



SL. No.2

**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 20.02.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC) (Plan)/2/2024 in CP (IB) No.712/9/HDB/2019
NAME OF THE COMPANY	Vaishnovi Infratech Ltd
NAME OF THE PETITIONER(S)	D.Srinivasa Rao
NAME OF THE RESPONDENT(S)	Vaishnovi Infratech Ltd
UNDER SECTION	9 of IBC

ORDER

IA (IBC)(Plan)/2/2024

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



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

**I.A. No.2 OF 2024
in
CP(IB) NO. 712/9/HDB/2019**

*[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
MR. D. SRINIVASA RAO Vs. M/s.VAISHNOVI INFRATECH
LIMITED**

Mr. Venugopal Kaspas
Resolution Professional of
M/s. Vaishnovi Infratech Limited
201, Vamshi Nivas, KPHB, Phase 5
Beside Malaysian Township
Hyderabad – 500 072

.... Applicant/Resolution Professional

Order Pronounced on : 20.02.2024

Coram:

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

Parties / Counsels Present:

For the Applicant : Ms. Mano Ranjani, Advocate
Mr. Venugopal Kaspas, RP

[PER : BENCH]

ORDER

1. The instant Application bearing IA No. 2/2024 is filed on behalf of the Resolution Professional of M/s. Vaishnovi Infratech Limited, for short '**CD**' under Section 30(6) and 31 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.Sudhakara Infratech Private Limited, for short '**SRA**' as duly approved by the Committee of Creditors, for short '**COC**', at their 9th meeting held on 07.11.2023 with 91.17% voting share.
2. The Company Petition CP(IB) No. 712/9/HDB/2019 filed by Mr. D. Srinivasa Rao, for short '**OC**' u/s. 9 of IBC, 2016 was admitted by this Adjudicating Authority, vide Order dated 15.03.2023 and ordered commencement of CIRP against the CD, M/s. Vaishnovi Infratech Limited, by appointing Mr. Venugopal Kasper as the Interim Resolution Professional, for short '**IRP**', who was subsequently confirmed as the Resolution Professional, for short '**RP**', in the 1st COC Meeting held on 19.01.2023.

3. It is averred that after assuming charge as IRP, when the Applicant visited the Registered Office of the CD to take control over the assets and records, it was found that the premises had been seized and locked by Union Bank of India, which was given as collateral security by one of the members of the Suspended Board for the loans availed by the CD.
4. It is averred that the property owned by CD, located at A5, Block No. A3, Utkarash Anuradha Residential Complex, Near VCA Ground, Civil Lines, Ward No.66, Sitabuldi, Nagapur District has been occupied by one Mr. Vinod Kumar, Ramdattamal Puniyani. On 29.04.2023, the Applicant issued a notice to Mr. Vinod Kumar to vacate the premises within 15 days and handover the possession and also filed an IA 1192/2023, which is pending for adjudication.
5. Public Announcement was issued in Form-A on 19.03.2023 in Financial Express, English Daily Newspaper and in Mana Telangana, Telugu Daily newspaper, inviting claims from the creditors of the CD.
6. In pursuance of the public notice dated 19.03.2023 by IRP, claims were received from various creditors, which were collected, collated and a list of creditors was prepared. The

summary of claims received and admitted is shown at page no.3 of the application.

7. After collating all the claims received and determining the financial position of the CD, the RP constituted the Committee of Creditors, for short 'COC', comprising of the following Financial Creditors:

S.No.	Name of the Financial Creditor	Claim admitted (in Rs.)	Voting Share %
1.	Union Bank of India	1,01,22,62,303/-	91.17%
2.	Punjab National Bank	9,80,06,821/-	8.83%
Total			100%

8. It is averred that the RP conducted a total of Nine (9) meetings of the COC during the CIRP. **A synopsis of the COC Minutes is filed as Annexure-A3 at pg. no.21 of the application.**
9. The Registered Valuers appointed by the RP submitted the Fair Value and Liquidation Value of the property as Rs.561.92 lakhs and Rs.419.36 lakhs respectively. **The detailed statement is filed at pg. no.4 of the application.**

10. The RP issued invitation for Expression of Interest, for short 'EOI' in Form-G on 15.07.2023, inviting the Prospective Resolution Applicants, for short 'PRAs', to submit their EOI, with the approval of COC, by fixing the last date to submit the EOI as 30.07.2023.
11. In response, Expression of Interests (**EOI**) were received from the following four PRAs:
 - i. S.V.Engineering Constructions
 - ii. Sudhakara Infratech Private Ltd.
 - iii. R.R. Edifice Pvt. Ltd.
 - iv. Samala Raja Sekhar
12. After approval of the COC at their Meeting held on 07.08.2023, the RP issued Request for Resolution Plan (RFRP) and Evaluation Matrix (EM) alongwith the Information Memorandum (IM) to all the 4 PRAs with the last date for receipt of Resolution Plans being 08.09.2023.
13. The RP received two Resolution Plans from the following two Prospective Resolution Applicants and placed before the 7th COC meeting held on 11.09.2023:
 - i. M/s.Sudhakara Infratech Pvt. Ltd; and
 - ii. M/s.S.V.Engineering Constructions.

