

SL No. 101

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON 17.11.2021 AT 10:30 AM
THROUGH VIDEO CONFERENCE

IA (IBC)/443/2021 in CP (IB) No.219/7/HDB/2020
U/s 7 of Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

Aryan Structions Pvt Ltd

...Financial Creditor

Vs

Agarwal Steel Structures (India) (P) Ltd

...Corporate Debtor

CORAM:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER JUDICIAL
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER TECHNICAL

ORDER

Orders in IA (IBC)/443/2021 in CP (IB) No.219/7/HDB2020, is pronounced vide separate sheets. Resolution Plan is approved.


MEMBER (T)

Srinivasa Rao


MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL,
BENCH-1, HYDERABAD**

IA. No. 443 / 2021

In

CP (IB) NO.219/7/HDB/2020

U/S 30(6) 2016 R/W REGULATION 39(4) OF IBBI (INSOLVENCY
RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS,
2016 & RULE 11 OF NCLT RULES, 2016

In the matter of

Aryan Structural Solutions Private Limited

Versus

M/s Agarwal Steel Structures (India) Private Limited

Filed by

KALVAKOLANU MURALI KRISHNA PRASAD
Resolution Professional for
Agarwal Steel Structures(India) Private Ltd
R/o H.No. 8-27 Plot No 106,
Mythripuram Colony Jillelguda,
Vyshalinagar PO, Hyderabad 500 079

...Applicant/
Resolution Professional

Date of order 17.11.2021

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

Shri Rajendra Prasad, Advocate for Resolution Professional



PER: BENCH

ORDER

1. The present Application vide IA No. 443/2021 is filed by the Resolution Professional under section 30(6) 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 resolution plan of **Sri Aaditya Yalamarty** as duly approved by the Committee of Creditors.
2. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated **18.01.2021** and Sri. Rammurthy Kommera was appointed as Interim Resolution Professional (IRP).
3. In response to the Form-A publication by the IRP on 23.01.2021 in Financial Express (English) & Mana Telangana (Telugu) inviting claims from the creditors of Corporate Debtor/ M/s Agarwal Steel Structures (India) Private Limited pursuant to the aforesaid order of this Adjudicating Authority, the IRP after collating and verifying the same, admitted Claims from financial creditors on 11-02-2021 and constituted Committee of Creditors on 12-02-2021 comprising of (1) APSFC – 90% Voting Share (2) Aryan Structural Solutions Private Limited – 10% voting share.
4. In the 1st CoC meeting convened on 18.02.2021, the CoC with 90% votes resolved to replace the IRP with the Applicant herein as Resolution Professional.





5. As seen from the records, the term of 180 days CIRP came to an end on 17.07.2021. After granting extensions and exclusion of covid induced lockdown by this Tribunal, the date of expiry of extended period of CIRP was 25.08.2021
6. In response to publication of Form-G (Invitation for Expression of Interest (EOI)) on 03.04.2021 in Financial Express and Mana Telangana, the Applicant received expression of interest from the following parties.
 - (1) Sri. Aaditya Yalamarty, Hyderabad
 - (2) Sri. Suresh Chand Gupta, HyderabadThe resolution plans were deliberated upon in the 5th CoC meeting held on 25-06-2021 requesting the resolution applicants to enhance their offer by 05-07-2021.
7. The 7th CoC meeting was held on 23-07-2021 and requested the resolution applicants to further enhance their offer. However, Sri. Suresh Chand Gupta has declined to improve the offer further.
8. The CoC after several rounds of negotiations evaluated the Resolution Plan submitted by **Sri Aaditya Yalamarty (Resolution Applicant)** as per the Evaluation Matrix and Section 29A of the Code. After evaluating in terms of both qualitative and quantitative criteria and aggregate the resolution plan was put for voting as per the decision taken in the 8th CoC meeting held on 12.08.2021. The Resolution Plan submitted by **Sri Aaditya Yalamarty (Resolution Applicant)** was considered and approved by the CoC with 100% voting in favour of it under Section 30(4) of IBC. The Applicant further submits that all the requirements envisaged under the Code and Rules/Regulations made there-under have been met.





9. An amount of Rs. 25 lakhs by way of demand draft in favour of APSFC and Rs. 25 lakhs through transfer by RTGS on 16.08.2021 (total amount Rs. 50 lakhs) have been remitted by the Resolution Applicant in lieu of Performance Bank Guarantee as required under sub regulation (4A) of Regulation 36(B) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2021.

10. **CONTOUR OF THE RESOLUTION PLAN:-**

(A) **Mr Aaditya Yalamarty** (herein referred to as Resolution Applicant), who submitted the resolution plan is a technopreneur primarily involved in executing EPC contracts for power lines and a resident of Hyderabad.

