

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD
COURT No.II**

**IA No. 305/HDB/2023
IN**

**CP (IB) No. 372/7/HDB/2018
[60(5) of Insolvency and Bankruptcy Code, 2016
r/w rule 11 of the NCLT Rules, 2016)**

In the matter of Indu Projects Limited

Between

**Mr. Anup Kumar Singh
Registration No. IBBI/IPA-001/IP-P00153/2017-2018/10322
Having Office at Suite 1B, 1st Floor,
22/28A Manoharpukar Road,
Kolkata – 700 029**

... Applicant

And

**Indu Projects Limited
Registered Office at 1009,
Indu Fortune Fields,
13th Phase, KPHB Colony
Through the Resolution Professional**

... Corporate Debtor

Vs.

**Bank of India
Large Corporate Branch,
PTI Building, 1st Floor,
10-1-1199/2, AC Guards,
Hyderabad – 500 004, Telangana**

... Financial Creditor

Date of order : 05/07/2023

Coram:

**Hon'ble Justice Mrs. Telaprolu Rajani, Member (Judicial)
Hon'ble Shri Charan Singh, Member (Technical)**

Parties / counsels present:

For petitioner : Mr. S. Ravi, Sr. Counsel along with
Mr. V.V.S.N. Raju, Advocate

For respondent: : -

ORDER

1. This application is filed by the Applicant u/s 30 R/w 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of NCLT Rules, 2016, by the Resolution Professional, seeking to approve the Resolution Plan submitted by the consortium of Mr. B. Subba Reddy and Mr. C. Venkateswara Reddy as approved by the Committee of Creditors (CoC) and to issue necessary directions to the statutory and regulatory bodies to grant necessary approvals in an expeditious manner.

2. The facts, in brief, are as follows:

i) The Corporate Debtor (CD) has been taken into CIRP by virtue of the order dated 25/02/2019 by this Tribunal. Two Resolution Plans were received by the Applicant and the same were put for voting in the 11th CoC meeting conducted on 24th January, 2020. In the said meeting, the plan proposed by one, Shyamraju & Company (India) Private Limited was accepted by the CoC and the said Resolution Applicant was declared as the H1 Bidder. However, the said plan could not muster the minimum 66% of the vote of the CoC and, hence, the same was rejected.

ii) The Applicant filed an application u/s 33 of the IBC for commencement of liquidation proceedings and due to Covid-19, the same could not be taken up by this Tribunal. Meanwhile, the Applicant received an Expression of Interest (EoI) from M/s Earthin Projects Limited, which expressed an intention to participate in the resolution process in relation to the CD. An extension was sought for the CIRP. Thereafter, the applicant published fresh Form G and the applicant received three Resolution Plans.

The plan submitted by M/s Earthin Projects Limited in consortium with K. Ramachandra Rao Transmission & Projects Pvt. Ld. was approved by the CoC with 100% voting and the same was approved by this Tribunal. However, due to the failure of the said Resolution Applicant to fulfil the conditions under the Resolution Plan, a fresh process of CIRP was conducted, during which 8 EoIs were received and the plan submitted by , B. Subba Reddy in consortium with C. Venkateswara Reddy, was approved after due deliberations, by 100% voting. The plan is as follows:

Sl.No.	Particulars	Amount claimed (Rs.)	Amount admitted by RP (Rs.)	Amount provided under Resolution Plan	Term
1	CIRP Costs	1,00,00,000	1,00,00,000	1,00,00,000	Upto 90 days
2	Operational Creditors				
	a) Operational creditors (other than workmen and employees)	2,91,32,32,996.00	1,78,66,48,321.41	4,99,81,567.87	Upto 90 days
	b) Operational creditors (workmen and employees)	6,47,96,432.00	4,21,37,889.00	1,00,00,000	Upto 90 days
	c) Other operational creditors				
	Total operational creditors	2,97,80,29,428.00	1,82,87,86,210.41	5,99,81,567.87	
3	Financial Creditors	41,89,94,65,115	38,90,93,27,075.57	3,94,00,00,000.00	Upto 90 days

4	Unsecured Financial Creditors (Related Party)	43,67,27,483.00	43,67,27,483.00	0	Upto 90 days
5	Government dues	1,84,282.00	1,82,025.88	18,432.13	Upto 90 days
	Total	42,33,63,76,880.00	39,34,62,36,584.45	3,94,00,18,432.13	
6	Working capital			1,00,00,00,000.00	Upto 90 days
	Total Resolution Fund			501,00,00,000.00	

Notes:

(i) The Resolution Applicant is proposing to assume responsibility of all the existing uninvoked Bank Guarantees – as set out in Section E Clause 2.6 of the Resolution Plan.

(ii) The Resolution Applicant is also proposing to invest INR 100,00,00,000 towards the Working Capital based on the business exigencies as set out in Section E Clause 2.8 of the Resolution Applicant.

