

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

FREE OF COST COPY

**C.A. No.166 of 2017
in C.P.(IB) No.13/10/HDB/2017**

In the matter of

M/s.VNR Infra Metals Private Limited,
8-2-310/17,
Road No.14, Banjara Hills,
Hyderabad – 500034
Telangana.

...Corporate Debtor

And in the matter of

Mr. Arun Kumar Malani,
VNR Infra Metals Private Limited
Hyderabad.

...Applicant / Resolution Professional

Versus

Indian Overseas Bank,
Rashtrapati Road Branch,
4-2-25 to 28 & 32,
1st Floor, R.P. Road,
Secunderabad.

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

....Financial Creditor / Respondent

Judgement Delivered on: 22.09.2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Parties / Counsels Present:

For Corporate Debtor : Mr.Rajesh Bohra

Resolution Professional : Mr.Arun Kumar Malani

Counsels for Financial Creditor:

Per: Ravikumar Duraisamy, Member (Technical)

JUDGEMENT

1. The Applicant / Resolution Professional Mr. Arun Kumar Malani, has filed the aforesaid C.A.No.166 of 2017 under Section 33(1), 33(2) and 34(1) of IBC seeking the following reliefs:



- a) to pass the order under Section 33(1), 33(2) of the Code for Liquidation and also pass under Section 34 (1) of the Code for appointment of Liquidator and
- b) to pass such further or other orders as this Hon'ble Authority may deem fit and proper

BRIEF FACTS OF THE CORPORATE DEBTOR:

2. The Company's Name was changed from VNR Logistics Private Limited to VNR Infra Metals Private Limited w.e.f. 21-05-2014. Main objections of VNR Infra Metals Private Limited (Company) are to carry out the business as traders, distributors in steel, coal, iron etc.
3. The Learned Applicant submits that defaulted dues of Corporate Debtor to the Financial Creditor and the total default as on date of filing of application was about Rs.88.33 crores which includes principles and interest outstanding. Further he submits that the Financial Creditors have initiated the recovery process against the Corporate Debtor and served notices under Section 13(4) of SARFAESI Act, 2002 on 22.09.2016 and subsequently, the Corporate Debtor has filed a Petition before the Hon'ble Debt Recovery Tribunal, Hyderabad challenging the action taken by Financial Creditors and the case is still pending before DRT, Hyderabad.
4. Adjudicating Authority vide Order dated 03.03.2017 admitted the Application filed under Section 10 of IBC read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. This Corporate Debtor viz VNR Infra Metals Private Limited, recommended Mr.Arunk Kumar Malani, as Interim Resolution Professional (IRP) and declared moratorium by prohibiting certain actions and the details are available at Para 8 of the Order dated 03.03.2017.
5. The Interim Resolution Professional (IRP) issued public announcement in Form-A dated 06.03.2017 under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016



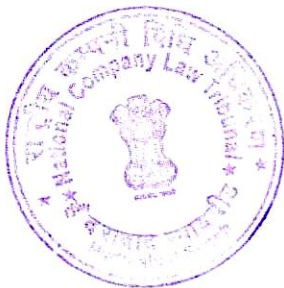
inviting claims from the Creditors of the Corporate Debtor. The public announcement was made in one national & one regional newspaper. Subsequently the applicant had constituted a Committee of Creditor (CoC) of the Corporate Debtor and meetings of the COC were held on various dates as given below:

1 st COC Meeting	..	01.04.2017
2 nd COC Meeting	..	16.06.2017
3 rd COC Meeting	..	13.07.2017
4 th COC Meeting	..	01.08.2017
5 th COC Meeting	..	04.08.2017
6 th COC Meeting	..	11.08.2017
7 th COC Meeting	..	19.08.2017

6. In the 1st COC Meeting held on 01.04.2017, Mr.Arun Kumar Malani, was appointed as Resolution Professional with 100% voting.
7. In the 2nd COC meeting held on 16.06.2017, the Company M/s. VNR Infrastructures (group company) have mentioned in its draft Resolution Process about the merger of M/s. VNR Infra Metals Private Limited into M/s. VNR Infrastructure Limited, which is yet to be examined by the COC of M/s. VNR Infrastructure Limited.
8. In the 3rd COC meeting held on 13.07.2017, after issuing notice on 04.07.2017, the Senior Officers of the Financial Creditor i.e Indian Overseas Bank (the only COC) had elaborate discussion about the submission of representative of Corporate Debtor that the Resolution Plan for both the Companies i.e M/s. VNR Infrastructures Limited and M/s. VNR Infra Metals Private Limited., shall be considered together for viability and ease of implementation, as they have extended Inter-Company Corporate Guarantees for each other's credit limits to their respective Lenders / Financial Creditors. The Corporate Debtor mentioned that the proposed Resolution Plan / OTS proposal will be submitted on or before 24th July to the Resolution Professional which shall have information in the manner discussed in the COC meeting.



