

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
08-12-2023 AT 10.30 AM**

IA (IBC) 1285 & 1431/2023 in CP (IB) No. 149/7/HDB/2022
u/s. 7 of IBC, 2016

IN THE MATTER OF:

SREI Equipment Finance Ltd

...Financial Creditor

VS

Mantovani Di Dharti Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

IA (IBC) 1431/2023

Both sides present.

Order pronounced. IA(IBC)1431/2023 is hereby dismissed subject to observations as made in the order.

IA (IBC) 1285/2023

Order pronounced. Resolution plan approved subject to the observations made in the order. No order as to costs.

SD/-

MEMBER (T)

SD/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
AT HYDERABAD**

I.A. NO. 1431/HDB/2023

IN

C.P. (IB) NO. 149/7/HDB/2022

In the matter of:

M/s. Swan LNG Private Limited,

Having its registered office at Ground floor,
9th Avenue, Behind Rajpath Club, S. G Highway,
Ahmedabad-380059

... Applicant

And

1. Mr. Krishna Komaravolu

Resolution Professional of Mantovani Di Dharti Pvt Ltd.
H.no 7-2-214, Flat No 409
Vamsirishna Apartment
Dharam Karam Road
Ameerpet, Hyderabad 500016
Email-irp.mddpl@gmail.com

**2. Committee of Creditors
of Mantovani Di Dharti Pvt Ltd.**

H.No 6-3-1113/2, 2nd Floor,
DDIL Bhavan, B S Maktha,
Begumpet, Hyderabad,
Telangana-500016.

3. Mr. Akumalla Rajendra

R/o Plot No.148, Ravi Colony, Opp. RTC Colony,
Thirumalgherry, Secunderabad – 500015
Email: khs.2005@gmail.com

4. Mrs. Akumalla Vijaya Lakshmi

R/o Plot No.148, Ravi Colony, Opp. RTC Colony,
Thirumalgherry, Secunderabad – 500015
Email: khs.2005@gmail.com

5. Ramalingam Constructions Company Pvt Ltd,

Having its Registered office at
NR Tower, No. 175/2, South State Bank Nagar,
Chettipalayam, Erode,
Tamil Nadu –638002

...Respondents

Dated: 08.12.2023

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member Judicial
Shri Charan Singh, Hon'ble Member Technical

Appearance:

For Applicant: Shri S. Niranjan Reddy, Senior Advocate
assisted by Ms. D. Hamsini, Advocate

For Respondents: Shri S. Ravi, Senior Advocate assisted by Shri P.
Ramesh Babu, Advocate for R-1
Shri M.S. Prasad, Senior Advocate for Shri VVSN
Raju, Advocate for R-2
Shri G.Bhupesh, Advocate for R-3, 4 & 5

PER: BENCH

ORDER

1. This Application is filed under Section 60 (5) of IBC, 2016 by M/s Swan LNG Private Limited which is an Operational Creditor of Mantovani di Dharti Pvt Ltd (Corporate Debtor), seeking the following reliefs
 - (a) To declare that Respondent Nos. 3, 4 and 5 are barred under Section 29A of the Code and therefore are ineligible to submit any resolution plan.
 - (b) To declare the actions of the COC in approving the Resolution Plan submitted by the consortium of Respondent Nos. 3, 4 and 5 as illegal, arbitrary, unjust in law and contrary to provisions of Insolvency and Bankruptcy Code, 2016 and consequently reject the Resolution Plan of Respondent Nos. 3, 4 and 5.
 - (c) Directions to Respondent No 1 to provide the Applicant with the copies of all the Resolution Plans received by the Respondent No. 1 from the Prospective Resolution Applicants.
 - (d) Grant any interim or ad-interim relief or such other reliefs as this Hon'ble Tribunal may deem fit in the circumstances of this case.

- 2.1 The averments in the Application are that the Corporate Debtor secured two EPC projects i.e. Breakwater Construction and Dredging from the Applicant but failed to complete the projects in accordance with the terms and conditions.
- 2.2 In the meantime, this Tribunal admitted CP No. 149/7/HDB/2022 under Section 7 of the Code and ordered commencement of Corporate Insolvency Resolution Process against Corporate Debtor i.e. Mantovani Di Dharti Pvt Ltd by order dated 11.11.2022 by appointing an Interim Resolution Professional who was later confirmed as Resolution Professional.
- 2.3 Pursuant to public notice made by the Resolution Professional inviting claims from the creditors, the Applicant herein submitted its claim to the Respondent No.1/Resolution Professional. However, the same was rejected by the Resolution Professional. Aggrieved by the decision of the Resolution Professional in rejecting the claim of the Applicant, IA No.599/2023 was moved by the Applicant herein and this Tribunal passed the following orders:-

“We are satisfied that the Applicant has made out a prima facie, case, and the balance of convenience also lies in favour of the Applicant. Hence, we hereby direct the Resolution Professional to send due notice of the proposed meeting of the CoC to be held on 14.04.2023 and in respect of all meetings in future, to

the applicant, until further orders of this Adjudicating Authority.”

- 2.4 Consequently, the Applicant was allowed by this Tribunal to participate in the CoC meetings of the Corporate Debtor. The Applicant states that it had significant interest in the Corporate Insolvency Resolution Process of the Corporate Debtor by virtue of the magnitude of the claim of the applicant against the Corporate Debtor.
- 2.5 It is further stated that pursuant to the EOI dated 07.01.2023 issued by Respondent No.1, four resolution plans were received. However, since none of proposals contained in the said plans were found satisfactory by the CoC of the Corporate Debtor, the 1st Respondent/Resolution Professional issued a fresh Form G dated May 03, 2023 inter alia inviting EOI from Prospective Resolution Applicants (“PRA”). In response to the said public announcement, the Resolution Professional had received EOIs from Five PRAs. Thereafter, the Applicant, in the capacity of CoC member, received an email dated May 20, 2023 wherein the Respondent No. 1 has provided the provisional list of “eligible” PRAs in terms of Regulation 36A(10) of IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016. The list contained the following applicants:

1. Meka Infrastructure Private Limited,
 2. Ramalingam Constructions Private Limited,
 3. Akumulla Rajendra and Alur Vijaylaxmi,
 4. Adani Port and Special Economic Zone Limited, and
 5. Backbone Projects Limited
- 2.6. The Resolution Professional received 3 (three) resolution plans respectively from Backbone Projects Limited, Meka Infrastructure Private Limited and consortium of Respondent Nos. 3, 4 and 5.
- 2.7 The applicant alleges that it was not intimated about the 7th CoC held on 15.07.2023 (adjourned meeting of 14th July, 2023), because of which the Applicant could not attend the adjourned meeting. However, the Applicant was belatedly served with the copy of the minutes of the 7th CoC meeting and in the said minute, it has been *inter alia* recorded that:-
- “Mr. Rajendra Akumalla and Mrs. Alur Vijayalakshmi submitted their Eol application and RCCL submitted separate Eol application. Accordingly, the Resolution Professional considered them as separate Resolution Applicants at the time of issuing final list of Resolution Applicants as required under Regulation 36A (12) of CIRP Regulations, 2016. Both the Resolution Applicants satisfied the eligibility criteria mandated by the CoC.*

However, both the Resolution Applicants have now submitted a Resolution Plan as a Consortium. On prima face verification, the Consortium is meeting the eligibility criteria and net worth required as a Consortium mandated by CoC.”

