

NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH  
(Video Conference)

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 25.11.2021 AT 10.30 AM

TRANSFER PETITION NO.	IA(IBC) 100/2021 in TCP(IB) No.41/9/AMR/2019
COMPANY PETITION/APPLICATION NO.	CP(IB) No.423/9/HDB/2018
NAME OF THE COMPANY	Veda Biofuel Ltd
NAME OF THE PETITIONER(S)	Priya Trading Company
NAME OF THE RESPONDENT(S)	Veda Biofuel Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

<small>Ries</small>	Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

<small>Ries</small>	Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA (IBC) 100/2021 is allowed, vide separate orders.

  
JUSTICE TELAPROLU RAJANI  
MEMBER JUDICIAL

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH**

**I.A. No.100 of 2021  
IN  
TCP (IB) No.41/9/AMR/2019  
IN  
CP No.423/9/HDB/2018**

**Filed under Section 60(5) of the Insolvency and Bankruptcy Code,  
2016 Read with Rule 11 of the National Company Law Tribunal  
Rules, 2016**

**In the matter of  
M/s. VEDA BIOFUEL LIMITED**

**BETWEEN:**

Mr.Vijay Kumar Penmetsa,  
R/o. 50-50-15/2,  
Behind Gurudwara Temple,  
Seethammadara, Vishakhapatnam,  
Andhra Pradesh – 530017

.... Applicant

**AND**

M/s. Veda Biofuel Limited,  
Rep. by its Liquidator Mr.Dr.K.V.Srinivas,  
401, Kurupam Anchorage, Beach Road,  
East Point Colony, Vishakhapatnam,  
Andhra Pradesh – 530017

.... Respondent

**Orders pronounced on: 25.11.2021**

**Coram:**

**Justice Telaprolu Rajani, Member Judicial.**

**Parties/Counsels present:**

For the Applicant : Mr. S.Ravi, Senior Counsel

For the Respondent : Mr. Y.Suryanarayana, Advocate

**ORDER**

1. The Applicant moved this Application seeking a direction to the Liquidator to accept the Micro Small Medium Enterprise (MSME) certificate issued by the Competent Authority and to allow the Applicant to submit a resolution/restructuring plan in accordance with Section 240 A read with Section 29A of the Insolvency and Bankruptcy Code, 2016.
2. The following are the facts of the case briefly:
  - i. The Applicant is a promoter/guarantor of the Corporate Debtor M/s.Veda Biofuel Limited. The Corporate Debtor was declared as a Non-performing Asset (NPA) on 31.10.2018 inspite of the promoters infusing additional capital to save the Company from NPA. The operations of the Corporate Debtor were forcibly shut down, and operating of the bank accounts were blocked by the consortium leader as soon as the Company was declared as NPA. The Promoters have been relentlessly trying to revive the Company. After repeated denials, in the 14<sup>th</sup> CoC meeting held on 06.11.2019, the CoC unanimously agreed to permit the Applicant/Promoter to present the restructuring plan proposed by him. It was resolved that if the Applicant/Promoter is not ineligible under Section 29A of IBC, 2016, he could also participate as a Resolution Applicant and submit his restructuring plan.
  - ii. During the course of restructuring plan approval, as requested by the CoC members, the Applicant/Promoter also settled with the Operational Creditor who was an Applicant under Section 9 of the IBC, 2016 for getting the Corporate Debtor

admitted into the CIRP process. As per the settlement agreement, the said Operational Creditor agreed to withdraw the application and provide necessary documents to the Applicant to facilitate the withdrawal of the present company application. A copy of the settlement agreement dated 06.02.2020 was also prepared. Immediately after the settlement, the Applicant addressed an email dated 11.02.2020 to the erstwhile Resolution Professional/Liquidator requesting him to submit the withdrawal application before the NCLT. But the said Liquidator failed to call for CoC meeting. Further, a new investor Mr.Madhusudhan Raju Chintalapati, and the Applicant / Promoter filed I.A.No.15/2020 in CP (IB) NO.423/9/HDB/2018 wherein by order dated 04.02.2020, this bench directed the erstwhile Resolution Professional Mr.Sisir Kumar *"to place the restructuring plan before the CoC and to consider /evaluate the restructure proposal as per law."*

