

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court -I)
KOLKATA**

**IA(IBC)/672(KB)2022
in
CP(IB)/1231(KB)2019**

In the matter of:

The Insolvency and Bankruptcy Code, 2016;

And

In the matter of:

An application under section 60(5) read with section 33(3) and section 74(3) of the Insolvency and Bankruptcy Code, 2016 and regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

And

In the matter of:

Allahabad Bank (now Indian Bank, w.e.f. 01/04/2020) having its Head Office at Indian Bank Corporate Office, 254-260, Avvai Shanmugam Salai, Royapettah, Chennai 600014, and carrying its business through branch office at SAM Branch Ranchi, Third Floor, Paras Complex, Lalpur Chowk, Circular Road, Ranchi 834001, Jharkhand;

....Financial Creditor

-Versus-

Jharkhand Mega Food Park Private Limited having its Registered Office at Plot No. 1596, Road No.7, Hawaii Nagar, Mouza – Hinoo, P.S. Jagannathpur, Ranchi 834003, Jharkhand;

....Corporate Debtor

And

In the matter of:

Mr. Niraj Agrawal, son of Mr. Hari Krishna Agrawal, residing at P-135, Block B, Lake Town, Kolkata 700089 having office at Matrix Tower, DN-24, 4th Floor, Room No.407, Sector – V, Salt Lake, Kolkata 700091, and acting as the Chiriperson of the Monitoring Agency in respect of the Corporate Debtor (Erstwhile Resolution Professional);

....Applicant

-Versus-

Indian Ocean Group PTE Ltd., incorporated under the appropriate laws of the Singapore having Corporate Identity No. 201026177W, having its office at 3791, Jalan Bukit Merah 05-28, Ecentre@Redhill, Singapore 159471.

....Respondent

Order pronounced on: 19 January 2024

Coram:

Shri Rohit Kapoor : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

For Applicant : Mr. Kumarjit Banerjee, Adv.
Ms. Sanchari Chakraborty, Adv.
Ms. Tanishka Khandelwal, Adv.
Mr. Niraj Agrawal, Chairperson of
Monitoring Agency in person

For the SRA : Mr. Mainak Bose, Adv.
Mr. Pooja Shukla, Adv.

For Financial Creditor : Mr. Ramesh Ch. Prusti, Adv.
Mr. Binay Upadhya, Adv.
Ms. Mahuya Ghosh, Adv.
Ms. Alisha Kar, Adv.

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. IA(IBC)/672(KB)2022 is an application filed under section 60(5) read with section 33(2) and section 74(3) of the Insolvency and Bankruptcy Code, 2016 and regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by Mr. Niraj Agrawal, Chairperson of the Monitoring Agency of the Corporate Debtor against Indian Ocean Group PTE Ltd., the Successful Resolution Applicant (“SRA”) seeking the following reliefs: -

(a) Direction be passed by the Hon’ble Adjudicating Authority for recommencement of the CIRP of the Corporate Debtor in accordance with and under the provisions of IBC and CIRP Regulations with object and purpose of reviving the corporate debtor as a going

concern and issuance of a fresh Invitation for Expression of Interest under Section 25(2)(h) of IBC in furtherance thereof;

(b) In the alternative, in view of the persistent refusal to implement the terms of the approved Resolution Plan by the successful resolution applicant and its continued conduct in patent derogation of the terms of the binding approved Resolution Plan in grave contraventions of the provisions of the Code, the Adjudicating Authority be pleased to pass an order directing the Corporate Debtor to be liquidated;

(c) An order directing forfeiture of the performance security, viz., the Performance Guarantee furnished by the successful resolution applicant, the Respondent herein, and forfeiture of all payments made and/or sums disbursed by the successful resolution applicant till date on account of the persistent refusal and/or failure on the part of the Respondent successful resolution applicant to implement the approved Resolution Plan in accordance with the terms of such Resolution Plan;

(d) Such further order or orders as to which this Hon'ble Tribunal may deem fit and proper.

This application is supported by an affidavit¹ duly affirmed by Mr. Niraj Agrawal, Chairperson of the Monitoring Agency.

