

SL.No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 23.02.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1525/2022 in Company Petition IB/150/2021
NAME OF THE COMPANY	Ananya Infra Projects Pvt Ltd
NAME OF THE PETITIONER(S)	Krishna Steels
NAME OF THE RESPONDENT(S)	Ananya Infra Projects Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

IA(IBC)/1525/2022

Application is allowed, vide separate orders.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

**I.A. No.1525 of 2022
in
CP(IB) NO. 150/9/HDB/2021**

*[U/s. 30(6) and U/s. 31(1) of the I&B Code, 2016 r/w Regulation 39(4) of
the IBBI (IRPCP) Regulations, 2016 & Rule 11 of NCLT Rules, 2016
praying for approval of Resolution Plan by the Hon'ble Adjudicating
Authority under Section 31(1) of IBC, 2016]*

In the matter of:

M/s.Krishna Steels vs. M/s.Ananya Infra Projects Private Limited

Mr. Madasa Kumar
Resolution Professional of
M/s.Ananya Infra Projects Private Limited

.... Applicant/Resolution Professional

Date of Order: 23.02.2023

Coram:

**Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)
Hon'ble Shri Charan Singh, Member (Technical)**

Parties / Counsels Present:

For the Applicant : Mr. Madasa Kumar
Resolution Professional

Mrs.JVL Bharathi, Advocate

Heard on: 03.02.2023

[PER : BENCH]

ORDER

1. The instant Application IA No. 1525/2022 is filed by the Resolution Professional of M/s. Ananya Infra Projects Private Limited, for short 'Corporate Debtor' under Section 31(1) of the Insolvency & Bankruptcy Code, 2016, r/w regulation 39(4) of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, seeking approval of the Resolution Plan submitted by Sri Bommidi Ashok Reddy as duly approved by the COC with 96.46% voting share.
2. The Company Petition CP(IB) No.150/9/HDB/2021 filed by M/s. Krishna Seeds against M/s. Ananya Infra Projects Private Limited under Section 9 of IBC, 2016 was admitted by this Adjudicating Authority on 01.03.2022 and the Corporate Debtor was put under CIRP by appointing Mr.Jarathi Kalyana Chakravarthy as Interim Resolution Professional (IRP). Later, Mr. Madasa Kumar was appointed as Resolution Professional (RP) in the Committee of Creditors (COC) Meeting held on 04.06.2022.
3. The Resolution Professional, after obtaining the information from the erstwhile IRP and after perusal of

Date of Order: 23.02.2023

Balance Sheet as on 31.03.2017, identified the following assets of the Corporate Debtor:

- i. The Corporate Debtor had taken up construction in the name of Tridend Grand over a piece of land admeasuring 5518.33 sq. yds. situated at Gundlapochampally (V) & (M), Medchal Malkajgiri District taken for development from 9 number of Land Lords vide Development Agreement dated 09.10.2015, and that the builder sold all the Flats of his share, partly constructed the project and abandoned midway. The valuers appointed for valuing the complex expressed their inability to value the complex and observed that the value may be treated as 'Nil' as the Development Agreement is as old as 7 years and that the project has been abandoned. Copies of the same are filed as Annexure-VI of the application.
- ii. As the CIRP period was coming to an end on 09.09.2022, the Applicant herein filed an IA No.978/2022 seeking to extend the period by 90 days, which was allowed by this Adjudicating Authority on 23.09.2022.

Date of Order: 23.02.2023

4. The Applicant published Form-G on 08.10.2022 inviting ‘Expression of Interest, for short ‘EOI’ from the Prospective Resolution Applicants (PRAs) and issued Request for Submission of Resolution Plan, for short ‘RFRP’ to the PRAs on 27.10.2022. In response, two Expression of Interests were received, of which, Sri Bommidi Ashok Reddy submitted the Resolution Plan for Rs.1,50,00,000/, which is as under:

Sl.No.	Description	Amount (Rs.)
1	CIRP cost in full (Approx.)	7,68,313/-
2	Operational Creditors	5,00,000/-
3	Balance amount to Unsecured Financial Creditors	1,37,31,687/-
	Total	1,50,00,000/-

5. The Resolution Plan submitted by Mr. Bommidi Ashok Reddy was placed by the Resolution Professional before the 7th COC meeting held on 01.12.2022 for their evaluation, which was evaluated with reference to the evaluation matrix and approved by the COC, which consisted of seven (7) Financial Creditors with 96.46% voting share. A copy of the Minutes of the 7th COC Meeting is filed as **Annexure-VII of the application**. A copy of the approved Resolution Plan along with its annexures is filed as **Annexure – A9** at page nos.137 to 156 of the application.

