SL. No.131

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

Video Conference

CORAM: HON'BLE BHASKARA PANTULA MOHAN–MEMBER JUDICIAL
CORAM: HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 08.04.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/79/2022 in CP (IB) No.262/7/HDB/2018
NAME OF THE COMPANY	Transstroy Tiruthani Chennai Tollyways Pvt Ltd
NAME OF THE PETITIONER(S)	Allahabad Bank
NAME OF THE RESPONDENT(S)	Transstroy Tiruthani Chennai Tollyways Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

IA 79/20022 is filed for liquidation b the COC. IA is allowed with specific directions. Orders passed vide separate sheets.

MEMBER (T) **MEMBER (J)**

Syamala

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No.79 of 2022
In CP (IB) No.262/7/HDB/2018
Under section 60(5) of the IB Code, 2016
Read with Rule 11 of NCLT Rules, 2016

In the matter of:-
TRANSSTROY TIRUPATI TIRUTHANI CHENNAI TOLLWAYS PRIVATE LIMITED

Erstwhile Committee of Creditors
of M/s. Transstroy Tirupati-Tiruthani-Chennai-
Tollways Private Limited
Represented by Indian Bank (Lead Bank)
By its authorised signatory
Mr. P S S Sudhakar Rao, AGM (SAM) Branch,
5-1-679, Surabhi Arcade, Bank Street, Koti,
Hyderabad – 500001.

...Applicant

M/s International Asset Reconstruction-
Company Private Limited,
709, 7th Floor, Ansal Bhawan,
16, Kasturba Gandhi Marg,
New Delhi – 110001.

...Respondent No.1

Mr. Sanjay Mishra
Erstwhile Resolution Professional (Ex-RP)
M/s Transstory Tirupati-Tiruthani-Chennai-
Tollways Private Limited

...Respondent No.2

Date of Order: 08.04.2022

Coram: Shri Bhaskara Pantula Mohan, Member Judicial
Dr. Binod Kumar Sinha, Member Technical

Parties/Counsels present:

For the Applicant: Mr. Krishna CV Grandhi, Advocate

For the Respondent No.1: Mr. D. Narendar Naik, Advocate

Per: Bench

ORDER

1. Under consideration is an interlocutory Application bearing IA No.79 of 2022 filed by the erstwhile CoC in the matter of M/s Transstory Tirupati-Tiruthani-Chennai-Tollways Private Limited u/s. 60(5)of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of NCLT Rules, 2016 inter-alia seeking the following relief(s):
   a. Passing an order cancelling the approved Resolution Plan and
   b. Pass an order initiating Liquidation under Section 33 of the Insolvency and Bankruptcy Code, 2016 and
   c. Pass an order appointing the Mr. Sanjay Kumar Mishra (IBBI/IPA-001/IP-P01047/2017-18/11730), Ex-RP as the Liquidator in accordance with Section 34 of the Insolvency and Bankruptcy Code, 2016.
2. Brief facts leading to filing of the Instant Application are as under:-
   a) That this Adjudicating Authority admitted the application filed by Allahabad Bank (now Indian Bank) under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC / "CODE") read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 ("IBC Rules") against the Transstroy Tirupati-Thiruthani-Chennai Tollways Private Limited ("Corporate Debtor") vide its order dated 03.06.2019 and Mr. G. Madhusudhan Rao was appointed as IRP.
   b) That the Erstwhile COC was constituted on 10.07.2019 in compliance of the provisions of Section 18 of the IBC. The

Adjudicating Authority vide its order dated 02.08.2019 confirmed the appointment of Mr. Sanjay Kumar Mishra as the Resolution Professional (RP).

c) That the Erstwhile COC, in their 22nd CoC meeting held on 09.09.2020 and 10.09.2020, approved the resolution plan which was submitted on 06.08.2020 by the International Assets Reconstruction Company Private Limited (**"RA"**). Thereafter, the Adjudicating Authority vide its order dated 05.03.2021 has approved the resolution plan submitted by the RA.

d) That the approved Resolution Plan had the following Condition Precedents (**"CP"**) that needs to be fulfilled by the RA:

   i. NHAI Approval
   ii. Supplementary Agreement
   iii. In-principle confirmation re-assignment of Assigned Debt
   iv. Termination of EPC Contract
   v. Material Adverse Effect

e) That the time period for fulfilling the CP as per the terms of the Resolution Plan is 6 (six) months from the date of approval of the Resolution Plan by the Adjudicating Authority which is the Long Stop Date and that the time period for completing the CP expired on 04.09.2021.

f) That the RA requested for an extension of the long stop date and Erstwhile /COC in the interest of implementation of the successful resolution plan approved the extension of the Long Stop Date for a period 30 (thirty) days i.e., from 4.9.2021 to 3.10.2021.

