

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 181/2022
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

Arising out of the Impugned Order dated 14/10/2021 in
C.P.(IB)/679/7/HDB/2018, passed by the 'Adjudicating Authority', National
Company Law Tribunal, Hyderabad Bench, Hyderabad

In the matter of :

Puissant Towers India Pvt. Ltd.

Through its Authorized Representative

Having registered office at:

Trend India Business Centre

8th Floor, RR Tower, 5 South Phase,

Ambedkar Nagar, SIDCO Industrial Estate,

Chennai, Tamil Nadu – 600 032.

...Appellant

Versus

1. Neueon Towers Limited

Through its liquidator

Mr. Ramachander Rao Bikumalla

Having registered office at:

Survey No. 321, TurkalaKhanapur,

Village Hatnur Mandal Medak,

Hyderabad, Telengana – 502201

Having correspondence address at:

H.No. 8-2-401/S/2, Sheetal Enclave,

Road No 5, Banjara Hills, Hyderabad,

Telengana – 500034

E-mail address: brremailid@gmail.com, liquidation.ntl@gmail.com

...Respondent No. 1

- 2. Central Bank of India**
Through Authorised Representative
Having office at:
SAM II, Central BKC, Ground Floor,
Chandermukhi Building,
Nariman Point, Mumbai – 400021
E-mail: sambmumbai2@centralbank.co.in, smmums@gmail.com,
Agmifb33873@centralbank.co.in ...Respondent No. 2
- 3. Edelweiss Asset Reconstruction Company Limited**
Through Authorised Representative
Having office at:
Edelweiss House, Off C.S.T. Road,
Kalina, Mumbai – 400098
Email: varunv.shah@edelweissfin.com ...Respondent No. 3
- 4. Export Import Bank of India**
Through Authorised Representative

Having Head Office at:
GoldenEdifice, 2nd Floor, 6-3-639/640,
Khairatabad Circle, Hyderabad – 500004, Telengana

Having Head Office at:
21st Floor, Centre-1 Building, World Trade
Centre Complex, Cuffe Parade,
Mumbai – 400 005
Email: agmifb3873@centralbank.co.in ...Respondent No. 4
- 5. IDBI Bank Limited**
Through Authorised Representative
Having Office at:
NPA Management Group,
#115, Anna Salai, Saidapet,
Post Bag No. 805, Chennai – 600015
Email: k bhoomalakshmi@idbi.co.in, Narendra.somisetti@idbi.co.in,
mohanasundaram.m@idbi.co.in, christina.dsouza@idbicapital.com,
varda.khanolkar@idbicapital.com ...Respondent No. 5

- 6. Invent Assets Securitisation & Reconstruction Private Limited (INVENT)**
Through Authorised Representative
Having office at Suite 'B' & Bakhtawar,
Ground Floor, Backbay Reclamation Scheme – III,
Nariman Point, Mumbai – 400 021
Email: vivek.adari@inventarc.com ...Respondent No. 6
- 7. Punjab National Bank**
Through its Authorised Representative
Having office at: Zonal SASTRA Centre,
181-A1, 18th Floor, MakeTower – E Wing,
Cuffe Parade, Mumbai – 400 005
Email: zs8356@pnb.co.in, pnbzscmum@gmail.com ...Respondent No. 7
- 8. SREI Equipment Finance Limited**
Through Administrator
Having office at: Plot No. Y-10, BlockEP,
Sector V, Salt Lake City, Kolkata – 700091
Email: sumit.sharma@srei.com ...Respondent No. 8
- 9. UCO Bank**
Through Authorised Representative
Having office at: FCC (IBB),
No. 328, 3rd Floor, ThambuchettyStreet,
Chennai – 600 001
Email: madibb@ucobank.co.in ...Respondent No. 9
- 10. Union Bank of India**
Through Authorised Representative
Having office at (E-Andhra Bank),
Stressed AssetManagement Branch, 3rd Floor,
Andhra Bank Building, Sultan Bazar,
Koti, Hyderabad – 500 095
Email: bm1204@unionbankofindia.com ...Respondent No. 10

J U D G M E N T

(Virtual Mode)

[Per: Shreesh Merla, Member (Technical)]

1. Challenge in this 'Appeal', is to the Impugned Order dated 14/10/2021, passed in IA No. 1114/2020 in C.P.(IB)/679/7/HDB/2018 by National Company Law Tribunal, Hyderabad Bench, Hyderabad, by which Order, the 'Adjudicating Authority' has dismissed the 'Application', filed by the 'Resolution Professional/ RP, under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code'), seeking approval of the Resolution Plan.
2. While rejecting the said 'Application', the Adjudicating Authority has observed as follows:

