IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

I.A. No.10 of 2024 in
C.P. (IB) No. 104/7/HDB/2020

In the matter of

M/S. STATE BANK OF INDIA
vs
M/S. SRI MATA INFRATECH LIMITED

Between:

Mr B Naga Bhushan,
Resolution Professional/Monitoring Committee Chairman of
M/s Sri Mata Infratech Limited,
H.No. 1-1-380/38,
Ashok Nagar Extension,
Hyderabad – 500 020.

....Applicant

And

Consortium of M/s Varma Steels Private Limited &
Mr A.V.P. Varma, Successful Resolution Applicant
Door No. 1-104/22/A, Plot No.16, Madhapur,
Hyderabad – 500 081.

....Successful Resolution Applicant

Date of Order: 20.12.2024

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel present:

For the Applicant	:Ld. Counsel Mr. P. Ramesh Babu and Mr. B Naga Bhushan
For the Respondent	:Mr. Sathakarni

Per : Bench

O R D E R

1. This application has been filed under Section 33(3) of IBC[1] by the Chairman of the Monitoring Committee & Erstwhile Resolution Professional (**RP**) of **M/s Sri Mata Infratech Limited,** the Corporate

[1] Insolvency and Bankruptcy Code, 2016

Debtor (**CD**), seeking cancellation of the approved Resolution Plan owing to failure of implementation of the same by the Successful Resolution Applicant (**SRA**), and orders for Liquidation of the CD.

2. In this case, an application filed under Section 7 of IBC by the State Bank of India **(the Financial Creditor/FC)**, the CD was admitted into CIRP[2] by this Authority vide Order dated 28.04.2022 and the Applicant RP herein was appointed as an Interim Resolution Professional (IRP), and subsequently, he was confirmed as Resolution Professional (**RP**) by the Committee of Creditors (**CoC**) in its 1st meeting held on 01.06.2022.

3. On 09.01.2023, the CoC approved the Resolution Plan submitted by the Consortium of M/s. Varma Steels Private Limited and Mr. AVP Varma with 100% voting. Accordingly, the RP issued Letter of Intent (**LoI**) to the SRA and advised to remit 10% of the Resolution Plan amount, and the SRA issued Bank Guarantee bearing No. 021GT02230240012 dated 24.01.2023 for Rs 3.30 Crores, being 10% of the resolution plan amount as Performance Guarantee and has given the acceptance of LoI.

4. The Applicant RP filed an application on 25.01.2023 for approval of the Resolution Plan submitted by the SRA, which was allowed by this Authority vide order dated 02.03.2023.

5. The Monitoring Committee (**MC**) was formed with the following members:
   - Mr. C. Ravi Sankar, AGM - Representative of SBI
   - Mr. Prasanna SR Kandula, Representative of SRA
   - Mr. Naga Bhushan, RP

6. The SRA was required to remit an amount of Rs 5.47 Crores to the RP within 30 days of the approval of the Resolution Plan by the Authority, to meet the following:

- CIRP expenses	-	Rs 39 lakhs (Actuals)
- Operational Creditors	-	Rs. 8 lakhs
- Financial creditors	-	Rs. 500 lakhs

[2] Corporate Insolvency Resolution Process

7. Apart from this, the SRA was also required to allot 15,00,000 shares at face value of Rs 10 amounting to Rs 1.50 Crores to the Financial Creditors, as part of the Plan within 30 days i.e. by 31.03.2023 which is yet to be done. The Applicant RP advised the SRA from time to time to initiate the process for the appointment of a new Board of Directors representing the SRA, and the allotment of shares for the amount infused by the SRA, but this was not done.

