

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

I.A. (IB) No. 724/KB/2022

in

C.P. (IB) No. 349/KB/2017

Section 10 of the Insolvency and Bankruptcy Code, 2016;

In the matter of :

Ramsarup Industries Limited

CIN: L65993WB1979PLC032113

... Corporate Applicant

I.A. (IB) No. 724/KB/2022

An application under sub-section (5) of section 60 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

S S Natural Resources Private Limited

CIN: U10300WB2015PTC204962

...Applicant

-Versus-

CFM Asset Reconstruction Private Limited

CIN: U67100GJ2015PTC083994

...Respondent

Order Pronounced on : 27 June 2023

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical)

Mr. Siddhartha Mitra, Sr. Adv.	:For CFM ARC in IA/724/2022
Mr. Siddhartha Datta, Adv.	and IA/746/2022.
Ms. Suhani Dwivedi, Adv.	
Mr. Deepanjan Dutta Roy, Adv.	

Mr. Jishnu Saha, Sr. Adv. :For Respondent No. 1 in IA/746/2022
Mr. Deep Roy, Adv
Mr. Rahul Auddy, Adv.
Mr. Aditya Gooptu, Adv.

Mr. Joy Saha, Sr. Adv. :For SS Natural Resources Pvt. Ltd. in
Ms. Manju Bhuteria, Adv. IA/724/2022 and IA/746/2022
Mr. Keshav Tibrewalla, Adv.

ORDER

Per: Balraj Joshi, Member (Technical)

1. The Court convened through hybrid mode.
2. This Application has been filed by the S S Natural Resources Private Limited, Successful Resolution Applicant (“SRA”) of Ramsarup Industries Ltd. seeking instruction upon the respondent viz. CFM Asset Reconstruction Private Limited, who has come into the picture of resolution of Corporate Debtor viz. Ramsarup Industries Ltd. after part of the loan of ARCIL was assigned to the respondent on 23rd of April, 2021.
3. It has been submitted by Ld. Senior Counsel appearing for the petitioner that respondent has caused number of obstacles in the successful implementation of the Resolution Plan. Despite the fact that *vide* order dated 6th April, 2022, this Adjudicating Authority had directed the applicant to implement the approved Resolution Plan within a month from the said order which was assured by the respondent before the Hon’ble NCLAT. The Hon’ble NCLAT dismissed the application on 19th April, 2022 without interfering with the order dated 6th April 2022.
4. Ld. Sr. Counsel appearing for the SRA submits that in terms of the order dated 6th April, 2022, the applicant herein had fulfilled it’s obligation by depositing the entire upfront amount in the Corporate Debtor account as directed. However, in the further meetings of the Monitoring Agency which were held on 13th April, 2022, 18th April, 2022 and 20th April, 2022 while discussing the stages in implementation of the approved plan the respondent

expressed their consent to discuss the relevant resolutions at the meeting which were needed for the implementation of the Resolution Plan.

5. The Chairman of the Monitoring Agency who was the Resolution Professional of the Corporate Debtor apprised that lenders of the Corporate Debtor that the Financial Creditors are required to issue no due certificate (“NDC”) to the applicant herein. Post receipt of consideration for the approved plan as per the terms thereof, it was further clarified that a draft of format of the NDC shall be shared with all the lenders on 5th of May, 2022 at the 18th meeting of the Monitoring Agency.
6. The Chairman informed that a copy of the Civil Appeal filed by respondent has been served upon him by email and accordingly the respondent had requested the Monitoring Agency not to proceed any further towards implementation of the approved Resolution Plan as they were taking steps for urgent listing of the said Civil Appeal before Hon’ble Supreme Court. The Civil Appeal filed by respondent was dismissed by Hon’ble Supreme Court *vide* order dated 12th May, 2022 which upheld the 19th April 2022 order/judgment of Hon’ble NCLAT.
7. It has been averred that out of 21 Financial Creditors of the Corporate Debtor the applicant has received the No Due Certificate (“NDC”) from 15 Financial Creditors and that the NDC from the remaining 6 Financial Creditors were yet to be executed. While the five lenders out of these six who are the Financial Creditors, have not disputed any inter se dispute qua distribution however, while the respondent herein has challenged the distribution mechanism and the respondent is refusing to issue the NDC and also handover the title deeds of the land parcels and their other corresponding obligations and is wilfully contravening the terms of the approved plan which has been held by Hon’ble NCLAT as well as Hon’ble Supreme Court.
8. Since SRA has already fulfilled his part of his plan by depositing Rs.322 Crore¹ as required under the Resolution Plan it is necessary that the

¹ Order dated 06.04.2022 in I.A. (IB) No. 538/KB/2021

Financial Creditor and the lenders immediately issue the NDC as required and handover the title deeds of the land and other assets to the Chairman of the Monitoring Agency so as to enable the SRA to effectively run the enterprises as a going concern.