9. In the 4th COC meeting held on 01.08.2017, Resolution Plan which submitted by the Investor of Corporate Debtor which mentions the merger of M/s. VNR Metals Private Limited with M/s. VNR Infrastructures Limited and M/s.IOB said that this Plan is subject to approval of COC of M/s.VNR Infrastructures Limited. Thereafter, the said Resolution Plan was not approved by the COC of M/s. VNR Infrastructures Limited and hence after expiry of 180 days Liquidation proceedings were initiated in NCLT in respect of M/s. VNR Infrastructures Limited and hearing for the same held on 04.08.2017.
10. In the 5th COC meeting held on 04.08.2017, after direction of the Hon'ble Adjudicating Authority to take a call on Resolution Plan or Liquidation and fixed next date of hearing on 07-08.2017. At the request of the Corporate Debtor of M/s. VNR Infra Metals Private Limited for extension of time u/s 12(2) of IBC Code, for revised Resolution Plan of the Corporate Debtor. The COC mentioned that a call shall be taken on 20th August, 2017 to either extend the time or recommend for liquidation as the matter is yet to be decided by their Competent Authority.
11. Hearing dated 7.08.2017, the Hon'ble Adjudicating Authority has directed to hold COC meeting within 3 days and get approval, if any (as approved in COC meeting dated 04.08.2017) for extension of time u/s 12 (2) of IBC Code for Resolution Process of the Corporate Debtor and file a report on 14.08.2017 and not to wait till 20.08.2017. Accordingly, the 6th COC meeting held on 11.08.2017. No Revised Resolution Plan was submitted. The COC (consisting only M/s. IOB) said that the direction of the Central Office for Extension of Time under Section 12(2) for Resolution Process, is still awaited.
12. Hearing dated 14.08.2017, the Hon'ble Adjudicating Authority has directed to come with the decision of the COC for extension under Section 12 or recommend Liquidation and fixed the next date of hearing to 21.08.2017 to file affidavit in this regard. Accordingly, the 7th COC meeting held on 19.08.2017, wherein it was recorded that the Resolution Plan of Corporate Debtor was



not accepted being too low. The Bank has told that decision of their Central Office on this matter has come mentioning that the Corporate Debtor has not submitted any fresh revised Resolution Plan with improved offer and the Bank has decided to go ahead with the recommendation for Liquidation.

13. In view of the above facts, according to the Resolution Professional the case is now to be considered under Section 33 for initiation of liquidation. Further your confirmation is awaited from IOB for confirmation of Resolution Professional to continue as Liquidator as per the provisions of Section 34 of IBC Code.
14. Therefore, the applicant has no option but to file Company Application before this Hon'ble Authority for seeking the reliefs in accordance to provisions 33(1), 33(2) and 34(1) of IBC Code for Liquidation of the Corporate Debtor and appointment of Liquidator.
15. The case was listed before the Adjudicating Authority on various dates and the proceedings held in the last month of the six months' time line prescribed which is a crucial period are narrated. During the hearing held on 07-08-2017, the Adjudicating Authority expressed the concern to the Resolution Professional to conduct COC meeting at an early date since stipulated period of 180 days will be lapsed on 30-08-2017. It was also suggested to get the approval of the Financial Creditor even by circular resolution since the Corporate Debtor has only one Financial Creditor i.e. IOB as stated above and the matter was posted on 14-08-2017. The Resolution Professional was directed to submit the proposal copy as approved by the COC on or before 16-08-2017 and case was posted to 21-08-2017. The Resolution Professional again on 21-08-2017 requested two weeks' time to file appropriate application, however the Bench posted the matter on 23-08-2017 but none appeared on that day and the matter was posted on 28-08-2017 and again on that day none appeared therefore, the case was posted on 29-08-2017.



