

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)**

**PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 07.05.2024 AT 01:00 PM

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(IB)/77/9/AMR/2021	Admitted	9 of IBC	Pattabhi Enterprises Vs. Blue Park Sea foods Private Limited
	IA(IBC)/407/2023	U/s 30(6) of IBC, 2016, R/w Reg 39(4) IBC (CIRP) Reg, 2016, R/w Rule 11 of NCLT	Sri. Rajesh Chillale, RP of Blue Park Sea foods Pvt. Ltd
	IA(IBC)/409/2023	U/s 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016	Mr Hemant Naga Kumar Merella Vs Sri. Rajesh Chillale, RP of Blue Park Sea foods Pvt. Ltd and Others

ORDER

IA(IBC)/407/2023:

Present: Mr. Rajesh Chillale, RP.

Orders pronounced. IA(IBC)/407/2023 is allowed and recorded in separate sheets.

IA(IBC)/409/2023:

Present: Mr. A. G. Sathyanarayana, Ld. Counsel for the Applicant.

None appears for the Respondent.

Orders pronounced. IA(IBC)/409/2023 is dismissed and recorded in separate sheets.

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

Date of order: 07.05.2024

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATHI BENCH**

IA(IBC)/409 of 2023
in
IA(IBC)/407/2023
in
CP(IB) No.77/9/AMR/2019

Under Section 60(5) of IBC, 2016 r/w Section 425 of Companies Act & Rule 11 of the
NCLT Rules, 2016.

In the matter of M/s Blue Park Sea Foods Pvt. Ltd.

Between:

Mr. Hemanth Naga Kumar Nerella
(Suspended Director),
5-85, Kurumaddali, Pamarru Mandal,
Krishna District, Andhra Pradesh.

... Applicant

A n d

- 1. Mr. Rajesh Chillale,**
(Resolution Professional of Corporate Debtor),
B-713, Western Plaza, OU, HS Darga,
Hyderabad- 500008,
Email: cirp.bluepark@gmail.com
- 2. State Bank of India,**
(Sole Member of CoC),
Stressed Assets Management Branch-I (SAMB-I),
5-9-76, 2nd& 3rd Floor, Prabhat Towers,
Opp. Amaravathi LHO, Chapel Road,
Gunfoundary, Hyderabad.
Rep. by its Authorised Officer.

..Respondents

Date of Order: 07.05.2024

CORAM:

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

Sd/-

Sd/-

Date of order: 07.05.2024

Counsels present:

For the Applicant : Mr.A.G.Sathyanarayana
For the Respondent : Mr. Bendi Ravi Teja

[Per : Rajeev Bhardwaj, Hon'ble Member (Judicial)]

ORDER

1. The present Application is filed by Mr. Hemant Naga Nerella (Suspended Director) of M/s.Blue Park Sea Foods Private Limited (**hereinafter referred as Corporate Debtor/CD**) under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the NCLT, seeking intervention in I.A.No.407/2023 in CP(IBC)/77/9/AMR/2021 and further rejection of the Resolution Plan of M/s.Kinneta Global Limited approved by the CoC in the meeting held on 10.10.2023.
2. **Petitioner's Case:**
 - 2.1. The Petitioner/Applicant is the Suspended Director of the Corporate Debtor, M/s.Blue Park Sea Foods Private Limited against which CIRP was initiated. Respondent No.2 is the sole member of Committee of Creditors (CoC) and Respondent No.1 was appointed as Resolution Professional (RP) in the 1st CoC meeting.
 - 2.2. On December 28, 2022, Respondent No.1 issued an invitation for Expression of Interest (EOI). The Petitioner vide email dated 05.01.2023 submitted that M/s.Blue Park Sea Foods Private Limited is an MSME Company and requested for documents for EOI submission, which the RP provided. On 13.01.2023, the Petitioner submitted EoI.

