

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing)

I.A No.46/BB/2022
I.A No. 207/BB/2022
AND
I.A No. 139/BB/2022
IN
CP No. 110/2016
T.P No. 57/2017

IN THE MATTER OF:
For I.A No. 46/BB/2022

Karnataka State Industrial and Infrastructure Development Corporation Limited,

Registered Office at:
Khanija Bhavan, 4th Floor,
East Wing, No. 49,
Race Course Road
Bangalore – 560 001

... Applicant

Versus

1. Bhadravathi Balaji Oil Palms Limited.,

Having registered office at:
No.8, Karehalli, B.H. Road,
Bhadravathi- 577 245.

... Corporate Debtor/Respondent No.1

2. Punjab Wool Combers Limited,

Having registered office at:
GT Road, Dhandari Kalan,
Ludhiana 141 010.

... Resolution Applicant/Respondent No.2

3. LVS Finance Limited

Having registered office at:
396, Maharani Jhansi Road,
Civil Lines,
Ludhiana 141 010.

... Respondent No.3

I.A No. 46/BB/2022
I.A No. 139/BB/2022
I.A No.207/BB/2022

I.A No. 139 of 2022

Punjab Wool Combers Limited

Acting together with

LVS Finance Limited

Registered office at:

Dhandari Kalang Road

Ludhiana Punjab

...

Applicant

Verus

Mr. Vinod Sunder Raman

(Resolution Professional)

Bhadravati Balaji Oil Palms Limited

Having registered office at:

1st Floor, 1433A, 22nd Main,

39th Cross, 4th T Block, Jayanagar,

Bangalore 560 041. ...

Respondent No. 1

Karnataka State VAT Department

Department of Commercial Taxes,

Government of Karnataka,

'Vanijya Therige Karyalaya',

1st Main Road, Gandhinagar,

Bangalore 560 009.

...

Respondent No. 2

For I.A 207/BB/2022

1. Smt. Anantha Lakshmie @ Ananthi Murugavel,

W/o. (Late) Mr. Murugavel,

Aged about 58 years

2. Smt. Gayetri Murugavel

D/o. (Late) Mr. Murugavel,

Aged about 34 years

3. Vihay Ganesh Murugavel

S/o. (Late) Mr. Murugavel,

Aged about 31 years

1 & 3 above named is residing at, Flat No. 1186,

Trellis South, Arcot Road, NSK Salai,

Vadapalani, CXhennai 600 026

And 2 above named is residing at,

No. 45, Vijayanagar 2nd street,

Valasaravakkam, Chennai 600 087.

...

Applicant

I.A No. 46/BB/2022

I.A No. 139/BB/2022

I.A No.207/BB/2022

Versus

M/s. Punjab Wool Combers Ltd.

Acting together with

M/s. LVS Finance Ltd.

Having Office at gt Road,

Dhandari Kalan,

Ludhiana 141 010

... Respondent/ Resolution Applicant

Order delivered on: 31st October, 2023

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

PRESENT:

For I.A. No.46 of 2022 : Shri Hemanth R. Rao, Adv. For Liquidator
For I.A No. 139 of 2022 : Shri. Rakesh Kumar
For I.A No. 207 of 2022 : Shri Ganapathi Bhat, PCS for Applicant

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present application in I.A No. 46 of 2022 was filed on 01.02.2022 by the financial creditor, Karnataka State Industrial and Infrastructure Development Corporation Limited, of the Corporate debtor inter alia praying for declaring that the respondent Nos. 2 & 3 have failed to implement the Resolution Plan and further pass an order for Liquidation of the Corporate Debtor. Subsequently, I.A No. 139 of 2022 was filed on 11.04.2022 by the Successful Resolution applicant, Punjab Wool Combers Limited together with LVS Finance Limited inter alia praying to grant extension in the implementation of the approved Resolution Plan of 6-9 months in view of Covid-19, ailing health condition of the Managing Director of the Applicant Company and delay in settlement with KSIIDC and further direct the respondent No. 2 to defreeze the bank account of the corporate Debtor in view of the approved resolution plan. Further I.A No. 207 of 2022 was filed on 04.04.2022 by the shareholders of the corporate debtor having in total

I.A No. 46/BB/2022

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I.A No.207/BB/2022

51.1111% equity shares of Rs. 10/- each interalia praying to pass an order declaring that the Resolution plan has failed and to re-appoint the Resolution Professional and form a Committee of Creditors by re-initiating CIRP for considering fresh Expression of Interest and subsequently fresh Resolution Plans.

