

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
HYDERABAD

C.A.No.123/2017
in
CP(IB)No.01/HDB/2017

U/s 30(6) and 31 of the IBC, 2016

In the matter of

Synergies-Dooray Automotive Limited
Debtor

... Corporate

And in the matter of

Ms. Mamta Binani
Resolution Professional
Synergies-Dooray Automotive Limited ...
Professional

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Applicant/Resolution

Versus

1. Edelweiss Asset Reconstruction Company Limited
Edelweiss House, Off CST Road,
Kalina, Mumbai 400 098
2. Millennium Finance Limited
402, 4th Floor, MGR Estate,
Punjagutta, Hyderabad – 500 082.
3. Synergies Castings Limited
Flat No.4A, Sampathji Apartments,
6-3-855/10/A, Saadat manzil,
Ameerpet, Hyderabad – 500 016.
4. Alchemist Asset Reconstruction Company Limited
D-54 (first Floor)
Defence Colony,
New Delhi – 110 024.
5. Synergies Dooray Automotive Limited
Corporate Debtor



Mr. Shekhar Movva,
Door No.9-19-4,CBM Compound,
Visakhapatnam – 530 003.

Respondents

CORAM

Hon'ble Shri Rajeswara Rao Vittalana, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Parties present

Counsels for the Applicant:

Ms. Mamta Binani, Resolution
Professional along with Krishnenda
Datta, P. Vikram, & Nitish Bandary,
Advocates

Counsel for the Respondent No.1
Advocate

Shri S. Niranjana Reddy, Sr.
Shri Jyoti Singh, Advocate
Ms. Rubaina Khatoon, Advocate
Shri P. Mohith Reddy, Advocate

Counsel for Respondent No.2

Shri Deepak Bhattacharjee, Senior
Advocate alongwith Shri Dishit
Bhattacharjee, Advocate

Counsel for Respondent No.3

Shri S. Chidambaram, PCS (R-3)

Counsel for the Respondent.5

Shri A.D. Gupta, Advocate

**Per: Rajeswara Rao Vittalana, Member (J)
Ravikumar Duraisamy, Member (T)**

Order Delivered on: 02.08.2017

ORDER

1. The present application bearing CA No.123 of 2017 in CP No.1/IBC/HDB/2017 has been filed by Ms. Mamta Binani, Resolution Professional against Edelweiss Asset Reconstruction Company Limited (EARCL for short) and four others, in the Corporate Insolvency Resolution Process ('CIRP') by the Corporate Debtor i.e.



Synergies Dooray Automotive Ltd. ('SDAL') under Sections 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 ('IBC') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') seeking approval of the Resolution Plan, as submitted by Synergies Castings Ltd., as duly approved by the Committee of Creditors in the 2nd meeting of the Committee of Creditors held on 24.06.2017.

2. Brief facts of case, as submitted by the Resolution Professional, which are relevant to the issue in question, are as follows:

- i. The Tribunal vide its order dated 23.01.2017 admitted the Petition filed by the Corporate Debtor seeking initiation of the Corporate Insolvency Resolution Process, under Section 10 of the IBC, to appoint Applicant herein as the Interim Resolution Professional ('IRP'). As per Section 12 of the IBC, the CIRP period ends on 21.07.2017 (180 days).
- ii. That pursuant to the above, the Applicant herein issued a public announcement and invited claims from the creditors of the Corporate Debtor as envisaged in the IBC. On receiving such claims, the Applicant herein collated the same, and constituted a Committee of Creditors. The first meeting of Committee of Creditors was called on 22.02.2017, on which date, the Applicant herein was confirmed as the Resolution Professional (RP) of the Corporate Debtor.
- iii. In pursuance to the same, the Applicant has ensured statutory compliance of all provisions of the IBC and the Rules and



Regulations made thereunder. After collation of claims, the Applicant has duly filed the List of Committee of Creditors, which has been updated from time to time after verification; it was placed on record of this Tribunal on 30.05.2017. The latest position of Creditors as per the list, reflecting the percentage exposure and the voting share is mentioned hereunder:

