

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 531 of 2025

IN THE MATTER OF:

Indian Ocean Group Pte Ltd.

...Appellant

Versus

Neeraj Agarwal

...Respondents

Present:

For Appellant: Mr. Farooque Ali, Advocate.

**For Respondents: Mr. Aadil Naushad, Ms. Sanchari Chakraborty,
Advocates for RP.**

ORDER
(Hybrid Mode)

26.05.2025: Heard learned counsel for the Appellant as well as learned counsel appearing for the Respondent. This appeal has been filed against order dated 13.12.2024 by which the Adjudicating Authority has rejected IA No.961(KB)2024 filed by the Appellant – Successful Resolution Applicant (SRA) seeking refund of the performance security of Rs.30 Lakhs and Rs.5.26 Lakhs paid as 1% upfront payment.

2. Appellant participated in the CIRP of the Corporate Debtor and submitted his Resolution Plan which was approved by the CoC on 20.08.2021 and subsequently, approved by the Adjudicating Authority on 10.02.2022. The Resolution Plan could not be implemented by the Appellant and IA No.672 of 2023 was filed by the Resolution Professional as Chairman of the Monitoring Committee, where the Adjudicating Authority has held on

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19.01.2024 that the SRA has failed to deposit the upfront payment in terms of the Resolution Plan. The Adjudicating Authority heard learned counsel for the parties and rejected the application IA No.961(KB)2024 filed by the Appellant wherein finding has been returned that the SRA has failed to implement the plan despite repeated opportunities, hence, it does not deserve any benevolence. Appellant challenging the order has filed this appeal.

3. Learned counsel for the Appellant submitted that in the Information Memorandum, the Resolution Professional did not correctly give the full information of lease land and regard to ten vehicles which were shown to be registered with Corporate Debtor. Had the Appellant known that the unexpired period of lease deed shall not be available to the SRA, the Appellant would not have participated in the CIRP. It is submitted that due to the aforesaid misinformation of the Resolution Professional, the Appellant participated in the Resolution Process. He further submitted that in view of the aforesaid, Appellant was entitled to refund of performance security and 1% upfront payment submitted by it.

4. Learned counsel for the Resolution Professional refuting the submissions of learned counsel for the Appellant submitted that Appellant has his due diligence and after due diligence he submitted Resolution Plan and letter of intent, which was issued to the Appellant on 30.08.2021 has clearly contemplated that in event Appellant failed to deposit the amount, the amount already paid shall be forfeited including the performance guarantee. It is submitted that all facts were well known to the Appellant since Appellant

in the Resolution Plan has prayed for certain waiver by the appropriate regulatory authority, which has cancelled the lease deed. The fact that the Appellant has prayed for waiver in the Resolution Plan clearly indicate that the Appellant was well aware of the cancellation of the lease deed by the regulatory authority.

5. We have considered the submissions of learned counsel for the parties. The Adjudicating Authority in Para 18 to 22 has made following observations:

“18. Further, at the third meeting of the Monitoring Committee convened on 11th May, 2022, it was duly noted that the applicant sought to render the implementation of the Resolution Plan otiose and impossible. The RP was constrained in its capacity as the Chairperson of the Monitoring Committee, to file an application being I.A. (IBC) No.672 of 2023 which was disposed of by the Hon'ble Adjudicating Authority by an order dated 19th January, 2024, clearly holding that "In the light of the above facts and circumstances, the SRA failed to deposit the upfront payment in terms of the Resolution Plan approved by this Adjudicating Authority and continue to do so."

19. It appears that in fact, the failure on the part of the recalcitrant SRA to make payments as per plan has led to liquidation of the CD vide order dated 03rd April, 2024.

20. Thus the RP contends that the recalcitrant SRA, is not entitled to refund of any amount paid by it.

21. We have considered the rival contentions and perused records.

22. Irrefutably and admittedly the SRA has failed to implement the plan despite repeated opportunities. It does not deserve any further benevolence. It has rendered itself fit to get its EMD or upfront amount forfeited.”

6. In so far as submission of the Appellant that Information Memorandum did not correctly depict the nature of lease land and 10 vehicles which were in the name of the Corporate Debtor, suffice it to notice Clause 1 to 3 of the Letter of Intent dated 30.08.2021 which was issued to the Appellant pursuant to approval of the Resolution Plan. Letter of Intent dated 30.08.2021 upto relevant Clause 3 is as follows:

“Date: 30th August 2021

*To
The Principal Officer
Indian Ocean Group Pte Ltd.*

*Registered Office:
3791 Jalan Bukit Merah
05-28 E-centre@Redhill,
Singaporo-159471*

Dear Sir,

Sub: Issuance of Letter of Intent (LOI) pursuant to approval of Resolution Plan submitted by Indian Ocean Group Pte Ltd. in the CIRP of M/s Jharkhand Mega Food Park Private Limited by its Committee of Creditors.

It gives me immense pleasure in informing you that in accordance with the provisions of Section 30(4) of the Insolvency & Bankruptcy Code, 2016, the Committee of Creditors ("CoC") of M/s Jharkhand Mega Food Park Private Limited in its 12 meeting held on Saturday, 28th August 2021, has approved the Resolution Plan ("Plan") submitted by your company M/s Indian Ocean Group Pte Ltd. and you are considered as Successful Resolution Applicant. The Plan has been approved with the following stipulations:

- 1. Assets/Securities in the name of the Corporate Debtor will be released to the Resolution Applicant after payment of full resolution amount within the stipulated time period mentioned in the plan. In case of any default, the amount already paid may be forfeited by the Financial Creditors/ Banks along with performance security provided by the Resolution Applicant and the Financial Creditors/ Banks shall also be at liberty to realize its dues through various available remedies to the creditors against the company as per Insolvency and Bankruptcy Code, 2016 and /-or-enforce-the-securities under SARFABSI Act or any other law applicable to Financial Creditor/Bank.*
- 2. Secured Creditors also retains the liberty to recover all remaining dues from the guarantors (other than the Corporate Debtor) and/or enforcement of other securities in the name of any Guarantors even if the resolution plan is approved*

3. *It is deemed that the Resolution Applicant has done due diligence with respect to the Corporate Debtor ("CD") and its available assets. After only such due diligence and after being fully satisfied about the existence, condition and status of the assets of the CD, the Resolution Applicant has submitted his Resolution Plan. Upon successful completion of the Resolution Plan, all available assets of the CD will be transferred to the Resolution Applicant on "As is where is" basis, "As is what is" basis, "Whatever there is" basis and "No recourse" basis, Neither the Secured Creditors nor the Resolution Professional shall be liable or made responsible for the condition, content or otherwise, etc., of these assets of the CD"*

7. Admittedly, the Appellant failed to deposit the amount as per the Resolution Plan and the Adjudicating Authority by order dated 19.01.2024 held that the Appellant failed to implement the plan, which order has already become final, as submitted by the Resolution Professional. The Appellant having failed to implement the plan, forfeiture of performance guarantee and 1% upfront payment cannot be said to be erroneous or illegal. Letter of Intent given to the Appellant clearly contemplated in Clause 1 to 3 that in case of any default, the amount already paid may be forfeited. The Appellant has done his due diligence, which is also referred in Clause 3. Relevant part of the Resolution Plan where waiver was asked by the Appellant regarding cancellation of lease deed itself indicated that Appellant was well aware of the regulation authority who has cancelled the lease deed.

8. We are of the view that no illegality has been committed by the Adjudicating Authority in rejecting the application filed by the Appellant. There is no merit in the appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Justice N Sesa Sayee]
Member (Judicial)**

**[Barun Mitra]
Member (Technical)**

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