

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

FREE OF COST COPY

CP (IB) 10/7/HDB/2017

U/s 7 of IBC, 2016

R/w Rule 4 IBC (Application to Adjudicating Authority) Rules, 2016

In the matter of

Indian Bank
66 Rajaji Salai
Royapettah, Chennai-600014
Tamil Nadu

... Petitioner/Financial Creditor

Versus

Kadevi Industries Limited
A-A2, Electronic Complex
Kushaiguda
Hyderabad - 600062... Respondent/Corporate Debtor



Shri Raghu Babu Gunturu
Resolution Professional
T 202, Technopolis
1-10-74/B, Above Ratnadeep Super Market
Chikoti Gardens, Begumpet
Hyderabad - 500 016

... Resolution Professional

Order pronounced on: 23.02.2018

CORAM:

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Parties present

For the Financial Creditor:

Shri V.K. Sajith, Advocate
Shri G. Raghu Babu, RP

For the Corporate Debtor:

Shri C. Srinivasan, CS and
Shri M.B.S. Purushottam, Chairman
of Respondent Company

Per: Ravikumar Duraisamy, Member (Technical)

ORDER

1. The present Company Petition bearing CP (IB) No. 10/7/HDB/2017 is filed by Indian Bank (Financial Creditor) under Section 7 of Insolvency and Bankruptcy Code, 2016, R/w Rule 4 of Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Kadevi Industries Limited (Corporate Debtor). The Adjudicating Authority admitted the case and the date of appointing IRP is 15.03.2017. The CIRP period ends on 11.09.2017 and the same had been extended for further period of 90 days which ends on 11.12.2017.

2. Brief facts, of the case, are as under:-



- (a) Kadevi Industries Limited (Corporate Debtor) was enjoying Rs. 80,00,00,000/- of the fund based and non-fund based limits with the Financial Creditor as a sole banker. In view to expand its business, the Corporate Debtor approached various banks viz SBI, Axis Bank, Corporation Bank and formed a Consortium authorizing the Financial Creditor herein to lead the Consortium as a "LEAD BANK" in order to facilitate financial assistance to the Corporate Debtor. Pursuant to formation of Consortium of Banks, financial assistance to a tune of Rs. 135 crores fund based and non-fund based was provided to the Corporate Debtor. In the year 2009, the Financial Creditor has enhanced the limits from Rs. 135 crores to 175 crores of fund based and non-fund based.
- (b) Indian Bank (Financial Creditor) has to receive Rs.171,09,96,659/- from Kadevi Industries Limited

(Corporate Debtor) which is the default amount including the interest as on 26.01.2017. Hence, Financial Creditor is entitled to claim relief under Section 7 of the IBC, 2016 and the case was admitted on 15.03.2017 and appointed Shri Raghu Babu Gunturu (IBBI/IPA-002/IP-N00025/2016-17/10053) as Interim Resolution Professional of Kadevi Industries Private Limited (Corporate Debtor) on 15.03.2017.

- (c) The Insolvency Resolution Professional (IRP) issued public announcement dt.19th March, 2017 under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016 inviting claims from the Creditors of the Corporate Debtor. The public announcement was made in one national one regional newspaper. Subsequently the applicant had constituted a Committee of Creditors (CoC) of the Corporate Debtor and meeting of the COC held on various dates as given below:



1 st CoC Meeting	..	13.04.2017
2 nd CoC Meeting	..	16.05.2017.
3 rd CoC Meeting	..	16.06.2017
4 th CoC Meeting	..	07.07.2017
5 th CoC Meeting	..	25.07.2017
6 th CoC Meeting	..	24.08.2017
7 th CoC Meeting	..	27.09.2017
8 th CoC Meeting	..	23.10.2017
9 th CoC Meeting	..	23.11.2017
10 th CoC Meeting	..	01.12.2017
11 th CoC Meeting	..	09.12.2017
12 th CoC Meeting	..	11.12.2017

3. In the 1stCoC Meeting Mr. Raghu BabuGunturu was appointed as Resolution Professional with 100% voting.

4. In the 2nd CoC Meeting held on 16.05.2017, the Resolution Professional presented the draft Information Memorandum. Mr. M.S. Prabhakar, Promoter of Kadevi Industries Limited identified Netoil (Singapore) Pte Limited along with its consortium partners (together referred to as Citax Ventures Limited as appropriate investor for Kadevi. They presented the proposal with the following details.

