



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH-1, HYDERABAD.**

I.A. (IBC) No. 71 of 2022

IN

C.P. (IB) No.651/7/HDB/2018

**IN THE MATTER OF M/S. SAINATH ESTATES PRIVATE
LIMITED**

BETWEEN

Dr. K.V.Srinivas,

Chairman,

Monitoring Committee of M/s. Sainath Estates Private Limited,

402, 4th Floor, 6-3-249/6, Alcazar Plaza & Towers,

Road No.1, Banjara Hills, Hyderabad 500 034.

...Applicant

AND

K. Premsagar Rao,

1-8-333&334, A-Wane, Begumpet, Opp Police Lanes,

Near U.S.Consulate, Secunderabad- 500 003.

.... Respondent/Successful Resolution Applicant

Date of Order: 24.02.2025

Coram:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA

HON'BLE MEMBER (JUDICIAL)

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)



Parties/Counsels present:

- i) **For Monitoring Committee** : Mr. DV Seetharam Murthy, Senior Counsel
for Dr. KV Srinivas in person.
- ii) **For Successful Resolution** : Mr. Shankarnarayana, Senior Counsel for
Applicant (SRA) Mr. P. Ramesh Babu, Counsel
- iii) **For Liquidator** : Mr. Amir Bhavani, Counsel along with
Mr. Krishna Mohan Gollamudi, Liquidator
- iv) **For Union Bank of India** : Mr. PBA Srinivasan, Counsel

PER BENCH

ORDER

1. Before entering into the merits of the present application, we find it appropriate to give a brief history of the proceedings that took place in the present case. The Corporate Debtor was put into Corporate Insolvency Resolution Process (CIRP) by an order of this Tribunal dated 08.07.2019 in C.P. (IB) No. 651/7/HDB/2018. During the CIRP, the Respondent herein submitted a Resolution Plan and the same was approved by the Committee of Creditors (CoC) of the Corporate Debtor on 07.01.2021 with 100% voting in favour of the plan. By an order dated 09.11.2021 in I.A. No. 43 of 2021 in C.P. (IB) No. 651/7/HDB/2018, this Tribunal approved the Resolution Plan for Corporate Debtor submitted by the Respondent herein.



2. This application was filed by Dr. K.V. Srinivas, the Chairperson of Monitoring Committee/Resolution Professional of M/s. Sainath Estates Private Limited (hereinafter referred as Corporate Debtor) seeking Liquidation of the Corporate Debtor on failure of the Respondent/Successful Resolution Applicant (SRA) to implement the Resolution Plan. The same was allowed by this Tribunal by an order dated 08.07.2022 and Liquidation Proceedings of Corporate Debtor were initiated by appointing Mr. Krishna Mohan Gollamudi as the Liquidator of the Corporate Debtor.
3. However, the SRA approached the Hon'ble NCLAT, Chennai Bench vide Company Appeal (AT)(CH)(Ins) No.326/2024 challenging the order dated 08.07.2022 of this Tribunal. The Hon'ble NCLAT by an order dated 06.09.2024 allowed the said appeal by modifying the Liquidation Order of this Tribunal passed on 08.07.2022 and issued certain directions. Accordingly, the present Application is suo-moto reopened on 04.11.2024 to enable the implementation of the directions of the Hon'ble NCLAT.
4. The order dated 06.09.2024 of the Hon'ble NCLAT is based on a memorandum of understanding recording the terms of settlement



submitted by the SRA. The Hon'ble NCLAT modified the order of this Tribunal dated 08.07.2022 (Liquidation Order) and issued certain directions, the relevant portion of the same for adjudication of the present application is as follows:

“The Appellant has submitted a memo of settlement condoning thereof that parties have arrived to a conclusion in league with the terms given in the Memorandum of Understanding, which has been placed before this tribunal.

The Respondents who have concurred to the terms and condition of the memo, are represented by the learned counsel Mr. Abhijeet Sinha, Senior Advocate. He supports the terms of settlement and he submits that, if the Impugned Order 8/07/2022, is modified to the extent of the terms of the settlement he may not have any grievances as such.

The counsel for the appellant submits that, in terms of the settlement which has been arrived at, which the Counsel for the Appellant has produced before this Learned Tribunal, a Demand Draft bearing Number 378025 dated 19.08.2024, as executed in favor of Sainath Estates Private Limited by the Appellants herein, for a total amount of Rs. 10 crores. The xerox copy of the said demand draft which has been taken under the endorsement of the learned counsel and which has been placed on record and would form to be a part of the today's order. The Appellant assures to hand over the said Demand Draft thus issued in favor of the Respondent, to him (Respondent), within one week from today. If the same is not done within the aforesaid period, this order will have no effect and the appeal would automatically stand revived back. In view of what has been observed above, the Impugned Judgement of 08.07.2022, of NCLAT, Hyderabad will stand modified to the extent of the terms of settlement as detailed in the memo, which has been placed on record today. Order accordingly. The appeal will stand closed subject to above directions, and would be treated to be disposed off.”



5. This development before the Hon'ble NCLAT was brought to the notice of this Tribunal on 19.09.2024 by Mr. Punith Yadav, Ld. Counsel for SRA. Accordingly, this Tribunal directed Mr. Punith Yadav to file the memo of settlement referred in the order of Hon'ble NCLAT and adjourned the matter to 23.10.2024 for passing appropriate orders.
6. On 23.10.2024, it was represented that the memo of settlement was physically filed but however due to lack of access, the same was not e-filed. The Registry was directed to provide the access to e-file the said memo of settlement. At this stage, it was represented on behalf of Union Bank of India (one of the secured financial creditors of Corporate Debtor) that Union Bank of India moved the Hon'ble NCLAT seeking certain clarifications in respect of the order dated 06.09.2024 and accordingly, the matter was further adjourned to 28.10.2024.
7. The gist of the memo of settlement as filed by SRA before the Hon'ble NCLAT basing on which the order dated 06.09.2024 was passed is as follows:



- i. A Joint Lenders Meeting (JLM) was virtually held on 05.08.2024 and it was agreed to settle the ongoing disputes on certain terms and conditions.
- ii. In furtherance of this discussion, the SRA wrote a letter to Assistant General Manager of Bank of India having 49.36% voting share stating that the SRA will be implementing the Resolution Plan by paying the remaining amount of Rs.107.59 cores along with simple interest calculated at 10.9% (MCLR+2%) per annum for the delayed period which stands at Rs.136.60 crores.
- iii. Out of this Rs.136.6 crores, SRA undertook to keep the Demand Draft ready for Rs.10 crores and a tranche of Rs.120 crores will be infused/funded by SEBI registered Mumbai based AIF Category 2 Fund along with their participating in ARC within 30 business working days from the date of order of appropriate forum.
- iv. The final tranche of Rs.6.60 crores would be infused within 15 working days from the date of order of appropriate forum.



- v. The SRA undertook to pay the Liquidations expenses within 15 working days from the date of order of appropriate forum.
8. In view of the order dated 06.09.2024 of the Hon'ble NCLAT, the present Application i.e., I.A. No. 71 of 2022 was suo-moto reopened enabling this Tribunal to consider the directions of the Hon'ble NCLAT order dated 06.09.2024.
9. On 27.11.2024, it was represented before this Tribunal that the Chairman of the Monitoring Committee/Resolution Professional has filed a compliance report which states that the directions of the Hon'ble NCLAT in the order dated 06.09.2024 in Company Appeal (AT)(CH)(Ins) No.326/2024 were complied. At this stage, it was submitted by Mr. Krishna Mohan Gollamudi, Ld. Liquidator that the fee payable and expenses so far incurred by Liquidator were not reimbursed by the SRA despite the undertaking given before the Hon'ble NCLAT for reimbursing the same. Mr. Ramesh Babu, Ld. Counsel for the SRA submitted that if Liquidator submits his 'invoice', the same will be honoured by the SRA. Accordingly, the Liquidator was directed to submit the invoice in respect of the fee and expenses as per the entitlement and the SRA to comply the same.



10. When the present Application was listed on 16.12.2024, it was represented on behalf of Union Bank of India that a memo dated 09.12.2024 was filed before this Tribunal stating that Union Bank of India approached Hon'ble Supreme Court challenging the order of Hon'ble NCLAT dated 06.09.2024 and till the same is decided, 'Status quo' regarding the further proceedings before this Tribunal may be ordered. The same was opposed by Ld. Counsel for SRA stating that Union Bank of India was one of the members of Joint Lender Meeting wherein the settlement terms proposed by SRA were accepted and Union Bank of India is estopped from contending contra. It was also prayed by Ld. Counsel for SRA for appropriate directions regarding the fee payable to the erstwhile Liquidator and to close the Liquidation proceedings. Ld. Counsel Mr. Amir Bhavani, appearing for Liquidator filed a memo inter alia stating that SRA failed to comply the order of this Tribunal in respect of the fee and expenses of the Liquidator.
11. The SRA filed a memo on 13.12.2024 alleging among others, that the Liquidator have raised incorrect invoices on the SRA which were not approved by the SCC.



12. In the above backdrop, the short question that remains for adjudication is:

Whether the terms and conditions as set out in order dated 06.09.2024 of the Hon'ble NCLAT are complied with by the parties, thus making a way for revocation of Liquidation order dated 08.07.2022 and implementation of resolution plan as approved by this Tribunal in I.A. No. 43 of 2021 dated 09.11.2021?

13. We have heard Ld. Senior Counsel Mr. Shankarnarayana for Mr. Ramesh Babu-Ld. Counsel for SRA, Ld. Senior Counsel Mr. DV Seetharam Murthy for Mr. KV Srinivas-Monitoring Committee, Ld. Counsel Mr. PBA Srinivasan for Union Bank of India, Ld. Counsel Mr. Amir Bhavani for Ld. Liquidator Mr. Krishna Mohan Gollamudi, perused the record and submissions.

SUBMISSIONS

14. Ld. Senior Counsel Mr. Shakarnarayana for Mr. P. Ramesh Babu, Ld. Counsel submits that as per the directions of the Hon'ble NCLAT, the SRA have infused the funds and satisfied the creditors of the Corporate Debtor. Thus submitting, it was prayed that the order dated 08.07.2022 Liquidating the Corporate Debtor be revoked and the Corporate Debtor be put back into CIRP thereby enabling the SRA to



implement the Resolution Plan as approved by this Tribunal in I.A. No. 43 of 2021 dated 09.11.2021.

15. On the other hand, Ld. Counsel Mr. PBA Srinivasan for Union Bank of India submits that aggrieved by the order of Hon'ble NCLAT dated 06.09.2024, Union Bank of India approached the Hon'ble Supreme Court challenging the said order. Ld. Counsel further submits that till the said case is decided by the Hon'ble Supreme Court, a '*status quo*' may be ordered in respect of the proceedings of the Corporate Debtor before this Tribunal.

16. Opposing to the said contention, Ld. Senior Counsel Mr. DV Seetharam Murthy appearing for Dr. KV Srinivas, the Chairman of Monitoring Committee of the Corporate Debtor submits that Union Bank of India consented to the terms of settlement with SRA during the Joint Lenders Meeting. As such, the said consent operates as an estoppel against the Union Bank of India and hence, there cannot be any contention contrary to the order of Hon'ble NCLAT in respect of the terms of the settlement. Ld. Senior Counsel further submits that the application that was filed by Union Bank of India seeking clarifications of the order dated 06.09.2024 was also dismissed by the



Hon'ble NCLAT. Thus submitting, it was stated that as the terms of settlement were honoured in respect of the creditors of the Corporate Debtor, appropriate directions may be issued to SRA in respect of payment of fee payable to the Liquidator of the Corporate Debtor and thereby close the Liquidation Proceedings and enable the SRA to implement the Resolution Plan.

17. Ld. Counsel Mr. Amir Bhavani for the Liquidator submits that as per the directions of this Tribunal, invoice was raised by the Liquidator on the SRA mentioning the fee and expenses to be payable to the Liquidator. But that the SRA have failed to make payment in this regard and failed to implement the undertaking given before this Tribunal.

18. Ld. Counsel for SRA Mr. Ramesh Babu submits that the Liquidator have submitted incorrect invoices. That these invoices raised by the Liquidator were not approved by the CoC of the Corporate Debtor. Ld. Counsel further submits that the amount of Rs.136.6 crores paid by SRA as part of the implementation of Resolution Plan were shown as amounts recovered during liquidation and realisation expenses @50% were charged on these amounts for which the Liquidator is not



entitled to. Ld. Counsel submits that the fee of the Liquidator was fixed at Rs.1 lakh per month and that the Liquidator have already withdrawn an amount of Rs.27 lakhs towards fee of Liquidator, as such the costs of Liquidation stands satisfied and that the Liquidator is not entitled for any further payments.

OUR ANALYSIS & FINDINGS

19. In terms of the settlement memo basing on which the Hon'ble NCLAT have passed the order dated 06.09.2024, the SRA have paid the amounts in respect of the Resolution Plan for the Corporate Debtor. To this extent, it was represented before this Tribunal by the Chairman of the Monitoring Committee of the Corporate Debtor that the directions of the Hon'ble NCLAT in the order dated 06.09.2024 were complied. Being so, the only term which remains to be complied by the SRA is the payment of Liquidation costs, if the SRA is allowed to implement the Resolution Plan.

20. As far as objection of Union Bank of India seeking *status quo* is concerned, in our view, it is not maintainable as Union Bank of India gave the consent in the Joint Lenders Meeting dated 05.08.2024 wherein the settlement proposed by SRA was approved by the lenders.



21. In respect of the Liquidation costs, we have directed the Liquidator of Corporate Debtor to submit the invoice in respect of the fee and expenses as per the entitlement. A memo dated 13.12.2024 with Inward No. 12059 was filed on behalf of SRA wherein the invoices stated to have been raised by the Liquidator were annexed. We have perused the invoices raised/submitted by the Liquidator to the SRA which appears to have been annexed to the email addressed by the Liquidator.

22. At this stage, it would be appropriate to refer to Regulation 4 of IBBI (Liquidation Process) Regulations, 2016 (hereinafter referred as ‘Liquidation Regulations’), which provides for the fee of Liquidator.

“4. Liquidator’s fee

(1) The fee payable to the liquidator shall be in accordance with the decision taken by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(1A) Where no fee has been fixed under sub-regulation (1), the consultation committee may fix the fee of the liquidator in its first meeting.

(2) In cases other than those covered under sub-regulation (1) and (1A), the liquidator shall be entitled to a fee-

(a) at the same rate as the resolution professional was entitled to during the corporate insolvency resolution process, for the period of compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013); and

(b) as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation, as under:



.....
(3) Where the fee is payable under clause (b) of sub-regulation (2), the liquidator shall be entitled to receive half of the fee payable on realisation only after such realised amount is distributed.”

23. A perusal of the above Regulation makes it amply clear that only in case of realisation of assets and distribution of the amounts during the Liquidation, the sub-regulation (2) and sub-regulation (3) comes into play and the Liquidator is entitled to the fee accordingly as mentioned therein. But in this case, since Hon’ble NCLAT modified the Liquidation Order enabling the SRA to make payments in respect of the resolution plan in terms of the settlement memorandum, the amounts paid in lieu thereof cannot be treated as amounts realised through Liquidation. Hence, in other words, the entitlement of the Liquidator as fee in this case shall be:

- The amount decided by the CoC; or
- The amount decided by the SCC in the first meeting.

24. Now, coming to the invoices submitted by the Liquidator, one of these invoices dated 03.12.2024 states that an amount of Rs.60,89,500/- is to be paid to the Liquidator for realisation and distribution of Rs.136.6 crores. We would like to state that these amounts of Rs.136.6 crores were paid by SRA in terms of the order of



the Hon'ble NCLAT modifying the Liquidation Order of this Tribunal. The terms of the settlement memo clearly state that the amount of Rs.136.6 crores will be paid/infused by SRA towards the implementation of the approved Resolution Plan. Hence, these amounts paid/infused by SRA cannot be treated as the amounts realised and distributed during Liquidation of Corporate Debtor. Though the amounts were paid by SRA during the Liquidation Period, but the same cannot be treated as the amounts realised by the Liquidator in the capacity of the Liquidator. This was never the intent of order of Hon'ble NCLAT dated 06.09.2024 and SRA also while submitting the settlement memo, never intended the same. Hence, the claim of Liquidator for a fee of Rs. 60,89,500/- through invoice dated 03.12.2024 stating the same is in accordance with Regulation 4 of IBBI (Liquidation Process) Regulations, 2016 is not correct and is invalid.

25. The other invoice mentions the Liquidation expenses incurred upto 03.12.2024 as Rs.47,36,623/-. It is the case of SRA that the Liquidator have already withdrawn an amount of Rs.27 lakhs (@Rs.1 lakh per month) towards Liquidator fee and the Liquidation costs stand



satisfied and hence, the Liquidator is not entitled for any other expenses. We would like to state that the fee of Liquidator is different from the Liquidation expenses. The Liquidator fee is the professional charge/fee to be paid to the Liquidator for the services provided by the Liquidator, whereas Liquidation expenses are the costs incurred during the process of Liquidation of the Corporate Debtor which also includes the Liquidator fee. The second invoice which gives the Liquidation expenses does not find a mention about the Liquidator fee. Probably, the Liquidator might have not included the same in the said invoice as an amount of Rs.27 lakhs was already withdrawn by the Liquidator.

26. In respect of the other Liquidation expenses as mentioned in the second invoice, we direct SCC to examine it in detail and if proper bills & receipts, and also proper approval from SCC are available on record, then SRA is directed to pay the bills accordingly. If any amount remains unpaid to the Liquidator for his fee @ Rs.1 lakh per month, the same is also to be paid by SRA.

27. The Liquidation Order dated 08.07.2022 in I.A. No. 71 of 2022 is hereby revoked in terms of the compliance to the order dated



06.09.2024 of the Hon'ble NCLAT and the SRA is allowed to proceed further with the implementation of the Resolution Plan.

28. The Chairman of Monitoring Committee/Resolution Professional is directed to file a report regarding the status of payment of Liquidator's fee and Liquidation expenses, and also on the implementation of Resolution Plan within 15 days from the date of this order.

29. Accordingly, this application is disposed off.

Sd/-

Charan Singh
Member (Technical)

Sd/-

Dr. Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Anil