Submissions on behalf of CFM ARPL

9. In reply Id. Senior Counsel appearing for the respondent has contended that the respondent (“CFM”) is entitled to receive an Upfront Payment of Rs. 270.27Crore under the approved Resolution Plan of SS Natural Resources Private Limited (“SSN”) (being 77% of the total Upfront Amount i.e Rs. 351 Crore) to be given to the Financial Creditors.
10. On 12 May 2022, after the appeal challenging the dismissal of the liquidation application was disallowed by the Hon’ble Supreme Court (Civil Appeal No. 3633 of 2022), CFM on the same day shared bank details with the expectation of receiving its full share of Upfront Payment. (pg. 512, Volume-3 of IA No. 724/KB/2022). On 23 May 2022, CFM also confirmed that it shall issue No Dues Certificate (“NDC”) and Assignment Agreement upon receiving its share of Upfront Payment. (pg. 529-530, Volume-3 of IA No. 724/KB/2022)
11. The question of issuance of NDC prior to the receipt of upfront money does not rise and since the dues have not been cleared and accordingly by the very definition of the NDC which stands for no due certificate, cannot be granted.
12. The respondent has questioned the distribution mechanism and methodology adopted by the Chairman of the Monitoring Agency and has raised serious question as regarding credibility of the applicant and the Chairman of the Monitoring Agency. It has been further averred that commercial wisdom of the CoC cannot be questioned by anybody and Monitoring Agency is not akin to the CoC since all the Members of the CoC are not a part of the Monitoring Agency. The rights of the Financial Creditors have been decided against their interest *ex-post facto* by the applicant and the Chairman of the Monitoring Agency by deducting Rs. 8.75 Crore from their upfront payment since such deduction was not

approved by the Committee of Creditors at the time of approval of the plan nor was such deduction part of the approved plan, therefore the same is not acceptable to the respondent.

13. The Respondent has contended that the applicant wants a NDC without paying the legitimate upfront amount of Rs. 270.27 Crore in full which is a cause for the dispute. The Ld. Senior Counsel appearing on behalf of the Respondent submits that from the total upfront Resolution amount corpus of Rs.351 Crore meant for distribution to the Financial Creditor in accordance with the approved Resolution Plan a sum of Rs. 8.75 Crore appears to have been deducted which has a direct impact of Rs. 6.74 Crore on the share of the respondent (being 77% of Rs. 8.75 Crore) ostensibly as CoC expenses.
14. The respondent has further contended that the applicant has deliberately suppressed in his application that as per the applicant's approved resolution plan any expenses incurred after the approval of the Resolution Plan had to be borne by the applicant as a part of upfront payment and such expenses cannot be deducted from the upfront amount payable to the Financial Creditors such as the respondent.
15. The Minutes of the 24th CoC meeting dated 6th March, 2019 also does not record that the predecessor of the respondent had agreed to the deduction of any amount on account of CoC expenses and future litigation fund and security reimbursement as stated in the email dated 15th June, 2022 sent by the Chairman of the Monitoring Agency.
16. It was further averred that no clause of the approved Resolution Plan of SSN provides that the issuance of NDC, execution of deed of assignment and handing over of the title deeds are to be made by a Financial Creditor (CFM) after SSN has deposited the Upfront Payment. The Resolution Plan specifically mandates that the above documents are to be issued only after receipt of Upfront Payment by the Financial Creditor being CFM.
17. It has been further averred that no decision has been arrived at on the deployment of the security guards and CoC expenses incurred by ARCL and WBIDC for protecting the Kharagpur Unit and Shyam Nagar Unit. The