- 2.8 It is stated that the representative of Applicant i.e. Shri MVPH Rao raised objections regarding the eligibility of the members of the Consortium of Respondent Nos. 3, 4 and 5 when the resolution plan submitted by the consortium was placed before the 9th CoC held on 24.07.2023. The Applicant was then informed that the said issue had already been deliberated upon in the 8th CoC meeting held on July 25, 2023 in which meeting the Applicant had raised a similar objection with regard to the eligibility of Consortium, The Applicant stated that however the same was not recorded in Minutes of meeting of the 8th COC and the COC verbally informed the applicant that the it has a right to accept the resolution applications. Further the Applicant was informed by the 1st Respondent vide an email dated August 6, 2023 that the matter regarding acceptance of the resolution plan of the consortium was discussed in the adjourned meeting of the 7th COC held on July 15, 2023. However, according to the Applicant no such deliberation whatsoever with regards to the eligibility of the Respondents forming the Consortium, was made by the Respondent No. 1

and Respondent No. 2 in the 8th CoC Meeting held on 17th July , 2023 and adjourned 8th CoC Meeting held on July 18, 2023.

2.9 The Applicant has at para 14 of the Application cited reasons as to why the Respondents forming part of the consortium are ineligible to submit the resolution plan in terms of Section 29 A of the grounds, which are as under:-

- a. The Corporate Debtor is a registered MSME. The Respondent Nos. 3 and 4 are the members of the suspended board of directors of the corporate debtor.
- b. As per Section 240A of the Code, clauses 29A(c) and (h) of the code shall not apply to the resolution applicants in respect of CIRP of any MSME. As such, clauses 29A(c) and (h) of the code do not apply to Respondent Nos. 3 and 4 herein. It is however stated that all the other disqualifications provided under Section 29A of the code are equally applicable to the Respondent Nos. 3 and 4.
- c. The Respondent Nos. 3 and 4 are disqualified to file a resolution plan in terms of section 29A(e) of the Code. Section 29A(e) of the Code, *inter alia*, provides as follows:-

“A person shall not be eligible to submit resolution plan, if such person, or any other person acting jointly or in concert with such person-

e) is disqualified to act as a director under the Companies Act, 2013”

- d. It is stated that the Respondent Nos. 3 and 4 are the directors in a company namely Dharti Dredging and Infrastructure Limited (in CIRP), being an Associate company of the Corporate Debtor. The said Company had failed to file its Financial Statements or annual returns for three consecutive financial years, and last of its financial statements was filed on 31st March, 2018. As such, in terms of the relevant provisions of the Companies Act, 2013, the directors of the said Company including the respondent nos. 3 and 4 stand disqualified to act as directors by operation of law.
- e. Since, Respondent Nos. 3 and 4 are disqualified to act as a director as per the provisions of the Companies Act 2013, Respondent Nos. 3 and 4 become ineligible to submit a Resolution Plan as per Section 29A(e) of the Code.
- f. A similar situation with respect to the resolution plan submitted by the respondent no. 3 during the Corporate Insolvency Resolution Process with respect to Dharti Dredging and Infrastructure Ltd. Respondent No.3 who is a lead member of the Consortium of the respondents in the instant case, had also submitted a resolution plan in Dharti Dredging and Infrastructure Ltd, in consortium with Mr. Rakeshkumar Jhunjhunwala, and SKH Impex Private Limited. The said

Resolution plan was, however, rejected by the Resolution Professional of Dharti Dredging and Infrastructure Ltd. *inter alia*, on the ground that the same is not in compliance with the provisions of Section 29A of the code as the Respondent no.3 had not filed financial statement for a continuous period of three years of Dharti Dredging and Infrastructure Ltd. and thereby disqualified to be a director by the competent authority under the Companies Act. Assailing the rejection of his resolution plan, the Respondent No. 3 filed an Interlocutory Application bearing IA No.407 of 2023 in CP (IB)No.329/7/HBD/2020 before this Tribunal, this Tribunal vide order dated 20th July, 2023, had, *inter alia*, held as follows:-

“Therefore, having carefully examined the reasons that are given by the Resolution Professional for rejecting the resolution plan of the applicant, and in the light of our discussion and the case law, we are fully convinced that the grounds of rejection are tenable and sustainable under law.”

- g. That Mr. Akumulla Rajendra, Respondent No. 3 herein, is part of the consortium in the instant case who has submitted a resolution plan in relation to the Corporate Debtor. Since he has been disqualified from submitting a resolution plan by this Tribunal in respect to another company, he is ineligible to submit a resolution plan in the case of Corporate Debtor as well, as per Section 29A (e) of the Insolvency and Bankruptcy

Code (IBC), 2016 and other relevant provisions outlined in the IBC.

- h. That Respondent No 3 is a lead member of the consortium who has submitted a Resolution Plan in relation to the Corporate Debtor. Given that the Respondent No.3 is disqualified from submitting any Resolution plan, the consortium itself loses its eligibility to submit the Resolution Plan.
- i. That the said order dated 20th July, 2023 is squarely applicable in the instant case, and once the directors are disqualified under the provisions of the Companies Act, 2013, they are not eligible to file resolution plan with respect to any Company in CIRP. As such, it is clear that the respondent nos. 3 and 4 are ineligible under the provisions of the Code to submit a resolution plan.

The respondents no. 5 is ineligible to file a resolution plan under Section 29A of the Code.

2.10 That the respondent no. 5 who is a part of the Consortium is also ineligible to file a resolution plan in terms of section 29A(j) read with clause (e) of the Code. Section 29A(e) and (j) of the Code, *inter alia*, provides as follows:-

“A person shall not be eligible to submit resolution plan, if such person, or any other person acting jointly or in concert with such person-

e) is disqualified to act as a director under the Companies Act, 2013

...

*(j) has a connected person not eligible under clauses (a) to (i).
Explanation — For the purposes of this clause, the expression
"connected person" means—*

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii)”

2.11 It is submitted that two of the directors of respondent no. 5 namely Nachimuthu Ramalingam and Nachimuthu Ramalingam Tamilselvi are disqualified to act as directors in accordance with the provisions of the Companies Act, 2013.

2.12 The said two directors are also directors in other group companies of the respondent no. 5, which has been struck off for non-filing of financial statement or annual returns for three consecutive financial years. Mr. Nachimuthu Ramalingam and Mr. Nachimuthu Ramalingam Tamilselvi are the directors in a group company named Ramalingam Engineering Private Limited which was struck off in 2016. Copy of the Company Master Data of Ramalingam Engineering

Private limited is annexed hereto and marked as **Annexure P-9**.

Mr. Nachimuthu Ramalingam Tamilselvi is also a director in Supreme Sago Industries Erode Private Limited which is also struck off by the Registrar of Companies in 2017. Further it as per the provisions of the Companies Act 2013, Mr. Nachimuthu Ramalingam and Mr. Nachimuthu Ramalingam Tamilselvi are disqualified to act as directors.

2.13 Since, Mr. Nachimuthu Ramalingam and Mr. Nachimuthu Ramalingam Tamilselvi are disqualified to act as directors as per the provisions of the Companies Act 2013, Mr. Nachimuthu Ramalingam and Mr. Nachimuthu Ramalingam Tamilselvi become ineligible to submit a Resolution Plan as per Section 29A(e) of the Code.

2.14 The Applicant by relying in terms of Section 29A(j) of the Code, submits that a person shall not be eligible to submit a Resolution Plan if they have a “connected person” who is not eligible to submit a resolution plan. Connected person would include any person who is a promoter or in control or in management of the resolution applicant and would also include a person who would be in control or management of the Corporate Debtor during the implementation of the Resolution Plan.

2.15 Thus, Mr. Nachimuthu Ramalingam and Mr. Nachimuthu Ramalingam Tamilselvi are the connected persons of the Respondent No. 5 Company, and in the management and control of Respondent No. 5 Company by virtue of their directorship. Hence, by virtue of Section 29A (j), the Respondent No. 5 Company also become ineligible to submit a Resolution Plan in accordance with the provisions of the code.

2.16 According to the Applicant all the three respondents i.e. R-3, 4 and 5 are ineligible to submit a plan under Section 29A of the Code and further submits that when a resolution plan is submitted by a consortium then all the members of the consortium are required to qualify in terms of Section 29A of the Code and even if one member fails to meet such qualifications then the consortium itself becomes ineligible.

