

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, COURT- I  
SPECIAL BENCH**

**I.A (IB) No. 1299/KB/2023**

**in**

**C.P(IB) No. 299/KB/2022**

**Under section 7 of the insolvency and bankruptcy code, 2016.**

**In the matter of:**

**Rahul Hydrocarbon Commercial Private Limited** (CIN:U51102JH2012PTC000177), a company incorporated under the companies act, 1956 having its registered office at 502, Punchwati Plaza, Kutchery Road, Ranchi-834001.

**...FINANCIAL CREDITOR**

Versus

**New Hind Silk House Private Limited** (CIN:U51909WB2009PTC134564) a company incorporated under the companies act, 1956 having its registered office at 111A, Park Street 2<sup>nd</sup> Floor, Kolkata-700016.

**...CORPORATE DEBTOR**

AND

**In the matter of:**

PNB Housing Finance limited, a company incorporated under companies act, 2013 having its registered address at 9<sup>th</sup> Floor, Antriksh Bhavan, 22 Kasturba Gandhi Marg, New Delhi-110001.

**...APPLICANT**

Versus

**Bimal Kanti Choudhary**, Interim Resolution Professional for **M/S NEW HIND SILK HOUSE PRIVATE LIMITED** bearing Registration No. IBBI/IPA-001/IP-P0128/2017-2018/11682 having its registered office at 77A/50, Raja S.C Mallick Road, 8 S.P.B Block, Kolkata-700092.

**...RESPONDENT**

Order Pronounced on: 12/02/2024

**Coram:**  
**Shri Rohit Kapoor, Member (Judicial)**  
**Shri D. Arvind, Member (Technical)**

**Appearance (via Hybrid mode):**

**For PNB Housing Finance in IA 1299**

Md. Dilwar Khan, Adv

**For the RP**

Mr. Rishav Banerjee, Adv

Ms Purna Shaha, Adv

**ORDER**

**Per: D. Arvind, Member (Technical)**

1. This Court convened through hybrid mode.
2. The present I.A has been filed by PNB Housing Finance Limited against the Bimal Kanti Choudhary, Interim Resolution Professional for M/s New Hind silk House Private Limited seeking the following reliefs:
  - I. Direct the interim resolution professional to accept the entire claim of the applicant, to the extent of Rs 4,93,40,531.95/-
  - II. Direct the interim Resolution Professional to include Rs. 1,52,51,531.95 being rejected amount as part of the Applicant claim in the corporate insolvency resolution process:
    - a. Stay of corporate insolvency resolution process till disposal of this application.
    - b. Ad-interim relief in terms of prayers hereinabove.
  - III. Costs of this miscellaneous application:
  - IV. Any other order that this Hon'ble tribunal may deem fit in the facts and circumstances of this case.
3. ***Submission of the learned counsel appearing for the applicant:***
  - 3.1 The Corporate Debtor has approached the applicant for availing a non-housing loan facility for the purpose of business expansion. The Corporate Debtor offered to obtain the loan by mortgage of its properties situated at Unit Nos. 201-203,

second floor, 111/A Panchsheel park, P.S park street, Kolkata- 700015. Accordingly, loan was loan facility was sanctioned by the letter dated 18<sup>th</sup> January 2018 bearing reference No NHL/SKOL/1217/469193.