predecessor of the respondent had also contested an objection of distribution expenses from the process advisors presentation and it is apparent that no decision was arrived at with regard to “CoC expenses and future litigation fund” and “security reimbursement”. It is stated by respondent that the mandatory steps under Annexure-2 to the approved resolution plan have not been completed which is a complete breach of the approved resolution plan and, therefore, the existence on the consent to provide NDC prior to disbursement of the approved upfront amount is contrary to the conditions made out in the Resolution Plan. The respondent has relied on the decision of Hon’ble Supreme Court in *Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta (2020) 8 SCC 531* wherein it has been held that the Monitoring Agency does not have powers akin to the CoC and therefore, Monitoring Agency cannot modify an approved resolution plan and since the deduction in question has not been approved by the CoC, this is a complete vitiation of the conditions of the resolution plan.

18. Clause 12 of the approved Resolution Plan provides that the “Financial Creditors to release Encumbrances (including making filings with ROC/ sub- registrar of assurances and other governmental agencies for recording such release), execute re-conveyance deeds, issuance of no-dues certificates and redeliver documents in relation to the Resolution Plan” “Promptly upon receipt of Upfront Amount by the Financial Creditors and in any event within 30 days of receipt of the Upfront Amount”²
19. Finally, it was concluded that the amount deposited by SSN which is lying in a controlled account which is being operated by the Ex-RP even though the Ex-RP has become functus officio after the approval of the Resolution Plan on 4th September 2019 should not be tinkered with and the share of the CFM be paid to them as per the approved resolution plan. It has been prayed that the Ex-RP being the Chairman of the now dissolved Monitoring Agency, should be directed to make payment of Rs. 6.74 Crores being the

² [pg. 45 of Volume – 1 of IA No. 724/KB/2022]

entitlement of CFM under the Resolution Plan after which CFM would hand over the NDC and the documents as sought by SSN. (Please also see the affidavit in reply of CFM to IA No. 724/KB/2022 which sets out the case of CFM)

Analysis and findings

20. We have heard the Ld. Senior Counsel appearing on behalf of the SRA, Ld. Senior Counsel appearing on behalf of the respondent i.e. CFM and the Ld. Senior Counsel for the Ex- RP.
21. It is not contested that the SRA has deposited the entire amount in a controlled account as directed *vide* order dated 06.04.2022 of this Adjudicating Authority. It is also not contested that approved plan has achieved finality having been carried upto Hon'ble Supreme Court , who has upheld the same and consequently the depositing of the plan money in the said controlled account.
22. The SRA is quite clearly and justly aggrieved that even after depositing the plan amount as per plan, it is not being issued the NDC along with the title deeds of the property for which he had already made the agreed payment way back in the year 2022. Such massive roadblocks in the path of the SRA are clearly capable of shooing away the genuine entrepreneurs from venturing into attempting to bid for the Corporate Debtors and put them back them on their feet, thus seriously jeopardizing the very intent and objective of the Code.
23. The Ex RP and the Chairman of the Monitoring agency is the person who has not yet become the proverbial "functus officio" , in view of the fact that the proceeds of the plan have yet not been distributed, with the only bone of contention being the contemporaneous expenditure, which would have not been required to be spent by the Monitoring Agency, be it in the shape of deployment of the security guards or be it on account of ongoing litigation in regard to various challenges to the plan.

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24. Following table enumerates the litigation cases which were either subsisting or were initiated after the approval of the resolution plan.

Date of approval of the resolution plan = 4.09.2019

S.no	Case No.	Filed by	Against	Reliefs sought	Date of judgement
1.	C.A. (IB) No. 1312/KB/2019 D.O.F 10.10.2019	SREI Multiple Asset Investment Trust Vision India Fund	S S Natural Resources Pvt. Ltd.	For recalling the order dated 04.09.2019	09.02.2022
2.	C.A. (IB) No. 1371/KB/2019 D.o.F 13.10.19	Gulshan Jaiswal	The Commissioner of Customs and Ors.	For claiming refund.	09.02.2022
3.	C.A. (IB) No. 1511/KB/2019 D.O.F 14.11.2019	The Commissioner of Custom	Mr. Kshitiz Chhawch haria	For claiming refund	09.02.2022
4.	C.A. (IB) No. 1093/KB/2019	--	--	--	--

