

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IBPP) No.03/MB-IV/2023**

*Under Section 54(C) of the Insolvency & Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016.*

*In the matter of*

**Kratos Energy & Infrastructure Limited**

[CIN: L40102MH1979PLC021614]

317, Maker Chamber V, 221 Nariman Point, Mumbai City, Mumbai, Maharashtra, India, 400021.

**...Corporate Applicant.**

**Order Delivered on: 01.02.2024.**

*Coram:*

Ms. Anu Jagmohan Singh  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances:*

For the Corporate Applicant:

Mr. Mustafa Doctor, Ld. Sr. Counsel  
a/w Mr. Amir Arsiwala i/b Mr. Kunal Kanungo, Ld. Counsel.

**ORDER**

1. The present Petition is being preferred by the Petitioner under the provisions of Section 54C of the Insolvency and Bankruptcy Code, 2016, for initiating pre-packaged Insolvency Resolution Process in respect of Kratos Energy & Infrastructure Limited under the Insolvency and Bankruptcy Code, 2016 in relation to Debt and Default of Rs. 1,20,00,000/-.
2. The Corporate Applicant is a public listed Company incorporated on 31.08.1979 vide Registration no. L40102MH1979PLC021614. The Corporate Debtor is a Company engaged in the business of Trading in capital market instruments, Market research and follow-up across multiple industries, Turnkey power projects consultancy and Undertaking energy and infrastructure projects.
3. The Corporate Debtor entered into an Inter-Corporate short-term Loan with one M/s Tricom Prints and Packaging Private Limited under an Intercorporate Loan Agreement dated 08.04.2022 from the said Financial Creditor. Accordingly, a sum of Rs. 1,20,00,000/- alongwith simple interest at the rate of 24% per annum was borrowed by the Corporate Debtor from the said Financial Creditor pursuant to the aforesaid agreement. The repayment terms as set out in the said Agreement mandated the Corporate Debtor to repay the 1<sup>st</sup> instalment and 2<sup>nd</sup> instalment of Rs. 11.21 Lakhs and Rs. 50,00,000/- respectively, within a period of 10 months from disbursement of the 1<sup>st</sup> instalment. The 3<sup>rd</sup> instalment of Rs. 58.79 Lakhs was required to be repaid within a period of one month from its disbursal.

4. As per the said Agreement, a total amount of Rs. 61.21 lakhs was required to be repaid by 07.02. 2023 and further an amount of Rs. 58.79 Lakhs was required to be repaid on or before 10.02. 2023.
5. The Financial Creditor vide its Notice dated 21.03.2023, sought repayment of Rs. 131.78 Lakhs including interest from the Corporate Debtor. however, the Corporate Debtor failed to repay the same. The Financial Creditor issued another Notice dated 05.04.2023 for outstanding amount of Rs. 136.23 Lakhs including interest, however, the Corporate Debtor once again failed to repay the same.
6. The Corporate Debtor issued Notice dated 01.09.2023 calling for a meeting with the Sole Financial Creditor (100%), seeking approval for the proposed Insolvency Resolution Professional.
7. There are 2 Unsecured Creditors of the Corporate Applicant. The pending liabilities towards the same and the payment proposal is given below:

Sr. No	Unsecured Financial Creditors	Amount as per books of accounts (Amount in lakhs)	Amount as proposed to be paid in cash (Amount in lakhs)	Amount of Hair Cut
1.	Tricom Prints and Packaging Pvt. Limited (unrelated FC)	120.00	72.00	48.00

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2.	Canons Trading Private Limited (Related FC)	32.59	19.55	13.04
Total		152.59	91.55	61.04

8. There are no Secured Creditors of the Corporate Applicant.
9. The undisputed debt due to the Operational Creditor is Rs. 20,14,000/- as on 15.09.2023.

**STATUTORY COMPLIANCES**

10. The Corporate Applicant is duly registered MSME (Micro, Small & Medium Enterprise) under The MSME Act, 2002 in the category Micro Enterprise and the requisite certificate dated 21.07.2023 is annexed with the application. The Corporate Applicant is eligible to file this application as per Section 54A (1) of the Code.
11. The Resolution Professional has given declaration regarding the non-existence of avoidance transactions relating to the Company and its directors as per section 54(3)(c) r/w Regulation 16(2) of IBBI (Pre-Packaged Insolvency Resolution Process) Regulations, 2021 in Form-P7.
12. The Financial Creditor approved the appointment of Insolvency Professional, Mr. Amit Chandrashekhar Poddar having Registration No. IBBI/IPA-001/IP- P00449/2017-18/10792, holding AFA No. AA1/10792/02/170124/105394 email: - [amitpoddar.ca@gmail.com](mailto:amitpoddar.ca@gmail.com) and has filed his written consent in Form P1. It is annexed with the Application, thereby complying with the provisions of Section 54A(2)(e) of IBC,2016 read