2.17 It is stated that the Resolution Professional has failed to conduct due diligence in order to check if the PRAs complied with the provisions of the Section 29A of the Code and Regulation 36A(8) of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016 and has wrongly declared the Respondent Nos. 3, 4 and 5 as 'eligible'. According to the Applicant, the Resolution Professional ought not to have included Respondent nos. 3, 4 and 5 in the provisional list of PRAs in the first place and have illegally and unlawfully

permitted the consortium to not only submit and present its resolution plan but also have approved it to participate in the challenge process conducted on July 31, 2023 wherein the Consortium was declared as the Highest bidder, which is in gross contravention of the provisions of the Code.

2.18 It is stated that despite Applicant raising query time and again on the eligibility of the Consortium, the Respondent no 1 continued to act in a manner which is illegal, unlawful and in gross contravention of the provisions of the Code. The Applicant further submits that despite requesting the Resolution Professional to share the copy of the Resolution Plan received by him which according to the Applicant is entitled as laid down by the Hon'ble Supreme court in *Vijay Kumar Jain v Standard Chartered Bank & Ors* in Civil Appeal No 8430 of 2018, the request was not acceded to by R-1 citing reason that the Applicant is not an operational creditor, though R-1 has been considering the applicant as an operational creditor and has also recorded the same in all CoC meetings.

3. Counter has been filed by the Resolution Professional/Respondent No.1 herein and contended as follows:-

- 3.1 That intimation regarding the Adjourned 7th COC meeting held on 15.07.2023 was given to the Applicant and the representative of the Applicant had expressed his inability to attend the same through whatsapp message. The VC link of the meeting was shared by the Resolution Professional/R-1 to the Applicant .
- 3.2 The eligibility of Consortium was deliberated upon the adjourned 7th meeting held on 15.07.2023 and the minutes of the meeting and the legal opinion obtained by the RP on the eligibility of the consortium was shared with the Applicant on 31.07.2023.
- 3.3 The challenge mechanism process was conducted in the presence of the Applicant and the consortium was declared as H1 bidder on 01.08.2023.
- 3.4 The request for re-examining the eligibility of the Consortium was not considered by Resolution Professional as in the instant case, the DIN status of the Directors is Active and are not disqualified under Section 164 of the Companies Act to attract ineligibility of Section 29A of the Code.
4. Counter is filed by Respondent No.2 rebutting the averments made in the application and contended as under:-
 - 4.1 That after due scrutiny by the Resolution Professional and after conducting the challenge mechanism process, has confirmed

the eligibility of Respondents 3, 4 & 5 to submit the Resolution Plan, which was approved by R-2 being the sole member of the CoC.

- 4.2 R-2 alleges that the instant application is filed by the Applicant as an afterthought after a passage of substantial period of time. According to R-2/CoC, the Applicant is aware of the submission of the Resolution Plan by the R-1.
- 4.3 With regard to the allegation of the Applicant that Respondents 3,4 & 5 are ineligible to file the plan, the 2nd Respondent submits that the disqualification of the Directors falls under the ambit of ROC and that the DIN of the directors are active and it took decision to approve the plan in its commercial wisdom.
- 4.4 It is stated that the Consortium has offered more amount than compared to other PRAs and the COC considering the feasibility and viability of the Resolution Plan, has approved the same in its commercial wisdom. Therefore, the Applicant has no locus standi to challenge the commercial wisdom of the COC.
5. A common counter is filed by Respondents 3, 4 & 5 contending as under:-
 - 5.1 It is contended that this Tribunal had not rejected IA 407/2023 filed by Respondents 3 & 4 challenging rejection of their resolution plan submitted for another company i.e. M/s Dharti

Dredging and Infrastructure Company on the ground of alleged disqualification of Directorship of Respondents 3 & 4. The appeal against the said order passed by this Tribunal in IA 407/2023 is pending before Hon'ble NCLAT and has not attained finality.

- 5.2. Adverting to the averments made by the Applicant, it is submitted that the DINs of the Directors of R-5 Company are still active and are not disqualified under the provisions of the Companies Act, 2013 as such R-5 is eligible to place the Resolution Plan. It is further stated that it is not Respondent No.5 independently placed the Resolution Plan. Respondent No.3, 4 and 5 have associated together, formed a consortium and placed the resolution plan which was declared as H-1 Bidder. Further the Applicant had not opted to challenge either the Provisional List of PRAs communicated to it by R-1 vide email dated 20.05.2023 or the final list.
- 5.3. Respondent Nos 3,4 & 5 have denied the allegation of the Applicant that the former are acting hand in glove with each other and the Applicant failed to demonstrate how the consortium is disqualified or ineligible under Section 29A of IBC, 2016. Therefore the present application filed by the Applicant is devoid of merits, not maintainable and liable to be dismissed.

6. Rejoinder is filed by the Applicant to the counter filed by Respondent No.1/Resolution reiterating the averments made in the application and denies the contention of R-1 that the application is devoid of merits or has been filed to frustrate the CIRP, and further dispute the contention that COC was within its rights or powers in approving the resolution plan submitted by the consortium. The Applicant further dispute the contention of the R-1 that proper notice for the adjourned 7th CoC was served upon them. Since no notice was served, the Applicant could not attend the COC meeting and failed to understand the background and/or circumstances under which the said meeting was adjourned and could not attend the adjourned 7th CoC meeting held on 15.07.2023. It is contended that the Applicant was unaware of the legal opinion taken as such the sanctity of the said legal opinion is in question and further stated that whether or not the Respondents 3,4 & 5 qualified under Section 29A of the Code was never a subject matter of query in the said legal opinion. It is further alleged that the said legal opinion has been given under the presumption that the resolution applicants are individually qualified based on the criteria laid down by the COC under Section 25(2)(h) and not otherwise statutorily disqualified under the provisions of the Code.

- 6.1 The Applicant has further emphasized the order passed by this Tribunal in IA 407/2023 in CP (IB) No. 329/7/HDB/2020 rejecting the resolution plan submitted by R-3 and one of the reasons being disqualification of R-3 under Section 29A of the Code.
- 6.2 The Applicant denies and disputes all the other contentions raised by R-1 and prayed the Tribunal to allow the reliefs sought in the application.
7. On perusal of all the documents and oral submissions from both the sides, the point which arises for our consideration is:-
“Whether the Consortium of Respondents 3, 4 & 5 who are declared as Successful Resolution Applicant are barred under Section 29A of the Code?”
8. We have gone through the written submissions and other documents filed by both the sides and heard Shri S. Niranjan Reddy, Ld. Senior Counsel assisted by Ms. D. Hamsini, Ld. Counsel for the Applicant and Shri S. Ravi, Senior Advocate assisted by Shri P. Ramesh Babu, Ld. Counsel for Respondent , Shri M.S. Prasad, Ld. Senior Counsel assisted by Ld. Counsel for Shri VVSN Raju, Advocate for R-2, Shri G.Bhupesh, Ld. Counsel for R-3, 4 & 5

9. Our observations and findings are as under:-

POINT:

“Whether the Consortium of Respondents 3, 4 & 5 who are declared as Successful Resolution Applicant are barred under Section 29A of the Code?

9.1. This Application is filed by the Operational Creditor of the Corporate Debtor with a prayer that Consortium of Respondents No. 3, 4 & 5 (in brief “Consortium”) who have been declared as Successful Resolution Applicant be declared as ineligible to submit any resolution plan as they are barred under Section 29A of the Code. Consequently, reject the resolution plan as submitted by the Consortium.

