

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, CHENNAI**

MA/530/2019

In

CP/977/IB/2018

Application filed under Section 60(5) (c) of the IBC, 2016

In the matter of M/s. Solidaire India Limited

M/s. Indian Bank

---Applicant/FC

V/s

Mrs. J. Karthiga, RP

For M/s. Solidaire India Limited

---Respondent-1

and

M/s. International Asset Reconstruction Company Private Limited

---Respondent-2

Order delivered on: 22.07.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

For the Petitioner (FC) : *Shri. Jayesh B. Dolia, Advocate*
Ms. T. Geethanjalli, Advocate
For M/s. Aiyar & Dolia

For the Respondent-1 : *Shri. P.S Raman, Sr. Advocate*
For Mrs. J. Karthiga, RP

For the Respondent-2 : *Shri. V.V Sivakumar, Advocate*
For Dua Associate

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Order dictated in the Open Court on 11.07.2019

It is an MA moved by Indian Bank (Applicant/Financial Creditor) u/s 60(5)(c) of the Insolvency & Bankruptcy Code, 2016 (**the Code**) against the Resolution Professional (RP) and another Financial Creditor, namely, International Asset Reconstruction Company Private Limited, seeking reliefs as follows:-

- a. *setting aside the decision of the RP dated 16.04.2019 rejecting part claim of the Applicant Bank and consider the entire claim of the Applicant as Financial Creditor;*
- b. *directing the RP to conduct valuation of the property of the Corporate Debtor situated at Perungudi Electronic Estate to arrive at proper fair value and liquidation value; and*
- c. *directing the RP to reconstitute the CoC with the original voting share of 27.96% of the Applicant Bank and consequently present the Resolution Plan for fresh voting by CoC.*

2. It is the case of the Applicant Bank that it is one of the Financial Creditors of the Corporate Debtor making a claim of ₹33,86,46,611.84 as financial debt against the Corporate Debtor before the Resolution Professional.

3. As to the details of the debt, the counsel for the Applicant has further stated that the Corporate Debtor on 24.01.1989 had issued 60,000 secured partly convertible debentures (Series I) with a face value of ₹200 each aggregating to ₹1,20,00,000 carrying interest at the rate of 14% per annum secured by charge over the debtor property. Thereafter, as per the terms of the issue, the Corporate Debtor converted ₹100 out of each debenture into five equity shares of ₹10 each for cash at a premium of ₹10 per share on 22.07.1989. By virtue of the conversion, the non-convertible portion value has come down to ₹60,00,000. Following which, at the request of the Corporate Debtor counsel, the Applicant (Indian Bank) on 07.10.1989 entered into Articles of Agreement with the Debenture Holders to act as Trustee.

4. In addition to the above, the Corporate Debtor on 12.03.1990 issued 2,96,616 secured non-convertible debentures (Series II) with a face value of ₹100 each aggregating to ₹2,96,61,600 carrying interest at the rate of 14% per annum secured by charge over the debtor properties. As to these debentures also, Indian Bank agreed to act as

Trustee by entering into Articles of Agreement dated 26.11.1990 with the Debenture Holders.

5. As the Corporate Debtor failed to pay interest over those debentures as agreed by the parties, this Applicant Bank filed three Recovery Applications before Debts Recovery Tribunal-II, Chennai (DRT-II) in O.A.No.299/2000 (renumbered as O.A.No.256 of 2007), O.A.No.441/2002 (renumbered as O.A.No.235 of 2007) and O.A.No.266/2002 against the Corporate Debtor. When mistakes crept in the Debt Recovery Application filed by the Applicant Bank having been noted and then the applicant was directed by the Hon'ble Supreme Court of India to initiate proceedings afresh, the Applicant Bank has initiated DRT proceedings against the Corporate Debtor and it is still pending.

6. Now the issue before this Bench is, on this Company Petition being admitted against the Corporate Debtor on 26.10.2018 for initiation of Corporate Insolvency Resolution Process (CIRP), this Applicant placed its claim in respect to the outstanding amounts of Series-1 and Series-II debentures, wherein the RP admitted Series-II.

7. As to Series-1, according to the RP, since this Applicant Bank has not filed proof with regard to the claim over Series-I Debentures, the RP rejected the claim made against Series-I. On this claim being rejected by the RP, this Applicant Bank has included this relief for admission of claim over Series-I Debentures for setting aside the claim rejected by the RP.

8. As to this relief is concerned, since the Applicant Bank itself is not in a position to place proof before the RP to determine the rejected claim of the Applicant Bank and despite the RP made an attempt to locate the records of the company, since he is also unable to get any material supporting the claim of the Applicant Bank, the RP rejected the claim over Series-1. In view thereof, I am of the considered opinion that unless proof is placed before the RP, it is not possible under law to admit this claim, thereby, I have not found any merit in the argument of the Applicant Bank seeking directions against the RP to admit its claim.

