

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

**IA No.173/2019
In CP(IB)No.302/7/HDB/2018**

In the matter of:
M/s.VBC Industries Ltd

M/s. VBC Industries Ltd.,
Rep. by Mr.TSN Raja (RP)
6-2-913/914, III Floor,
Progressive Towers, Khairatabad,
Hyderabad – 500004

... Corporate Debtor/
IA Applicant

Order pronounced on: 07.01.2021.

**Coram: K. Anantha Padmanabha Swamy, Member Judicial
Dr. Binod Kumar Sinha, Member Technical**

Parties/ Counsels Present:-

For the Applicant: Mr. TSN Raja, RP

Per: Dr. Binod Kumar Sinha, Member Technical

ORDER

1. The Present Application bearing IA No.173/2019 is filed under Section 30 of IB Code, 2016, inter-alia seeking the following prayers:
 - i. The Adjudicating Authority may approve the Resolution Plan of M/s Kamini Metalliks Private Limited, as provided under Section 31(1) of the Code.
 - ii. Since the implementation period is about one year from the approval by the NCLT, and the Resolution Applicant is proposing a monitoring committee with RP and representative of FC's and the Applicant, the Adjudicating Authority may appoint the RP to monitor the implementation of the scheme.

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2. Brief facts of the present CIRP are as under:

- a. That the present Corporate Debtor was admitted for CIRP on 13.04.2018 and Mr. CS Ahalada Roa Vummenathala was appointed as IRP. Subsequently upon recommendation by COC and order of the Adjudicating Authority dated 01.06.2018, Mr. TSN Raja was appointed as RP.
- b. That the Resolution Professional published invitation for EOI on 12.09.2018 and received 8 EOI's and one enquiry.
- c. That three Resolution proposals were received from the following PRAs:
 - i. M/s. Raaga Mayuri Builders Pvt Ltd
 - ii. M/s. Amaravathi Textiles Pvt Ltd &
 - iii. M/s. Kamini Metalliks Pvt Ltd.
- d. That after discussions, Resolution Applicants were advised by CoC to submit revised plans.
- e. That M/s. Raaga Mayuri Builders Pvt Ltd dropped out on business reasons. Further, the CoC analyzed and ranked the other two proposals and declared M/s. Kamini Metalliks Pvt Ltd as H1 and held discussions with them.
- f. That M/s. Kamini Metalliks Pvt Ltd have improved their offer after discussion to Rs. 98.15 Crores from Rs. 81.5 Crores.
- g. That the Liquidation value of the Corporate Debtor's estate is Rs. 72 Crore. The Corporate Debtor owns investments which are valued at Rs. 27 crores. However, the investment is mainly in M/s. Konaseema Gas Constortium Pvt Ltd being a private limited Company and although the holding is 42% of the total equity of that Company, marketability is at stake.
- h. That the value for the asset offered by H1 is Rs. 57.15 Crore. Thus the Resolution Applicant is proposing 58.22% of the Resolution Plan value (Rs.98.15 Cr.) for the Financial Creditors.
- i. That the CoC in its 15th Meeting held on 21.02.2019, with 100% majority voted for recommending Resolution Plan to the Adjudicating

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Authority for approval. The Applicant agreed to give Rs. 2 Crore as performance security.

- j. That there are 3 creditors in the COC, details of which with their respective voting shares are as under:-

Sl.No	Name of Creditor	Voting Share (%)
1	IFCI Limited	62.32%
2	Phoenix ARC Private Limited	23.17%
3	Shriram City Union Finance Limited	14.51%

3. Brief contents of the Resolution plan are as under:

- a. The amounts provided for the stakeholders under the Resolution Plan is as under:-

Sl.No.	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed(%)
1	Secured Financial Creditors (Phoenix ARC Pvt. Ltd.)	4085.80	4085.80	2050.00	50.17%
2	Unsecured Financial Creditors i) IFCI Ltd ii) Shriram City Union Finance Ltd.	10988.72 2557.64	10988.72 2557.64	2800.00 850.00	25.47% 33.23%
3	Operational Creditors	1801.78	1664.12	10.00	0.55%
	Government	5078.12	5078.12	0.00	0.00
	Workmen	537.90	298.61	0.00	0.00
	Employees	243.59	25.75	0.00	0.00
4	Other Debts and Dues	1545.98	1545.98	0.00	
5	CIRP Cost			5.00	
Total		26839.53	26244.74	5715.00	21.29%

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- b. The details of payment as proposed in the Resolution Plan are as under:-

Sl.No.	Details	Final Plan in (₹ Crores)
COST FOR THE ASSET		
1	CIRP COST	0.05
2	F C SECURED PHONIX	20.50
3	F C UNSECURED	
	IFCI	28.00
	SHRIRAM	8.50
4	OPERATIONAL CREDITORS	0.10
	SUB TOTAL	57.15
FUND INFUSION		
5	REPAIRS AND REFRUBISHING	12.00
6	WORKING CAPITAL MARGIN	5.00
7	WORKING CAPITAL BORROWING	24.00
	SUB TOTAL	41.00
	TOTAL	98.15

Reiterating above, counsel for the Applicant prayed to allow the Application as prayed for.

4. Heard and perused the record.
5. Section 30(2) of the Code as amended w.e.f. 06.08.2019 enjoins upon the resolution professional to examine each resolution plan received by him to confirm that such plan –
 - a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

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- b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-
- i. the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
 - ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the Corporate Debtor.
- c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- d) provides for the implementation and supervision of the resolution plan;
- e) does not contravene any of the provisions of the law for the time being in force; and
- f) confirms to such other requirements as may be specified by the Board.
6. Section 30(4) of the Code as it stands at present after the amendment reads as follows: -

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.”

