



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**

**I.A No.53/BB/2022**  
**AND**  
**I.A No. 367/BB/2022**  
**IN**  
**CP (IB) No. 68/BB/2018**

**IN THE MATTER OF:**  
**For I.A No. 53/BB/2022**

**Canara Bank,**  
Large Corporate Branch  
“Ramanashree Building”, 18,  
3<sup>rd</sup> Floor, M.G Road,  
Bangalore – 560 001

... Applicant

**Versus**

**1. Scotts Garments Limited.,**  
Having registered office at:  
481-B, IV Phase,  
Peenya Industrial Area,  
Bangalore 560 058.

... Corporate Debtor/Respondent No.1

**2. Lenin Art Private Limited,**  
Having registered office at:  
Tex Centre Premises Society,  
Gala 202 H wing,  
26/A Chandivali Road,  
Opp. Saki Vihar Road, Sakinaka,  
Mumbai 400 072.

... Resolution Applicant/Respondent No.2

**3. State Bank of India**  
Commercial Branch,  
Krishi Bhavan,  
Hudson Circle,  
Bangalore 560 001.

... Respondent No.3

**4. IDBI Bank Limited.,**  
Specialized Corporate Branch,  
No. 102, Shakthi Comforts Tower,  
KH Road,  
Bangalore 560 027

... Respondent No. 4

**I.A No. 53/BB/2022 &**  
**I.A No. 367/BB/2022**



**For I.A 367/BB/2022**

**Lenin Art Private Limited,**  
Having registered office at:  
Tex Centre Premises Society,  
Gala 202 H wing,  
26/A Chandivali Road,  
Opp. Saki Vihar Road, Sakinaka,  
Mumbai 400 072.

...

Resolution Applicant / Applicant  
**Versus**

**1. Canara Bank,**

Large Corporate Branch  
"Ramanashree Building", 18,  
3<sup>rd</sup> Floor, M.G Road,  
Bangalore – 560 001

...

Financial Creditor/Respondent No. 1

**2. Scotts Garments Limited.,**

Having registered office at:  
481-B, IV Phase,  
Peenya Industrial Area,  
Bangalore 560 058.

...

Corporate Debtor/Respondent No.2

**3. State Bank of India**

Commercial Branch,  
Krishi Bhavan,  
Hudson Circle,  
Bangalore 560 001.

...

Respondent No.3

**4. IDBI Bank Limited.,**

Specialized Corporate Branch,  
No. 102, Shakthi Comforts Tower,  
KH Road,  
Bangalore 560 027

...

Respondent No. 4

**Order delivered on: 25<sup>th</sup> May, 2023**

**Coram:** Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)  
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Applicant in I.A. No.53 of 2022 &  
For the Respondent No.1 in I.A No. 367 of 2022 : Shri Hemanth R. Rao

**I.A No. 53/BB/2022 &  
I.A No. 367/BB/2022**



For the Applicant in I.A No. 367 of 2022 &  
For the Respondent No. 2 in I.A No. 53 of 2022 : Shri. C.K Nandakumar  
(Sr.Adv) a/w Ms. Tahura Anzar

For the Respondent No. 1 in I.A No. 53 of 2022&  
For the Respondent No. 2 in I.A No. 367 of 2022 : R. DharmaRajan(erstwhile  
RP)

## **ORDER**

### **Per: Manoj Kumar Dubey, Member (Technical)**

1. The present application is filed on 10.02.2022 by the financial creditor of the Respondent No. 1, Corporate Debtor, having voting share of 75.41%. The respondent No. 2 is the Resolution Applicant and the Respondent Nos. 3 and 4 are financial creditors, who had 17.9% & 13.23% voting share. Further, the Applicant is also the leader of the consortium of Banks which had granted credit facilities to the respondent No. 1 and sole financial creditor on the Monitoring Committee constituted under the Resolution Plan dated 24.07.2019. The application is filed with a prayer to declare that Respondent No. 2 failed to implement the Resolution Plan and consequently, the resolution plan in respect of the corporate debtor has failed; to reinstate the Committee of creditors and the Resolution Professional, exclude 924 days from 24.07.2019 to 02.02.2022, and to permit the Financial Creditors to forfeit Rs. 32.60 crores deposited by Respondent No. 2 under the Resolution Plan to recoup the losses suffered by them and the Corporate debtor and to pass orders against the respondent No. 2 and its Directors under Section 74 (3) of IBC, 2016 for deliberately failing to implement the Resolution Plan.
2. The Brief facts of the case which are relevant to the issue in question are as follows:
  - a. M/s Sarvana Distributors, Operational creditor, filed the captioned insolvency petition which was admitted by this Tribunal vide order dated 13.08.2018. It is submitted that the Respondent No.2 submitted a Resolution Plan on 24.07.2019 and the CoC approved the Resolution Plan by a majority of 74% on 28.07.2019. Further,



