NATIONAL COMPANY LAW TRIBUNAL, BENCH-1,

HYDERABAD

IA (IBC)/541/2022
In CP (IB) No.651/7/HDB/2018
Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
R/w Rule 11 & 153 of NCLT Rules, 2016

(IN THE MATTER OF M/s SAINATH ESTATES PRIVATE Ltd.)

Between**.**
K. Premsagar Rao,
1-8-333&334,
A-Wane, Begumpet, Opp Police Lanes,
Near U.S.Consulate,
Secunderabad- 500 003.

…Applicant/Erstwhile Successful Resolution Applicant

VS

Dr.K.V.Srinivas
Chairman,
Monitoring Committee,
Sainath Estates Private Limited
402, 4th Floor, 6-3-249/6,
"Alcazar Plaza & Towers,
Road No.1, Banjara Hills,
Hyderabad 500 034.

….Respondent

Date of order: 08.07.2022

<u>Coram</u>

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble, Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties/ Counsels present:

For the Applicant : Shri. P.Pratap Puneet Yadav, Counsel.

For the SRA : Shri Virender Ganda, Senior Counsel.

PER: BENCH

This is an application filed by the erstwhile successful resolution applicant seeking the following reliefs:

(i) To place on record the judgements of Hon'ble Supreme Court and Hon'ble NCLAT before this Adjudicating Authority for consideration before passing order in IA No.71/2022.

(ii) To pass an order that the Applicant be liable to pay interest @15% p.a from the date of delay till the date of payment in terms of the approved Resolution plan.

(iii) To pass an order for extension of time frame of two months from the date of the order in the present application for payment of the third trench amount due as per the Resolution plan together with interest.

1. The facts apropos to the present application are that the Applicant had submitted the Resolution Plan approved by the COC and this Adjudicating Authority approved the resolution plan vide order dated 09.11.2021. Later due to the delay in payments as per schedule, Applicant filed an IA No.95/2022 seeking extension of time, wherein this Adjudicating Authority vide order dated 16.02.2022 extended the time frame for infusing the balance amount as per the Resolution plan approved.

2. It is averred that due to onslaught of Russia-Ukraine war and consequent debacle of the economy at large, the Applicant could not comply with the condition of depositing the 1/3rd of the amount due under the 3rd tranche.

3. In view of the non-compliance of the order dated 16.02.2022 IA No.71/2022 which was filed by the RP seeking liquidation of the corporate debtor is heard and reserved for order on 13.05.2022.

4. It is averred by the Applicant that he already paid an amount of Rs.10.00 crores and due to some difficulties payment of 3rd tranche as per the approved Resolution Plan is delayed. The Applicant is now willing to deposit the 3rd Tranche with interest@15% p.a till the repayment entire resolution plan amount.

5. Applicant has relied on the Judgments of Hon'ble Apex Court in Re: Vallal RCK vs Siva Industries & Holding Limited & Others" in Civil Appeal No(s) 1811-1812 of 2022 which was held that the Commercial wisdom of COC has been given paramount status without any judicial intervention.

6. It is further submitted that while the order in IA No.71/2022 has been reserved for orders on 09.05.2022, Hon'ble NCLAT has passed a judgment on 06.05.2022 in Re "GP Global Energy Pvt Lts. V/s Mr.Sandeep Mahajan Monitoring Professional for Allied Strips Ltd" in Company Appeal(AT) (Insolvency) No.954/2021 with Company Appeal (AT) (Insolvency)No.1011 of 2021 which has held that the Hon'ble Adjudicating Authority has the Jurisdiction to extend the time for complying the financial obligations in the Resolution plan. Further, the Hon'ble NCLAT, stated that in case of delay of payments, had saddled the SRA with interest@11% p.a simple interest till the date of payment.

7. Thus, contending the Applicant/Successful Resolution Applicant prays for extension of time for two months for payment of third trench amount which is due as per the approved resolution plan with interest @15%p.a.

8. Before we proceed further we may state herein that, in so far as the reliefs, namely to place on record the judgements of Hon'ble Supreme Court and Hon'ble NCLAT before this Adjudicating Authority for consideration before passing order in IA No.71/2022 is concerned it is to be stated that since the same are cited before we are bound to consider these rulings irrespective a prayer to consider the same.

9. Therefore, the Point that emerges for consideration by this Tribunal is;

Whether the Applicant is entitled for extension of time frame of two months prayed in the present application for payment of the third trench amount due as per the Resolution plan together with interest @15% p.a from the date of delay till the date of payment in terms of the approved Resolution plan?

10. We have heard Shri Virender Ganda Ld. Sr. Counsel for Shri. P.Pratap Puneet Yadav, Counsel for the Applicant, perused the record and the case law.

11. At the outset it may be stated the Applicant, who is the erstwhile Successful Resolution Applicant, for short, SRA, in terms of the Approved Resolution Plan shall implement the plan within 60 days from 09.11.2021 which is the date of approval of the Resolution Plan by this Tribunal. The key terms and conditions of the Approved Resolution Plan and the milestones prescribed in the Resolution Plan, are as below:

S.NO	Particulars	Key Terms/Amount in Rs	Status as on 12.01.2022
1	Payment of deposit/1st Tranche	Rs.1.00 Crore along with Resolution Plan submission	Complied(BG)
2	Payment of deposit/2nd Tranche- upfront payment to proposed creditors	9.00 Crores- immediately within two weeks upon receipt of official communication from COC and Resolution Professonal about the Approval of Resolution Plan	Complied(BG)
3	Payment of deposit/3rd Tranche- Balance payment(other than amount specified (S.No.2&3) obligation to creditors	107.59 Crores- within 60 days from the final order passed by the Hon'ble NCLT, therein approving the instant Resolution Plan	Not complied
4	Proposed instruments for repayment	Cheque/Through banking system out of the amount infused	not complied
5	Amount of fresh equity proposed to be infused for revival and improvement of operations of corproate debtor	The total amount of Rs.117.59 crores(including deposit) will be infused with a combination of equity, quasi equity and or debt instruments	Not complied
6	implementation Schedule proposed by Resolution Applicant	Within 60 days from the approval date of resolution plan by AA	Not complied

12. Pleading breach of the terms of the approved resolution plan by the SRA, the Chairman of Monitoring Committee filed IA 71/2022 praying as below;

- To pass an order in accordance to the provisions of Section 33;
- Permit the applicant to forfeit the performance Bank Guarantee amount.

