

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 27

IA (LIQ)92/2024 IA 5009/2024 in C.P. (IB)/789(MB)2022

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **09.12.2024**

NAME OF THE PARTIES: **TATA CAPITAL FINANCIAL SERVICES**
LIMITED V/s SANTOSHI BARRIER FILM
INDIA PRIVATE LIMITED

Section 66(1) & 7 of the Insolvency and Bankruptcy Code, 2016 and
Application under any other provisions- IBC

ORDER

IA 5009/2024 in C.P. (IB)/789(MB)2022

- 1) Mr. Aniruth Purusothaman, Ld. Counsel for the Applicant, Ms. Tanushree Sogani, Ld. Counsel for the Resolution Professional and Mr. Gaurav Jangle, Ld. Counsel for the Respondent No. 3 are present.
- 2) The present Interlocutory Application has been filed by Applicants/Ex-managing Directors of the Corporate Debtor challenging the decision by the Resolution Professional to file an Application seeking initiation of the Liquidation Process of the Corporate Debtor.
- 3) In this Case the Bank of Baroda is arrayed as a Party Respondent No. 2, who is holding 65% vote share in the Committee of Creditors, categorically submits that they are not willing to consider the Resolution Plan submitted

by the Suspended Board, unless it is further improvised. Counsel for the suspended Board informs that they are willing to improvise their offer, however, no steps have been taken forward by both the Parties.

- 4) The Authorised Representative/Counsel appearing for Bank of Baroda could not confirm as to what kind of improvisation they are seeking to cast their vote in favour of the Resolution Plan proposed by Suspended Board when this Bench raised specific question to him.
- 5) In view of this facts, we consider it appropriate to pass an order dismissing the Interlocutory Application bearing IA No. 5009 of 2024, whereby suspended Board has sought direction to Bank of Baroda to cast their vote on the Resolution Plan submitted by the Suspended Board in view of its abstention from voting when the plan was put for vote earlier.
- 6) In view of the forgoing, the Interlocutory Application bearing IA No. 5009 of 2024, is disposed of as dismissed.

IA (LIQ)92/2024 in C.P. (IB)/789(MB)2022

- 1) Ms. Tanushree Sogani, Ld. Counsel for the Resolution Professional is present.
- 2) The present Interlocutory Application has been filed by the Applicant/Resolution Professional of the Corporate Debtor seeking leave of this Bench to initiate Liquidation Process against the Corporate Debtor herein u/s 33 of the Insolvency and Bankruptcy Code, 2016.
- 3) The brief facts leading to the case in hand are as follows:

- i. It is submitted that pursuant to publication of Form G, Applicant was in receipt of s Expression of Interest and out of these s prospective resolution applicants (hereinafter referred to as "PRAs"), only 3 had submitted the Resolution Plans. Pertinently, the Applicant had approached this Tribunal for seeking extension of 60 days after expiry of 180 days as the members of the Committee of Creditors (hereinafter referred to as "CoC") were in negotiations with the PRAs and were deliberating upon the same. Hence, vide order dated 21.11.2023, this Tribunal was pleased to extend the CIRP period by 60 days on account that the CoC members were deliberating on the Resolution Plans.
- ii. Since one of the PRAs i.e., the suspended directors of the Corporate Debtor submitted the documents in support of the Resolution Plan on 10.12.2023, the CoC members took some time to consider the same. Therefore, on 11.12.2023, in the 8th CoC meeting, the Resolution Plans were put to vote and the voting lines were open from 12.12.2023 till 18.12.2023. However, vide E-mail dt. 18.12.2023, a request was made by the Bank of Baroda having 65% voting share for extension of time to consider and vote on the Plans, as it was informed to the Members that CIRP of the Corporate Debtor was scheduled to expire on 20.12.2023. Accordingly, the Applicant had preferred an application seeking extension in the CIRP period by 45 days which

was allowed and granted by this Tribunal vide order dated 01.01.2024, thereby, extending the CIRP period till 03.04.2024.

