

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

**I.A. No.9/2024  
in  
CP(IB) NO. 378/7/HDB/2022**

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

**In the matter of  
M/s. Virtual Energy Private Limited vs. Nagai Power Private Limited**

Mr. Krishna Komaravolu  
Interim Resolution Professional  
M/s.Nagai Power Private Limited  
7-1-214, Flat No.401, Vamsikrishna Apartments  
Dharam Karan Road, Ameerpet  
Hyderabad – 500 016



.... Applicant/Interim Resolution Professional

**Order Pronounced on : 29.07.2024**

**Coram:**

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

**Parties / Counsels Present:**

For the Applicant : Mr. Krishna Komaravolu, IRP  
Mr. Maharshi Viswaraj, Advocate

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[PER : BENCH]

ORDER

1. The instant Application bearing IA No.9/2024 has been filed by the Interim Resolution Professional (**IRP**) of M/s.Nagai Power Private Limited (**CD**) under Section 30(6) 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.Smartgen Infra Private Limited (**SRA**) as duly approved by the Committee of Creditors (**COC**) at their 29<sup>th</sup> Adjourned Meeting held on 16.02.2024 which was concluded on 29.02.2024 with 100% voting share.
2. The Company Petition CP(IB) No. 378/7/HDB/2022 filed by M/s. Virtual Energy Private Limited (**FC**) u/s. 7 of IBC, 2016 was admitted by this Authority, vide Order dated 09.01.2023 and ordered commencement of CIRP against M/s. Nagai Power Private Limited by appointing Mr.Krishna Komaravolu as the Interim Resolution Professional. Since the appointment of Resolution Professional (**RP**) was deferred by the COC in all its meetings, the existing IRP has been performing the functions of RP from 18.02.2023 i.e. 40<sup>th</sup> day of the CIRP commencement date as per Regulation 17(3) of IBBI (CIRP) Regulations, 2016.



**Regulation 17(3) of IBBI (CIRP) Regulations, 2016 is reproduced below:**

*"Where the appointment of the Resolution Professional is delayed, the Interim Resolution Professional shall perform the functions of the Resolution Professional from the 40<sup>th</sup> day of the Insolvency Commencement Date till a Resolution Professional is appointed under Section 22 of IBC, 2016".*

3. After assuming charge as IRP, Public Announcement was issued in Form-A on 12.01.2023, inviting claims from the creditors of the CD. After collating / verifying the claims received, the IRP constituted the **COC** on 30.01.2023. Subsequently, upon verification and collation of the additional claims, the COC reconstituted on 16.04.2023 and again on 20.06.2023 with the following Financial Creditors:

S.No.	Name of the Financial Creditor	Claim Submitted (in Rs.)	Claim admitted (in Rs.)	Voting Share %
1.	REC Limited	9,64,84,59,793/-	9,64,84,59,793/-	65.87
2.	Indian Overseas Bank	2,42,70,40,627/-	2,42,70,40,627/-	16.57
3.	Union Bank of India	1,97,90,95,671/-	1,97,90,95,671/-	13.51
4.	Virtual Energy Private Limited	34,20,35,710/-	34,20,35,710/-	2.34
5.	Chintalapati Holding Private Limited	8,25,72,603/-	8,25,72,603/-	0.56
6.	Ilabs Hyderabad Technology Centre Private Limited	14,03,20,685	13,87,67,261	0.95%
7.	Madison Technology Private Limited	17,08,95,175/-	2,95,53,589/-	0.20
<b>TOTAL</b>		<b>14,79,04,20,264/-</b>	<b>14,64,75,25,254/-</b>	<b>100%</b>





4. IRP conducted a total of Thirty (30) meetings of the COC during the CIRP.
5. The IRP had filed IAs for extension of CIRP period from time to time and lastly, the CIRP period was extended upto 03.04.2024 by extending 30 days beyond 420 days.
6. The IRP appointed Valuers for valuing the Plant & Machinery, Land and Buildings and Securities & Financial Assets and appointed M/s. Sagar and Associates as the Transaction Auditor.
7. The IRP issued invitation for Expression of Interest, for short 'EOI' in Form-G on 10.03.2023 in Business Standard (English Daily) and Nava Telangana (Telugu Daily) in Hyderabad Edition and Makkal Kural (Tamil Daily) and Trinity Mirror (English Daily) in Madurai Edition newspapers, inviting the Prospective Resolution Applicants, for short 'PRAs', to submit their EOI, with the approval of COC. As the response is very meagre, with the approval of COC, the IRP published Form-G on five more occasions by fixing the last date to submit the EOI on various dates and lastly on 10.06.2023.
8. In response, Expression of Interests (EOI) were received from 12 PRAs and final list of PRAs was issued to the PRAs and COC on 30.06.2023. The IRP issued Request for



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Resolution Plan (RFRP) and Evaluation Matrix (EM) alongwith the Information Memorandum (IM) to all the PRAs on due receipt of Confidentiality Undertaking. With the approval of COC, the last date to submit the Resolution Plan was fixed as 20.07.2023, which was further extended upto 18.08.2023.