- iii. The new investor came to a resolution that the proposed resolution plan is in tune with the guidelines issued by the RBI. After due deliberations, the CoC members unanimously came to the conclusion, that given the circumstances of the Corporate Debtor, considering the economic value of the restructuring plan and since it is also complying with the mandatory requirements of the IBC Code, to consider the plan submitted by Mr.Madhu Sudhan Raju Chintalapati as the successful resolution plan.
- iv. The NCLT, Amaravati Bench vide its order dated 26.05.2020 rejected the resolution plan put forth by Mr.Madhusudhan Raju Chintalapati and held that the present Applicant was trying to seek a backdoor access to the management of the

Corporate Debtor. While doing so the NCLT, considered the judgment of the Hon'ble Supreme Court in *Chitra Sharma vs. Union of India (WP (Civil) No.744 of 2017 decided on 09.08.2018)* wherein, it was observed that promoters were ineligible to participate in the CIRP by virtue of Section 29A of the Code.

- v. The erstwhile Resolution Professional was appointed as Liquidator by order dated 26.05.2020. He continued his arbitrary actions and dismissed the Corporate Debtor's auditors and appointed his own nephew as the new auditor.
  - vi. After repeated requests, the erstwhile liquidator failed to adhere to the request of the Applicant to contemplate on the status of the Corporate Debtor as a Micro Small Medium Enterprises (MSME) unit. Since RP declined, the Promoter has obtained MSME certificate and submitted to CoC. By virtue of 2<sup>nd</sup> Amendment brought out to IBC Section 240 A was introduced into the Code as per which MSME can submit a resolution application in spite of being a promoter.
  - vii. The Liquidator Mr.Sisir Kumar Appikatla was replaced by a new liquidator by virtue of order of this Tribunal dated 07.08.2021 holding that the appointment of the said Liquidator is *non-est/ illegal and void ab initio*.
3. Heard the Counsel for the Applicant and the Counsel appearing for the Liquidator. By virtue of section 240A Clauses (c) and (h) of Section 29-A of the IBC, loses application of the promoter is an MSME. Section 29-A Clauses (c) and (h) are extracted hereunder for ready reference:

*"29-A : (c):- [at the time of submission of the resolution plan has an account] or an account of a corporate debtor under the management or control of such person*

*or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) [or the guidelines of a financial sector regulator issued under any other law for the time being in force] and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution of the corporate debtor:*

*Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan:*


*[Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor].*

*(h):- has executed [a guarantee] in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code [and such guarantee has been invoked by the creditor and remains unpaid in full or part].”*

4. Section 240 A of the Code was enacted specifically to exempt MSME from the purview of Clauses **c** and **h**. The Applicant is an MSME as certified by the Government of India in the certificate issued in favour of the Applicant. The Counsel appearing for the liquidator does not raise any counter arguments to the submissions made by the Counsel for the Applicant. Since the appointment of

earlier liquidator is held to be *void ab-initio*, all actions and orders made by him would be *non-est* in law. It is a clear case where the applicant who is MSME is eligible to submit Resolution Plan. Hence IA is allowed. The liquidator is directed to accept the MSME certificate produced by the Applicant and consider the Resolution/Restructuring Plan on the similar lines as approved in the 20<sup>th</sup> CoC meeting held on 03.03.2020. Hence this order.

Accordingly, IA No.100/2021 in TCP (IB) No.41/9/AMR/2019 is disposed of.



**JUSTICE TELAPROLU RAJANI**  
**MEMBER JUDICIAL**

*Swamy Naidu*