3. The present application has been filed by the Applicant in the capacity of being the Chairperson of the Monitoring Agency, representing inter alia the interest of the Financial Creditor(s) of the Corporate Debtor, appointed on 01/03/2022 to oversee the implementation of the approved Resolution Plan of the Respondent, approved by this Adjudicating Authority vide its Order dated 10/02/2022.

4. ***Brief background of this case:***

(a) An application u/s. 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**")

¹ At pages 31 and 32 of the application

was filed by the Allahabad Bank (since merged with Indian Bank *w.e.f.* 01/04/2020.) ("**Financial Creditor**") against Jharkhand Mega Food Park Private Limited ("**Corporate Debtor**") a company registered under the Companies Act, 1956 and having its registered office at Plot No. 1596, Road No.7, Hawai Nagar, Mouza – Hinoo, P.S. Jagannathpur, Ranchi 834003, Jharkhand.

- (b) *Vide* order dated 10/01/2020 in CP(IB)1231(KB)2019 this Adjudicating Authority had admitted the Corporate Debtor under Corporate Insolvency Resolution Process ("**CIRP**") appointing Mr. Niraj Agrawal as the Interim Resolution Professional ("**IRP**").
- (c) Public announcement was made on 15/01/2020 in the "*Times of India*" (English) and "*Sanmarg*" (Hindi) calling for proof of claims from the creditors of the Corporate Debtor and CoC was duly formed with lone petitioning Financial Creditor, i.e., Allahabad Bank on 31/01/2020. The CoC at its meeting held on 06/02/2020 confirmed the appointment of Mr. Niraj Kumar Agarwal as the Resolution Professional ("**RP**") with 100% voting share.
- (d) In terms of section 25(2)(h) of the Code read with regulation 36A(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ("**CIRP Regulations**") Form G was published inviting Expression of Interest ("**EoI**") twice on 23/03/2020 and 05/10/2020 respectively from prospective resolution applicants ("**PRA**"). In response, the applicant received only one EoI from Indian Ocean Group PTE Ltd., a Singapore based company. The applicant issued the final list of eligible resolution applicant on 18/11/2020 in compliance of regulation 36A(10) of the CIRP Regulations.
- (e) Accordingly, the said Indian Ocean Group PTE Ltd., the PRA, had submitted the Resolution Plan on 25/12/2020. As per regulation 35(2) of the CIRP Regulations, the applicant provided the "fair value" and the "liquidation value" to the CoC on 06/01/2021 after receipt of the Resolution Plan on 25/12/2020.

- (f) The applicant placed the Resolution Plan for discussion in its 6th CoC meeting held on 15/01/2021, wherein the Resolution Applicant was requested to revise the Resolution Plan. Further negotiations took place in the 7th and 8th CoC meetings. The final revised Resolution Plan was placed for discussion before the CoC in its 11th CoC meeting held on 07/08/2021 and was put for e-voting in its 12th CoC meeting held on 28/08/2021. The Resolution Plan in respect of the Corporate Debtor was approved by the CoC in the said 12th CoC meeting with 100% voting share.
- (g) The applicant issued the Letter of Intent² (“LoI”) to the Successful Resolution Applicant on 30/08/2021. Upon receipt of the LoI, the Successful Resolution Applicant sought modification of the Performance Security criteria. The CoC at its 13th meeting held on 04/09/2021 after due deliberation agreed for the modification of the terms of Performance Security to be given by the Resolution Applicant and decided that the amount of Rs.10 Lakhs being the Earnest Money received by the applicant (erstwhile Resolution Professional at the material time), would be adjusted with the Performance Security and Successful Resolution Applicant would only be liable to deposit the balance amount of Rs.20 Lakhs. It was also resolved that clause 26.4 (Implementation) of the Resolution Plan of Indian Ocean Group PTE Ltd. approved by the CoC at its 12th meeting held on 28/08/2021 would be modified in accordance with the resolution passed in the 13th meeting. Accordingly, the Resolution Applicant provided the performance security of the balance amount, i.e., Rs.20 Lakhs on 13/09/2021.
- (h) Upon receipt of performance security of Rs.30 Lakhs in total (Rs.10 Lakhs earnest money + Rs.20 Lakhs), the then Resolution Professional, had moved an application u/s. 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 for approval of the CoC approved Resolution Plan being IA(IBC)/842(KB)2021. After hearing the said application, this

² Annexure ‘E’ at pages 156 to 158 of the application

Adjudicating Authority *vide* its Order³ dated 10/02/2022 had passed the following orders approving the Resolution Plan submitted by the said Successful Resolution Applicant, the respondent herein.