g) That another mail was received from the Resolution Applicant on 03.10.2021 with a Request Letter dated 03.10.2021 seeking further extension of the Long Stop Date by 4 weeks which will expire on 03.10.2021.

h) That a letter dated 06.10.2021 was sent by the Lead Bank i.e., Indian Bank (erstwhile Allahabad Bank) To RA to apprise regarding unanimous decision of the lenders in their meeting dated 05.10.2021 to not grant further extension of Long Stop Date.

i) That on 22.10.2021, India Bank representative sent an email to the RA representative informing that the representation made by the RA during the meeting held on 22.10.2021 may be considered, provided RA deposits the entire amount payable under the Resolution Plan with Lead Bank unconditionally on or before 27.10.2021.

j) That the Performance Bank Guarantee (PBG) in favour of the Indian Bank (Lead Bank) bearing reference no. 1959NDDG00005921 issued on 26.10.2020 which was further amended on 22.04.2021 amounting to INR 3,00,00,000/- (Rupees Three Crores only) was getting expired on 25.10.2021, and in order to demonstrate the intent of implementation of the Resolution Plan, RA was requested to revalidate the PBG accordingly and deposit the same with Indian Bank.

k) That on 25.10.2021, the RA sent the scanned copy of the renewed Performance Bank Guarantee (PBG) amounting to INR 3,00,00,000/- (Rupees Three Crores only) and subsequently the same was deposited in original with the Ex-RP.

l) That on 01.11.2021, Representative of Indian Bank sent the response to the RA on their mail dated 28.10.2021, reiterating the lenders position and requested the RA to immediately comply with the requirement of depositing the entire plan value consideration unconditionally in terms of the resolution plan to enable the lenders to consider the request for extension of long stop date.

m) That RA has issued letter dated 03.12.2021 informing Indian Bank that it is making its efforts to seek approval of NHAI and is working towards the implementation of the resolution plan.

n) That the RA had failed to meet the CP even after the extension of time period granted by the erstwhile CoC. Therefore, the RA had miserably failed to fulfil the CP despite the time extension.

o) That the time limits in fulfilling the CP is critical as it involves risk to the public safety.

p) That the erstwhile CoC has recommended to proceed with liquidation of the Corporate Debtor and voted in favour of the resolution for liquidation in their meeting held on 03.01.2022. A copy of resolution is placed at Pg. No. 196 to 205 of the instant IA.

q) That the RP had presented and discussed an estimate of liquidation costs with the CoC members. The Liquidation cost was estimated assuming realization and distribution of the proceeds from liquidation in 18 months. That the CoC also approved the appointment of Mr. Sanjay Kumar Mishra, RP of the Corporate Debtor as the liquidator, in the event of liquidation of the Corporate Debtor.

r) That the implementation of the resolution plan has reached an impossibility wherein on one hand the RA refuses to make any payments under the successful resolution plan unless the NHAI agrees to the CP and on the other hand the NHAI vide Letter dated 14.10.2021 have clearly negated any opportunity to achieve the CP by entering into a supplementary agreement. Therefore, the implementation of the successful resolution plan has reached an impasse. Hence, the erstwhile COC is constrained to approach this Adjudicating Authority for cancellation of the successful resolution plan to protect the value of the Corporate Debtor and in the interest of value maximization of the Corporate Debtor and towards this end the erstwhile COC request this Adjudicating Authority to issue an order for liquidation of the Corporate Debtor.

3. Learned counsel for the Respondent No.1 filed counter inter-alia stating that the allegations made by the Financial Creditors are denied except those that are specifically admitted hereunder:
   a) The Respondent No. 1 has been communicating with NHAI time and again and now, again, NHAI has declined to give its consent to the terms as per the Resolution Plan or the execution of the Supplementary Agreement making it impossible for the Conditions Precedent to be met as acknowledged and accepted by the Applicant and the answering Respondent.
   b) That the Applicant and NHAI have agreed for liquidation of the Corporate Debtor which involves transfer of the concession/project to NHAI and the making of termination payment by NHAI to the CoC. The Respondent herein has no objection to the same and the same may be taken on record by this Adjudicating Authority, provided it is recognised by the Applicant that the failure of the Resolution Plan is on account of the Conditions Precedent in the approved Resolution Plan not being satisfied and the CoC would be at liberty to pursue the alternative resolution of transfer of the project to NHAI whilst the Applicant would be discharged from performance of the Resolution Plan.

4. Heard. Perused the record.

5. This Adjudicating Authority by its order dated 05.03.2021, has approved the Resolution Plan proposed by the Resolution Applicant and also directed for implementation of the same within the agreed time frame.