7. Section 30(6) of the Code enjoins the resolution professional to submit the resolution plan as approved by the committee of creditors to the



Adjudicating Authority. Section 31 of the Code deals with the approval of the resolution plan by the Adjudicating Authority, if it is satisfied that the resolution plan as approved by the committee of creditors under section 30(4) meets the requirements as referred to in section 30(2).

8. Thus, before approving the Resolution plan, it is the duty of the Adjudicating Authority that it should satisfy itself that the Resolution plan as approved by the COC meets the requirements as referred to in sub-section (2) of Section 30.
9. On perusal of the Resolution Plan, this Adjudicating Authority has observed that the Resolution plan placed for consideration provides for the following:
 - a) Payment of CIRP Cost as specified U/s 30(2)(a) of IBC, 2016.
 - b) Repayment of Debts of Operational Creditors as specified U/s 30(2)(b) of IBC, 2016.
 - c) Provides for management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of IBC, 2016.
 - d) Provides for appointment of a Monitoring Committee for implementation and supervision of the Resolution Plan consisting the Insolvency Resolution Professional and nominees of the COC as specified U/s 30(2)(d) of IBC, 2016.
 - e) The Resolution Plan is not in contravention to any of the provisions of Law, for the time being in force, as specified U/s 30(2)(e) of IBC, 2016.
 - f) The Resolution plan conforms to other requirements specified by the Board.
10. In terms of Regulation 27 of CIRP Regulations, Fair value and Liquidation value was ascertained through two registered valuers, and the same stands at Rs.109.18 Crores and Rs.96.92 Crores respectively. The

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total Resolution Plan value of Rs.98.15 Crores is higher than the liquidation value.

11. The RP has complied with the code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of CIRP regulations.
12. The identity of the Resolution Applicants have been duly verified by the RP and affidavit as per section 30(1) of the Code has been obtained from the Resolution Applicants stating that the Resolution Applicant is not ineligible U/s 29A of the IB Code, 2016.
13. The Plan also provides for keeping the Company as a going concern and operate in its normal course of business upon implementation of Resolution Plan. There is no objection filed by any other person in this regard.
14. Copy of Form-H (Compliance Certificate) filed by the RP along with the Plan has been perused and considered. The RP *inter-alia* has certified as under:
 - i. *"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 force.*
 - ii. *The Resolution Applicant M/s Kamini Mettaliks Private Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.*
 - iii. *The said 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 [state the number of votes by which Resolution Plan was approved by CoC] 100% of voting share of financial creditors*

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after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

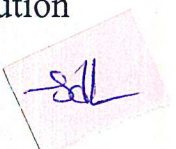
- iv. *The voting was held in the meeting of the CoC on 21.02.2019 where all the members of the CoC were present."*
15. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and Regulations thereunder.
16. It is also evident that the Resolution Plan placed before this Adjudicating Authority, was approved by the Committee of Creditors in its 15th CoC meeting dated 21.02.2019 with 100% votes cast in favour of Approval of the Resolution Plan.
17. In *K Sashidhar Vs. Indian Overseas Bank & Others*, decided on 05.02.2019 in Civil Appeal No.10673/2018 with CA Nos.10719/2018, 10971/ 2018 and SLP(C) No.29181/2018, the Hon'ble Supreme Court, noticing the provisions of section 30(4), 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 (NCLT). On receipt of such a 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.
18. In the said judgment, in para 35, the Hon'ble Supreme Court held that the discretion of the adjudicating authority is circumscribed by Section 31 and is 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.
19. In view of the discussions in the foregoing paragraphs, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in

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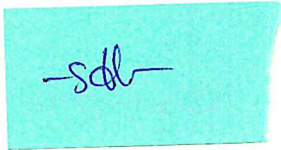
contravention of any of the provisions of Section 29A. Hence, this Adjudicating Authority is satisfied that the Resolution Plan is in accordance with Law. Therefore, the 'Resolution Plan' annexed with Application bearing IA No.173/2019 filed in CP(IB) No.302/7/HDB/2018 is hereby approved along with the modifications as proposed by this Adjudicating Authority vide its order dated 11.08.2020 in IA No. 316/2020 in relation to the claim of IREDA, which forms part of this Order and which shall be binding on the corporate debtor and 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 other stakeholders involved in the resolution plan.

20. However, the Resolution Plan approved shall not construe any waiver to any statutory obligations/liabilities arising out of the approved Resolution Plan and same shall be dealt in accordance with the appropriate Authorities as per relevant Laws. We are of the considered view that if any waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities. The same view has also been held by Hon'ble Principal Bench, NCLT in the case of *Parveen Bansal Vs. Amit Spinning Industries Ltd.* in CA No.360 (PB) 2018 in CP No (IB) 131 (PB)/ 2017.
21. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution Applicant shall pursuant to the Resolution Plan approved under Sub-Section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for in such law.
22. This Adjudicating Authority orders for the Constitution of Monitoring Committee consisting of Mr TSN Raja, RP, representatives nominated by the Financial Creditors and the Resolution Applicant to supervise the implementation of the Resolution Plan and further Resolution Professional is directed to file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.

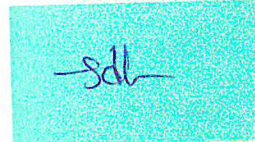




23. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.
24. The order of moratorium passed by this Adjudicating Authority under Section 14 of the I&B Code, 2016 shall cease to have effect from the date of passing of this Order.
25. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI along with Copy of this Order, so that the Board may record the same on its data-base.
26. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
27. Accordingly, IA No. 173/2019 is disposed of as allowed.



Dr. Binod Kumar Sinha
Member Technical



K. Anantha Padmanabha Swamy
Member Judicial