S. No.	Name of the Financial Creditor	Amount of Claim admitted (Rs. in Crores)	Percentage share in committee of creditors	Percentage Share in Voting
1.	Alchemist Asset Reconstruction Company Ltd. (AARC)	122.06	12.56%	13.83%
2.	Edelweiss Asset Reconstruction Company Limited (EARC)	86.92	8.94%	9.84%
3.	Millennium Finance Ltd.	673.91	69.32%	76.33%
4.	Synergies Castings Ltd.	89.26	9.18%	0
	TOTAL	972.15	100%	

iv. That as per the requirements of Section 25(2)(h) of the IBC, the Applicant herein initiated the process of inviting prospective Resolution Applicants for submission of Resolution Plans for the resolution of the Corporate Debtor. The above process was carried out through a Merchant Banker, who invited applications from prospective Resolution Applicants and also made publication in this regard.

v. That in response to the aforesaid expression of interest, 4 participants applied for the offer document, out of which, only the following entities sent Resolution Plans.:

- a. SMB Ashes Industries
- b. Synergies Castings Limited
- c. Suiyas Industries Private Limited.

vi. The applicant herein has already filed an affidavit dated



17.06.2017, wherein the detailed steps and statutory compliance undertaken by the Applicant have been placed before this Tribunal. The Tribunal during the hearing held on 19.06.2017, took note of the Affidavit dated 17.06.2017 filed by the Resolution Professional and specifically directed all the parties to participate in the meeting of the Committee of Creditors dated 24.06.2017 and extend full cooperation to the Resolution Professional. And further directed the Resolution Professional to expedite the matter and prepare a Comprehensive Plan by the next date of hearing while listing the matter for hearing on 11.07.2017.

- vii. Accordingly, the 2nd meeting of the Committee of Creditors was convened on 24.06.2017, wherein, in the Agenda, the only List of Issues to be voted upon was the presentation, consideration and approval of the Resolution Plans submitted by the Resolution Applicants, with or without modifications. The Resolution Plans submitted by SMB Ashes Industries and Suiyas Industries Pvt. Ltd., placed before the meeting held on 24.06.2017 was unanimously rejected by the Members of the Committee of Creditors. However, Resolution Plan submitted by Synergies Castings Ltd.(SCL) was approved by a majority vote of 90.16% (EARC abstained from voting), with certain modifications (duly reflected in the minutes) and the above item was declared as approved / passed by the requisite majority by the Applicant herein. The minutes of the 2nd meeting of Committee of Creditors dated 24.06.2017 has been circulated amongst all stakeholders vide email dated 26.06.2017.



So the instant Application is being moved for submission of Resolution Plan under section 30(6) of the IBC and for approval under Section 31(1) of the IBC.

3. The major objective behind the Resolution Plan is as under:-

I. The Resolution Plan envisaged by SCL for insolvency resolution of SDAL and to ensure continuity of business along with most effective use of the assets and equipments of SDAL is as detailed below:

- a) **Financial Re-Structuring** – Restructuring of Debts by way of settlement in terms of directions of the BIFR and payment of restructured dues over a period of three years.
- b) **Operational Restructuring** – Amalgamation of Corporate Debtor with the Applicant.
- c) **Capital Restructuring** – Allotment of shares of the merged entity to the shareholders of Corporate Debtor and payment of cash towards fractional shares.
- d) **Payment to Operational Creditors and Statutory Dues** – Dues to the Operational Creditors be restructured and payment to such Operational Creditors and the Statutory Dues to be made in a staggered manner after completion of payment to the Financial Creditors.
- e) **Infusion of fresh funds by the promoters** – Fund infusion by promoters of the Applicant Company, if required.
- f) **Payment of Insolvency Resolution Process Cost** in priority to all other debts.
- g) **IRP Cost**



Amalgamation with appointed date as 31.03.2017 with the following major benefits:-

- i) Operational Synergies
- ii) Marketing synergies
- iii) Financial synergies
- iv) Continuation of employment.

h) Statutory dues

As per the latest provisional financial statement of SDAL for the FY ended on 31st March, 2017 made available to us, the amount outstanding towards Statutory Dues was Rs.389.53 lakhs (constituting of Rs.351.69 Lakhs as deferred sales tax dues and Rs.37.84 lakhs as service tax dues). It is proposed to make full payment of Rs.389.53 Lakhs (as reduced by any payments that would have been already made by SDAL till the date of approval) pertaining to Statutory dues, however the payment shall be made in a staggered manner over a period of three years on an interest free basis, and the payment shall commence after completion of due payment of restructured dues to all the secured financial creditors of SDAL.