After due deliberations and negotiations, M/s. Sudhakara Infratech Pvt. Ltd. agreed to reduce the implementation time from 180 days to 120 days and increased the resolution amount from Rs.4.88 crs. to Rs.5.00 crs.

14. The RP had filed an IA 1957/2023 seeking extension of CIRP period by 60 days, which was approved by this Authority on 14.12.2023, extending the CIRP period till 08.02.2024.
15. In the 9th COC Meeting held on 08.11.2023, the COC discussed upon the compliance, feasibility and viability of the final Resolution Plans as submitted by the 2 PRAs and put for e-voting. During the e-voting, the COC with 91.17% voting rights approved the Resolution Plan submitted by M/s.Sudhakara Infratech Private Limited alongwith the revised commercials proposed, vide letter dated 07.11.2023. The Applicant further submits that the approved Resolution Plan meets all the requirements envisaged under the Code and Rules/Regulations made thereunder.

A copy of the Resolution Plan alongwith the revised offers for Resolution Amount are filed as Annexure-A6 at pg. nos.24 to 70 of the application.

16. On 06.01.2024, the RP issued 'Letter of Intent' (**LoI**) to the SRA declaring M/s.Sudhakara Infratech Pvt. Ltd. as the SRA and to furnish the Performance Bank Guarantee for an amount of Rs.50 lakhs being 10% of the Resolution Plan amount. In turn, the SRA submitted Performance Bank Guarantee No.0008NDLG00194424, Dated 22.01.2024, for Rs.50,00,000/- (Rupees Fifty Lakhs only), which was valid upto 21.07.2024, with acceptance of LOI. **A copy of the same is filed as Annexure-A13 at page nos.104 to 110 of the application.**
17. The details of the approved Resolution Plan submitted by the SRA is as follows:
- i. M/s. Sudhakara Infratech Private Limited was incorporated on 08.02.2010 with CIN: U45200TG2010PTC066947. The Company is led by its Managing Director, Mr. Sudhakara Reddy Allam. The Company has significant experience in executing infrastructure development projects.
 - ii. The distribution of the Resolution Plan amount of Rs.5,00,00,000/- (Rupees Five Crores only) submitted by M/s.Sudhakara Infratech Pvt. Ltd., are as follows:

National Company Law Tribunal, Hyderabad Bench, Court-II

I.A. No. 2/2024 in
C.P.(IB) No.712/9/HDB/2019

Date of Order: 20.02.2024

(Rs. in lakhs)

Sl. No.	Type of Claim	Name of the Creditor	Amount Claimed	Amount Admitted	Amount Provided under the Resolution Plan	Amount Provided to the Amount admitted (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Secured FC	Union Bank of India	10122.62	10122.62	431.22	4.26%
2.	Unsecured FC	Punjab National Bank	980.07	980.07	7.79	0.51%
3.	Secured OC – Govt. Dues	State Tax - Maharashtra	668.47	660.97	28.16	4.26%
4.	OC – Govt. Dues	Commercial Tax Officer, Chhindwara Circle-1, MP	455.96	433.43	0.65	0.15%
5.	OC-Govt. Dues	Commercial Tax Officer, Panna Circle, Panna, MP	769.41	769.41	1.15	0.15%
6.	OC-Govt. Dues	Dy. Commissioner of Income Tax, Circle-8(1), Hyderabad	3528.66	3528.66	5.29	0.15%
7.	OC – Govt. Dues	Asst. P.F.Commissioner (Comp-517), Regional Office Hyderabad -II	3.73	3.73	3.73	100%
8.	OC-Employees	D. Srinivas Rao	20.08	19.52	0.03	0.15%
9.	OC-Others	GSR Ventures Pvt. Ltd. (Revised claim submitted)	780.89	780.89	1.17	0.15%
10.	OC-Others	Ganga Iron & Steel Trading Company Limited	524.95	524.95	0.79	0.15%
11.	OC-Others	Bhavya Cements Ltd.	10.00	10.00	0.02	0.15%
Total Claims			17864.85	17834.27	480.00	