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- 2.3. The Petitioner has sent a demand draft of Rs.1 Crore as an advance payment towards the plan value to demonstrate his financial capability, in accordance with the Request for Resolution Plan (RFRP), despite it not being obligatory. However, the RP dismissed the petitioner's Resolution Plan without taking into account that CD is an MSME undertaking. Aggrieved by this decision, the Petitioner filed an I.A. No.132/2023 before this Authority to consider his Resolution Plan, which was granted by this Adjudicating Authority vide order dated July 26, 2023, directing the RP to place the Petitioner's plan before the CoC.
- 2.4. Despite this Authority's specific order, the RP rejected the Petitioner's Resolution Plan suo moto. Additionally, the RP sought a revision of the plan from the Petitioner and rejected the same on flimsy grounds through mail dated 14.10.2023, without presenting it to the CoC for consideration. The Petitioner has relied upon the decisions of the Hon'ble NCLAT in *Comp. App. (AT) (Ins.) No. 371 of 2022, Sharavan Kumar Vishnoi versus Upma Jaiswal & ors.* and *CA(AT) INS No. 565 of 2023, Epitome Components Pvt. Ltd. versus Divyesh Desai & Anr.*, to support his contention.
- 2.5. Regulation 36A (2) of the CIRP Regulations, 2016 also mandates the RP to publish Form-G. However, the RP has failed to upload Form-G on the IBBI website, constituting a gross violation and further in the minutes of the 9th, 10th, and 11th CoC meetings held on 08.08.2023, 18.09.2023, and 10.10.2023, respectively, the RP did not reconstitute the PRA list by adding the Petitioner's name. The CoC also remained silent and did not consider this Authority's order. These actions clearly shows that RP has colluded with the CoC and further deemed to have acted arbitrarily and

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wilfully, which clearly shows a deliberate disobedience towards the order passed in IA/132/2023.

- 2.6. In this regard, the Petitioner filed two applications IA/390/2023 and IA/391/2023 directing the 1st Respondent to place the Applicant's Resolution Plan before the CoC for their decision. The same was dismissed, granting liberty to the Petitioner to file an appropriate petition. Subsequently, the Petitioner filed a Contempt Application in Cont. A. No. 3 of 2023, which is pending for adjudication.
- 2.7. Meanwhile, out of the three Resolution Plans submitted by other resolution applicants, two were placed before the CoC. Among them, the Resolution Plan submitted by M/s. Kinneta Global Limited was approved by the CoC in the meeting held on 10th October 2023.
- 2.8. The Petitioner contends that according to the judgment of the Hon'ble Supreme Court in *Vijay Kumar Jain v. Standard Chartered Bank, (2019) 20 SCC 455*, it is the RP's responsibility to furnish the suspended director with copies of all Resolution Plans. However, this obligation was not fulfilled. The Petitioner requested the 1st Respondent to provide the resolution plan and valuation reports in view of the judgment in *Vijay Kumar Jain* case, which mandates that suspended directors be supplied with all Resolution Plans. This request was conveyed via email dated 10.11.2023. In response, the 1st Respondent deliberately misinterpreted the judgment and declined to share the documents.
- 2.9. Accordingly, the Petitioner prays to allow this Petition, as failure to grant relief will lead to severe prejudice and irreparable loss to the Petitioner.

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3. Case of Respondent No.1:

- 3.1. The Respondent No.1 denies the Petitioner's contention of wilful disobedience regarding compliance with the order in IA/132/2023. It is averred that in the 9th CoC meeting on 08.08.2023, the RP with CoC's consent, opened the sealed envelope containing the Petitioner's Resolution Plan and briefed its contents to the CoC. The CoC directed Respondent No.1 to submit the plan along with compliance evaluations. The RP evaluated the plan for compliance, shared findings with the CoC on 17.08.2023 and then with the Petitioner on 08.09.2023. The Petitioner submitted clarifications on 18.09.2023. During the 10th CoC meeting held on 20.08.2023, it was noted that the plan was non-compliant due to ineligibility of Petitioner under Section 29A of IBC. Further, clarifications were sought from the Petitioner, who responded on 23.09.2023.
- 3.2. Subsequently, on 26.09.2023, Respondent No. 1 sent an email requesting for the submission of the final Resolution Plan by 29.08.2023, considering compliance with the IBC, Regulations, Request for Resolution plans (RFRPs), and the observations of the CoC/RP mail dated 08.08.2023. Consequently, the Applicant submitted the final Resolution Plan on 29.08.2023 and fresh due diligence concerning the final Resolution Plan was circulated to the CoC on 07.10.2023.
- 3.3. During the 11th CoC meeting held on 10.10.2023, Respondent No.1 informed the CoC about several deviations from the Request for Resolution Plan (RFRP) in addition to those under the IBC. Subsequently, Respondent No.1 asked the CoC whether they were willing to amend or ease the non-compliant clauses of the RFRP

