



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

I.A. 108 OF 2024

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

Mr. Ankur Kumar,

Chairman Monitoring Committee

...Applicant

Vs.

Mr. Pushkar Gulati,

Successful Resolution Applicant

...Respondent

I.A. 5640 OF 2023

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

Mr. Pushkar Gulati,

Successful Resolution Applicant

...Applicant

Vs.

Mr. Ankur Kumar,

Chairman Monitoring Committee

...Respondent



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 108/2024
I.A. 5640 OF 2023
In
C.P.(IB) No. 703/MB/2019

In the matter of

C.P.(IB) No. 703/MB/2019

Corporation Bank

Financial Creditor

Vs.

General Composite Private Limited

Corporate Debtor

Order delivered on: 05.03.2024

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Justice Shri V.G. Bisht

Hon'ble Member (Judicial)

Appearances

For the Applicant in IA 108/2024 : Ms. Bindu Bhatia, Advocate

For the Applicant in IA 5640/2024 : Attendance not marked

For the Respondent in IA 5640/2024 : Ms. Bindu Bhatia, Advocate

ORDER`

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 108/2024 is filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 ("Code") by Mr. Ankur Kumar ("Applicant in 108/2024") in the Corporate Insolvency



Resolution Process (“CIRP”) of General Composite Private Limited (“Corporate Debtor”), seeking following reliefs:

- a. Pass an order directing SRA to comply with the terms of the approved resolution plan of the Corporate Debtor;
- b. To impose cost on the Respondent under Section 74(3) of the Code for contravention of the Resolution Plan;
- c. Pass any other orders as this Hon'ble NCLT may deem fit and

2. The CIRP of Corporate Debtor had commenced vide order dated 03 September 2019 passed by this Hon'ble NCLT in Company Petition No. CP (IB)-703/MB/2019 U/s 7 of the Code. The Applicant in 108/2024 states that in the 13 COC meeting convened on 23 July 2021 the COC had decided to reject the Resolution Plan submitted by the suspended director on 19 June 2021 and further decided to liquidate the Corporate Debtor under section 33 of the Code. In view thereof the Interlocutory Application ("IA") bearing IA no.1974 of 2021 (the Liquidation Application) was filed with the NCLT on 19 August 2021

2.1. That pending the hearing of the Liquidation Application filed by the Applicant herein, the Suspended Director of the Corporate Debtor had filed an IA bearing no. 2128 of 2021 seeking to stay the initiation of liquidation proceedings against the Corporate Debtor and further to direct the COC to consider the fresh resolution plan submitted by the suspended director. Thereafter vide order dated 21 October 2021, the Hon'ble NCLT allowed the suspended director to submit fresh Resolution Plan and directed the Resolution Professional and the COC to consider the fresh Resolution Plan submitted by SRA, if any, before proceeding with the liquidation Application.

2.2. Pursuant to the directions passed by the NCLT, the resolution plan was submitted by the suspended director of the Corporate Debtor. Subsequently, the resolution plan was discussed and negotiated by the COC members and the Suspended Director in the several COC meetings. Thereafter, in the 19th meeting of COC held on 04 June 2022, the COC decided to put the resolution for approval of the resolution plan for e-voting and the same was approved by 100% voting in favor. Accordingly IA no. 2293 of 2022 was filed by the Applicant in 108/2024 before the NCLT for approval of the resolution plan and subsequently the NCLT had vide order dated 11 August 2023 approved the resolution plan of the Corporate Debtor.

2.3. That as per the directions passed by the NCLT a monitoring committee (hereinafter referred as "MC") was constituted in terms of the approved resolution plan for supervising the implementation of the Resolution Plan of the Corporate Debtor comprising of erstwhile Resolution Professional, Authorized Representative of the Financial creditors i.e., UBI and Resolution Applicant. The erstwhile Resolution Professional was appointed as the Chairman of the MC.

2.4. During MC meeting held on 03 October 2023, the Applicant (in 108/2024) in the capacity of the Chairman of the MC informed the MC that the SRA vide email dated 26 September 2023 had requested extension of 60 days period to make the upfront payment as envisaged in the approved resolution plan to the stakeholders of the Corporate Debtor, reason stated that the SRA was in process of arrangements to make the upfront payment as per Resolution Plan. However, the MC had informed the SRA that the MC is not authorized to grant



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extension of time and advised SRA to make upfront payment in terms of approved Resolution Plan.