- “10.1 Therefore, subject to the observations made in this Order, we hereby accord our approval to the Resolution Plan. The Resolution Plan shall form part of this Order.*
- 10.2 As far as the question of granting time to comply with the statutory obligations or seeking sanctions from government authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.*
- 10.3 Any relief sought in the Resolution Plan, where any contract, agreement, understanding, proceeding, action, notice, etc. not specifically identified, or is for a future contingency, is, at this point of time, rejected.*
- 10.4 The Resolution Plan as approved is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Corporate Debtor can come into force with immediate effect.*
- 10.5 The Moratorium imposed under section 14 shall cease to have effect from the date of this order.*
- 10.6 The Resolution Professional shall stand discharged from his duties with effect from the date of this Order. However, he shall perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority*
- 10.7 The Resolution Professional is further directed to hand over all records, and properties to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises of the corporate debtor through the Resolution Professional to finalise the further line of action required for starting of the operation.*
- 10.8 In case of non-compliance of this order or withdrawal of Resolution Plan, the performance security amount already paid by the Resolution Applicant shall be liable to be forfeited, in addition to such further action as may be permitted under the law.*

³ Annexure ‘F’ at pages 159 to 271 of the application

- 10.9 *Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.*
- 10.10 *The Resolution Professional shall file a copy of this Order with the Registrar of Companies, Jharkhand, Ranchi, inter alia for updating the status of the Corporate Debtor.*
- 10.11 *Additionally, the Registry shall send a copy of this order to the Registrar of Companies, Jharkhand, Ranchi.*
- 10.12 *The application bearing IA No.842/KB/2021 and the main CP(IB) No. 1231/KB/2019 shall stand disposed of accordingly.*
- 10.13 *Certified copy of this Order be issued on demand to the concerned parties, upon due compliance of requisite formalities.”*

5. ***Contentions of the Applicant :***

- (a) The approved Resolution Plan had endorsed payment of a total amount of Rs.20.76 Crores against the total admitted amount of Rs.119.51 Crores, out of which Rs.75 Lakhs was earmarked towards the CIRP cost, Rs.20 Crores was payable to the Financial Creditor against the total admitted dues of Rs.49.63 Crores and Rs.1 Lakh was apportioned towards payment of the admitted dues of the Operational Creditors and/or the employees and workmen of the Corporate Debtor.
- (b) In terms of the said Resolution Plan, a total sum of Rs.5.26 Crores was to be paid upfront within 30 days from the date of the Order approving the Resolution Plan, i.e., within 12/03/2022. The balance sum of Rs.15.50 Crores was to be paid in four (4) separate tranches within a period of 36 months from the effective date (date of approval of the Resolution Plan), i.e., Rs.3.75 Crores within 18 months, Rs.4 Crores within 24 months, Rs. 4 Crores within 30 months and Rs.3.75 Crores within 36 months respectively from the effective date.
- (c) Accordingly, erstwhile RP, the applicant herein, demitted his office and formed a four member Monitoring Agency comprising of two nominees of the Successful Resolution Applicant (“**SR A**”), one representative of the

Financial Creditor and the erstwhile RP. At the first meeting of the Monitoring Agency held on 01/03/2022, the erstwhile RP was appointed as the Chairperson of the Monitoring Agency.

