

SL. No.6

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

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 10.01.2024 AT 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>IA (IBC)/1947/2023 in Company Petition IB/324/2022</b>
<b>NAME OF THE COMPANY</b>	<b>Sindhanur Gangavathi Tollways Pvt Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>IDBI Bank Limited</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Sindhanur Gangavathi Tollways Pvt Ltd</b>
<b>UNDER SECTION</b>	<b>7 of IBC</b>

**ORDER**

Orders Pronounced, recorded vide separate sheets. In the result, this petition is allowed

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

Basha

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, COURT - II**

**I.A. No.1947 OF 2023  
in  
CP(IB) NO. 324/7/HDB/2022**

*[U/s. 30(6) and 31 of the I&B Code, 2016 r/w Regulation 39(4) of the IBBI (IRPCP)  
Regulations, 2016]*

**In the matter of  
M/s.SINDHANUR GANGAVATHI TOLLWAY PRIVATE  
LIMITED**

**Between:**

Mr. Raghu Babu Guntur  
Resolution Professional of  
M/s.Sindhanur Gangavathi Tollway Private Limited  
1<sup>st</sup> floor, Golden Heights  
Plot No.9, Sector-III, HUDA Techno Enclave  
Opp: Raheja Mindspace, Raidurg  
Hyderabad – 500 081

.... Applicant /  
Resolution Professional

**Order Pronounced on : 10.01.2024**

**Coram:**

**Hon'ble Shri Rajeev Bhardwaj, Member (Judicial)  
Hon'ble Shri Sanjay Puri, Member (Technical)**

**Parties / Counsels Present:**

For the Applicant : Mr.VVSN Raju, Advocate

**[PER : BENCH]**

**ORDER**

1. The instant Application bearing IA No. 1947/2023 is filed on behalf of the Resolution Professional of M/s. Sindhanur Gangavathi Tollway Private Limited/Corporate Debtor, for short '**CD**' under Section 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016, r/w regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking approval of the Resolution Plan submitted by M/s. Kalyan Toll Infrastructure Limited, for short '**SRA**' as duly approved by the Committee of Creditors, for short '**COC**', at their 15<sup>th</sup> meeting held on 01.11.2023 with 100% voting share.
2. The Company Petition CP(IB) No. 324/7/HDB/2022 filed by IDBI Bank Limited u/s. 7 of IBC, 2016 was admitted by the Adjudicating Authority, vide Order dated 08.12.2022 and ordered commencement of CIRP against the CD, M/s. Sindhanur Gangavathi Tollway Private Ltd., by appointing Mr. Raghu Babu Gunturu as the Interim Resolution Professional, for short '**IRP**'. Later, in the 1<sup>st</sup> COC Meeting held on 19.01.2023, the IRP was confirmed as Resolution Professional, for short '**RP**'.

3. Public Announcement was issued on 23.12.2022 in Financial Express, Bengaluru Edition and Hosadigantha, Kannada Edition where the Corporate Debtor is operating and in Financial Express, Hyderabad Edition and Mana Telangana, Hyderabad edition, where the Corporate Office of the Corporate Debtor is situated, calling for claims from the stakeholders.
4. On receipt of claims from the Creditors pursuant to public announcement dated 23.12.2022, the RP constituted the Committee of Creditors, for short 'COC' on 12.01.2023 comprising of the following Financial Creditors:

<b>S.No.</b>	<b>Name of the Financial Creditor</b>	<b>Voting Share %</b>
1.	Canara Bank	51.91%
2.	IDBI Bank Ltd.	26.73%
3.	IFCL	21.36%
Total		100%

5. Subsequently, claims were received from one Financial Creditor and two Operational Creditors. As the Financial Creditor is a related party to the CD, there was no change in the COC and their voting share. Subsequently, another claim was received from the EPFO, RO, Bellary. Initially, the claim of EPFO was admitted partially and after receipt of verifiable proof, the revised claim of EPFO was admitted

and the revised list of Creditors (version-4) was filed before this Adjudicating Authority.

