

In the National Company Law Tribunal

Kolkata Bench, (Court-II), Kolkata

IA(IB) No. 1378/(KB) /2023

In CP(IB) No. 302/(KB) /2021

An Application under Section 60(5) of Insolvency and Bankruptcy Code, 2016;

In the Matter of:

Sarga Hotel Private Limited

....Corporate Debtor

And

In the matter of:

Rare Asset Reconstruction Limited, having its Registered office at 104-106, Gala Argos, Near Harikrupa Tower, Ellisbridge Gymkhana, Gujarat Collage Road, Ahmedabad, Gujrat – 380 006.

.....Applicant

Vs

1. Avishek Gupta, Resolution Professional of Sarga Hotel Private Limited and Applicant in IA No. 1054/KB/2023 having his address at CK 104, Sector 2, Salt Lake, Kolkata – 700 091 and having email id: cirp.sargahotel@gmail.com
2. Committee of Creditors of Sarga Hotel Private Limited, service through J.C. Flowers Asset Reconstruction Private Limited having its address at 12th Floor, Crompton Greaves House, Dr. Annie Besant Road, Worli, Mumbai – 400 030 and email id: teamjcarc@jcfarc.com and saptarshi.saha@augustuslaw.com

.....Respondents

Date of Hearing: 06.11.2023

Date of Pronouncement of order: 24.11.2023

Coram:

Smt Bidisha Banerjee	:	Member (Judicial)
Shri Arvind Devanathan	:	Member (Technical)

Counsel appeared physically / through video Conferencing

Appearance (via video conferencing/physically)

Mr. Swatarup Banerjee, Adv.] For Rare Asset

Mr. Rahul Auddy, Adv.

Mr. A. Gootu, Adv.

Mr. Ramji Srinivasan, Sr. Adv.] For Resolution Professional

Ms. Manju Bhuteria, Adv.

Mr. S. Dasgupta, Adv.

Ms. A. Barman, Adv.

Ms. P. Mahajan, Adv.

Ms. M. Singh, Adv.

Ms. S. Pandey, Adv.

Ms. S. Mahalwar, Adv.

Mr. Abhinav Vasisht, Sr. Adv.] In IA 1378 of 2023 & IA 1271 of 2022

Mr. Arindam (Mrinal) Pal, Adv. for J.C. Flowers ARC in CoC

Mr. Abhishek Swaroop, Adv.] for Proforma Respondent in IA 1851 of 2023

Mr. Dwaipayan Basu Mallick, Adv. / National Asset Reconstruction Company Ltd.

Mr. Anupm Prakash, Adv.

Mr. Vasu Manchanda, Adv.

Ms. Kirti Talreja, Adv.

Mr. Dripto Majumdar, Adv.] For Applicant in IA 1866 of 2023

Mr. N. Shukla, Adv.

Mr. Joy Saha, Sr. Adv.] For the SRA

Mr. Ratnanko Banerji, Sr. Adv.

Mr. K. Kejriwal, Adv.

Mr. A. Chatterjee, Adv.

Ms. S. Dalmia, Adv.

Mr. D.N. Sharma, Adv.

Ms. B. Gayatri, Adv.] For the Applicant in IA 642 of 2023

Mr. A. L. Kamle, Adv.

Mr. A. Swaroop, Adv.] For R-3 in IA 1851 of 2023

Mr. D. B. Mallick, Adv.

Mr. A. Prarash, Adv.

Ms. T. Luhariwala, Adv.

Mr. V. Manchanda, Adv.

Mr. K. Tajuja, Adv.

Sk. Md. Wasim Akram, Adv.

Ms. Mini Agarwal, Adv.] For Rishima SA in IA 1271 of 2022

Mr. S. Mitra, Adv.] For SIDCL

Mr. S. Jain, Adv.

ORDER

Per Bidisha Banerjee, Member (Judicial):

1. Heard the Ld. Sr. Counsel/Counsel for the parties.
2. This application has been filed by Rare Asset Reconstruction limited to seek the following reliefs:-
 - a) Permit the Applicant to submit a Resolution Plan for an amount of Rs. 425 Crores;
 - b) Stay in the hearing of IA(IBC) 1054/KB/2023 and further actions under CIRP, if any, unless this instant Application is adjudicated and final orders are passed by the Adjudicating Authority;
 - c) Stay on the CIRP until adjudication and disposal of this instant application;
3. At the outset it would be useful to quote the list of dates furnished by the said Applicant at page 4 as extracted hereunder for clarity:

"Date	Particulars
11 th February, 2022	Commencement of CIRP
28 th April, 2022	Form G published by RP
18 th of May, 2022	EIO submitted by the Applicant

24 th and 26 th May, 2022	Clarifications on the EOI was sought by the RP and the same was provided by the Applicant
28 th May, 2022	Provisional List of PRAs were published by the RP which included the name of the Applicant
10 th June, 2022	Information Memorandum and Virtual Data Room “VDR” Access was provided by the RP to all the PRAs including the Applicant herein.
22 nd June, 2022	RFRP was issued by the RP to all the PRAs
20 th and 21 st July, 2022	Emails exchanged between the Applicant and RP about the BG issue
July, 2022	IA 822/2022 filed by Rare Asset (Applicant)
24 th May, 2023	14 th CoC meeting in which one Resolution Plan was approved by CoC