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S.no	Case No.	Filed by	Against	Reliefs sought	Date of judgement
5.	C.A. (IB) No. 716/KB/2018 D.O.F. 6.8.2018	Mr. Kshitiz Chhawchharia	Allied ICD Services Limited	--	09.02.2022
6.	C.A. (IB) No. 346/KB/2018 D.O.F 26.3.2019	Mr. Kshitiz Chhawchharia	Madhumalati Merchandise Pvt. Ltd.	--	--
7.	I.A. (IB) No. 212/KB/2021 D.O.F 15.02.2021	Mr. Kshitiz Chhawchharia	Ramsarup Industries Ltd and Ors.	Seeking directions that the Applicant is not responsible or liable to run the Corporate Debtor after approval of resolution plan and direction upon the Resolution Applicant and lenders to finalise the terms of engagement with the Applicant within 10 working days for payment of remuneration.	--
8.	I.A. (IB) 381/KB/2021	Mr. Kshitiz Chhawchharia	Ramsarup Industries	--	--

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S.no	Case No.	Filed by	Against	Reliefs sought	Date of judgement
	D.O.F 26.03.2021		s Ltd and Ors.		
9.	I.A. (IB) No. 538/KB/2021 D.O.F 09.06.21	CFM Asset Reconstruction Pvt. Ltd.	S S Natural Resource s Pvt. Ltd.	Seeking for liquidation of the Corporate Debtor	--
10.	I.A. (IB) 505/KB/2021 D.O.F 18.05.2021	Ellenbarrie Industrial Gases Ltd.	Mr. Kshitiz Chhawch haria and Ors.	Declaration that the oxygen tank delivered to the premises of the Corporate Debtor is the property of the Applicant and cannot form part of the assets of the Corporate Debtor.	--
11.	I.A. (IB) No. 635/KB/2021 D.O.F 15.07.2021	S S Natural Resources Pvt. Ltd.	Mr. Kshitiz Chhawch haria and Ors.	Direction upon CFM ARC to cooperate in the implementation of the Resolution Plan in accordance with the schedule of implementation approved by the Monitoring Agency in its meeting held on 07.07.2021	--

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S.no	Case No.	Filed by	Against	Reliefs sought	Date of judgement
12.	IA (IB) No.. 664/KB/2021 D.O.F 27.07.21	Kotak Mahindra Bank	Mr. Kshitiz Chhawch haria and Ors.	Direct the Resolution Professional to rework the distribution pattern.	28.06.2022
13.	I.A. (IB) No. 628/KB/2021 D.O.F 13.07.2021	CFM Asset Reconstruction Pvt. Ltd.	S. S Natural Resource s Pvt. Ltd. and Anr.	Direction upon S S Natural Resource Pvt. Ltd. to make payment of interest @12% p.a. on and from 04.10.2019 i.e. X+30days until payment of upfront payment under the approved Resolution Plan.	--
14.	I.A. (IB) No. 669/KB/2021 D.O.F. 28.07.21	Employees Provident Fund Organisation	Ram Sarup Industrie s Ltd. & Ors.	Direction upon Ramsarup Industries to release the dues.	--
15.	I.A. (IB) No. 456/KB/2020 D.O.F 13.03.2020	Regional Provident Fund Commissioner	Mr. Kshitiz Chhawch haria	--	10.10.2022

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S.no	Case No.	Filed by	Against	Reliefs sought	Date of judgement
16.	I.A. (IB) No. 304/KB/2022	S S Natural Resources Private Limited	Directorate of Enforcement through Deputy Director Mumbai Zonal Office II & Anr.	Direction that the assets of the Corporate Debtor cannot be attached by PMLA.	04.08.2022
17.	Company Appeal (AT)(ins.) No. 995 of 2029	S S Natural Resources Private Limited	Ramsarup Industries Limited and Ors.	Challenge to the approval of Resolution Plan	04.03.2021
18.	Civil Appeal No. 1142 of 2021 D.O.F. 18.03.2021	S S Natural Resources Private Limited	Ramsarup Industries Limited and Ors.	Objection to the approval of the Resolution Plan.	04.05.2021
19.	Company Appeal (AT)(ins.) No. 396 of 2022 D.O.F.	CFM Asset Reconstruction Pvt. Ltd.	SS Natural Resources Pvt. Ltd.	Appeal against order dated 06.04.2022 passed in I.A. No. 538 of 2021.	19.04.2022

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S.no	Case No.	Filed by	Against	Reliefs sought	Date of judgement
	08.04.22				
20.	Civil Appeal No. 3633 of 2022 D.O.F. 04.5.22	CFM Asset Reconstruction Pvt. Ltd.	SS Natural Resources Pvt. Ltd.	Appeal against the NCLAT order dated 19.04.2022	12.06.2022

25. It is not a denied position that the Resolution Applicant in the Resolution Plan has stated that it shall make payments to the MA as given in Clause 13.1 which is reiterated below:

“Clause 13.1

vi. All fees payable to the MA and expenses incurred by the MA (including any legal costs which have arisen or may arise out of or in connection with the CIRP of the Company) shall be met out of the accruals of the Company and to the extent the internal accruals are not sufficient to meet the aforesaid costs and expenses, the same shall be paid by the Resolution Applicant.

vii. Notwithstanding the aforesaid, it is stated that all costs incurred by the MA in connection with the day-to-day operation of the Corporate Debtor post approval of the Plan shall be at the behest of the Resolution Applicant.”

26. Clause 15.1 of the Resolution Plan states that:

“i. In the event it is determined that any provision of the Resolution Plan is unenforceable per-se or as applied to any claims or transaction and/or in the event any provision of the Resolution Plan becomes invalid for reasons other than by breach of any party, the new management of the Corporate Debtor may apply to the Adjudicating Authority for appropriate modifications of such provisions of the Resolution Plan, to the satisfaction of the Adjudicating Authority and

such invalidity and/or unenforceability of the provision of the Resolution Plan shall not render the whole Resolution Plan ineffective, unless otherwise directed by the Adjudicating Authority by order.”

27. From the above table it is evident that even after the approval of the resolution plan, a sizeable number of cases were subsisting which had to be pursued and as per the provisions of the plan the cost thereof is to be met from the internal accruals of the company i.e. the CD and as such has to be met accordingly. The internal accruals here would also include the money coming into the account of the cost of the plan paid by the SRA. This amount has therefore to be borne by the stakeholders and shall be paid for by the SRA only if the internal accruals are not sufficient to cover these costs.
28. In regard to the expenses on providing of the security guards at the Shyam Nagar and Durgapur plants, it is evident that this would have been the responsibility of the SRA and considering the situation that it was natural for the SRA to expect that the plan would be allowed to be implemented as scheduled, the SRA would have borne the cost of providing security guards. In other words, had these establishments been handed over by the Monitoring Committee to the SRA, it would have been the SRA's responsibility to provide for the security of these two establishments, which has now been done by the Monitoring Committee. Alternatively, put, the expenditure made by the Chairman of the Monitoring committee on the security establishment for protecting the assets of the corporate debtor would have been made by the SRA himself. This is of course without going into the genuineness of the expenses made and also without going into the aspect of comparative managerial efficiencies of individual institutions. This being a subject matter of detailing, we leave it to the Monitoring committee to decide upon the cost of such security establishment to be paid by the SRA.
29. Finally, we make a remark that the object of Code is to revive a Corporate Debtor and not to drag it to the grave. The SRA, despite of the huge number of litigations and passage of time has not backed out and wants to revive

the Corporate Debtor. The Respondent should try to take a logical approach and not stand as a wall in the revival of the Corporate Debtor and the implementation of the Plan after three years.

30. The SRA has deposited the amount as given in the Resolution Plan in the controlled account and hence, he has fulfilled his part. The Respondent is therefore under due obligation to provide the NDC and execute the assignment agreements and further hand over the title deeds of the Corporate Debtor which are in the custody of the Respondent, to the SRA forthwith. The revival of the Corporate Debtor should not be hampered any further.
31. The MA shall determine and appropriate the amounts to be borne out by various parties as outlined above, preferably within two weeks from the date of issue of this order. A compliance affidavit be filed by the Chairman of the Monitoring committee within two weeks of completion of the above transactions. We order accordingly.
32. With these direction I.A. (IB) No. 724/KB/2022 is disposed of, with the liberty to the Chairman of the monitoring agency to approach this Adjudicating Authority in case of any difficulty in implementation of the above protocol.
33. The Registry shall e-mail copy of this order to the Counsel on record for the Applicants and for the Respondents, and the Resolution Professional, for information and for taking necessary steps.
34. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)