

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

**SPECIAL BENCH(Video Conference)**

**CORAM: HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL  
HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 06.08.2021 AT 12:30 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA(IBC)/316/2021 in CP(1B) No.430/7/HDB/2019
NAME OF THE COMPANY	KVK Energy and Infrastructure Pvt Ltd
NAME OF THE PETITIONER(S)	IL & FS Financial Services Ltd
NAME OF THE RESPONDENT(S)	KVK Energy and Infrastructure 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):**

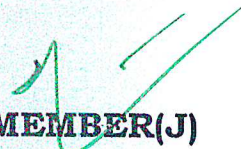
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

**IA 316/2021 in CP 430/7/HDB/2019** is listed for orders. Orders pronounced vide separate Order.

  
**MEMBER (T)**

**Syamala**

  
**MEMBER(J)**

**NATIONAL COMPANY LAW TRIBUNAL  
BENCH-2, HYDERABAD**

**IA No. 316 of 2021**  
In CP (IB) No.430/7/HDB/2019  
Under section 30(6) of the IB Code, 2016  
Read with Regulation 39(4) of the IBBI (Insolvency Resolution  
Process for Corporate Persons) Regulations, 2016.

**In the matter of:-**

**IL & FS Financial Services Limited**

**Versus**

**M/s. KVK ENERGY AND INFRASTRUCTURE PRIVATE LIMITED**

Filed by:-

Mr. Mahadev Tirunagari,  
(IBBI Regn. No. IBBI/IPA-002/IP-N00320/2017-2018/10925)  
Resolution Professional of  
M/s KVK Energy and Infrastructure Private Limited

...Applicant/  
Resolution Professional

**Date of Order: 06.08.2021**

**Coram: Shri Madan B. Gosavi, Hon'ble Member Judicial.**

**Dr. Binod Kumar Sinha, Hon'ble Member Technical.**

**Parties/Counsel Present:**

For the Applicant: Shri Mahadev Tirunagari, PCS/Resolution  
Professional.

**PER: BENCH**

1. The present Application bearing IA No. 316/2021 is filed by the Resolution Professional under section 31(1) of the IB Code, 2016, R/w regulation 39(4) of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, seeking approval of resolution plan of **M/s GBR International Pte Ltd** as duly approved by the Committee of Creditors.
2. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order on







21.01.2020 and the Applicant herein was appointed as Interim Resolution Professional (IRP). The Committee of Creditors (CoC) comprising the following Financial Creditors, in its 1<sup>st</sup> meeting had confirmed the Applicant as Resolution Professional (RP). The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

**FINANCIAL CREDITORS**

Sl.No.	Name of financial creditor	Claim admitted In Rs.	Voting share %
1.	IL & FS Financial Services Limited	<b>300,25,33,455.00</b>	<b>70.07%</b>
2.	IFCI Limited	<b>94,70,58,841.00</b>	<b>22.10%</b>
3.	L & T Infrastructure Finance Company Ltd	<b>33,51,89,342.00</b>	<b>7.83%</b>
	Total	<b>4,28,47,81,638.00</b>	<b>100%</b>

3. As seen from the records, 180 days CIRP period came to an end on 20.07.2020. After granting extension of 90 days CIRP period and exclusions, the 270 days CIRP ended on 22.06.2021. A total of 21 CoC meetings were convened by the Applicant.
4. During the period of CIRP, at the first instance, 02 EOIs viz. Malaxmi Infra Ventures (India) Pvt. Ltd. and iLabs Hyderabad Technology Center Pvt. Ltd. were received pursuant to publication of Form-G on 27.07.2020. Out of the two, the Resolution Professional received one Resolution Plan from **Malaxmi Infra Ventures (India) Pvt. Ltd** which was deliberated in the 13<sup>th</sup> Committee of Creditors (CoC) meeting held on 11.02.2021. However, since the said bid did not meet the financial viability parameters of the CoC, the bid was cancelled and CoC resolved to issue fresh Form-G. The Form-G was re-issued on 03.09.2020 and for the second time on 16.03.2021. Two EOIs were received i.e. from **Malaxmi Infra Ventures (India) Pvt. Ltd** and **GBR International Pte Limited**. After being satisfied with the fulfilment of the eligibility criteria, the prospective resolution applicants were provided the Request for







Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	IL & FS Financial Services Limited	70.07%	Assented
2	IFCI Limited	22.10%	Abstained
3	L&T Finance Limited	7.83%	Assented

(C) The Resolution Plan dated 07.06.2021 for an amount of **Rs. 15,89,93,508/- (Rs. 15,14,00,000/- plus CIRP amount of Rs. 75,93,508/-)** provided for the stake holders under the Resolution Plan is as under:-

(Amount in Rs)