2.5. That in terms of the approved resolution plan, the following payments were to be made by the SRA to the creditors from effective date i.e., 11 August 2023 (date of approval of Resolution Plan by Hon'ble NCLT):

Tenure from Effective Date	Due date	Particulars	Principal due (Amount in Rs.)
60 days	Monday, 09.10.2023	CIRP Cost*	77,93,465
		Financial Creditor (UBI)	50,00,000
		Operational Creditors	5,00,000
120 days	Friday, 08.12.2023	Financial Creditor (UBI)	50,00,000
12 months	Saturday, 10.08.2024	Financial Creditor (UBI)	4,00,00,000
18 months	Wednesday, 05.02.2025	Financial Creditor (UBI)	2,00,00,000
24 months	Sunday, 10.08.2025	Financial Creditor (UBI)	4,50,00,000
TOTAL			12,32,93,465

** In terms of Note 1 on Page 46 of the approved resolution plan, CIRP cost which is expected to be incurred between the period after approval of Plan by CoC till the plan is approved by Adjudicating Authority will continue to be paid from the accounts of Corporate Debtor. In case of any increase in CIRP cost, then the above estimate, the same shall be paid the RA, in addition to the proposed Total Payment.*

2.6. The SRA had not made any endeavors to comply with the terms of the approved resolution plan. The members of the MC had time and again requested the SRA to do so however, SRA defaulted in upfront payment of Rs. 1,32,93,465/- payable within 60 days of approval of plan i.e. on or before 9 October, 2023.

2.7. The Applicant in 108/2024 states that MC meeting was held on 17 October 2023, wherein, the SRA informed that he is not able to raise the funds for payment through sale of the Company's land, unsecured loan from friends and family i.e., source of funds in terms of approved resolution plan, hence SRA has approached a stressed asset fund and Banks/financial Institutions to fund the resolution plan and to take over the debt

owed to the secured financial creditor i.e., UBI. At the request of SRA, UBI has issued conditional NOC for repayment of entire debt on 09 November 2023. However, as agreed by the SRA at the 3rd MC meeting, SRA has not provided the sanction for funding the resolution plan amount on or before 10 November 2023, or till the date of filing this Application. However, till date of filing this application, the SRA has not made the upfront payment as is envisaged in the resolution plan approved by the NCLT causing grave prejudice to the interest of the stakeholders of the Corporate Debtor. The Members of the MC have time and again requested the SRA to adhere with the terms of the resolution plan however, the SRA has consistently failed to meet its obligations under the Resolution Plan therefore, members of the MC suggested to take necessary action against the SRA as per the provisions of the Code.

2.8. The Applicant herein apprised the MC members on 4th MC meeting held on 20 November 2023 that the SRA has till date not complied with the terms of the approved resolution plan, thereafter the UBI one of the member of the MC advised the Applicant to file an Application before this NCLT to seek necessary direction against the SRA for contravention of the terms of the approved resolution plan. Accordingly the member of the MC i.e. Union Bank of India, Financial Creditor had vide email dated 21 November 2023 authorised the Applicant herein to file the instant IA. In view thereof, the Applicant in 108/2024 states that as per the Section 74 of the Code, in the event of contravention of the resolution plan approved by the Hon'ble NCLT by any person other than the Corporate Debtor whose interests is prejudicially affected can attract penal



provision under the Code. The Applicant in 108/2024 alongwith the MC member i.e. Union Bank of India" interest have been prejudicially affected by the SRA's failure to perform its payment obligations under the Resolution Plan. Therefore, the Applicant in 108/2024 is constrained to approach this Hon'ble NCLT for seeking necessary directions against the Corporate Debtor in terms of section 74 of the Code.

2.9. The Applicant states and submits that the SRA is in contravention of the approved resolution plan and hence is also liable to be penalized in terms of section 74 of the Code.

3. An Application IA 5640/2023 was filed on 18.10.2023 under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 ("Code") by Mr. Pulkit Sharma ("SRA") in the Corporate Insolvency Resolution Process ("CIRP") of General Composite Private Limited ("Corporate Debtor"), seeking following reliefs:

- a. The Tribunal may be pleased to allow this Interlocutory Application and grant further extension of 60 days' time to make payment of first instalment as stated in the Successful Resolution Plan.
- b. The Tribunal may be please to not entertain any application for liquidation of corporate Debtor filed under Section 33 of Insolvency and Bankruptcy Code, 2016 for such extended period of 60 days or any other extended period as may be granted by this tribunal.

3.1. The SRA has submitted that he has unfortunately not able to implement the Resolution Plan even during these 60 days period after the approval of said resolution plan mainly on account of the challenge and difficulties has arises out of non-

fulfillment of commitment made by Mr. Nityanand S. Hegde to provide unsecured Loan of Rs. 1.0 Crore to applicant as committed in the letter of intent submitted by him along with Resolution plan, due to liquidity issue and he seeks further time of 60-90 days to provides to said unsecured Loan.