the said resolution plan was approved by this Tribunal vide order dated 16.09.2019.

- b. However, the resolution applicant failed to abide by the terms of the Resolution Plan on the pretext that a forensic audit had been initiated in respect of the Corporate Debtor. Moreover, the resolution applicant filed I.A No 29/2021 seeking modification of the resolution plan and cited the forensic audit and the Covid- 19 pandemic as the reason for failing to implement the resolution plan. However, this Tribunal vide order dated 09.03.2021 held that the plan is binding on the Resolution Applicant and that forensic audit initiated by the Respondent No. 3 would not come in the way of implementation of the plan and further directed the CoC to reconsider the grievance of the Resolution Applicant and take reasonable and dispassionate decisions keeping in view the object of the code.
- c. Pursuant thereto, several rounds of discussion were held and the resolution applicant sent a letter dated 12.08.2021 to the Applicant stating that it was ready to deposit Rs. 25 crores in a no-lien account and the balance 15 crores would be paid within 3 weeks from the date of approval.
- d. Further, on 17.08.2021, as per the direction of this Tribunal, a CoC meeting was held to discuss the modifications requested by the Resolution Applicant to the Plan. However, except the Applicant, all the other CoC members rejected the modified payment terms. It is submitted that since the Applicant was in the majority and intended to prevent the Corporate Debtor from going into liquidation, the CoC had accepted the modified terms in consonance with the direction of this Tribunal.
- e. Accordingly, the Applicant sent a letter dated 29.09.2021 to the Resolution Applicant communicating the acceptance of the modified payment terms and the same was also accepted by the Resolution Applicant vide its letter dated 30.09.2021. Pertinently, the Resolution Applicant informed the Applicant to adjust/distribute Rs. 23.50 crores in the no-lien account towards the Resolution



Applicant's liability of paying Rs. 40 crores by August 2021 under the revised terms. Further, it undertook to pay the balance of Rs. 16.50 crores on or before 20.10.2021.

- f. However, the Resolution Applicant failed to comply with the revised plan as it could not pay the balance amount of Rs. 16.50 crores to the Financial Creditors by 20.10.2021, therefore, the Applicant sent letters dated 25.10.2021 and 30.10.2021 requesting the Resolution Applicant to adhere to the terms of the modified plan.
  - g. However, in spite of such reminders, the resolution applicant failed to comply with the terms of the plan and wasted more than 2 and half years of all the stakeholders. It is submitted that the Resolution Applicant paid only a sum of Rs. 23.50 crores under the plan from the date of approval of the revised terms wherein as per the revised terms the resolution applicant was required to pay Rs. 83.07 crores by November 2021.
  - h. It is further submitted that the Corporate Debtor has around 4000 employees and due to the deliberate and mischievous act of the Resolution Applicant, the employees will lose their livelihood. Further, the liquidation value of the corporate debtor was only Rs 160 crores at the time of approval of the Plan and it is likely to be reduced by half due to depreciation. Further, a total sum of Rs 468,67,93,172/- is still outstanding as on date.
  - i. Hence, the applicant has sought for reinstating the CoC and the Resolution Professional and also, an exclusion of 90 days from the CIRP period to restart the resolution process afresh. Further, the applicant also sought for forfeiture of Rs. 32.60 crores deposited by the Resolution Applicant under the plan to recoup the losses suffered by them.
3. The learned counsel for the Respondent No. 2 (Successful Resolution Applicant, SRA) filed his objection vide diary No. 1715 dated 21.04.2022 inter alia stating as under:
- a. The Successful Resolution Applicant proposed a Resolution plan of Rs. 223.41 Crore with an implementation time period upto May 2022 and a Resolution Plan involving revival and restarting of the



Corporate Debtor's unit, sale of non-assets of capital and debt refinancing. The said plan was approved by the Tribunal vide order dated 16.09.2019.