- 3.2** Thereafter, the parties executed disbursement letter dated 19 January 2018, including most important terms of contract and general terms of the contract. These document are referred to as “the Finance Documents”.
- 3.3** The applicant created loan account No. NHL/SKOL/1217/469193 for loan disbursement in accordance with the terms of the finance Documents.
- 3.4** In or around November 2020 the Corporate Debtor again requested the applicant for emergency line of credit guarantee scheme for the purpose of reviving /helping business of the Corporate Debtor. Accordingly, on the loan application of the Corporate Debtor another sanction letter was issued on 28<sup>th</sup> November,2020 bearing reference No NHL/SKOL/1120/833546 with general terms and condition and most important terms and condition.
- 3.5** Thereafter, the parties executed disbursement letter dated 30 November 2020, including most important terms of contract and general terms of the contract. These document are referred to as “the Financial Documents”.
- 3.6** Further supplemental agreement was executed between the parties on 30<sup>th</sup> November 2020, relating to the additional loan provided to the Corporate Debtor.
- 3.7** The loan facility was sanctioned upon consideration of the application and particulars of security provided by the Corporate Debtor. In the sanction letter several conditions were mentioned including provision of security by creation of security interest in respect of a property situated at unit Nos 201-203, second floor 111/A Panchseel park, P.S Park Street, Kolkata-700015. The equated monthly statement due and payable by the Corporate Debtor was initially Rs 5,48,197/- along with 99,800/- for the first 12 months and Rs 3,31,479/- upto 48 months.
- 3.8** During the subsistence of loan facility, Corporate Debtor miserably failed adhere to the terms of the finance documents including in particular the repayment schedule. Despite of repeated remainder the Corporate Debtor has to failed repayment schedule. Accordingly, Corporate Debtor was declared as a non-performing asset on 12.05.2022.

- 3.9** Since Corporate Debtor has continued to default in repayment schedule, the applicant issued notice under section 13(2) of SARFAESI Act demand the payment of entire Outstanding amount of Rs 6,25,85,029.85 (Rupee six crore twenty-five lakh eighty-five thousand twenty rupee and eighty-five paisa only) against the Corporate Debtor as on date 16<sup>th</sup> May 2022.
- 3.10** In the meantime, the Corporate Debtor approached the applicant for one-time settlement of the total outstanding debt, whereby the applicant by settlement letter dated 15 February 2015 proposed that the entire debt of Rs 6,25,85,030/- be adjusted by way of an OTS proposal of Rs 5,68,86,000/- towards full and final settlement of dues.
- 3.11** The Applicant against the payment of Rs 2,27,97,000/- (Rupee two Crore twenty-seven lakh and ninety-seven thousand only) released the property being unit No 201, 2<sup>nd</sup> floor, 111A, Park street, P.S Park street Kolkata-700016. The Applicant released the title deed of the said premises and caused adjustment to the outstanding dues.
- 3.12** The balance outstanding payment towards the full and final one-time settlement was required to be paid by 31 march 2023. But the Corporate Debtor has failed to make payment.
- 3.13** Accordingly, the said one-time settlement stood rejected and outstanding liability of the Corporate Debtor as on 1<sup>st</sup> April 2023 was a sum of Rs 4,93,40,531.95 (Rs Four crores Ninety three lakh and forty thousand five hundred thirty one and ninety five paisa).
- 3.14** Thereafter the applicant issued foreclosure letter dated 25 April 2023 and statement of account dated 30 may 2023 for the loan account Nos. NHL/SKOL/1217/469193 and NHL/kol/1120/833546 aggregating the aforesaid amount.
- 3.15** The Applicant has a valid and subsisting charge over the properties situated at unit Nos 202 and 203, 2<sup>nd</sup> floor, 111A park street, P.S Park street Kolkata-700016. The applicant is in symbolic possession of the said premises by invoking of section 13(4) of the SARFAESI Act.
- 3.16** The Applicant filed an application under section 7 of the said code, 2016 before the Hon'ble Tribunal that was disposed by an order dated 21.06.2023 on the

account of the order of admission in corporate insolvency resolution process in the present case.