6. It is averred that the RP conducted a total of Fifteen (15) meetings of the COC during the CIRP. The Applicant issued Form-G on 09.02.2023. In view of requests from the Prospective Resolution Applicants (PRAs), with the approval of COC, the last date for receipt of EOI was extended upto 13.03.2023.
7. In response, Expression of Interest (**EOI**) were received from the following 12 PRAs.
  - i. Kalyan Toll Infrastructure Limited
  - ii. Sumati Projects Limited
  - iii. ANPR Projects Private Limited
  - iv. Derit Infrastructure Private Limited
  - v. AGROH Infrastructure Developers Private Limited
  - vi. Green Energy Wind Corporation Pvt. Ltd. & Shri Syed Fahad (Consortium)
  - vii. GVPR Engineers Limited
  - viii. Prakash Asphaltings & Toll Highways (I) Limited
  - ix. KP Advisory Services LLP
  - x. Amrutha Constructions Private Limited
  - xi. Innopark (India) Private Limited
  - xii. Ramalingam Construction Company (P) Limited

8. A copy of the Information Memorandum filed by RP on 10.03.2023 is placed as **Annexure-10 of the application.**
9. After approval of the COC at their Meeting held on 20.03.2023, the RP issued Request for Resolution Plan (RFRP) and Evaluation Matrix (EM) alongwith the Information Memorandum (IM) to all the 12 PRAs on 01.04.2023 with the last date for receipt of resolution plans being 01.05.2023. As on the last date of receipt of resolution plans, one Resolution Plan was received from M/s.Amrutha Constructions Private Limited (M/s.ACPL). At the requests of PRAs, the time was extended upto 11.05.2023. As on the extended period, except M/s.ACPL's revised Resolution Plan, no other Resolution Plans were received.
10. M/s. Kalyan Toll Infrastructure Limited (KTIL) one of the PRAs requested to fix a cut-off date from which onwards, the toll revenue surplus would be available to the Successful Resolution Applicant (SRA) instead of the COC as mentioned in the RFRP, also requested for extension of the last date for receipt of resolution plans by 30 days and to accept the Earnest Money Deposit (EMD) by way of Bank Guarantee also, instead of Cash/DD as mentioned in the RFRP. M/s.Prakash Asphaltings & Toll Highways (PATH)

also requested for extension of the last date for receipt of the resolution plans by 15 days.

11. After the due deliberations, COC in their 5<sup>th</sup> meeting held on 15.05.2023 and adjourned 5<sup>th</sup> meeting held on 17.05.2023 has accepted to approve the modifications to RFRP dated 24.03.2023 and passed the resolutions through e-voting on 02.06.2023 modifying the RFRP and extended the last date to submit the resolution plans upto 10.07.2023. As on the last date i.e. on 10.07.2023, three Resolution Plans were received from the following three PRAs:

- i. Kalyan Toll Infrastructure Limited
- ii. M/s.Amrutha Constructions Private Limited; and
- iii. M/s.Prakash Asphaltting and Toll Highways (India) Limited

12. After detailed discussions and negotiations with the Resolution Applicants during various COC Meetings, COC and the RP requested all the three PRAs to submit their improved plans by 06.09.2023.

13. The RP had filed applications seeking for exclusion and extension of CIRP period, which were approved by this Adjudicating Authority and after exclusion and extensions, the CIRP period was extended upto 16.12.2023.