Date of Order: 23.02.2023

6. Letter of Intent was issued to the Successful Resolution Applicant/Mr.Bommidi Ashok Reddy on 02.12.2022 advising him to provide the performance surety amounting to Rs.7,50,000/- within 5 days from the date of the order. In response, the Resolution Applicant submitted a Pay Order for Rs.7,50,000/- dated 07.12.2022 drawn on Canara Bank in favour of the Corporate Debtor. **A copy of the same is filed as Annexure-X at page nos. 157 to 158 of the application.**
7. In all, the Applicant has convened Seven (7) CoC Meetings. The Resolution Plan submitted by Mr. Bommidi Ashok Reddy was considered and approved by the CoC with 96.46% voting in favour of it under Section 30(4) of IBC.
8. The Valuation Certificate issued by M/s.B.E.Reddy & Associates, Structural/Civil/Chartered Engineers, is filed at page nos.99 to 108 of the application.

The summary of the Valuation Certificate is as follows:

The total fair market value of the Residential Apartment Complex, situated at Gundlapochampally Village / Municipality, Medchal Mandal, Medchal-Malkajgiri District, Hyderabad, Telangana, is on as is where is basis.

Part	Description	Value by adopting	
		PMR considering the clear Marketable Titles, free from other encumbrance & Possession of the Property (Rs.)	Market Value of the property considering the site conditions and other issues between Owner & Developer of the property (Rs.)
A.	Value of the Residential Flat Units built-up area (Semi-furnished) entitled by Developer share as on date of inspection.	34,62,25,000/-	Nil

9. The Applicant further submits that all the requirements envisaged under the Code and Rules/Regulations made there-under have been met, which are as follows:

10. **Contour of the Resolution Plan:**

- i. The Resolution Plan is submitted by Mr. Bommidi Ashok Reddy, for short 'Resolution Applicant'.
- ii. The COC comprised of the following Financial Creditors and the distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share)%(Voting for Resolution Plan)Voted for / Dissented / Abstained(
1.	Nitesh Vijayvargiya	41.05%	Voted for
2.	Santosh Vijayvargiya	18.23%	Voted for

Date of Order: 23.02.2023

3.	Vijay Kumar Vijayvargiya	15.87%	Voted for
4.	Vinod Prakash Vijayvargiya HUF	17.15%	Voted for
5.	Vinod Prakash Vijayvargiya	4.16%	Voted for
6.	Mukesh Vijayvargiya HUF	2.35	Abstained
7.	Ashish Rani Vijayvargiya	1.19	Abstained

11. Financial Proposal :

The amount provided to the stakeholders of the Corporate Debtor under Resolution Plan is Rs.150 lakhs, which is as under:

(Rs. 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	--	--	--	--
		(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	--	--	--	--
		Total[(a) + (b)]	--	--	--	--

Date of Order: 23.02.2023

2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	--	--	--	--
		(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	3,47,99,667	3,47,99,667	1,37,31,687	39.54
		Total[(a) + (b)]	3,47,99,667	3,47,99,667	1,37,31,687	39.54
3	Operational Creditors	(a) Related Party of Corporate Debtor	--	--	--	--
		(b) Other than (a) above: (i) Government (ii) Workmen (iii) Employees (iv) Others	-- -- -- 1,32,81,465	-- -- -- 1,32,81,465	-- -- -- 5,00,000	-- -- -- 3.76
		Total[(a) + (b)]	1,32,81,465	1,32,81,465	5,00,000	3.76
		4	Other debts and dues	CIRP cost in full	At actuals	At actuals
Grand Total			4,80,81,132	4,80,81,132	1,42,31,687	29.60

12. The Successful Resolution Applicant proposes to distribute the resolution plan amount to different stakeholders in the following manner:

Details of expense/ stakeholder	Amount Claimed (in Rs.)	Amount of claim admitted (in Rs.)	Payment proposed as per Resolution Plan (in Rs.)	% Payment to amount claimed
CIRP cost in full (Approx.)	7,68,313	7,68,313	7,68,313	100%

Date of Order: 23.02.2023

Operational Creditors	1,32,81,465	1,32,81,465	5,00,000	3.76%
Unsecured Financial Creditors	3,47,99,667	3,47,99,667	1,37,31,687	39.54%
Total	4,88,49,445	4,88,49,445	1,50,00,000	

13. The Applicant submitted in Form-H that the following are the deviations / non-compliances of the provisions of the IBC, 2016 Regulations made or circulars issued thereunder:

S.No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1.	Delay in appointment of the Registered Valuers	Regulation 27 of IBBI (IRPCP) Regulations	The delay caused as the IRP could not identify any asset of the Corporate Debtor to undertake valuation. The valuers were appointed by the RP on 30.09.2022 after identifying an asset.	The valuers were appointed by the RP after identifying an asset of the Corporate Debtor with the approval of COC.
2.	Delay submission of Information Memorandum to COC	Regulation 36(1)	The Information Memorandum could not be prepared and submitted as no assets of the Corporate Debtor were identified by the IRP	

Date of Order: 23.02.2023

3.	Delay in issuance of Form-G and RFRP etc.	Regulation 36(A), Regulation 36(B)	As there was delay in identifying the assets of the Corporate Debtor. Form-G and RFRP were issued with delay.	As there was delay in identifying the assets of the Corporate Debtor, Form-G and RFRP were issued with delay.
----	---	------------------------------------	---	---

14. The Resolution Plan is being filed on the last day of the expiry of the period of CIRP provided in Section 12 of the Code.

