

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 2737 OF 2021

Under Section 32A r/w 60(5) of
Insolvency & Bankruptcy Code, 2016

IDBI Bank Limited

...Applicant

Vs.

**Ruchi Soya Industries Limited &
Another**

...Respondent

In the matter of

C.P.(IB) No. 1371/MB/2017

C.P.(IB) No. 1372/MB/2017

Standard Chartered Bank

& DBS Bank Limited

Financial Creditor

Vs.

Ruchi Soya Industries Limited

Corporate Debtor

Order delivered on: 19.12.2023

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Justice Shri V.G. Bisht

Hon'ble Member (Judicial)

Appearances

For the Applicant : Mr. J.P. Sen, Sr. Advocate a/w Mr.
Kunal Vaishnav & Ms. Surbhi Soni
i/b MGV & Associates (Patanjali
Foods Limited)

For the Respondent : None

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Application IA 2737/2021 is filed by M/s IDBI Bank Limited under section 32A read with Section 60(5) of the Insolvency & Bankruptcy Code, 2016 ("Code") for directions to M/s Ruchi Soya Industries Limited ("Respondent No. 1") and Sh. Dinesh Shahra, Ex-managing director of the Respondent No. 1 to provide all the necessary assistance, cooperation and documents required in respect of and to aid the conduct of forensic audit in compliance with the directions of the Hon'ble Madhya Pradesh High Court in W.P. No. 25995 of 2018 in its order dated 05.12.2019.

2. The Applicant is a company incorporated under the Companies Act, 1956 and is a banking company as per the meaning ascribed under Section 5(c) of the Banking Regulations Act, 1949 having its registered address as more particularly stated in the cause title. Prior to the resolution of the corporate insolvency of the Respondent No.1 being achieved under the Code, the Applicant was one of the financial creditors of the Respondent No.1.
3. M/s Ruchi Soya Industries Limited (“Respondent No. 1” or “Corporate Debtor”) is a company incorporated under the Companies Act, 1956 and was undergoing corporate insolvency resolution process from 15th December 2017. By and under an Order dated 4th September 2019 in M.A. No. 1721 of 2019 (“Plan Approval Date”), this Tribunal approved the Resolution Plan submitted by the Patanjali Consortium, in terms of the Insolvency and Bankruptcy Code, 2016 [‘Code’], pursuant to which the Patanjali Consortium led by M/s Patanjali Ayurved Limited completed all the formalities and took over the Applicant from 18th December 2019. As of 24.06.2022, the name of the Applicant has been changed from Ruchi Soya Industries Limited to Patanjali Foods Limited.
4. The Respondent No.2 was the promoter/director of the Respondent No.1 Corporate Debtor prior to the initiation of CIRP of the Corporate Debtor.
5. Due to the financial downturn faced by the Respondent No.1 in and around 2016, the other lenders of the Corporate Debtor

categorized the account of the Respondent No.1 as SMA-2 and proceeded to form a Joint Lenders' Forum ("JLF") with the other lender banks of the Respondent No.1. On 01.09.2016, the Applicant declared Respondent No.1's account as a Red Flag Account under the provisions of the Reserve Bank of India (Fraud Classification and Reporting by Commercial Banks and Select FIs) Master Directions, 2016.

5.1. Pursuant to the aforesaid Master Directions by RBI, a special audit was conducted by the Applicant in 2017. The Auditor's Report in respect of the special audit recorded various adverse findings which were communicated to the Respondent No.1 by the Applicant.

5.2. In the meantime, as stated hereinabove, vide order dated 15.12.2017 passed in C.P. No. 1371 of 2017 and 1372 of 2017, this Tribunal initiated CIRP of Respondent No.1.

5.3. The JLF was of the view that the account of the Respondent No.1 was fit to be classified as a Red Flag Account. Accordingly, the Applicant declared the Respondent No.1's account as a Red Flag Account on 22.02.2018. This classification was reported to CRILC on the same date.