- (d) At the said 1st meeting of the Monitoring Committee held on 01/03/2022, the said SRA duly confirmed that upfront payment shall be made by 12/03/2022 and that the entire upfront payment would be made in the ICICI Bank account maintained in the name of the Corporate Debtor. However, the SRA raised an issue pertaining to the 10 collection vehicles comprising of 8 trucks and 2 reefer vans parked in the premises of the Corporate Debtor pointing out that the said 8 trucks are registered in the name of a contractor, Frigoscan Foodtech Pvt. Ltd. instead of in the name of the Corporate Debtor. It was further asserted that in order to enable the Corporate Debtor to use the vehicles, the vehicles should be registered in the name of the Corporate Debtor. Though it was necessary that the vehicles are to be registered in the name of the Corporate Debtor for its use, members of the Monitoring Agency nor the representative of the SRA considered the same to be a mandatory precondition for compliance of the terms of the Resolution Plan and/or its implementation thereof. A copy of the minutes of the 1st meeting of the Monitoring Agency forms **Annexure 'G'**⁴.
- (e) However, despite unequivocal commitment to disburse the upfront payment within 30 days, i.e., 12/03/2022, no upfront payment was made by the SRA. The applicant vide e-mail dated 14/03/2022 had reminded the SRA of its payment obligations. In response to the aforesaid e-mail dated 14/03/2022, the SRA sought to contend that such payments could only be made upon clear title and ownership of the subject mobile collection vehicles being made by way of registration in the name of the Corporate Debtor and refused to disburse the upfront payment under the terms of the Resolution Plan. Copies of the correspondence exchanged between the applicant and one Mr.

⁴ Annexure 'G' at pages 272 to 277 of the application

Pradeepto Kumar Biswas, representative of SRA forms **Annexure 'H'**⁵(Colly).

- (f) Subsequent thereto, the Monitoring Agency convened its 2nd meeting on 21/03/2022 wherein the non-payment of upfront payment by the due date was raised. The SRA unilaterally asserted that till the process of registrations of 8 vehicles in the name of the Corporate Debtor were completed, SRA shall not disburse any upfront payment since they were not in a position to successfully implement the Resolution Plan. It was emphasized that Monitoring Agency is committed to assist and facilitate registration of the 8 vehicles in the name of the Corporate Debtor, the same cannot by any stretch of imagination be rendered pre-condition to either implementation or disbursement of the upfront payment under the terms of the Resolution Plan. Such contention, besides being ex-facie illegal with oblique motive and vexatious attempt at non-performance of the binding terms of the Resolution Plan. A copy of the minutes of 2nd meeting of the Monitoring Committee forms **Annexure 'I'**⁶.
- (g) In spite of best efforts of the members of the Monitoring Agency, and more particularly by the applicant, Chairperson of Monitoring Agency, and the representative of the Financial Creditor, the SRA refused to make the entire upfront payment even upon expiry of March 2022, excepting a sum of Rs.5,26,000/- being 1% of the total upfront payment on 31/03/2022. The respondent apart from the aforesaid payment only paid the insurance premium of the Food Park and a small amount towards replacement of the battery of a Mahindra make SUV vehicle of the Corporate Debtor.
- (h) Upon the persistent refusal and/or failure on the part of the SRA to make payment of the upfront amount in terms of the approved Resolution Plan, the applicant herein on various occasions during the month of April 2022 and May 2022 insisted upon the SRA to comply with the obligations under the

⁵ Annexure 'H' (Colly) at pages 278 to 282 of the application

⁶ Annexure 'I' at pages 282 to 285 of the application

terms of the approved Resolution Plan and/or for the implementation of the approved Resolution Plan. However, the SRA in terms of the approved Resolution Plan in accordance with the timeline thereto take any steps towards implementation of the Resolution Plan and continued with withholding payment of upfront amount on the plea of registration of the mobile vehicles in the name of the Corporate Debtor. The correspondences exchanged between the applicant and the SRA during the months of April and May 2022 forms **Annexure ‘J’(Colly.)**⁷

- (i) In the aforesaid facts and circumstances, the Monitoring Agency was constrained to convene its 3rd meeting on 11/05/2022 wherein it was noted that despite expiry of significant period beyond the stipulated period of 30 days from the date of approval of the Resolution Plan, the SRA has so far has refused to make and/or disburse the upfront payment. Upon enquiry, the representative of the successful resolution applicant sought to unilaterally amend and modify the entire payment timeline and payment tranches proposed under the approved Resolution Plan in complete departure and derogation of the approved Resolution Plan. Furthermore, they also sought to change the source of funds during the implementation period thereby essentially seeking to amend the entire approved Resolution Plan with mala fide and oblique intention of rendering the implementation of the Resolution Plan otiose and impossible. The representative of SRA also made unilateral and absurd allegations pertaining to the entire Corporate Debtor’s account being a ‘fraud account’ on account of non-registration of the said vehicles in the name of the Corporate Debtor. However, after due deliberation, Monitoring Agency is left with no option but to seek appropriate legal recourse on account of persistent refusal and failure on the part of the SRA to implement the terms of the Resolution Plan by defaulting in making any further payment in accordance with the terms of the approved Resolution Plan, which is binding on all stakeholders u/s. 31 of the IBC Code, 2016. A

⁷ Annexure ‘J’ at pages 286 to 289 of the application

copy of the minutes of 3rd meeting of the Monitoring Agency forms **Annexure 'K'**⁸.

