

S.No.7

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
01-08-2023 AT 10:30 AM**

**Inv. P (IBC) 34 & 35/2023, IA (IBC) 1112 & 1047/2023 in
CP (IB) No. 219/7/HDB/2017
u/s. 7 of IBC, 2016**

IN THE MATTER OF:

Asset Reconstruction Company (India) Limited

...Financial Creditor

VS

Viceroy Hotels Limited

...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 (IBC) 1047/2023

Order in IA No. 1047/2023 pronounced. Recorded vide separate sheets. In the result, this IA No. 1047/2023 is disposed of. No costs.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

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

IA.No.1047/2023

IN

CP (IB) NO. 219/7/HDB/2017

*Under Section 60(5) of the I&B Code, 2016
Read with Rule 11 of the NCLT Rules, 2016.*

IN THE MATTER OF VICEROY HOTELS LTD

Between

M/s.Vasavi Realty Pvt Ltd.,

Having its registered Office at

#8-2-120/86/9/A/1,12 &2/13,

1st Floor, North end,

Northend, Anilath Maja Housing Society,

Road No.2, Banjara Hills,

Hyderabad- 500 034.

Represented by Mr.Yarram Vijay Kumar.

... Applicant/Proposed Respondent

AND

Dr.Govindarajula Venkata Narasimha Rao,

Resolution Professional of M/s. Viceroy Hotels Ltd.,

Plot no.20, Sector-1, Survey No. 64,

4th Floor,

Huda Techno Enclave, Hyderabad-500 081.

... Respondents

Date of order: 01.08.2023

CORAM:-

DR.VENKATA RAMAKRISHNA BADARINATH NANDULA,

HON'BLE MEMBER (JUDICIAL)

SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Appearance

For Applicant : Sr Counsel Shir P.Vikram for
Shri Gautham Polusany, Counsel
Shri Anarghya K.Chandar, Counsels

For the Respondent: Mr. Shabbeer Ahmed, and Mr.V.Aneesh, Counsels.

[PER BENCH]

O R D E R

1. This application is filed by Applicant under Section 60(5), Read with Rule 11 of NCLT Rules, 2016 praying the Tribunal to direct the Respondent to immediately publish an invitation for expression of interest vide Form-G as per the Insolvency and Bankruptcy Regulation, 2016 in compliance with the order dated 09.06.2023, passed by this Tribunal in IA No.1343/2022.

2. The Averments of the Applicant in brief:

- i. This Tribunal initiated CIRP against the corporate debtor vide order dated 12.03.2018 and declared moratorium. Later on Dr.Govindarajula Venkata Narasimha Rao, respondent herein had filed an IA No.1343/2022 seeking approval of Resolution Plan submitted by M/s Anirudh Agro Farms Limited.

- ii. It is averred that this Tribunal vide order dated 09.06.2023, rejected the resolution plan submitted by M/s.Anirudh Agro Farms Ltd and directed the Resolution professional (respondent herein) to issue a fresh Form-G but not later than 60 days from days from the date of this order. The relevant paragraph of the order is reproduced below:

34. In the light of rejection of Resolution Plan, as per sub-clause (1)(b) of section 33 of the I&B Code, 2016, this Tribunal shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter-III. However, considering the facts and circumstances of the case, besides liquidation of the Corporate Debtor being the last resort, we hereby direct continuation of the Corporate Insolvency Resolution Process of the Corporate Debtor by directing the Resolution Professional to issue fresh Form-G and complete the resolution process as expeditiously as possible, but not later than sixty days from the date of this order."

- iii. It is averred that despite of directions respondent has not yet issued form G and it appears to be unduly delaying the process in furtherance of oblique motives.
- iv It is averred that the Applicant is waiting for the publication of Form-G, and further he sent an email dated 16.06.2023 to the

respondent by expressing his willingness to submit a resolution plan in order to revive the corporate debtor.

- v. It is averred that the Applicant is willing to offer Rs.200,00,00,000/- to revive and resolve the insolvency of the corporate debtor. Further submitted that the amount which is offered is 20% more than the previous one. The copy of the email is annexed to the Application as Annexure-B.
- vi. It is averred that the respondent is delaying in publishing fresh form-G, which will reduce the value of the corporate debtor. It is further submitted that the Applicant is the serious contender as the nature of the business of the Applicant is linked to the business of the corporate debtor.
- vii. Thus, due to non-publication, Applicant is unable to express its interest in the resolution of the insolvency of the corporate debtor and the inaction is causing prejudice to the Applicant. With regard to this the Applicant has placed reliance on **Swiss Ribbons (P) Ltd. Vs Union of India,(2019) 4 SCC 17** and

**Gujarat Urja Vikas Nigam Limited vs Mr.Amit Gupta &
Ors(2021) 7 SCC 209.**

viii. Thus, submitted that balance of convenience is in favour of the Applicant and no prejudice will be caused to the respondent if the interest of the Applicant are protected by this Tribunal. Applicant also filed an application seeking to intervene in the Company Petition in order to ensure value maximization of the corporate debtor. Applicant also seeks liberty to place additional documents and Applications for fair adjudication of the present Application and supplement, modify or amend this Application, depending on information/documents produced by the Respondent or obtained by the Applicant during the adjudication of the Application.