5.4. Subsequent to the classification and upon the advice of the JLF, the Applicant appointed one M/s. G.D. Apte and Co. to conduct the Forensic Audit of Respondent No.1. Accordingly, a Forensic Audit was conducted and a Forensic Audit report

dated 07.02.2018 along with an addendum dated 07.03.2018 was submitted by the said Auditor. In view of the observations in the Forensic Audit Report, the Applicant declared the Respondent No.1's account as "Fraud" on 02.07.2018. The Applicant, on behalf of the JLF, filed a complaint dated 01.10.2018 with the CBI and further filed a revised complaint dated 25.01.2019 requesting CBI to take investigate the fraud and to register an appropriate proceeding against the Respondent No.1, its directors/promoters and other Key Managerial Personnel.

5.5.The Respondent No.2 had filed a Writ Petition 2018 challenging the Forensic Audit Report and the Addendum thereto before the Hon'ble Madhya Pradesh High Court. The Applicant contested the said Writ Petition and informed the Hon'ble Madhya Pradesh High Court of the pendency of investigation and requested that judicial intervention was not required at that stage.

5.6.In the meantime, vide order dated 24.07.2019 in M.A. No. 1721 of 2019, this Tribunal approved the Resolution Plan submitted by the consortium led by Patanjali Ayurved Limited and accordingly the consortium led by Patanjali Ayurved Limited acquired the management of Respondent No.1.

5.7.Vide its order dated 05.12.2019, the Hon'ble Madhya Pradesh High Court directed Applicant herein to conduct a fresh forensic audit by an Independent Auditor at Respondent No.2's

expense. Further, the Applicant and the law enforcement agencies were directed to be restrained from taking any action either penal or otherwise, on the basis of the earlier Forensic Audit Report. It is pertinent to note that the Hon'ble Madhya Pradesh High Court has not quashed or disregarded the legality and the evidentiary value of the Forensic Audit Report. Hereto annexed and marked as Annexure-C is a copy of the said order dated 05.12.2019 passed by the Hon'ble Madhya Pradesh High Court.

5.8. Pursuant to the order dated 05.12.2019, the Applicant, in consultation with the JLF, appointed New Independent Auditor, viz. Haribhakti Business Services LLP to conduct a forensic audit of the Respondent No.1. This was communicated to the Respondents as is evident from the letter dated 30.03.2020.

5.9. From 24.03.2020, a nationwide lockdown was declared on account of Covid- 19 pandemic. The conduct of forensic audit as well as seeking of information from the Respondents by the Applicant as well as the forensic auditor was affected due to the lockdown restrictions. The lockdown continued with varying severity of restrictions till October 2021. The Hon'ble Supreme Court also took a judicial notice of the Covid-19 affected period and has by its various orders has granted appropriate extensions for initiating legal proceedings, the period of limitation whereof was affected by the pandemic and resultant lockdown. Despite

the pandemic the parties exchanged the correspondence in respect of the compliance of the order dated 05.12.2019.

5.10. Further, the Applicant vide its email dated 04.04.2020 requested the Respondent No.2 as well as the new management of Respondent No.1 to support the Forensic Auditor and to provide all the necessary documents to complete the Audit in a specified time frame. Vide its email dated 08.04.2020, 10.06.2020 and 26.08.2020 Applicant, once again, requested the Respondents to cooperate and provide the necessary documents to the forensic auditor in compliance of the order dated 05.12.2019 of the Hon'ble Madhya Pradesh High Court, but the same was deliberately neglected by the Respondents. That despite repeated follow-ups and request by the Applicant vide its letters/emails dated 03.12.2020, 28.12.2020 & 13.01.2021, 25.01.2021 and 12.04.2021 the Respondents have not cooperated with the forensic auditor and failed to provide the necessary documents. Further the Forensic Auditor also communicated its list of required documents/information vide emails dated 26.08.2020 and 28.12.2020 and vide letter dated 31.08.2020. Thus, the whole spirit of the order dated 05.12.2019 stood frustrated.