- (j) It is a matter of records that payment in respect of the 10 mobile vehicles were made by the Corporate Debtor and were procured by the contractor Frigoscan Foodtech Pvt. Ltd. under suitable work order(s) issued by the Corporate Debtor. Furthermore, it is also a matter of record that completion certificate in respect of all 10 mobile collection vehicles were issued declaring the Corporate Debtor as the owner in respect of the said vehicles. In this connection, the work order(s) issued by the Corporate Debtor on the contractor above named Frigoscan Foodtech Pvt. Ltd. for procurement of the mobile collection vehicles, invoices issued in respect thereof, and payment details, together with the completion certificates issued in respect thereof declaring the Corporate Debtor as the owner form **Annexure 'L' (Colly.)**⁹.
- (k) The applicant, the Chairperson of the Monitoring Agency, has already initiated steps to get the 8 mobile collection vans registered in the name of the Corporate Debtor by submitting the necessary application with the District Transport Office, Ranchi on 08/06/2022.¹⁰
- (l) It is also pertinent to note that post approval of the Resolution Plan by the Adjudicating Authority, Mr. Pradepto Kr. Biswas, Director of the SRA along with his team members had visited the Food Park in Ranchi and met inter alia the officials of the Indian Bank on 25/02/2022 and asked for the original site plans of the Food Park for the purpose of implementation of the Plan. Consequently, Mr. Pradepto Kr. Biswas was handed over 8 original Food Park site plans by the Bank Officials after confirmation from the then Resolution Professional, the present applicant.¹¹

⁸ Annexure 'K' at pages 290 to 294 of the application

⁹ Annexure 'L' at pages 295 to 316 of the application

¹⁰ Averments in paragraph 5(xxiv) at page 27 of the application

¹¹ Averments in paragraph 5(xxv) at pages 27 and 28 of the application

6. ***Contentions of the SRA in Reply Affidavit:***

- (a) The assets of the Corporate Debtor sold to the SRA were “as is where is”, “as is what is” and “whatever there is” basis as mentioned in the Letter of Intent. The Resolution Plan submitted by the SRA was based on the information gathered from the Information Memorandum, which inter alia included not only the vehicles but also 56 Acres of leasehold land granted by the Ranchi Industrial Area Development Authority.
- (b) It is stated by the SRA that despite the RFRP as well as the Information Memorandum stating that the SRA would be responsible to conduct the necessary due diligence in respect of the Corporate Debtor and its assets, if they choose to submit a Resolution Plan pursuant to RFRP, the SRA while considering to put in the plan could have been deemed to carry out due diligence only in respect of matters kept outside of what has been mandated to be mentioned by the RP in the Information Memorandum under the Code. Section 29 read with Rule 36(1) CIRP Rules has specifically made it incumbent upon the RP to furnish correct details of the assets and liabilities of the Corporate Debtor, amongst others, to enable a Resolution Applicant to submit a Resolution Plan. Matters relating to the title to the assets of the Corporate Debtor. In fact, the applicant as the erstwhile Resolution Professional has violated the provisions of the Code by furnishing incorrect information in the Information Memorandum. The SRA never sought to renege and/or revoke the Resolution Plan, it has in fact been extremely committed in complying with the terms of the plan, it is in fact the applicant who has with malafide intention and with an intention to hide the illegalities committed as Resolution Professional, has now come up with the instant application seeking rejection of the resolution and liquidation of the Corporate Debtor.
- (c) For the purpose of commencing business operations of the Corporate Debtor, the respondent through its director held meetings with the Regional Director