- b. The Successful Resolution Applicant took over the management and commenced running the affairs of the Corporate Debtor. However, the respondent had to face several difficulties and challenges in the implementation of the Plan.
- c. The 3<sup>rd</sup> respondent has also requested for conducting a fresh forensic audit by an independent chartered accountant, despite the new management taking control of the corporate debtor and the said action of the Bank have caused uncertainty in the eyes of several investors and buyers of the corporate debtor's non-core assets as well as other persons who intend to transact with the Corporate Debtor.
- d. The Applicant and other members of the CoC convened multiple meetings of the CoC over a period of 6 months, to consider the grievances of the Respondent. The Respondent submitted its revised proposal for a holistic modification in the Resolution Plan contemplating revised repayment schedule, a proposition to sell the Peenya plant and a proposition for modification in the timeline for sale of non-core assets.
- e. The Applicant, financial creditor vide letter dated 29.09.2021 intimated the respondent regarding the approval of the revised payment schedule, however, the said letter was silent with respect to the proposed sale of the Peenya plant and proposed change in timeline for the sale of the non-core assets.
- f. It is submitted that during the implementation of the plan, the respondent has experienced several ongoing challenges such as Covid- 19, delay caused due to repairs, service and maintenance of the equipment and machinery, delay caused in obtaining approvals and NOCs from various authorities, delay caused in construction of the effluent treatment plant and septic tank, are all bona-fide and out the control of the Respondent.



- g. Further, despite all the challenges faced in implementation of the Resolution Plan, the Successful Resolution Applicant has invested a sum of Rs. 53.20 Crores out of which the CIRP costs, all operational creditors and all employees' dues and a sum of Rs. 32.575 towards Financial Creditors dues have been paid till date.
- h. It is also pointed out by the respondent that the liquidation value of the Corporate Debtor was Rs. 160 crores as opposed to the amount of Rs. 223.41 as agreed to be paid according to the Resolution Plan. It is further stated that as against the approved payment of Rs. 160 Crores to the financial creditors in the plan, they proposed to make payment of Rs. 172 crores; and request for more time.
4. Heard both the counsels and perused the records available.
5. On 20.07.2022, this Tribunal directed the Respondent No. 2 to make payment to the Applicant to show their bonafide and file the receipt of payment. On 19.10.2022, it was observed by this Tribunal that order dated 20.07.2022 was not complied with and one more week was granted to the Respondent No. 2 to comply with the order. Again, there was no compliance. On 16.11.2022 Respondent No. 2 was directed specifically to pay Rs. 50 crore to the Applicant within three weeks to show their Bonafide. However, the respondent did not bother to comply with the directions till the next hearing. Further, on 02.02.2023 the Sr. Counsel for R-2 offered a cheque of Rs. 35 Crores during the proceedings, which he offered to pay, but it was not actually paid. Again, on 21.02.2023 the Learned Senior Counsel for R-2 submitted that they are willing to pay an amount of Rs. 50 crore, but the same should be deposited in a separate-lien Account. However, the learned counsel for the Applicant/ Canara Bank submitted that this offer was not accepted during the meeting held between the two parties. It is thus noticed that the Respondents has failed to comply with the directions issued/opportunities granted repeatedly by this Adjudicating Authority since 20.07.2022; and nothing has been done till March 2023 by them; except making empty promises and offers.
6. This Tribunal directed both the Counsels to file written submissions with relevant judgments. The said compliance is made vide diary Nos



4673 and 5460 dated 31.10.2022 and 15.12.2022. The same is taken on record.

