

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 01.07.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/365/2024 in Company Petition IB/308/2022
NAME OF THE COMPANY	Gayatri Projects Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Gayatri Projects Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/365/2024

Orders pronounced, recorded vide separate sheets. In the result, Applicant to seek ratification or approval from the CoC for the amount of Rs.52.88 Crores paid by the RP as pre-CIRP dues to maintain the CD as a going concern. The Applicant is granted liberty to file a fresh application after obtaining ratification or approval from the CoC.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

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

**IA.No. 365 of 2024 in
CP (IB) No.308/7/HDB/2022**

**[Under Section 60(5) of the Insolvency and Bankruptcy Code,
R/W Rule 11 of the National Company Law Tribunal Rules, 2016]**

In the matter of:

Sai Ramesh Kanuparthi, (RP),
Resolution Professional Gayatri Projects
Limited, (in CIRP) having its registered
Office at 6-3-1090, TSR Towers,
Rajbhavan Road, Somajiguda,
Hyderabad-500016, India.

...Applicant

And

In the matter of:

State Bank of India

...Financial Creditor

And

Gayatri Projects Limited (Under CIRP)

...Corporate Debtor

Date of Order: 01.07.2024

Counsel/Parties present:

For the Applicant : Sai Ramesh Kanuparthi (RP)

Per: Rajeev Bhardwaj, Member (Judicial)

ORDER

1. The present application has been filed by the Resolution Professional (RP) of the Corporate Debtor (CD), seeking post-facto approval for the payment of pre-CIRP dues amounting to Rs. 52.88 Crores, which were made to avoid work stoppage, termination of contracts, invocation of bank guarantees and to maintain the CD as a going concern.
2. Brief facts of the present application are stated as under:
 - 2.1 The CD is one of the largest infrastructure companies in the country, executing important government projects across multiple locations and employs over a thousand people. The CD has active bank guarantees worth Rs. 1258.89 Crores and pending orders totalling around Rs. 5982.33 Crores. As an EPC (Engineering, Procurement, and Construction) Company, the CD operates across numerous project sites nationwide, including remote areas, with major clients consisting of government and governmental entities.
 - 2.2 The CD's primary valuable assets include the contracts it has been awarded, trade receivables from clients generated through regular business activities and claims, both pending and finalized through arbitration awards.
 - 2.3 The CIRP was initiated against the CD on 15.11.2022 and this Authority granted extension of the CIRP period until 08.01.2024 through an order dated 03.01.2024 in IA (IBC)/37/2024. The Applicant filed an IA

seeking the liquidation of the CD on 07.01.2024 which is pending for adjudication.

- 2.4 Since the beginning of the CIRP, the Applicant has been notified of terminations for several projects, particularly road projects in Bihar, waterworks projects in UP, the Delhi-Saharanpur Road project and the Purvanchal Expressway road project. Many projects undertaken by the CD were considered as national priorities and subject to close monitoring by the Ministry of Road Transport & Highways (MoRTH) and the Prime Minister's Office (PMO), intensifying the pressure on CD to deliver results.
- 2.5 Many bank guarantees were invoked before the commencement of CIRP and a significant amount was also invoked at the initial stages and subsequently during CIRP. The Applicant faced challenges in accessing necessary information due to the departure of key senior personnel shortly before or after CIRP began. This included the Company Secretary (CS), Chief Financial Officer (CFO), HR head, several project accountants, and some project heads. Additionally, there was passive non-cooperation from the Managing Director/Promoter.
- 2.6 At the commencement of CIRP, there was a backlog in salary payments ranging from three to five months (seven months or more in some instances). Previously, salaries were disbursed based on the cash flow of specific projects. RP streamlined the salary payments, prioritizing employees based on a "bottom-up" principle to ensure fairness across all locations. Further operational issues faced by the RP and efforts to address them are detailed comprehensively in the Special Report

submitted to the Insolvency and Bankruptcy Board of India (IBBI), which is attached herewith for reference.

Payment of Pre-CIRP Dues

- 2.7 Considering the nature and exigencies of circumstances, the Applicant authorized payment of certain pre-CIRP dues to prevent work stoppages that could have resulted in contract terminations and the invocation of bank guarantees totalling approximately Rs. 225 Crores, which negatively impacted on financial creditors and potential damages payable to clients under "risk and cost purchase" clauses in all EPC contracts.
- 2.8 On the commencement of CIRP, non-governmental operational creditors (OCs) had total dues amounting to Rs. 935 Crores, out of which Rs. 52.88 Crores has been paid during CIRP. Throughout the CIRP period, total operating expenses incurred across all projects amounted to Rs. 2517 Crores. An analysis indicates that only 5.66% of the total pre-CIRP dues and 2.1% of the total outflows during CIRP were related to pre-CIRP dues.
- 2.9 The fact of pre-CIRP dues payment was mentioned in previous meetings and specifically stated in the 17th Committee of Creditors (CoC) meeting held on 16.11.2023, along with the reasoning for the same (**Annexure-B**).
- 2.10 The Disciplinary Committee of IBBI, on 07.01.2024 in the order of IBBI (No. BB/DC/136/2022 dated 28.10.2022) (**"IBBI Order"**) concerning the payment of pre-CIRP dues held against Mr. Anil Mehta (IP) that

payments by the RP were in violation of Section 14 of the Code and that the RP should have sought directions from the Adjudicating Authority if payments were required to be made to keep the CD as a "going concern" and the said copy of the IBBI Order is annexed as **Annexure-C**.

