

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

*** **

I.A.No. 59/2021
IN
TCP (IB) No. 79/9/AMR/2019
IN
[CP (IB)No.32/9/HDB/2019]

**Under Section 30(6) of Insolvency and Bankruptcy Act, 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. KEI-RSOS MARITIME LIMITED**

Between:

Mr.V.Mahesh,
Resolution Professional of
M/s.Kei-Rsos Maritime Limited
#12/22, 7th Main Road,
RA Puram, Chennai - 600028.

... Applicant/Resolution Professional

And

M/s.Divetech Marine Engineering Services Private Limited,
B5/123 Safdurjung Enclave,
New Delhi – 110029.

.....Respondent/Resolution Applicant

Date of pronouncement of Order: 03.01.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant/RP : Mr. Chandrasen Reddy, Senior
Advocate along with
Mr.Ch.Srinivasulu, Advocate

For Respondent : Mr.G.Sita Rama Rao, Advocate

Per:

Justice Telaprolu Rajani, Member Judicial

ORDER

1. The Resolution Professional (in short the RP) in respect of M/s. Kei-Rsos Maritime Limited (the Corporate Debtor) seeks approval of the Resolution Plan (in short the Plan) in this Application under Section 30(6) of Insolvency and Bankruptcy Act, 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 as under.
 - i) The Hon'ble Bench vide its order dated 28.08.2019 directed initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and appointed Mr. Anand Chandra Swain, as Interim Resolution Professional. The Committee of Creditors (CoC) in its meeting held on 11.12.2019, decided to appoint Mr. Anand Chandra Swain as Resolution Professional (RP) and the same is approved by this Hon'ble Bench vide its order dated 24.12.2019.
 - ii) The Applicant submits that the IRP executed certain duties of the Resolution Professional and got valued the assets of the Corporate Debtor through two registered valuers i.e., Protocol Valuers & Crest Capital. Further, the Resolution

Professional prepared Information Memorandum on 01.09.2020.

- iii) Subsequently, invitation of Expression of Interest (EoI) in Form-G under Regulation 36A(1) of the Regulations was invited by the Applicant. In response to invitation for EoI in Form-G, the RP received EoI from Resolution Applicants viz 1. Bluemine Marine Solutions Private Limited (as a Consortium with Heaven on Ocean Tourism Private Limited, Shanmuga Transport Private Limited and Mr.Pushparaj) and 2. Divetech Marine Engineering Services Private Limited.
- iv) The Prospective Resolution Applicants had submitted their Resolution Plans on 10.10.2020, but the same were incomplete due to pending of inspection of vessels and due diligence of the sites and vessels of the Corporate Debtor which are not operational. They requested the RP/CoC permission and time to inspect the vessels and other assets of the Corporate Debtor, conduct a proper due diligence and submit a comprehensive, viable, feasible and a detailed Revised Resolution Plan. After several request of the Resolution Applicants due to their travel schedule and some key members affected by Covid they gave the final Resolution Plan on 31.03.2021.
- v) In its 7th CoC meeting held on 13.10.2020 it instructed the RP to apply for extension of time by a period of another 90 days, due to the time loss caused by lockdown. Accordingly, the RP applied for extension of the CIRP period on

04.11.2020, subsequently the Adjudicating Authority passed orders on 23.12.2020 extending the CIRP period upto 05.02.2021. However, the COC discussed and deliberated on the Resolution Plans, invited the Resolution Applicants and emphasized the need to expedite the matters.

- vi) In its 11th CoC meeting held on 19.04.2021, detailed discussions of the plan were discussed and the Resolution Applicant namely Divetech Engineering was asked to clarify and submit enough proof from their Parent Company (Financial Sponsor) by way of Corporate Guarantee. The detailed EM with financial and technical matrix was deliberated.
- vii) In its 12th CoC meeting held on 09.05.2021 through virtual mode, both the Resolution Applicants were once again afforded an opportunity, individually to increase the commercial offer, explain and confirm with proof, source of funds, manner of settlement, plan for revival etc.,. Both the Resolution Applicants had increased their commercial offer from their original plan.
- viii) From 15.05.2021 & 16.05.2021, unfortunate event of CS IX Tug Vessel, completely getting wrecked by the Cyclone Tauktae occurred and the same was informed to the Resolution Applicants. In its 13th CoC meeting held on 17.05.2021, the Applicant and CoC, clearly informed the Resolution Applicants to resubmit their Resolution Plan by removing the Vessel or Asset CS-IX along with the OSR equipment from the Information Memorandum (IM) by the Resolution Professional and were given time till 26.05.2021.