9. The IRP received Three Resolution Plans from three Prospective Resolution Applicants and placed before the 10<sup>th</sup> COC meeting held on 23.08.2023.
10. The Registered Valuers appointed by the IRP submitted the Fair Value and Liquidation Value of the property as Rs.360,85,49,203/- and Rs.201,53,91,585/- respectively. **The detailed statement is filed at pg. no.15 of the application.**
11. After due deliberations and negotiations with the Resolution Applicants for improving their Resolution Plans, the Resolution Applicants submitted their revised Resolution Plans, which are as follows:



S.No.	Name of the Resolution Applicant	Original Plan Amount (Rs.)	Revised Plan Amount (Rs.)
1.	M/s.Smartgen Infra Private Limited	155,01,00,000/-	175,01,00,000/-
2.	PVP Ventures Private Limited	132,50,00,000/-	162,50,00,000/-
3.	Iiabs India Special Situations Fund	113,00,00,000/-	113,00,00,000/-

12. As the revised bids were not satisfactory, the COC decided to invite fresh EOI and directed the IRP to issue fresh Form-G.
13. Subsequently, the IRP issued fresh Form-G on 18.09.2023 by fixing the last date for submission of EOI was 25.09.2023. In response, four EOIs were received from four new applicants. 3 PRAs appearing in the list of first round expressed their unwillingness to participate further. The IRP issued the Final List of 13 PRAs vide email dated 03.10.2023 to all PRAs and COC and shared IM, RFRP and EM to the final PRAs.
14. The Transaction Auditor, M/s.Sagar & Associates, Chartered Accountants submitted their report for the period from 01.04.2019 to 09.01.2023 and COC directed that IRP not to file any application pertaining to the avoidance transactions as there is no specific conclusive findings/observations with regard to occurrence of the same.
15. At the request of the PRAs, the COC extended the last date for submission of Resolution Plans to 30.10.2023.
16. The IRP received the Resolution Plans from four PRAs, which were placed before the 15<sup>th</sup> COC meeting held on 01.11.2023.



S.No.	Name of the Resolution Applicant	Resolution Plan Amount (Rs.)
1.	Sherisha Technologies Private Limited	210,97,55,185/-
2.	Smartgen Infra Private Limited	200,01,00,000/-
3.	PVP Ventures Private Limited	172,00,00,000/-
4.	Ilabs India Special Situations Fund	123,00,00,000/-

17. During 16<sup>th</sup> to 20<sup>th</sup> COC meetings, after detailed negotiations, M/s.Smartgen Infra Private Limited submitted its proposal to revise the Resolution Plan amount to Rs.267 crs. payable over a period of 3 years.

18. During the 21<sup>st</sup> COC Meeting held on 11.12.2023 challenge mechanism was carried out wherein only one RA, M/s.Sherisha Technologies Private Limited participated and Five rounds of bidding were conducted. The summary of the bidding process is furnished at pg. no. 19 of the application.

19. There was no change in the Revised Financial Bids submitted by M/s.PVP Ventures Limited and Ilabs India Special Situations Fund. M/s.Smartgen Infra Private Limited submitted their final Revised Resolution Plan for an amount of Rs.318.90 crs. including interest on Deferred Payment.