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concerning the Resolution Plan submitted by the Petitioner. The CoC, in exercise of their commercial wisdom, decided against modifying or relaxing the RFRP clauses. It is noted that as per Section 24(3)(b) of IBC 2016, the Petitioner participated in all CoC meetings, attended and signed the attendance sheet, as evident from the minutes of the CoC meetings. There is no wilful disobedience on the part of Respondent No.1 in complying with the Order passed by this Authority.

- 3.4. According to Section 30(2) and (3) of the IBC, Respondent No.1 presented the other resolution plans before the CoC on 10.10.2023 for its approval. It is submitted that with regard to approval of Resolution Plan, this Authority has limited jurisdiction to determine compliance with provisions. Similarly, the Applicant lacks locus standi in intervening this application and challenging the Resolution Plan's approval. Additionally, it is submitted that there was a technical error in submitting Form-G to the IBBI Portal, which was promptly rectified with the concerned authorities.
- 3.5. On the question of providing copies of all Resolution Plans to suspended directors, as per the *Vijay Kumar Jain* Judgment (supra), it is submitted that the same is distinguishable in the present case. Here, the suspended Board of Director is one of the Resolution Applicant who submitted his Resolution Plan. Therefore, he is not entitled to copies of all Resolution Plans, as it would result in unjust enrichment. Sharing all Resolution Plans with one of the Resolution Applicants would be prejudicial and would violate the confidentiality of sensitive information submitted by other Resolution Applicants. In support of his contention Respondent No.1 relied on judgement passed by this Authority in the matter of

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Prasad Raju MRV vs Vamsi Kambhamettu, RP, IA No.78 of 2023 in IA No. 1468 of 2022 in CP (IB) No. 682/07/HDB/2018, dated 06.02.2024.

- 3.6. It is claimed that the Respondent No.1 acted in accordance with the provisions of the Code and the regulations in fulfilling the duties assigned under the IBC.
4. The Respondent No.2 has not filed counter.
5. We have heard Learned Counsels of both the parties and have also gone through the entire records.
6. The Applicant wants to intervene in the Application for the approval of the Resolution Plan on the basis of his being the suspended director of the CD, claiming that he has every right to do so because his plan was wrongly rejected by the Respondent No.1, despite the direction of this Authority in I.A./132/2023 to consider his plan also. The Applicant is fighting tooth and nail to get his Resolution Plan approved at any cost and for this he has filed many IAs. After the rejection of the Resolution Plan, the Applicant filed IA/390/2023, wherein he has levelled allegations of contempt in wrongfully rejecting his Resolution Plan and IA/391/2023 was filed praying for interim relief, but this Authority vide order 20.10.2023 dismissed both the applications with the observations that the Applicant can file separate contempt application. Subsequently, the Applicant filed a Contempt Application No. 3 of 2023, citing various grounds for the wrongful rejection of their Resolution Plan. This Contempt Application

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has already been dismissed by this Authority vide order dated 03.04.2024. The Applicant in the present IA has also raised same pleas regarding the illegal rejection of his Plan. However, this Authority is not inclined to provide findings on this aspect again, as it has already addressed this issue in Cont. A. No. 3 of 2023.

7. Besides the alleged procedural lapses which have already been addressed in Cont. A. No. 3 of 2023, the Applicant has also alleged that being suspended director, he was not provided with the approved Resolution Plan of M/s Kinneta Global Ltd in view of the judgment of the Hon'ble Supreme Court in *Vijay Kumar Jain versus Standard Chartered Bank (2019)20 SCC 455*. However, the Applicant is not only a suspended director of the CD but also a Resolution Applicant. Sharing the resolution plans of other applicants with the Applicant could confer an undue advantage to him and potentially breach the confidentiality of sensitive information submitted by the other resolution applicants. This is virtually clash of interests and therefore, the decision in *Vijay Kumar Jain case supra* is distinguishable and accordingly not applicable to the present case.
8. The Applicant has also no locus standi to challenge the commercial wisdom of the CoC in approving the Resolution Plan submitted by M/s Kinneta Global Ltd. The Resolution Plans submitted were discussed in the presence of the Applicant in the 9th, 10th, and 11th meetings of the CoC held on 08.08.2023, 20.09.2023, and 10.10.2023, respectively. During these meetings, the Resolution Plan of the Applicant was presented to the CoC. Subsequently, the CoC sought clarifications on various eligibility criteria in accordance with regulations, RFRPs, and clauses 'c' & 'h' of sections 29A & 240 A of the IBC.