- (a) Netoil through its SPV (Citax Ventures Private Limited) will infuse a lumpsum of Rs. 150 crore towards full and final settlement of all secured lenders and Rs. 30 crore towards working capital.
- (b) Rs. 36 Crore in share capital of Kadevi, by way of subscription of equity shares to acquire 50% + 1 share post investment and Rs. 144 crore by way of External Commercial Borrowings.



The promoter and the Citax Ventures Limited entered into an Investment Agreement dated 05.07.2017 for above proposal.

In the 3rd CoC meeting held on 16.06.2017, Shri M.S. Prabhakar, Resolution Applicant & Promoter of CD and Mr. S.G. Srinivas, Director of Investor, attended the meeting and presented the Term Sheet for the investment of Rs. 180 crore.

6. In the 4th CoC meeting held on 07.07.2017, Resolution plan dated 06.07.2017 submitted by Mr. M.S. Prabhakar, Resolution Applicant and Promoter was submitted to the CoC with increase in settlement amount to Rs. 155 crores.
7. In the 5th CoC meeting held on 25.07.2017, Resolution Applicant has confirmed that such increase in settlement of Rs. 160 crore is not possible.
8. In the 6th CoC meeting held on 24.08.2017, the revised Resolution Plan was submitted to the CoC, wherein it was noted that among

other changes, there was also modification in the amount to be disbursed from the Escrow Account. As per the earlier Plan the Financial Creditors were to receive entire escrow amount i.e. Rs. 27 Crores. But the revised plan offers them Rs. 23.25 crores out of the escrow amount and the balance of Rs. 3.75 crores is to be utilised by the Corporate Debtor towards working capital requirements. But CoC did not approve the plan.

9. Since the stipulated 180 days period for completing Corporate Insolvency Resolution Process was due to expire on 11.09.2017, the Resolution Professional vide Company Application No.154/2017 sought extension of 90 days in addition to 180 days which was granted vide order passed in CA No.154/2017 dated 01.09.2017.
10. In the 7th CoC meeting held on 27.09.2017, approval of Resolution Plan dated 24.08.2017 was given by the CoC subject to bringing in Rs. 27 Crores into Escrow Account for giving final approval.
In the 8th CoC meeting held on 23.10.2017, CoC did not approve the plan as the Escrow amount was pending and suggested certain changes to the plan. The revised draft Resolution Plan as per suggestions of the Indian Bank and the Resolution Professional was circulated to the members of CoC on 20.11.2017.
12. In the 9th CoC meeting held on 23.11.2017, CoC agreed to wait up to 30.11.2017 to receive funds into escrow account and proceed accordingly.
13. In the 10th CoC meeting held on 01.12.2017, the CoC discussed in detail on the remittance and affirmed that they cannot approve the Resolution Plan as the fund of Rs. 27 crores is not received in escrow bank account as per Resolution Plan and desired to wait up to 03.12.2017 for escrow amount. Further the Resolution Professional apprised the CoC on the ineligibility of Mr. S.



Prabhakar, as Resolution Applicant consequent to notification of Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 dated 23.11.2017.

14. In the hearing held on 08.12.2017, the Learned Counsel for the Financial Creditor and Company Secretary of Kadevi Industries Limited submitted that efforts are on to transfer funds from Deutsche Bank, New York to Escrow Account opened with ICICI Bank Khairtabad Branch and all the parties are in constant touch with the Bank for transfer of the funds and because of some glitches, transfer of funds is getting delayed. It is also stated that all the parties are trying hard and following it up with the above Bank. The Learned Resolution Professional submitted that the 11th CoC meeting will be held on 09.12.2017 finally to discuss and take a final call to submit the Resolution Plan on 11.12.2017, i.e. the last day of 270th day.



In the 11th CoC meeting held on 09.12.2017, CoC decided to approve and file resolution plan, subject to Resolution Applicant providing statement of account from Investor's Bank confirming remittance of money into escrow account.

16. In the 12th CoC meeting held on 11.12.2017 i.e. the last date of CIRP, the Resolution Professional after some modifications to the Resolution Plan, presented the same to the CoC. The CoC has approved the plan, subject to receipt of money into escrow account by 21.12.2017.
17. Subsequently, in the hearing held on 03.01.2018, the Resolution Professional submitted a memo dated 26.12.2017 confirming that the money has not come into the account of ICICI Bank, Khairtabad Branch. The Resolution Professional vide affidavit dated 03.01.2018 submitted to the Adjudicating Authority that the condition placed by the CoC on remittance of Rs.27 crores in to

escrow account is
from CoC.

not met, there is no approved Resolution Plan

18. The Resolu

submit

tion Professional filed an Affidavit dated 03.01.2018

escr

ing that there is no remittance of Escrow amount in to the

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ow account from Citax Ventures Limited, the Investor, till

ate. The e-mail dated 2nd January, 2018, from ICICI Bank

confirming that it has not received the escrow amount. It is

further submitted that the condition placed by CoC on remittance

of Rs.27 Crore in to escrow account on/before 21st December,

2017, is not met and hence there is no approved Resolution Plan

from CoC, pursuant to the provisions of Section 30 of the

Insolvency and Bankruptcy Code, 2016, during the Corporate

Insolvency Resolution Process period. The Resolution

Professional also submitted the email correspondence between

Banks regarding transfer of USD 5.0 million to the Escrow

Account.



19.

The 13th CoC was called for on 4th January, 2018, but as the

members of CoC were preoccupied, members could not present

for the meeting. In the hearing on 5th January, 2018, Mr. M.B.S.

Purushottam, Chairman, Kadevi Industries Limited was

personally present at the hearing and submitted his views on

status of escrow amount before the Adjudicating Authority and

sought time of two more days for fresh remittance initiated by

investor. He also pleaded that liquidation would adversely impact

the employees of Kadevi. The Learned Counsel for the Financial

Creditor / RP submit that the investor has initiated new transfer of

funds (EUROs) equivalent to 5 million US Dollars and the same

is expected to be credited/transferred into Escrow A/c opened

with ICICI Bank, Khairtabad Branch, Hyderabad and since the

Respondent Company is having more than 300 employees, prayed

for granting one more opportunity as last and final and Resolution

Resolution Process under Chapter II shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-Section (4)

2. Therefore, in accordance to the above provisions, this Hon'ble Authority is prayed to pass the order u/s 33(1) of the Code for liquidation and also pass orders under Section 34(1) of the Code for appointment of Liquidator.
3. Therefore the Applicant has no option but to file Company Application before this Hon'ble Authority for seeking the above reliefs as prayed for.
4. Mr. Raghu Babu Gunturu, Resolution Professional is recommended to be appointed as Liquidator pursuant to section 34 of Insolvency and Bankruptcy Code, 2016, in the CoC meeting held on 9th January, 2018.



22. Accordingly, by exercising the powers conferred on the Adjudicating Authority under Section 33(1) of the IBC Code, we pass the following orders:

- i) We pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in chapter 3 of IBC Code 2016, Issue a Public announcement stating that the Corporate Debtor is in liquidation, and a copy of this order to be sent to the Registrar of Companies, Hyderabad, State of Telangana where the Corporate Debtor is registered.
- ii) Subject to Section 52 of IBC, no suit (or) other legal proceedings shall be instituted by or against the Corporate Debtor "provided that suit or other legal proceedings may be instituted by the liquidator on behalf of the Corporate Debtor with a prior approval of the Adjudicating Authority".

- iii) As Per Section 34 of IBC on the appointment of the Liquidator, all powers of the Board of Directors, key managerial personnel and the partners of the Corp. Debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.
- iv) As per Section 34 (3) 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 provisions of Section 19 shall apply.
- v) The fee to be paid to the liquidator is as per Section 34(8) and (9) of IBC 2016.
- vi) The liquidator will be strictly governed by Section 35 to 50, 52, 53 and 54 of IBC code 2016 as amended from time to time.
- vii) The Liquidator appointed will be strictly governed by the Insolvency and Bankruptcy Board of India (Liquidation process) Regulation, 2016 as amended from time to time.
- viii) The liquidator has to submit various reports to the Adjudicating Authority in the manner prescribed under IBC code 2016 and the above referred Regulation 2016.
- ix) As per Regulation 6 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the liquidator has to maintain various registers, books of accounts of the Corporate Debtor.
- x) As per Regulation 7, a liquidator may appoint professionals to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.
- xi) The liquidator shall make public announcement in Form-I of Sch.2 within 5 days from his appointment as per Regulation 12. The public announcement shall



- 1 (a) Call upon stakeholders to submit their claims as on the liquidation commencement date; and
- (b) Provide the last date for submission of claim, which shall be thirty days from the liquidation commencement date
2. The announcement shall be published;
 - a) in one English and one Regional language newspaper with wide circulation at the location of the Registered Office and principal office, if any, of the Corporate Debtor and any other location where in the opinion of the liquidator, the Corporate Debtor conducts material business operations;
 - b) on the website if any, of the Corporate Debtor; and
 - c) on the website, if any, designated by the Board for this purpose.



