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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

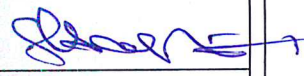
**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL
(SINGLE BENCH)
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 13.12.2019 AT 10.30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.1079/2019 CP(IB)673/7/HDB/2018
NAME OF THE COMPANY	Gavi siddeswara Steels India Pvt Ltd
NAME OF THE PETITIONER(S)	Punjab National Bank
NAME OF THE RESPONDENT(S)	Gavi siddeswara Steels India Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

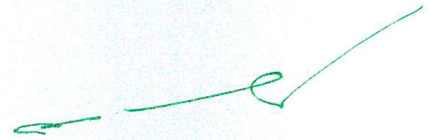
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
S. KASTHURAMAN	RP	7246344297 asikwe@gmail.com	

ORDER

IA 1079/2019 is listed today for passing orders. Order is passed in IA 1079/2019 vide separate orders.



Member (J)

Syamala

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

IA No. 1079 of 2019

in

CP (IB).NO 673/07/HDB/2018

**AN APPLICATION UNDER SECTION 30 (6) R/w SECTION 31(1) OF
INSOLVENCY AND BANKRUPTCY CODE AND REGULATIONS 39(4)**

IN THE MATTER OF

**M/S. PUNJAB NATIONAL BANK
(PETITIONER/FINANCIAL CREDITOR)**

VS

**GAVI SIDDESWARA STEELS (INDIA) PRIVATE LIMITED
(CORPORATE DEBTOR)**

S. Kasthuri Rangan
Resolution Professional

... Applicant

Date of order: 13.12.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Appearance:

For Applicant: Shri S. Kasthuri Rangan, Resolution Professional in
person

Heard on: 09.12.2019

1. Under consideration before me is the Interlocutory Application filed by the Resolution Professional of M/s Gavi Siddeswara Steels, ("Corporate Debtor"), under Section U/s 30(6) of Insolvency &

Bankruptcy Code, 2016, seeking directions to approve the Resolution Plan.

FACTS OF THE CASE:

- 2.1 This Tribunal vide order dated 08.01.2019 admitted the Petition filed under Section 7 of Insolvency & Bankruptcy Code, 2016 filed by Punjab National Bank (Financial Creditor) and Corporate Insolvency Resolution Process (CIRP) started against the Corporate Debtor/ Gavi Siddeswara Steels (India) Private Limited by appointing Mr. Gonugunta Murali as Interim Resolution Professional.
- 2.2 Pursuant to his appointment, the Interim Resolution Professional made public announcement in Andhra Prabha and Nava Telangana (both Telugu) and Financial Express (English) newspapers on 10.01.2019 inviting proof of claims from creditors on or before 24.01.2019. The Interim Resolution Professional after collating the claims received from Financial Creditors constituted the Committee of Creditors (CoC) as under:-

SL.NO	NAME OF CREDITOR	AMOUNT
1.	Indian Overseas Bank, Asset Recovery Branch, Chikkdapally, Hyderabad – 500020	77,30,36,521.93
2.	Punjab National Bank, ARMB, Lakdaikapul, Hyderabad – 500004	55,48.02,804.00
3	UCO BANK, Asset Management Branch, Raj bhavan Road, Hyderabad – 500082	23,21,80,625.65
Total		156,00,19,952.38

- 2.3 The COC in its first meeting held on 05/02/2019 decided to replace the IRP by new Resolution Professional Sri S. Kasthuri Rangan, Applicant herein, who was subsequently confirmed vide this Tribunal order dated 08/03/2019.
- 2.4 According to the Resolution Professional the Corporate Debtor has not complied with the provisions of Companies Act relating to filing of annual financial statements and Annual returns for the financial year 2017-18 with Registrar of Companies, Telangana. It is also stated further that there was no operation in the factory since last six years and all employees have resigned.
- 2.5 Consequent to his taking possession of assets of Corporate Debtor comprising of factory land, building and plant & machinery situated at B.N. Halli, Rayadurgam (M), Ananthpur District of Andhra Pradesh on 16th April 2019, the Applicant herein appointed M/s. Akshara Security and Maintenance Services for the security of the plant.
- 2.6 In the 2nd CoC meeting held on 19.03.2019 two Registered Valuers were appointed who have submitted their report and liquidation value as under :-