of RIADA and future course of action was chalked out for successful revival of the Corporate Debtor discovered that the 10 trucks stationed at the premises of the Corporate Debtor were not under the ownership of the Corporate Debtor. The payment in respect of the 10 vehicles might have been made by the Corporate Debtor and might have been procured by the said company, Frigoscan Foodtech Pvt. Ltd. under suitable work orders issued by the Corporate Debtor and though completion certificate in respect of the vehicles might have been issued declaring the Corporate Debtor as the owner of the vehicles, in fact as on the date of filing the instant application by the applicant, 8 nos. vehicles continue to be registered in the name of said company, Frigoscan Foodtech Pvt. Ltd., and rest two vehicles remain unregistered. In the result the vehicles stationed at the premises of the Corporate Debtor would serve no purpose to the SRA. However, the SRA is ready and willing to clear all outstanding dues instantly as soon as the ownership issue in relation to the vehicles is resolved.

7. ***Contentions of the applicant in Rejoinder to the Reply Affidavit:***
- (a) In rejoinder the applicant stated that save what are matters of record, each and every allegation and/or averment contained in paragraphs 1 to 32 of the reply affidavit are denied and disputed except paragraphs 30(c) to 30(e), which are not found in the reply affidavit.
 - (b) It was the SRA's sole duty to conduct due diligence of the assets of the Corporate Debtor and the applicant under the terms of the RFRP cannot be attributed any responsibility whatsoever for the SRA's own laches in conducting the due diligence despite over 9 months having been provided for the same.
8. *Vide* order dated 12/12/2022 in IA(IBC)672(KB)2022, this Adjudicating Authority had passed the following orders: -

“IA(IBC)/672(KB)2022

1. *This Resolution Plan was approved on 10.02.2022, Indian Ocean Group PTE Limited was SRA and required to deposit upfront amount of Rs.5.26 crores on 12/03/2022. Admittedly, this amount has not been deposited. Before considering this application, we direct SRA to deposit the amount of 5.26 crores + cost of CIRP as incurred in the interregnum period within three weeks from today. This amount shall be deposited with the Registry of this tribunal and shall be kept in a simple interest-bearing account pending disposal of this IA.*
2. *It is hoped, in the meantime, the parties will resolve the issue of the ownership of trucks, so that entire matter can be resolved. The chairman of the monitoring committee shall take all necessary steps in this regard.*
3. *Post this matter on 06.01.2023.”*

When the matter came up for hearing on 06/01/2023, the erstwhile RP was directed to share with SRA the details of Monitoring Agency cost and the matter was posted on 02/02/2023.

9. In the meantime, the SRA has filed an application being IA(IBC)492(KB)2023 seeking modification of the said order dated 12/12/2022, wherein direction was given to deposit upfront amount of Rs.5.26 Crores + CIRP cost as incurred in the interregnum period within three weeks with the Registry, on the ground that due to certain regulatory compliances since the respondent is a Singapore base company the amount is required to be deposited in the CIRP account only. The matter was came up for hearing on 08/05/2023 and upon hearing the IA was allowed and disposed of with the following directions: -

“iii.the order dated 12th of December, 2022 is modified to that extent so the said amount is to be deposited in the CIRP account by the SRA.”

It is also recorded in the said order dated 08/05/2023 that *“In view of the order passed in IA(IBC)/492(KB)2023, this IA [IA(IBC)/955(KB)2022] has been rendered infructuous and the same is accordingly dismissed.”*

10. The applicant has filed a supplementary affidavit affirmed on 10/07/2023 to

bring on record the subsequent events post-passing of the order dated 08/05/2023 as well as factum of continued non-compliance on the part of the respondent/SRA as directed by this Adjudicating Authority from time to time. The applicant has also submitted his written consent in Form AA to act as Liquidator in the event of liquidation order is passed along with a copy of AFA¹² valid till 23/11/2023 with the supplementary affidavit.