16. In view of the above facts that the Resolution Plan has been rejected by the Financial Creditor having 100% voting power, according to the Resolution Professional case is now to be considered under Section 33 for initiation of liquidation.
17. According to Section 33(1) of the Code, "33.(1) Where the Adjudicating Authority-
- a) before the expiry of the Insolvency Resolution Process period or the maximum period permitted for completion of the Corporate Insolvency Resolution Process under Section 12 or the fast tract Corporate Insolvency Resolution Process under Section 56, as the case may be, does not receive a Resolution Plan under sub-Section (6) of Section 30; or
 - b) rejects the Resolution Plan under Section 31 for the non-compliance of the requirements specified therein, it shall
 - i) pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in this Chapter
 - ii) issue a public announcement stating that the Corporate Debtor is in liquidation; and
 - iii) require such order to be sent to the authority with which the Corporate Debtor is registered.



According to Section 34(1) of the Code:

"34(1) where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the Corporate Insolvency Resolution Process under Chapter-II shall act as the Liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-Section (4)

18. Though the Resolution Professional prayed to pass an order under Section 33(1) of the Code, after perusing entire record, we feel Section 33(2) would be appropriate Section under which orders needs to be passed. Accordingly, by exercising the powers conferred on the Adjudicating Authority under Section 33 (2) of the IBC Code, we pass the following orders:
- i) We pass an Order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter-III of IBC

Code 2016, issue a public announcement stating that the Corporate Debtor is in liquidation, and a copy of this order to be sent to the Registrar of Companies, Hyderabad, State of Telangana where the Corporate Debtor is registered.

- ii) Vide E-mail dated 29-08-2017, the financial creditor has confirmed the existing Resolution Professional, Mr. Arun Kumar Malani to continue as Liquidator of the Corporate Debtor, M/s. VNR Infra Metals Private Limited. Accordingly, we confirm Shri Arun Kumar Malani as Liquidator of VNR Infra Metals Private Limited.
- iii) Subject to Section 52 of the I&B Code, no suit (or) other legal proceedings shall be instituted by or against the Corporate Debtor "provided that suit or other legal proceedings may be instituted by the liquidator on behalf of the Corporate Debtor with a prior approval of the Adjudicating Authority"
- iv) As per Section 34 of IBC on the appointment of the Liquidator, all powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.
- v) As per Section 34 (3) the personnel of the Corporate Debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 shall apply.
- vi) The fee to be paid to the liquidator is as per Section 34 (8) & (9) of IBC 2016 and as amended from time to time.
- vii) The liquidator will be strictly governed by Section 35 to 50, 52, 53 and 54 of IBC code 2016 as amended from time to time.
- viii) The Liquidator appointed will be strictly governed by the Insolvency and Bankruptcy Board of India (Liquidation process) Regulation, 2016 as amended from time to time.
- ix) The liquidator has to submit various reports to the Adjudicating Authority in the manner prescribed under IBC 2016 and the above referred Regulation 2016.
- x) As per Regulation 6 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the liquidator has to maintain various registers, books of accounts of the Corporate Debtor.



xi) As per Regulation 7, a liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.

xii) The liquidator shall make public announcement in Form-B of Schedule-II within 5 days from his appointment as per Regulation 12. The public announcement shall :

1. (a) Call upon stakeholders to submit their claims as on the liquidation commencement date; and
- b) Provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date

2. The announcement shall be published;

- a) in one English and one Regional language newspaper with wide circulation at the location of the Registered Office and Principal Office, if any, of the Corporate Debtor and any other location where in the opinion of the liquidator, the Corporate Debtor conducts material business operations;
- b) on the website if any, of the Corporate Debtor; and
- c) on the website, if any, designated by the Board for this purpose.

19. As per Regulation 13 the liquidator shall submit a Preliminary Report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details / information as mentioned in the said regulation.

- a) As per Regulation 15, the Liquidator shall submit various progress reports regularly to the Adjudicating Authority
- b) The Liquidator should strictly follow all the provisions of the IBC 2016 and Regulation 2016 while exercising his powers, functions, duties, various process of liquidation and distribution of assets, mode of sale etc.,

20. With the above directions C.A.No.166 of 2017 in C.P.(IB).

No.13/10/HDB/2017 is disposed of.

21. No Order as to costs.

8d/-

8d/-