I.A No. 46 of 2022

2. The facts are that the Corporate Insolvency Proceedings against the Corporate Debtor was initiated under section 9 of the IBC vide order dated 22.11.2017 and Mr. Vinod Sunder Raman was appointed as IRP. It is submitted by the applicant in I.A No. 46 of 22 that the Resolution Professional constituted the Committee of Creditors consisting only of the operational creditor, Ruchi Soya Industries Ltd; as the Applicant KSIIDC being a shareholder, was deemed to be a 'related party'. Further, after following the requisite procedures, the RP has invited expression of interest for the Corporate Debtor and Respondent Nos. 2 and 3 submitted the Resolution Plan.
3. It is submitted that under the resolution plan respondent Nos 2 and 3 agreed to “ 22. *Payment to unsecured Financial Crediotr Karnataka State Industrial and Infrastructure Development Corporation:*
 - 22.1. *The amount due to KSIIDC as per the books of account is Rs. 53,77,147/-. The claim admitted by the Resolution Professional is Rs. 19,87,79,689/-*
 - 22.2. *KSIIDC also holds 49% share capital in the Corporate Debtor.*
 - 22.3. *For the current, the entire amount admitted as claim by KSIIDC will be carried forward in the books of the Corporate Debtor as payable and outstanding to KSIIDC.*
 - 22.4. *The amount due to KSIIDC will be settled in due course of time within 3 months of the approval of the Resolution Plan by the Tribunal.*
 - Further 27.2.5. *Payment to KSIIDC –within a period of 3 months (or such other period as mutually agreed with KSIIDC) of approval of the Resolution Plan by the Tribunal.*
4. Hence it is submitted that the Resolution Applicant was liable to clear the Applicant's dues within a period of 3 months from the date of approval of the Plan. This tribunal approved the resolution plan vide

I.A No. 46/BB/2022

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I.A No.207/BB/2022

order dated 28.09.2018. It is further submitted that respondent No. 2 and 3 have taken control of the business/assets of the Corporate Debtor. Subsequently during the period of implementation of the Plan, the Respondent/ Successful Resolution Applicants have approached the Applicant, Financial Creditor with offer of One Time Settlement from 30.11.2018 onwards and the said OTS was approved in terms of letter dated 09.09.2020. The terms of settlement are as follows:

The respondents had to pay OTS amount of Rs. 2,11,41,000/-.

First twenty five percent (25%) of the approved OTS amount of Rs. 52,85,000/- had to be paid within 30 days from the date of issue of OTS communication.

Second twenty five (25%) of the approved OTS amount of Rs. 52,85,000/- had to be paid within 60 days from the date of issue of OTS communication.

Third Twenty five (25%) of the approved OTS amount of Rs. 52,85,000/- had to be paid within 90 days from the date of issue of OTS communication.

Fourth Twenty five (25%) of the approved OTS amount of Rs. 52,86,000/- shall be paid within 120 days from the date of issue of the OTS communication.

The Respondent had to pay Rs. 12/- per share for buying the entire equity shares of Rs. 19,59,996/- held by KSIIDC in the Corporate Debtor. the total consideration of Rs. 2,35,19,952/- had to be paid within 90 days from the date of communication of the OTS Letter

5. It is submitted that inspite of sufficient time being granted to the Respondents, they have failed to comply with the terms of the OTS. Further, after repeated reminders and follow up, the Respondent No. 2 issued cheques bearing No. 240562 for a sum of Rs. 2,35,19,952/- and No. 240561 for a sum of Rs. 2,06,41,000/- dated 04.11.2021 towards the OTS dues. On presentation of the cheques, the same were returned due to insufficient funds in the account of the Resolution Applicant. Similarly, all the other cheques issued by the Resolution Applicants have been dishonoured.