- 2.11 Upon becoming aware of the possible non-compliance for not following the correct procedure as per the IBBI Order, the Applicant filed a detailed Special Report regarding the CIRP of the CD and non-compliance in relation to the payment of pre-CIRP dues with IBBI on 11.01.2024. (**Annexure-D**).
- 2.12 The Applicant submits that his actions were guided entirely by the objective of preventing work stoppage and consequent termination, BG invocation, and "risk and cost purchase" claims. Payments were restricted to projects where the potential losses were high compared to the amounts required to be released towards pre-CIRP dues, and there were also risks of harm to personnel and damage to equipment.
- 2.13 The Applicant admits that there was an error in not adhering to the law and submits that there was absolutely no malafide intention on the part of the RP.
3. We have heard the learned RP and perused the records placed before us.
4. It is an admitted fact that the RP has paid pre-CIRP dues amounting to Rs. 52.88 Crores out of Rs. 935 Crores owed to certain OC's.
5. Now, the Applicant contends that these payments were made without any malafide intention to prevent work stoppage, which could have led to terminations of contract and the invocation of bank guarantees amounting to

Rs. 225 Crores. These events would have caused a negative impact on financial creditors and further resulted in potential damages payable to clients under “risk and cost purchase” clauses.

6. The Applicant has also admitted that the payment of pre-CIRP dues unilaterally by the RP was in violation of section 14 of IBC and in this regard, he has referred to the IBBI Order dated 28.10.2022. Hence the present application is filed to rectify the said mistake.
7. In the above context it is important to look into sections’ 5(13) & 28 of the IBC. The relevant extract is mentioned below

“5(13). Insolvency Resolution Process cost means-

- (a) the amount of any Interim Finance and the costs incurred in raising such finance;
- (b) the fees payable to any person acting as a resolution professional;
- (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;
- (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
- (e) any other costs as may be specified by the Board.”

“28. Approval of committee of creditors for certain actions. -

- (1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely; -
xxxxx

e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting

- (2) The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions under sub-section (1)

(3) No action under sub-section (1) shall be approved by the committee of creditors unless approved by a vote of [sixty-six] percent of the voting shares.

(4) Where any action under sub-section (1) is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void.”

XXXXXX

8. On plain reading of the above sections, it is clear that there is no provision under IBC or regulations thereunder which empowers this Authority to ratify the actions of the RP directly without prior approval of the CoC and it is within the domain of the CoC to decide the costs incurred or payments made by the RP during CIRP to keep the CD as a going concern.
9. Similar observations were made by Hon’ble NCLAT in *Avil Menezes (Liquidator) v. Abdul Quddus Khan and Anr, Company Appeal (AT) (Insolvency) No. 263 of 2024*, where it is held that:

49. We are, therefore, inclined to agree that mere fact that the dues have arisen during the CIRP period would not be determinative of it to be classified as CIRP cost. Interpreting Section 5(13)(c) of the Code in this manner would render the words "in running the business of the corporate debtor as a going concern" otiose. Further, it is clear from Regulation 31 and the guidance provided by IBBI vide the above-mentioned circular that unless the CoC has approved the dues and they directly relate to the CIRP, the dues cannot be classified as CIRP cost. And the CoC decided to exclude the cost incurred from the terminated projects, which is not maintaining the Corporate Debtor as "a going concern".

50. In conclusion, the following criteria determine whether a cost incurred by the Resolution Professional during CIRP qualifies as CIRP cost: (a) maintaining the Corporate Debtor as a going concern, (b) payment to suppliers of essential goods and services, and (c) direct relation to CIRP with approval from the Committee of Creditors (CoC). Applying these criteria to this case, the claim fails to meet the definition of CIRP cost.

10. Further the Hon'ble NCLAT in *Bharat Hotels Ltd. Vs Tapan Chakraborty Company Appeal (AT) (Insolvency) No. 1074 of 2022* has held:

“...Question of cost and its approval lays in the domain of the coc. The coc may ratify, modify or set aside the cost claimed. These issued may be decided in the meeting of the coc and are not to be examined by the Adjudicating Authority even before the coc takes a decision.”

11. Thus, it is clear that any payments made by the RP to maintain the CD as a going concern shall be treated as CIRP costs and the same must be decided by the CoC. In the present case, as observed in Annexure B, although the RP explained the payment of pre-CIRP dues to operational creditors in the 17th CoC meeting upon inquiry by a CoC member, but it appears that this has not been approved or ratified by the CoC. Furthermore, the RP has failed to provide any substantial evidence showing that his actions regarding the payment of pre-CIRP dues were approved by the CoC in subsequent meetings.
12. Based on the aforementioned observations, we direct the Applicant to seek ratification or approval from the CoC for the amount of Rs. 52.88 Crores paid by the RP as pre-CIRP dues to maintain the CD as a going concern. The Applicant is granted liberty to file a fresh application after obtaining ratification or approval from the CoC.

Sd/-

(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 01.07.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	New IA (IBC)/1329/2024 in Company Petition IB/308/2022
NAME OF THE COMPANY	Gayatri Projects Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Gayatri Projects Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1329/2024

Present: Mr. Sai Ramesh Kanuparthi, Resolution Professional.

This is an application filed to take on record the updated List of Creditors dated 21.06.2024 and reconstituted Committee of Creditors. The same are taken on record. Accordingly, this application is allowed and disposed of.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)