9. *We heard the Learned Counsel for the Applicant. After the case was reserved for passing orders, this Adjudicating Authority observed that co-resolution Applicant is an ARC and had sought clarification on the issue. In response, the Learned Counsel for the Applicant filed memo dated 22.09.2021 stating that ARC viz, Invent Assets Securitization and Reconstruction Private Limited is only the Co-Resolution Applicant and the main Resolution Applicant is M/s Longview Resources (HIK) Limited Hong Kong. He further stated that ARC i.e. Invent Assets Securitization and Reconstruction Private Limited does not own any equity rights and it is used only for limited purpose of payment for assignment of Assignable Financial debt by Financial Creditors i.e. they only debt the funds of the Resolution Plan and shall not participate in the equity of the Corporate Debtor and as such the resolution plan is not hit by Section 29A of IBC, 2016.*

10. *In the instant case before us, M/s Invent Assets Securitisation & Reconstruction Private Limited cannot submit resolution plan as co-Applicant along with*

M/s Longview Resources (HK) Limited Hong Kong, without the prior approval of RBI under Section 10 (2) of SARFAESI Act. Therefore, we are of the view that prima facie even though the entry point under Section 29A is satisfied, the Successful Resolution Applicant has to satisfy that they are capable of submitting the resolution plan, without the prior permission of the RBI as contemplated under the law. We hold that the Resolution Plan is in contravention of Section 30 (2)(e) of I&B Code, 2016.

11. *This Bench, earlier in the matter of ARCIL Vs Viceroy Hotels Limited has taken a view that the resolution plan submitted by an ARC requires prior approval from the Reserve Bank of India. (RBI) under SARFAESI Act. This Bench rely on para 85 of Hon'ble Supreme Court judgement in the matter of **Manish Kumar vs Union of India [2021) SCC Online SC 3011, which is reproduced hereunder:-***

"The resolution professional has to examine each resolution plan received by him on the basis of the invitation made by the resolution professional under Section 25(h) and ascertain whether the plan is in conformity with the various criteria mentioned in Section 30(2) of the Code. The matter is thereafter put up by the resolution professional before the committee of creditors. All resolution plans which conform to the conditions in sub-section (2) of Section 30 are, in fact, to be placed before the committee of creditors. The committee of creditors may approve the resolution plan after considering its feasibility and viability, the manner of distribution proposed, which may take into account the hurdles, priority amongst creditors as laid down in sub section (1) of Section 53 including the priority and the value of security interest of secured creditors and such other requirements as may be specified by the Board"

12. *The Hon'ble High Court of Delhi in the matter of UV Asset Reconstruction Company Vs Union of India on the issue whether ARC without prior approval of RBI can submit the resolution plan or otherwise, after*

verifying the provisions of Section 29A of Code and Section 10 of the SARFAESI Act has held that

"This issue has arisen in the context of the Petitioner Company which is an asset reconstruction company, participating in the Corporate Insolvency Resolution Process of Aircel entities i.e. Aircel Limited, Dishnet Wireless Limited and Aircel Cellular Limited, before the NCLT. The resolution plan submitted by the Petitioner is stated to have already been approved by the NCLT, vide order dated 9th June, 2020 in CP(IB)No.298/MB.11/2018 and connected applications. The NCLT had, vide the said order, directed the Petitioner to obtain an approval of the Reserve Bank of India. The order of the NCLT reads:

"6.6.2. The RA is an asset reconstruction company, having been licensed to act as such by RBI. Hence, RA will require approval of RBI to acquire shares in the corporate applicants. The RA submits that it shall apply for such approval after the Resolution Plan is approved by this Adjudicating Authority."

The Reserve Bank India denied the approval and a show cause notice has been issued on 12th November, 2020, as to why action ought not to be taken for violating section 10 of the SARFAESI Act. It is this show cause notice, issued by the Reserve Bank of India, which has been challenged by the Petitioner in the present petition. Vide order dated 27th November 2020, the show cause notice dated 12th November 2020 was stayed by this Court".

13. We also feel the resolution plan submitted by the CoC before the Adjudicating Authority has become a conditional resolution plan subject to the approval of RBI as Regulator of ARCs. As such, we are not inclined to consider such conditional resolution plan for resolution of the Corporate Debtor.

14. The Resolution Plan submitted in I.A. No.1114 OF 2020 is rejected under Section 31 (2) of the Code. The Corporate Debtor / Neueon Towers Limited shall be liquidated in the manner laid down in Chapter III of the Code."

3. The facts in brief are that the Committee of Creditors approved the Resolution Plan with 98.70% majority Share of votes in its 27th meeting held on 19/10/2020. The Adjudicating Authority has rejected the said approval on the aforementioned grounds.

