

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA(IB)/233/2020 in CP/762/2018
(filed under Rule 11 of NCLT Rules, 2016)

In the matter of **M/s. Sri Srivathsa Paper Mills Private Limited**

1. **Ms. Pavithra,**
No.17A, Srivathsha Enclave,
Gnanambika Mills,
Coimbatore,
Tamil Nadu.

2. **Mrs. Elavarasi,**
F2A, Boraiyah Street,
L.S. Puram,
Mettupalayam 641 301,
Tamil Nadu. ... Applicants

-Vs-

1. **Mr. A. Arumugam,**
(Resolution Professional),
1/56, Market Road,
Devi Stores, 1st Floor,
Kelambakkam,
Chennai 603 103.

2. **Asset Reconstruction Company (India) Ltd.,**
Rep. by its Authorized Signatory,
10th Floor, the Ruby Tower,
Senapati Bapat Marg,
Dadar West,
Mumbai 400 028.

3. **Insolvency and Bankruptcy Board of India,**
Represented by its Chairman/Chairperson,
M.S. Sahoo, 7th Floor, Mayur Bhawan,
Shankar Market, Connaught Circus,
New Delhi 110 001. ... Respondents

Present:

For Petitioner : A.R.L. Sundaresan, Senior Advocate
for A.L. Gandhimathi, Advocate

For Respondent No.1 : K. Moorthy, Advocate

For Respondent No.2 : V.V. Sivakumar, Advocate

Order pronounced on 12th April 2021

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

ORDER

***Per:* R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. This is an Application filed by the Applicants seeking to condone the delay of 381 days in relation to the main Application filed seeking inter alia to institute and enquire into the conduct of the Resolution Professional, declare the CIRP culminating with the acceptance of the Resolution Plan of M/s. Hi-tech Bio Products Pvt. Ltd. as null and void and to direct to restart of the CIR process.

2. In the averments made in the present Application viz., condone delay Application, it is seen that allegations have been made against the Resolution Professional alleging that copies of the status report as

filed by the Resolution Professional were not handed over and that the documents were handed over to the Counsel on record of the Applicants only in the last week of October 2019 and in the circumstances the Applicants came to know of the serious flaws and mistakes committed by the Resolution Professional, particularly in regard to the calculation of liability pertaining to the Sales Tax and dues to the Electricity Board.

3. It is also brought to the notice of this Tribunal that State Government through the Sales Tax Department had proceeded to file a case against the RP for wrongful calculation of Tax and that the same had also been permitted by the Hon'ble NCLAT, which fact also came to be known by the Applicants only in the last week of October 2019, when these Applicants were permitted to inspect the records, effectively a Chinese wall mentality has been created, it is alleged as against the Resolution Professional in shutting out the Applicants from accessing details and in the circumstances there has been a delay in relation to the main Application and its filing and hence the delay of 381 days is required to be condoned as sought for.

4. To the Application seeking for condone delay, an affidavit in reply has been filed on behalf of Respondent No.2 viz., Asset Reconstruction Company (India) Limited. Perusal of the said reply

contends that the Applicants seem to be aggrieved by the rejection of their Resolution Plan on the ground that they are ineligible under Section 29 (A) (C) r/w clause (ii) of Explanation 1 of Section 29 (A) (g), Section 5 (24) (h) and Section 5 (24 A) of the IBC, 2016.

5. However, it is also brought to the notice of this Tribunal by virtue of the affidavit in reply filed by 2nd Respondent that in MA/393/2019 which sought to challenge the same, came to be dismissed vide order dated 11.06.2019 and that the same had also attained finality.

6. Subsequently, the appeals which came to be filed before the Hon'ble NCLAT as well as Hon'ble Supreme Court came to be also dismissed. Further it is also brought to the notice of this Tribunal that in relation to the Resolution Plan the one as submitted by M/s. Hi-tech Bio Products Pvt. Ltd. was approved by this Tribunal vide order dated 19.07.2019 and the said order had also attained finality as there has been no challenge mounted in relation to the said order dated 19.07.2019 approving the Resolution Plan.

7. It is also brought to the notice of this Tribunal that the Section under which the Applicants have sought to invoke the main Application itself is not sustainable as Section 87 of the IBC, 2016 is

falling under Part III of IBC, 2016 being applicable to Insolvency & Bankruptcy for individual and partnership firm.