with Regulation 14(5) of IBBI (Pre-packed Insolvency Resolution Process) Regulations, 2021. The said Insolvency Professional proposed to be is appointed as Resolution Professional to conduct the PPIRP and to discharge duties before initiation of PPIRP. The resolution for appointment of Insolvency Professional was passed by 100% sole Financial Creditor vide its Board Resolution dated 07.09.2023.

13. The Board of Directors of the Corporate Debtor in their meeting held on 15.09.2023 passed a resolution for filing an application seeking initiation of Pre-packaged Insolvency Resolution Process of the Corporate Debtor.
14. The members of the Corporate Debtor passed a Special Resolution in their Extra- Ordinary General Meeting held on 22.09.2023 granting their approval for filing an application seeking initiation of Pre-packaged Insolvency Resolution Process of the Corporate Debtor. The declaration given by majority of the directors of the Corporate Applicant as per Section 54A(2)(f) of the Code in Form P6 is annexed with the application.
15. The Sole Financial Creditor i.e. M/s Tricom Prints and Packaging Private Limited holding 100% vote share of the Corporate Debtor also granted its approval for filing of an application as contemplated under section 54A (3) of the Code after considering the formalities completed by the Corporate Debtor including submission of Base resolution Plan. The Form P4 duly signed by the authorised signatory of M/s Tricom Prints and Packaging Private Limited is annexed with the application.

16. Further, the Resolution Professional's report dated 23.09.2023 under section 54B(1)(a) of the Code in Form-P8 is annexed with the application.
17. The affidavit stating that the Corporate Applicant and the Strategic Investor is eligible under section 29A of IBC, 2016 to submit the plan is annexed with the application.
18. Details of Base Resolution Plan:

I. AMOUNT UNDER THE RESOLUTION PLAN

- i. The Strategic Investor has provided Rs. 15.00 lakhs for PPIRP costs in the Resolution Plan;
- ii. The Strategic Investor proposes to pay Rs. 72,00,000/- to the sole Financial Creditor under the Base Resolution Plan within a period of 60 days from the approval of the Plan;
- iii. The Strategic Investor proposes to pay Rs. 17,37,000/- to the Operational Creditors and the same shall be paid in priority to the Financial Creditor;
- iv. The Strategic Investor proposes to pay Rs. 2,77,000/- towards Government Dues;
- v. The Strategic Investor has proposed adjustments of fixed deposit lying with National Stock Exchange to the tune of Rs. 1,95,43,251/- as against disputed claim to the tune of Rs 6,08,50,000/- of Securities Exchange Board of India. The Hon'ble Supreme Court vide its Order dated 16.05.2023 was pleased to stay further proceedings for the recovery of the balance amount by Securities Exchange Board of India.

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II. EQUITY STRUCTURE-POST ACQUISITION/  
IMPLEMENTATION OF RESOLUTION PLAN

This Plan proposes to undertake cancellation and capital reduction of existing equity shareholding in the following manner:

- i. Cancellation and extinguishment of entire shareholding of the existing promoters and promoter group of Corporate Debtor without any pay out;
- ii. Cancellation of the Shareholding of the Public Shareholders other than existing promoters to the extent of 95% of their shareholding as on Record date to be announced by the Company;
- iii. Preferential allotment of Shares against the Infusion of funds by the Strategic Investor;
- iv. Allotment of Shares to the Shareholders of Transferor Company (Strategic Investor) pursuant to the Merger of Transferor Company with the Corporate Debtor (Transferee Company) as per the terms and conditions as envisaged in the Resolution Plan.

III. SOURCES OF FUNDING

The Strategic Investor Plans to fund the Resolution Amount by way of-

Particulars	Rs. In Lakhs	Remarks
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Upfront Payment of PPIRP cost within 60 days	15.00	To be infused by SI as in cash
Upfront within 60 days for Payment to Unsecured Financial creditors	91.55	To be infused by SI and paid directly to Financial Creditors.
Upfront within 60 days for Payment to Operational creditors - Expenses	17.37	To be infused by SI and paid directly to Operational Creditors.
Upfront within 60 days for Payment to Operational creditors- Government Dues/ Statutory dues	2.77	To be infused by SI and paid directly to Operational creditors- Government Dues/ Statutory dues
To SEBI (Disputed Claim)	195.43	Security deposit lying with Stock exchange
Total upfront payments within 60 Days of approval by NCLT	322.12	

IV. SUPERVISION AND IMPLEMENTATION OF THE PLAN

A monitoring committee will be formed to implement, monitor and supervise the implementation of the Resolution Plan.