ix) In its 14th CoC meeting held on 31.05.2021, both the Resolution Applicants and their consultants participated and the plans were deliberated by removing the Asset CS IX from their Plan in detail. The settlement amount was reduced due to that and several other clarifications, explanations relating to the Plan were put to them. The Resolution Applicants sought two days' time to submit the same to the Applicant by mail, later by hardcopy duly signed. On 02.06.2021 the Resolution Applicants submitted the same and CoC was handed over all the relevant documents by the Applicant, vide email. The CoC concluded the meeting with voting time fixed for approving the plans up to 10.06.2021. Accordingly, on 10.06.2021, the CoC approved, by 100% voting, the Resolution Plan submitted by the Resolution Applicant Divetech Marine Engineering Services Private Limited with Divetech Marine Engineering Services LLC, Dubai acting as the Financial Sponsor.

x) 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 and Regulations and the Plan had been approved by the CoC. The Resolution Applicants have undertaken to provide the Performance Security of Rs.1.5Crores, out of which Rs.50 Lakhs in the form of EMD has already been received and to pay the remaining balance of Rs.1 Crore within one month of Approval of the Resolution Plan by CoC or within one month from the date of receipt of order passed by the NCLT, whichever is earlier.

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

a) The Plan offers an amount of Rs.17.05 Crores as detailed below:

S. No.	Category of Claimants	Amount admitted Rs.	Amount proposed to be paid under the Plan (Rs.)
1	Secured Financial Creditors	42,95,08,651.27	16,70,00,000
2	Unsecured Financial Creditors	25,42,87,246.00	NIL
3	Operational Creditors	5,26,85,479.28	10,00,000
4	Operational Creditors – contingent liability	3,82,25,213.00	NIL
5	Employees (Roughly inclusive of PF & ESI)	44,79,372.58	25,00,000
	Total	77,91,85,962.13	17,05,00,000

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

S. No.	Particulars	Terms and amount
1	Payment towards CIRP Costs	The RP has not provided the estimated CIRP costs. The CIRP costs up to the date of approval of the Resolution Plan by the Hon'ble Adjudicating Authority shall be paid towards full and final payment of CIRP costs within 45 days of from the date of the order of the Adjudicating Authority.
2	Workmen dues & Employee dues	Rs.25 Lakhs within 45 days of from the date of the order of the Adjudicating Authority.
3	Operational Creditors other than workmen & Employees, including any Government Authority	Rs.10 Lakhs would be paid prior to FC but not before 45 days from the date of the order of the Adjudicating Authority.

4	Financial Creditors	Rs.6.2 Crores will be paid 45-60 days from the date of the order of the Adjudicating Authority. Another Rs.5.0 Crores will be paid within 90-120 days from the date of the order of the Adjudicating Authority. Final Rs.5.50 Crores shall be paid within 120-180 days from the date of the order of the Adjudicating Authority.
---	---------------------	--

b) The RA is proposing to constitute Monitoring Committee consisting of Four (4) members for implementation of the Resolution Plan, as given below:-

- i. Mr.V.Mahesh, Resolution Professional, shall be the Chairman of the Monitoring Committee.
- ii. Mr.Ashok Kumar
- iii. Mr.Ashish Nanda
- iv. One representative from the Financial Creditors

xii) Hence this Application.

3. I have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application. The objections raised against the Plan, by the Unsuccessful Resolution Applicant i.e., I.A.72/2021 were considered in detail in the said I.A and are reflected in the order in the said I.A. The allegation against the RP was dismissed as unfounded. Hence, the only task remaining is to see whether the Plan approved by the CoC fulfils the regulations of 30(2) of IBC.

7/10/21

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 a 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 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 a 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 this section –

- (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 and the Liquidation value is Rs.24,08,44,413/-and the Resolution Plan offers Rs.17.05 Crores.

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 operates in its normal course of business upon implementation of Resolution Plan. No objection has been filed by any other person 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. The Resolution Plan has been approved by the CoC meeting held on 10.06.2021 with 100% votes.
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 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, I.A.No.59/2021 in TCP (IB) No.79/9/AMR/2019 is disposed of.


JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL