DIVISION BENCH **O-5**
COURT - I

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CP (IB) No.1237/KB/2018
IA(IBC) No.341/KB/2021, IA(IBC) No.944/KB/2019, IA(IBC) No.1074/KB/2019, IA(IBC) No.245/KB/2020, IA(IBC) No.63/KB/2020, IA(IBC) No.1275/KB/2020

CORAM: 1. HON'BLE MEMBER(J), SHRI RAJASEKHAR V.K.
2. HON'BLE MEMBER(T), SHRI BALRAJ JOSHI

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 27TH JANUARY, 2022, 10:30 A.M

NAME OF THE COMPANY	**BENI GOPAL SINGH VS EMC LIMITED**
UNDER SECTION	**IBC UNDER SEC 9**

Appearances (via video conference):

For the Applicant in IA No.1275/KB/2020	:	Mr. Joy Saha, Senior Advocate Mr. Pratik Mukhopadhyay, Advocate Mr. Saptarshi Mandal, Advocate Mr. Kannan Tiruvengadam, erstwhile RP in person *(now Chairman, Monitoring Committee)*
For the Successful Resolution Applicant	:	Mr. Ratnanko Banerji, Senior Advocate Ms. Shreya Choudhary, Advocate Mr Amardeep Sharma, Authorised Representative of the SRA in person
For LIC Housing Finance Ltd	:	Mr Pranit Bag, Advocate Mr Debabrata Das, Advocate
For Indiabulls Consumer Finance Ltd	:	Ms. Urmila Chakraborty, Advocate Mr. Debasish Chakrabarti, Advocate

ORDER

IA No.1275/KB/2020

1. Learned senior counsel for the applicant present. Learned senior counsel for the Successful Resolution Applicant (SRA) present. Learned counsel for LIC Housing Finance Ltd present. Learned counsel for Indiabulls Consumer Finance Ltd present.

2. Mr Joy Saha, learned senior counsel for the applicant, submitted that the present application has been filed for initiating proceedings under section 74 of the Code against the SRA for contravening the resolution plan approved by this Adjudicating Authority *vide* order dated 21.10.2019. This matter has been receiving our consideration from 04.01.2021 onwards.

3. The resolution plan was approved by this Adjudicating Authority on 21.10.2019 and the entire payment was required to be made by the SRA within 60 days from the date of approval of the plan, *i.e.,* on or before 20.12.2019. However, the SRA failed to do so even after multiple opportunities were granted in this regard by the Monitoring Committee.

4. Mr. Ratnanko Banerji, learned senior counsel for the SRA, tried valiantly to put forth many reasons for non-compliance, including the fact that there was an appeal filed against the order approving the resolution plan, the intervention of the Covid-19 pandemic, and the illness of family member of the authorised representative of the SRA in August 2021. He also earnestly requested that a last opportunity be granted to him to make payments under the approved resolution plan by 31st March 2022. This was vigorously opposed by the learned senior counsel appearing for the applicant, who submitted that in response to the orders passed by this Adjudicating Authority, affidavits have been filed on three earlier occasions, assuring the Court that the payments under the approved resolution plan will be made within certain time frames. However, the SRA has not adhered to these timelines.

5. We are singularly unconvinced that the reasons mentioned by Mr Ratnanko Banerji, learned senior counsel, are mitigating factors for non-compliance of the approved resolution plan.

6. The three earlier affidavits referred to by Mr Joy Saha were filed on behalf of the SRA, in terms of the directions issued and opportunities granted by this Adjudicating Authority, were ones affirmed on 21.01.2021 by Mr. Indraneel Biswas; on 12.03.2021 by Mr Amardeep Sharma; and again by Mr. Amardeep

Sharma on 11.08.2021. Mr Joy Saha has rightly contended that these affidavits do not really yield confidence that the SRA would be able to implement the plan for the simple reason that there is no information regarding the source of funds and not even a concrete plan as to how and when these funds are likely to be tied up. This leads to believe that the SRA is not sincere, and it is uncertain whether it would be able to adhere to its commitments under the approved resolution plan. While the affidavits submitted on 21.01.2021 and 12.03.2021 assured payment of the amount envisaged under the resolution plan by 30.06.2021, this was also not honoured, nor was any explanation proffered by the SRA as to why these commitments made to court could not be met.

7. It is pertinent to note here that approved resolution plan envisages a total payment of ₹568 crore. However, except for the Performance Bank Guarantee (PBG) of about ₹30 crore, nothing has been paid so far. Even here, a part of the PBG came to be paid only after the present application came to be filed.

8. Learned senior counsel for the applicant submitted that it is due to the outstanding efforts of the erstwhile resolution professional (the Chairman) of the Monitoring Committee, that the bank guarantees given on behalf of the Corporate Debtor have not been invoked so far. In the event of liquidation being ordered, the outstanding bank guarantees amounting to about ₹562 crore would be encashed immediately, putting further strain on the Corporate Debtor. However, it was becoming increasingly difficult to carry out the functions of the Corporate Debtor.

9. Mr Joy Saha, learned senior counsel for the applicant, presented different alternatives that could emerge under the present circumstances created due to non-implementation of the approved resolution plan which comprised of - (a) sending the Corporate Debtor into liquidation; or (b) to exclude certain periods of time from the CIRP timelines to the CoC and the RP to run a fresh EoI process. He stated that he was under instructions to press for appropriate orders in IA No.1275/KB/2020 today itself.

10. We have considered the rather longish submissions made by the learned senior counsel for the Applicant and for the SRA. The alternatives that could emerge from this imbroglio, as brought out above, have the very large probability of delaying the fruitful completion of the process of a resolution further in time. Thus, even though the conduct of the SRA thus far does not instil confidence, but considering the fact that the alternative recourse available too has the potential to push the resolution further ahead, we are constrained to do a fine balancing act, noting the fact that the SRA has already deposited the Performance Bank Guarantee which would be lost in case the commitments made in the resolution plan are not honoured/implemented

11. In the light of the above, we deem it fit, in the interest of justice, to give one last opportunity to the SRA to file an affidavit giving a detailed roadmap of how it intends to discharge its commitments under the successful resolution plan. The affidavit must be accompanied by some immediate and reasonable payments so as to demonstrate the earnestness of the SRA to meet its commitments under the approved resolution plan. This affidavit shall be filed on or before 15.02.2022 positively. The affidavit shall also disclose the full list of assets held by the SRA as on the date of hearing, *i.e.,* 27.01.2022. *Status quo* as on 27.01.2022 in respect of cash and bank balances standing in the name of the SRA in India shall be maintained, and these shall not be transferred to accounts outside India without the leave of this court.

12. List this matter for consideration on 17.02.2022. Mr. Amardeep Sharma, authorised representative of the SRA, shall remain present in court through video conferencing on that date.

13. The other IAs be tagged along for hearing on that date.

Balraj Joshi
Member (Technical)

Rajasekhar V.K
Member (Judicial)