



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

I.A. No.21 OF 2024

in

CP(IB) NO. 10/7/HDB/2022

*[U/s. 30(6) and Section 31(1) of the I&B Code, 2016 r/w Regulation 39(4) of the IBBI (IRPCP)
Regulations, 2016]*

In the matter of

Canara Bank Limited vs. M/s. Feno Plast Limited

In the matter of:

Ms. Kalpana G

Resolution Professional

Regn. No.IBBI/IPA-001/IP-P00756/2017-2018/11288

.... Applicant

Order Pronounced on: 22.01.2025

Coram:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Shri Sanjay Puri, Hon'ble Member (Technical)

Parties / Counsels Present:

For the Applicant : Mrs. G. Kalpana, Resolution Professional

: Mrs. Mummaneni Vazra Laxmi, Advocate

[PER : BENCH]

ORDER

1. The instant Application bearing IA No. 21/2024 has been filed by the Resolution Professional of the Corporate Debtor **(CD)** M/s. Fenoplast Limited, under Section 30(6) and



31(1) of **IBC**¹, r/w regulation 39(4) of the applicable **Regulations**², seeking approval of the **Resolution Plan**³, submitted by the Resolution Applicant, Mr.Krishna Kumar Haridas (**Mr.Krishna Kumar/SRA**) duly approved with 100% voting share by the Committee of Creditors (**COC**), at their 24th meeting held on 27.08.2024 and by e-voting on 12.09.2024 (scheduled between 29.08.2024 to 13.09.2024).

2. The Company Petition CP(IB) No. 10/7/HDB/2022 filed by Canara Bank Limited, the Financial Creditor (**FC**) was admitted by this Authority u/s 7 of IBC, vide Order dated 07.02.2023 ordering commencement of CIRP⁴ against M/s.Fenoplast Limited, the **CD** by appointing Ms.G.Kalpana as the Interim Resolution Professional, who was confirmed as Resolution Professional (**RP**) in the 1st COC Meeting held on 24.03.2023.
3. Public Announcement of the commencement of CIRP was made in Form-A on 10.02.2023 in the newspapers⁵ inviting claims from the creditors of the CD. In response, claims were received from the Financial Creditors.

¹ Insolvency & Bankruptcy Code, 2016

² IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

³ Resolution Plan dated 03.04.2024 alongwith the Addendum placed at pg. nos.247 to 251 of the application.

⁴ Corporate Insolvency Resolution Process

⁵ Financial Express, English Daily (All India Edition) & Mana Telangana Newspaper, Telugu Daily Newspaper (All Telangana Editions)



4. After verification of all the claims received and determining the financial position of the CD, the RP constituted the COC, comprising of the following Financial Creditors:

S.No.	Name of the Financial Creditor	Voting Share (%)
1.	Canara Bank	71%
2.	State Bank of India	29%
Total		100%

5. After initiation of CIRP, the IRP requested the suspended directors to provide the required information on various dates, viz. Provisional Financial Statements as on 07.02.2023, login credentials of BSE, Audited Financial statements etc. As there was no response, the RP filed an application IA 444/2023 for non-cooperation under Section 19(2) of IBC against the suspended directors, which was allowed by this Authority directing the suspended directors to co-operate with the RP till the completion of CIRP. Further, the Applicant filed an IA 1338/2023 for exclusion of 132 days from the CIRP period for non-co-operation of the suspended directors, which was allowed by this Authority.
6. The RP conducted a total of Twenty Five (25) meetings of the COC during the CIRP.



7. The RP invited Expression of Interest (**EOI-1**) from the Prospective Resolution Applicants (**PRAs**), by issuing Form-G on 09.04.2023. In response, Expression of Interests were received from 3 PRAs.
8. As the Resolution Plans received were non-compliant, the Applicant informed the same to PRAs and requested to submit their revised Plans. Subsequently, non-receipt of compliant Resolution Plans, the COC approved to issue fresh Form-G on 13.12.2023. Accordingly, RP invited Expression of Interest (**EOI-2**) from the **PRAs** by issuing fresh Form-G on 17.01.2024 and the last date to receive the Resolution Plans as 27.03.2024. In response, 16 EOIs were received from the PRAs. The RP shared RFRP and Evaluation Matrix with the PRAs⁶.
9. After availing the exclusion and extensions allowed periodically⁷, the last date for completing the CIRP was set at 13.10.2024.
10. In response to EOI-2, out of the sixteen (16) PRAs, the following five PRAs submitted their Resolution Plans:

⁶ Pg. nos.75-154 & 155-162 of the application respectively

⁷ Paras 8, 11 & 14 of the application



- i. Mr. Aditya Soni
- ii. Archana Iron Traders Private Limited in consortium with Mr. Sudhir Kumar Agarwal
- iii. Deevyashakti India Private Limited
- iv. Maruti Ispat & Energy Private Limited
- v. Mr. Krishna Kumar

11. In the 21st COC Meeting held on 05.07.2024, the COC negotiated with each applicant and the RP on 08.07.2024 requested the PRAs to submit their binding Resolution Plans on or before 13.07.2024.

