IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

IA(IBC)/1800(CHE)2023
IN
IA(IBC)/1425(CHE)2022
IN
CP/216/2019

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

In the matter of ***M/s. Venkat Ram Spinners Private Limited***

Ansio Industries Private Limited
17/1,1, Srirengapalayam,
Rajapalyam,
Virudhunagar-626 117

…Applicant / Successful Resolution Applicant

-Vs-

1. M/s. Sri Venkat Ram Spinners Private Limited,
Through its Liquidator,
109/1, Koonakulam Road,
Cholapuram,
District Virudhunagar
626 139

…Respondent No.1/ Corporate Debtor

2. C A Mahalingam Suresh Kumar,
Liquidator, M/s. Venkat Ram Spinners Private Limited
No.27/9, Nivedh Vikas , Pankaja Mills Road
Puliyakulam,
Coimbatore-641045

…Respondent No.2/ Liquidator

3. **State Bank of India**
Stressed Assets Management Branch
1112, Raja Plaza, First Floor,
Coimbatore -641037

…Respondent No 3/ Financial Creditor

4. Bank of Baroda,
Stressed Assets Management Bran
No. 45, Moore Street
JBAS Building , 4th Floor,
Chennai – 600 001

…Respondent No 4/ Financial Creditor

Order Pronounced on ***9th February, 2024***

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM MEMBER (TECHNICAL)

For Applicant : Mr. Kumar Anurag Singh assisted by Ms. Ekta Bharati
For Respondent 1: Not represented
For respondent 2: Mr. A.G. Sathyanarayana led by Mr. T.K. Baskar
For Respondent 3: Not Represented
For Respondent 4: Not represented

O R D E R

This application has been filed under Section 60(5)of the Insolvency and Bankruptcy Code, 2016 ("IBC") by the Applicant, **M/s Ansio Industries private Limited** (erst-while Successful Resolution Applicant) seeking following reliefs:

a) *To stay the operation of sale notice dated 16.09.2023 issued by Respondent No.2 during the pendency of present application;*

b) *To quash the sale notice dated 16.09.2023 issued by Respondent No.2*

c) *Grant such other incidental or consequential reliefs as may be deemed fit and proper by this Hon'ble Adjudicating Authority.*

BRIEF FACTS:

2. It is stated that Corporate Insolvency Resolution Process of M/s. Sri Venkat Ram Spinners Private Limited (Corporate Debtor) was initiated on 09.08.2019. The Resolution Plan submitted by M/s. Ansio Industries Private Limited was approved with 100% vote in CoC [State Bank of India (75.11%) and Bank of Baroda (24.89%)] of the Corporate Debtor. The plan was approved by Adjudicating Authority on 17.02.2022 in *IA 47/2021 in IBA/216/IB/CB/2019*.

3. It is stated that the applicant, being the Successful Resolution Applicant, failed to pay the last Tranche amount of Rs. 1321.80 lakhs with interest on the due date i.e. 17th July 2022 (150 days from the date of Resolution Approval).

4. It is stated that in 6th Monitoring Committee held on 19th July 2022, the fact of breach of resolution plan terms and future course of

action were discussed. It is stated that Applicant had filed *IA Nos 756 of 2022 and 1047 of 2022* in NCLT seeking additional time for payment of final tranche and for directing the 3rd and 4th respondent and not to take any coercive action for non-payment.

5. It is stated that in the Monitoring Committee, the financial creditors after discussing in detail, decided that there is no provision in the IBC which empowers the Monitoring Committee to extend the time line in Resolution Plan payout and recommended for the liquidation. It is stated that the Adjudicating Authority allowed the liquidation process of the Corporate Debtor on 24.01.2023 in *IA 985 CHE 2022*.

6. It is stated that on the oral direction of NCLAT (in CA AT INS 93 of 2023,) to seek SCC view on the approved plan, Liquidator placed an agenda about the grievance of Applicant in the 1st SCC meeting where SCC decided to go ahead with the liquidation process.

7. It is stated that the Applicant had filed *CA AT INS Nos 47 and 93 of 2023* before NCLAT, challenging the Liquidation order in IA 985/2022 and the order on an application filed by the applicant requesting extension of time to pay the balance resolution plan amount

passed by Adjudicating Authority. It is stated that these appeals are pending in NCLAT for disposal.