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 subsection (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	306,91,64,212	300,25,33,455	14,85,00,000	4.95%
		Total[(a) + (b)]	306,91,64,212	300,25,33,455	14,85,00,000	4.95%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (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	128,22,48,183	128,22,48,183	25,00,000	0.19%

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		Total[(a) + (b)]	128,22,48,183	128,22,48,183	25,00,000	0.19%
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:(i)Government (ii)Workmen (iii)Employees	2,16,00,069	2,16,00,069	4,00,000	1.85%
		Total[(a) + (b)]	2,16,00,069	2,16,00,069	4,00,000	1.85%
4	Other Creditors	-	2,85,79,600	2,85,79,600	-	-
Grand Total			440,15,92,064	433,49,61,307	15,14,00,000	

(D) The timelines for the payment of the above mentioned debts of the Corporate Debtor are as follows:

No. of Days from Date of Approval of Resolution Plan by the Adjudicating Authority CIRP	CIRP Expenditure	Operational Creditors	Secured Financial Creditors	Unsecured Financial Creditors
30 days	75,93,508	4,00,000	48,00,000	2,00,000
90 days	-	-	1,12,00,000	3,00,000
180 days	-	-	3,45,00,000	5,00,000
270 days	-	-	3,45,00,000	5,00,000
360 days	-	-	3,45,00,000	5,00,000
450 days	-	-	2,90,00,000	5,00,000
<b>Total</b>	<b>75,93,508</b>	<b>4,00,000</b>	<b>14,85,00,000</b>	<b>25,00,000</b>

- a. The Resolution Applicant submits that, while payment of Rs.50,00,000/- (Rupees Fifty Lakhs only) shall be made on or before the expiry of 30 (thirty) days from the Effective Date from GIPL Sources, with respect to the payment of remaining amount i.e., Rs.14,60,00,000/- (Rupees Fourteen Crores Sixty Lakhs Only), the Corporate Debtor may issue Non-Convertible Debentures ("NCDs") or other debt instruments (if required) in terms of the Applicable Laws, representing an amount of Rs.14,60,00,000/- (Rupees Fourteen Crores Sixty Lakhs Only),

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to the Financial Creditors, which shall be secured by Security Interest over all the existing assets of the Corporate Debtor, with the detailed redemption schedule as follows:

Redemption Amount	Redemption Period
Rs. 1,12,00,000/- (Rupees One Crore Twelve Lakhs only) and Rs.3,00,000/- (Rupees Three Lakhs only) to the Secured Financial Creditors and Unsecured Financial Creditors respectively.	at the completion (last day of the month) of 3 (three) months from the Effective Date
Rs.3,45,00,000/- (Rupees Three Crores Forty Five Lakhs only) and Rs.5,00,000/- (Rupees Five Lakhs only) to the Secured Financial Creditors and Unsecured Financial Creditors respectively	at the completion (last day of the month) of 6 (six) months from the Effective Date
Rs.3,45,00,000/- (Rupees Three Crores Forty Five Lakhs only) and Rs.5,00,000/- (Rupees Five Lakhs only) to the Secured Financial Creditors and Unsecured Financial Creditors respectively	at the completion (last day of the month) of 9 (nine) months from the Effective Date
Rs.3,45,00,000/- (Rupees Three Crores Forty Five Lakhs only) and Rs.5,00,000/- (Rupees Five Lakhs only) to the Secured Financial Creditors and Unsecured Financial Creditors respectively	at the completion (last day of the month) of 12 (twelve) months from the Effective Date
Rs.2,90,00,000/- (Rupees Two Crores Ninety Lakhs only) and Rs.5,00,000/- (Rupees Five Lakhs only) to the Secured Financial Creditors and Unsecured Financial Creditors respectively.	at the completion (last day of the month) of 15 (fifteen) months from the Effective Date

- b. That the redemption schedule indicated above has been arrived at on the basis of the projections of the Resolution Applicant and in the event, the Resolution Applicant is able to turnaround the Corporate Debtor in a lesser time frame, including refinancing (if any), the Resolution Applicant at the sole discretion may prepone the redemption of any or all payments



either by way of NPV method or any other method mutually agreed between the Resolution Applicant and the Financial Creditors. However, in case, any of the Financial Creditor(s) fail to accept for preponement then the resolution amount pertaining to agreed Financial Creditor(s) will be distributed on pro-rata basis as per the preponement method mutually agreed between the Resolution Applicant and Financial Creditor(s). It is clarified that, any prepayment pursuant to any such early redemption shall not be subjected to any prepayment penalty.