8. The synopsis of the payments as per the approved resolution plan was as below:

Particulars	**Time frame for payment**	**Amount (Rs)**
	PAYMENTS MADE	
CIRP expenses	Within 30 days from the date of the order i.e. 31.03.2023.	39,00,000 (Actuals)
Operational Creditors	Within 30 days from the date of the order i.e. 31.03.2023.	8,00,000
Financial Creditors	Within 30 days from the date of the order i.e. 31.03.2023.	5,00,00,000
	SCHEDULED PAYMENTS BUT YET TO BE FULFILLED	
	Within 30 days from the date of the order i.e. 31.03.2023 – Allotment of shares to FC, as part of plan.	1,50,00,000
	Within 4 months from the date of the order i.e. 02.07.2023.	1,00,00,000
	Within 6 months from the date of the orderi.e. 02.09.2023.	6,50,00,000
	Within 9 months from the date of the order i.e. 02.12.2023.	1,00,00,000
	Within 12 months from the date of the order i.e. 02.03.2024.	8,00,00,000
	FUTURE SCHEDULED PAYMENTS	
	Within 15 months from the date of the order i.e. 02.06.2024.	2,00,00,000
	Within 18 months from the date of the order i.e. 02.09.2024.	8,00,00,000
TOTAL AMOUNT		**33,47,00,000**

9. It is submitted that, at the request of the SRA, a complaint was lodged by the RP and FC with the Tahasildar, Mellacheruvu and Revenue Development officer, Huzurnagar on 27.09.2023 with respect to the part of

the land (mining land owned by the CD) which has been in the custody of some encroachers and is not reflecting in recently introduced DHARANI portal.

10. It is asserted that, despite several reminders in the MC meetings and e-mail communications sent to SRA for the payment of installments that fell due, SRA did not make payments.

11. It is submitted that, during the 4th MC Meeting held on 18.11.2023, the Applicant RP apprised about the delay in payment by the SRA as per the schedule of the approved resolution plan, and the SRA requested time till the month end for arranging payment. During the 5th MC Meeting held on 13.12.2023, the SRA informed that he is in the process of mobilizing the required funds and making payment by month end, but subject to the condition that clarity on inclusion of all the land details owned by the CD in the DHARANI Portal.

12. During 6th MC meeting on 09.01.2024, the SRA informed that he would be able to inform the date of payment of the amount due, after consulting his partners and requested for postponement of the meeting to 11.01.2024, but during the meeting on 11.01.2024 at 6.30 p.m. the Applicant RP informed that the SRA had sent a request seeking postponement of the meeting to 19.01.2024.

13. The Applicant RP filed the progress report on the implementation of the resolution plan in IA 1669 of 2023 on 11.10.2023 wherein delay in remittance of amount by the SRA and consequent delay in implementation of the approved resolution plan were reported. The same was heard, and during the hearing on 06.02.2024, the Applicant RP was also directed to implead the SRA. Accordingly, the Applicant RP had filed a memo on 23.02.2024, impleading the SRA. A neat copy incorporating all the suggested changes was also filed on the same day. During the hearing held on 27.02.2024, the impleaded party was asked to submit his counter, and the matter was adjourned to 22.4.2024. Meanwhile, the SRA filed an application on 28.01.2024 in IA No.508 of 2024, seeking certain reliefs.

14. The FC felt that SRA was using delay tactics and advised the Chairman of MC to make arrangements for filing an application seeking cancellation of the approved Resolution Plan, if the SRA does not pay the overdue amount by 05.02.2024.

15. In the 8th MC meeting, the Applicant RP apprised that despite repeated reminders through email, telephonic conversations and during the meetings, the SRA had failed to make the following payments as per the approved resolution plan.

Time frame for payment	**Amount (Rs)**
Within 4 months from the date of the order i.e. 02.07.2023	100,00,000
Within 6 months from the date of the order i.e. 02.09.2023	650,00,000
Within 9 months from the date of the order i.e. 02.12.2023	100,00,000
Within 12 months from the date of the order i.e. 02.03.2024	800,00,000

16. Apart from the above, the allotment of shares to the tune of Rs 1.50 crores which was to be done in the name of the FC before 31.03.2023 has not been done. Further, the SRA has failed to make payment of the fees of the Chairman of the MC as agreed in the approved resolution plan amounting to Rs 12.98 lakhs, security charges of Rs 9.01 lakhs and also the legal counsel fees.