6. It is submitted that, the respondents are not in a position to comply with the terms of the resolution plan. The Applicant, being the largest creditor of the corporate debtor has been prejudicially affected by the respondents non-implementation of the Plan. Moreover, the resolution applicants are in possession and enjoyment of the assets of the Corporate Debtor but have deliberately failed to implement the Plan inspite of the Applicant giving them ample time and opportunity.
7. Pertinently, The Plan was approved on 28.09.2018 and the Resolution Applicant had to pay the dues of the Applicant within 3 months of such approval. However, it has been more than three (3) years since the approval of the Plan and yet the Resolution Applicants have deliberately failed to comply with the Plan. Further, as stipulated in clause 5 (iii)(i) of the approved resolution plan, the Resolution Applicants were required to start the operation of the factory within 9 months from the date of approval of the Plan. As per master data of the company, upon approval of resolution plan, the successful resolution applicants have inducted two directors with effect from 11.10.2018 and taken possession of the company. The Company master data also indicates that the company is “Active non-compliant” status as the new management have not filed any annual financial reports with MCA from the financial year 2018-19 and onwards, for three consecutive financial years. The successful resolution applicants have not started the production activity after taking over the Corporate Debtor. Accordingly, the Resolution Applicants have also failed to comply with the said provision of the approved resolution plan. Hence it is stated that the corporate debtor be liquidated.

I.A No. 139 of 2022

8. I.A No. 139 of 2022 was filed on 11.04.2022 by the Successful Resolution Applicants requesting to grant extension in the implementation of the approved resolution plan interalia stating that the in the course of implementation of the Resolution Plan and in the year 2020, the entire nation suffered from Covid 19 and on multiple occasions, the nation wide lockdown was declared.

9. It is further submitted that the applicant approached KSIIDC for settlement of its dues and the acceptance letter of final settlement was issued by the KSIIDC and a period of four months ending in January, 2021 was granted to settle all the claims of KSIIDC. However, in the month of January 2021, the bank account of the corporate debtor was frozen by the Karnataka State VAT Department. Further, the MD of the S.R.A was diagnosed with Cancer in January 2021; because of which the implementation of the Resolution Plan could not be done.
10. It is submitted that non-implementation of the resolution plan is because of delay in settlement with KSIIDC, which is due to the freezing of the bank account of the Corporate Debtor by Respondent No. 2. Hence it is prayed for extension of 6-9 months in the implementation of the approved resolution plan in view of the circumstance of Covid 19. And further to direct respondent No. 2 to defreeze the bank account of the Corporate Debtor.

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11. Further I.A No. 207 of 2022 is filed on 04.04.2022 by applicants, who are the shareholders of the Corporate Debtor having in total 51.1111% equity shares of Rs. 10/- each, for declaring that the resolution applicants have failed to implement the plan inter alia stating the same reasons as stated by the applicant in I.A 46 of 2022, and to re-initiate CIRP for the corporate debtor. It is further submitted that the Corporate Debtor is still a going concern and there is a very large scope for the company to be revived despite the Resolution plan so approved earlier having failed. Further, if the corporate debtor is liquidated then that would be contrary to the spirit of IBC as it would not result in maximization of the assets of the corporate debtor, but in fact a reduction in the value of the assets of the Corporate Debtor. The applicants also filed synopsis in this I.A vide diary no 3577 dated 05.07.2023, in which the same contention regarding the resolution plan having failed was made, while requesting for the re initiation of CIRP.
12. Heard counsel for the parties and perused the records available.

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13. It is observed by this Tribunal that the resolution plan for the corporate debtor was approved by this Tribunal vide order dated 28.09.2018. And on perusal of the approved resolution plan it is seen from point 27.3 that *“the implementation of the Resolution plan shall be completed within a period of One Year from the date of approval of the Resolution Plan by this Tribunal, and this One year shall be the term of the Resolution Plan”*.
14. It is noticed that in **I.A.No.139/2022** the specific prayer was for extension of 6 to 9 months in the implementation of the approved Resolution Plan. The plan approval was granted by this Tribunal vide Order dated 28.09.2018 and the timeline for the same has been discussed above. However, the Applicant in I.A.No.139/2022 has been granted multiple opportunities as revealed from various Order Sheet entries; specifically, dated 21.12.2022, 25.01.2023, 24.02.2023 and 21.03.2023. On 21.03.2023, two weeks’ more time was granted, failing which, the matter was to be decided on merits. On the next date, explaining that the Promoter of the Company was not well, further time was sought for making compliance and arguing the matter and the case was listed for 24.04.2023. Again, on failure to make compliance, further listing was done for 23.05.2023 for final hearing in the matter.
15. On 23.05.2023, it is noticed that the Applicant again failed to file the synopsis etc., and a letter was filed in the Registry vide Diary No.2589 dated 22.05.2023, in which the SRA has again reiterated the earlier request for extension of time for implementation of the negotiated OTS with KSIIDC, on account of COVID-19 and the Managing Director of the Company having been detected with Cancer. In this letter, a specific request was made that the case may be listed in July, stating categorically that all the payments will be made pursuant to the above referred Resolution Plan/OTS by the 1st week of July. Subsequently, more adjournments were allowed on the same request on 07.06.2023, 26.06.2023 and 05.07.2023. Finally, the matter was heard and reserved for orders in respect of all the I.As on 18.08.2023, and till that time also, no payment pursuant to the Resolution Plan/the OTS entered with the KSIIDC has been made by the SRA in spite of the