3.2. The SRA has addressed a mail dated 26th September 2023 to Resolution Professional to grant an additional 60 days of time to make the payment wherein applicant mentioned that he has approached a few financial institutions / Stressed asset funds/NBFC's to take over the existing liability of Union Bank of India, as per the approved Resolution Plan, and provide with additional working Capital limits to grow the business of the Company further mentioned that a few agencies have also shown keen interest in the Company's Business and his proposal is under consideration by them. However, considering their process of Due Diligence, Valuation, Legal and other report (s), it may take approx. 45-60 days to avail disbursement and hence, requested the Management Committee to grant an additional 60 days for upfront payments

3.3. The Management Committee in its meeting dated 3rd October 2023 took the note of request receipt from the in SRA for extension of time. However, the said request has not been executed by the Management Committee on the ground that Management Committee is not authorized to grant additional time and make any changes to the Resolution Plan approved by the NCLT.

3.4. The SRA trying to manage the fund and in the conversation with the prospective buyer to liquidate the Property of the Corporate Debtor Located at Gut nos. 208, 302 & 303, at Lahe

Gaon, Tal. Shahpur, India mentioned in Section 13 of Page no. 70 of the Successful Resolution Plan and make the substantial payment to the financial creditors, with respect of the same one prospective buyer Mr. Chaitanya Parekh, Director of Soham Real Estate Development Co. Pvt. Ltd. has been interested to acquire the property of the company However, considering their process of Due Diligence, Valuation, Legal and other report of property, it may take approx. 30-40 days to close the deal. The SRA Managed to arrange 15 Lakhs Bank guarantee against Fixed Deposit and also made the payments toward CIRP cost of Rs. 6 Lakhs in Cash the applicant remain committed and is taking all the necessary steps to arrange the funds through its investment in order to expeditiously implement the Resolution Plan however due to liquidity issue faced by Mr. Pushkar Gulati and process to provide loans by bank and NBFC the applicant is constraint to file the current application praying for and additional period of 60 days from 9th October, 2023 to 8th December, 2023 for implementation of resolution plan and making payment of first installment.

3.5. That the Adjudicating Authority Please to grant the extension of 60 days for implementation of approved resolution plan as this additional time period of 60 days is very crucial and necessary for revival of the Corporate Debtor and in the Interest of all the stakeholders in the Corporate Debtor's CIRP.

4. Heard learned counsel and perused the materials available on record.

4.1. We note that the Monitoring Committee in its meeting held on 17th October, 2023 discussed the issue of provision of NOC to



the Successful Resolution Applicant in view of his IA 5480/2023 pending consideration before this Tribunal for extension of 60 days. The relevant extracts of the minutes of meeting are reproduced hereunder –

“After details discussion, the MC unanimously took the following decisions :

A. Subject to the order of Hon’ble NCLT in the application filed by SRA to grant extension of time to comply with terms of approved resolution plan, -

- i. The draft NOC may be provided by UBI to SRA, if all the requisite information is provided to it.*
- ii. The SRA shall provide the sanction for funding the resolution plan amount on or before 10th November, 2023.*

B. Bank Guarantee (BG) kept as FD with UBI of Rs. 15.0 lakhs may be liquidated and some of the pending CIRP cost be paid out of the said FD proceeds and the said FD amount would be adjusted against the total liability of SRA in terms of the approved plan and if SRA fails to comply with resolution plan the said FD amount shall be treated as forfeited.”

4.1.1. It is clear that NOC, as requested by SRA to raise further finance to pay the Resolution money, was provided to him and in terms of the provision of said NOC, the SRA was to provide the sanction for funding of the resolution plan on or before 10th November, 2023 and the same has not been provided even till date.

4.1.2. We further note that another meeting of Monitoring committee was convened on 20.11.2023 to take note of failure of SRA to provide sanction letter and discuss the

further steps. SRA also attended the meeting. The relevant extracts of this meeting are reproduced hereunder-

“The SRA informed the MC that application filed by him before Hon’ble NCLT seeking extension of time to make payment under resolution plan is still not listed and he will keep the MC updated about the same.

The SRA further informed the MC that he has submitted the soft copy of conditional NoC received from UBI to Bank of Baroda (BoB) for the financing requirements. However, BoB requested the original hardcopy of the said NoC which would be submitted by SRA to BoB on 22nd November, 2023 at meeting with BoB and thereafter for sanction and disbursement, might take 7 to 10 days. Mr. Vikas Srivastava informed that the conditional NoC was submitted to SRA much earlier and requested the SRA to update MC after his meeting with BoB on 22nd November, 2023.

The SRA stated that the process is taking longer time, however he has received verbal assurances from the BoB.