4. By way of pleadings as well as oral submissions, Ld. Counsel for the Applicant has submitted that a Resolution Plan has already been approved by the CoC on 24.05.2023. An approval of the said Plan is sought for from this Adjudicating Authority vide IA (IBC)/1054/KB/2023 and the same is pending adjudication.
5. The Applicant has emphatically admitted by way of pleadings the following:

5.1 “The Applicant states that it is evident that it was YES Bank at whose behest, the RP removed the Applicant without any reason from the COC. The grounds of removal were baseless, meritless and it was basically "taking a holistic view". There was no proper and / or legal basis for not to include the Applicant as CoC member. It is clear that Yes Bank and RP were acting in a manner which was intentionally biased and prejudicial against the interest of Applicant. The COC did not even want to recognize the Rs. 393 crores claim of the Applicant (earlier

admitted by the RP) and accordingly at a later date filed an application IA 1377/2022. In such a situation where Yes Bank was interested to act in a manner which is totally prejudicial against the Applicant, the Applicant parking another INR 5 crores in the form of BG with Yes Bank was definitely not commercially prudent. Hence, the request for changing the beneficiary was made. However since the RP expressed his inability to change the beneficiary bank, the Applicant did not proceed with the submission of the plan.”

5.2 “From the records of the proceedings and the cause-list, the Applicant understands that one resolution plan has been approved by the COC and the same is pending approval before this Hon'ble Tribunal.”

5.3 “The Applicant states that though it did not submit its plan, the Applicant is ready and willing to submit its plan at the present date and for the same the Applicant is ready to submit a plan which value is approx. Rs. 425 crores. The Applicant further states that all Financial Creditors including Yes Bank shall have a very good recovery in the Resolution plan that will be submitted by the Applicant.”

6. It is discernable that the Plan approval application is pending for orders before this Tribunal. During pendency of the said application, the present IA has been preferred.
7. The Applicant expects that the RP and the CoC should consider its proposed Plan of Rs. 425 Crores and in fact, it claims that the proposed figure is more than approved Plan value. It expects that its Plan should be permitted to be approved keeping in view maximization of value for all Stakeholders.
8. The Applicant has also claimed that the Applicant has also preferred one IA (IBC) 822/KB/2022 for its inclusion in the CoC and if the same is allowed, the Applicant would have got 51% voting right in the CoC. However, from the records it is evident that IA (IBC) 822/KB/2022 already stands dismissed by this Adjudicating Authority on 13.09.2023.

9. It is brought to our notice that an Appeal has been preferred before the Hon'ble NCLAT against the said order dated 13.09.2023. The Operative portion of the order passed in IA (IBC) 822/KB/2022 is the following:

“As per the above order, the Corporate Debtor was established as a wholly owned subsidiary of the said Shruti Infrastructure Development Corporation, which is in turn promoted and owned by the Kanodia family of Kolkata. This fact is also borne out by the press clipping given in the media section of the company's own web site and as such the family is a de-facto promotor of the Corporate Debtor. Since the SREI group also promoted by the Kanodia family is holding 85 % of the Security receipts for the loan given by the applicant to the Corporate debtor, the family connection is quite obvious and the said stipulations of Section 5(24) squarely find their applicability in the present case.

As such we have no hesitation in upholding the decision of the RP to oust the RARE ARC, the applicant in this IA, from the Committee of Creditors being a related party of the Corporate Debtor, which is by virtue of section 21(2) is proscribed for their inclusion in the Committee of Creditors. IA(IB) No. 822/(KB)/2022 therefore fails and is disposed of accordingly.”

10. J.C. Flower ARC in IA (IBC)1377/KB/2022 has sought for direction upon the RP to reject the claim filed by RARE ARC. The IA (IBC)1377/KB/2022 was disposed of having held as under:

“(8)(viii). Further the applicant has also relied on the averments in the Avoidance IAs (supra) by the Administrator, the applicant contends that since the Administrator has to make a determination and form an opinion in terms of Regulation 35A of the code in regard to the Avoidance & fraudulent transactions, before filing the application with this Adjudicating Authority , and the very fact that the applications have been filed by the Administrator as being fraudulent, these pass the muster of “ Collusive transactions” and therefore in line with Phoenix judgment, the respondent no. 2 should not be recognised by the RP as a Financial Creditor.

(8)(ix). In view of the foregoing, we are inclined to hold that no clear case has been made out either by the applicant or not even by the RP that the assignment to RARE ARC by SIFL/SEFL is collusive in nature so that the judgement of the Hon'ble Supreme Court (supra) can find its application

in the instant case. As such we are not passing any directions on the RP as prayed at prayer no. (a) of this IA.

(8)(x). We however make it clear that we are by no means commenting on the merits of two IAs (supra), which are pending adjudication before Court no. 1 of this Adjudicating Authority.

11. In view of such, we find that the claim of the Applicant to allow it to submit a plan of Rs. 425 Crores long after the expiry of maximum time limit of 330 days (which expired on 07.01.2023). Coupled with dismissal of IA (IBC)822/KB/2022 and disposal of IA (IBC)1377/KB/2022, in the manner enumerated supra, no case has been made out by the Applicant which merits interference by this Tribunal at this stage, when a Resolution Plan is already up for approval.
12. Therefore, this **IA (IBC)1378/KB/2023 stands rejected.**
13. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsels on Record.
14. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

Arvind Devanathan
Member (Technical)

Bidisha Banerjee,
Member (Judicial)

Signed on this the 24th day of November, 2023