12. After verifying the compliances of the Resolution Plans received in terms of provisions of IBC and CIRP Regulations, the RP placed the compliant resolution plans before the COC in the 24th COC Meeting held on 27.08.2024, which were received from the following PRAs:

- i. Mr. Aditya Soni
- ii. Archana Iron Traders Private Limited in consortium with Mr. Sudhir Kumar Agarwal
- iii. Deevyashakti India Private Limited
- iv. Maruti Ispat & Energy Private Limited
- v. Mr. Krishna Kumar



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13. Further, COC advised the RP to put the agenda and keep the voting window open for 7 days. Later, through email on 05.09.2024, the members of COC requested the RP to extend the timeline for 1 week. The e-voting was scheduled between 29.08.2024 and 13.09.2024. The COC discussed upon the compliance, feasibility and viability of the Binding Resolution Plans submitted by PRAs and approved the Resolution Plan amounting to Rs.76,52,82,382/- submitted by Mr. Krishna Kumar by e-voting on 12.09.2024 with 100% voting share⁸.

14. The salient features of the Resolution Plan are as follows:

S.No.	Name of the Creditors/Expenses	Claims admitted (in Rs.)	Total amount offered as per Resolution Plan (in Rs.)	Timeline
1.	CIRP Cost	50,00,000/-	50,00,000/-	Within 45 days from the date of approval of Resolution Plan by the Adjudicating Authority
2.	Debts due to Operational Creditors (Employees & Workmen)	12,89,69,877/-	11,27,50,202/-	
3.	Debts due to Operational Creditors other than employees and workmen (Suppliers/Vendors/ Service provider payments)	22,33,78,330/-	11,47,79,416/-	
4.	Debts due to Operational Creditors (Statutory Dues, PF & ESIC)	3,04,32,117/-	3,04,32,117/-	
5.	Debts due to Operational Creditors (Govt. Dues and Tax Authorities)	6,63,92,625/-	4,93,00,000/-	
6.	Debts due to Secured Financial Creditors	45,30,20,647/-	45,30,20,647/-	
7.	Payments to related Unsecured Financial Creditors & others	No claims	--	—
Total		90,71,93,596/-	76,52,82,382/-	

⁸ E-voting result for approval of Resolution @ pg.174 of the application



15. The Applicant has further submitted that as the approved Resolution Plan meets all the requirements envisaged under IBC and Rules/Regulations made thereunder. On 12.09.2024, the RP issued Letter of Intent (LoI) to Mr.Krishna Kumar declaring him as Successful Resolution Applicant (**SRA**) and requested to submit the Performance Security as stipulated in RFRP document. In turn, the SRA submitted the Performance Security by way of Bank Guarantee No.0076NDDG00015325, dated 18.09.2024, valid upto 17.09.2025, amounting to Rs. 11,48,00,000/- on 18.09.2024, issued by ICICI Bank Limited⁹.
16. The brief details of the Resolution Plan submitted by Mr.Krishna Kumar and as approved by the CoC, are as follows:
- i. Mr. Krishna Kumar is one of the promoters/directors of M/s.Fenoplast Limited/CD. Mr. Krishna Kumar joined in M/s. Fenoplast Limited in the year 1982 and since then he is associated with the company at various levels. He was primarily responsible for building the CD and the brand name it has in the market. Ensuring quality and standards of products has been the key focus of Mr. Krishna Kumar and he raised the bar in quality and standards and made the company first in the industry to achieve the ISO/TS

⁹ At pg.264 to 281 of the application



16949 certification, the globally recognised quality management standard for the automotive industry.

- ii. Mr. Krishna Kumar has been acknowledged as an expert in the field for developing any type of products as per customer requirements in minimum time and lowest costs. He also developed export market for the products like UK, Netherlands, France, Germany, Cyprus, Belgium and the US. He was instrumental in the company getting the Best Exporter award for a number of years from PLEXCONCIL, which works under aegis of Govt. of India.
- iii. Mr. Krishna Kumar has diversified the Company's products to Pharma Market by developing a sophisticated PvDC coated PVC Film for enhancement of the market and sales, especially in the sensitive hygroscopic drugs being exported.
- iv. The Company has achieved the peak turnover of Rs.275 crs. under the guidance of Mr. Krishna Kumar Hridas in the year 2018-2019. Thus, Mr. Krishna Kumar is well versed in the relevant industry and activities of the company, with his more than 40 years of experience having led the CD from the forefront and is most suitable for revival and resolution of the Corporate Debtor.