II. Cost of Scheme and Means of Finance

As per the proposed settlement and payments envisaged to various creditors of SDAL and also the payment of the Insolvency Process Cost, the total cost of scheme is arrived at Rs.5,408.21 lakhs. The same is proposed to be funded by way of induction of long term funds and through the operational accruals of SCL. The gist of scheme and means of finance are tabulated below:

Particulars	Total
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	(Rs. in Laksh)
Insolvency Resolution Cost	50.00
Payment of EARC	489.00
Payment of AARC	686.75
Payment of MFL	3,791.75
Total Secured Payments	5,017.52
Deferred Sales Tax dues	351.69
Current Liabilities	1.16
Statutory dues	37.84
Total Payment	5,408.21
Means of Financing	Total
	(Rs. In Lakhs)
Receivables from other corporate debtors	2,548.26
Internal Accruals from operations	2,859.95
Total	5,408.21

III. Payment plan to Financial Creditors and the Operational Creditors -

The plan for making payment of the amount mentioned in Clause 5.1 to financial creditors and other class of creditors has been tabulated below:

(Rs. In lakhs)

Particulars/ Year	2017- 18	2018-19	2019-20	2020-21	2021- 22	2022- 23	Total
Insolvency Resolution Cost	50.00	-	-	-	-	-	50.00
Payment of EARC		163.00	163.00	163.00	-	-	489.00
Payment of AARC		228.92	228.92	228.92	-	-	686.77
Payment of MFL		1263.92	1263.92	1263.92	-	-	3791.75
Total Secured Payments	50.00	1655.84	1655.84	1655.84	-	-	5017.52
Deferred Sales Tax Loan				117.23	117.23	117.23	351.69



Current Liabilities				0.39	0.39	0.39	1.16
Statutory Dues				12.61	12.61	12.61	37.84
Total	50.00	1655.84	1655.84	1786.07	130.23	130.23	5408.21
Means of Financing							
Receivable from other corporate debtors		762.60	762.60	762.60	130.23	130.23	2548.26
Internal Accruals from Operations	50.00	893.24	893.24	1023.47	-	-	2859.95
Total	50.00	1655.84	1655.84	1786.07	130.23	130.23	5408.21

The Plan also provided Profit & Loss projections upto 31.03.2023.

4. The major reliefs/concessions as envisaged in the Resolution Plan are as under:-

- i. From the State Government of Andhra Pradesh

To exempt the merged entity from levy of Stamp Duty on the value of assets transferred on account of merger of SDAL with SCL.

- ii. Sales Tax-Department & Service Tax Department

a) Sales Tax Department to accept the re-payment of outstanding of Rs.351.69 Lakhs towards Sales Tax Deferred Payments and the Service Tax Department to accept Rs.37.84 Lakhs towards Service Tax dues (to the extent remaining unpaid) in three equal annual installments starting from the Financial Year 2020-21, 2021-22, 2022-23 without any interest, damages, penal interest etc.

b) To waive penal interest, simple interest, compound interest, damages charged if any on the liability of the company as on the date of approval of the Resolution Plan.



- iii. **CBDT** – To exempt SCL in respect of SDAL from the applicable provisions of Section 79 of the Income Tax Act, 1961 with respect to business losses incurred by SDAL. SCL shall be entitled to carry forward and set off the accumulated losses and unabsorbed depreciation as per provisions of Section 72A of the Income Tax Act, 1961. To exempt SCL from the applicability of and payment of Tax under Section 115(JB) of the Income Tax Act, 1961, to accept the repayment of outstanding amount of Rs.5.29 lakhs TDS dues in three equal annual installments without any interest, damages, penal interest etc.
- iv. The Company will have the option to pre pay the dues of the Banks/Financial Institutions/Creditors, without any additional levies.
- v. In the event of failure on the part of the Company to adhere to make payments to Financial Creditors for an amount and in the manner and in accordance with the terms as envisaged in the scheme, the financial creditors will be entitled to reinstate their dues to the original status as per the admitted claims by the Resolution professional along with the security available to them as on COD. However, the principal outstanding of each lender shall stand reduced by the amounts actually paid by the Company, till such date.
- vi. The Applicant further undertakes to bring in funds in the form of equity/interest free unsecured loans to finance any shortfall in each generation to meet the repayment obligations and to finance any other financial obligation which may be required for the implementation of this Resolution Plan.
- vii. Till the completion of the repayment of entire amount of restructured loan payable to the financial creditors, the financial



creditors shall have the right to seek copies of audited Annual Financial Statements prepared in accordance with Indian GAAP.

