

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 16.02.2023 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB)N o.37/7/AMR/2022	Main Case	7 of IBC	Pridhvi Asset Reconstruction and Securitisation Company Limited Vs Andhra Cements Limited
	IA(IBC)/31/2023	30(6) of IBC	Nirav Kirit Pujara, RP of M/s Andhra Cements Limited Vs. Sagar Cements Limited (Resolution Applicant) & CoC (Proforma Respondents)

ORDER

IA(IBC)/31/2023:

Mr. M.Yateendra Raju, M.Anugrah Frey & M.Manmeet Singh, Advocates for the Applicant present. Mr.P.Vikram, Sr. Counsel for the CoC present. Ms. Kiranmayee, Standing Counsel for the Income Tax Department present.

IA(IBC)/31/2023 is allowed, vide separate orders.

Sd/-

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

RSN

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

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IA(IBC)/31/2023

IN

CP (IB)/37/7/AMR/2022

**Under Section 30(6) and 31(1) of Insolvency and Bankruptcy Code,
2016 Read with Regulation 39 (4) of Insolvency and Bankruptcy Board
of India (Insolvency Resolution for Corporate Persons) Regulations,
2016.**

In the matter of M/s. ANDHRA CEMENTS LIMITED

BETWEEN:

Mr.Nirav Kirit Pujara,
Resolution Professional for Andhra Cements Limited,
Deloitte India Insolvency Professional LLP,
27th Floor, Tower 3, One International Center,
Senapati Bapat Marg, Elphinstone (West),
Mumbai – 400013.

... Applicant/Resolution Professional

Date of pronouncement of Order: 16.02.2023

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant/RP: Mr. M.Yateendra Raju, M.Anugrah Frey &
M.Manmeet Singh, Advocates

For CoC : Mr.P.Vikram, Sr. Counsel

For Income Tax : Ms. Kiranmayee, Standing Counsel

Per: Justice Telaprolu Rajani, Member Judicial

ORDER

1. The Resolution Professional (in short the RP) in respect of M/s. Andhra Cements Limited (the Corporate Debtor) seeks approval of the Resolution Plan (in short the Plan) in this Application under Section 30(6) & 31(1) of Insolvency and Bankruptcy Code, 2016 Read with Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016.
2. The brief facts leading to the Application are as under.
 - i) This Bench, vide its order dated 26.04.2022 directed initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and appointed Ms.Nirav Kirit Pujara as Interim Resolution Professional (IRP).
 - ii) The IRP made a public announcement on 28.04.2022 in the newspapers, inviting claims from creditors/stakeholders of the Corporate Debtor fixing the last date of receiving the claims as 10.05.2022. Pursuant to the publication, IRP received claims from various creditors and published the first list of creditors of the CD on 17.05.2022, comprising 281 claims, aggregating to INR 1755,08,47,137/- and after verification of claims, an amount of INR 1310,61,99,367/- was admitted. The list of creditors was updated from time to time and published on the CD's website on various dates i.e., 23.06.2022, 12.07.2022, 12.08.2022, 14.10.2022 & 28.11.2022. As on 05.01.2023, the list of creditors of the CD is:

- a) The Applicant received claims from Two Financial Creditors for an amount of INR 1316,92,21,786/- out of which an amount of INR 1316,31,15,131.64/- was admitted.
- b) One claim was received from an unsecured related party Financial Creditor for an amount of INR 39,91,32,930/-, out of which an amount of INR 39,90,93,742.21/- was admitted.
- c) Ninety-Six (96) claims received from Workmen and Employees (operational creditors) of the CD for an amount of INR 1505,01,819.30/-, out of which 15 claims for an amount of INR 827,18,454.84/- were admitted.
- d) Fifteen (15) claims were received from Operational Creditors (Government Dues) of the CD for an amount of INR 248,85,10,744.75/-, out of which 10 claims for an amount of INR 116,06,67,784.16/- were admitted.
- e) Two Hundred and Seventy Six (276) claims were received from the Operational Creditors (other than Workmen and Employees and Government Dues) of the CD for an amount of INR 241,22,15,364.28/-, out of which 259 claims for an amount of INR 227,87,77,409.92/- were admitted.
- iii) Initially the IRP constituted CoC with three members i.e., Pridhvi Asset Reconstruction and Securitization Company Limited (PARAS) (86.13%), Union Bank of India (UBI) (11.25%) and

State Bank of India (2.62%). Later, pursuant to the assignment of debt on 16.06.2022 by SBI to PARAS, the CoC voting share between PARAS and UBI was 88.79% and 11.21%.

- iv) The 1st Committee of Creditors (CoC) meeting held on 26.05.2022, decided to appoint the Applicant as Resolution Professional (RP) and the CoC approved the appointment of two registered valuers i.e., RBSA Advisors and Adroit Appraisers & Research Pvt Ltd to provide the Liquidation value and fair value of the CD.
- v) In the 2nd CoC meeting held on 10.06.2022, the CoC approved the eligibility criteria for Prospective Resolution Applicants (PRAs). The Applicant made public announcement in Form G for inviting Expression of Interest (EoI) on various dates i.e., 17.06.2022, 02.07.2022 & 11.08.2022.
- vi) In the 3rd CoC meeting held on 07.07.2022, the Applicant appraised the CoC that in response to Form-G, Four (4) EoIs were received from the Prospective Resolution Applicants (PRAs) i.e., 1) Dalmia Cement (Bharat) Limited, 2) Sagar Cements Limited (SCL), 3) Jindal Poly Films Ltd., & 4) Khandwala Finstock Private Limited. The Applicant issued the final list of PRAs on 07.07.2022 and the information memorandum (IM) was issued on 09.07.2022.
- vii) In the 4th CoC meeting held on 15.07.2022, the CoC approved the criteria for Performance Guarantee, Bid Bond Amount and

Evaluation Matrix and fixed the last date for receipt of Resolution Plan as 19.08.2022. Accordingly, the Applicant circulated the Request for Resolution Plan (RFRP), Evaluation matrix along with Information Memorandum to the PRAs. As per the revised Form G published on 22.07.2022, the Applicant published the final list of PRAs on the CD's website and the last date for submission of resolution plans as per the initial Form G, on 11.08.2022. On 12.08.2022, Dalmia Cement (Bharat) Limited (DCL) sent an email to the Applicant, requesting for an extension for submission of resolution plans until 31.08.2022.

viii) In the 6th CoC meeting held on 30.08.2022, the Applicant informed the CoC members that a writ petition filed by the DCL before High Court of Andhra Pradesh, was pending adjudication. In such meeting, the Applicant informed the CoC that SCL submitted its resolution plan in a sealed envelope on 29.08.2022. The DCL made another request to extend the last date of submission of resolution by a period of 15 days. After due consideration of such circumstances and in the interest of value maximization, the CoC members passed a resolution to extend the last date of submission of resolution plan till 14.09.2022.

ix) In the 7th CoC meeting held on 13.09.2022, the CoC was apprised of the interim order dated 08.09.2022 passed by the High Court of Andhra Pradesh holding that "*there shall be no voting on any Resolution Plan(s) in the meeting of CoC, to be convened in the near future*". Further, the Applicant sought views

from the CoC qua extension of time for submission of resolution plans. Representatives of both CoC members declined to grant any further extension of submission of resolution plans and the same was informed to the DCL and DCL submitted its resolution plan on 14.09.2022. DCL filed another writ petition before the High Court of AP on 25.09.2022, wherein inter alia certain provisions of the Code were challenged and a full stay on the instant CIRP was sought. On 14.12.2022, the DCL withdrew all the writ petitions and the applications before the High Court and NCLT.

x) In the 8th CoC meeting held on 15.09.2022, the Applicant informed the CoC members that the resolution plans of both the PRAs (i.e., SCL and DCL) were received on 29.08.2022 and 14.09.2022. In such meeting, each resolution plan was opened separately in the presence of their representatives. The CoC informed that both **RAs** had submitted Bank Guarantees as a proof of funds as per the RFRP.

xi) In the 9th CoC meeting held on 21.09.2022, the CoC directed the Applicant to file an application seeking 90 days extension of the CIRP beyond 180 days. The Applicant filed an extension application before this Tribunal and the same was allowed by the Tribunal vide order dated 21.10.2022. In the same meeting, the CoC *inter alia* approved the appointment of Baker Tilly Business Advisory Services Private Limited ("**Baker Tilly**") to provide their assessment of eligibility of the **RAs**.

xii) In the 10th CoC meeting held on 13.10.2022, the CoC decided to undertake a challenge mechanism to decide upon and approve the resolution plan which would be in the interests of value maximization of the CD and the same was discussed and approved by the CoC. On 06.06.2022, the Applicant engaged BDO India LLP (“TRA Consultant”) to review and identify suspect transactions of the CD from 01.06.2016 to 26.04.2022 (Review Period).

xiii) In the 13th CoC meeting held on 07.11.2022, the Applicant invited the TRA Consultant to present their findings of certain transactions undertaken by the CD during Review Period. The TRA Consultant submitted its audit report on 24.11.2022 along with addendum on 30.11.2022. In view of the contents of the reports, the Applicant filed an avoidance application before this Tribunal.

xiv) In the 14th CoC meeting held on 05.12.2022, the CoC informed that there were no disqualifications for either RA. The representatives of SCL and DCL were again briefed on the challenge mechanism process by the Applicant. Thereafter, the challenge mechanism process was undertaken and upon conclusion, the Applicant requested both the RAs to incorporate appropriate changes in their financial proposal and submit revised resolution plans by 10.12.2022. Accordingly, SCL and DCL submitted their revised resolution plans on 10.12.2022 and

11.12.2022 respectively and the same were discussed in the 15th CoC meeting held on 15.12.2022 and the BDO Restructuring Advisory LLP, the CoC advisor gave a detailed presentation on the contours and evaluation of both the resolution plans to the CoC members.

- xv) In the 16th CoC meeting held on 22.12.2022, the CoC members sought to evaluate, consider and approve the resolution plan submitted by SCL and DCL. The CoC members deliberated on the feasibility and viability of the resolution plans. Post due deliberations, the Applicant informed the CoC members that the voting agenda *qua* approval of the revised resolution plans submitted by SCL & DCL will be put up for e-voting and e-voting lines will be open from 26.12.2022 to 02.01.2023 and further at request of the UBI, voting lines were extended till 17.01.2023. In the same meeting, the Applicant placed the agenda concerning Regulations 39B, 39C and 39D of the CIRP Regulations. A proposal was discussed to provide for contribution for meeting the difference between the amount required to meet liquidation costs and value of liquid assets available. To such end, the estimated amount (differential amount between liquid assets and liquidation costs) for a period of 12 months from February, 2023 was estimated to be INR 16.53 Crores. The CoC recommended the sale of the CD as a going concern. In the e-voting, the Resolution Plan submitted by the SCL (Successful Resolution Applicant) was approved by the CoC with 100% voting. The Letter of Intent (LoI) dated

13.01.2023 was sent to the Successful Resolution Applicant (SRA) in accordance with RFRP, which was accepted by the SRA on 14.01.2023. As per clause 1.9 of RFRP, in the event the Upfront Comfort Bank Guarantee is equal to or more than 10% of the Resolution Plan value, the same shall continue as the Performance Security for the SRA. In pursuance of the same, the SRA ensured by submission of the Upfront Comfort Bank Guarantee for an amount of INR 276,42,54,178/-.

xvi) The Applicant/RP submitted the Compliance Certificate in Form-H under Regulation 39(4) of the Regulations showing the compliances of the Plan with mandatory requirements under the Code. The Regulations and the Plan were approved by the CoC.

xvii) The following is the summary of the Plan/Restructuring Proposal:

a) The Plan offers an amount of INR **767,46,00,000/-** as detailed below:

S. No.	Category of Claimants	Amount admitted (INR)	Amount proposed to be paid under the Plan (INR)
1	CIRP costs	-	18,90,72,059
2	Secured Financial Creditors (Non-Related party)	1316,31,15,132	725,89,33,418
3	Employees and Workmen	8,27,18,455	8,27,18,455
4	Other Operational Creditors (except	155,79,34,468	9,34,76,068

	related party)		
5	Legal Corpus	--	1,00,00,000
6	Allotted Interim Management Costs	--	3,89,00,000
7	CoC advisor's cost	--	15,00,000
Total Resolution Amount (INR)			767,46,00,000