9.2 Ld. Counsel for the Applicant submitting that Respondents 3 & 4 are disqualified to file a resolution plan in terms of Section 29A (e) of the Code as they are disqualified to act as a Director under Section 164 (2) of the Companies Act, 2013. Section 29A(e) of the Code and Section 164(2) of the Companies Act, 2013 are reproduced below: -

29A. Person not eligible to be resolution applicant. –

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(e) is disqualified to act as a director under the Companies Act, 2013;

[Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I];

Explanation 1 is reproduced below:-

- (i) any person who is the promoter or in the management or control of the resolution applicant; or**
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or**
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii)**

164 (2) of the Companies Act,2013

No person who is or has been a director of a company which—

(a) has not filed financial statements or annual returns for any continuous period of three financial years ; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debenture on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

9.3 The Ld. Counsel further submits that Respondent 3 & 4 are Directors in a Company named M/s Dharti Dredging and Infrastructure Limited (in CIRP) and financial statements and Annual Returns of the said Company are not filed for three consecutive financial years. The last financial statements were filed on 31.03.2018. As such, in terms of the relevant provisions of the Companies Act,2013, the Directors of the said

Company which include Respondent 3 & 4 stands disqualified to act as Director by operation of law and therefore, in terms of Section 29A(e) of the Code, they are not ineligible to submit a resolution plan.

- 9.4 The Ld. Counsel for Respondents countered the submissions made by the Ld. Counsel for the Applicant and submitted that Director Identification Number (DIN) of Respondents 3 & 4 are active and they are not dis-qualified by the appropriate authority under the provisions of Companies Act, 2013.
- 9.5 The Ld. Counsel for the Respondents further submits that if a Company fails to file financial statements and Annual Returns for 03 years in a row, the Registrar of Companies has the authority to deactivate the DIN for the default and disqualify the directors by de-activating their DIN and Directors in that case will be ineligible for appointment or re-appointment as Directors for a period of 05 years. But no such action has been taken by the concerned authorities i.e. ROC against the Respondents 3 & 4 and their DINs are quite active. Therefore, Section 164(2) is not attracted and consequently Section 29A(e) will also not be applicable in case of Respondents 3 & 4. The Ld. Counsel for the Applicant also raised a point that on the same ground resolution plan submitted by Respondent No.3 in

other group company namely Dharti Dredging and Infrastructure Ltd was rejected by the Resolution Professional and assailing the rejection of the Resolution Plan, the Respondent No.3 filed IA No. 407/2023 before this Tribunal and this Tribunal by its order dated 20.07.2023 held that the grounds for rejection by the Resolution professional are tenable and sustainable under law. Ld. Counsel for the Applicant pleaded that for the same reason the Resolution Plan submitted by Respondent No.3 cannot be accepted.

9.6 To counter the arguments, the Ld. Counsel for the Respondent submitted that this Tribunal has not disallowed the IA No. 407/2023 for the reasons of Applicant's statutory disqualification under Section 29 A of the Code but it was not disallowed for the following reasons:-

- (i) It is a conditional plan and also seeking release of third party guarantees and Section 31(1) does not permit the Hon'ble Tribunal to approve such a resolution plan.
- (ii) The assets referred to in the plan does not belong to the applicant as the same are the assets of the promoters already given as personal guarantees and the personal insolvency proceedings initiated by the lenders are pending against them; besides some other assets belong to third

parties; moreover, the information memorandum does not indicate these assets as that of the Corporate Debtor.

(iii) The Hon'ble Tribunal's interference with the CoC's commercial wisdom to be at barest minimum.

9.7 Ld. Counsel for the Resolution Professional placed his reliance on the Hon'ble Supreme Court in M.K. Rajagopalan Vs Periasamy Palani Gounder and Ors (MANU/SC/0517/2023), wherein it is held that unless a specific order disqualifying the resolution applicant as Director because of any default under Section 164(2) (b) of the Companies Act, 2013 came into existence, it could not have been taken by way of any process of assumption that the Appellant-resolution applicant was disqualified to act as a director and thereby, was ineligible to submit a resolution plan. When the DIN status of the Appellant was active compliant, he could not have been treated as ineligible. The relevant portion of the said order of the Hon'ble Apex Court is reproduced hereunder;-

“Point C1 – Effect of Section 164(2)(b) Companies Act

43. A long length of argument has been advanced by the contesting parties as regards impact of Section 164(2)(b) of the Companies Act because of the alleged default of the company named International Aviation Academy Private Limited of which, the resolution applicant is a director. It has been argued that the said company collected share application money pending allotment and did not refund the same; and consequently, in terms of Section 164(2)(b) of the Companies Act, this default would disqualify the resolution applicant from acting as a director and thereby, would render him ineligible

to submit a resolution plan. We find it difficult to accept the submissions aforesaid and the propositions against the resolution applicant on this score.

43.1. Even if there had been any possibility of the resolution applicant incurring such a disqualification in terms of Section 164(2)(b) of the Companies Act, because of alleged default of another company, in which he is a director, to refund the share application money, the same would essentially be a matter of consideration of the registrar of companies. Unless a categorical finding was recorded in the competent forum as regards any such default and unless specific order disqualifying the resolution applicant as director because of such default came into existence, it could not have been taken by way of any process of assumption that the appellant-resolution applicant was disqualified to act as a director and thereby, was ineligible to submit a resolution plan. It has rightly been pointed out that when DIN status of the appellant was “active compliant”, he could not have been treated as ineligible.

43.2. Again, it has been too far-stretched on the part of the Appellate Tribunal to refer to the Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014 and then to make a declaration as if the resolution applicant was disqualified in terms of Section 164(2)(b) of the Companies Act. Although, we do not agree with the submissions on behalf of appellant that such an issue of eligibility could not have been raised before NCLAT for the first time because the question of eligibility of the resolution applicant goes to the root of the matter but, we do agree with the other part of the submission in this regard that there is no concept of deemed disqualification under Section 164(2)(b) of the Companies Act. 43.3. Hence, in our view, the Appellate Tribunal had not been right in holding the resolution applicant ineligible by virtue of Section 164(2)(b) of the Companies Act. Point C1 is answered accordingly.”

At Para 67

“..... Similarly, the Appellate Tribunal has not been right in holding the resolution applicant ineligible to submit a resolution plan with reference to Section 164(2)(b) of the Companies Act, 2013 (as held in point C1)”

9.8 It is further submitted that DIN status is active as on 11.09.2023 and is annexed as Annexure-6 to the Counter.

Our reasoning: -

10.1 We have gone through our order in IA No. 407/2023 and find that para 35 of the order clearly says that the plan was not in conformity with Clause 4.7 of RFRP, hence not eligible to place before the COC. In para 36 also we found that ineligibility in terms of Section 29 of the Code was one of the reasons for rejection of resolution plan of the Applicant but there were other reasons also like plan being a conditional plan and not in conformity with the relevant provisions of the Code and the Regulations. Therefore, the submissions made by the Ld. Sr. Counsel for the Applicant that R-3 since was declared as ineligible by the order of this Tribunal in IA 407/2023, is unacceptable to the extent that we have not given any specific comment or decided about the ineligibility of Respondent no.3 in terms of Section 29A of the Code in the said IA but our order was pertaining to rejection of resolution plan as such.

10.2 On perusal of the ruling supra by Hon'ble Apex Court, relied upon by the Respondent, it is quite clear that we cannot assume that the Resolution Applicant is disqualified to act as a Director and thereby making him ineligible to submit resolution plan if DIN status of the Applicant is active. In view of the above facts and placing reliance on the order of the Hon'ble Apex Court in M.K.

Rajagopalan Vs Periasamy Palani Gounder and Ors, we decide that Respondent no.3 and 4 cannot be treated as ineligible for submitting a resolution plan as their DINs are active as per Counsel of the Respondent and this fact has not been contended by the other party.

10.3 Ld. Counsel for the Applicant submits that Respondent No.5 is also ineligible to file a resolution plan in terms of Section 29A (e) and (j) of the Code as two of the Directors of Respondent No.5 namely Nachimuthu Ramalingam and Nachimuthu Ramalingam Tamilselvi are disqualified to act as Directors. Ld. Counsel further submits that because the said two Directors are Directors in a group company named Ramalingam Engineering Private Limited which was struck off in 2016 for non-filing of Financial Statements or Annual Returns for three consecutive financial years. Since Nachimuthu Ramalingam and Nachimuthu Ramalingam Tamilselvi are disqualified to act as Directors, they became ineligible to submit the resolution plan as per Section 29A(e) of the Code. Respondent No.5 Company being connected person to the above said two Directors and so became ineligible to submit the resolution plan in accordance with the provisions of the Code.