NAME OF THE VALUER	FAIR VALUE	LIQUIDATON VALUE
P. MADHU	26,86,08,679	16,12,19,207
G.V.APPAR RAO	27,70,04,000	23,54,53,000
AVERAGE	27,28,06,339	19,83,36,103

- 2.7 It is stated by the Resolution Professional that though there was no operations in the Corporate Debtor for the last 5 years, yet as per the decision of CoC in its 3rd meeting held on 06.05.2019, it was decided to appoint M/s. Velichety and Co as Forensic Auditor to conduct Forensic Audit of the operations of the corporate debtor from the date of commencement of implementation of project till the account has

become Non Performing Asset (NPA). The Forensic Auditor in his report opined that accounts of the corporate debtor were not maintained properly and funds disbursed by the banks were not properly utilised for the purpose for which it was sanctioned. Further as per the decision taken in the said meeting, the Resolution Professional carried out publication of Expression of Interest on 09.05.2019 inviting prospective Resolution Applicants to file Resolution plans on or before 27/06/2019 against which the Applicant received expression of interest from the following resolution applicants

1. Prudent ARC Limited, New Delhi
2. Mahalakshmi Profiles Private Limited, Hyderabad
3. Shiva Ferric Private Limited, Bangalore
4. Bharat Kumar (Sugna Metals Limited), Hyderabad.


Out of the four Resolution Applicants, the Resolution Professional received only one Resolution Plan submitted by Mr. Bharat Kumar.

- 2.8 Based on the decision taken in the 4th CoC meeting held on 22/05/2018, this Tribunal extended the CIRP by 90 days beyond 180 days vide order passed in IA No. 471/2019 dated 01.07.2019.
- 2.9 Further the Applicant conducted subsequent CoC meetings on the following dates:-

5 th CoC Meeting	16.07.2019
6 th CoC Meeting	19.08.2019
7 th CoC Meeting	22.08.2019
8 th CoC Meeting	16.09.2019
9 th CoC Meeting	20.09.2019
10 th CoC Meeting	26.09.2019

- 2.10 The COC in its 10th CoC meeting held on 26.09.2019 had discussions with Mr. Ashok Kumar, Director (Suspended Board) of Corporate

Debtor who stated that the entire amount taken from the bank were utilised for the creation of the assets and that some of the documents in support of the same could not be produced before forensic auditor as the same were then not readily available. In turn COC advised Mr. Ashok Kumar to submit documents and other details to forensic auditor. The CoC through Resolution Professional requested forensic auditor to submit his opinion on the same so as to enable the banks to take further action based on Forensic Audit report.

- 2.11 COC at its 10th meeting held on 26th September 2019 rejected the Resolution Plan submitted by Mr. Bharat Kumar, Resolution Professional with 100% voting share and further took a decision to liquidate the corporate debtor under section 33 of the Insolvency and Bankruptcy Code 2016. Pursuant to the above decision of CoC, the Resolution Professional filed IA No. 932/2019 requesting this Tribunal for passing an order of Liquidation under section 33 (2) of IBC, 2016.
- 2.12 Subsequently, the COC through Resolution Professional persuaded the Resolution Applicant through series of meetings to improve/modify the resolution plan by increasing the payment to financial creditors considering the liquidation value of the assets and the claim amount.
- 2.13 Since the main reason for rejection of Plan by CoC was the amount proposed and terms and conditions of the Plan. The Resolution Applicant (Mr. Bharat Kumar) revised the resolution plan by enhancing the amount and reducing the terms and conditions. Subsequently, this Tribunal vide order passed in IA NO 1032 of 2019 dated 04.11.2019, directed Resolution Professional to conduct a CoC meeting to consider the revised plan. Accordingly Resolution Professional conducted COC meeting on 16th November 2019 and the same was approved by COC with 100% voting share.
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3. We have heard the Counsel for Resolution Professional. This Application is filed under Section 31 (1) of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "CODE") for approval of the Resolution Plan submitted by M/s Mr. Bharat Kumar, ("**Resolution Applicant**").
4. The Resolution applicant Mr. Bharat Kumar submitted Resolution Plan with a bid amount of Rs. 20.32 cr proposing payment to secured financial creditors and including CIRP cost as under:-