20. When the COC decided to conduct the extended challenge mechanism process, no RA was interested to participate in it.
21. During the 29<sup>th</sup> meeting of COC held on 15.02.2024, after due deliberations, the three RAs except M/s.Smartgen Infra Private Limited confirmed that the Financial Proposal outlined in their Final Resolution Plan will remain unchanged, and they will not be increasing its value any further.
22. During the Adjourned 29<sup>th</sup> COC Meeting held on 16.02.2024, the IRP placed the updated comparative chart and Evaluation Matrix of the Four Resolution Plans as on 15.02.2024 and Score as per Evaluation Matrix of RFRP, which are placed **at pg. no.22 & 23 of the application respectively.**
23. Upon submissions of the final Resolution Plans, the same were placed before the COC for its consideration and the members of the COC evaluated the said Resolution Plans strictly as per the evaluation Matrix and Section 29A of the Code. After evaluating in terms of both qualitative and quantitative criteria and aggregate, the final Resolution Plans were put for e-voting, which was opened on 17.02.2024 and closed on 29.02.2024. During the e-voting, the COC in exercise of its commercial wisdom with



100% voting rights approved the Revised/Final Resolution Plan dated 08.01.2024 read along with Addendum dated 15.02.2024 and clarifications shared vide email dated 16.01.2024 submitted by M/s. Smartgen Infra Private Limited in favour of it in the adjourned 29<sup>th</sup> COC Meeting held on 16.02.2024. The Applicant further submits that the approved Resolution Plan meets all the requirements envisaged under the Code and Rules/Regulations made thereunder have been met.

24. The details of the approved Resolution Plan submitted by M/s.Smartgen Infra Private Limited, are as follows:

- i. M/s. Smartgen Infra Private Limited was incorporated during 2013 with CIN: U13100TG2013PTC086261 and is carrying on the business of wholesale trading in minerals, metals both imported and indigenous apart from infra related activities and is one of the leading suppliers of imported steam Coal to prestigious power generating plants in public and private sectors like TANGEDCO, TNPL, ITPCL etc. The Company is promoted by Mr.Murali Barathwaj, who is having 15 years of experience in trading of minerals including imported, metals and execution of infrastructure projects and is managed by the experienced Key Managerial Personnel.



- ii. The COC comprises of the following Financial Creditors and the distribution of voting share among them is as under:

S.No.	Name of the Financial Creditor	Voting %
1.	REC Limited	65.87
2.	Indian Overseas Bank	16.57
3.	Union Bank of India	13.51
4.	Virtual Energy Private Limited	2.34
5.	Chintalapati Holding Private Limited	0.56
6.	Ilabs Hyderabad Technology Centre Private Limited	0.95
7.	Madison Technology Private Limited	0.20
<b>TOTAL</b>		<b>100%</b>

- iii. The distribution of the Resolution Plan amount of Rs.320,60,00,000/- (Rupees Three Hundred Twenty Crores Sixty Lakhs only) submitted by M/s.Smartgen Infra Private Limited, are as follows:

(Rs. in crores)

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 1405.46	0 1405.46	0 311.90	0 22.19%
		<b>Total[(a) + (b)]</b>	<b>1405.46</b>	<b>1405.46</b>	<b>311.90</b>	<b>22.19%</b>
2	Unsecured 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 73.58	0 59.29	0 Nil	0 Nil
		<b>Total[(a) + (b)]</b>	<b>1479.04</b>	<b>1464.75</b>	<b>311.90</b>	<b>21.09%</b>
3	Operational Creditors	(a) Related Party of Corporate Debtor	61.67	57.93	Nil	Nil
		(b) Other than (a) above: i. EPFO ii. Other Statutory iii. Workmen/ Employees iv. Suppliers	2.06 5.75 0.98 375.33	2.06 5.75 0.98 120.78	2.06 0.04 0.98 0.92	26.89% 0.69% 100% 0.24%
		<b>Total[(a) + (b)]</b>	<b>445.79</b>	<b>187.50</b>	<b>4.00</b>	<b>0.90%</b>
4	Other debts and dues	CIRP Expenses	4.70	4.70	4.70	100%
	<b>Grand Total</b>		<b>1929.53</b>	<b>1656.95</b>	<b>320.60</b>	<b>16.61%</b>

A copy of the Revised Resolution Plan alongwith its annexures dated 08.01.2024 read alongwith clarifications shared vide email dated 16.01.2024 and addendum dated 15.02.2024 are filed as Annexure-A44 (colly.) at pg. nos.425 to 558 of the application.



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

Sl.No.	Particulars	Amount in Rs.
1.	Resolution Plan amount including interest	320,60,00,000/-
2.	Resolution Plan period	2 years
3.	Payment to various Stakeholders	
	a) CIRP Expenses	4,70,00,000/-
	b) Operational Creditors (Employees & Workmen)	97,69,185/-
	c) Operational Creditors (Suppliers)	91,43,949/-
	d) Operational Creditors (Statutory)	--
	e) Operational Creditors (EPFO)	2,10,86,866/-
	f) Financial Creditors	272,00,00,000/-
	g) Interest during the deferred period	39,90,00,000/-
	<b>Total</b>	<b>320,60,00,000/-</b>
4.	<b>Mode of Payment</b>	<b>Cash</b>
5.	<b>Payment Schedule :</b>	
	<b>(i) Upfront within 90 days from NCLT Order</b>	
	a) CIRP Expenses	4,70,00,000/-
	b) Operational Creditors (Employees & Workmen)	97,69,185/-
	c) Operational Creditors (Suppliers)	91,43,949/-
	d) Operational Creditors (Statutory)	--
	e) Operational Creditors (EPFO)	2,10,86,866/-
	f) Financial Creditors	82,00,00,000/-
	<b>UPFRONT TOTAL</b>	<b>90,70,00,000/-</b>
	<b>(ii) Deferred Payment to Financial Creditors</b>	
	At the end of Year 1	95,00,00,000/-
	At the end of Year 2	95,00,00,000/-
	<b>DEFERRED TOTAL</b>	<b>190,00,00,000/-</b>
	<b>UPFRONT AND DEFERRED TOTAL</b>	<b>280,70,00,000/-</b>
6.	Interest on Deferred Payment	39,90,00,000/-
	<b>GRAND TOTAL</b>	<b>320,60,00,000/-</b>

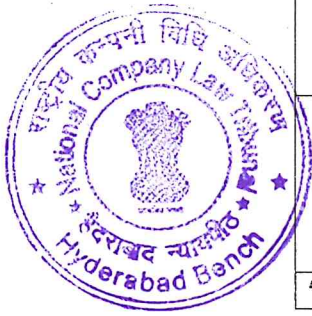


**v. Source of Funds:**

The SRA proposes to infuse the funds in the following manner:

Source	Amount Rs. in Crs.	Utilisation	Amount Rs. in Crs.
Equity Shares (Promoter Infusion)	10.00	CIRP Cost*	4.70
OCD's/similar instrument to OCD (Promoter Infusion)	67.20	Financial Creditors Upfront	68.50
Other Debt Instruments (For Working Capital Margin and Refurbishment Costs)	65.63	Operational Creditors	4.00
Operational Accruals and bridge funding (need based) (Financial Creditors staggered Payments and interest payments)	243.40	Working Capital Margin	17.63
		Refurbishment Cost	48.00
		Staggered Payments to Financial Creditors	200.00
		Interest on staggered payments to Financial Creditors	43.40
<b>Total</b>	<b>386.23</b>		<b>386.23</b>

\*Final figures would vary based on final CIRP Cost





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) as **Annexure A-49 at pg. nos.582 to 586 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 Affidavit are in order. The Fair Value and Liquidation Value as submitted in Form-H is Rs.360,85,49,203/- and Rs.201,53,91,585/- respectively.



25. Pursuant to the 'Letter of Intent' (**LoI**) issued by the IRP on 02.03.2024 to the Successful Resolution Applicant (SRA), M/s.Smartgen Infra Private Limited requesting to submit the Performance Bank Guarantee (**PBG**) for an amount of Rs.32,06,00,000/- being 10% of the Resolution Plan amount, the SRA submitted the following PBGs with acceptance of LOI.

S.No.	PBG No.	Issue Date	Valid upto	Amount
1.	101139000024	12.03.2024	12.03.2025	15,00,00,000/-
2.	101139000025	12.03.2024	12.03.2025	17,06,00,000/-
Total Amount				32,06,00,000/-

**Copies of the same are filed as Annexure-A46 at page nos.562 to 571 of the application.**

26. In the above backdrop, we have heard Mr. Krishna Komaravolu, Ld. IRP and Mr. Maharshi Viswaraj, Learned Counsel for IRP and perused the record. The Learned Counsel for IRP submits that the Resolution Plan meets the requirement of Section 30(2) of the Code as under:

i. Provides for payment of Rs.4.70 crores towards CIRP costs and any unpaid CIRP expenses above Rs.4.70 crores would be paid and adjusted from the proposed payments to Operational Creditors (Other than Employee and Workmen) and shall be paid in priority.

ii. The Plan provides for payment of Rs.4.00 crores to the Operational Creditors, as per the following details:

S.No.	Stakeholders	Claims Admitted (Rs.)	Amount Proposed (Rs.)	%
1.	Workmen and Employee Dues	97,69,185/-	97,69,185/-	100%