The timelines for the payment of the abovementioned debts of the Corporate Debtor are as follows:

S. No.	Particulars	Estimated Timeline
1	CIRP Expenses	Within 30 days from the date of NCLT Order.
2	Secured Financial Creditors (Non-Related party)	
3	Employees and Workmen	
4	Other Operational Creditors (except related party)	

- b) The RA is proposing to constitute Monitoring Committee consisting of Five (5) members for implementation of the Resolution Plan, as given below:-
- i. One Insolvency Resolution Professional appointed by the SCL (with the consent of Financial Creditors), shall be the Chairman of the Monitoring Committee.
 - ii. Two Authorised Representatives appointed by the Financial Creditors.
 - iii. Two Authorised Representatives appointed by Successful Resolution Applicant.

xviii) Hence this Application.

3. I have heard the Applicant and perused the Resolution Plan and related documents submitted along with the Application. The Resolution Plan submitted by the Resolution Applicant is found to be meeting all the requirements of the IBC, 2016 and more importantly Section 30 (2) of the IBC Code and Regulation 38 (1A) and applicable CIRP Regulations. It does not contravene any of the provisions of law. It caters to the interest of all the Stakeholders.

4. Section 30 (2) of the Code, as amended up to date, enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such plan –
 - a) provides for the payment of insolvency resolution process costs in the manner specified by the Board in priority to the payment of other debts of the corporate debtor;
 - b) provides for the payment of debts of the operational creditors in such manner as may be specified by the Board, which shall not be less than-
 - i. the amount to be paid to such creditors, in the event of liquidation of the corporate debtor under section 53; or
 - ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner

as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation - For the purpose of ready reference, the above provision is extracted here under:

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and
- (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

- c) Provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;
- d) The implementation and supervision of the resolution plan;
- e) Does not contravene any of the provisions of the law for the time being in force;
- f) Confirms to such other requirements as may be specified by the Board.

5. Section 30(4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.”

6. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan, as approved by the CoC, meets the above requirements.

7. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.

- c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
 - e) The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code.
8. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through registered valuers as INR 708.20 Crore while the Resolution Plan offers Rs.767,46,00,000/-.
9. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1-A), 38 (1-B) 38(2) & 38(3) of the Regulations. The Plan also provides for keeping the Company as a going concern and to operate in its normal course of business upon implementation of Resolution Plan. No objection has been filed by anyone in this regard.
10. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal, the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of the Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.

11. 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 (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by CoC, meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is 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.

12. **In CoC of Essar Steel** (Civil Appeal No.8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate

*Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

13. On the last adjournment i.e., 27.01.2023, when the matter stood posted for pronouncement of orders, Ms.Kiranmayee, Standing Counsel for the Income Tax Department made her appearance and submitted that the Income Tax Department has received a notice from the Applicant with regard to filing of this Application and sought time to respond on the said notice. On the next date of adjournment i.e., 09.02.2023, the Sr.Counsel Mr. Vikram, for the CoC submitted that the Income Tax Department need not be put on notice in an Application filed under Section 30(6) IBC, by a listed company, according to section 79 of the Income Tax Act, 1995 and that they would withdraw the notice sent to the Income Tax Department. The Standing Counsel Ms. Kiranmayee appeared on the next date of adjournment i.e., 16.02.2023 and submitted that the Income Tax Department has received a notice from the Applicant withdrawing the earlier notice and hence, the Income Tax Department does not have anything to submit in this case. She however sought this tribunal to make an observation that the issues pertaining to the Income Tax Act shall be dealt with by the concerned authorities of the Income Tax department.
14. In view of the discussions and the law thus settled, the instant Resolution Plan is found to be meeting the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

ORDER

- i. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, Income Tax Department 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. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Andhra Pradesh 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.
- iii. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- iv. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.

- v. 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.
- vi. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant.

Accordingly, IA(IBC)/31/2023 in CP (IB)/37/7/AMR/2022 is disposed of.

Dated 16.02.2023

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