- v. It is averred that the CD being an MSME entity, the promoters/directors who wish to Resolution Applicants are exempted from the eligibility criteria under Section 29A of the IBC, 2016. The Hon'ble NCLT, Hyderabad, vide orders dated 17.07.2023 in IA 805/2023 in CP(IB) 10/7/HDB/2023 directed the Resolution Professional to accept the Resolution Plan of Mr. Krishna Kumar Haridas exempting him from certain eligibility criteria fixed by COC/RP.
- vi. The amounts provided for the stakeholders under the Resolution Plan¹⁰ are as under:

(Rs. in lakhs)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	N.A.	N.A.	N.A.	N.A.
		(b) Other than (a) above:				
		(i) who did not vote in favour of the Resolution Plan				
		(ii) who voted in favour of the resolution plan	4530.21	4530.21	4530.21	100%
		Total [(a) + (b) + (c)]	4530.21	4530.21	4530.21	100%

¹⁰ Form-H (Sr. No. 7) on Page 282 – 288 of the Application



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2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	N.A.	N.A.	N.A.	N.A.
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	N.A.	N.A.	N.A.	N.A.
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	N.A.	N.A.	N.A.	N.A.
3	Operational Creditors	(a) Related Party of Corporate Debtor	N.A.	N.A.	N.A.	N.A.
		(b) Other than (a) above:				
		(i) Government	2462.60	968.25	797.32	32.38%
		(ii) Workmen & Employees	1331.79	1289.70	1127.50	84.66%
		(iv) Suppliers and Vendors	2511.92	2233.78	1147.79	45.69%
		Total[(a) + (b)]	6306.31	4491.73	3072.61	48.72%
4	Other debts and dues					
Grand Total			10836.52	9021.94	7602.82	70.16%

* If there are sub-categories in a category, please add rows for each sub-category.

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

A copy of the approved Resolution Plan along with the Addendum are filed at pg. nos. 179-235 & 247 to 251 of the application respectively.

vii. **Effective Date**¹¹: The date on which the Resolution Plan is approved by the Adjudicating Authority under Section 31 of IBC or any other date being decided by the Adjudicating Authority, Appellate Authority and Supreme Court as the case may be.

¹¹ Pg. 187 of the application



vi. **Management of the Corporate Debtor¹²:**

By order of the Adjudicating Authority approving this Resolution Plan, all the existing Directors of the Corporate Debtor, without any further action being required on the part of any person, shall, unless otherwise required by the Adjudicating Authority or agreed to by the SRA in writing, be deemed to have resigned from the Board of the Corporate Debtor. After the Effective Date, the SRA shall constitute the Board of the CD with three Directors nominated by the Funding Source and the Board of Directors shall not exceed Four Directors and appoint key managerial personnel.

The implementation of the Resolution Plan until the final payment of the Resolution Plan shall be supervised by the 'Monitoring Committee'. The COC shall constitute the 'Monitoring Committee' which shall comprise of (i) Resolution Professional; (ii) one Representative/Nominee of Financial Creditor; and (iii) One Representative/Nominee of SRA.

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

¹² Pg. 249 of the Application (Addendum to Resolution Plan)



- vii. **Source of Funds¹³:** The SRA proposes to fund CD Resolution Plan amount through M/s.Bhavya Constructions Private Limited, Hyderabad (“Funding Source”) who will secure the funding. The confirmation of funding from M/s.Bhavya Constructions Private Limited and networth Certificate of the Funding Source are enclosed as Annexures¹⁴ to the Resolution Plan. The Successful Resolution Applicant shall bring in Rs.76,52,82,382/- (Resolution Fund for revival of CD) from M/s.Bhavya Constructions Private Limited.
- viii. **Compliance of mandatory contents of Resolution Plan under IBC and CIRP Regulations:** The Applicant is stated to have conducted a thorough compliance check of the Resolution Plan in terms of Section 30(2)(a), (b) & (c) of IBC as well as Regulations 38 & 39 of the CIRP Regulations and has submitted Form-H under Regulation 39(4). A copy of the **Form-H** has also been filed.¹⁵ It is submitted that the SRA has filed an Affidavit pursuant to Section 30(1) of IBC confirming that they are eligible to submit the Plan under Section 29A of IBC and that the contents of the said Certificate are in order. The **Fair Value** and

¹³ In Addendum – at pg. no.251 of the application

¹⁴ Pg. nos.252 to 263 of the application

¹⁵ Pg. 282 to 288 of the Application



Liquidation Value as submitted in Form-H are stated to be Rs.36,57,86,844/- and Rs.31,33,31,712/- respectively.