8. In the circumstances, the Applicants, it is contended, have not chosen to explain as to how they are eligible to file an Application under Section 87 of IBC, 2016 pertaining to the main reliefs sought for. It is also highlighted by the 2nd Respondent in its affidavit in reply that no reason has been provided for the delay and the only ground alleged in the Application is that delay was due to administrative reasons, which it is strongly contended to be false and frivolous and the same cannot constitute a sufficient cause.

9. Further it is also highlighted that the MSME certificate which is sought to be produced under which the Applicants are claiming shelter has also been obtained only on 21.11.2019 much after the order dated 13.11.2018 of this Tribunal was passed admitting Section 7 Application filed by the 2nd Respondent and the approval of the Resolution Plan on 16.10.2019 and in the circumstances no consideration can be given in relation to the Certificate as sought for.

10. No counter has been filed by the Resolution Professional being the 1st Respondent, however, a detailed memo has been filed by the Resolution Professional in the capacity of a Chairman of the

Implementation Committee and as the erstwhile Resolution Professional in respect of the Corporate Debtor. From the same it is evident that the CIRP of the Corporate Debtor was initiated on 13.11.2018 and that the CoC was constituted in accordance with the provisions of IBC, 2016 on 14.12.2018.

11. Subsequently, on 26.04.2019, in the 6th CoC meeting and the e-voting on 01.05.2019 the Resolution Plan submitted had been approved by the CoC with 100% voting. However, in MA/484/2019 the Resolution Plan came to be approved by this Tribunal on 19.07.2019 and that the Resolution Applicant had paid Rs.21.66 Crore as envisaged in the Resolution Plan approved by the CoC and by the Adjudicating Authority.

12. It is also highlighted that the Resolution Plan was fully implemented and that the commercial production was started in the Paper Mill on 19.02.2020 and that all payments have been made to all the Creditors including Government Departments. Further the 2nd Respondent had also released the charge as reflected in the RoC being a Secured Creditor.

13. Taking into consideration all the above, it is submitted that allegations as made by the Applicants are incorrect and false even

taking into consideration the averments and allegations made in the main Application. Further allegations are also made in relation to non-submission of EoI before the last date of 10.02.2019 as fixed for the CoC by the Applicants and that they have also failed to remit the EMD amount of Rs.50 lakh and they have also failed to submit any Resolution Plan.

14. Despite the opportunity provided to the Applicants to submit their case in the 5th CoC, the CoC have rejected the case as one falling under Section 29 (A) of IBC, 2016 which also came to be challenged before this Tribunal in MA/393/2019 rejected by this Tribunal vide order dated 11.06.2019. Consequent thereto in correlation with the statements as made by the 2nd Respondent by means of an affidavit in reply, it is brought to the notice of this Tribunal that an appeal was filed before Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.652 of 2019 and the said Appeal also came to be dismissed against which Civil Appeal No.6021 of 2019 was preferred and the same was dismissed as withdrawn before the Hon'ble Supreme Court. Again, MA/914/2019 dated 02.10.2019 was filed which was dismissed as barred by res judicata.

15. In the circumstances, in relation to the main Application the 1st Respondent seeks for a dismissal / seeks for its rejection of the same.

16. We have carefully considered the submissions of Learned Counsels as well as the averments made in the respective affidavits filed by the respective parties as well as the memo as filed by the 1st Respondent. It is evident that the Resolution Plan itself has been approved by this Tribunal against which no appeal seems to have been preferred and even in relation to the rejection of the Applicants being declared as ineligible under Section 29 (A) of IBC, 2016 even though Appeals have been preferred up to the highest Court of the land, no worthwhile relief has been granted to the Applicants herein.

17. However, in this order we are not venturing into the merits of those Applications and we have detailed the above facts only to bring to light that a Resolution Plan which stood approved by this Tribunal as per the averments contained by the 1st Respondent has been fully implemented in as much as the claimants have been settled as envisaged under the Resolution Plan. Pertaining to the allegations as made against the conduct of the Resolution Professional, it is required to be noted that the appropriate Authority for consideration of the same is the Regulator viz., IBBI, if at all the Applicants have any

grievance, the same is required to be made with the IBBI in the capacity as a Regulator and not before this Tribunal so that if it is found true, appropriate action can be taken against the conduct of the Resolution Professional, who conducted the CIRP of the Corporate Debtor.

18. As rightly pointed out by Learned Counsel for the 2nd Respondent, we do not find any sufficient cause being given in the Application seeking for the condonation of delay of 381 days other than merely stating that due to administrative reasons, there has been a delay.

19. In the circumstances, we are constrained to **dismiss** this Application, however, without cost.

-Sd-
ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-
R. VARADHARAJAN
MEMBER (JUDICIAL)

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