17. It is averred that, FC felt that since the SRA has not been adhering to the payment schedule of the approved resolution plan, and since an amount of Rs 16.50 crores has already fallen due for payment apart from allotment of shares to the tune of Rs 1.50 crores, resulting in a deviation from the approved plan, the Applicant RP shall initiate the process of informing the Tribunal about the delay in implementation of the plan and also their recommendation for cancellation of the resolution plan along with forfeiture of the amounts that have already been paid. FC also felt that the bank guarantee provided by the SRA shall be invoked. Hence, this application as resolved by the lone FC, seeking to;

- pass an order under Section 33(3) of the Code directing initiation of the Liquidation of the CD and appoint a Liquidator of the CD.

- pass an order forfeiting the amounts paid by SRA till date.
- direct the SRA to make payment of the outstanding fees of the Chairman of the Monitoring Committee and the security charges from the time of approval of the resolution plan by NCLT till date along with the legal counsel charges.

Counter reply

18. In its reply, the SRA averred that there is no physical boundary or demarcation of the lands held by the CD as well as its associate company. Further, there is ambiguity on the split of charges held by the creditor on both the companies as stated in the resolution plan page No.29 under clause 4 (iii)(g), and the third parties are encroaching the company assets and the CD's land is not reflecting in recently introduced DHARANI portal. Also, there is some physical activity going on in the lands owned by the CD especially in Sy No. 425, 436, 438 and 492 falling under SRO, Kodada with a large number of mud trucks and manpower deployed for land filling etc. Some of the people are claiming as owners of the above pieces of land as per DHARANI portal.

19. It is contended that, the RP has no control on the assets of the CD, and no follow-up was made to the correspondence initiated by SBI to sort out the issue. It is further contended that the Monitoring Committee is constituted for the purpose of implementation of the Resolution Plan, and the implementation does not only mean payments proposed in the approved resolution plan but also other terms and conditions of the plan.

20. It is asserted that, in spite of the above issues, the SRA has initially paid an amount Rs 3.30 Crores on 24.01.2023 towards 10% of the resolution plan amount as per the request of RP and subsequently paid CIRP expenses in full besides an amount of Rs 8.0 lakhs to operational creditors as per the approved resolution plan. In addition to the above the SRA has also paid an amount of Rs.5.0 Crores on different dates between 31.03.2023 to 30.06.2023. Neither any agreement made nor any security

was transferred in the name of the SRA in lieu of the above amount paid so far.

21. It is further contended that the Applicant RP's insistence on the payment of the remaining amounts, without addressing the significant issues faced by the SRA, is a flagrant disregard of its duties and responsibilities under the Resolution Plan.

22. With these submissions, the Respondent SRA seeks dismissal of this application.

Written Submissions filed by the Applicant RP

23. It is asserted that, out of Rs 33.0 Crores to be paid to the lone FC (SBI), the SRA had paid Rs 5.0 Crores in the first tranche, staggering over a period of three months. Despite assurances, the SRA failed in making payments to meet plan commitments, and failed to induct their directors and formation of new Board for taking over the functioning of the CD after making upfront payment as per the approved resolution plan.

24. It is further averred that, the SRA was fully aware of the various issues concerning the CD's assets in general and land encroachments, absence of proper demarcation of lands and issues concerning the DHARANI portal before submission of the Plan itself, and the same is evidenced through 9th MC meeting. As per the resolution Plan document, the plant shall be handed over to SRA after the payment of upfront amount, and the SRA never raised this issue in any of the MC meetings.

25. The Applicant RP has also submitted his willingness[3] to act as Liquidator. With these submissions, the Applicant RP prayed to allow this application.

Decision

26. The Corporate Debtor was put in CIRP vide order dated 28.04.2022. Regarding the Resolution Plan, this Authority had given a concrete finding

[3] Page 24 of the written submission of the Applicant

in the Interim Application bearing no. 1789 of 2024 by mainly relying on the law laid down by the Supreme Court in ***Ebix Singapore Private Limited Vs. Committee of Creditors of Educomp solutions Limited &Anr***[4]and rejected the Application considering that once the Resolution Plan is approved by the COC, it cannot be allowed to be withdrawn or modified by the Successful Resolution Applicant by approaching the Adjudication Authority.