- c. Upon payment of last tranche of Rs.2,90,00,000/- (Rupees Two Crores Ninety Lakhs only) and Rs.5,00,000/- (Rupees Five Lakhs only) to the Secured Financial Creditors and Unsecured Financial Creditors respectively, all the Financial Creditors shall transfer/ assign all underlying Security Interests (as defined under IBC), inter alia, including: (a) entire Security Interest created by the Corporate Debtor in favour of the Financial Creditors, (b) any and all Security Interests created exclusively in favour of one or more of the Financial Creditors; and (c) any other rights, title, interest and claims in relation to the Outstanding Financial Debt in accordance with the terms of the Request for Resolution Plan document ("RFRP").
- d. Payment of the Financial Creditors Settlement Amount to the Financial Creditors (secured and unsecured) shall constitute full and final settlement of the Outstanding Financial Debt owed by the Company to the Financial Creditors, and it is further clarified that the liability of Corporate Debtor and Resolution Applicant is settled on payment of Financial Creditors Settlement Amount.
- e. Post such release, no benefit or recourse to any of the Security Interest shall be available in any manner whatsoever, to any of the Financial Creditors and the entire assets (over which such Security Interest is subsisting) shall be available for the sole benefit of Resolution Applicant.

**(D) Management of Corporate Debtor**

The Resolution Plan proposes to appoint Resolution Professional as Monitoring Agent in consultation with Resolution Applicant and the CoC to run the Corporate Debtor

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as a going concern, to oversee the activities of Corporate Debtor for implementation of the plan. Post-Handover Date, a Monitoring Committee comprising of 1 (one) representative of the Financial Creditors, Resolution Professional and two representatives of Resolution Applicants shall monitor and supervise the implementation of the Resolution Plan by the Resolution Applicant.

**(E) 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 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (herein after referred to as Regulation) and has submitted his Form H under Regulation 39 (4). It is submitted that the Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the Resolution Applicant is not ineligible under Section 29A of the Code. That the liquidation value and fair value were also placed before the 21<sup>st</sup> CoC meeting after obtaining necessary undertakings from the CoC member in order to ensure the conformity of the plan with respect to the provisions of code. The fair value is INR 4,10,181 and Liquidation value is INR 3,99,366.

9. Further the Learned Counsel for the Applicant stated that the Resolution Plan takes care of the interest of the stakeholders concerned which includes Financial Creditors, Operational Creditors and payment of CIRP costs which is being taken care on priority to payment to the other creditors.
10. We heard the Counsel for Applicant. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code in the following manner:
  - A. Plan provides for the priority payment of CIRP costs estimated to the extent of Rs. 75,93,508/-. If there is any CIRP costs over and above estimated CIRP then the same shall be paid in priority at actuals to any other payment as per provisions of the Code.

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- B. To pay an amount of Rs. 4,00,000/- due to Operational Creditors of the Corporate Debtor in the manner indicated supra.
11. The Resolution Applicant proposed to appoint GIPL (as the shareholder) and newly appointed board of directors to manage the day to day affairs of the Corporate Debtor in terms of Section 30 (2) (d). The Plan also provides for the implementation and supervision of the Resolution Plan. The Resolution Plan has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of Regulation 38 of the Regulations.
- (a) The payment due to operational creditors will be made in priority over Financial Creditors (Regulation 38 (1))
- (b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38 (1A)).
- (c) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38 (1B)).
12. 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.
13. Further, the Hon'ble Court has further held at para 35 of the said 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.***

14. The Hon'ble Supreme Court at para 7 of the judgement in the matter of ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors (MANU/SC/1577/2019)***, has held that a successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by the successful resolution applicant.
15. In view of the above rulings of Hon'ble Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. The Resolution Plan has been approved by the CoC through e-voting from 11.06.2021 to 21.06.2021 with 77.90% votes in favour of the said Resolution Plan.
16. The Applicant/Resolution Professional has submitted that the Resolution Applicant has sought certain waivers and reliefs in the Resolution Plan. We are, however, not inclined to grant such concession or waivers. The Resolution Applicant needs to approach the authorities concerned for permits, if required, and the same will be considered by the authorities concerned in accordance with law.
17. 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.
18. In the light of above and settled position of law, the instant Resolution Plan meets the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the

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Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law.

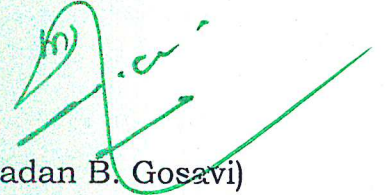
### ORDER

19. The Resolution plan dated 19.05.2019 submitted by **GBR International Pte Limited** ("Resolution Applicant") annexed to the Application is hereby approved. It 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.
20. It is clarified under the Insolvency and Bankruptcy Code, 2016, all crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on approval of this Resolution Plan.
21. 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 regards to the reliefs sought, the Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful.
22. 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.
23. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in para 7 (C) supra.

24. The moratorium under Section 14 of the Code shall cease to have effect from this date.
25. 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.
26. The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
27. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.



(Dr Binod Kumar Sinha)  
Member (Technical)



(Madan B. Gosavi)  
Member (Judicial)

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