10.4 Ld. Counsel for the Respondent/Consortium countered the argument and submitted that declaration of disqualification of

the Directors under the Companies Act, 2013 falls under the jurisdiction of the ROC and as on date the DIN of these Directors is active which implies that the Directors are not disqualified under Section 164 of the Companies Act, 2013, thereby ineligibility of Section 29A is not attracted to them.

10.5 Ld. Counsel for the R-2 (COC) further submitted that Ramalingam Constructions Company Private Limited, which is a separate legal entity is a consortium of Resolution Applicants and not individual Directors of the said Company are part of consortium of Resolution Applicant. Since Corporate entity is a compliant and active company and not disqualified by any authority under the provisions of the Companies Act, 2013, the Respondent No.5 is very much eligible to submit the Resolution Plan as a part of the consortium.

10.6 We have perused and analysed the submissions made by both the Ld. Counsels and find that keeping in view the order passed by the Hon'ble Supreme Court of India, in case referred above and also keeping in view the fact that Corporate Entity which is a member of consortium is not disqualified. Further if we read Section 29A(e) with explanation I (Clause iii) supra, we find that Section 29A(e) shall not apply in relation to a connected person which is the Holding Company, Subsidiary Company, Associate

Company or related party of a person referred to in clauses (i) and (ii).

10.7 Therefore, in the above backdrop and placing reliance on the judgement of Hon'ble Supreme Court of India, we hold that Respondent No.5 is eligible to submit the Resolution Plan.

10.8 Therefore, in view of the above facts, submissions and case laws, the point raised is decided that Consortium of Respondent No. 3,4 & 5 is eligible to submit resolution plan under Section 29A of the Code.

10.9 The Ld. Counsel for the Applicant in his oral submission also submitted that since the Applicant was not included in the COC since beginning the whole process of approval of the resolution plan should be re-run to give it a chance to provide its inputs. The Ld. Counsel for the Resolution Professional vehemently opposed the submission and made reference to relevant Sections of the Code highlighting that COC consist only of financial creditors and Operational Creditor is not a Member of COC. It was submitted, the applicant being an Operational Creditor is not a Member of COC as per Section 21(2), read with Section 24(4) of IBC, 2016 and he has no role in approval of the resolution plan. Section 24(4) further has a provision "provided that the absence of any such director, partner or representative of operational creditors, as the case may be,

shall not invalidate proceedings of such meeting, which clearly says that absence of representative of Operational Creditor will not invalidate the proceedings of COC meetings.

10.10 The other oral submission made by the Id. Counsel for the Applicant is that, he was not provided with a copy of the resolution plan. The Counsel for the Resolution Professional submitted that applicant is not eligible to receive copy of the resolution plan in terms of Section 30 (3) of IBC, 2016. We perused Section 30(3) of IBC,2016 in this regard and find that the above section provides that the Resolution Professional shall present to the Committee of Creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2). Therefore, we hold that submissions of applicant to re-run the whole process on account of it not being provided a copy of the resolution plan and/or not allowed to attend the COC meetings since beginning is not tenable.

10.11 In view of the point as decided above, the IA is liable to be dismissed. Accordingly, IA is dismissed and accordingly disposed of.

(Charan Singh)
Member (Technical)

(Dr. N. Venkata Ramakrishna Badarinath)
Member (Judicial)

binnu

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I**

I.A.No.1285 of 2023

IN

CP (IB) NO.149/7/HDB/2022

Application under Sections 30(6) and 31(1) of IBC, 2016 read with Regulation
39(4) of the IBBI (IRPCP) Regulations, 2016

IN THE MATTER OF

**SREI EQUIPMENT FINANCE LIMITED
CREDITOR**

.... FINANCIAL

VERSUS

**M/S. MANTOVANI DI DHARTI PRIVATE LIMITED
DEBTOR**

....CORPORATE

BETWEEN

KRISHNA KOMARAVOLU

RESOLUTION PROFESSIONAL

MANTOVANI DI DHARTI PRIVATE LIMITED

IBBI/IPA-002/IP-N00562/2017-2018/11699

7-1-214, FLAT NO.409, VAMSIKRISHNA APARTMENTS,

DHARAM KARAN ROAD, AMEERPET,

HYDERABAD -500016

.....APPLICANT / RESOLUTION PROFESSIONAL

AND

SWAN LNG PRIVATE LIMITED

9th AVENUE, RAJPATH RANGOLI ROAD,

SINDHU BHAVAN MARG, BODAKDEV,

AHMEDABAD – 380059

.... RESPONDENT

Date of Order: 08.12.2023

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member Judicial
Shri Charan Singh, Hon'ble Member Technical

Appearance:

For Applicant: Shri P. Ramesh Babu, Advocate

For Respondent: Shri S. Niranjan Reddy, Sr. Advocate assisted by Shri Mohit Reddy, Advocate

**PER: BENCH
ORDER**

1. The present Application is filed by Shri Krishna Komaravolu ("**Resolution Professional**" / "**Applicant**"), the Resolution Professional of M/s Manovani Di Dharti Private Limited ("**Corporate Debtor**"), under Sections 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**"), seeking the approval of the resolution plan of Mr. Akumalla Rajendra, Mrs. Alur Vijay Lakshmi in consortium with M/s Ramalingam Construction Company Private Limited ("**Successful Resolution Applicant**").

- 2.1 To put precisely, this Tribunal on 11.11.2022 admitted Petition under section 7 of the IBC, 2016 which was filed by the Financial Creditor i.e., SREI Equipment Finance Limited against the Corporate Debtor i.e., Mantovani Di Dharti Private Limited and appointed Shri Krishna Komaravolu as the Interim Resolution Professional who was subsequently on 16.12.2022 in the 1st CoC meeting, was confirmed as Resolution Professional.
- 2.2 Pursuant to the above order, the Applicant herein made public announcement on 19.11.2022 inviting claims from creditors. The Resolution Professional after collating and verifying the claims constituted Committee of Creditors (CoC) comprising of sole Financial Creditor i.e. SREI Equipment Finance Limited.
- 2.3 In the 2nd COC meeting held on 06.01.2023, the COC approved Form-G which was published in Financial Express (English) and Nava Telangana (Telugu) on 09.01.2023 with last date for submission as 24.01.2023. In response to Form-G Publication, the Applicant received interest from the following five (5) Prospective Resolution Applicants:-

S.No.	Name of the Applicant	Networth (Rs. In crores)
1	Meka Infrastructure Pvt. Ltd, Mumbai	17.64
2	Ramalingam Construction Company Pvt. Ltd, Erode.	609.04
3	Vakratund Plaza Pvt. Ltd, Kolkata.	85.94
4	Yogayatan Ports Pvt. Ltd, Mumbai.	25.39
5	Nalwa Steel & Power Ltd, Raigarh.	859.69

2.4. In the 3rd meeting of CoC held on 02.02.2023, the COC had approved RFRP and Evaluation Matrix and the last date for submission of Resolution Plan was fixed as 10.03.2023 which was subsequently extended twice on the request made by the Resolution Applicants and the revised last date for submission of Resolution Plan was 08.04.2023.

2.5 In the 4th COC meeting, the Applicant informed the COC that the following four Prospective Resolution Applicants submitted their resolution plans on time.