9. As to other relief in respect to the valuation of around 16 grounds of land assigned to the Corporate Debtor by the

Government of Tamil Nadu through Assignment Deed in the year 1989, the Applicant Bank counsel says that the liquidation value determined by the RP over the aforesaid land is decimal in value against the approximate value of ₹18,74 Crores given by valuer of the Applicant Bank on 24.06.2019. In addition to it, this Applicant counsel has further stated that even at the time of mortgaging the property to the applicant bank, the valuation of the land at that point of time, i.e., in 2013, was shown as ₹17 Crores. He says, since the liquidation value given by the RP being too low and incomparable with the market value of the asset, the liquidation value given by the RP shall be ignored and fresh valuation shall be given so as to maximise the value of the asset of the Corporate Debtor.

10. As against this argument, the RP counsel has further stated that this land was assigned by the Government of Tamil Nadu through Director of Industries on payment of ₹31,700 in the year 1989 with a mandate that this land shall be used only for the purpose for which it was assigned without making any alienation or creation of third party rights in respect to this land. The RP counsel says that

since ownership rights or lease holding rights of the land assigned not being conferred upon the Corporate Debtor by the Government of Tamil Nadu, this Corporate Debtor neither can alienate nor can create third party rights over the land impugned to anybody on its own. As property rights have not been conferred upon the Corporate Debtor, this land will only fetch the same money from Tamil Nadu Government that was paid to the Government in the event this property has been taken back by the Government. In view thereof, the Valuer as well as the RP, the RP counsel says, determined liquidation value that was shown at the time of assignment.

11. The RP counsel has further stated that this Applicant Bank has not even voted either for or against the Resolution Plan placed before the CoC for voting, moreover this Bank voting for or against the Resolution Plan would not change the decision because the requisite majority voted for the approval of the Resolution Plan. He further says that the applicant bank has not raised any objection that this plan is in violation of the procedure laid under the Code.

12. On hearing the submissions of either side, it is evident that the land presently lying in the name of the Corporate Debtor is admittedly belonging to the Government of Tamil Nadu and only possession has been lying with the Corporate Debtor basing on the Assignment Deed executed in the year 1989. It is also an admitted fact that this land cannot be used for any other purpose other than the purpose mentioned in the Assignment Deed and there is also no provision entitling the Corporate Debtor to create third party rights, therefore, the value of the property cannot be ascertained basing on the market value prevailing in the vicinity around this land. May be it is true that the charge was created over this property by the Bank with the consent of the Government, but that consent will not make any difference to the rights already crystallized by virtue of assignment made in favour of the Corporate Debtor.

13. In spite of these inhibitions, this Bench has on 03.07.2019 already given directions asking this Applicant Bank to place valuation report given by IBBI panel valuer. Over which, the applicant bank relied upon the valuation report given by the valuer

on 24.06.2019 reflecting that this property would be valued at ₹18.74 crores by saying that IBBI has not entertained the request of the Applicant Bank on the ground that unless the Adjudicating Authority or the RP places a request to IBBI for appointment of Valuer to ascertain the value of the said property, it cannot entertain the request of the Bank.

14. As to this contention, the Applicant counsel's argument is only limited to the extent that the value would be ₹18 crores on the ground that the Panel Valuer of the Bank has ascertained the value as ₹18 crores, but this report has no supporting's reflecting that this land would fetch ₹18.74 crores of value in the market. At least had there been some material before this Bench that there is a possibility for fetching the value mentioned by the Applicant Bank, then the occasion would have arisen before this Bench to look into such relief, but no material except bald valuation taking market value in that vicinity into consideration. This valuation has not discussed as to title of the land. When the title of the asset is not transferred and when the land was assigned on some fees paid by the Corporate

Debtor with a rider that land shall remain used for the purpose for which it is taken and it shall not be created with any third party rights, the occasion for valuing it basing on market value will never arise.

15. It is understandable if any fraud has been played by the parties in arriving at liquidation value, then it could become a ground for re-examining the valuation process already arrived at. Unless such ground is in existence, this Bench cannot repeat the process of valuation. Here no such ground, except saying if the asset is valued at market value, it would fetch ₹18Crores. As we all know, time is the essence of this Code and there being no tenable ground for repeating the process when it is clear that ownership rights or leasehold rights are not vested with the Corporate Debtor, it could not be assumed that that this land value could be valued on market valuation.

16. In view of the reasons aforementioned, I am of the considered opinion that the valuation given by the Valuers and the determination of the liquidation value of the asset by the RP cannot

be re-examined by looking at the allegation made by this Applicant Bank.

17. Accordingly, the reliefs sought by this Applicant are hereby dismissed.

-SD-

B. S.V. PRAKASH KŪMĀR
MEMBER (JUDICIAL)

vs