- iii. In view thereof, the voting lines to vote upon the Plans were extended till 01.02.2024. However, once again request was made by the Applicant for extension of CIRP period by 60 days in view of maximization of value of the assets of the Corporate Debtor as one of the PRAs i.e., suspended directors of the Corporate Debtor had proposed to submit the revised offer. Accordingly, the Applicant had filed an application bearing IA No. 1117 of 2024 seeking extension of 60 days after expiry of 285 days which was allowed and disposed of vide order dated 18.03.2024.
- iv. Thereafter, in the 9th CoC meeting, it was noted and informed to the members of the CoC that the revised Resolution Plans received from the PRAs were submitted for voting based on H1, H2 and H3 on 12.12.2023. But due to lack of requisite approval of 66%, no Resolution Plan could be approved. Hence, as stated above, Suspended Board of Directors had requested to submit the Revised Resolution Plan and the same was shared on 04.02.2024. However, due to certain discrepancies, the said Plan could not be considered by the CoC and as a result, the Suspended Directors were informed to clear the deficiencies. Accordingly, the revised Plan was accepted on 31.03.2024 after receiving the balance Earnest Money Deposit

amount to the tune of Rs. 70,76,151/-. In addition to this, it was also informed to the CoC members that the scheduled CIRP expiration date is 03.04.2024. But in order to consider the revised Resolution Plan submitted by the Suspended Directors of the Corporate Debtor and vote on the Plans received, the CoC members asked the Applicant to approach this Tribunal for an extension of 30 days after elapse of 345 days. Pursuant to this, in the 10th CoC meeting dated 01.04.2024, the resolution seeking extension of 30 days after elapse of 345 days in the CIRP period was approved by the CoC members and accordingly, an Interlocutory Application bearing IA No. 1720 of 2024 was filed by the Applicant which was allowed by this Tribunal on 17.04.2024.

- v. Since the voting lines for voting on the Resolution Plans were closing on 10.04.2024, and the CIRP had expired on 03.04.2024, after seeking the extension of another 30 days, the CoC members had resolved and approved to extend the voting lines till 02.05.2024 with the sole objective to resolve the Corporate Debtor. However, on 03.05.2024, in the 12th CoC meeting, Bank of Baroda (65%) and Tata Capital Financial Services Limited (22%) had requested for further extension of voting lines as the members were awaiting approval from their respective officers. The Applicant had informed the CoC members that even after seeking extension, 375 days were expiring on

04.05.2024. However, due to active consideration of the Resolution Plans, the CoC members in their paramount wisdom had resolved and approved with 87% voting share to extend the CIRP period by another 30 days after elapse of 375 days in the 12th CoC meeting dated 03.05.2024. Accordingly, an Interlocutory Application bearing IA No. 2569 of 2024 was filed by the Applicant seeking an extension of 30 days beyond 375 days in the CIRP period which was listed for the first time on Board on 03.06.2024.

- vi. However, this Tribunal while allowing the application seeking an extension of 30 days beyond 375 days of the CIRP period had noted that even after allowing the said Application, -the extended period was ending on 04.06.2024. Therefore, the Applicant was granted the liberty to file a fresh application before this Tribunal for continuation of CIRP. It was further recorded that the CoC is in active consideration of 3 Resolution Plans but on request of the members, time period to vote upon the said Plans has been extended and is yet not concluded.
- vii. Subsequently, in the 13th CoC meeting dated 06.06.2024, the Applicant had informed the members regarding the status of CIRP and the order passed by this Tribunal. It was requested by the Applicant that the CIRP has been extended even beyond the maximum time period of 330 days and hence, it was imperative that the members

conclude their voting on the Plans. In response to which, it was informed by the Authorized Representative of Bank of Baroda (65%) that they were still awaiting approval from their head/ corporate office, hence, had requested the Applicant to apply for further extension in lieu of the liberty granted by this Tribunal. Accordingly, it was unanimously resolved by the members of the CoC to further extend the CIRP period of the Corporate Debtor by 30 days beyond 405 days. Accordingly, an Interlocutory Application bearing IA No. 3611 of 2024 was filed seeking extension in the CIRP period by 30 days, which was allowed vide order dated 12.07.2024, thereby, extending the CIRP period till 04.07.2024.

