E.M.D.”. However, the CoC at the first instance, rejected all the resolution plans. Consequently, this Tribunal granted 90 days extension of time for CIRP. Later, the RP had issued

second “Form G” on 06/01/2023 fixing the last date for submission as 22/01/2023. In Response to the same, the RP Received 4 EOI followed by Resolution Plans as mentioned below:

Name of the Applicant	Total Resolution Plan Amount (in Cr.)	Funds for Outsiders Debts and CIRP Costs (in Cr)	Funds for Working Capital & CAPEX (In Cr)	Ranking as per Evaluation Matrix
Vinayak Steels Limited	12.12	10.35	1.77	H1
Mahesh Agarwal	11.00	9.05	1.95	H2
Pankaj Agarwal	12.71	8.31	4.00	H3
KJR Poly Films Private Limited	6.40	3.20	3.20	H4

6. After negotiations and amendment to plans in tune with negotiations, the final resolution plan submitted by the Resolution Applicant viz. **Vinayak Steels Limited** was approved by the CoC in the 12th the meeting held on 10/03/2023 by 100% of the CoC members voting in favour of the Resolution Plan.
7. The RP issued Letter of Intent on 10/03/2023 in favor of the Resolution Applicant and the Successful Resolution Applicant furnished Performance Bank Guarantee of Rs.53.00 lakhs on 16/03/2023. Thus submitting, prayed the Tribunal to approve the Resolution Plan which has been approved by the CoC and that it is in compliance with the requirements of Section 30(2) of the Code.

8. Contour of the Resolution Plan

- (A) The Resolution Applicant viz. Vinayak Steels Limited is a company incorporated at Hyderabad in 12/07/1985 [CIN: U27109TG1985PLC005654] having its Registered Office at 5-4-83 TO 85, TSK Chambers, 1st Floor, M.G Road Secunderabad-3. The Company is engaged in the business of Manufacturing and Trading of Iron and Steel and claimed to have a strong marketing networks for the Iron and Steel Products. The Resolution Applicant has proposed to take-over the management and ownership control of the Corporate Debtor by acquiring 100% ownership of the Company in the manner specified at Clause 5 in page 7 of the Plan.
- (B) The CoC comprised of sole operational creditor i.e. Southern Power Distribution Company of Telangana Limited (TSSPDCL) who has 100% voting share in the CoC.

Rupees in Lakhs

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL

		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	NIL	NIL	NIL	NIL
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	NIL	NIL	NIL	NIL
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) Government				
		(ii) Workmen	1608.16	1608.16	1025.00	63.74
		(iii) Employees	NIL	NIL	NIL	NIL
		(iv)				
		Total[(a) + (b)]	1608.16	1608.16	1025.00	63.74
4	Other debts and dues		NIL	NIL	NIL	NIL
Grand Total			1608.16	1608.16	1025.00	63.74

(C) The summary details of the approved plan submitted by the Successful Resolution Applicant (SRA) are furnished hereunder:

S No	Particulars	Amount (in Rs.)
1	Resolution Plan Amount	12,24,00,000.00
2	Resolution Plan Period	One Year
3	Payment to Various Stake Holders	

	CIRP Cost	At Actuals (Estimated at 22,00,000/-)
	Operational Creditors	10,25,00,000.00
	CAPEX/Working Capital	1,77,00,000.00
4	Mode of Payment	Bank
5	Payment Schedule	
	CIRP Cost	Within 30 days from NCLT Order
	Operational Creditors	Within 30 days from NCLT Order
	CAPEX/Working Capital	Within 365 days from NCLT Order
Proposed Distribution of Resolution Plan amount among various stake Holders		
	Southern Power Distribution Company of Telangana Limited (Operational Creditor)	10,25,00,000.00

The Resolution Applicant proposes a total consideration of Rs.10,47,00,000/-(Rupees Ten Crore Forty-Seven Lacs only) to all the stakeholders to be paid within a period of 30 (Thirty) days from the effective date of this resolution plan. The Resolution Plan is valid for a term of Twelve (12) months till all the payments are made to all the stakeholders as per the terms and conditions of the Resolution Plan and the obligations of the Resolution Applicant to implement the Resolution Plan shall become effective only from the Effective Date.

(D) MONITORING COMMITTEE

The Monitoring Committee shall comprise of the following:

- a. A representative of the committee of creditors
- b. a representative of the Resolution Applicant
- c. Any independent Insolvency Professional appointed by the Resolution Applicant (IBBI registered Insolvency Professional).

An independent Insolvency Professional will act as the Chairman, with equal number of representatives of Resolution Applicant and the CoC, during the course of implementation of the plan. All key managerial personnel of the Corporate Debtor would be deemed to have resigned and new Key managerial personnel shall be appointed by the Resolution Applicant (Clause 12 of resolution plan - page no 22)

(E) 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 Resolution Applicant has filed an Affidavit declaring that they are eligible to submit the plan under Section 29A of the Code and that the contents of the said affidavit are in order. The fair value and Liquidation value as submitted in Form-H is Rs. 6,27,68,000/- and Rs. 4,39,37,500/- respectively.

9. In the above backdrop we heard Shri G. Srikanth, Learned Counsel for the Resolution Professional. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-

- (a) Provides payment of Rs. 22 Lacs of CIRP Costs which will be paid at actuals whichever is higher (as determined by RP) in priority to Payment to Operational Creditors and Secured Financial Creditors and any CIRP costs over and above Rs.22 Lacs Crores will be adjusted from the Upfront payment.
 - (b) The Plan provides for payment of Rs. 10.25 crores provided under the Resolution Plan of the operational creditors on priority in terms of Section 30 (2)(b).
 - (c) There are no dissenting financial creditors.
10. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:
- (a) The Plan provides for payment of 63.74% to the admitted claims of the operational creditor on priority (clause 2 of Financial Proposal).
 - (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). {Clause 3.c of financial proposal }
 - (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)){clause 9.c of Resolution Plan }

11. ***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”.
12. The Hon’ble Supreme Court has further held at para 35 of the above judgement that ***the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements.***
13. The Hon’ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors**, held that “*the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved*”.

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

*21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of **K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.***

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

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The

legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

15. Therefore, the resolution plan, when tested on the touch stone of the aforesaid facts and the rulings, we are of the view that the instant resolution plan satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. We also found that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.
16. We therefore, hereby approve the Resolution Plan submitted by Vinayak Steels Limited, along with annexure, schedules forming part of the Resolution Plan annexed to the Application and order as under:
 - (i) The Resolution Plan along with annexures and schedules forming part of the plan shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
 - (ii) All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.
 - (iii) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and

shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned as held by Hon'ble Supreme Court in the matter of ***Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited*** in CIVIL APPEAL NO.8129 OF 2019 dated 13.04.2021.

- (iv) It is hereby ordered that the Performance Bank Guarantee of Rs. 53.00 lakhs furnished by the Resolution Applicant shall remain as performance Bank Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented.
- (v) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- (vi) Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- (vii) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (viii). The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.

- (ix). The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- (x). The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- (xi) The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.
- (xii). Accordingly, IA 542/2023 stands disposed of.

SD/-

(Charan Singh)
MEMBER (TECHNICAL)

SD/-

(DR N.Venkata Ramakrishna Badarinath)
MEMBER (JUDICIAL)

Binnu