- viii. The promoter directors would continue to extend their personal guarantees to lenders till the entire repayment of the debt, in the manner as envisaged in the scheme.
- ix. The balance sheet of the company as on the cut-off date shall stand restructured in terms of the Scheme and as per Annexure of the Financial Projections attached.

5. Relevant provision for approval of resolution plan is Section 31(1) of the IBC which reads as under:

“31. Approval of resolution plan –

- (1) *If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.”*



The Resolution Plan as submitted by Synergies Castings Ltd. has been examined by the Applicant and has been found to be strictly complying with the mandatory provision of Section 30(2) of the IBC. And the Committee of Creditors, in terms of Section 30(4) of the IBC, have also approved the Resolution Plan wherein more than 75% of the Financial Creditors (90.16%) have voted in favour of the Resolution Plan of Synergies Castings Ltd. The Applicant also certifies that, in accordance with Regulation 39(4) of the Regulations, the contents of resolution plan meet all the requirements of the Code and the Regulations; and it is duly

approved by the Committee of Creditors.

6. EARCL (Respondent No.1 herein) has filed an objection dated 10.07.2017 by inter-alia contending as follows:

- a) The approved resolution plan of Respondent No.3 is in contravention of Section 13(4) of IBC, and the same was not passed with vote of 75% of voting shares of financial creditors.
- b) The Respondent No.2 (MFL) was wrongly included in the COC as financial creditor of Corporate Debtor basing on the alleged three assignment agreements evenly dated 24.11.2016 are not executed in accordance with law. Moreover, Respondent No.3 is a related party of Corporate Debtor assigned more than 90% of its debt holding in the Corporate Debtor to the Respondent No.2 (MFL). And these agreements were executed immediately prior to the coming to the effect of SICA Repeal Act in November, 2016.
- c) They have earlier filed C.A.Nos. 43 ,56, 57 and 124 of 2017 by questioning the constitution of the COC, related party issue etc and all CAs are pending for adjudication before this Tribunal.
- d) In spite of the objection raised by the Respondent No.1, the IRP/RP steadfastly maintained that as a RP, she does not have power to enter into enquiries regarding the validity of documents or inter-se disputes amongst the creditors of Corporate Debtor.
- e) It is further alleged that no consideration has been paid by the Respondent No.2 to Respondents No.3.
- f) The application is in contravention of the provisions of the IBC,



2016 and the Regulations made there under. Section 30 of the Code cast an obligation on the Resolution Professional to examine each resolution plan and has to confirm that the Resolution Plan do not contravene any of the provisions of the law for the time being in force i.e. Section 30(2)(e).

g) Therefore, it is prayed that the application has to be rejected.

7. Heard Ms. Mamta Binani, Resolution Professional along with M/s Krishnenda Datta, P. Vikram, & Nitish Bandary, Advocates; Shri S. Niranjana Reddy, Sr. Advocate, Shri Jyoti Singh, Advocate, Ms. Rubaina Khatoon, Advocate, Shri P. Mohith Reddy, Advocate Shri Deepak Bhattacharjee, Senior Advocate along with Shri Dishit Bhattacharjee, Advocate, Shri S. Chidambaram, PCS (R-3), Shri A.D. Gupta, Advocate for the respondent No. 5.



8. The parameters for submission and approval of resolution plan are defined under Sections 31 and 32 of the IBC, 2016 and these are extracted below for ready reference:

Section 30(1) - A resolution applicant may submit a resolution plan to resolution professional prepared on the basis of information memorandum.

(2) - The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

- (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;
- (b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under Section 53;
- (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) conforms to such other requirements as may be specified by the Board,

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy-five percent of voting share of the financial creditors.

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered;

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors, unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating authority.

31 (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall be order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1) –

- (a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and
- (b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and



the resolution plan to the board to be recorded on its database.

9. As stated supra, the applicant has duly filed the list of committee of creditors, which has been updated from time to time, after due verification, and the same was also placed before the Adjudicating Authority on 30.05.2017. It is stated that AARC hold 12.56%; EARC hold 8.94%; MFL holds 69.23% and SCL holds 9.18%. As per Section 25(2)(h) of the IBC, the applicant has initiated the process of inviting prospective resolution applicants for submissions of resolution plans of the corporate debtor. This process was carried out by Merchant banker. Accordingly, four participants applied for the offer of documents, out of which, only the following three entities have sent their respective resolution plans :
- a. SMB Ashes Industries
 - b. Synergies Castings Limited
 - c. Suiyas Industries Private Limited



Accordingly, second meeting of Committee of Creditors (CoC) was convened on 24.06.2017 with an agenda of presentation, consideration, approval of the above resolution plans. Hence, resolution plan submitted by SCL was approved by a majority with 90.16% with certain modifications, while rejecting the other resolution plans submitted by SMB Ashes Industries and Suiyas Industries Private Limited.