Sl.No.	Particulars	Amount (in crores)
01	CIRP Costs	0.32
02	Payment to Financial Creditors	20.00
	Total	20.32

The bid amount shall be paid by RA in the manner as mentioned in Below Table 1

FINANCIAL PROPOSAL WITH BID VALUE in Crores

1.	Up front payment within 7 days from the date of approval of NCLT	5.32
2.	On or before 90 days from the date of approval of NCLT	5.00
3.	On or before 180 days from the date of approval of NCLT	5.00
4.	On or before 270 days from the date of approval of NCLT	5.00
	Total	20.32

5. Further it is proposed that bid value shall be appropriated among the

creditors of the corporate debtor strictly in the manner as mentioned below Table 2.

TABLE 2- APPROPRIATION OF BID VALUE

(VALUE IN CR)

Sl.no	Particulars	Admitted amount	Payment from plan
1	CIRP COST*	0.32	0.32 (out of upfront payment)
2.	Operational creditors	3.46 cr	NIL (No amount would accrue to the operational creditors out of liquidation value in the case of liquidation under section 53 of IBC)
3.	Secured Financial Creditors	156.00	20.00 cr (5.00 cr would be paid out of each instalment)

(* includes CIRP cost incurred till 14/10/2019) and estimated up to the date of approval of plan By NCLT and balance would be used to meet the monitoring cost during the term of the resolution plan).

6. The Applicant stated that, two Registered Valuers viz, P. Madhu and G.V. Appa Rao were appointed on 22.02.2019 to determine the fair value and liquidation value of the Corporate Debtor. The Fair value was fixed at Rs. 27.28 crores and the Liquidation value at Rs.19.9 crores. Further on the advice of CoC, M/s Velichety and Co. was appointed as Forensic Auditor to conduct the forensic Audit of the Corporate Debtor. In all the Applicant conducted 11 CoC meetings. The CIRP ended on 06.10.2019. However 330 days ends on 05./12.2019.

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7. The Resolution Plan submitted by Mr. Bharat Kumar (“**Resolution Applicant**”) was approved by CoC with 100% voting in favour of it. The minutes of the eleventh meeting of the COC held on 16.11.2019 is filed at page Nos. 2-25. The list of Financial Creditors of the Corporate Debtor and their distribution of voting share is as under:-

SL.NO	NAME OF CREDITOR	Voting %
1.	Indian Overseas Bank, Asset Recovery Branch, Chikkdapally, Hyderabad – 500020	49.55
2.	Punjab National Bank, ARMB, Lakdaikapul, Hyderabad - 500004	35.57
3	UCO BANK, Asset Management Branch, Raj bhavan Road, Hyderabad - 500082	14.88
Total		100%

8. The Resolution Professional has furnished certificate in Form-H as per Regulation 39 of CIRP Regulations, 2016. The amounts provided for the stakeholders under the Resolution Plan is as under:-

Amount in Lakhs					
Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Dissenting Secured Financial Creditors	NOT	APPLICABLE		
2	Other Secured Financial Creditors	156,00,19,952	156,00,19,952	20,00,00,000	12.82
3	Dissenting Unsecured Financial Creditors	NOT	APPICABLE		
4	Other Unsecured Financial Creditors	NOT	APPLICABLE		
5	Operational Creditors				
	Government-APCPDCL	34638107	34638107	NIL (amount receivable is Nil in the case of Liquidation under section 53 of IBC)	NIL

	Workmen	NIL	NIL	Not applicable	Not applicable
	Employees	NIL	NIL	Not applicable	Not applicable
				
6	Other Debts and Dues	NIL	NIL	Not applicable	Not applicable
Total					

9. The Applicant states that there is only one Operational Creditor i.e. APCPDCL whose claim amount is Rs. 3,46,38,107/-. However, it is stated that no amount is provided for the Operational Creditor in the said plan as amount receivable in case of Liquidation for the operational creditor would be nil under Section 53 of IBC.

10. It is also stated by the Resolution Professional that the interests of existing shareholders were altered by the Resolution Plan as under:-

Sl. No	Category of Share holder	No. of shares held before CIRP	No. of shares held after the CIRP	Voting share (%) held before CIRP	Voting share (%) held after CIRP
1	Equity	31500000	-	100%	0%
2	Preference	NA	NA	NA	NA

11. PRIORITY OF PAYMENTS:-

It is stated that the payment of insolvency resolution process cost would be paid as first priority as per the provision of 30(2)(b) of IBC, 2016 As operational creditors would not have received any amount in the event of liquidation of operational creditors, no payment is proposed for operational creditors. Secured financial creditors will be paid as specified in above table.

12. SOURCES OF FUNDS:-

Resolution applicant is the promoter and Managing director of M/s. Sugna Metals Limited engaged in similar line of business having a turnover over Rs. 600.00 cr. The resolution applicant is resourceful

person to fund the resolution plan. It is further stated at Clause "K"- INFUSION OF FUNDS OF RESOLUTION APPLICANT that the funds would be brought by way of equity share capital or partly by way of unsecured loans.

13. **LIQUIDATION VALUE AND INTEREST OF STAKE HOLDERS:-**

The verified/admitted claims of the secured financial creditors are more than the liquidation value. Further the proposed bid value is substantially less than the admitted claims of secured financial creditors. As such the liquidation value payable to operational creditors including statutory dues, if any would be NIL. Further it is also stated that all the Liabilities including outstanding amount to any of the creditors, statutory dues and other which are either claimed or unclaimed, not admitted by RP and any liability which has been provided or not provided for the in the resolution plan would stand extinguished.

14. **Term of the Resolution Plan Its Implementation and Supervision And Management Of Affairs Of The Resolution Plan**

The term of the resolution plan shall be from the date of approval of plan by this Tribunal till the transfer date. Transfer date shall be the date of last instalment of Resolution amount.

15. **PROPOSAL FOR MEETING THE INTEREST OF ALL STAKEHOLDERS ALONG WITH TIME LINE**

S.NO	PARTICULARS	TREATMENT/PAYMENT PROPOSED
1.	CIRP cost	Rs. 32.00 lacs (up to 14 th October 2019 and balance CIRP cost up to approval of plan by NCLT and monitoring fee/expenses till the Term of plan)

2.	Secured Financial Creditors	Rs. 20.00 Cr (to be disbursed in proportion to their claim amount)
3.	Operational Creditor	Nil (as Liquidation value available to operational creditor is Nil – only one operational creditor – Andhra Pradesh Power Distribution Corporation Limited)
4.	Present Equity Share Holders	<p>All the shares issued by the Corporate debtor either in physical or De-materialised form shall stand cancelled in totality without calling back physical certificates. These shareholders or their Nominees shall not have any rights/claims to damages/ Compensation of whatsoever nature on this account from Corporate debtor or Resolution applicant.</p> <p>Any commitment to issue shares in future by Corporate Debtor before the approval of NCLT shall stand cancelled.</p> <p>Any rights of whatsoever nature given to shareholders through Articles of Association of Corporate Debtor shall stand cancelled and suitable amendment to AOA will be made on or after date.</p> <p>All the paid up equity share capital at present against which issued shares are being cancelled will be transferred to reserves and surplus along with recasting of assets and liabilities representing true and fair value of state of affairs of CD.</p> <p>Any compliance (s) required to be executed under this resolution plan shall be deemed as granted, as a fait accompli to the resolution process, by virtue of NCLT order accepting this resolution plan.</p>
	PRESENT DIRECTOR	All the existing directors of the corporate debtor shall cease to exist from the date of transfer date and approval of the resolution plan by NCLT serves as an order for filing necessary forms with MCA or any other statutory authority, if any as required. The board will act under the guidance of monitoring committee till the transfer date (from the date of approval of plan by NCLT)
	COMPLIANCES	Compliance with the Term of the Resolution plan as approved by NCLT is with in itself the requisite consent and therefore automatically empower Resolution applicant and corporate Debtor to complete necessary formalities of filing with regard to change in shareholders, Directors and such other filings as are relevant for completing the resolution process to the end – be it with ROC, MCA, statutory Authorities, government and tax

		departments and will not require any separate consent from any authority Compliances if any required under the Companies Act 2013 under this resolution plan shall be treated as complied on approval of resolution plan by NCLT. Any compliance required to be executed under this resolution plan will be deemed to have been complied with by virtue of approval of the resolution plan by NCLT.
	STAUTS OF AUTHORIZED CAPITAL	Upon adjustment of existing paid up capital as aforesaid, Corporate debtor will issue further shares in future against existing authorised share capital.

16. It is stated that the Resolution Applicant has furnished Performance Security letter by depositing Rs. 2,03,20,000/- to the extent of 10% of the bid amount (in lieu of performance guarantee) in the escrow account opened with Indian Overseas Bank, Chikkadpally, Hyderabad and requested this Tribunal to consider this deposit to as performance security or guarantee for the execution of resolution plan with a condition that it shall be forfeited in the event of any failure or default in meeting bid payments proposed in the resolution plan which is annexed to the memo dated 05.12.2019. It is further stated that the transfer of management of Corporate Debtor would be only after the final instalment of bid amount proposed in the resolution plan is made. The Applicant has filed statement of account for the period from 15.10.2019 to 04.12.2019 substantiating the amount of Rs. 2.32 crores deposited into the escrow account.
17. The Resolution Applicant Mr. Bharat Kumar has submitted a declaration confirming his eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.
18. The Monitoring Committee comprising of nominee of Resolution Applicant, representative of CoC and Resolution Professional will monitor the implementation of the plan after the effective date and until closing date.

19. The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
20. It is further stated by the Applicant that the Resolution Plan takes care of the interest of Financial Creditors and a provision is made for payment of CIRP costs which shall be paid as first priority. It is stated that no payment is made to Operational Creditor, as operational creditor would not get any amount in the event of liquidation as per provision of 30 (2) (b) of IBC. Even otherwise, the Operational Creditor / APCPDCL is a Government undertaking. By virtue of amendment to Section 31 (1) of the Code, the Resolution Plan is binding on the State Government. Therefore, even if no amount is allotted to Operational Creditor in the Resolution Plan, but by virtue of amendment, the plan is binding on the undertaking of State Government. Hence, Resolution Plan can be approved even if no allotment is made to the Operational Creditor.
21. Applicant submits that Corporate Debtor has already commissioned the industry by taking necessary approvals from the various departments. However for any future clearance, the same would be taken accordingly.
22. The Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations. It is also stated by the Resolution Professional that RESOLUTION APPLICANT would take up the repair and renovation of the plant only after getting possession of plant i.e after the entire payment of Rs.



20.32 cr earmarked for Financial Creditors and CIRP cost is paid. The bid amount is above the Liquidation Value.


23. As per the amendment to Section 31 (1), the Resolution Plan is binding on the central Government, any State Government or any Local Authority to whom a debt in respect of the payment of due arising under any law for time being in force such as authorities to whom statutory dues are owed. The Resolution Applicant has to obtain necessary approval if any required with one year as per Section 31 (4) of the Code. I am convinced with the Resolution Plan approved by the CoC and as such the Application is question deserves consideration. Hence, I pass the following order:-

24.

ORDER

1. Thus, Resolution plan submitted by Resolution Applicant Bharat Kumar (“**Resolution Applicant**”) which is approved by members of CoC having 100% voting share stands **approved** as per Section 31 (1) of the Code subject to filing an undertaking by Resolution Applicant that the Performance Security Deposit amounting to Rs. 2,03,20,000/- will not be withdrawn by the Resolution Applicant till implementation of Resolution Plan and until full bid amount is paid. In other words I am satisfied with the Resolution Plan as approved by Committee of Creditors under Section 30 (4) of the Code and it meets the requirement as referred to in Section 30 (2) of IBC, 2016. Accordingly, the Resolution Plan stands approved with above condition and the same is binding on Corporate Debtor, its employees, Members, Creditors including the Central Government, any State Government or any Local Authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, Guarantors and stakeholders involved in the Resolution Plan in terms of Section 31 (1) of the Code.

2. The moratorium order passed under Section 14 shall cease to have effect from today.
3. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.
4. The Resolution Applicant shall obtain necessary approval required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan or within such period as provided for in such law.


13.12.19
**(RATAKONDA MURALI
MEMBER (JUDICIAL))**

Binnu