SUBMISSIONS BY APPLICANT:

8. It is stated that as per the resolution plan approved by NCLT in *IA 47 of 2021* on 17.02.2022, the Resolution Applicant has paid/ not paid the following instalments:

S. NO	TRANCHES	TIMELINE FOR PAYMENT	AMOUNT (RS. IN LAKHS)
1	5% of plan amount By way of EMD	During submission of plan	110.15 (PAID)
2	10% of plan as Performance Guarantee	15 days from Date of Plan Approval by CoC	220.30 (PAID)
3	25% of the Plan amount	60 days from the date of approval by AA	550.75 (PAID)
4.	Balance 60% of plan amount	150 days from date of approval of Plan	1321.80 Due date 17.07.2022 NOT PAID

9. It is stated that the Order dated 17.02.2022 in *IA/47/2021 in IB/216/IB/CB/2019* approving the resolution plan was challenged by one of the Operational Creditor of the Corporate debtor , on the ground that it had a better plan, before Hon'ble NCLAT in *Comp.App (AT)(CH)(INS) No. 157/2022*. It is stated that Applicant had also filed an impleadment application bearing no *IA 687 of 2022 in Comp.App (AT) (CH)(INS) No 157/2022*. It is stated that the NCLAT disposed of both the *Comp.App (AT)(CH)(INS) No. 157/2022* and *IA 687 of 2022 in Comp.App (AT) (CH)(INS) No 157/2022* vide order dated 16.06.2023.

10. It is stated that the applicant had filed *IA 756 CHE 2022* before Adjudicating Authority seeking appropriate directions for extension of timeline by 30 days for implementation of Resolution Plan from the date of disposal of *CA (AT) (Ins) No.157 of 2022*. It is stated that NCLT erroneously rejected the Application *IA 756/2022*, filed by the Applicant seeking extension of time.

11. It is stated that the applicant had challenged the orders of NCLT dated 24.01.2023 passed in *IA 985(CHE) 2022* and *IA 756 (CHE) 2022* before Hon'ble NCLAT vide *Company Appeal (AT)(CH)(Ins) No.47 of*

2023 and *Company Appeal (AT)(CH) (Ins) No.93 of 2023* respectively and the same are pending before Hon'ble NCLAT.

12. It is stated that on 16.09.2023, 2nd Respondent i.e. Liquidator issued a 'joint sale notice' under IBC 2016 whereby , the property not only of the Corporate Debtor was sought to be sold, but also the property of one Mr. S. Srinivasan, who was erstwhile director/guarantor of the Corporate Debtor was sought to be sold. It is stated that similar joint notices were issued on 12.05.2023, 17.06.2023 and 17.08.2023 which applicant came to know only later.

13. It is stated that the joint sales notice published, included the sale notice issued under SARFAESI Act 2002. It is stated that such joint notice is not only foreign but also in contravention to the provision of IBC as it overlaps the jurisdiction of the Tribunal under IBC 2016 and SARFAESI Act 2002.

14. It is stated that the Information Memorandum contained the lease land of 3.64 acres belonging to Mr. Srinivasan which was surrendered on 28th January 2010 vide Doc No 535/2010. It is stated that as the lease deed stood cancelled, the main asset of the Corporate

Debtor where the factory was set up is not legally tenable. It is stated that the corporate debtor did not hold the primary building either free hold or lease hold.

15. It is stated that aggrieved by the illegality in conducting the CIRP and the liquidation process present application has been filed seeking quashing of joint sale notice dated 16.09.2023 issued by the 2nd respondent.

<u>REPLIES OF RESPONDENTS 1, 3 AND 4:</u>

16. Respondent 1 is the Corporate Debtor is under liquidation represented by the Liquidator, Respondent No 2. So, no separate reply has been filed by Respondent No. 1.

17. The 3rd and 4th respondents are secured financial creditors . They have not filed separate reply. It is stated that they adopt the reply filed by 2nd respondent.

<u>REPLY BY RESPONDENT NO2- LIQUIDATOR:</u>

18. It is stated that the application filed by the applicant is infructuous, erroneous and not maintainable in law or facts, as the applicant's relief in relation to the e-auction sale notice dated 16.09.2023, issued by the 2nd

respondent, during the pendency of the application has become infructuous by virtue of status-quo order passed by the Adjudicating Authority on the alleged sale notice dated 16.09.2023.