17. In the above backdrop, we have heard the Learned Counsel for the Applicant and perused the records.

18. The Resolution Plan dated 03.04.2024 alongwith the Addendum (**pg. nos.247-251 of the application**) is as per the Plan approved by the CoC, and it meets the requirement of Section 30(2) of IBC and Regulation 38 of CIRP Regulations, as under:

a) **CIRP Cost**¹⁶:

The Plan provides for payment of Rs.50,00,000/- towards CIRP costs. In the event, the unpaid CIRP cost is more than Rs.50,00,000/-, then the excess amount shall be paid by the SRA. The same shall be paid in priority to all other payments proposed in the Resolution Plan.

b) **Payment to Operational Creditors:** As per the Regulations 38(1) of the CIRP Regulations, payment to Operational Creditors shall be made before settlement of claim of Financial Creditors.

¹⁶ Pg. 198 of the application



(i) Operational Creditors (workmen/employees)¹⁷ –

The Plan provides for payment of Rs.11,27,50,202/- against the admitted amount of Rs.12,89,69,877/-.

(ii) Operational Creditors (Suppliers/Vendors/ service Providers)¹⁸

The Plan provides for payment of Rs.11,47,79,416/- against the admitted amount of Rs.22,33,78,330/-.

(ii) Operational Creditors (PF & ESI)¹⁹

The Plan provides for payment of Rs.3,04,32,117/- as claimed by both the Statutory Authorities.

c) Financial Creditors:

The Plan provides for payment of Rs.45,30,20,647/- as claimed by the Financial Creditors in full²⁰.

19. While reviewing the Resolution Plan as aforesaid, we have taken into account the judgment in the case of **K. Sashidhar v. Indian Overseas Bank**²¹ where the Hon'ble Supreme Court has held that:

“if CoC had approved the Resolution Plan by requisite

¹⁷ Pg. 198 – 199 of the application

¹⁸ Pg. 200 of the application

¹⁹ Pg. 202 of the application

²⁰ Pg.204 of the application

²¹ In **K. Sashidhar v. Indian Overseas Bank & Others** (in Civil Appeal No. 10673/2018) decided on 05.02.2019: (2019) 12 SCC 150



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”.

And held further in para 35 of the 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”.

20. The Hon’ble Supreme Court reiterated this view in the case of **Essar Steel**²² by holding that:

“...it is clear that the limited judicial review, which can in no circumstances trespass upon a business decision of the majority of the CoC, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned....”.

²² 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: (2020) 8 SCC 531



21. Reinforcing the above, the Hon'ble Supreme Court more recently has held in ***Vallal RCK vs M/s Siva Industries***²³ that:

“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.

Emphasizing yet again, that

“27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC.”

and, by referring to an earlier judgment in the case of ***Arun Kumar Jagatramka***²⁴, added a note of caution that

“...However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicating 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

²³ Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors. in Civil Appeal No.1811-1812/2022, decided on 03.06.2022: (2022) 9 SCC 803

²⁴ Arun Kumar Jagatramka v. Jindal Steel & Power Ltd. (2021) 7 SCC 474 : (SCC p. 533, para 95)



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.....”

22. Therefore, when tested on the touch stone of the rulings, and considering the facts of the case, we are of the view that the Resolution Plan satisfies the requirements of Section 30 (2) of IBC and Regulations 37, 38 & 39 of CIRP Regulations. We also find that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of IBC.

23. It is also to be clarified that 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, if any, the Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful. *“Approval of this plan by NCLT shall be deemed to be sufficient notice which may be required to be given to any person for such matter and no further notice shall be required to be given”* as per the view taken by the Hon’ble



Supreme Court in the case of ***Ghanashyam Mishra***.²⁵

24. With the above remarks, we hereby approve the Resolution Plan submitted by the Resolution Applicant dated 03.04.2024 alongwith the Addendum (pg.nos.247 to 251 of the application), and order as under:

- i. The Resolution Plan and schedules forming part thereof 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 SRA fails to pay the amount as envisaged in the 'Resolution Plan' to the stakeholders within the timeline fixed in the Plan, the entire amount paid by the SRA shall be forfeited.

²⁵ 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.: (2021) 9 SCC 657



- iv. It is hereby ordered that the Performance Bank Guarantee furnished by the SRA shall remain in force 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 SRA 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. Any pending IA(s) will be pursued by the Monitoring Committee.
- vii. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in the resolution plan.
- viii. The moratorium under Section 14 of IBC shall cease to have effect from the date of this order.
- ix. 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.



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- x. The Applicant shall forthwith send a copy of this order to the CoC and the SRA.
 - xi. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
 - xii. 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.
25. Accordingly, **IA 21/2024 in CP(IB) No.10/7/HDB/2022** is allowed and disposed of.

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

Syamala