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9. Then, the Applicant submitted a revised final resolution plan on 29.09.2023, which was presented to the CoC on 7.10.2023. Additionally, during the 11th CoC meeting, Respondent No.1 sought input from the CoC on modifying/relaxing the non-compliant clauses of the RFRP concerning the revised Resolution Plan submitted by the Applicant. The CoC, exercising their commercial wisdom, decided against modifying or relaxing the RFRP clauses and subsequently rejected the revised Resolution Plan. It is also on record that the Resolution Plan submitted by another prospective applicant, M/s Kinneta Global Ltd., has been approved by the CoC with 100% voting.
10. It is settled law that the commercial wisdom of the CoC in voting or rejecting the Resolution Plans cannot be ordinarily interfered with by this Authority. It has been observed by the Hon'ble Apex Court, in *Vallal RCK versus M/s Siva Industries and Holdings Limited & Ors*, [(2022) *ibclaw.in 63 SC*];-

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*.

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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 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.....”

11. Linked to the commercial wisdom of the CoC is the locus standi of the Applicant to intervene in the approval of the Resolution Plan by this Authority in I.A. 407 of 2023. Although the Applicant is the suspended director and erstwhile promoter, he has no legal standing to seek intervention because of the above discussion. Here we may also profitably refer to the decision of the Hon'ble NCLAT in *Ramesh Kesavan versus CA Jasin Jose and anr. Company Appeal (AT) (CH) (INS.) No. 422/2023 (IA No. 1288 & 1289/2023)*, decided on 10.01.2024 where it was observed:

10. At this juncture, we address to the 'locus' of the Appellant challenging the approval of the Resolution Plan. It has been held in '*Ravi Shankar Vedam vs. Tiffins Barytes Asbestos and Paints Limited and Others*' that the Promoter / Shareholder of the Corporate Debtor Company has no locus to challenge the Plan, after its approval. Learned Counsel for the Appellant placed reliance on the Judgement of the Apex Court in '*M.K. Rajagopal v. Dr. Periasamy Palani Gounder*' in Civil Appeal No. 1682-1683 of 2022, in support of his submission that the Appellant, being a Promotor has the locus to challenge the approval of the Resolution Plan. The ratio of the Judgement in the matter of '*M.K. Rajagopal*' (Supra), is not applicable to the facts of the attendant case

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on hand as the subject matter of that case is that there was an established material irregularity in the approval of the plan and the issue of the 'locus' has not specifically been addressed to. Moreover, the Judgement of the Hon'ble Apex Court in the matter of '*Ravi Shakar Vedam*' (*Supra*) is dated 06.11.2023 and is later than '*M.K. Rajagopalan*' (*Supra*) which is dated 03.05.2022. The relevant Paragraphs of the NCLAT Judgement in '*Ravi Shakar Vedam*', pertinent to the issue of 'locus' of the Shareholder / Promoter in challenging the approval of the Plan is reproduced as hereunder:

"27. From the aforementioned observations, it is clear that once the affairs of the Corporate Debtor was handed over to the IRP, any action taken by Shareholder, even if a Majority shareholder, would not be maintainable.

28. Keeping in view, the scope and intent of the Legislature, and that the 'I & B Code, 2016' is a distinct shift from 'Debtor in Possession' to 'Creditor in Control' Insolvency System, where the Shareholders have a limited role and are only confined to co-operate with the Resolution Professional as specified under Section 19 of the Code, are entitled to receive the Liquidation value of its equity, if any, in accordance with Section 53 of the Code, we are of the considered opinion that a 'Shareholder' has 'no locus standi' to challenge the Resolution Plan."