5.11. Vide email dated 02.04.2020, the Respondent No.1 responded to the above letter dated 30.03.2020 denying any obligations in complying with the forensic audit in view of the approval of the Resolution Plan. This objection was once again repeated in the emails dated 07.04.2020. Vide emails dated 08.04.2020, the

Respondent No.1 sought some time to discuss the issue of forensic audit with its legal team in view of the ongoing lockdown. Thereafter, the Respondent No.1 addressed emails dated 31.08.2020 and 04.12.2020 once again calling upon the Applicant to reconsider the conduct of forensic audit. Vide email dated 09.02.2021, the Respondent No.2 replied to the letter dated 25.01.2021 and expressed his inability to comply with the order dated 05.12.2019. Moreover, vide email dated 19.02.2021, the Respondent No.1 also refused cooperation in conduct of the forensic audit and denied its liability to comply with the said order.

5.12. In addition to the above, it is also pertinent to note that vide email dated 07.01.2021, the Forensic Auditor i.e. New Haribhakti Business Services LLP, informed the Applicant that the Respondent No.1 had communicated that it had not received any notice of the Writ Petition and that it was not a party thereto. Moreover, the Respondent No.1 alleged that it had no knowledge of any order requiring a fresh forensic audit of the Respondent No. 1 and that it would not act in support of the conducting such audit. A copy of the said email dated 07.01.2021 is annexed herewith and marked as Annexure-F

5.13. In view of the above, in and around June 2021, the Applicant was constrained to initiate contempt proceedings against the Respondent No.2 under the Contempt Petition No. 1153 of

2021 before the Hon'ble Madhya Pradesh High Court. Presently the contempt petition is sub-judice.

5.14. It is submitted that, by virtue of section 32A(1) of the Code, the Respondents are obligated to extend all assistance and cooperation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process of the Respondent No.1. This is evident from the provisions of Section 32A of the Code, which states as follows:

" 32A. Liability for prior offences, etc.

(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-

- a. a promoter or in the management or control of the corporate debtor or a related party of such a person; or*
- b. a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission*

of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a “designated partner” as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor’s liability has ceased under this sub-section.

(2)

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to

any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.

5.15. It is pertinent to note that the section 32A of the Code does not give any immunity to the ex-promoters/directors or any person in management or control of Corporate Debtor or a related party of such a person who had abetted or conspired in the commission of an offence. It is submitted that the ongoing investigation against the Respondent no. 2 and other affiliates of the Respondents, in respect of fraud, cheating and criminal misappropriation of funds, are offences under the Indian Penal Code, 1860 and are ongoing and the same are not absolved on account of the approval of the Resolution Plan under the Code. As the investigations against the Respondent No.2 and other affiliates of Respondent No. 1 are ongoing on account of fraud, as per the applicable RBI guidelines, the co-operation of the Respondent No. I to provide requisite information to the Forensic Auditor is necessary without which auditor shall not be able to provide a conclusive report.

5.16. From a perusal of the above, it is abundantly clear that the Respondents herein are not cooperating or providing any assistance in respect of an ongoing investigation, which is further bolstered by the order dated 05.12.2019 of the Hon'ble Madhya Pradesh High Court. The forensic audit being in compliance of the said order and further in aid of the investigation of the accounts of the Respondents, it is

necessary in the interest of justice to compel the Respondents to cooperate and provide all such documents and assistance necessary to aid and complete the forensic audit. The same is in consonance with the provisions of the Section 32A (3) of the Code as extracted above.

- 5.17. In the light of the blatant denial of the Respondents to cooperate and provide documents for effective conduct of forensic audit mandated by the order dated 05.12.2019 by the Hon'ble Madhya Pradesh High Court, the judicial intervention by this Tribunal is necessary to tie the ends of justice.
6. Heard the Learned Counsel and perused the material available on record.
- 6.1. We find that provisions of Section 32A(3) of the Code are explicitly clear and mandates the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process. Accordingly, we consider it appropriate to direct the Respondent No. 1 & 2 to cooperate and provide all such documents and assistance, as may be requested and requisitioned by the Forensic Auditor M/s. New Haribhakti Business Services LLP or any person authorised by the Applicant in this regard from time to time for

the necessary completion of the forensic audit pursuant to the aforesaid order dated 05.12.2019. The Respondents shall provide all the information they are seized and possessed of and all documents necessary for completion of the forensic audit and are duty-bound to provide the same.

7. In view of the foregoing, this IA 2737/2021 is disposed of as allowed.

Prabhat Kumar
Member (Technical)

Justice V.G. Bisht
Member (Judicial)