11. ***Submissions of the Applicant, Chairperson of Monitoring Agency: -***

- (a) Ld. Counsel for the applicant submits that non-compliance of the Respondent in making the upfront payment in compliance of the order dated 12/12/2022 as modified by the order dated 08/05/2023 conclusively establishes that SRA has no intention whatsoever to make payment of the upfront amount. In support of his contention Ld. Counsel relied upon the judgment of the Hon'ble Supreme Court reported in ***(2021) 6 SCC 94 Kridhan Infrastructure Pvt. Ltd. –vs- Venkatesan Sankarnarayan & Ors. at para 11.***
- (b) Ld. Counsel for the applicant further submits that it is evident from the perusal of the minutes of the 3rd meeting of the monitoring committee that asides from non-payment of the upfront amounts, the SRA has sought to resile completely from its payment obligation in the manner stipulated under the approved Resolution Plan which amounts to modification of the approved Resolution Plan of the SRA and as such is ex facie impermissible by law. In support of his contention Ld. Counsel relied upon the judgment of the Hon'ble Supreme Court reported in ***(2022) 2 SCC 401 Ebix Singapore Pvt. Ltd. –vs- COC of Educomp Solutions Limited and Anr. at para 164, pl. e; 168 pl a-b).***
- (c) There has been a delay of 17 months in making the upfront payment on the part of the SRA. Despite repeated opportunities having been granted to the SRA, the SRA has refused to such payment, accordingly it is evident that all

¹² Annexure 'G' at pages 64 to 66 of the supplementary affidavit affirmed on 10/07/2023

necessary requirement for passing an order under section 33(4) of the Code has been made out and accordingly the Applicant prays that the Adjudicating Authority passes and appropriate order u/s. 33(4) of the Code read with regulation 36B(4A) of the CIRP Regulations.

- (d) The Applicant, Chairperson of the Monitoring Agency has formerly given his consent to be appointed as the Liquidator in the event of order of liquidation of the Corporate Debtor passed.

12. ***Submissions of the Respondent, the Successful Resolution Applicant (SRA): -***

- (a) The present application u/s. 33(3) proceeds on the assumption that the SRA has failed to make deposit of the upfront payment in terms of the approved Resolution Plan. Allegations have been made that the SRA in complete departure and derogation of the approved Resolution Plan has sought to amend and modify the payment time line and thereby seeking to amend the approved Resolution Plan.
- (b) What has been deliberately suppressed is the fact that the applicant (erstwhile Resolution Professional) has failed to perform his fundamental obligations required in terms of the Resolution Plan. Significantly, in the Information Memorandum published by the then Resolution Professional at clause 5A at page 139 has been specifically declared that the Corporate Debtor, is the owner of 10 Mobile Collection Trucks of Tata make. The said RFRP also provided that the Corporate Debtor has a leasehold land measuring around 56 acres. The original period of the lease was 30 years and the Lease Deed was dated 21/05/2012. As such, the unexpired period of lease as on the date of publication of RFRP was 22 years. From the Information Memorandum it would be evident that the Corporate Debtor was in the process of setting up of a Mega Food Park under the Mega Food Park Scheme of the Government of India. The Corporate Debtor was a Special Purpose Vehicle (SPV) that involved in setting up the Mega Food Park as a Public Private Partnership project at Ranchi.

- (c) The Food Park was required to be set up at the leasehold land with processing at the Central Processing Centre supported by requisite forward and backward linkages. The project was estimated at Rs.114.74 crores. The Public Private Partnership (PPP) was between Ranchi Industrial Development Authority (RIADA) and the Corporate Debtor. The project also constituted by the Ministry of Food Processing Industry, Government of India, with grant of a sum of Rs.50 Crores. The land for setting up the Food Park comprising of an area of 56 Acre at Jetalsud, Ranchi was allotted by RIADA, which in term holds 5% equity in the project.
- (d) The Food Park, which appears from the records, went into trouble and the Corporate Debtor failed to pay the lenders which resulted in an order being passed in a proceeding initiated under section 7 of the IBC by the Financial Creditor.
- (e) The Resolution Plan submitted by the SRA was based on the information gathered from the information memorandum which, inter alia, included not only the vehicles but also 56 Acres of leasehold land granted by RIADA to the Corporate Debtor.
- (f) Subsequently, it transpired that RIADA, which is now been renamed as Jharkhand Industrial Area Development Authority (JIADA) after being aware of the insolvency proceeding against the Corporate Debtor, has refused to renew the lease in the name of the SRA or in any other name. Moreover, JIADA by its letter dated 11/07/2023 has specifically stated that since the allottee of the land, the Corporate Debtor, has gone into insolvency and has not only refused to renew the existing lease but has also referred to a clause which provides that upon the allottee, the Corporate Debtor, went into insolvency the existing lease shall stand terminated and application has to be made afresh for grant of lease.
- (g) From the aforesaid it would be evident that the very substratum of the Corporate Debtor, i.e., the leasehold land of 50 Acres where the Food Park

was in the process of being set up is no more in existence. It is stated that the erstwhile Resolution Professional, the applicant herein, has not discharged his duties and have neither provided adequate information nor has done the required due diligence necessary for implementation of a Resolution Plan.