12. Based on the aforementioned observations, findings and legal discussions, it is evident that the Applicant being the suspended director has no locus standi to intervene or challenge the proceedings before this Authority regarding the approval of the Resolution Plan.
13. Accordingly, there is no merit in the present application. As a result, the present application is dismissed with costs.

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SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH, AT MANGALAGIRI**

**I.A. No. 407 of 2023
IN
C.P (IB) No. 77/9/AMR/2021**

[under section 30(6) of the Insolvency and Bankruptcy code, 2016, read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016]

IN THE MATTER OF:

PATTABI ENTERPRISES

--- OPERATIONAL CREDITOR

Versus

BLUE PARK SEA FOODS PRIVATE LIMITED

--- CORPORATE DEBTOR

IN THE MATTER OF:

Mr. RAJESH CHILLALE

Resolution Professional,

Blue Park Seafoods Private Limited,

B-713, Western Plaza, OU Colony,

H S Darga, Manikonda, Hyderabad – 500089

--- APPLICANT/RESOLUTION PROFESSIONAL

Date of Order: 07.05.2024

CORAM:

SHRI RAJEEV BHARDWAJ – MEMBER (J)

SHRI SANJAY PURI – MEMBER (T)

Counsels Present:

For the Applicant : Mr. Bendi Raviteja

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ORDER
(Per : Bench)

1. The present Application has been filed under section 30(6) of the Insolvency & Bankruptcy Code, 2016 (“Code”) read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by Mr. Rajesh Chillale, RP/Applicant on behalf of M/s. Blue Park Seafoods Private Ltd. (‘Corporate Debtor), seeking approval of Resolution Plan submitted by Kineta Global Limited (‘successful Resolution Applicant’) and approved by the Committee of Creditors (‘CoC’) with 100% votes in its 11th meeting of CoC held on 10.10.2023.
2. Briefly stated, the facts as averred in the application are as follows:
 - a) That by an order dated 26.10.2022, this Adjudicating Authority had initiated Corporate Insolvency Resolution Process against the Corporate Debtor (M/s. Blue Park Seafoods Private Ltd) and Mr. Popat Mayur Rajendrakumar was appointed as the Interim Resolution Professional (IRP) in the matter.
 - b) That Public Announcement in the matter for inviting the claims from the Creditors of Corporate Debtor was made on 28.10.2022 by the IRP in Form- A in “Times Of India (English language) and in Rayalaseema Samayam (Telugu Language).

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- c) That, pursuant to Public Announcement dated 28.10.2022, the erstwhile IRP has inter-alia received and collated claims from the Creditors of the CD and constituted the CoC on 19.11.2022.
- d) That the first CoC meeting was held on 25.11.2022, where the IRP was not confirmed as the Resolution Professional. Hence, this Authority vide its order dated 14.12.2022 appointed the applicant as the Resolution Professional of the Corporate Debtor.
- e) That in 2nd CoC meeting held on 27.12.2022, RP apprised the CoC as to appointment of Two Registered Valuers on 15.12.2022. Further the Applicant apprised the CoC regarding Appeal preferred by Hemanth Naga Kumar Nerella (Suspended Director) against this Hon'ble Tribunal Admission Order before the Hon'ble NCLAT, Chennai bench. Pursuant to the approval of the CoC, the Applicant published on 08.12.2022 a public announcement in Form G inviting Prospective Resolution Applicant ("PRA") to submit EOI, in Business Standard and Eenadu All AP and All Telangana editions, which was republished on 18.01.2023. The last date for submission of EOI was 12.01.2023, which was further extended to 27.01.2023.
- f) That in 3rd meeting of CoC, held on 21.01.2023, the Resolution Professional apprised the CoC that an Application No. IA(IBC)/44/2023 under section 19(2) has been filed on 19.01.2023 before this Authority

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against the suspended directors for non-cooperation. Further, the applicant put forth a draft Request for Resolution Plan (“RFRP”) before the CoC members for their perusal. Also, Mr. Hemanth Naga Kumar Nerella (Suspended Director) apprised the CoC that power bill for the month of November 2022 and December 2022 are pending and asked the members to arrange for the payment of the same.

- g) That in the 4th CoC meeting held on 07.02.2023, the applicant placed before the CoC the provisional list of PRAs issued in terms of Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulation 36A (10), which included 7 applicants. Mr. Hemanth Naga Kumar Nerella (Suspended Director) was declared ineligible as he had not deposited the EMD and the CoC refused to relax the criteria. Further, in compliance with provisions of section 25(2) (h) of the Code read with Regulation 36A of the CIRP Regulations, the applicant placed before the CoC draft RFRP, which was approved with requisite majority. On 11.02.2023, the Applicant issued final list of PRA in compliance with Regulation 36A (12) of the CIRP Regulations, wherein 7 Applicants were declared eligible. The RP further apprised the CoC that RFRP, Evaluation Matrix & Information Memorandum was issued to all the PRA’s whose name was in the provisional list of PRAs on 06.02.2023. The last date for submission of Resolution Plans by the Prospective Resolution Applicants

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was 13.03.2023. Subsequently, Mr. Hemanth Naga Kumar Nerella (Suspended Director) deposited EMD of 1 Crore along with envelope titled Resolution Plan. The CoC refused to take his plan since his name was not there in the final list of PRAs and the same was intimated to him on 15.03.2023. The same has been captured in minutes of 5th CoC meeting held on 17.03.2023.

- h) That in the 6th CoC meeting held on 12.04.2023, the RP apprised the CoC that the envelope containing the Resolution Plans received from the PRAs had been opened in front of CoC members in the 5th CoC meeting & the respective Prospective Resolution Applicant the contents there of were taken on record. Hence, the Plans were put under the process of verification for compliance in terms provision of Sec 30 of Code. Further, the RP informed the members of the CoC that Mr. Hemanth Naga Kumar Nerella (Suspended Director) had approached the Hon'ble NCLT, Amaravati Bench, to challenge the rejection / non-acceptance of envelope containing Resolution Plan submitted by him, vide IA (IBC)No. 132 of 2023, which was allowed by this the Hon'ble Tribunal by Order dated 26.07.2023 and directed the Resolution Professional to place the Resolution Plan submitted by the applicant before the CoC for its consideration.

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- i) Furthermore, the CoC members were apprised that 180 days of CIRP will come to an end on 24.04.2023 and the Resolution Plans received are under active consideration and CoC may take time to conclude the appraisal of the Resolution Plans. After due discussion, the members of CoC decided to make an Application before the Hon'ble Tribunal seeking extension of CIRP by another 90 days under section 12 of the Code. The same was allowed by this Authority vide order dated 27.04.2023 in IA No. 167/2023 and the extended CIRP date to 22.07.2023.
- j) That in the 7th CoC meeting held on 22.05.2023, the transaction audit report was placed before the CoC. That the RP filed avoidance application under sections 49 and 66 of the Code, vide IA (IBC) No. 214 of 2023, against the Suspended Directors. On 13.07.2023, this Hon'ble Tribunal set the Respondents exparte. Consequently, IA(IBC) 321 of 2023 was filed by the Respondents to set aside the exparte order, which was allowed by this Authority on 09.11.2023 and posted IA(IBC) No. 214 of 2023 for 13.12.2023.
- k) That in 8th CoC meeting held on 16.06.2023, all the PRAs were invited to the CoC meeting separately & the respective PRA's presented the salient features of the Resolution Plan and after discussing about the IBC compliance etc.

CoC requested PRA's to:

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- Improve the plan amount significantly.
- Pay the actual CIRP costs.
- Reduce the tenure of plan

After detailed discussion the PRAs were given time up to 24.06.2023 for submitting the revised Resolution Plan. RP also placed before the CoC a table describing the pending receivables from ITC Ltd. and even after repeated reminders from the RP to release the payments. However, they stated that they used the amount for renewal of licenses and shifting of their stocks to their other godowns. Further submitted that the renewal of licenses/compliance of Non-conformities (NC's) are mandatory for export of their processed stocks, hence they spent those amounts. They spent the amount bonafidely to ensure their stocks are safeguarded. An IA(IBC) No. 362 of 2023 has been filed against ITC Ltd, directing them to remit the outstanding amounts amounting to Rs.17,83,847, which is still under consideration before this Authority. It is averred that notice No.SE/O/VJA/SAO/JAO-HT/R2A9/D No. 497/23 dated 24.04.2023 from electricity department for disconnection was received by the RP & the same was suitably replied vide RP letter dated 29.04.2023. Further, CoC advised RP to explore with Electricity Department for the waiver of minimum mandatory

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electricity charges from the date of disconnection of power. As the matter stood, M/s. Bayfresh Inc. filed an IA(IBC) No.223 of 2023, to consider the claim of USD 532,000 amounting to Rs.4,35,38,880/- as FC and consequently to re-constitute the Committee of Creditors by including the Applicant as a member of the Committee of Creditors with voting rights proportionate to the debt amount.