13. While the above 71/2022 is pending, the Successful Resolution Applicant, being unable to comply the terms and conditions of approved resolution plan pertaining to the payment of the 3rd tranche amount filed IA No.95/2022 on 24.01.2022 with the following prayers:

- To permit the Applicant to make the payment of 3rd tranche together with the agreed interest rate of 15% p.a.
- To direct the respondent not to forfeit the performance Bank guarantee.

14. This Tribunal on 16.02.2022 disposed of IA No.95/2022 with the following directions.

(i) The petitioner shall deposit 1/3rd per annum to be calculated from the due date of 3rd trench payment till the date of payment, within 30 days from the date of this order.

(ii) The remaining 2/3rd amount of 3rd trench with interest @15% per annum shall be deposited within 30 days thereafter.

(iii) It is made clear that default of the first condition above by the Successful Resolution Applicant itself is sufficient for the chairman of the Monitoring Committee to forthwith forfeit the

Performance Security furnished by the SRA and for initiation of steps for liquidation of the Corporate Debtor.

15. As the above order was not complied by the SRA, one of the Members of Stake holders Committee i.e Bank of India, on 14.03.2022 filed IA no.252/2022 praying as below;

- Respondent No.1 to invoke and encash the Bank Guarantee and to distribute the amount of Rs.10 crores among the stakeholders in terms of approved resolution plan without any delay.
- Respondent No.1 to distribute the remaining amount to be received as per the order dated 16.02.2022 that is to be paid by the Respondent no.2 in two tranches immediately, on receipt of amount among the stakeholders as per the terms of the approved resolution plan.

16. Pursuant thereto, this Tribunal vide order dated 23.03.2022 directed the RP to distribute the amount so far deposited by the erstwhile Successful Resolution Applicant towards first and second tranches of the Resolution Plan among the stake holders in the ratio of their voting share forthwith, without deducting CIRP expenses claimed by the RP. Subsequently, the Chairman of the Monitoring Committee filed a memo stating as follows

"In compliance to the directions of this Adjudicating Authority, the Applicant forfeited the Performance Guarantee amount of Rs.10.00 Crores and intimated the same to the Resolution Applicant vide his letter dated 19.03.2022.

17. Therefore, in the above factual backdrop it is to be seen whether the present application seeking extension of time of two months is sustainable or not?

18. It may be stated that this Tribunal while disposing of IA No.95/2022 filed with similar prayer *besides* not to *forfeit* the performance bank guarantee after specifically considering Clause 13 of Resolution Plan dismissed the said IA No. 95/2022, *inter alia*, observing that " we are fully conscious of the fact that the SRA has already delayed infusing of the funds as per the plan, hence it should not be allowed to take undue advantage of the aforesaid provision and prolong compliance of the payment terms of the plan on a mere plea that payment can be delayed as there is a provision for payment of interest" with the following directions:

- The petitioner shall deposit $1/3^{rd}$ per annum to be calculated from the due date of 3^{rd} trench payment till the date of payment, within 30 days from the date of this order.
- The remaining $2/3^{rd}$ amount of 3^{rd} trench with interest @15% per annum shall be deposited within 30 days thereafter.
- It is made clear that default of the first condition above by the Successful Resolution Applicant itself is sufficient for the chairman of the Monitoring Committee to forthwith forfeit the Performance Security furnished by the SRA and for initiation of steps for liquidation of the Corporate Debtor.

19. The present Applicant neither complied the above directions nor questioned the order in IA No.95/2022 and the same has attained finality. That apart, the Chairman Monitoring Committee has already implemented the order in IA 95/2022 by forfeiting the Performance

Bank guarantee and also distributed among the members of the stakeholders committee the amounts so far paid by the applicant as per their entitlement. Therefore, the present application is not only devoid of any merit or substance but also barred by the principle of *res judicata*, since order in IA No.95/2022 for similar relief between the same parties had attained finality.

20. In so far as the ruling, *in re,* GP Global Energy Pvt Lts. V/s Mr.Sandeep Mahajan Monitoring Professional for Allied Strips Ltd" in Company Appeal(AT) (Insolvency) No.954/2021 with Company Appeal (AT) (Insolvency)No.1011 of 2021, relied on by the Applicant, it may be stated that in tune with the settled law that the Adjudicating Authority has the Jurisdiction to extend the time for complying the financial obligations in the Resolution plan, this Tribunal gave a long rope to the applicant so that liquidation of the Corporate Debtor, can be averted. However, the applicant despite of availing sufficient time granted from time to time besides vide order in IA No.95/2022, failed in complying the terms of the Resolution plan. So much so under these circumstances this Tribunal is left with no option but to order liquidation.

21. Therefore, the application being devoid of any merit or substance is liable to be dismissed.

22. Accordingly, the Application is hereby dismissed. No Costs.

Sd/-
Veera Brahma Rao Arekapudi
Member (Technical)

Sd/-
Dr.N.V.Ramakrishna Badarinath
Member (Judicial)

Pavani