2.	Operational Creditors (Other Statutory Dues)	5,75,96,903/-	4,89,162/-	0.85%
3.	Operational Creditors – EPFO Dues	2,05,97,704/-	2,05,97,704/-	100%
4.	Operational Creditors – Other than Workmen, Employees and Statutory Dues	120,78,37,066/-	91,43,949/-	0.75%
<b>Total</b>		<b>129,58,00,858/-</b>	<b>4,00,00,000/-</b>	<b>3.09%</b>

- iii. The Plan provides for payment of Rs.311.90 crores to the Financial Creditors, as per the following details:

S.No.	Particulars	Amount (Rs.)	Interest (Rs.)	Total (Rs.)
1.	Upfront – 90 days from NCLT Order	82,00,00,000/-	--	82,00,00,000/-
2.	Deferred Payments			
(i)	Within one year from NCLT Order	95,00,00,000/-	26,60,00,000/-	121,60,00,000/-
(ii)	Within two years from NCLT Order	95,00,00,000/-	13,30,00,000/-	108,30,00,000/-

- iv. There are no dissenting Financial Creditors as such the Plan does not provide for payment to the Dissenting Financial Creditors.





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

The implementation of the Resolution Plan until the final payment of the Resolution Plan shall be supervised by the 'Monitoring Committee'. The COC shall constitute the 'Monitoring Committee' which shall comprise of (i) IRP / a Resolution Professional or any other professional with the approval of this Authority; (ii) one Representative/Nominee of Financial Creditor; and (iii) One Representative/Nominee of Resolution Applicant.

On and from the Effective Date, the Reconstituted Board shall be responsible for daily affairs and operations of the Company/Corporate Debtor.

**vi. Reliefs & Concessions:**

According to the Ld. Counsel for the Resolution Professional, the Resolution Applicant has sought the reliefs/concessions mentioned in Annexure A-47 at page Nos.572 to 578 of the Application. 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 the 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.*

- vii. *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”.



viii. 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”.

ix. 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”.



x. 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.....”

27. 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), 38(1B) and 39 of the Regulations. We also found that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.



28. It is to be noted that M/s.VR Commodities Private Limited had filed an IA No.844/2024 on 18.03.2024 seeking to admit their complete claim of Rs.30,41,78,846.76 as the IRP failed to take on record the total outstanding claim of the Applicant against the CD, which is pending for adjudication.
29. During the hearings held on 11.07.2024, the IRP informed that the SRA in the Resolution Plan has proposed at pg. 450 of the application, as follows:

“Notwithstanding anything contained elsewhere, the above proposed payment under clause 1.2 is being made towards full and final settlement of all the claims of CIRP Cost, Financial Creditors and Operational Creditors (whether or not their claims have been filed, admitted or not, ascertained or unascertained as on Resolution Plan submission date). In the event any claims are admitted by the Resolution Plan post Resolution Plan submission date, such claims shall also be deemed to stand fully settled for on account of above proposed payments under Clause 1.2 above, with pro-rata distribution amongst the admitted claims of each class of creditors”.

30. The IRP further informed that SRA expressed its wiliness to furnish an undertaking to remit an amount of Rs.13,07,928/- i.e. @0.756% on the balance amount of Rs.17,30,06,297/- in the event this Authority directs to allow the claim of M/s.V.R.Commodities Private Limited. Accordingly, an undertaking has been given by SRA in the form of an Affidavit, which is filed as **Annexure-A1** of the Memo dated 11.07.2024.





31. In view of the facts and circumstances mentioned above, we hereby approve the Resolution Plan submitted by M/s. Smartgen Infra Private Limited on 08.01.2024 read along with clarifications shared vide email dated 16.01.2024 and addendum dated 15.02.2024 and order as under:

- i. The revised 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 Guarantees furnished by the Resolution Applicant shall remain as performance Bank Guarantees 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.

32. Accordingly, IA 9/2024 in CP(IB) No.378/7/HDB/2022 is allowed and disposed of.



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

Syamala

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

  
02/8/24

Duty Registrar / Assistant Registrar / Court Officer  
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति  
CERTIFIED TRUE COPY

केस संख्या... (CP(IB) No. 378/7/HDB/2022  
निर्णय का तारीख... 29/7/24  
DATE OF JUDGEMENT...  
प्रति तैयार किया गया तारीख... 2/8/24  
COPY MADE READY ON...