Mr. Vikas Srivastava stated that presently there is default in complying with approved resolution plan and for the delayed period the SRA need to pay penal interest subject to NCLT order, if any in respect of said default by SRA. He further added that the SRA has not submitted any formal communication from BoB till date hence the verbal assurance given by SRA cannot be considered.

The SRA noted the observations made by UBI. The SRA and UBI had further discussion on following points –

- (a) SRA requested UBI to clarify, if in case full resolution amount is paid by BoB to UBI, in on trench only, will UBI be giving any kind*



of concession on the amount to be paid to UBI as per the approved resolution plan.

(b) SRA further requested UBI to clarify, if the resolution plan amount is paid in terms of the approved resolution plan over the plan period including interest on delayed payment as per the approved resolution plan, then will UBI give consent to create paripassu charge in favour of BoB.

Mr. Vikas Srivastava informed that it may not be possible to alter the terms of resolution plan as regard the plan amount and UBI may not give consent to create paripassu charge in favour of BoB till full payment is done. He also stated that default made by SRA in implementation of successful resolution plan may lead to liquidation of the CD in terms of IBC, 2016.”

4.1.3. From the perusal of the proceedings of the meeting, it is clear that SRA was still exploring the options and had no firm proposal in his hand as regard funding of the Resolution Money he was obligated to deposit. It is not in dispute that he has not brought any document evidencing the arrangement of funds for payment of resolution money, even though the timeline for payment of second instalment has also expired on 8.12.2023 and the third instalment is due for payment in August, 2024. It is also clear from these conversations that SRA has no means to fund Resolution except either out of proceeds of disposal of the lands owned by the Corporate Debtor or proceeds of fresh borrowings. In view of these findings, we are of considered opinion that SRA has not independent means to pay the Resolution

money as proposed in the approved resolution plan and his commitment to pay are contingent on disposal of the lands owned by the Corporate Debtor or fresh borrowings. It is trite law that a contingent plan cannot stand and it has to give way to consequential proceedings. Accordingly, we have no hesitation to hold that the SRA has failed to implement the resolution plan. Hence, in terms of provisions of section 33(4) of the Code, it is incumbent on this Tribunal to pass orders for liquidation of the Corporate Debtor.

4.2. Section 74 of the Insolvency & Bankruptcy Code, 2016 provides for Punishment for contravention of moratorium or the resolution plan. Sub-section (3) thereof reads as under -

(3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both."

4.2.1. The provision does not directly state whether the Resolution Plan is binding on the successful resolution applicant. *The Hon'ble Supreme Court of India, in Reserve Bank of India v. Peerless General Finance and Investment Company Limited, 1987 SCC (1) 424* has held that to derive the true meaning of a statute, it must be read in a whole, regard must not only be given to the text but also to the context,



as it is the context which gives the text its colors. Thus, the court must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs.

4.2.2. Therefore, looking through the glasses of the drafter of the statute, the term "corporate debtor" under Section 3(8) of IBC encompasses within its definition two different entities. At the beginning of the insolvency proceedings, the original promoters and the key managerial personnel of the corporate debtor are the ones who owe debt to the creditors. Once the Resolution Plan gets approved, it is the successful resolution applicant who now owes a debt to other creditors and undertakes to pay them. Thus, the successful resolution applicant becomes the new corporate debtor to the creditors and the Resolution Plan becomes binding on the new corporate debtor as per Section 31(1). Hence, a contravention of the terms of the Resolution Plan would constitute an offence under Section 74(3), and the Applicant states and submits that reliance can also be placed upon the order dated 16 August 2019 passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 442 of 2019, Liberty House Group Pte Ltd. Vs. Mr. Dinkar T. Venkatasubramanian & Ors., and rightly held that the non-implementation of the Resolution Plan constitutes an offence under Section 74 of the Insolvency Bankruptcy Code, 2016.

4.2.3. In view of the above-mentioned facts, it is established beyond doubt that default has been committed by the SRA leading to the contravention and stalling the

implementation of the Resolution Plan approved by this Tribunal.

4.2.4. Accordingly, we refer the contravention of the plan by SRA to IBBI to take appropriate action against the SRA.

5. In view of the foregoing, we direct that the Corporate Debtor be liquidated.
6. Mr. Devang Sampat, having Registration No. IBBI/IPA- 001/IP-P00224/2017-2018/10423, email dpsampat@sampatassociates.in, Mobile - 9820925550 is hereby appointed as the Liquidator as provided under Section 34(1) of the Code.
 - i. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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.
 - v. 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.



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- vi. 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 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.
- vii. 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.
7. In view of aforesaid, IA 108/2024 is allowed and IA 5640/2023 is dismissed. Both IAs are disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)