10. The Resolution professional has certified that the approved resolution plan is not in contravention of provisions of any law for time being in force and it has complied with all statutory provisions as mandated in the above sections.

11. So far as the issue regarding constitution of committee of creditors are concerned, three Assignment Agreements commonly dated 24.11.2016, through which SCL has assigned its accrued rights to MFL, which is alleged to be a related party issue etc., it is stated that those issues have already raised by EARCL by filing C.A.No.43/2017, C.A.No.56/2017, C.A.No.57/2017 and C.A.No.124/2017. And all the contentions raised by EARCL are already considered by the Adjudicating Authority and passed separate orders dated 02.08.2017 by rejecting all those contentions as not meritorious.

12. We have carefully perused the Resolution Plan submitted by SCL, to the Resolution Professional vide letter dated 05.07.2017 (Exhibit A - Page 17 of material papers). An undertaking dated 05.07.2017 is also given by SCL (Page 18 of the material papers) by undertaking to take care of issues relating to stamp duty, implications, staggered payment to the revenue authorities as and when they arise in compliance with the assurances given by them during second COC held on 24.06.2017 ,and also undertakes to comply with all provisions of law relevant to the Company and to infuse fresh funds as when need arises, and finally declared that the resolution plan in question is strictly in accordance with extant law.



13. The Resolution plan provides compliance of all the requirements of Section 30 of IBC, and main contents of the plan are as follows:

- a) Amalgamation of Synergies Dooray Automative Limited with Synergies Castings Limited;
- b) Payment of Insolvency Resolution Process Cost in priority to all other debts of the Corporate Debtor;

- c) Payment to all the Financial Creditors of corporate Debtor in equal installments over a period of three years, without interest;
- d) Payment to Operational Creditors, on interest free basis, of an amount, which is more than the amount payable to them in the event of liquidation of the Corporate Debtor, in a staggered manner over a period of three years, post completion of payments to all the Financial Creditors of the Corporate Debtor;
- e) Payment of Statutory dues, in a staggered manner, over a period of three years, on interest free basis in three equal yearly installments, post completion of payment of the financial creditors of the Company;
- f) Continued usage and operations of the facilities of the Corporate Debtor, in the manner, in which they are being presently utilized as the Resolution Applicant is the lessee of all the assets and facilities of the Corporate Debtor against an annual lease rentals of Rs.1.20 crore;
- g) The plan envisages a lesser cash outage, as the resolution applicant itself is one of the major secured financial creditors of the corporate debtor;
- h) Continued employment to all the erstwhile workmen of the Corporate Debtor;
- i) As the resolution applicant is one of the major secured lenders of the Corporate Debtor (accounting for 9.18% of the total debt of the Corporate Debtor) as such to that extent the cash outage would be reduced. Further, the resolution applicant is also to receive substantial sum of monies from MFL, the largest financial creditor of the Corporate Debtor (accounting for around 69% of the total outstanding debt of the Corporate Debtor) and as such any



payments to be made to MFL under the present Resolution Plan can be netted off against the receivables from them, thereby further reducing the cash outage burden.

14. The Resolution Plan also envisages for insolvency resolution of SDAL, and ensure continuity of business along with most effective use of the assets and equipments of SDAL and the amalgamation of the Corporate Debtor with the Resolution applicant will bring in the number of operating and financial synergies, since both the companies relates to Aluminum Alloy wheel manufacturing industry, in which the corporate debtor is engaged in the manufacturing of Aluminum Alloy wheel and that of the applicant is in the field of painted and chrome plated Aluminum Alloy Wheel etc.
15. The applicant (applicant of resolution plan) in the past has settled dues pertaining to 5 banks of the Corporate Debtor, which constituted 93% of the borrowings of corporate debtor. And the same was also recognized by BIFR in one of its proceedings. The applicant has proven track record of optimum utilization of the infrastructure and manufacturing facilities of the corporate debtor and it has successfully provide continued and meaning employment to direct/indirect work force of over 1500 employees. Most of these employees are absorbed by the applicant when the corporate debtor ceased operations. It is currently single largest employer of extremely skilled and unskilled persons in the Zone and more than 1500-2000 families depend on the applicant.
16. In the light of the above benefits, apart from others as provided in the resolution plan, it would be in the best interest of the Company, its employees in particular, public in general, and also in the interest of



financial creditors to accept the Resolution plan in question. We are unanimous in accepting Resolution plan in question as it meets all parameters including legal and moral.

17. In the result, the Company application bearing C.A.No.123/2017 in CP(IB)No.1/HDB/2017 is allowed with following directions:

a) The resolution plan, as submitted by the Synergies Castings Limited, which is approved by the Committee of Creditors, in its meeting held on 24th June, 2017 with 90.16% vote, in terms of Section 31(1) of the IBC, is hereby approved with following conditions:

i. As regards to point No (9) of the Resolution plan submitted by SCL i.e. Resolution Applicant, the Bench is of the considered view that netting against the receivables is not acceptable and MFL has to first make necessary payments to SCL and SCL can make appropriate payments to MFL as per the Resolution Plan in order to establish the bonafide of both the parties/genuinity of the transactions.

ii. The Bench is of the considered view that the debt of the Operational Creditors should be paid first before making any payment to the other financial creditors of the Corporate Debtor considering nature of creditors as well as the quantum of dues involved.

iii. SCL will be bound by the undertaking dated 05.07.2017 submitted to the Resolution Professional for SDAL



undertakes to take care of the issues relating to stamp duty implications, staggered payments to revenue authorities etc., undertakes to infuse fresh funds as and when the need arises.

iv. The Resolution Plan shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

b) We hereby declared that the order of moratorium passed on 23.01.2017 by the Adjudicating Authority in the case, shall cease to have effect in terms of Section 30(3)(a) of the IBC ;

c) We hereby declared that all the parties to the Resolution Plan are to be bound by the terms and conditions mentioned therein;

d) The Respondent No.1 (EARCL) is directed to extend full cooperation to carry out the terms and conditions of the said resolution plan and also mandating the SCL and SDAL to involve EARCL in the affairs of Company, in accordance with law;

e) We hereby directed the learned Resolution professional to forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.

f) We would also like to place on record that the speed with which the Government has taken steps to implement Insolvency and



Bankruptcy Code, 2016 and setting up an Adjudicating Authority for the same, as well as a constituting a Board namely IBBI for which appreciations were received from various quarters including foreign corporates, investment arms, etc., which is the major reform in the financial/corporate sector in the recent years. Therefore, a single financial creditor holding less than 9% of the total share of debt cannot super impose; to scuttle the process of the entire Resolution Plan. If Adjudicating Authority accepts the plea without any supporting evidence, we feel the preamble of the IBC Code will be jeopardized considering the social object of benefitting more than 1500 families directly/indirectly associated with SDAL.



- g) We have also observed that the Corporate Debtor and the Resolution Applicant is from South, Resolution Professional is from East, Banks/financial institutions/EARC are from West and an ARC and most of the Counsels are from North, therefore we further observe that Pan India efforts were involved to revive the Corporate Debtor namely SDAL.
- h) A copy of this order be filed with the Registrar of Companies, Hyderabad.
- i) Before parting with the case, we hereby record our appreciation to all learned Senior Advocate/Counsels appearing for the parties who have fully co-operated and assisted the Adjudicating Authority to deliver this judgment expeditiously within the time prescribed by law.

- j) All the parties especially as stated in point (a)(iv) above are hereby directed to strictly comply with the Resolution Plan approved by the Adjudicating Authority. If any deviation in implementing the Resolution Plan the concerned parties/entity will be liable for punishment as per Chapter 7 (Offences & Penalties) of IBC, 2016.

No order as to costs.



Sd/-

(RAVIKUMAR DURAISAMY)
MEMBER (T)

Sd/-

(RAJESWARA RAO VITTANALA)
MEMBER (J)

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प्रमाणित प्रति
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केस संख्या
CASE NUMBER CA No. 123/2017 TN
निर्णय का तारीख CP (IB) No. 01/HDB/2017
DATE OF JUDGEMENT... 02/08/2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON... 9-8-2017

V. Annapoorna
V. ANNAPOORNA
Assst. DIRECTOR
NCLT, HYDERABAD.

Order received by
the Registry on 9/8/2017
CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL