

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 4034 OF 2023

Under Section 33(3) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules, 2016

State Bank of India

...Applicant

Vs.

Ashok Dattarey Atre

...Respondents

I.A. 3410 OF 2023

Under Section 60(4) of Insolvency &
Bankruptcy Code, 2016

Vijendra Kumar Jain

...Applicant/Monitoring Agent

Vs.

Ashok Dattarey Atre

...Respondents

I.A. 483 OF 2023

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules, 2016

Ashok Dattarey Atre

...Applicant

Vs.

Mr. Vijendra Kumar Jain & Anr.

...Respondents

In the matter of

C.P.(IB) No. 3448 /MB/2018

Tractabel Engineering Pvt. Ltd.

Operational Creditor

Vs.

Transparent Energy Systems Private
Limited

Corporate Debtor

Order delivered on: 04.01.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances

For the Applicant in IA 4034/2023 : Mr. Subir Kumar a/w Ms. Disha
Shah, Advocate

For the SRA : Mr. Rohit Gupta a/w Ms. Prashansa
Agarwal i/b Mr. Agam H Mallo

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This application IA 4034/2023 is filed on behalf of the State Bank of India ("Financial Creditor" or "SBI"), sole Committee of Creditors ("CoC") of the Corporate Debtor and now a member of the Monitoring Committee ("MC") overseeing the implementation of the approved resolution plan ("Resolution Plan") submitted by the Mr. Ashok Dattatray Atre, the Successful Resolution Applicant ("Respondent") in respect of Transparent Energy Systems Pvt. Ltd. ("Corporate Debtor"). The application is filed under the provisions of Section 33 (3) read with Section 33 (4) and Section 33 (1) of the Insolvency And Bankruptcy Code, 2016 ("Code") and in accordance with relevant Regulations of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") and any other applicable provision of Code and rules and regulations made thereunder, seeking appropriate Orders from this Hon'ble Court to initiate the process of liquidation against the Corporate Debtor, as the Respondent herein, viz. the Successful Resolution Applicant, has failed to implement the Resolution Plan, as per the terms and conditions approved by the Hon'ble Adjudicating Authority viz. Hon'ble National Company Law Tribunal (Hon'ble NCLT). The Applicant has sought following reliefs :

- a. an order of Liquidation of the Respondent/Corporate Debtor viz. M/S Transparent Energy Systems Pvt. Ltd.;
- b. appointment of Mr. Avil Jerome Menezes, Resolution Professional holding (BBI Registration No.. IBBIIPA-001/IPP00017/2016-17/10041, as the Liquidator for the Corporate Debtor;
- c. direction to the Liquidator, to issue a Public Announcement stating that the Corporate Debtor is in liquidation in Terms of Regulation 12 of the Insolvency and Bankruptcy Board in India Liquidation Process) Regulations, 2016;
- d. direction to the Registry to communicate the order of liquidation to relevant Registrar of Companies and to the Insolvency and Bankruptcy Board of India;
- e. an order directing the order of moratorium passed under Section 14 of the Insolvency And Bankruptcy Code, 2016 shall cease to have its effect and that of fresh moratorium under Section 33 (5) of the Insolvency And Bankruptcy Code, 2016 shall commence;
- f. direction that this order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33 (7) of the Insolvency And Bankruptcy Code, 2016;
- g. direction to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Regulations;

h. direction that till the disposal of this Application, the moratorium, imposed in accordance with the Section 14 of the Code to continue, to protect and preserve the assets of the Corporate Debtor.

1.1. Another Application IA 3410/2023 is filed by Sh. Vijendra Kumar Jain, the Monitoring Agent (“Erstwhile Resolution Professional”) to seek directions to Sh. Ashok Atre, the Successful Resolution Applicant of the Corporate Debtor (“Respondent”) to implement the Resolution Plan approved by this Tribunal vide Order dated 16th April, 2021 in IA no. 07/2021. Since, this Application is connected to IA 4034/2023, this is also disposed of by this common order.

1.2. Another Application IA 483/2023 is filed by Successful Resolution Applicant (“SRA”) for the Corporate Debtor whose Resolution Plan having a tenure of three years i.e. up to 16th April 2024 was approved by this Tribunal on 16th April 2021. Erstwhile Resolution Professional, presently the Chairman of the monitoring committee constituted for implementation and supervision of the Resolution Plan, is the Respondent No.1 and Respondent No.2 is the other member of the monitoring committee which in fact constitutes 100% of the CoC. Since, this Application is connected to IA 4034/2023, this is also disposed of by this common order.

2. The Corporate Insolvency Resolution Process (“CIRP”) of the Corporate Debtor was commenced by the order of this Tribunal

dated 8th March, 2019 in C.P. (IB) 3448/2018 and Mr. Ashish Vyas was appointed the Interim Resolution Professional (the IRP). Thereafter, Mr. Nimit Kalsi was appointed as Resolution Professional by the order of this Tribunal dated 15th July, 2019 and subsequently, Mr. Nimit Kalsi was replaced vide order dated 21st February, 2020 and the erstwhile Resolution Applicant was appointed as Resolution Professional of the Corporate Debtor.

2.1. The Resolution Plan submitted by the SRA was approved by the COC on 20th November, 2020. After the approval of the CoC the applicant filed IA no 07 of 2021 u/s 30 (6) application for the approval of the resolution plan by this Tribunal, which was accorded vide Order dated 16th April, 2021.

2.2. The tenure of the approved resolution plan is for the three years and the Erstwhile Resolution Professional is appointed as Chairman of the Monitoring Committee, which has been constituted as per clause 5.2.3 of the approved resolution plan for overseeing its implementation. As per the terms of the said order, Erstwhile Resolution Professional have been entrusted with the responsibility of supervising and ensuring the compliances mentioned in the approved resolution plan. The Erstwhile Resolution Professional is stated to have diligently and efficiently conducted the monitoring committee meetings, thereby ensuring seamless oversight and adherence to the provisions laid out in the approved resolution plan.

2.3. As per the approved resolution plan, the SRA was making payments to the creditors according to the timelines, upto 12-18 months tranches i.e. 16 April, 2022-15th October, 2022, however, the payment obligation which were due for the period 18-24 months i.e. 16 October 2022-15th April 2023 are not fulfilled by the SRA. The SRA filed an IA no 483 of 2023 before this Tribunal, which is also dealt with in this Order, for seeking extension in timeline of the approved resolution plan stating that the source of funds was contemplated from the recoveries of litigations of the Corporate Debtor which were delayed due to Covid-19 causing several unforeseen halts and delays in the progress and completion of the pending litigations.

2.4. In the 6th and 7th Monitoring Committee held on 30th January 2023 and 25th April 2023, State Bank of India ("SBI"), the committee member of the Monitoring Committee is not in agreement with the proposed timeline, by the SRA, extending the plan by 2 years as compared to the original timelines in the Resolution Plan. SBI advised that there will be deterioration of the value in the approved resolution plan if the resolution applicant defaults/delays the payments as per the approved plan. Further, in such circumstances, SBI would consider liquidation of the Company.

2.5. During the 9th Monitoring Committee meeting held on Thursday, 20th July 2023, conducted via video conferencing, members of the Committee brought to light various instances

of non-compliance with the approved resolution plan by the respondent. It was highlighted that the SRA has failed to pay 4th tranche falling due in 18-24 months payment plan, as outlined in the approved Resolution Plan; has failed to submit the progress report of the Corporate Debtor for the June Quarter 2023, as required under the approved Resolution Plan; SRA had rented out Shirwal Factory, without obtaining the necessary approval from the Monitoring Committee and the Lonad factory was closed and no operation were carried out by the SRA in the said factory and the labour force was sitting idle.

2.6. Recognizing the seriousness of these non-compliances, the Monitoring Committee unanimously decided to submit a report before this Tribunal and this caused IA 3410/2023 being filed before us. The Erstwhile Resolution Professional (Applicant in this IA) has sought direction to SRA to handover the Shirwal bank account no. 00000011539267155 of the corporate debtor to the applicant; implement the Plan and attend the meeting of Monitoring Committee.

3. The SRA has stated in IA 3410/2023 that it has paid total sum of Rs. 692.27 lacs out of total settlement amount of Rs. 1972.02 Lacs under the Resolution Plan, thus leaving a balance of Rs. 1279.75 lacs, which is to be paid between October, 2022 to 15th April 2024. It is the case of SRA that an amount of Rs. 1224.86 lacs was projected to be paid out of inflow from Performance Guarantee and Litigation recoveries and the remaining amount of Rs. 54.89 lacs was to be funded from additional litigation recoveries.

3.1. The SRA has accordingly sought extension by 2 years and proposed a revised payment plan as follows :

S. No.	Amount (Rs. Lakh)	Original Timeline	Revised Timeline
1.	19.41	April 2023	April 2024
2.	274.23	October 2023	July 2025
3.	914.10	April 2024	April 2026

3.2. It is case of SRA that, after taking over the operations of the Corporate debtor, it has also taken the necessary steps for revamping the manufacturing establishments, particularly for exploring exports to USA and other countries. The Corporate Debtor, for the said purpose, has obtained certification on 3.7.2022 from American Society of Mechanical Engineers (ASME) for manufacturing boilers and pressure vessels as per the ASME Code, which has global acceptance for export. The Corporate Debtor has already earned revenue of Rs. 24 Lakhs from the export to USA through its group companies, as contemplated in the approved resolution plan. Even on this front, the Corporate Debtor has been facing certain delays due to uncertainties prevailing in international market on account of the ongoing Ukraine-Russia war and such other factors.

4. The SBI has opposed the prayer for extension of timelines stating that the Resolution Plan provides for alternative sources of payment; the extension is permissible only with the assent of CoC; and this Tribunal cannot invoke its residuary powers to extent the

timelines dehors COC consent. It is stated the clause 5.1.2.12 of the Resolution Plan dealing with alternative source of funds specifies (i) equity infusion through strategic investor, (ii) funding through Debt, and (iii) Sale of factory at Shirwal, and exercise of these options would be procedurally less time consuming and within the control of the SRA.

5. We have heard the learned Counsel and perused the material available on record.

5.1. We find that the SRA has placed on record the status of recoveries from litigation in the 7th Monitoring Committee Meeting, however, we are of considered view that extension of timelines on the ground of delay in recovery can not be considered as the infusion of Resolution Money and can never be said to contingent upon recoveries from the Litigation considering that the Plan was not contingent in nature. We are conscious of legal proposition that this Tribunal, generally, should refrain from modifying the terms of approved Resolution Plan unless the same is concurred by the CoC. In view of this, we are of considered view that this Tribunal can not consider the request of SRA for extension of timelines in view of express prayer of the CoC to order the liquidation of the Corporate Debtor. We find force in the contention of CoC that the SRA ought to have explored the alternative source of funding to avoid missing the deadlines for payment of money.

5.2. In view of the express unwillingness of the CoC to consider the extension of timelines, we are of considered view that the Corporate Debtor ought to be liquidated.

5.3. This Bench appoints Mr. Ram Ratan Kanungo, having Registration No. IBBI/IPA-001/IP-P00070/2017-2019/10156, Mob: 9821031996, Email: rrkanoongo@gmail.com is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.

- a. That the Liquidator for conduct of the liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- b. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- c. The Liquidator appointed under section 34(1) of the Code. All powers of the board of directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.
- d. That the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to the ROC under which this Company has been registered.
- e. That the personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- f. That on having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except

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the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority.

- g. This liquidation order u/s 33(7) shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- h. The liquidator shall be at liberty to pursue pending the Interlocutory Application pertaining to avoidance transactions, if any.

6. In view of, IA 4034/2023 is allowed and IA 483/2023 is dismissed. Consequent to this, IA 3410/2023 is rendered infructuous.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)