S. No.	Name of the Resolution Applicant	Resolution Plan amount (Rs.)
1	Vakratunda Plaza Private Limited	2,44,74,746
2	Yogayatan Ports Private Limited	8,00,00,000
3	Meka Infrastructure Private Limited	43,22,76,237
4	Ramalingam Construction Company Pvt Ltd	6,00,00,000

Further in the said meeting, Resolution Professional informed the CoC that the Valuation Reports have been received and the same were shared to them electronically on receipt of the Confidentiality undertaking. The summary of the Valuation Reports is as under:

VALUATION SUMMARY			
S. No.	Name of the Valuer	Fair Value (Rs. In Lacs)	Liquidation Value (Rs. In lacs)
1	PLANT AND MACHINERY		
	a) Alok Kumar Gupta	23,25,00,000	15,11,00,000
	b) G. Prabhakar Rao	23,40,00,000	15,76,00,000
	Average Value of Plant and Machinery	23,32,50,000	15,43,50,000
2	FINANCIAL ASSETS		
	a) Santosh Kumar Katla	14,88,90,947	4,46,94,908

	b) Satyanarayana. N	14,20,07,098	4,26,29,754
	Average Value of Financial Assets	14,54,49,023	4,36,62,331
	Grand Total Average Value (1+2+3)	37,86,99,023	19,80,12,331

A copy of the minutes of 4th meeting of CoC is annexed and marked as **Annexure – A8**.

2.6 In the 5th CoC meeting and Adjourned 5th CoC meeting held on 19/20/21.04.2023 the resolutions plans were deliberated upon and in the 6th CoC held on 01.05.2023, CoC with 100% voting share directed the RP to file an application seeking extension of CIRP period by 90 days beyond 180 days i.e., from expiry of 09th May, 2023 to 7th August, 2023, which was allowed by this Tribunal vide order dated 04.05.2023.

2.7 In the 6th meeting of CoC held on 01st May 2023 the RP placed the revised financial bids submitted by the Resolution Applicants and the details of the Revised plan amounts are furnished hereunder:

S. No.	Name of the Resolution Applicant	Original Plan amount (Rs.)	Revised plan amount (Rs.)
1	Vakratunda Plaza Private Limited	2,44,74,746	2,44,74,746
2	Yogayatan Ports Private Limited	8,00,00,000	12,00,00,000
3	Meka Infrastructure Private Limited	43,22,76,237	17,10,00,000*
4	Ramalingam Construction Company Pvt Ltd	6,00,00,000	6,00,00,000

*before the plans were taken up for consideration, Meka Infrastructure Private Limited who submitted a conditional plan revised its offer downwards, with removal of conditions.

2.8. Upon directions from the COC, the Applicant the Applicant published form-G (Reissued) on 04.05.2023 indicating the last date for submission of

EOI as 12.05.2023 (Annexure-14). However, at the request of a few PRAs the Reissued Form G (Date Extended – 1) was issued on 13.05.2023 with the last date for submission of resolution plans fixed as 19.05.2023, later extended to 11.07.2023. However, two of the PRAs in the earlier final list viz Vakratund Plaza Private Limited and Yogayatan Ports Private Limited vide their emails dated 05.05.2023 expressed their inability to participate in the process and left the fray. In response to the reissued Form-G, three new Resolution Applicants submitted their EOIs and the same were discussed and negotiated with the Resolution Applicants during the 7th and Adjourned 7th meetings of CoC held on 14/15.07.2023. The details of the Final List of Prospective Resolution Applicants are as under:-

S.No.	Name of the Applicant	Networth (Rs. In crores)
1	Meka Infrastructure Pvt. Ltd, Mumbai	17.64
2	Ramalingam Construction Company Pvt. Ltd, Erode.	609.04
3	Akumalla Rajendra and VijayaLakshmi Alur, Hyderabad.	30.60
4	Adani Ports and SEZ Limited, Ahmedabad.	26582.26
5	Backbone projects Limited, Ahmedabad.	67.90

- 2.9 In the 10th COC meeting held on 31.07.2023, Mr. Akumalla Rajendra, Mrs. Alur Vijaya lakshmi in consortium with M/s. Ramalingam Construction Company Private Limited were declared as H1 bidders. The Revised and Final Resolution Plans were received on 01. 08.2023.
- 2.10 The Members of the COC evaluated the said Resolution Plans strictly as per the evaluation matrix and Section 29A. After evaluation in terms of both

qualitative and quantitative criteria and aggregate, the said resolution plan was put for voting in the 11th meeting held on 01.08.2023. The Resolution Plan submitted by Mr. Akumalla Rajendra, Mrs. Alur Vijaya Lakshmi in consortium with M/s. Ramalingam Construction Company Private Limited was approved by COC with 100% voting in favour of it and the following resolution was passed.

“RESOLVED THAT the Resolution Plan submitted by **Mr. Akumalla Rajendra, Mrs. Alur Vijayalakshmi in consortium with Ramalingam Construction Company Private Limited** on 11th July, 2023 and subsequently modified on 01st August, 2023, having the broad features given in the undermentioned table, and laid before the Committee of Creditors of Mantovani Di Dharti Private Limited, duly initialed by RP for the purpose of identification, be and is hereby approved by Committee of Creditors in terms of section 30(4) of IBC 2016 and other applicable provisions and Regulations framed thereunder:

S. N	Particulars	Amount in Rs.
1	Resolution Plan Amount	34,00,00,000
2	Resolution Plan Period	30 days
3	Payment to Various Stakeholders	
	• CIRP Expenses	1,05,00,000**
	• Operational Creditors (Employee/Workmen)	8,54,893
	• Operational Creditors (Suppliers)	12,00,000
	• Operational Creditors (Statutory)	26,00,000
	• Operational Creditors (EPFO)	2,60,45,107
	• Operational Creditors (Contingent)	-
	• Financial Creditors	29,88,00,000
	Total	34,00,00,000
4	Mode of Payment	Cash

5	Payment Schedule	
	Within 30 days from the NCLT Order	34,00,00,000
	Total	
6	Proposed Distribution of Resolution Plan amount among the Financial Creditors	29,88,00,000
	SREI Equipment Finance Limited	29,88,00,000
	Total to Financial Creditors	29,88,00,000

****As per para 3.2.2 of the plan,** The Resolution Applicant agreed to pay the Performance Incentive to RP as approved by the CoC and Success Fees to the Process Advisors which will be extra and over and above the approved CIRP Expenditure.

“RESOLVED FURTHER THAT Mr. Krishna Komaravolu, Resolution Professional, be and is hereby authorised to issue “Letter of Intent” to Mr. Akumalla Rajendra, Mrs. Vijayalakshmi Alur in consortium with Ramalingam Construction Company Private Limited, the Resolution Applicant, after the approval of Resolution Plan by the Committee of Creditors.”

Mr. Akumalla Rajendra, Mrs. Vijayalakshmi Alur in consortium with Ramalingam Construction Company Private Limited is declared as Successful Resolution Applicant (SRA).

- 2.11 Subsequently, the RP issued Letter of Intent to the Successful Resolution Applicant on 02.08.2023 which was accepted by the Successful Resolution Applicant.
- 2.12 The SRA submitted the Performance Guarantee amount in the form of RTGS which was converted into Fixed Deposit along with acceptance of Lol on 03.08.2023.
- 2.13 That the Resolution Professional issued a ‘Letter of Intent’ (Lol) dated 02.08.2023 to Mr. Akumalla Rajendra, Mrs. Alur Vijaya lakshmi in

consortium with M/s. Ramalingam Construction Company Private Limited and asked the Successful Resolution Applicant to submit the Performance Bank Guarantee (PBG) Amount of Rs. 3,40,00,000/-. The letter of intent was duly signed by the authorised representative of the Consortium Resolution Applicant and copy of the acknowledged Lol is attached as **Annexure – A31.**

2.14 That the Successful Resolution Applicant requested RP/CoC to allow the adjustment of EMD amount and the application fees paid by the Consortium members amounting to Rs.1,30,00,000/- against the Performance Guarantee Amount of Rs. 3,40,00,000/-. The same was agreed by RP/CoC.