15. 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 and 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016, for short 'Regulation' and has submitted his Form-H under Regulation 39 (4). The fair value and Liquidation value as submitted in Form-H both are 'Nil'.

16. We have heard Mr. Madasa Kumar, Learned RP He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code and Regulation 38 of the Regulations, as under:-

Section / Regulation	Description	Compliance
Section 30(2)(a)	The Resolution Plan shall provide for the payment of Insolvency Resolution Process costs in priority to the other debts.	The Resolution Plan provides for payment of CIRP cost in priority to the other debts.
Section 30(2)(b) and Regulation 38(1)	The Resolution Plan shall provide for fair and equitable payment of debts of Operational Creditors and shall not be less than (i) the amount to be paid to such creditors in the event of liquidation of Corporate Debtor under Section 53 or (ii) the amount that would have been paid to such creditors. If the amount to be distributed in accordance with the order of priority in Sub-section (1) of Section 53.	The Resolution Applicant proposed payment of Rs.5,00,000/- to the operational creditors. The Liquidation Value of assets of the Corporate Debtor is treated as Nil and that the Resolution Plan amount is Rs.150 lakhs. The Operational Creditors would not have got any amount as per the provisions of Section 53 in case if the Corporate Debtor is liquidated. Thus, the amount offered for payment to operational creditors is in conformity to the provisions of the Code.
Section 30(2)(c) & 38(2)(b)	The Resolution Plan shall provide for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	The Resolution Applicant has got good knowledge of construction activity and that he can successfully handle the operations and complete the project.
Section 30(2)(d) & Regulation 38(2)(a)		The implementation supervision of the Resolution Plan during implementation period is as follows: The RA proposed that payment under the Plan

Date of Order: 23.02.2023

		<p>within two months and the implementation period proposed in the Resolution Plan is two months only from the date of approval of Resolution Plan by the Hon'ble Adjudicating Authority. The Resolution Applicant proposed a Monitoring Committee with the following members to supervise the implementation of the Resolution Plan:</p> <ol style="list-style-type: none"> 1. Mr. Madasa Kumar, RP – Member 2. Mr. Nitesh Vijayavargiya, Member of COC – Member 3. Mr. Bommidi Ashok Reddy, Resolution Applicant – Member <p>Members 1 & 3 would jointly operate the Bank Accounts of the Corporate Debtor.</p>
Section 30(2)(e)		<p>It is observed that the Resolution Plan does not contravene any of the provisions of the law for the time being in force.</p>
Section 30(2)(f)		<p>It is observed that the Resolution Plan confirms to all other requirements as per the Regulations of IBBI.</p>
Regulation 38(1)(b)		<p>The Resolution Plan includes a statement to the effect that neither the RA nor any of its related parties have failed to</p>

Date of Order: 23.02.2023

		implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past.
Regulation 39(3)		The Committee deliberated on feasibility and viability of the Resolution Plan which is recorded in the Minutes of the Meeting of COC.
Regulation 39(4)		The Resolution Plan could not be submitted 15 days before the maximum period for completion of CIRP under Section 12. Being submitted on the last date of the CIRP period on 09.12.2022 and requested to condone the delay.

17. In respect of the property of ‘Tridend Grand over a piece of land admeasuring 5518.33 sq. yds situated at Gundlapochampally (V) & (M), Medchal Malkajgiri District’, the Fair Value and Liquidation Values are shown as ‘Nil’. At the time of hearing, the Resolution Professional clarified that the said property no more belongs to the Corporate Debtor as the share which fell to it as developer is already sold off to various persons. When he was questioned as to why, under these circumstances, valuation had to be sought for, he did not have any answer. However, since the property does not belong to the Corporate Debtor, it would not add to the estate.

18. ***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”.
19. 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.***

20. 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”*.

21. 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.....”

22. 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.

Date of Order: 23.02.2023

23. We therefore, hereby approve the Resolution Plan submitted by Mr.Bommidi Ashok Reddy, along with annexure, schedules forming part of the Resolution Applicant 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 the 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 Pay Order furnished by the Resolution Applicant shall remain as 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.

Date of Order: 23.02.2023

- 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 1525 in CP (IB) No. 150/9/HDB/2021** stands disposed of.

Sd/-

**CHARAN SINGH
MEMBER (TECHNICAL)**

Syamala

Sd/-

**JUSTICE TELAPROLU RAJANI
MEMBER (JUDICIAL)**