- 3.17** The Applicant submitted its claim under Form C for a sum of Rs 4,93,40,531.95 (Rupee four crore ninety-three lakh forty thousand five hundred thirty one and ninety five paisa). The applicant in its proof of claim has submitted all the supporting documents and record relating to the aforesaid transaction.
- 3.18** The Interim Resolution Professional arbitrarily rejected part of the claim amounting to of the applicant by an email dated 23 June 2023 citing the approved claim was the balance due as per settlement letter.
- 3.19** The interim Resolution professional has given following reason for rejection of part of the claim as follows:
- a. Claim on account of Rs. 1,52,51,531.95 was rejected considering the amount paid towards the settlement letter.
  - b. The learned interim Resolution professional ought to have appreciated that on account of failure to comply with the terms and condition of the one-time settlement letter dated 15 February 2023 to make payment of Rs 3,40,89,000/- within 31 march 2023, it stood revoked and cancelled.
  - c. The learned interim Resolution professional failed to appreciate that on the date of commencement of corporate insolvency resolution process i.e 26 April 2023 the outstanding dues of the Corporate Debtor would amount to Rs 4,93,40,531.95 (Rupee four crore ninety-three lakh forty thousand five hundred thirty-one and ninety-five paisa).
  - d. There has been incorrect appreciation of the laws by the learned interim Resolution professional and the total outstanding debt was Rs 4,93,40,531.95 (Rupee four crore ninety-three lakh forty thousand five hundred thirty-one and ninety five paisa).
  - e. Particular of the outstanding claim has been indicated in foreclosure letter issued by the 25 April 2023.
  - f. Inasmuch as the Corporate Debtor failed to discharge its obligation under the letter of settlement dated 15 February 2023. Therefore, the Corporate Debtor was liable to pay the entire extent of outstanding dues amounting to Rs 4,93,40,531.95 (Rupee four crore ninety-three lakh forty thousand five

hundred thirty-one and ninety-five paisa) to the applicant on and from 1<sup>st</sup> April 2023.

**3.20** The interim Resolution professional has erred in rejecting part of the claim for Rs 1,52,51,531.95 on account of settlement letter while computing claim/outstanding dues as on 26 April 2023.

**3.21** That the interim Resolution professional has failed to appreciate that the Corporate Debtor has not complied with the terms of the settlement letter and has failed to discharge its obligations thereby cannot claim any benefit pursuant to expiry of the period of compliance.

**4. *Submission of the learned counsel appearing for the Respondent:***

**4.1** The applicant has made gross error in the calculation of their claim while filing claim with interim Resolution professional. The total amount payable to the applicant by Corporate Debtor was 6,25,85,029.85 (Rupee six crore twenty-five lakh eighty-five thousand twenty-nine and eighty-five paisa) as on 16.05.2022.

**4.2** That the Corporate Debtor has approached the applicant for one-time settlement. Under one-time settlement the Corporate Debtor has to pay 5,68,86,000 (Rupee five crore sixty-eight lakh eighty-six thousand only) to the applicant by 31.03.2023.

**4.3** Corporate Debtor has paid 2,27,97,000 (Rupee two crore twenty-seven lakh ninety-seven thousand only) out of 5,68,86,000 (Rupee five crore sixty-eight lakh eighty-six thousand only) to the applicant. Since the Corporate Debtor was not able to make full payment of Rs 5,68,86,000 (Rupee five crore sixty-eight lakh eighty-six thousand only) to the applicant, therefore one-time settlement stand cancelled.

**4.4** After deducting the amount of Rs 2,27,97,000 (Rupee two crore twenty-seven lakh ninety-seven thousand only) that has already paid by the Corporate Debtor to the applicant from the initial total outstanding of Rs 6,25,85,029.85 (Rupee six crore twenty five lakh eighty-five thousand twenty-nine and eighty-five paisa), the amount which is left to be paid is Rs 3,97,88,029.85 (Rupee three crore ninety seven lakh eighty eight thousand twenty nine and eighty five paisa). Further the interest payable at the rate of 13.50% from 17.05.2022 to 26.04.2022 (date of initiation of corporate insolvency Resolution process) is Rs 50,91,777.74 (Rupee fifty lakh ninety-one thousand seven hundred seventy-seven and seventy-four paisa only). Therefore, the total amount that is required to be paid by the applicant is Rs

4,48,79,807.59 (Rupee four crore forty-eight lakh seventy nine thousand eight hundred seven and fifty nine paisa only).

**4.5** The applicant claims of Rs 4,93,40,531.95 (Rupee Four crore ninety-three lakh forty thousand five hundred thirty-one and ninety-five paisa) filed through form C is wrong.