- 4) Pertinently, Tata Capital Financial Services Ltd. (22% votes) and Phoenix ARC Private Limited (13% votes) voted in favor of the Resolution Plan submitted by IBC Impex Private Limited but Bank of Baroda abstained from voting on the agendas put for voting before the members in the 10th CoC meeting dated 01.04.2024. Therefore, despite requesting Bank of Baroda (65% votes) to cast their vote, it failed to do so and as a result, the Resolution Plans submitted by the PRAs failed to garner the requisite approval of 66%.
- 5) Hence, due to elapse of CIRP period and failure in garnering the requisite approval of the CoC with 66% for approval of the Resolution Plan, the

Applicant was constrained to approach this Tribunal seeking commencement of liquidation proceedings of the Corporate Debtor.

6) The Bank of Baroda on the specific direction of this Bench has submitted the name of Mr. Piyush Kisanlal Jani, Insolvency Professional to act as the Liquidation of the Corporate Debtor, who has also given his consent in Form AA to act as a Liquidator of the Corporate Debtor. It is submitted that in view of the time constraint, they recommendation of name of Mr. Piyush Jani, has not been placed on record by way of an Affidavit. The said submissions are noted and Written consent of the Liquidator is taken on record.

7) Hence, the present Interlocutory Application has been filed seeking Liquidation of the Corporate Debtor as the Resolution Plan submitted by the Suspended Board has not been considered, hence, we deems it fit and appropriate to pass the Order for Liquidation of the **Corporate Debtor viz. Santoshi Barrier Film India Private Limited** in the manner laid down in Chapter III of the Insolvency and Bankruptcy Code, 2016, considering the fact there is no Resolution Plan for consideration and CoC does not foresee any possibility of getting Plans for the Corporate Debtor. Accordingly, having considered the submissions of the Application and on perusal of the averments made in the present Interlocutory Application, this Bench is satisfied and accordingly is of the considered view that the present Interlocutory Application is in consonance with Section 33 (2) of the

Insolvency and Bankruptcy Code, 2016 and the same is liable to be allowed.

Accordingly, the Liquidation is ordered.

8) Hence ordered.

ORDER

- a) The Application be and the same is allowed. The Corporate Debtor, **Santoshi Barrier Film India Private Limited**, shall be Liquidated in the manner as laid down in Chapter-III of the Code.
- b) **Mr. Piyush Kisanlal Jani, Insolvency Professional having IBBI Registration No. IBBI/IPA-001/IP-P01439/2018-2019/12164 is appointed as Liquidator of Santoshi Barrier Film India Private Limited.**
- c) That the Liquidator for conduct of the Liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- e) Liquidator shall issue public announcement stating that Corporate Applicant is in Liquidation.
- f) The Liquidator shall endeavour to sale the Company as a going concern during the liquidation in terms of Regulation 32A of the Liquidation Process Regulations. In case he is not able to do so within a period of

90 days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.

- g) Subject to Section 52 of the Code no suit or other legal proceedings shall be instituted by or against the Corporate Applicant. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Applicant shall cease to have effect and shall be vested in the Liquidator.
- i) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code read with the Liquidation Process Regulations.
- j) Personnel connected with the Corporate Applicant shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- k) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Applicant, except when the business of the Corporate Applicant is continued during the liquidation process by the Liquidator.

- l) The Liquidator shall submit progress reports as per Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- m) The Liquidator is hereby Authorized to represent the Corporate Applicant before the Government Authorities, if need be.
- n) Registry shall furnish a copy of this Order to the **Insolvency and Bankruptcy Board of India, New Delhi; Regional Director (Western Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Maharashtra; the Registered Office of the Corporate Debtor;** and the **Liquidator, Mr. Piyush Kisanlal Jani**, having address Om Ashrya, New Laxminagar, Behind Mazar, Ring Road, Gondia - 441614, having E-mail ID capiyushj@gmail.com
- 9) Needless to say, Committee of Creditors shall ratify and clear the fees of the erstwhile Resolution Professional of the Corporate Debtor, for the payment of the expenses & cost, including fees of the Resolution Professional i.e., CIRP cost amounting to Rs. 41,85,799/- including for the period from filing of the present Application and till the date of final liquidation order in this present matter, to be a part of CIRP cost.
- 10) With the aforesaid observations and directions, the Interlocutory Application bearing **IA (Liq.) No. 92 of 2024**, stands disposed of as Allowed.

11) There will, however, be no order as to costs.

12) Ordered Accordingly.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

Vedant Kedare