- l) That in the 9th CoC meeting held on 08.08.2023, the RP apprised the CoC members that a circular Resolution was moved on 13.07.2023 for approval of CoC for making an application before this Authority for exclusion of 116 days (20.03.2023 to 13.07.2023) from the CIRP Period which was lost due to Litigation in IA (IBC) No. 132 of 2023. CoC vide mail dated 15.07.2023 approved the Resolution with 100% voting rights. Consequently, IA (IBC) 312/2023 was filed and the same was allowed by this Authority vide Order dated 28.07.2023 and the new CIRP closure date is 15.11.2023. Further, with the consent of CoC the envelope, containing the Resolution Plan submitted by Mr. N. Hemanth Kumar (Suspended Director) was opened in the presence of Mr. Hemanth Kumar and other CoC members. A draft salient feature, compliance aspects of the Resolution Plan of Mr. Naga Hemanth Kumar were shared with CoC members for their observations. Findings & observations on the

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Resolution Plan of Mr. Hemanth Kumar was sent with a request to submit the clarifications by 18.09.2023. Mr. Hemanth Kumar submitted the clarifications on 18.09.2023.

- m) That in the 10th CoC meeting on 20.09.2023, with the consent of CoC, the envelope containing the Resolution Plan submitted by Mr. N. Hemanth Kumar (Suspended Director) was opened in the presence of Mr. Hemanth Kumar and other CoC members. RP vide email requested Mr. Hemanth Kumar to submit the final Resolution Plan keeping in view the compliance under IBC, CIRP regulations, RFRP dated 07.02.2023 and the observations of the CoC / RP mail dated 08.09.2023 made therein & requested to submit the same by 29.09.2023. Mr. Hemanth Kumar submitted the final Resolution Plan on 29.09.2023. RP shared with the CoC members the Revised Resolution Plans of all 4 Resolution Plans of all the PRA's 29A Due Diligence Report & Compliance certificates on the plans.
- n) Further, the successful resolution applicant had also submitted undertaking dated 24.06.2023, specifically in relation to CIRP Cost and another undertaking, dated 29.09.2023, acknowledging Resolution Plan and Financial Plan therein as unconditional and irrevocable in relation to certain clauses of the Resolution Plan.

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- o) On 10.10.2023, the RP convened the 11th CoC meeting. The Resolution Plan submitted by M/s Amaravai Acqa Exports Pvt. Ltd., in consortium with Cofoods Processors Pvt. Ltd. and M/s Kineta Global Limited, was placed before the CoC for voting. The Resolution Plan submitted by M/s Kineta Global Limited was approved by the CoC which was put for voting in 11th CoC meeting and voting timelines commenced on 12.10.2023 and concluded on 10.11.2023.
- p) It is pertinent to note that the Resolution Applicant deals in export and import of minerals and metals, generation of thermal and solar energy, having international presence. The Group has exported approximately 4.00 million tonnes of Iron ore/Iron ore pellets I Manganese ore to China's major steel producers. Further, Company's promoters and their team has good network with farmers since their COO has managed an Agri Complex with farmers' network of more than 50000 in Krishna, Godavari and Guntur districts. Therefore, due to their rich experience and knowledge bank Kineta Global Limited is confident of managing the farmers for uniform and continuous supply of raw material to factory. The Management of Kineta Global Limited intends to spread its wings into aqua complex by acquiring M/s. Blue Park Sea foods Pvt., Ltd.

