

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 266 OF 2023

Under Section 60 (5) of Insolvency &
Bankruptcy Code, 2016

Majestic Auto Limited

...Applicant

Vs.

Sharan Hospitality Private Limited

(Monitoring Agent) & Anr.

...Respondents

I.A. 1290 OF 2023

Under Section 60 (5) of Insolvency &
Bankruptcy Code, 2016

Cushman & Wakefield India Pvt. Ltd.

...Applicant

Vs.

Sharan Hospitality Private Limited

...Respondent

In the matter of

C.P.(IB) No. 4071/MB/2018

Axis Bank Limited

.... Financial Creditor

Vs.

Sharan Hospitality Private Limited

...**Corporate Debtor**

Order delivered on: 22/11/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr. Saurabh Gupta a/w
in 266/2023 Mr. Saurabh Pandya,
Advocate

For the Applicant : Mr. Shyam Kapadia i/b
in 1290/2023 Mr. Lalan Gupta,
Advocate

For the Respondent : None

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The IA 266/2023 is filed by M/s Majestic Auto Limited ("Successful Resolution Applicant" or "SRA") for exclusion of a period from 13.12.2021 till date from the time period of 18 months provided in the Resolution Plan, in view of the Stay granted by the Hon'ble Supreme Court vide order dated 13.12.2021; and for extension of period of implementation of Resolution Plan, till 30 days from the final disposal of the matter pending before Hon'ble Supreme Court; and to restrain the

Respondent No. 1 (“Monitoring Committee for implementation of Approved Resolution Plan”) and Respondent No. 2 (“Axis Bank Limited”, the financial creditor and sole member of Committee of Creditor) from invoking the Performance Bank Guarantee of the SRA.

2. M/s Sharan Hospitality Private Limited (“Corporate Debtor”) was admitted into Corporate Insolvency Resolution Process (“CIRP”) on 8.5.2019, and a Resolution Plan submitted by SRA was approved by this Tribunal on 15.4.2021, pursuant to which the Approved implementation of Resolution Plan was to commence anytime within 18 months from the approval of said Resolution Plan. The Approved Resolution Plan contemplated that –

“(e) The vacation or modification of stay Orders shall also include an order passed by a Higher Court in relation to the same subject matter. Provided that any appeal filed against the order of the Hon’ble Delhi High Court by Daiichi Sankyo CO. Ltd or any other party to a Higher Court shall be preferred within the statutory period of limitation. Therefore, if no appeal is filed by Daiichi Sankyo Co. Ltd. or any other party within the prescribed statutory period of limitation, since there will be no injunction or stay operating against the assets, the resolution applicant will complete the implementation of the plan as per its implementation schedule. It is clarified that if an appeal is filed after the passage of permissible period with prayer to condone delay, the implementation period shall be put on hold on filing of such appeal. Upon favourable outcome of appeal, if any, the remaining implementation period shall start or the plan shall be implemented in 30 days, whichever is more”.

3. SRA has pleaded that the matter is presently sub-judice in appeal before the Hon’ble Supreme Court, and in that proceedings, the Hon’ble Supreme Court has stayed the Order of Hon’ble Delhi High Court, which had lifted the restraint on implementation of the Plan. However, since the restrain still continue pursuant to Hon’ble Supreme Court, there is no failure in implementation of the Resolution Plan and the SRA ought to

be protected in terms of express stipulation in the plan dealing with such scenario.

4. Axis Bank Limited, the Sole Member of Committee of Creditors has filed an IA 1290/2023 seeking liquidation of the Corporate Debtor on account of non-implementation of the Resolution due to ongoing litigation by third party, presently pending before Hon'ble Supreme Court in SLP 20028/2021, stating the terms of the resolution plan under 'Clause 5' of 'the Basic Assumption while submitting the Resolution Plan' is conditional in nature and the same is contingent upon the happening of any event i.e. vacation of the restraint/stay order of the Hon'ble High Court of Delhi.

- 4.1. It has further been stated in the said Application that the approved resolution plan, which is contingent in nature, provides the due charted course, in the event, the vacation of the restraint/stay Order of the Hon'ble High Court of Delhi was disallowed. The clause 6 of Basic Assumptions reads as follows –

“6. It is understood that accordingly, the implementation of the Resolution Plan will only follow vacation or modification of Stay Orders by the Hon'ble High Court of Delhi or any Higher Court in the manner provided in paragraph 4 above.