7. In the Written Submission filed on 31.10.2022, the Respondents have stated that in the Resolution Plan there was a Para regarding Sale of Non Core Assets and Successful Resolution Applicant (SRA) filed an I.A No. 29 of 2021 before the AA to direct the Financial Creditors to consider the modification in the resolution plan for the above and also a change in the time-line, and vide common order dated 09.03.2021 this Adjudicating Authority (AA) directed the Canara Bank and other CoC Members to re-consider the grievance of Resolution Applicant (RA) as mentioned in I.A No. 29/2021 within three months. However, the CoC only granted a revised payment schedule, but did not decide regarding the proposed sale of Peenya Plant /Non Core Assets. Thus, it is contended that the Applicant had not complied with the order of this Tribunal dated 09.03.2021. Further, the Respondents have submitted that the prayer to forfeit Rs. 32.60 Crores paid towards the Financial Creditors may be rejected; since it will cause uncertainty with the potential investors and other difficulties for the RA. Further, neither in the resolution plan approved by this AA was there any such provisions to forfeit the amount deposited by SRA nor there is any provision of law. The Respondent had already invested a sum of Rs. 53.20 Crores towards CIRP costs, payment to Operational Creditors and payment of Rs. 32.6 crores to the Financial Creditors; and willing to deposit additional Rs.16.5 crores within two weeks if the Applicant/COC complies with the common order dated 09.03.2021 passed by this AA and addresses the grievance of the SRA.
8. In the written submission filed on 15.12.2022, on the other hand, the Applicant/ Canara Bank has given details of the dates and events since the approval of the plan by this AA on 16.09.2019; and contended that these details reveal that inspite of repeated opportunities granted to the RA to comply with the time lines for payment, they have failed to do so. Reference was given to the order of this Tribunal from 20.07.2022, onwards, in which the SRA was repeatedly directed to make payments to show their bonafide. Accordingly, the Applicant has requested to



declare that the resolution plan has failed and requested for the exclusion of 924 days from 24.07.2019 to 02.02.2022, and also to reinstate the CoC and Resolution Professional, so that the CIRP can be restored. Vide Diary No. 4889 dated 16.11.2022, the Applicant/Canara Bank filed a memo enclosing the copy of the letter dated 15.11.2022 addressed to the SRA, in which the Bank has rejected the proposal of the SRA to sell the Peenya plant or other Non-core Assets. It was explained as under:

*“Peenya plant is a core asset and central to the operations of the Corporate Debtor. The proposal of the RA virtually amounts to liquidating the assets of the Corporate Debtor to make the payments under the plan. Added to this, the proposal is contingent on finding interested buyers which is time consuming and may result in distress sale of the assets. At this late juncture, a contingent proposal cannot be permitted as the Resolution plan is of the year 2019 and no progress is made for the last 3 years, though the RA is continuing with the possession of plants and running the same and earning substantial amount of money.”*

9. It is further explained that in the resolution plan, regarding Non Core Assets, the RA has stated that they had already identified investors, and the RA had committed that the payments will be made according to the timeline; but inspite of the investors agreeing to pay the upfront amount of Rs.10 crores as per resolution plan, neither that has been paid nor the SRA has paid the amount with thirty days of the approval of the resolution plan.
10. We have considered the arguments of both the counsels and perused the records available. The present Application is filed under section 60 (5) r/w, section 74(3) of the IBC, 2016 and Rule 11 of the NCLT Rules, 2016 seeking to declare that the Respondent No. 2, Successful Resolution Applicant has failed to implement the Resolution Plan and to reinstate the Committee of Creditors and the Resolution Professional be permitted to take charge of the Corporate Debtor.
11. It is seen from the Application that the Resolution Plan of the Corporate Debtor was approved by this Tribunal vide order dated



16.09.2019. The Resolution Plan provided for overall plan amount of Rs. 223.42 Crores; out of which payment of Rs. 130 crores was to be made to the financial creditors; and date/year wise schedule of payment was prescribed. This time-line was subsequently extended by the CoC in pursuance of order dated 09.03.2021 of this Adjudicating Authority.

12. It is observed from the Application that sufficient time has lapsed after the approval of the resolution plan by this Tribunal and till date the Successful Resolution Applicant has not been able to implement the plan. The SRA has not made any compliance to the commitment given in the resolution plan, adhering to the timelines and schedule for making various payments to the Stakeholders, in particular Financial Creditors and even the revised time line granted by the COC/FC in compliance to the common order dated 09.03.2021 from this AA. The Applicant/Canara Bank had intimated the SRA vide letter dated 29.09.2021 regarding the revised payment schedule. On 20.07.2022 this AA directed the Respondent No.2 to make payment of the outstanding amount to show their bonafide and the same direction was reiterated on 19.10.2022. Since no compliance was made, on 16.11.2022, specific direction was given to the Resolution Applicant to make a payment of Rs. 50 crores to the Applicant within three weeks, but nothing was done. On 02.02.2023, the Counsel for the Respondent No.2 offered a cheque of Rs. 35 crores for making payment immediately to the Applicant; however it was not done. Again 21.02.2023, an offer was made by the Counsel for the Respondent for payment of Rs. 50 crores with a condition that it may kept in the separate account to which the Applicant/Canara Bank's Counsel submitted that this proposal was not acceptable. Finally on 17.03.2023, the matter was Reserved for Orders asking the Counsels to file their brief synopsis.
13. The above sequence of events clearly shows that inspite of so much time having already passed after the approval of the Resolution Plan on 16.09.2019, the SRA failed to adhere to the timelines and different schedule of the original plan as well as revised time line approved by



the letter dated 29.09.2021. Accordingly we are of the considered opinion that the RA has failed to implement the resolution plan.

14. In so far as other prayer in the application regarding the exclusion of the time of 924 days and reinstate CoC/RP for restoration of the CIRP is concerned, there is no such provision under the Code. Infact, this proposition of law has been underlined by the *Hon'ble NCLAT, New Delhi* vide order dated 05.01.2022 in *Company Appeal (AT) (Ins) Nos. 161 and 169 of 2021* in the case of '*Edelwiss Asset Reconstruction Limited and other vs Peter Bech and Peter Vermoegensverwaltung Limited and others*' in which it is observed that "there is no express provision regarding re-initiation of CIRP in the IBC". In the same judgment, though, the period which was spent in litigation before the Hon'ble NCLAT and also Hon'ble Supreme Court of India challenging the approval of the resolution plan; and due to the status-quo order passed by the Hon'ble NCLAT for about 8 months; was excluded for the implementation of the resolution plan, which is in a different context altogether. Further, regarding the prayer for forfeiting of Rs. 32.60 crores already paid by the Respondent No.2 to the Financial Creditors, the amount payable as performance bank guarantee for the resolution plan is liable to be forfeited under Regulation 36B (4A) since the RA has failed to implement the Resolution Plan. Moreover, Hon'ble NCLAT in the matter of *GP Global Energy Private Limited v. Mr. Anil Kohli*, order dated 15.12.2022 in *Company Appeal (AT) (Insolvency) No. 14 of 2022*, has upheld the order of NCLT Principal Bench Delhi; in which since the Successful Resolution Applicant had failed to implement the Resolution Plan, the amount paid by the Successful Resolution Applicant was forfeited. In this case also the amount paid by the Successful Resolution Applicant is forfeited and this Prayer is allowed.
15. In so far as the Prayer to pass order under section 74 (3) of IBC, 2016 is concerned, the provisions of IBC clearly mentions that there shall be knowingly and willfully contravention of the approved resolution plan by the corporate debtor , its officers or creditors for passing orders under section 74 (3) of the IBC, 2016. The Applicant has failed to place on record any willful or deliberate contravention of the Approved plan



by the corporate debtor, its officers or the creditors, or any persons, nor any abetment has been made out. This prayer is not granted.

16. In accordance with the above discussion, **I.A No. 53 of 2022** filed in CP (IB) 68/2018 is hereby **disposed** of, granting liberty to the Applicant to take necessary steps in accordance with law.

**I.A 367 of 2022**

1. The present Application is filed on 05.07.2022 by the Resolution Applicant seeking to direct Respondent Bank to consider permitting the Applicant to sell Peenya plant and non-core assets of the Corporate Debtor and to direct respondent Bank along with other creditors who are part of the Monitoring Committee to consider the modified timeline for making payment and permit the Applicant to effect payment as per the modified timeline.
2. However, this Tribunal in the order passed today in I.A 53 of 2022 has held that the Resolution Applicant has failed to implement the Resolution Plan and consequently, the Resolution Plan has failed. In this order, the issue regarding the request of the resolution applicant to sell the Peenya Plant and non- core assets have also been dealt with it in detail. Considering the reasons discussed in that order, this I.A 367 OF 2022 filed for direction for sale of Peenya Plant and Non core assets becomes infructuous and the request for another extended timeline cannot be considered.
3. Hence **I.A 367 of 2022 is disposed** of as infructuous.

**-Sd-**  
**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**(T. KRISHNAVALLI)**  
**MEMBER (JUDICIAL)**