6. It is seen that the Resolution Applicant has failed to pay the Plan value consideration and has failed to implement the plan even after extension of time by CoC/monitoring and implementing committee.
7. The Resolution Applicant has stated that the Resolution Plan could not be implemented as the Condition Precedent could not be achieved due to NHAI's refusal to enter into Supplementary Agreement.
8. However, it is observed that the NHAI vide their letter dated 14.10.2021 (quoted on Pg No. 195 of the instant IA) have categorically stated that they will not be able to modify the terms of the in-principle approval granted by entering into a Supplementary Agreement as desired by the Resolution Applicant. The relevant portion of the said letter is quoted as under:-

"………

2. The key pending CPs attached with your above mail has been broadly seen and it is observed that you have proposed to modify the in-principle agreed key terms by NHAI communicated vide NHAI letter cited at ref (1) above.

3. It may be appreciated that before conveying the in-principle approval to agreed key terms, all the conditions precedent as per your Resolution Plan approved by CoC had been discussed with you in detail and decision taken with the concurrence of all. As such, any modifications in agreed key terms at this stage is uncalled for. Further, modifications in agreed key terms at this stage is uncalled for. Further, modifications now proposed by you is not in line with the in-principally agreed key terms as communicated by NHAI vide ref(1), above and, therefore not agreed to.

4.It is an important project and cannot be linger on like this. Our stand is clear and decision will be within the framework of the original

Concession Agreement dated 12.07.2010. As such there is no point in further discussion as requested by you.

.........."

9. Thus, it is clear that the Resolution Applicant has tried to scuttle the process of Resolution of Insolvency of the Corporate Debtor even after the approval of the Resolution Plan by this Adjudicating Authority, by not making any payments to the lenders as agreed in the approved Plan on one hand and making unreasonable demands to NHAI for entering in supplementary Agreements on the other, thereby, altering the agreed key terms as approved by NHAI in their 'in-principle' approval.

10. Be that as it may, since there is a failure on the part of the Resolution Applicant in implementing the approved Resolution Plan, the Resolution Plan so approved stands terminated, and performance Bank Guarantee is to be forfeited.

11. The lenders being adversely affected by the failure of the Resolution Applicant in implementing the Resolution Plan have resolved to initiate liquidation proceedings against the Corporate Debtor. Even though the instant Application is filed under Section 60(5) of the Code, 2016, the Applicant did ask for the Liquidation of the Corporate Debtor. We are aware of the dictum of the Hon'ble Supreme Court, which says that the provisions of Law quoted on an Application is not very important since the Court stands completely guided by the content and not by provisions so quoted. Apparently, in view of the same, the invocation of Section 33 of the Code, 2016 for Liquidation is not erroneous for the reason that the natural consequence of cancellation of Resolution Plan shall lead to liquidation. It is also pertinent to note the provisions of Section 33(3) and 33 (4) of the code, as under:-

"(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)."

12. In view of the above provisions and the facts as observed, this Adjudicating Authority in exercise of its power under Section 33 of the Code, 2016, hereby orders that Liquidation proceedings be initiated in respect of the Corporate Debtor.

13. Accordingly, in exercise of powers conferred under provisions of Section 33 of the I&B Code, 2016, we proceed to pass Order as follows:—

    (i) This Adjudicating Authority hereby order for Liquidation of M/s. Transstorty Tirupati Tiruthani Chennai Tollways Pvt.Ltd which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;

    (ii) This Adjudicating Authority hereby appoint Mr. Sanjay Mishra, as liquidator of the Corporate Debtor, who has filed his written consent to act as Liquidator along with valid Authorization for Assignment. He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;

(iii) The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of Liquidation;

(iv) Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.

(v) We make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

(vi) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the Liquidation process by the Liquidator.

(vii) All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Company Liquidator viz., Mr.. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(viii) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

(ix) The Liquidator shall keep in view the provisions of Regulation 32A of Insolvency and Bankruptcy Board of India (Liquidation

Process) Regulations, 2016 and shall endeavour to first sell the Corporate Debtor or its business as going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from liquidation commencement date, Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(x) The Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in accordance with Regulation 4(2) of IBBI (Liquidation Process) Regulations, 2016.

(xi) Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz., Mr. Sanjay Mishra for information and compliance.

(xii) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.

14. In view of the fact that the approved resolution plan had to be terminated on account of failure on part of the Resolution Applicant, it is deemed that such failure on the part of Resolution Applicant would fall under the provisions of Section 74(3) of the Code, 2016, making Resolution Applicant liable for punishment. Accordingly, proceedings under Section 74(3) of the IB Code, 2016 have to be initiated as per Law.

15. Accordingly, Application bearing IA No. 79/2022 stands disposed off.

Dr. Binod Kumar Sinha
Member Technical

Bhaskara Pantula Mohan
Member Judicial