14. Again, in the 14<sup>th</sup> COC Meeting held on 20.10.2023, the COC opined that the Resolution Plans submitted by the Resolution Applicants were not commercially viable and the same needs to be revised and informed the three PRAs to submit their revised resolution plans.
15. In the 15<sup>th</sup> COC Meeting held on 01.11.2023, out of the three resolution applicants, only M/s.Kalyan Toll Infrastructure Limited has submitted its revised plan and the other two PRAs did not revised their plans, which were presented to the COC on 01.11.2023 for their approval.
16. In the 15<sup>th</sup> COC Meeting held on 01.11.2023, the COC discussed upon the compliance, feasibility and viability of the final resolution plans as submitted by the three PRAs and put for e-voting. As per the e-voting, the COC with 100% voting rights approved the Resolution Plan submitted by M/s.Kalyan Toll Infrastructure Limited. The Applicant further submits that the approved Resolution Plan meets all the requirements envisaged under the Code and Rules/Regulations made thereunder.
17. On 21.11.2023, the RP issued 'Letter of Intent' (**LoI**) to the SRA and advised to furnish an unconditional and irrevocable performance guarantee of 15% of the Resolution Plan amount. In turn, the SRA submitted Performance Bank Guarantee No.07033GPGE2332801 for



Rs.10,54,38,284/- (Rupees Ten Crores Fifty Four Lakhs Thirty Eight Thousand Two Hundred and Eighty Four only), which was valid upto 20.11.2024, with acceptance of LOI. A copy of the same is filed **at page nos.106 to 109 of the application.**

18. The details of the approved Resolution Plan submitted by the SRA is as follows:

- i. M/s. Kalyan Toll Infrastructure Limited (KIL) is a flagship company of “Kalyan Group”, which is promoted by Mr. Tikamchand Garg & Mr. Rajesh Garg based in Indore having wide experience in the field of construction for more than 43 years. The company is engaged in business of EPC Contractor (mainly in infrastructure) and also undertaking & executing BOT Road Projects, mainly in Maharashtra & Gujarat. The Group’s Order Book 11 hybrid Annuity Projects. Out of 11 HAM projects, 2 are structured under KTIL’s standalone Balance Sheet and the other road projects are being executed through separate SPVs. The Company has been registered for construction works with Public Works Department of Maharashtra and Madhya Pradesh as ‘A’ category contractor, which enable the company to bid for any amount of work. The company is carrying on the business of Road Projects, Railway Projects,

Bridges, ROB and Flyover Projects and Water Supply Projects.

- ii. The distribution of the Resolution Plan amount submitted by M/s.Kalyan Toll Infrastructure Limited, are as follows:

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	0
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	0 26204	0 26204	0 7000	0 26.71%
		<b>Total[(a) + (b)]</b>	<b>26204</b>	<b>26204</b>	<b>7000</b>	
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-	6020	4521	0	0

**National Company Law Tribunal, Hyderabad Bench, Court-II**

I.A. No. 1947/2023 in  
C.P.(IB) No.324/7/HDB/2022

**Date of Order: 10.01.2024**

		section (2) of section 21				
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	0	0	0	0
		<b>Total[(a) + (b)]</b>	6020	4521	0	0
3	Operational Creditors	(a) Related Party of Corporate Debtor	2294	1261	0	0
		(b) Other than (a) above: (i)Government (ii)Workmen (iii)Employees (iv) Others	35 67	29 42	29 0	82.86% 0
		<b>Total[(a) + (b)]</b>	<b>2390</b>	<b>1332</b>	<b>29</b>	
4	Other debts and dues		0	0	0	0
<b>Grand Total</b>			<b>34614</b>	<b>32057</b>	<b>7029</b>	

A copy of the Resolution Plan along with its annexures is filed at page **nos.15 to 75 of the application.**

- iii. The Term of the Resolution Plan and Implementation Schedule is as follows:

<b>Particulars</b>	<b>Rs. in lakhs</b>	<b>Timeline</b>
Upfront payment towards CIRP cost	Actuals	30 days
Payment to Secured Financial Creditors in full and final settlement of their dues	10,00,00,000	30 days
	60,00,00,000	180 days
Settlement of debts of Unsecured Financial Creditors	If any	30 days
Payment towards Workmen and Employees	If any	30 days
Payment towards Statutory Dues	29,21,894	30 days
Payment towards Operational Creditors (other than Workmen and Statutory Dues) and other Creditors	If any	30 days
Capex, Working Capital and other requirements	9,70,78,106	180 days
<b>Total</b>	<b>80,00,00,000</b>	<b>180 days</b>

**iv. Source of Funds:**

As on 31.03.2022, the Successful Resolution Applicant has a tangible networth of Rs.4,55,89,00,000/-. Besides, this, M/s.Kalyan Toll Infrastructure Limited as well as its Managing Director and Promoter have sufficient resources to induct more funds in the company to meet the proposed investment as envisaged in the Resolution Plan.

