

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 02.12.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
TCP(IB)No.41/9/AMR/2019	IA(IB)/63/2022	9 Of IBC	Priya Trading Company Vs Veda Biofuel Ltd

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

ORDER

IA(IB)/63/2022:

Mr.Pankaj Vivek, Advocate for CoC and Mr.Y.Surya Narayana,
Advocate for respondent present.

IA(IB)/63/2022 is dismissed, vide separate orders.

Sd/-

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

**IA (IBC)/63/2022
IN
TCP (IB) No.41/9/AMR/2019**

**Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
Read with Rule 11 of National Company Law Tribunal Rules, 2016**

In the matter of M/s. VEDA BIOFUEL LIMITED

BETWEEN:

1. Mr. Ramakrishna Indrakanti,
S/o. Late Indrakanti Ramachandrudu,
R/o.1500, Horseshoe Drive, NY, 11710, USA.
Represented by S.P.A. Holder;
Mr.VN Srinivasarao, aged about 55 years,
S/o. Late V.B.Tilak,
R/o.Flat No.102, Roshan Towers,
Balaji Nagar, Siripuram,
Visakhapatnam – 530003.

2. Mr. Sriram Raju Nadimpalli,
S/o. N.Subba Raju,
R/o.2106, Redbud Lane,
Furlong, PA 18925, USA.
Represented by GPA Holder;
Mr.N.S.N. Raju,
S/o. Mr.N.Subba Raju,
Aged about 63 years,
R/o. Flat No.308, Tranquil Towers,
White Fields, Kondapur, Hyderabad – 500084.

3. Ms.Sujatha Chandra Nadimpalli,
W/o. Sriram Raju Nadimpalli,
R/o.2106, Redbud Lane,
Furlong, PA 18925, USA.
Represented by GPA Holder;
Mr.N.S.N. Raju, S/o. Mr.N.Subba Raju,
Aged about 63 years,
R/o. Flat No.308, Tranquil Towers,
White Fields, Kondapur, Hyderabad – 500084.
4. Ms.Venkata Sujatha Penmetsa,
W/o. Vijay Kumar Penmetsa,
R/o.20059, Mattingly Ter,
Gaithersburg, MD, USA – 20879.
Represented by GPA Holder,
Mr.Vijay Kumar Penmetsa,
Aged about 55 years, R/o. 50-50-15/2,
Behind Gurudwara Temple, Seethammadara,
Vishakhapatnam, Andhra Pradesh – 530017.
5. Mr.Vijay Kumar Penmetsa,
Aged about 55 years,
R/o. 50-50-15/2, Behind Gurudwara Temple,
Seethammadara, Vishakhapatnam,
Andhra Pradesh – 530017.

.... Applicants

AND

M/s. Veda Biofuel Limited,
Represented by its Liquidator, Dr.K.V.Srinivas,
(Reg.No.IBBI/IPA-001/IP-P00520/2017-18/10945).
401, Kurupam Anchorage,
Beach Road, East Point Colony,
Vishakhapatnam, Andhra Pradesh – 530017.

...Respondent

Orders pronounced on: 02.12.2022

Coram:

Justice Telaprolu Rajani, Member Judicial.

Parties/Counsels present:

- For the Applicants : Mr. S.Ravi, Senior Counsel along with
M.Naga Deepak, Advocate
- For the Respondent : Mr. Y.Suryanarayana, Advocate

ORDER

1. This application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of NCLT Rules, 2016, by the Applicants who are the majority unsecured Financial Creditors holding around 91% of the unsecured financial credit and shareholders of the Corporate Debtor (CD).
2. The facts of the case briefly are as follows:
 - i. The Corporate Debtor (CD) is a company incorporated under the Companies Act, 1956. On the basis of an application filed by M/s.Priya Trading Company under Section 9 of IBC to initiate Corporate Insolvency Resolution Process (CIRP) against the CD, the CD was admitted to CIRP. The original Interim Resolution Professional (IRP) who was appointed as Resolution Professional (RP) was replaced at the request of the Committee of Creditors (CoC) by this Tribunal by order

dated 29.09.2019 and the appointment of one Mr.Sisir Kumar was confirmed.

- ii. The current account of the CD was blocked by Vijaya Bank on 28.11.2018, as soon as it was classified as NPA, which action is against the established RBI guidelines. Several requests were made by the promoters to unblock the account.
- iii. During the process of CIRP, the CoC issued Expression of Interest (EoI) and CoC received only Rs.47 Crores and Rs.54 Crores as maximum bids. Subsequently, the Applicant No.5 wanted to submit a restructuring proposal and in the 14th CoC meeting held on 06.11.2019, the CoC unanimously resolved that if the promoter is not ineligible under Section 29A of IBC, 2016, he could participate as a Resolution Applicant and submit his restructuring plan.
- iv. During the course of the restructuring plan approval, Applicant No.5 also settled with the Operational Creditor (OC) who was responsible for getting the CD admitted into the CIRP process. As per the settlement agreement, the said OC i.e., M/s. Priya Trading Company agreed to withdraw the application and provided necessary documentation for withdrawal of the present Company Application.

- v. One Mr.Madhusudhan Raju, a new investor and Applicant No.5 filed IA No.15/2020, wherein by the order dated 04.02.2020, the Tribunal directed the erstwhile RP to place the restructuring plan before the CoC and to consider the restructuring proposal as per law.
- vi. The directions of the Tribunal were incorporated in the 20th CoC meeting held on 03.03.2020 wherein the CoC resolved that the restructuring plan submitted by Mr.Madhusudhan Raju is considered as the Successful Resolution Plan.
- vii. This Tribunal, by order dated 26.05.2020, rejected the said plan and ordered for liquidation of the CD. Mr.Sisir Kumar was to continue as the Liquidator.
- viii. By order dated 07.08.2021, the Tribunal however, held that the appointment of Mr.Sisir Kumar as Liquidator is void ab initio, rendering all the proceedings conducted by the erstwhile RP as null and void.
- ix. The CD was certified as an MSME on 03.07.2020 and an application was filed in IA No.100/2021, which was allowed by the Tribunal by order dated 25.11.2021. The Liquidator was directed to accept the MSME certificate produced by the Applicant and consider the Resolution/restructuring Plan on

the similar lines as approved in the 20th CoC meeting held on 03.03.2020.

- x. In view of the order dated 25.11.2021, Applicant No.5 submitted a Composite Compromise and Settlement Scheme under Section 230 to 232 to the Liquidator.

- xi. CA(AT) (Ins) No.204/2019 was preferred challenging the CIRP order and the matter is pending. However, vide order dated 28.02.2019, the NCLAT has stated that in the meantime, the Interim Resolution Professional (IRP) will ensure that the company remains as going concern and will take assistance of the (suspended) Board of Directors. The persons who are working will perform their duties, including the paid Directors. The person who is authorized to sign the bank cheques may issue cheques only after authorization of the Interim Resolution Professional. The bank accounts of the Corporate Debtor be allowed to be operated for day to day functioning of the company such as for payment of current bills of the suppliers, salaries and wages of employees/workmen, electricity bills etc. The erstwhile IRP and the consortium did not follow the orders of the Tribunal and the employees of the CD were fired within one month of CIRP. The suspended Directors were kept aloof from the functioning of the CD.

- xii. CA (AT) (Ins) No.757 of 2020 was preferred, challenging the Liquidation order and the same is pending. The NCLAT stayed the operation of the auction notice.
- xiii. The reasons for the CD to going into liquidation are the arbitrary and unreasonable actions of the erstwhile RP, who failed to call for CoC meetings and appraise them about the settlement and intention to withdraw of M/s.Priya Trading Company – Operational Creditor who filed the present Company Petition. The CD would never have slipped into insolvency if the settlement agreement was brought to the notice of the CoC and M/s.Priya Trading Company would have been permitted to submit application under Section 12A of IBC.
- xiv. The erstwhile RP turned Liquidator was requested multiple times to contemplate on the MSME status of the CD. But again, it was the Tribunal, which gave a direction to consider the status of the CD as an eligible MSME and allow Applicant No.5 to submit the scheme.
- xv. As per the scheme submitted by Mr.Vijay Penmetsa on 13.12.2021, the value to be realized by the stakeholders is Rs.140.39 Crores. The unsecured Financial Creditors are going to realize 100% of the dues admitted before the

Tribunal. Similarly, the workmen/employees, statutory dues as well as the contract staff are realizing 100% of the amount due. The Financial Creditors are realizing 100% of the amount agreed by them in 20th CoC meeting dated 03.30.2020, a plan which was unanimously agreed by the CoC as the successful resolution plan. The Operational Creditors have submitted affidavits in support of the plan of Applicant No.5 as maximizing their interest.

xvi. On the instructions of the Liquidator, Applicant No.5 already transferred Rs.30 Lakhs towards proposed Scheme of Compromise and Arrangement as per Regulation 2B(3) of IBBI (Liquidation Process) Regulations, 2016. On the above grounds, two prayers were made the 1st of which is not pressed which is;

- (a) To direct the Liquidator to consider the Scheme as presented by Applicant No.5 amounting to Rs.140.39 Crores, as the one that maximizes the interest and returns of all the stakeholders involved and place the said Scheme before the Consortium of Creditors.
- (b) To direct the Liquidator not to accept any scheme where the benefit of the said scheme is lesser than the one given by the Promoter in the present Scheme, as that would be contrary to the interest of the

stakeholders and the Corporate Debtor involved and reduce the returns which they are now getting under the present Scheme.

3. The Liquidator filed a short reply on the grounds of maintainability. The present application which is filed with a prayer not to accept any other scheme is not sustainable. The Applicants are conscious that the proposal submitted by Applicant No.5 was rejected by all the Secured Financial Creditors (SFCs) and this Application is a blatant attempt to abuse the process of law. The appeal preferred by Applicant No.5, challenging the liquidation order, is still pending. The Applicant suppressed the material fact that the Scheme of Compromise/Settlement submitted by him was rejected by the SFCs not once but twice after applying their commercial thought and wisdom. Applicant No.1 submitted a composite scheme of arrangement under Section 230 to 232 dated 18.11.2021. Certain preliminary clarifications were sought by the Liquidator. On 03.12.2021, Applicant No.1 sent an email stating that after going through the order of NCLT, Amaravati dated 25.11.2021, he believes that it would be more beneficial to all the stakeholders, if the main promoter submits the proposal as stated in the order and at the moment he is withdrawing his scheme with a right to resubmit the same in future, if necessary. Applicant No.5, in compliance with the directions of the Tribunal in IA No.100/2021, submitted a scheme of proposal to the Liquidator on 13.12.2021 i.e., on the 90th

day from the date of uploading of appointment order of the new Liquidator. The Liquidator promptly submitted the proposal received from Applicant No.5 to all the SFCs for their consideration, which was rejected by them. Subsequently, Applicant No.5 approached the SFCs with a revised proposal for their consideration directly. The SFCs intimated the Liquidator that in the Joint Lenders meeting held on 30.05.2022, the OTS proposal was considered and the same was rejected on commercial grounds. The scheme of arrangement submitted by Applicant No.5, failed to garner the requisite mandatory consent of 75% of the SFCs in accordance with provisions of Section 230 (2) (c) of the Companies Act and maximum period of 90 days is also over. Another OTS proposal was submitted by Applicant No.5 which was unanimously rejected by the SFCs. Subject to the outcome of the appeal before the NCLAT, the Liquidator will be calling for bids from the prospective bidders for the sale of the CD as a going concern and the Applicant may be directed to participate in the Auction Process once he makes a public announcement in this regard. On the above grounds the Liquidator seeks to dismiss the Application.

4. Heard both the Counsel and perused the written submissions. The only issue that came up before this Tribunal during the course of arguments is with regard to the consent of 75% of the Creditors while proposing the Scheme. Section 230 (2) (c) runs as follows:

“Section 230. Power to compromise or make arrangements with creditors and members

(2) The company or any other person, by whom an application is made under sub-section(1), shall disclose to the Tribunal by affidavit—

(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—

(i) a creditor’s responsibility statement in the prescribed form;

(ii) safeguards for the protection of other secured and unsecured creditors;

(iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;

(iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and

(v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.”

According to Section 230(1), where a compromise or arrangement is proposed between a company and its creditors or

any class of them; or between a company and its members or any class of them, the Company or any other person by whom an application is made shall disclose to the Tribunal by affidavit, any scheme of CD restructuring consented to by not less than 75% of the Secured Creditors in value. The contention of the Counsel for the Applicant is that the 75% consent of the Secured Creditors in value has to be obtained after the submission of the Scheme and not at the time of submitting the Scheme. The contention of the Liquidator is that 75% consent of the Creditors has to be obtained, while the scheme is proposed. However, according to the Liquidator, the Scheme was forwarded to the SFCs by email dated 19.12.2021, after it was received on 13.12.2021, for their consideration. The same was intimated as rejected by the higher ups. Another scheme was submitted by the Applicant and the same was discussed and deliberated in the meeting held on 30.05.2022, but it was unanimously rejected. Another proposal was submitted, which was also discussed at length and rejected unanimously. Then an appeal was preferred by Applicant No.5 before the NCLAT and is pending. Later the Applicant sent an email withdrawing his scheme with a right to resubmit the same. Applicant No.1 gave instructions to his Counsel for withdrawing the appeal before the NCLAT and a formal consent of the Tribunal is pending. An email in that regard is also filed by the Liquidator.

5. The 1st prayer which is as follows:

“To direct the Liquidator to consider the Scheme as presented by Applicant No.5 amounting to Rs.140.39 Crores, as the one that maximizes the interest and returns of all the stakeholders involved and place the said Scheme before the Consortium of Creditors.”

Was submitted as not pressed by the counsel for the applicant during the course of arguments. But since, the entire argument of the Counsel revolved around the 1st prayer, a clarification was sought for again from the Counsel for the Applicant and a memo was filed reiterating the said submission that the 1st prayer is not pressed. The reason for not pressing the 1st prayer is also mentioned in the memo. The Liquidator in the present case conducted a joint lender forum meeting dated 30.05.2022 only after this application was filed by the Applicant. Hence, in view of the said development the 1st prayer in relation to placing the scheme before the CoC members is not pressed/contested. However, the matter was reopened and listed for clarification. The Counsel for the Applicant reiterated that the 1st prayer is not pressed. But however, he contends that so far as, placing the scheme before the Committee of Creditors (CoC) is concerned is complied with. But hearing the Applicant by the CoC need to be directed. But unfortunately the said prayer is not made in the application and it is not a part of the 1st prayer made in the Application.

6. Since, the scheme was not placed before the CoC, it appears that the 1st prayer was made for a direction for the scheme to be placed before the Consortium of Creditors. But since there is no prayer made with regard to the right of the Applicant to appear before the CoC and convince them with regard to the approval of the scheme and obtain 75% voting as required by the Section 230(2)(c) of the Companies Act, the same cannot be granted. For the same reason, the judgment of NCLAT, Principal Bench, New Delhi in the case between *Ramesh Kumar Chaudhary and another vs. Anju Agarwal and others* need not be taken up for discussion. The counsel seeks the tribunal to look at the contents of the applications to grant the said relief. But when there is no prayer, no relief can be granted, based on the contents of the pleading. The contents of the pleadings shall only be for the purpose of drawing support to the reliefs claimed. Hence the unasked for relief of the applicant cannot be granted.

7. As regards the 2nd prayer it is to direct the Liquidator not to accept any scheme where the benefit of the said scheme is lesser than the one given by the Promoter in the present Scheme, as that would be contrary to the interest of the stakeholders and the Corporate Debtor involved and reduce the returns which they are now getting under the present Scheme. In the considered opinion of this Tribunal, without being appraised about the scheme that is proposed to be accepted by the Liquidator, no such order can be given on

hypothetical grounds. It cannot also be assumed that any scheme where the benefit is lesser than the one given by the promoter would be accepted by the Liquidator. In all probability, the Liquidator would accept a scheme which is beneficial to the CD and its stakeholders. Hence, on an assumption, such prayer cannot be granted. Hence, for the above reasons, the Application fails and is consequently dismissed.

Accordingly, IA(IBC)/63/2022 in TCP (IB) No.41/9/AMR/2019 is dismissed.

Sd/-

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

Swamy Naidu