4. The Learned Counsel for the Appellant, Mr. Sandeep Bajaj submitted that the Adjudicating Authority has erroneously rejected the Resolution Plan on the ground that it had become a 'Conditional Resolution Plan' subject to the approval of RBI as the Regulator of ARCs, as one of the co-Resolution Applicants was an ARC. It is also submitted that the Adjudicating Authority had wrongly relied on the Judgment delivered in the matter of '**ARCIL vs Viceroy Hotels Ltd., reported in IA No. 281 of 2019 in C.P.(IB) No. 219/7/HDB/2017**' and in the Judgment of '**UV Asset Reconstruction Company Vs. Union of India reported in (2022 SCC Online del 4289)**' and held that approval of RBI is a prerequisite as one of the Co-Applicants was an ARC.

5. The Learned Counsel for the 'Appellant also submitted that the ARC, though a Co-Resolution Applicant, was not proposing to acquire any Equity Shareholding and that the other Co-Resolution Applicants were to solely acquire the Shareholding and run the business and therefore at the very outset, the analogy drawn by the Adjudicating Authority is incorrect as facts are distinguishable. It is also submitted that the Appellant is an 'Aggrieved Person' as elucidated under Section 61(1) of the Code.

6. This Tribunal, vide Order dated 14/06/2022, deemed it appropriate to seek the view of RBI and therefore the Appellant filed IA No. 743/2022, seeking to implead 'RBI' and 'Long View Resources (HK) Private Ltd.', the Co-Resolution Applicants.

7. The Learned Counsel appearing for the proposed Party Mr. Chevanan Mohan i.e. RBI submitted that it was not necessary to implead RBI as it is not a 'necessary Party' for whom no effective Order can be made and therefore sought for dismissal of IA No. 743 of 2022. The Learned Counsel placed reliance on the Judgment of the Hon'ble Supreme Court in '**Kasturi Vs. Iyyamperumal and Ors., reported in 2005 (6 SCC 733)**' in which the Hon'ble Apex Court observed as follows:

"It is now clear that two tests are to be satisfied for determining the question who is a necessary party, Tests are (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party"

8. It is argued that the question of impleadment of a Party has to be decided under Order 1, Rule 10 of 'Civil Procedure Code' which provides that only a necessary and a proper Party may be added. A necessary party is one without whom no order can be effectively made. A proper party is one whose presence is necessary for a complete and final decision of question involved in the proceedings. Therefore, the addition of parties, thus, would depend upon the

judicial discretion which has to be exercised, in view of the facts and circumstances of a particular case.

9. Without going into the aspect of whether RBI ought to be ‘impleaded’ or not, this Tribunal finds it relevant to place reliance on the submissions of the Learned Counsel regarding whether prior approval of RBI is required for participating as a Resolution Co-Applicant under the Code. It is submitted in Para 4 of the Notes of Submissions that ARC does not require prior approval of RBI for participating as a Resolution Co-Applicant. The relevant Paragraph is reproduced as herein:

“It is further submitted that an ARC does not require prior approval of RBI for participating as a ‘resolution co-applicant’ under IBC provided any of the activities undertaken by the ARC as part of the resolution plan submitted by it is not prohibited under SARFAESI Act. Hence, prima facie, when an ARC is a resolution “co-applicant”, as is in the instant case, RBI’s prior approval is not always required. Thus, there is no need to make RBI a party in the present appeal.”

[Emphasis Supplied]

10. It is significant to mention that Section 238 of the Code, will prevail over any of the provisions of the SARFAESI Act, 2002, if it is inconsistent with any of the Provisions of the ‘I&B Code, 2016’ and therefore the Adjudicating Authority ought not to have placed reliance on Section 10(2) of the SARFAESI Act, 2002. It is also pertinent to mention that the CoC has approved the Resolution Plan by the majority of 98.70% in its 27th meeting, held on 19/10/2020. The Hon’ble Supreme Court in a Catena of Judgments has held that the

commercial wisdom of the CoC is non-justifiable and in the instant case, we do not see any material irregularity, under Section 30(2) of the 'IBC Code, 2016'.

11. Keeping in view, the clarification given by the Counsel for RBI that the 'prior permission' is not required, this 'Tribunal' is of the considered view that the Adjudicating Authority ought not to have rejected the Resolution Plan, more so, when the principal objective of the Code is that '*revival of the Corporate Debtor and Resolution*'. Liquidation ought to be the last resort, keeping in view the scope and spirit of the Code.

12. For all the aforementioned reasons, this Company Appeal (AT) (CH) (Ins) No. 181/2022 is allowed and the Order of the Adjudicating Authority directing 'Liquidation' is set aside and the matter is remanded to the Adjudicating Authority for approval of the Resolution Plan under Section 31(1) of the IBC Code, 2016. As precious time has lapsed and the IA is of the year 2020, it is hoped and requested that the Adjudicating Authority shall decide the matter of approval of Resolution Plan within 'one week' from the date of this Order. All parties shall appear before the Adjudicating Authority on 14/06/2023. No further 'Notice' is required in this matter. Connected pending Interlocutory Applications, if any, are 'closed'.

[Justice M. Venugopal]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

12/06/2023
SPR/TM