**4.6** There is exorbitant difference of Rs 44,60,724.36 (Rupee forty four lakh sixty thousand seven hundred twenty-four and thirty six paisa) in the claim made by the applicant i.e Rs 4,93,40,531.95 (Rupee Four crore ninety three lakh forty thousand five hundred thirty one and ninety five paisa) and the rightful claim of Rs 4,48,79,807.59 (Rupee four crore forty eight lakh seventy nine thousand eight hundred seven and fifty nine paisa only).

## **5. Finding and Analysis**

**5.1** Heard the submission made by the Ld. counsel of the parties and perused the records.

**5.2** The Ld. Counsel appearing for the applicant two contentions:

- a. The interim Resolution professional has incorrectly rejected amount of Rs 1,52,51,531.95/-
- b. Whether interim Resolution professional has incorrectly admitted 3,40,89,000/- on the basis of One-time settlement. Even though upon default in making payment as per one-time settlement, the concession/waiver granted shall lapse as per clause 9 of settlement letter dated 15.02.2023.

**5.3** As per the terms of settlement letter dated 15 February 2023, in case the default of payment of the compromise/OTS amount by the New Hind Silk House Private Limited, all the concession or waivers granted as in the OTS shall lapse. Clause 9 of the settlement letter is incorporated herein:

*This is made clear to you in the event of any default in payment of the compromise/OTS amount by the applicants, all concession or waivers granted as above shall lapse and the PNB housing shall be entitled to recover the entire outstanding amount with further interest, legal expenses and costs as stated in the terms mentioned herein.*

5.4 Hence the total outstanding as on 16.05.2022 is Rs 6,25,85,029.85

5.5 The per interim Resolution professional calculation sheet the outstanding amount is Rs 6,25,85,029.85 as on 16.05.2022. After the payment Rs 2,27,97,000 under One-time settlement, the new outstanding amount will be 3,97,88,029.85. The interim Resolution professional calculated interest @ 13.50% from 17.05.2022 to 26.04.2023 i.e for 346 days amount to Rs 50,91,777.74. Therefore, the total outstanding amount including interest would come to Rs 4,48,79,807.59 as on 26.04.2023. The Respondent/IRP in its reply has not denied admission of amount Rs 4,48,79,807.59 as on 26.04.2023. The calculation sheet of Interim Resolution professional is incorporated herein below;

Total loan disbursement	
Original disbursement	5,26,50,000/-
Additional loan on 28.11.2022	99,80,000/-
Total disbursement	6,26,30,000/-
Demand on 16.05.2022	
Principal	5,99,24,660.48
Interest Overdue	22,74,747/-
Charges, due & taxes	3,85,622.37
<b>Total Due on 16.05.2022</b>	<b>6,25,85,029.85</b>
Less paid between December 22 and feb 23	2,27,97,000/-
Due after payment of Rs 2,27,97,000/- (i)	3,97,88,029,.85
<b>Estimated interest at 13.50% from 17.05.22 to 26.04.23 i.e for 346 days (ii)</b>	<b>50,91,777.74</b>
<b>Due on 26.04.2023 (CIRP Commencement date) (i)+(ii) (A)</b>	<b>4,48,79,807.59</b>
<b>Claim as per Form C (B)</b>	<b>4,93,40,531.95</b>
<b>Difference (B)-(A) (Estimated Excess claim)</b>	<b>44,60,724.36</b>

- 1.1 In view of the above, we direct the interim Resolution professional to consider the claim of the applicant to tune of Rs 4,48,79,807.59 instead of admission of claim of Rs 3,40,89,000/- by interim Resolution professional.
- 1.2 Accordingly, the present I.A (IB) No 1299/KB/2023 is **partially allowed** (i.e 4,48,79,807.59 instead of admission of claim of Rs 3,40,89,000/- by interim Resolution professional) and **stand disposed of**.
- 1.3 The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Counsel for information and for taking necessary steps.
- 1.4 Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**D. Arvind**  
Member (Technical)

**Rohit Kapoor**  
Member (Judicial)

**This order is signed on 12<sup>th</sup> day of February, 2024.**

N.K.S(LRA)