19. It is stated that the Factory Building of Corporate Debtor was built on the land belonging to Mr. S. Srinivasan, who had mortgaged the land to the Secured Creditor (Bank of Baroda). It is stated that to realise the maximum amount and in the interest of the stakeholders, the Factory Building of the CD along with land of Mr.Srinivsan, guarantor was put into auction jointly and the same was clearly mentioned in the e-auction notice which is as follows:

"*Note:*

1) *Cash and cash equivalent shall not form part of Sale as a Going Concern, as the same will be utilized for distribution to the stakeholders as per Section 53 of IBC 2016.*
2) *Lot-1, Lot-2 & 6 include immovable property belonging to guarantor, being auctioned under SARFAESI by the concerned Security Creditor.*"

20. It is stated that 2nd respondent issued Joint e-auction Sale notice under IBC 2016 to sell the assets of the Corporate Debtor along with the Secured Creditor Bank of Baroda (Respondent No 4) under SARFAESI to

sell the assets of guarantor / mortgagor of the Corporate Debtor. This being the fact, the applicant has no locus / right to challenge the impugned Sale Notice.

21. It is stated that the 2nd respondent has acted upon the commercial decision of CoC. It is stated that the tribunal cannot invoke its inherent power to deal with the present application, unless there is irregularity in the sale notice issued by the 2nd respondent.

22. The 2nd Respondent has relied upon the cases for joint sale of land of guarantor and building of Corporate Debtor as under:

i) NCLT Chennai order dated 06th December 2021 in *Ms. Subramaniam Aneetha , Liquidator vs Karur Vysya Bank Ltd* in *IA 1089/2021 in CP IB 1263/2018*. The relief sought was a) *'To permit the applicant to bring all the assets of the Corporate Debtor and the assets held by Respondent, to auction by way of single joint auction and consequently permit the applicant to issue sale certificate in favour of the highest bidder;'* The Adjudicating Authority ordered as under: *'15. In so far as prayer (a) is concerned , in view of the reasons stated supra, this Tribunal hereby permits the Liquidator to proceed* *with a single joint auction of the land, building, plant and machinery along with trademark belonging to the Corporate Debtor and the Promoter.'*

ii) Hon'ble NCLAT order dated 13.05.2022 in *Ayan Mallick Vs Pratim Bayal, Liquidator & Ors in CA(AT)(INS) No 456 of 2022* has observed as under:

> *5. We have considered submissions of learned counsel for the parties and perused the record. When the Adjudicating Authority is satisfied that joint sale shall bring maximization of assets of the Corporate Debtor and the possession of the properties of the Guarantors have already been taken under SARFAESI and both land and factory need to be sold together to maximize the value of the assets, we fail to see that how the Appellant shall be prejudiced in any manner. We do not find any error in the order of the Adjudicating Authority rejecting the I.A. We dismiss the Appeal. We, however, observe that it shall be open to the Appellant to take such remedy under SARFAESI with regard to auction in accordance with law.*

REJOINDER BY APPLICANT

23. It is stated that the 2nd respondent has failed to outline the section under which joint sale is being carried, when as per Section 36 of IBC, asset held in trust by third party is to be excluded. Only assets of Corporate Debtor forms liquidation asset and any other property cannot be the part of liquidation estate.

24. It is stated that the land in question was leased to the Corporate Debtor vide lease deed dated 02.07.1997 by Mr. NKP. Jaganatharaja and Mr. Srinivasa Raja, jointly. The said lease was cancelled vide cancellation deed dated 28.01.2010. It is stated that the said property has been shown as leased property to the Corporate Debtor in the Information Memorandum prepared by the 2nd respondent.

25. It is stated that Mr. NKP. Jaganatharaja transferred his share of land to his sister Mrs. Krishnammal vide Deed of Settlement dated 28.01.2010. It is stated that, thereafter, the land in question was transferred by Mrs. Krishnammal to Mr. Srinivasaraj vide Settlement deed dated 27.07.2010.

26. It is stated that the land in question was shown as leased land of the Corporate Debtor whereon the factory was set up. However, with the cancellation of lease deed, which was not disclosed in Information Memorandum, the factory of the Corporate Debtor is not under the operation and legal viability of the Corporate Debtor.

27. It is stated that the liquidator has acted without jurisdiction and no permission or direction has been sought from the Tribunal and 2nd

respondent could not on his own assume power which has not been conferred by the Regulation.