2.15 Accordingly, the Successful Resolution Applicant paid the balance amount of PBG of Rs. 2,10,00,000/- on 03rd August, 2023 in the form of a RTGS with UTR number as HDFC 52023080376842809 into the Current account number 020205007178 of the Corporate Debtor maintained with ICICI Bank, Punjagutta Branch. The bank statement is attached herewith showing the credit of the Rs. 2,10,00,000/- into the bank account. The same has been deposited by the RP in a Fixed Deposit bearing number 19833447 for a period of 120 days. The details of the PBG are shown in the table hereunder:

S. N.	Particulars	DD/FDR/BG Number	Date	Amount
1	Application fees paid by Ramalingam Construction Company Pvt. Ltd.	DD No: 275055	24.01.2023	15,00,000

2	Application fees paid by Mr. Rajendra and Mrs. Vijaya Lakshmi Alur	DD No: 039650	09.05.2023	15,00,000
3	EMD Amount paid by Ramalingam Construction Company Pvt. Ltd.	BG: 0406123BG0000062	06.04.2023	1,00,00,000
4	The balance PBG Amount paid by Consortium Resolution Applicant	FDR No: 19833447	03.08.2023	2,10,00,000
TOTAL AMOUNT OF PBG				3,40,00,000

A copy of the Bank Statement and Fixed Deposit receipt is annexed as **Annexure – A32.**

2.15 Thus submitting, prayed the Adjudicating Authority to approve the resolution plan submitted by Mr. **Akumalla Rajendra, Mrs. Alur Vijaya Lakshmi in consortium with M/s. Ramalingam Construction Company Private Limited.** The Compliance Certificate in Form-H is filed as Annexure A35.

3. **CONTOUR OF THE RESOLUTION PLAN APPROVED BY THE COC:**

(a) **Mr. Akumalla Rajendra, Mrs. Alur Vijaya Lakshmi in consortium with M/s. Ramalingam Construction Company Private Limited.**

(i) Shri A. Rajendra is a native of Bellary in Karnataka and has taken over the Management Control of Dharti Dredging and Infrastructure Ltd(DDIL) he has served as Chairman of Association of Eastern Dredging Companies.

(ii) M/s. Ramalingam Construction Company Private Limited (RCCPL) is a Company having its registered office at NR Tower, 1st Floor, 175/2 South State Bank Nagar, Chetipalayam, Erode. The Company

is into business of Civil Mechanical and Electrical, Engineering contracts.

A copy of the revised Resolution Plan of the Successful Resolution Applicant is annexed and marked as Annexure A-30.

- (b) The CoC comprised of the following Financial creditors and the distribution of voting share among them is as under:-

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	SREI Equipment Finance Limited	100%	Voted for
	Total	1005	

- (C) FINANCIAL PROPOSALS: The amount provided to the stakeholders of the Corporate Debtor is tabulated below:-

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	Secured Financial Creditors	(a) Creditors not having a right to vote under section 21(2)	-	-	-	-
		(b) Other than (a) above:	-	-	-	-
		(i) who did not vote in favour of the Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	10367.64	10367.64	2988.00	28.82%
		Total[(a) + (b)]	10367.64	10367.64	2988.00	28.82%

2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under section 21(2)	-	-	-	-
		(b) Other than (a) above:	-	-	-	-
		(i) who did not vote in favour of the Plan	-	-	-	-
		(ii) who voted in favour of the plan	-	-	-	-
		Total[(a) + (b)]	-	-	-	-
3	Operational Creditors	(a) Related Party of CD	-	-	-	-
		(b)(i) Government	4477.56	4477.56	26.00	0.58%
		(ii) EPFO	260.45	260.45	260.45	100.00%
		(iii) Workmen	136.86	136.86	2.55	1.86%
		(iv) Employees	468.89	468.89	6.00	1.28%
		(v) Others	105637.00	2562.45	12.00	0.01%
		(vi) Contingent Creditors	10818.16	10818.16	-	-
		Total[(a) + (b)]	121798.92	18724.37	307.00	0.28%
4	Other debts/dues	CIRP Expenses	105.00	105.00	105.00	100.00%
Grand Total			132271.56	29197.01	3400.00	2.57%

A copy of the Revised Resolution Plan along with its annexures is annexed as **Annexure – A30**.

(D) Amounts payable under the Resolution Plan to various classes of creditors of the Corporate Debtor.

S. N	Particulars	Amount in Rs.
1	Resolution Plan Amount	34,00,00,000
2	Resolution Plan Period	30 days
3	Payment to Various Stakeholders	
	• CIRP Expenses	1,05,00,000**
	• Operational Creditors (Employee/Workmen)	8,54,893
	• Operational Creditors (Suppliers)	12,00,000
	• Operational Creditors (Statutory)	26,00,000
	• Operational Creditors (EPFO)	2,60,45,107
	• Operational Creditors (Contingent)	-
	• Financial Creditors	29,88,00,000
	Total	34,00,00,000

4	Mode of Payment	Cash
5	Payment Schedule	
	Within 30 days from the NCLT Order	34,00,00,000
	Total	
6	Proposed Distribution of Resolution Plan amount among the Financial Creditors	29,88,00,000
	SREI Equipment Finance Limited	29,88,00,000
	Total to Financial Creditors	29,88,00,000

(E) **The Timeline and implementation schedule** of the Resolution Plan upon becoming effective is set out in Schedule-1 (para 8.3.3 page 102 of the revised resolution plan).

(F) **MONITORING COMMITTEE**

The Monitoring Committee shall comprise of Resolution Professional, two representatives of the COC and two members nominated by the Resolution Applicant. The Resolution Professional, shall act as the Chairman of the Monitoring Committee. The Monitoring Committee shall continue to exist till the Total Resolution Plan Amount is paid in accordance with the terms of this Plan. Once the entire Total Resolution Plan Amount is paid by the Resolution Applicant/Corporate Debtor as per the terms of the Resolution Plan, the Monitoring Committee shall cease to exist. Further proposed that immediately upon payment of the Upfront Cash, the Resolution Applicant shall reconstitute the Board of Directors of the Corporate Debtor ("Reconstituted Board") by appointing the Directors nominated by the Resolution Applicant on the Board. The existing Board

and the Monitoring Committee will be replaced by the Reconstituted Board and the day-to-day operation and maintenance of the Company will be handled under the supervision of the new Board of the Company.

- (G) 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 Resolution Applicant has filed an Affidavit declaring that they are eligible to submit the plan under Section 29A of the Code and that the contents of the said affidavit are in order. The fair value and Liquidation value as submitted in Form-H is Rs.37,86,99,023/- and Rs. 19,80,12,331/- respectively.

4. In the above backdrop we heard Shri P. Ramesh Babu, Learned Counsel for the Resolution Professional and Shri S. Niranjan Reddy, Ld. Senior Counsel for Respondent. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-

- (i) **Section 30 (2) (a) – The Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor. (Para**

3.2.2 Page No 35 and Appendix - 1 Page No.47 – 49 of the Plan Document):

The Resolution Plan allocated Rs. 105 lakhs towards unpaid CIRP costs which shall be paid in priority to other creditors within 30 days from the date of NCLT Order. The unpaid CIRP costs have been approved by COC to the extent of Rs. 105 lakhs. The Resolution Professional informed that the estimated CIRP expenditure is Rs. 80 lacs and **(a)** Performance incentive to Resolution Professional as approved by the COC **(b)** the Success fees to the Process Advisor @1% of Total Resolution Plan amount and **(c)** rental of Tremie Barge upon the order of NCLT is extra and over and above the CIRP cost of Rs. 80 lacs. The Resolution Applicant agrees to pay such Performance Incentive to the RP, Success Fees as approved by CoC to the Process Advisors and any additional amount on account of rental of Tremie Barge as intimated by the RP upon the order of NCLT, over and above allocated CIRP amount of Rs.105 lacs. The Outstanding CIRP costs shall be paid in priority to the payment of other debts of the Corporate Debtor.

