



S.No.2

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
27-02-2023 AT 10:30 AM

IA (IBC) 1277/2022 in CP(IB)No.109/7/HDB/2020
u/s. 7 of IBC, 2016

IN THE MATTER OF:

Syndicate Bank

...Financial Creditor

Vs

Kranthi Edifice Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA No. 1277/2022:

Orders pronounced and recorded vide separate sheets. In the result, IA is partly allowed and accordingly disposed of.

SD/-

MEMBER (T)

SD/-

MEMBER (J)



**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

IA 1277 of 2022

In

CP (IB) No. 109/7/HDB/2020

Application U/S 60 (5) of IBC, 2016

In the matter of **Syndicate Bank (at present Canara Bank**

vs

M/s Kranthi Edifice Private Limited

Filed by

Kalpana G
Resolution Professional for
M/s Kranthi Edifice Private Limited
MSKM Group, Flat No. 1209, 11th Floor
Vasavi MPM Grand, Yellareddyguda Road
Ameerpet, Hyderabad – 38.

...Applicant
Resolution Professional

Versus

Mr. Suresh Kumar Reddy Medipalli
H.No. 3-5-784/2/8/A, Sri Sai Heights
Opp: Pardha Gate, King Koti
Hyderabad – 500029, TG

Date of order: 27.02.2023

Coram:

Shri Dr. N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Charan Singh, Hon'ble Member (Technical)



Appearance:

For Applicant: Ms. Mummeneni Vazra Laxmi, Advocate
For Respondent: Mr. A. Venkatesh, Senior Advocate assisted by Ms. Mahee, Advocate

PER: BENCH

ORDER

1. The present application is filed by the Resolution Professional of M/s Kranthi Edifice Private Limited seeking following reliefs:-
 - (a) This Adjudicating Authority to take on record the orders passed by the Hon'ble Supreme Court in CA No. 7121/2022 dated 21.10.2022 staying the impugned order until further instructions.
 - (b) To pass an order for continuation of Corporate Debtor (M/s. Kranthi Edifice Pvt. Ltd) as a going concern till further orders form the Hon'ble Supreme Court.
 - (c) Directions to Respondent to furnish the copy of application, Appeal No. 7121/2022, IA No. 151652 and IA No. 151651/2022 filed before the Hon'ble Supreme Court.
2. The averments in brief of the Application are:
 - 2.1 That this Tribunal vide order dated 27.06.2022 admitted the Petition filed by Syndicate Bank (presently Canara Bank) against the Corporate Debtor (M/s. Kranthi Edifice Pvt. Ltd) and ordered initiation of Corporate Insolvency Resolution Process. The Applicant was appointed as



Resolution Professional and moratorium was declared with effect from 27.06.2022.

2.2 Pursuant to his appointment, the IRP issued public announcement in verified newspapers calling for claims. Subsequently, COC was constituted post verification of claims and IRP/Applicant prepared a list of creditors as per Regulation 13 of CIRP Regulations, 2016.

2.3 That the IRP constituted the COC on the basis of claims received and conducted the following COC meetings.

(i) In its first CoC meeting held on 05.08.2022 the members of COC with 100% voting resolved to continue the Applicant as RP.

(ii) In the 2nd COC meeting held by RP on 07.09.2022 appointment of registered valuers, proposal on forensic/transaction audit, issuance of Form G etc were deliberated upon.

(iii) In 3rd COC meeting held by RP on 16.09.2022 the eligibility criteria for PRAs, date of Form G publication, finalization of transaction auditor appointment etc were discussed.

(iv) In 4th COC meeting conducted on 28.09.2022 the RP after discussion with the members, issued Form G inviting expression of interests from prospective resolution applicants and RP has released the provisional list of prospective resolution applicants on 30.09.2022.



- 2.4 That the RP has taken over the assets and current accounts of the Corporate Debtor which owns a solar power plant where daily 3 MW power is produced and sold to TSSPCDCL under PPA and having a TR account to accept amounts from TSSPCDCL.
- 2.5 In the meantime, aggrieved by the admission order passed by this Tribunal, the Suspended Board of Directors assailed the CIRP process by filing an Appeal before the Hon'ble Appellate Tribunal, Chennai. However, the appeal was dismissed on 06.08.2022.
- 2.6 Subsequently on 25.10.2022 the Respondent had forwarded a copy of order of Hon'ble Supreme Court in CA No. 7121/2022 where-in the following order is passed.

Application for exemption from filing certified copy of the impugned judgement is allowed.

Learned Senior Counsel appearing for the appellant submits that the appellant has sent a proposal for settlement under One Time Settlement Scheme and that the Appellant has paid Rs. 6,00,00,000/- (Rupees Six Crores) to the Respondent Bank on 15th October, 2022.

Issue Notice.

Until further orders, operation of the impugned order shall remain stayed.

- 2.7 Thus submitting, sought appropriate directions to continue operations of CD as a going concern as any stay may hamper the operations of the CD which in turn will affect the interests of all the stakeholders.



