



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
SPECIAL BENCH
COURT - 1

ITEM No.106-IA/118(AHM)2023
ITEM No.107-IA/222(AHM)2023 in
C.P.(IB)/209(AHM)2021

Proceedings under Section 7 IBC

IN THE MATTER OF:

State Bank of India
V/s
Yashasvi Yarns Ltd

.....Applicant

.....Respondent

Order delivered on: 25/04/2023

Coram:

Mr.Ashok Kumar Bhardwaj, Hon'ble Member(J)
Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant : Mr. Arjun Sheth, Advocate for the RP
Mr. Ravindra Kumar Goyal, RP present in person
For the Respondent : Mr. Devang Nanavati, Sr. Advocate along with
Ms. Aishwarya Reddy & Ms. Vinamra Agrawal,
Advocates for the Respondent in IA/222(AHM)2023

ORDER

IA/222(AHM)2023

The plea espoused in the captioned application is for grant of incentive to the RP. Ld. Counsel appearing for the applicant submitted that it is general practice that the IRP/RP takes years together to complete the CIRP, thus, when the RP in the present case could complete the process within eight months, i.e. 240 days, he is entitled to incentive. The claim is founded on Regulation 34 (B) (4) of IBBI (IRCP Regulations), 2016. The plea of the Ld. Counsel for the applicant is that in terms of the Regulation the applicant is entitled to incentive. On the other hand, Ld. Counsel appearing for the CoC submitted that the Regulation is not mandatory but it reserves discretion to committee of creditors to allow performance based the incentive fees and in the present case the CoC has already exercised its discretion in its meeting dated 01.12.2022. He could draw our attention to the relevant excerpt of the minutes of meeting of the CoC dated 01.12.2022, which is read thus:-



“RESOLVED THAT, the committee of creditor is be and hereby decided to approve performance-linked incentive fees for value maximization as per Clause 4 of Schedule-II, under Regulation 34B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016”

Name of the Stake Holder	SHARE %	SHARE AMONGST THOSE PRESENT	FOR	AGAINST	ABSTAINED
State Bank of India	63.73%	63.73%		√	
Pegasus Assets Reconstruction Pvt. Ltd.	19.94%	19.94%		√	
Phoenix ARC Pvt. Ltd.	7.88%	7.88%		√	
Canara Bank	8.45%	8.45%	√		
Total	100.00%	100.00%	8.45%	91.55	0.00%
Result: Resolution not approved with 91.55% voting in against.					

It is stare decisis that the power to accept include the power to nix. The Regulation 34 (B) (4) (ibid) reserves discretion to CoC to grant the incentive. The CoC could exercise the same in refusing to grant incentive to the RP. We can also be not oblivious of the fact that Section 12 (1) of IBC prescribes the maximum period for completing the CIRP as 180 days. The 180 days limit is the outer limit. One could appreciate if the process could be completed before expiry of maximum period of 180 days. In the present case, the process could be completed within 240 days i.e. beyond 180 days. So it is not so that even the statutory time limit without extension could be adhered to by the RP in completing the process. Besides, as has been ruled by the Hon'ble Supreme Court in **K. Sasidhar Vs. Indian Overseas Bank & Ors.** it is commercial wisdom of the CoC to take decision regarding the affairs of the CD. The decision regarding payment of incentive which creates financial liability of CD certainly falls within the commercial wisdom of CoC and we would not like to interfere with the same. It could be different situation if CoC could not have applied its mind. In such situation, this Adjudicating Authority could probably require CoC to take the decision as required in terms of the Regulation. Once the CoC has already taken the decision and has nixed to pay any incentive to applicant, we are not



inclined to interfere with the decision of CoC or to issue any positive direction regarding payment of incentive to the applicant.

The application is accordingly dismissed.

List IA/118(AHM)2023 on 13.06.2023

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**ASHOK KUMAR BHARDWAJ
MEMBER (JUDICIAL)**

Sudha