Financial key features of the Resolution Plan are tabulated below:

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Category	Claim			Plan amount, priority & order of distribution	From the NCLT approval date		(% of recover in terms of amount claimed)
	Claimed	Admitted	Under verification		Within 45 days	Within 90 days	
Secured Financial Creditors	114.13	114.13	-	12.78	4.50	8.28	11.20%
Unsecured Financial Creditors	4.38	-	4.38	-	-	-	0.00%
Workmen dues	-	-	-	0.20	-	0.20	
Operational Creditors	5.41	1.27	4.14	0.05	-	0.05	0.92%
Statutory dues	27.40	0.09	27.32	0.05	-	0.05	0.18%
Total Payments to Creditors	151.33	115.48	35.55	13.08	4.50	8.58	9.30%
Insolvency Resolution Process costs				1.80	1.80	-	
Towards repairs & capital expenditure & working capital				6.00	-	6.00	
Total				20.88	6.30	14.58	

(Rs. In Crores)

Sources of funds	1 st tranche within 45 days from the date of NCLT order	2 nd tranche within 90 days from the date of NCLT order	Total
Available Cash/bank balance	0.50	0.58	1.08
Realisation of loans and advances	5.80	4.00	9.80
Associates / promoters	-	4.00	4.00
Total	6.30	8.58	14.88

q) It is averted that on 10.11.2023, Letter of Intent was issued by the Resolution Applicant to the Successful Resolution Applicant ("SRA"),

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i.e., Kineta Global Limited. The SRA has duly accepted and acknowledged the terms and conditions of the letter of Intent.

- r) It is averted that the Applicant in its capacity as the Resolution Professional states that the approved Resolution Plan meets all requirements envisaged under the Code and the Rules/Regulations made there under. In this regard the Applicant is hereby placing on record a Compliance Certificate dated 16th November 2023 in Form H, as required under Regulation 39(4) of the CIRP Regulations
- s) It is averred that the Applicant, has received Rs.1,00,00,000/- from the Resolution Applicant as and by way of EMD at the time of submission of Resolution Plan.
- t) In compliance with RFRP & Letter of Intent dated 15.11.2023, the Successful Resolution Applicant submitted the Performance Guarantee in the form of Bank Guarantee ("PBG") dated 15.11.2023 for an amount of Rs. 3,00,00,000/- pursuant to approval of Resolution Plan by the CoC in consonance with the terms of the RFRP & letter of Intent dated 15.11.2023. This PBG is valid up to 15.11.2024 & claim period up to 13.02.2025. Canara Bank is the Guarantor Bank and PBG is unconditional and irrevocable as per the terms of the RFRP. Since PBG has been received, the Applicant will take steps to refund the EMD amount of Rs. 1 Crore to the Successful Resolution Applicant.

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- u) It is averred that an IA for extension of 14 days of CIRP Period of CD has also been filed before this Authority on 14.11.2023 by the Applicant as the last date for closure for CIRP was 15.11.2023. The Applicant has preferred this Application in furtherance to his duties as the Resolution Professional of the CD and has complied with all the applicable regulations towards the discharge of my functions as the RP of the CD. The Applicant further submitted that the Resolution Plan has been approved by the requisite majority of the CoC.
- v) It is averred that the CoC with 100% voting power voted in favour of the Resolution Plan submitted by M/s. Kineta Global Limited under section 30(4) of the Code and the subject Application is filed for approval of Resolution Plan by this Authority. It is submitted that approval of Resolution Plan by the Authority is a condition precedent for implementation of the Resolution Plan and only after such approval the terms of Resolution Plan can be implemented. It is further submitted that, proceeding under the Code are to be conducted in a time bound manner with an aim to maximize the value of the assets of the CD. Hence this Application.
3. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.

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4. 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.

5. 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 the above provision is as under:

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- (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.
6. 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.”*
7. 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

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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.

8. 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.
9. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through registered valuers and the Liquidation value is Rs.9.97 crore and the Resolution Plan offers Rs.20.88 crore
10. 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

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implementation of Resolution Plan. No objection has been filed by anyone in this regard.

11. 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.
12. 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.
13. 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).”*

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, 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

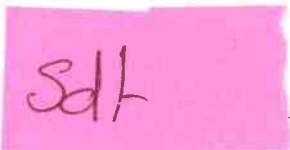
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obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

- 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)/407/2023 in CP (IB) No.77/9/AMR/2021 stands allowed** in terms of the aforesaid discussion.



SANJAY SURI
MEMBER (TECHICAL)



RAJEEV BHARADWAJ
MEMBER (JUDICIAL)

Reddy Pavani, LRA.