3. The Respondent filed Counter, *inter-alia*, contending as under:-
 - 3.1 That he is co-operating with the Resolution Professional for smooth conduct of CIRP by providing the documents required by the Resolution Professional despite seizure of certain documents by the CBI.
 - 3.2 That aggrieved by the admission order dated 27.06.2022, an appeal was preferred before the Appellate Tribunal vide CA (AT) (CH) (Ins) No. 315 of 2022 which has been dismissed on 05.08.2022.
 - 3.3 That the Respondent had filed a Special Leave Petition before the Hon'ble Supreme Court and the Hon'ble Apex Court vide order dated 21.10.2022 has granted stay of the operation of the impugned order dated 27.06.2022 passed by this Tribunal and order of Hon'ble Appellate Tribunal dated 05.08.2022. The order of Hon'ble Apex Court was intimated to the Applicant and sought not to take any further action. Despite being aware of the orders of Hon'ble Supreme Court, the Applicant has been dealing with properties and business of the Corporate Debtor and has approached this Tribunal seeking certain reliefs when there is stay by Hon'ble Supreme Court.
 - 3.4 It is contended that the Hon'ble Supreme Court is the proper forum to seek any relief or clarification, the same must be done before the Hon'ble Supreme Court. Moreover, the present application is filed with an intention to take control of the Corporate Debtor and conduct of CIRP and



the application filed by the Applicant is not maintainable and is liable to be dismissed with costs for all the reasons mentioned above.

3.5 That the Respondents have not received any emails alleged to have been issued by the Applicant and that it is incorrect for the RP to say that she is unaware of the prayers sought because the Applicant was a party to the said appeal and the Hon'ble Supreme Court had issued notice vide docket order dated 21.10.2022.

3.6 In response to contentions of Para V (15), the Respondent submits that the Hon'ble Supreme Court had stayed the impugned order dated 05.08.2022 and hence the order dated 27.06.2022 passed by this Hon'ble Tribunal and order dated 05.08.2022 passed by Appellate Tribunal stands stayed and unenforceable. Hence, prayed the Tribunal to dismiss the Interlocutory Application filed by the Applicant as the same is not maintainable in the interest of justice.

4. In the light of the contentions put-forth, the point that arises for our consideration is:-

Whether the Applicant is entitled for an order of continuation of the Corporate Debtor as a going concern till further orders from the Hon'ble Supreme Court of India?



5. We have heard Ms. Mummaneni Vazra Laxmi, Ld. Counsel for the Applicant and Shri A. Venkatesh Ld. Senior Counsel for the Respondent.

Point: **Whether the Applicant is entitled for an order of continuation of the Corporate Debtor as a going concern till further orders from the Hon'ble Supreme Court of India?**

6. Before we proceed to decide the above point, we wish to refer to certain important dates and events relating to the subject dispute which is necessary and essential for the proper disposal of this Application. The Corporate Debtor is a going concern owing a Solar Power plant of capacity of 10 MW at Tadoor village and daily 3 MW power is being produced which is sold to TSSPCDCL under Power Purchase Agreement and is having a TR account to receive the amounts from TSSPCDL, was taken over by the RP along with its assets, the current accounts of the CD in different banks upon being appointed as Resolution Professional by the Corporate Debtor, consequent to the admission of the corporate debtor into CIRP by this Tribunal on 27.06.2022. Pursuant thereto, the IRP carried out public announcement on 10.07.2022.
7. The challenge to the admission order dated 27.06.2022 by the Corporate Debtor ended in dismissal before Hon'ble NCLAT on 05.08.2022. The Corporate Debtor carried the matter in Appeal before Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India on 21.10.2022 passed the following order:-



8. Therefore, the above undeniable factual matrix discloses that even before the order of stay granted by the Hon'ble Supreme Court of India in Civil Appeal No. 7121/2022 dated 21.10.2022, the Corporate Debtor which is a going concern has been taken over by the IRP/RP pursuant to the admission order of this Tribunal dated 27.06.2022 and has been under the control and management of the Resolution Professional.
9. A bare perusal of the stay order dated 21.10.2022 passed by the Hon'ble Supreme Court of India makes it very clear that in the backdrop of the settlement proposal by the Appellant (suspended management of the Corporate Debtor), for settlement under One Time Settlement and that as the Appellant has paid Rs. 6 crores to the Respondent Bank on 15.10.2022, the Hon'ble Supreme Court of India had stayed the operation of the order of Hon'ble NCLAT until further orders.
10. Needless to say that in terms of section 25 (1) of IB Code, it shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor as part of insolvency process of the corporate debtor. The Resolution Professional can be ousted of his/her responsibilities only upon the order of the Adjudicating Authority, which will, be passed upon the order admitting the Corporate Debtor into CIRP, when set-aside, or when the parties have settled the dispute. That apart, the order of the



Hon'ble Supreme Court, did not direct the Resolution Professional to handover the management of the corporate debtor to the suspended board, Therefore, under these circumstance in the interests of preserving the assets of the Corporate Debtor the Resolution Professional shall continue to the keep the corporate debtor as going concern, while fully following the above order of Hon'ble Supreme Court.

11. In so far as the relief sought to take on record the orders passed by the Hon'ble Supreme Court in Civil Appeal No. 7121/2022 is concerned as the order has already been taken and relied upon in this order no order need be required. The relief as to directions to the Respondent to furnish the copy of the application, Appeal No. 7121/2022, IA No. 151652/2022 and IA No. 151651/2022 filed before the Hon'ble Supreme Court of India, cannot be given in the present application.
12. Therefore, with these observations, the Application is disposed of.

SD/-

(Charan Singh)
Member Technical

SD/-

(Dr. Venkata Ramakrishna Badarinath Nandula)
Member Judicial

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