A copy of the Resolution Plan along with its annexures are filed at page **nos.24 to 75 of the application.**

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

Particulars	Proposed Payment Amount (Rs.)	Amount provided to the Amount Claimed	Upfront 10% (Rs.)	Balance -90% on 4 instalments & Each EMI (Rs.)	Total 4 instalments (Rs.)	Remarks
CIRP Cost	20,00,000	100%	20,00,000	0.00	0.00	Upfront – within 30 days from the effective date
Provident Fund	3,72,939	100%	3,72,939/-	0.00	0.00	Upfront – within 30 days from the effective date
Financial Creditor - Secured	4,31,22,375	4.26%	43,12,237.50	97,02,534.38	3,88,10,137.50	Upfront-10% Balance 90% within a period of 4 months from the date of approval of the Resolution Plan by the Adjudicating Authority
Secured Operational Creditor – State Tax Maharashtra	28,15,710	4.26%	2,81,571.00	6,33,534.75	25,34,139.00	
Unsecured Financial Creditor	7,78,945	0.51%	77,894.50	1,75,262.63	7,01,050.50	
Operational Creditors (Government Dues)	7,09,726	0.15%	70,972.60	1,59,688.35	6,38,753.40	
Operational Creditors (Employees)	2,930	0.15%	293.00	659.25	2,637.00	
Operational Creditors (Other than Workmen and employees and Government Dues)	1,97,375	0.15%	19,737.50	44,409.38	1,77,637.50	
Total	5,00,00,000		71,35,645.10	1,07,16,088.73	4,28,64,354.90	

A copy of the Letter issued by M/s.Sudhakara Infratech Private Limited is filed at pg. nos.69 to 70 of the application.

iv. Source of Funds:

The entire Resolution Plan amount shall be paid by the Resolution Applicant from the “Internal Accruals/Company’s owned sources” of the Resolution Applicant. The Resolution Applicant is not borrowing funds either from the bank or from a third party to pay the resolution plan amount and resolve and revive the Corporate Debtor. The Turnover and the Net worth of the Resolution Applicant are sufficient to pay the Resolution Plan amount and revive the Corporate Debtor.

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 Financial Creditor; (ii) Resolution Professional; and (iii) one representative of the Successful 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. **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. 90-96 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. **Copies of Affidavit and Undertaking submitted by SRA are filed as Annexure-A11 at pg. nos.98-102 of the application.** The Fair Value and Liquidation Value as submitted in Form-H are Rs.5,61,92,087/- and Rs.4,19,35,597/- respectively.

18. In the above backdrop, we heard Ms. Mano Ranjani, Learned Counsel for the Resolution Professional and Mr.Venugopal Kaspas, Learned Resolution Professional and perused the record.

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

- a) The CIRP costs shall be paid at actuals and in priority. **Break-up of CIRP costs as on 31.12.2023 is filed as Annexure-A12 at pg. no.103 of the application.**
- b) The Plan provides for payment of Rs.431.22 lakhs to the sole secured Financial Creditor and Rs.7.79 lakhs to the Unsecured Financial Creditor.
- c) The Plan provides for payment of Rs.28.16 lakhs to the Secured Operational Creditor i.e. State Tax Maharashtra.
- d) The Plan provides for payment of Rs.3.73 lakhs to the Employees Provident Fund Organisation, Rs.7.10 lakhs to the other Govt. dues and Rs.1.97 lakhs to the other Operational Creditors.
- e) **Dissenting Financial Creditor – [Chapter VIII (ii) (e) at pg no.26 of the Resolution Plan]** It is averred in the Resolution Plan that in case there is any Dissenting Financial Creditor, the same would be paid their Liquidation Value as per the provisions of Regulation 38(1)(b) of the CIRP

Regulations in priority to the Financial Creditor who consented for the Resolution Plan.

- f) It is averred that there are nine (9) litigations pending, involving the CD in various courts which are detailed at pg. nos.29 to 30 of the Resolution Plan. The SRA shall actively pursue the cases filed both by and against the CD and any amounts recovered through these proceedings will be utilised to meet the working capital requirements of the CD.

20. **Reliefs & Concessions:**

According to the Ld. Counsel for the Resolution Professional, the Resolution Applicant has sought the reliefs/concessions as mentioned at page Nos.39 to 41 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 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.**

21. **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”.

22. 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”.

23. 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”.

24. 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.....”

25. 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.
26. We therefore, hereby approve the revised Resolution Plan submitted by M/s. Sudhakara Infratech Private 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.
27. Accordingly, **IA 2/2024 in CP(IB) No.712/9/HDB/2019** is allowed and disposed of.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Syamala