3. Counter filed on behalf of the Respondent/Resolution Professional

- i. Respondent denied the averments made by the Applicant and submitted that the Applicant has no *Locus Standi* to file the present Application.
- ii. It is submitted that the present Application is not maintainable as there is no vested right with any resolution Applicant to have its

resolution plan considered or approval as such. With regard to this reliance has been place on the decisions of Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors** (Civil Appeal No. 8766-67 of 2019) and **Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors (2019)** (4) SCC 17 and the decision of this Hon'ble Tribunal in **Amaravathi Textiles Private Limited vs. VBC Industries Limited & Ors.** (Order dated 04.03.2020 in I.A. No. 166/2019.) It is further submitted that a similar view has also been taken by the Hon'ble NCLAT, Delhi in **Kallinga Allied Industries Private Limited vs COC &Anr(2022)** SCC Online NCLAT 1618, wherein it was observed that the Adjudicating Authority cannot entertain an Application of a person who has not participated in CIRP even when such person is ready to pay more amount in comparison to the successful resolution Applicant.

- iii. It is averred that this Tribunal has rejected the Resolution plan on the ground that the Performance Bank Guarantee had expired as on the pronouncement of order. Thus, the members of COC instructed the Resolution Professional to file an appeal before Hon'ble

NCLAT, Chennai challenging the order dated 09.06.2023. The Appeal is pending for hearing before Hon'ble NCLAT, and the date of hearing in 17.07.2023.

- iv. It is averred that erst while SRA filed an Appeal vide Company Appeal No.166/2023, before Hon'ble NCLAT. Further Resolution Professional filed an appeal vide Company Appeal No.170/2023 and thereafter COC represented by ARCIL too filed an appeal vide Company Appeal No.183/2023 challenging the order of this Tribunal dated 09.06.2023.
- v. It is averred that there is a settled law that RP will have to act as per the instructions and commercial wisdom of COC and cannot issue Form G without approval of COC. Further submitted that Applicant approached two different forums one is NCLT, Hyderabad and the other is NCLAT, Chennai seeking similar reliefs.
- vi. The Applicant cannot maintain two separate applications for similar cause thus the present Application be either dismissed or kept in abeyance till the Hon'ble NCLAT decides on its applications.

4. In light of the above, the point that emerges for our consideration is:

Whether the Resolution Professional can be directed to immediately publish an invitation of expression of interest vide Form-G, for the purpose of Corporate Insolvency Resolution of the Corporate debtor?

5. We have heard Learned Senior Counsel Mr. P.Vikram , for the Applicant, Learned Senior Counsel Mr.Hemandranth Reddy, and Learned Counsel Mr.Shabeer Ahmed for the Resolution Professional. Perused the records.

6. Admittedly this Tribunal while rejecting the resolution plan of the resolution applicant vide order dated 09.06.2023 had ordered as follows:

34. In the light of rejection of Resolution Plan, as per sub-clause (1)(b) of section 33 of the I&B Code, 2016, this Tribunal shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter-III. However, considering the facts and circumstances of the case, besides liquidation of the Corporate Debtor being the last resort, we hereby direct continuation of the Corporate Insolvency Resolution Process of the Corporate Debtor by directing the Resolution Professional to issue fresh Form-G and

complete the resolution process as expeditiously as possible, but not later than sixty days from the date of this order."

7. Needless to say, that Resolution Professional is bound to implement the above, order of this Tribunal, in its letter and spirit, especially when the proceedings relating to corporate insolvency resolution are time bound, and considerable delay has already occurred in this case.
8. However, Resolution Professional contends that as the COC had resolved to prefer an Appeal against the order dated 09.06.2023 passed by this Tribunal, an Appeal has been preferred before Hon'ble NCLAT, hence the order is not implemented.
9. It is trite law that mere filing of an Appeal, does not operate as stay. Reliance in this regard can be placed on the ruling of Hon'ble Supreme Court of India, in re, Sanjiv Kumar Singh Vs The State of Bihar and Ors , 2023 LiveLaw (SC) 63, whereunder it has been held that "keeping in view the provisions as contained in Order 41 Rule 5 of CPC, unless the appeal is listed and there is an interim order, the mere filing of the appeal would not operate as a stay. If that be so, the judgment as decree dated 25.08.2021 would enure to the benefit of the petitioner as on today and the rejection of the NOC only on the ground

that the appeal has been filed, would not be justified. In that view, the High Court was also not justified in rejecting the petition”.

10. Therefore, our order dated 09.06.2023 holds good and is fully enforceable, in the absence of any stay from the Appellate Authority. As such no further direction to issue fresh Form-G, is required at the behest of the petitioner. However, the consequences of not implementing our order dated 09.06.2023 shall follow suit.
11. Therefore, with these observations, the Application is disposed of. No costs.

SD-
Charan Singh
Member Technical

-SD-
Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Pavani