**v. Management of the Corporate Debtor:**

The implementation of the Resolution Plan until the final payment of Resolution Plan shall be supervised by the 'Monitoring Committee'. The COC shall constitute the 'Monitoring Committee' which shall comprise of (i) one representative of the Resolution Applicant; (ii) One representative of the COC and a Qualified member from the Financial Creditor (Secured); and (iii) Resolution Professional. On and from the Effective Date, the Reconstituted Board shall be responsible for daily affairs and operations of the Company/Corporate Debtor.

**vi. 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, for short '**Regulations**' and has submitted Form-H under Regulation 39 (4). **A copy of the Form-H is filed at page nos. 178 to 219 of the application.** It is submitted that the Resolution Applicant has filed an Affidavit pursuant to Section 30(1) of the Code confirming that they are eligible to submit the Plan under Section 29A of the Code and that the contents of the said Certificate are in order. The Fair Value and Liquidation

Value as submitted in Form-H is Rs.5658.64 lakhs and 4825.33 lakhs respectively.

19. In the above backdrop, we heard Mr. VVSN Raju, Learned Counsel for RP.

20. The Learned Counsel for RP submits that the Resolution Plan meets the requirement of Section 30(2) of the Code as under:

a) Provides for upfront payment of actual CIRP cost.

b) The Plan provides for payment of Rs.70,00,00,000/- within 180 days of the effective date, to settle the claims/debt of the secured Financial Creditors in full and final settlement, in the following tranches:

➤ Rs.10.00 crores within 30 days from the effective date

➤ Rs.60.00 crores within 180 days from the effective date

c) The plan provides for payment of Rs.29,21,894/- to the Statutory Dues.

- d) The plan provides for payment of Rs.9,70,78,106/- towards Capex, Working Capital and other requirements.
- e) There are no dissenting financial creditors as such the plan does not provide for payment to the dissenting Financial Creditors.

21. **Reliefs & Concessions:**

According to the Ld. Counsel for Resolution Professional, the Resolution Applicant has sought the reliefs/concessions as mentioned at page Nos.66 to 71 of the Resolution Plan. We have carefully examined the same. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. As regards to the reliefs sought, the Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful. The same view has been taken 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.8129/2019 with Civil Appeal**

**No.1554/2021 and 1550-1553/2021, decided on 13.04.2021.**

22. **In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018) decided on 05.02.2019,** 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”.

23. 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”.



24. The Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. in Civil Appeal No.8766-67/2019, decided on 15.11.2019**, 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”.

25. The Hon'ble Supreme Court of India, in the recent ruling in re **Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors. in Civil Appeal No.1811-1812/2022, decided on 03.06.2022**, 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.....”

26. Therefore, the resolution plan, when tested 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 found that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.
27. We therefore, hereby approve the Resolution Plan dated 15.11.2022 submitted by M/s. Kalyan Toll Infrastructure Limited, along with annexures, 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. If the Successful Resolution Applicant (SRA) fails to pay the Resolution Plan amount to the stakeholders within the timeline fixed in the Resolution Plan, the entire amount paid by the SRA shall be forfeited.
- iv. It is hereby ordered that the Performance Bank Guarantee furnished by the Resolution Applicant shall remain as performance Bank 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.
28. Accordingly, **IA 1947/2023 in CP(IB) No.324/7/HDB/2022** stands disposed of.

**Sd/-**

**SANJAY PURI**  
**MEMBER (TECHNICAL)**

**Sd/-**

**RAJEEV BHARDWAJ**  
**MEMBER (JUDICIAL)**