V. MANDATORY THE CONTENTS OF THE RESOLUTION PLAN AS PER THE REGULATIONS 45.

The RP has certified that the Resolution Plan complies with the requirements of the Code by providing the Report in Form P8.

The Compliances are also enlisted in the Base Resolution Plan in Clause 10 of the Application.

**OBSERVATION: -**

19. As per material on record this bench observed that, the Securities Exchange Board of India had demanded Rs. 6,08,49,566/- from the Corporate Debtor. The said demand was challenged by the Corporate Debtor before the Securities Appellate Tribunal and the same was dismissed. Being aggrieved the Corporate Debtor challenged the same before the Hon'ble Supreme Court. The Strategic Investor has proposed adjustments of fixed deposit lying with the National Stock Exchange to the tune of Rs. 1,95,43,251/- as against disputed claim to the tune of Rs. 6,08,50,000/- of Securities Exchange Board of India. The Hon'ble Supreme Court vide its Order dated 16.05.2023 was pleased to stay further proceedings for the recovery of the balance amount by Securities Exchange Board of India. This bench further directed the applicant to file an affidavit regarding the updated status of the same. An Affidavit was filed on 05.12.2023 stating that the matter is still pending before the Hon'ble Supreme Court. The Learned Senior Counsel for the Petitioner appeared and stated that the matter is presently *subjudice* before the Hon'ble Supreme Court and stated that this is a Base Resolution Plan and the issue regarding the disputed amount claimed by Securities Exchange Board of India will be placed before the COC at the time of approval of Final Plan. Therefore, this bench is of the view that this issue regarding SEBI

demand can be taken up when the final plan comes for approval before the COC/AA.

20. The application is complete in all respects and meets all requirements of Law. Hence, this Bench admits this application and pass the following orders: -

**ORDER**

21. The application CP(IBPP) No. 03 (MB) 2023 for Pre-Packaged Insolvency Resolution Process of Kratos Energy & Infrastructure Limited is admitted under Section 54C of the Code.

i. In view of the commencement of the PPIRP, moratorium is declared, under Section 14 of Code, 2016, for prohibiting all of the following in terms of Section 14(1) of the Code.

- a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest

Act,2002;

- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate Debtor.
- ii. The Resolution Professional as proposed by the Financial Creditor namely, Mr. Amit Chandrashekhar Poddar having Registration No. IBBI/IPA-001/IP-P00449/2017-18/10792, holding AFA No. AA1/10792/02/170124/105394 email: - [amitpoddar.ca@gmail.com](mailto:amitpoddar.ca@gmail.com) is appointed as a Resolution Professional to conduct Pre-Packaged Insolvency Resolution Process ("PPIRP") as per the Provisions of Chapter III A of the Insolvency Regulations. Further, the Resolution Professional shall also perform his duties and functions as per the provisions given under Section 54F of the Code.
- iii. This Adjudicating Authority directs the RP to make a public announcement of Pre-Packaged Insolvency Resolution Process ("PPIRP") of the Corporate Debtor as per Section 54A of the Code and invite and collate the claim of the creditors.
- iv. As mentioned under Section 54F (5), the personnel of the Corporate Debtor shall extend all assistance and cooperation to RP.
- v. In case of non-cooperation, the RP can approach this Adjudicating Authority under Section 19(2) of the Code. The management of the Corporate Debtor shall remain vested with the Board of Directors of the Corporate Debtor as per the provisions of Section 54H, subject to action under Section 54J of the Code, if, any. The Board of Directors

shall discharge their duties as specified under Section 54H(b) and Section 54H(c) of the Code.

- vi. This Bench directs Resolution Professional to file an interim report within thirty days to this Authority.
- vii. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.
- viii. Accordingly, CP(IBPP) No. 03 (MB) 2023 stands disposed of in terms indicated above.
- ix. The registry is further directed to send the copy of the order to the IBBI also for their record.
- x. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Sd/-

**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**  
**01.02.2024.**

Sd/-

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**