The Resolution Applicant submits that, if the Stay Orders are not vacated/modified, by the Hon'ble High Court of Delhi or any Higher Court, as the case may be, only then shall the present Resolution Plan lapse and the Bid Bond Guarantee and/or performance guarantee furnished by the Resolution Applicant shall be duly returned to the Resolution Applicant. The Resolution Applicant shall not be held responsible for lapse of such plan and the same will not be treated as a case of non-performance of the resolution plan by the Resolution Professional.”

- 4.2. Axis Bank Limited has also submitted that there has been a lapse of over 21 months since the approval of the resolution plan by this

Tribunal, and even after several applications filed for early hearing before the Hon'ble Supreme Court, no fruitful outcomes have accrued from such applications. Accordingly, Axis Bank Limited has fairly contended that it is willing to return the Performance Bank Guarantee issued by the SRA and further states that, it would not hold it responsible for non-implementation of the approved Resolution Plan. Finally, it has been prayed that in view of the provisions of the Resolution Plan, i.e. Clause 4,5,6,7 and 8 as prescribed under "Basic Assumptions while submitting the Resolution Plan", r/w Section 33(3) and 33(1)(b) of the Code, the applicant in the capacity of a secured financial creditor of the Corporate Debtor seeks direction from this Tribunal to initiate liquidation process against the corporate debtor, and it shall cause no prejudice to SRA, however, Axis Bank would continue to incur tremendous losses due to further delay in implementation of the approved plan.

5. We have heard the Counsel and perused the material available on record.
 - 5.1. Since the issue involved in both the applications is inter-related, we consider it appropriate to dispose of both applications by this common order. The Monitoring Committee for implementation of Resolution Plan ("Monitoring Committee")
 - 5.2. We find that The Resolution Plan also contains provisions where the implementation of the said plan is not started within 18 months from the approval of the said plan :

"In the event, the implementation of the plan does not start within 18 months from the date of approval of the Resolution Plan by NCLT, the RA will mutually discuss with RP and secured financial creditor of the Corporate Debtor regarding further action. Any proposal/agreement to not extend the term of the Resolution Plan at that stage shall not be treated as non-implementation of the Resolution Plan. In case of any disagreement between the RP, the

secured financial creditor of the Corporate Debtor and the Resolution Applicant, the secured financial creditor and/or the resolution applicant may at their sole discretion consider filing an application before the Hon'ble NCLT to seek directions."

- 5.3. We find that both these applications are in pursuance to above stipulation in the approved Resolution Plan. We find that the proceedings initiated by Daiichi Sankyo Co. Ltd. are still pending before the Hon'ble Supreme Court, and more than 21 months have passed since the Order of vacation granted by Hon'ble Delhi High Court was taken in appeal before the Hon'ble Supreme Court by Daiichi Sankyo Co. Ltd. We are in agreement with Axis Bank Limited that the implementation of the plan is contingent upon the outcome of these proceedings or vacation of stay order, and this has caused stalemate in the whole Resolution process, which is jeopardising the interest of the Financial Creditor. Accordingly, we are of considered view that a Liquidation Order can be passed in the present matter in terms of Section 33(1)(a) / 33(3) of the Code, as the Corporate Debtor can be sold as going concern in that process also. It will not serve the purpose to wait endlessly.
- 5.4. Accordingly, we order that the Corporate Debtor be liquidated; the Performance Bank Guarantee furnished by SRA be returned; and it be declared that the implementation of the Resolution Plan has failed on account of contingency in its implementation conditions.
6. In view of aforesaid, we pass following order:
- a. Mr. Amit Chandrasekhar Poddar, having Registration No. IBBI/IPA-001/IP-P00449/2017-18/10792, is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
 - 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 in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d. The Liquidator appointed under section 34(1) of the Code. 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.
- e. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- f. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.
- h. This liquidation order u/s 33(7) shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- i. The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.

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7. In view of foregoing, IA 266/2023 is dismissed and IA 1290/2023 is allowed.

SD/-

Prabhat Kumar
Member (Technical)

SD/-

Justice V.G. Bisht
Member (Judicial)