(B) The CoC comprised of the following financial creditors and the distribution of voting share among them is as under:-

S.No.	Name of the Financial creditor	Voting share
1	Andhra Pradesh State Financial Corporation	90%
2	Aryan Structural Solution Private Limited	10%
	Total	100%

(C) **Financial proposal:** The amount provided to the stakeholders of the Corporate Debtor is Rs. 645.99 Lakhs which is tabulated below:



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 FC	Andhra Pradesh State Financial Corporation.	1089.89	1089.89	615.03	56.43
2	Unsecured FC	Aryan Structural Solutions Private Limited.	121.10	121.10	0.96	0.79%
		Total[(a) + (b)]	121.10	121.10	0.96	0.79%
3	Operational Creditors	(a) Related Party of Corporate Debtor	Nil	Nil	Nil	Nil
		(b) Other than (a) above:				
		(i)Government				
		(a) TSSPDCL	10.58	9.06	6.00	56.71
		(b) CGST	424.8	424.8	1.00	0.23
		(ii)Workmen	Nil -	Nil -	Nil -	Nil -
		(iii)Employees	Nil	Nil	Nil	Nil
		(iv) others – Admitted	1579.92	1579.92	2.00	0.12
		Rejected (for want of submission of proof)	1051.29	0	0	0
		Total[(a) + (b)]	3066.59	2013.78	9.00	0.29%
4	Other debts and dues		Nil	Nil	Nil	Nil
Grand Total			4277.58	3224.77	624.99	14.61%

The amount offered to the secured financial creditors under the resolution plan as approved by COC is Rs.615.03 lakhs which is more than fair value i.e. Rs. 540.15 lakhs and Liquidation value i.e. Rs. 413.01 lakhs of CD's assets. The Statement of fair value and liquidation value is annexed and marked as **Annexure 7**.



The break-up of the resolution amount of INR 645.99 lakhs brought in by the Resolution Applicant for various purposes are detailed as under:

S. No	Name of the Creditor	Amount Proposed by RA Rs in lakhs
01.	CIRP Cost *	21.00
02.	APSFC	615.03
03	M/s Aryan Structural Solutions (P) Ltd (unsecured financial creditor)	0.96
03.	Operational Creditors	9.00
	Total	645.99

D) Tenure of Payment:

i) Performance Security Interest free Fixed Deposit of Rs.50.00 lakhs Covering resolution plan period:

The RA shall deposit an amount of Rs.25.00 lakhs towards balance amount required, (in addition to Rs.25.00 Lakhs as EMD along with the resolution plan,) on or before 16.08.2021 upon receipt of approval of COC.(LOI).

ii) Rs. 51.00 lakhs on or before 31st day from the date of approval of resolution plan by

iii) Balance amount of Rs. 544.99 lakhs within total period of 120 days from the date of approval of resolution Plan by the Adjudicating Authority.



(E) Management of Corporate Debtor

The Plan provides for the Management of the affairs of Corporate Debtor after approval of the Resolution Plan in accordance with Section 30(2) (c). It provides for the constitution of a Monitoring Committee consisting of one representative of CoC, the Resolution Professional and two representatives of the Resolution Applicant. The Plan also provides for the Implementation and Supervision of Resolution Plan in accordance with Section 30(2) (d).

(F) 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). The Resolution Applicant has declared that the resolution plan is in compliance with the Section 30 (2) (e) of the Code and the Regulations. The Resolution Applicant has filed an Affidavit declaring that it is eligible to submit the plan under Section 29A of the Code, which is annexed at page No. 192 of the Application.

11. Further the Applicant confirms that the Resolution Plan takes care of the interest of the stakeholders concerned which includes Financial Creditors, Operational Creditors and payment of CIRP costs is being taken care on priority over payment to the other creditors.



12. In the above backdrop we heard the 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. The Plan provides for the priority payment of CIRP costs estimated to the extent of Rs.21 lakhs and the same shall be paid in full and in priority to any other payment as per provisions of Section 30 (2) (a) of the Code. If the CIRP cost is more than Rs. 21 lakhs, the same shall be met by the Resolution Applicant. In the event the CIRP costs is less than the estimated costs or if the RP has recovered any of these expenses from the cash flows of the Corporate Debtor or otherwise, such residual amount shall be added to the settlement amount to be paid to the secured financial creditors.
- B. The Plan provides priority of dues to Operational Creditors over Financial Creditors in accordance with Section 30(2)(b). The Plan provides for payment of Rs.9 lakhs to operational creditors towards full and final settlement on the 31st day of receipt of approval of the Resolution Plan by the Adjudicating Authority There is no dissenting Financial Creditor and the plan has been approved with 100% votes in favour of it.
13. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:
- (a) The payment due to operational creditors will be made in priority over Financial Creditors (Regulation 38 (1) (a)).
- (b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38 (1A)).





- (c) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38 (1B)).
14. It is further submitted that the Plan value of Rs. 645.99 lakhs is higher than the Liquidation value of Rs. 413.01 lakhs and the Resolution Plan has been approved by the CoC in the 8th CoC meeting with 100% votes in favour of it.
15. ***In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018) the Hon'ble Apex Court*** held that, *"if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per Section 30 (6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less"*.
16. 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.***
17. 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"*.



18. 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. We therefore, hereby **approve** the Resolution Plan submitted by the Resolution Applicant annexed to the Application and order as under:-


- (i) The Resolution 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) 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.
- (v) Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- (vi). The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (vii). 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.
- (viii). The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- (ix). 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.


(Veera Brahma Rao Arekapudi)
MEMBER (TECHNICAL)


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