Both (i) and (ii) shall be read as part of the total resolution fund proposed by the RA, for the Corporate Debtor but not forming part of the payments proposed to the stakeholders outlined in the resolution plan.

A copy of the Resolution Plan proposed by consortium of B. Subba Reddy and C. Venkateswara Reddy as approved by the CoC is annexed hereto and marked as **Annexure X**.

iii) Post approval of the Resolution Plan by the Members of CoC, the applicant issued a letter of intent dated 04/02/2023 to the successful resolution applicant being the consortium of Mr. B. Subba Reddy and Mr. C. Venkateswara Reddy and received a Performance Bank Guarantee (PBG) of Rs. 29,40,00,000/- dated 9th February, 2023 along with Rs. 10,00,00,000/- of Earnest Money Deposit, which forms part of the Performance security, adding up to a total amount of Rs. 39,40,00,000/- in terms of requirement of PBG required as per the letter of intent dated 04/02/2023, to the successful resolution applicant, till the complete

implementation of the resolution plan, in compliance with Regulation 36B(4A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. A copy of the Letter of Intent dated 04/02/2023 and receipt of PBG dated 09/02/2023 are annexed as “Annexure Y” to the application.

iv) The compliance certificate is submitted in Form H of the Schedule, in accordance with Regulation 39(4) IBBI (Insolvency Resolution Process for Corporate Persons), 2016. The contents of the Resolution Plan meet the requirements as mandated under the Provisions of IBC, 2016 and Regulations therein. A copy of the report of the Legal Advisor, validating that consortium of Mr. B. Subba Reddy and Mr. C. Venkateswawra Reddy, who is successful resolution applicant is eligible to participate in the Resolution Process u/s 29A of the IBC, 2016, was received by the applicant and annexed as “Annexure AA” to the application.

v) The Resolution Plan is in compliance with the IBC, 2016 and the Regulations made thereunder and does not contravene any of the provisions of the law.

3. We have heard the Id. Counsel for the Applicant and perused the record.

The counsel for the petitioner submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-

(a) Provides for payment of Rs. 1,00,00,000/- towards CIRP Cost within 30 days of the NCLT Approval Date.

(b) The Plan provides for payment of the amount provided under the Resolution Plan of the operational creditor on priority, in terms of Section 30 (2)(b).

(c) There are no dissenting creditors, as such the plan does not provide for payment to the dissenting Operational Creditors.

4. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:

(a) The Plan provides for payment of claim amount restricted only to the extent specified in the resolution plan to the operational creditor on priority

(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) is placed on record.

5. In *K. Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No. 10673/2018) the Hon'ble Apex Court held that, when 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".

6. The Hon'ble Supreme Court has further held at para 35 of the above 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 Operational 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.

7. The Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors*, held that "the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved".

8. The Hon'ble Supreme Court of India, in the recent ruling in re Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors, has held as under:-

“21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that Operational creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.

27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another: “95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

9. As per the Resolution Plan “The Insolvency Resolution Plan considers Insolvency Resolution Process Costs which have been estimated at an amount of Rs.1,00,00,000/- which includes payment to the Resolution Professional and all amount of expenses incurred by RP, to the extent duly ratified or approved by the COC and shall be paid in priority to all other debts by the Resolution Applicants. The source for the amount

can be identified as a commitment by the resolution applicants. Any higher amount over and above this (as approved by the COC) shall be borne and paid by the Resolution Applicants on a priority basis in addition to the proposed amount as above”.

10. In so far as the CIRP expenses are concerned the plan provides for Rs. 1,00,00,000/- payable in priority to all other debts payable by the Resolution Applicants.

11. Therefore, by testing the resolution plan, on the touch stone of the aforesaid facts and the rulings, we are of the view that the instant resolution plan satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. We also find that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.

12. We therefore, hereby approve the Resolution Plan submitted by Mr. B. Subba Reddy in consortium with Mr.C. Venkateswara Reddy along with annexure, schedules forming part of the Resolution Applicant annexed to the Application and order as under:

(i) The Resolution Plan along with annexures and schedules forming part of the plan 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.

(ii) All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.

(iii) 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 held by Hon'ble Supreme Court in the matter of Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited in CIVIL APPEAL NO.8129 OF 2019 dated 13.04.2021.

(iv) That amount deposited in lieu of Performance Bank Guarantee shall remain as performance guarantee till the amount proposed to be paid to the creditors under this plan is fully paid and the plan is fully implemented.

(v) 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.

(vi) Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.

(vii) The moratorium under Section 14 of the Code shall cease to have effect from this date.

(viii). 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.

(ix). The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.

(x). The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.

(xi) The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI. (xii).

xii) Accordingly, IA 305/2023 in CP(IB) No. 372/7/Hyd/2018 is allowed and stands disposed of.

Sd/-

**CHARAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE TELAPROLU RAJANI
MEMBER (JUDICIAL)**

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