23. As per Regulation 13 the liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details/information as mentioned in the said regulation.

- a) As per Regulation 15, the Liquidator shall submit various progress reports regularly to the Adjudicating Authority
- b) The Liquidator should strictly follow all the provisions of the IBC code 2016 and Regulation 2016 while exercising his powers, functions, duties, various process of liquidation and distribution of assets, mode of sale etc.
- c) Though the COC has recommended Mr. G. Raghubabu as Liquidator, considering the entire events, handling the entire CIRP, considering the liquidation of assets of corporate



debtor worth more than Rs.69 crores, the process involved in the liquidation, powers and duties of liquidator, liquidation estate, powers of liquidator to access information, consolidation of claims, verification of claims, determination of valuation of claims, preferential transaction, avoidance of undervalued transactions, distribution of assets, dissolution of corporate debtor etc., we are also of the prima facie view that the performance of the Resolution Professional is not upto the mark and not satisfactory and he has also not assisted the Adjudicating Authority properly/adequately, which was also recorded in during the hearing held on 04.01.2018. Therefore, by exercising the powers conferred upon the Adjudicating Authority, we hereby appoint Mr. G. Satyanarayana Murthy, Chartered Accountant (bearing Registration No.IBBI/IPA-001/IP-P00177/2017-18/10356) as Liquidator. The fee to be paid to the liquidator is as per Section 34 (8) & (9) of IBC 2016 and as amended from time to time. He is appointed in the interest of all the stakeholders especially employees, secured creditors, unsecured creditors, various Government Authorities etc.

- d) The RP is directed to extend full cooperation/assistance to the Liquidator and to submit all the records/documents.
- e) The Resolution Professional, officials of the Financial Creditors/Banks, officials of the Company could not clarify the inordinate delay in transfer of funds from Deutsche Bank AG in Frankfurt to Deutsche Bank AG in USA and to Escrow Account of ICICI Bank, Khairatabad Branch in Hyderabad (wire/swift transfer). The officials of Banks

also not explained/convinced the delay in transfer of funds. Since the first transfer of funds was not successful, the second transfer of funds initiated from Frankfurt to India through Euros equivalent to USD 5 millions have also not been received/credited into the ICICI Bank, Khairatabad Branch Escrow Account. In spite of completion of 270 days as on 11.12.2017, still the money from the Investor/Resolution Applicant i.e. Citax Ventures Limited is not received. However, all the financial creditors, officials of Corporate Debtor, Resolution Professional prayed to grant few additional days since the money is expected at any time. In spite of completion of the extended period of 270 days and in the absence of non-receipt of money, the Resolution Plan is failed.



- f) In the wake of the recent developments taking place/unfolding in the Banking Sector, none of the Banks/officials appeared before the Tribunal could justify and provide sufficient reasons for inordinate delay for swift/wire transfer but merely affirmed the Bench that the funds are expected any moment. This was the unanimous stand of all the Banks, Officials, Resolution Professional and Corporate Debtor in the instant case. However, surprisingly, even today there is no information about receipt of funds in Escrow Account of ICICI Bank, Khairatabad Branch.
- g) All the parties appeared before the Tribunal informed that ordinarily the Swift/Wire transfer will not take more than 48 hours. In general, the Swift Payment will take 1 to 3 working days to reach the destination. However, in the



instant case the reasons best known to the parties, the money has not been received/come into the Escrow Account. This implies that all the parties involved in the entire CIRP process are hand in glove and made untruthful/wilful false submissions to the Adjudicating Authority. Therefore, the Adjudicating Authority has taken the issue seriously and imposes a cost of Rs.1,00,000/- (Rupees One Lakh only) each on the Financial Creditors/CoC and on the Corporate Debtor and the cost to be paid to the "Prime Minister's Relief Fund" within 3 (three) weeks from the date of receipt of copy of this order.

- h) Further, Resolution Professional is warned to be careful in all his future assignments. Also to send Strong signals to all the Resolution Applicants to be genuine/truthful/adequate participation in the entire CIRP, the Resolution Applicant in this case is also warned to be careful in all his ventures/participation.

Post the matter for submitting progress report of the Liquidator on 20.04.2018.

Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

G. Anantha Lakshmi
Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
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केस संख्या
CASE NUMBER *CP(13)No:10/7/HQ/2017*
निर्णय का तारीख
DATE OF JUDGEMENT *23-2-2018*
प्रति तैयार किया गया तारीख
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