27. In the instant case, the 8th meeting of the Monitoring Committee of Corporate Debtor was held on 05.03.2024 and notice of which was sent to SRA also through e-mail but the SRA did not attend the said meeting.

28. In the said meeting following resolutions have been passed by the lone Financial Creditor for filing an application, seeking liquidation of the Corporate Debtor and cancellation of the approved resolution plan:

> *"**RESOLVED THAT** the approved resolution plan of the Successful Resolution Applicant viz Verma Steels Pvt. Ltd. in consortium with Mr. AVP Varma which was approved by Hon'ble NCLT vide order dt. 02.03.2023 be cancelled as the SRA has not complied with the terms of the plan by not paying the instalments that have fallen due on the dates mentioned below amounting in all to Rs 16.50 crores apart from allotment of shares to the tune of Rs 1.50 crores"*
> *"**RESOLVED FURTHER THAT** the Corporate Debtor may be Liquidated under Section 33(3) of IBC 2016 as the Successful Resolution Applicant has contravened the implementation of the approved resolution plan"*
> *"**RESOLVED FURTHER THAT** the performance bank guarantee for Rs 3.30 crores provided by the SRA be invoked and forfeit the amount already paid"*
> *"**RESOLVED FURTHER THAT** the Resolution professional and Chairman of the meeting Mr. B. Naga Bhushan be and hereby authorized to make an appropriate application before the Hon'ble NCLT under Section 33(3) read with Regulation 39(9) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*

29. Consequently, on the basis of the above said resolution passed in the 8th meeting of the Monitoring Committee of Corporate Debtor, the Resolution Professional filed this application for liquidation of the Corporate Debtor.

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[4] Civil Appeal No. 3224 of 2020 with other appeals

We find that the application satisfies the contents as mentioned under section 33(3) of IBC, 2016.

30. Furthermore, this Authority had also observed that the Resolution Applicant had defaulted on multiple counts to make payments as proposed in the Resolution Plan and made all attempts to regain the company through the back door without implementing the Resolution Plan.

31. It is noteworthy to mention here that even after the approval of the Resolution Plan, it is observed that SRA paid only 1st Tranche i.e., Rs 5,00,00,000 towards the Resolution Plan. Pursuant to this, the only issue that needs to be decided is whether the Adjudicating Authority should liquidate the Corporate Debtor under section 33(3) of the IBC in a case of contravention/ non-implementation of the Resolution Plan without the mandate of the Implementation and Monitoring Committee (IMC)?

32. The SRA had to make payments in 7 tranches, the 1st tranche within 30 days from the effective date i.e., 02.03.2023 of Rs 5,00,00,000 along with 15,00,000 equity shares of face value of INR 10/- per share aggregating to INR 1,50,00,000, to the FC for no consideration. However, the SRA made the payment of Rs 5,00,00,000 in multiple installments with a delay of 90 days. The SRA failed to provide 15,00,000 equity shares to the FC which is pending to date exceeding the time frame. The SRA has also failed to repay the subsequent installments.

33. In view of the above-mentioned facts, it is established beyond the doubt that, the non repayment of the amounts as per the Resolution Plan by the Resolution Applicant is a wilful act leading to the contravention and stalling the implementation of the Resolution Plan. On the grounds of blatant violation, this Authority has left with no choice except to put the Corporate Debtor into Liquidation as per the Code as well as also to protect the asset of the Corporate Debtor from further deterioration.

34. Further the Resolution Applicant has breached the Resolution Plan not only by contravening the timelines but also defeating the purpose and objectives envisaged under IBC Code. Therefore, the Resolution Applicant will attract penal provision envisaged under Section 74 of the Code. In reference to this, the Hon'ble NCLAT in Liberty House Group Pte Ltd. Vs. Mr. Dinkar T. Venkatasubramanian & Ors., held that the non-implementation of the Resolution Plan constitutes an offence under Section 74 of the Insolvency Bankruptcy Code, 2016.

35. In respect of prayer (c) in this application which is to pass an order forfeiting the amounts paid by SRA till date, we have carefully perused the RFRP and the Resolution Plan submitted by the SRA and we do not find any clause or condition in these documents, which stipulate forfeiture of amount already paid by the SRA. Regulation 36B (4A) provides that if the Resolution Applicant fails to implement or contributes to the failure of implementation of the plan, the performance security shall stand forfeited. We reproduce here under Regulation 36B(4A) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

> *"[(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule. Explanation I- For the purposes, of this sub-regulation, "performance security" shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor. Explanation II - A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X and Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc..]"*

36. In addition to the provision contained in Regulation 36B (4A) of Insolvency

and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 about the forfeiture of performance bank guarantee, the Clause 3.7(b) and 3.7(d) of the Request for Resolution Plan which has been received and accepted by the SRA, also provides for forfeiture of performance bank guarantee in case of failure of implementation of resolution plan. We therefore order invocation of performance bank guarantee and its forfeiture.

37. Keeping in view, Regulation 36B (4A) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 we hereby decide that performance bank guarantee given by SRA can be invoked and liquidated. However, keeping in view that there is no supporting provisions in RFRP and resolution plan to forfeit the other instalments/amount (other than performance bank guarantee) paid by SRA, we are of the view that, the amount already paid by the SRA be returned, after recovering the CIRP cost. Also, to recover outstanding fees of the Chairman of the Monitoring Committee and the security charges from the time of approval of the resolution plan by NCLT till date along with the legal counsel charges.

38. After considering the SRA's contentions we are of the view that the SRA cannot seek changes to the Resolution Plan after submission or demand that the FC take certain actions before paying the remaining amount. It is clear that updating revenue records does not affect the title. The SRA was aware of the alleged property encroachments and cannot shift the responsibility for addressing them to the FC. Obtaining mining permissions is the SRA's obligation, as directed by the Authority's order dated 02.03.2023.

39. From the perusal of the documents, it is apparent that the SRA's reasons were meant only to delay the payment of the Resolution Plan. The SRA made payment of 1st Tranche of Rs 5,00,00,000 towards the FC in delay of 90 days. Additionally, the SRA has failed to allot equity shares worth Rs 1,50,00,000 and has not repaid the subsequent installments. In the event

the RP as authorized by the monitoring committee in its 8th meeting on 05.03.2024, has filed this application for the liquidation of the CD.

40. In view of the above facts, we opine that this is a fit case for ordering Liquidation of the Corporate Debtor and also appoints Mr. **Mr.Naga Bhushan** having **Registration No.: IBBI//IPA-001/IP-P00032/2016-17/10085,** herein as the Liquidator as prayed in the application to carry out the Liquidation process of the Corporate Debtor subject to the following terms of the directions:

ORDER

41. The above IA (IBC)/LIQ/10 OF 2024 is allowed and the Corporate Debtor, **M/S SRI MATA INFRATECH LIMITED** is ordered to be liquidated.

a. The Liquidator shall strictly act in accordance with the provision of IBC, 2016 and the attendant Rules including Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date.

b. 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.

c. The Liquidator appointed under section 34(1) of the Code will have all powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.

d. The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

e. The Liquidator shall investigate the financial affairs of the

Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.

f. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad and to the Insolvency and Bankruptcy Board of India

g. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

h. The order of moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

i. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

j. The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.

k. The Liquidator shall submit a Preliminary report to this Authority within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

l. Copy of this order be sent to the Financial creditors, Corporate Debtor, Resolution Professional, Resolution Applicant and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation., 2016.

42. With the above directions, this application i.e. I.A. No. 10 of 2024 is hereby allowed and disposed of.

Sd/-	Sd/-
(SANJAY PURI) **MEMBER (TECHNICAL)**	**(RAJEEV BHARDWAJ)** **MEMBER (JUDICIAL)**

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