28. It is stated that following questions of law have been raised in the current application:

a) Whether a resolution professional can carry out the liquidation process of the Corporate Debtor in contravention to the explicit provision of IBC 2016?
b) Whether a joint sale notice of the assets of the Corporate Debtor and a third person can be issued by the Resolution Professional when no such stipulation is provided in the Code?
c) Whether the joint sale be allowed when 2nd respondent has failed to produce any decision / order of COC or the order of the tribunal ratifying such joint sale?
d) Whether the illegal action by the Resolution Professional can be shielded behind the plea of commercial wisdom of the Committee of Creditors?

ANALYSIS AND FINDINGS:

29. Heard the counsels of the applicant and respondents.

30. The lease deed (Doc No 1848/1997) dated 02nd July 1997 was executed between Mr. NKP Jaganatharaja and Mr. Srinivasaraja , jointly as lessors and M/s. Sri Venkatram Spinners Private Limited (Lessee), for a period of 90 years , measuring 3 acres 64 cents of land in 5 parcels. The lease Cancellation Deed (Doc No 535/2010) dated 28th January 2010 was also executed between Mr. NKP Jaganatharaja and Mr. Srinivasaraja , jointly as lessors and M/s. Sri Venkatram Spinners Private Limited (Lessee) cancelling the lease deed executed on 02nd July 1997. After the cancellation of lease, Mr. NKP Jaganatharaja through settlement deed (Doc No 536/2010) dated 28th January 2010 transferred his share in those assets to Mrs. Krishnammal and vide DOC No 6800/2010 dated 27th Sep 2010 Mrs. Krishnammal transferred to Mr. Srinivasaraja.

31. We find that Mr. Srinivasaraja is now holding the entire assets, earlier leased to M/s.Venkatram Spinners Private Limited, Corporate Debtor. It is found from page 29 of the application, that the loan documents were executed along with securities and guarantees on 22.03.2016, much later than 27th September 2010, when Mr.Srinivasaraja got land from Mrs. Krishnammal.

32. We find that the questions of law raised by the applicant in the rejoinder as mentioned in para 27 above, relate to actions of the Resolution Professional and Information Memorandum during CIRP period which has nothing to do with the current application, where the Corporate Debtor is in liquidation . Further, applicant was declared as Successful Resolution Applicant and his resolution plan has been approved. Hence, he has no grounds to raise these issues relating to CIRP now in the present case during liquidation.

<u>CONCLUSION</u>:

33. Based on the averments made by all the parties, it is observed as under:

i) Applicant is the erstwhile successful Resolution Applicant.

ii) The resolution plan could not be implemented due to non-payment of resolution amount instalment as per the schedule in the approved plan.

iii) Liquidation was ordered by the Tribunal on 24.01.2023 vide *IA 985 CHE 2022*.

iv) *IA 756 CHE 2022* filed by applicant, before the Adjudicating Authority seeking appropriate directions for extension of timeline by 30 days for implementation of Resolution Plan was dismissed by Adjudicating Authority on 24.01.2023.

v) The applicant has filed appeal in Hon'ble NCLAT against the above orders.

vi) No stay or injunction has been given by NCLAT in any of these appeals.

vii) Shri.Srinivasraj the guarantor, the owner of the property, proposed to be jointly sold, has not raised any objection, so far. The applicant being the third party has no locus.

viii) Without going into details, regarding the validity of the leasehold rights after the termination of lease, , it is sufficient to say that both the Corporate Debtor owning the building and the land i.e. the guarantor had mortgaged the properties in favour of the 4th Respondent, a secured financial creditor. The e-auction notice, clearly states that some properties of the guarantor are also jointly brought to sale by the secured creditor.

ix) In *Ayan Mallick Vs. Pratim Bayal, Liquidator & Ors. [Company Appeal (AT) (Insolvency) No. 456 of 2022]* Hon'ble NCLAT has allowed the joint sale of properties of Corporate Debtor and guarantors. There are catena of judgements supporting the joint sales of the properties.

34. In view of the above facts, **we do not find any merit in the application.** Hence, the reliefs seeking a)*To stay the operation of sale notice dated 16.09.2023 issued by Respondent No.2 during the pendency of present application;* b) *To quash the sale notice dated 16.09.2023 issued by Respondent No.2* ***are dismissed with no order as to cost.***

35. **IA/IBC/1800/CHE/2023 is disposed of.**

-Sd-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-
SANJIV JAIN
MEMBER (JUDICIAL)