above assurance of making the payment by first week of July. Therefore, as against the time extension requested in this I.A for up to nine months, the SRA has availed more than four years after the approval of the Resolution Plan and almost three years after the OTS was entered with KSIIDC. Accordingly, the Applicants' contention in this IA do not have any merits, and the request made in the IA has become meaningless. Since the SRA is unable to implement the Plan even after lapse of so much of time, we are of the considered opinion that the SRA has failed to implement the Resolution Plan; and **I.A.No.139/2022 is hereby dismissed.**

16. **I.A No. 46 of 2022** has been filed by KSIIDC, the Financial Creditor seeking liquidation of the Corporate Debtor. At this juncture, we find it apt to reproduce Sub Section (3) and (4) of Section 33 of the IBC, 2016, which states as under:-

(3) Where the resolution plan approved by the Adjudicating Authority (under section 31 or under sub-section (1) of section 54L) is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interest are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i) (ii), (iii) of clause (b) sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clauses (b) of sub-section (1).

17. The Applicant, KSIIDC has filed its written submission vide dy No 2397 dated 01.05.2023, submitting that the respondents, Successful Resolution Applicant have not filed any reply to the Application filed by the Applicant. Hence, it is clear that the Respondents do not dispute the contents of the Application filed by the Applicant and admit that they have contravened the Resolution Plan.

18. Further it is stated that the respondents have filed I.A No. 139 of 2022 seeking extension of time to comply with the Resolution Plan. Thus, the Respondents admit that they have contravened the Plan but are only seeking extension of time and indirectly, modification of a duly approved Resolution Plan, which is impermissible in law. The Learned Counsel for the Applicant relied on the judgment of Hon'ble Supreme Court dated 13.09.2021 in "*Ebix Singapore Private Limited v Committee of Creditors of Educomp Solutions Ltd*" wherein it was held that "*Permitting the Adjudicating Authority to exercise its residuary powers under Section 60(5) to allow for further modifications or withdrawals at the behest of the Successful Resolution Applicant, would be in the teeth of the decision of this Court in Essar Steel (supra) which held that "section 60(5)(c) cannot be used to whittle down Section 31(1) of the IBC, by the investment of some discretionary or equity jurisdiction in the Adjudicating Authority outside Section 30 (2) of the Code, when it comes to a resolution plan being adjudicated upon by the Adjudicating Authority"*".
19. As discussed supra, it is observed by this Tribunal that the successful resolution applicants have contravened the resolution plan and the same is also brought to our knowledge by one of the Financial creditors. In view of the contravention of the resolution plan, we hereby order the Liquidation of the Corporate Debtor in terms of Section 33(3) of the IBC. The applicant have suggested the name of Mr. M.V Sundarshan as the Liquidator; for which consent was also filed. Accordingly, this Tribunal appoints Mr. M.V Sundarshan having Registration No. IBBI/IPA-002/IP-N00561/2017-2018/11707 as the Liquidator to carry out the liquidation process of the corporate debtor subject to the following terms of the directions:-
- a. That as per Section 33 (5) of the Code and subject to Section 52 of the code, no suit or other legal proceedings shall be instituted against the corporate Debtor;
Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;

- b. That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and
- c. That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator; and
- d. That all the 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 in the Liquidator; and
- e. That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provision of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.
- f. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.
- g. That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.
- h. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75

days and to file regular progress reports as per Regulation 15 thereafter.

20. Accordingly IA No. 46 of 2022 is disposed of.

21. Further, Applicant in **I.A No. 207 of 2022** has prayed for re-initiating CIRP against the Corporate Debtor. In so far as this prayer is concerned, there is no provision under the Code for re-initiation of CIRP. 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*".

22. Further more than four year's period has already lapsed since the approval of the Resolution Plan. Hence, the prayer for re-initiation of the CIRP cannot be granted. Further, I.A No. 46 of 2022 filed for liquidation for Corporate Debtor is allowed today and hence I.A No. 207 OF 2022 is dismissed as infructuous.

23. Accordingly I.A No. 207 OF 2022 is dismissed.

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

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