- (h) It is well settled that the object of the Code is to augment resolution process and bring about the existence of a Corporate Debtor by effectively reviving through a resolution process. However, the present application is not only contrary to the object of the IBC but is the result of the failure of the applicant, the then Resolution Professional, by not taking effective steps. The then Resolution Professional has neither informed the Ranchi Industrial Area Development Authority/Jharkhand Industrial Area Development Authority or the necessary authorities including the Ministry of Food Processing Industries regarding the Corporate Debtor, the SPV being sent to a resolution process. It has also not informed to any of the authorities of the fact that a public announcement has been made for resolution of the Corporate Debtor and steps are being taken to give effect to the implementation of the Mega Food Park Scheme, Government of India. On the contrary, it is apparent that the applicant, the then Resolution Professional, has proceeded without undertaking the necessary steps for ensuring implementation of the Food Park Scheme and the fact that a Successful Resolution Applicant is required to step in to the shoe of the SPV, the Corporate Debtor, and effectively established the Food Park as a Public Private Partnership with the Government of India. The very essence and substratum of the Corporate Debtor is the Food Park Scheme of the Government of India and as a SPV its existence could only be implementation of the scheme and setting up of the Food Park. In the first two meetings of the Monitory Agency, the applicant, the then Resolution Professional has unequivocally admitted, which is recorded in the said minutes that steps are being taken to have the ten vehicles registered in the name of the Corporate Debtor.
- (i) From the aforesaid it would be evident that the vehicles in fact are not

registered in the name of the Corporate Debtor and consequently the same never formed a part of the asset of the Corporate Debtor and could not have formed the part of the information memorandum or the asset of the Corporate Debtor till such time registration is completed.

- (j) It is under these unusual circumstances, despite being the SRA, the upfront payment was not made. The SRA was always ready and willing to make the upfront payment but had chosen not to make payment of the same in as much as the Resolution Plan under the given circumstances, could not be implemented. Moreover, the land on which the Food Park is being set up and the lease having been questioned by the lessor, the question of proceeding with the plan under the present circumstances cannot and does not arise.
- (k) From the aforesaid it would be evident that non-deposit of the upfront payment could not be attributable to the SRA. Under these circumstances, it is respectfully stated that the reliefs claimed by the applicant for forfeiture of the Performance Guarantee be rejected and the applicant be directed to refund the Performance Security given by the SRA.

13. ***Issues involved:***

- (a) Whether Resolution Plan approved by this Adjudicating Authority is contravened by the Successful Resolution Applicant in the given circumstances;
- (b) Can the Adjudicating Authority entertain an application filed by the Chairman of the Monitoring Agency; and
- (c) Can the Adjudicating Authority pass the reliefs sought for in IA(IBC)/672(KB)2022, if the SRA fails to implement the Resolution Plan approved by the Adjudicating Authority?

14. Before going to consider this matter, we are reproducing certain provisions of the Code and Regulations for better understanding: -

“Section 33(3) – Where the resolution plan approved by the Adjudicating Authority under section 31 or under sub-section (1) of section 54L is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interest are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”

“Section 33(4) – On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”

“Section 74(3) – Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.”

“Regulations 36B(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 performance security shall stand forfeited if the resolution applicant of 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.”

15. In the light of the above facts and circumstances, the SRA failed to deposit the upfront payment in terms of the Resolution Plan approved by this Adjudicating Authority and continue to do so.
16. We are of the view there is no provision for re-commencement of CIRP of the Corporate Debtor. As per forfeiture of the performance security deposit is concerned, the Chairman of the Monitoring Committee can proceed in accordance with the terms of EoI. There is/was no need for filing an application seeking such directions from this Adjudicating Authority.

17. The application is disposed of in view of the above observation.
18. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
19. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
20. Post CP for further consideration on 22.2.2024.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 19th day of January 2024.