- (ii) **Section 30 (2) (b) – Provides for payment of debts of operational creditors in such a manner as may be specified by the Board which shall not be less than (Para 3.3 and 3.4 - Page 36 – 42, Appendix -1 Page No.47 to 49)**

- (a) The liquidation value of the Corporate Debtor is Rs. **19.80 Cr** as per the average of the valuations obtained by the Resolution Professional. As per the liquidation value of the Corporate Debtor and the waterfall mechanism provided under Section 53 of the Code, no amount would be available / liable to be paid to persons other than resolution process cost, secured creditors and wages to workmen.
- (b) The Resolution Applicant proposes to pay Rs. 3,07,00,000/- (Rupees Three Crore Seven lacs only) to the various operational Creditors towards OC Debt, within 30 days after the approval of the Resolution Plan by the Adjudicating Authority and the payment shall be made in proportion to their OC Debt due to them as verified and admitted by the RP for the purposes of the CIRP, as per the details furnished hereunder

S. No.	Stakeholders	Claims Admitted (Rs.)	Amount proposed (Rs.)	% to Claims admitted
1	Workmen Dues –			
	a) Dues for 24 Months preceding ICD	1,31,51,138	2,54,893	1.94%
	b) Other Dues of Workmen	5,34,422	0	0.00%
2	Employees Dues:			
	a) Dues for 12 Months preceding ICD	4,52,98,192	6,00,000	1.32%
	b) Other Dues of Employees	15,90,869	0	0.00%
3	Operational Creditors- Statutory dues (Except EPFO)	44,77,55,775	26,00,000	0.58%
4	Operational Creditors- Other than Workmen, Employees and Statutory dues	25,62,44,746	12,00,000	0.47%
5	Contingent claims of GST Department	108,18,16,108	0	0.00%
6	Employees Provident Fund Organization	2,60,45,107	2,60,45,107	100.00%

Total	1,87,24,36,357	3,07,00,000	3.88%
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- (c) Since the GST Department has not submitted their claim and is not crystallized thereby falling under the category of Contingent Liability, no amount was proposed by the Resolution Applicant in his Resolution Plan.
- (d) Similarly, no amount is proposed by the Resolution Applicant in respect of the Contingent Liability of Rs. 992.82 Cr as advised by the Resolution Professional about the Claim submitted by M/s Swan LNG Private Limited which was rejected by RP. In view of the pending IA filed by the creditor, this amount was to be considered as Contingent Liability as per the information provided by RP. Even though, the point was covered in the Resolution Plan, no amount was proposed by the Resolution Applicant.
- (e) The amount payable to the Operational Creditors being the Workmen and Employees from the Upfront Cash under this Resolution Plan shall be given priority in payment over the Financial Creditors. The payment set out in the Financial Plan (as the case may be), shall be deemed to be in full and final settlement / discharge of the liabilities pertaining to the Workmen Dues and Employees Dues in compliance with the Applicable Law. In the event, any more Claims for Workmen Dues and Employees Dues are admitted or required to be paid, the Workmen and Employees having such Claims shall be entitled to receive only from the amounts agreed to be paid under this Resolution

Plan as per their relevant category and the amounts payable to towards other Workmen Dues and Employees Dues (respectively) shall stand adjusted accordingly on proportionate basis.

- (5) The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:
- (a) **Regulation 38(1)(a) of the CIRP Regulations 2016:** The Plan provides for payment of Rs. 3,07,00,000/- to Operational Creditors to be paid in priority to any other creditors of the Corporate Debtor. **(Para 3.3 and 3.4, Page No. 36 – 42 and Appendix – I, Page No. 47 - 49 of the Resolution Plan Document).**
 - (b) **Regulation 38 (1) (b):** Declaration by the Resolution Applicant that there are no dissenting Financial Creditors. SREI Equipment Finance Limited is the sole Financial Creditor and an amount of Rs. 29,88,00,000/- is proposed to be paid within 30 days of the NCLT Order. **(Para 3.7, Page 43 – 45 and Appendix – I, Page no. 47 – 49 of the Resolution Plan Document):**
 - (c) **Regulation 38 (1A):** 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. **(Appendix – I, page No. 47 – 49 of the Resolution Plan Document).**
 - (d) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of its related party has either failed or contributed to

the failure of the implementation of any other approved Resolution Plan. (**Para 9.5.4, page 75 of the plan**).

- (6) ***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*”.
7. 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 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.***
- 8 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”.

9. 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 financial 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.....”

10. The present resolution plan, when tested on the touch stone of the afore-stated rulings, we are of the view that the instant resolution plan *subject to our observations as below*, satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations.
11. That apart, by way of a reasoned order we dismissed IA 1431/2023 filed by the 2nd Respondent. Further, we also found that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.
12. Our Observations.
It is pertinent to state herein that, some operational creditors viz SWAN LNG Private Limited, Aayans Construction, Bhushan Kumar and Aditya Construction have filed applications bearing IA Nos 599/2023, IA 1280/2023, IA 1281/2023 and IA 1282/2023, assailing the communication of the Resolution professional rejecting their claims. This Tribunal after condoning the delay in filing the claims before the Resolution Professional, disposed of the above IA's, 1280/2023, IA 1281/2023 and

IA 1282/2023 with a direction to the Resolution Professional to examine the same as per law and communicate the outcome to the Applicants within two weeks. However, decision if any taken pursuant to our order dated 28.08.2023, has not been placed before us by the Resolution Professional.

13. In so far as IA 599/2023 filed by SWAN LNG Private Limited, is concerned, this Tribunal had specifically ordered that as against the claim of the Applicant for Rs. 157,10,10,127/-, a sum of Rs. 95,64,00,000/- (Rupees Ninety Five Crores sixty four lakhs only) to be admitted by the Resolution Professional. The Resolution Professional later reported that the order of this Tribunal has been complied with.
14. Here it is also pertinent to note that the present application for approval of resolution plan has been filed on 07.08.2023 i.e. before the disposal of all the above interlocutory applications.
15. Therefore, in the above backdrop we are of the opinion that the admitted claim of the Applicant in IA 599/2023 cannot be allowed to be frustrated on account of non-inclusion of the said claim in the Resolution Plan under the category of ‘admitted claims’ by the Resolution Professional. We also noticed from the plan that provision has been made to pay 0.47 % of the claims admitted, in respect of other admitted claims.
16. Therefore, in the above backdrop, we direct that a provision for payment of the claim of the Applicant in IA 599/2023 be made in the plan at the same percentage i.e. 0.47% of admitted claim amount and accordingly,

the amount to be allocated for financial creditor needs to be worked out after making the provision as aforesaid.

17. In so far as the claims of the Applicants in IA No. IA 1280/2023, IA 1281/2023 and IA 1282/2023, since neither side has placed any material before this Tribunal as to the fate of the said claims post passing order of the order on 28.08.2023, it is hereby held that in the event if their claims are admitted, let the same also be placed by the Resolution Professional before the COC for its approval.
18. This exercise of placing the claims of the Applicants in all the above IAs , before the COC shall be completed within a period of 7 days from the date of order in this IA, enabling the COC to take note of the above claims and make necessary provision in respect of these claims within a period of seven days there after. We make it clear that default in complying the same in the manner stated above, the present resolution plan stands rejected.
19. Therefore, subject to the compliance of our observations as above, we hereby approve the revised Resolution Plan submitted by Mr. Akumalla Rajendra, Mrs. Alur Vijay Lakshmi in consortium with M/s Ramalingam Construction Company Private Limited (“**Successful Resolution Applicant**”) along with annexure, schedules forming part of the Resolution Plan annexed to the Application subject to above direction 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) It is hereby ordered that the deposit amount of Rs.3,40,00,000/- made by the Resolution Applicant shall remain as performance Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off 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). Accordingly, IA 1285/2023 stands disposed of.

SD/-

(Charan Singh)
MEMBER (TECHNICAL)

SD.-

DR N.V. Ramakrishna Badarinath)
MEMBER (JUDICIAL)

NCLT HYD-1
I.A.No.1285 of 2023
IN
CP (IB) NO.149/7/HDB/2022
DOO: 08.12.2023

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