

(2023) 06 NCLT CK 0097

In the National Company Law Tribunal

Case No : IA No. 1281 of 2022 And IA No. 1570 of 2022 In CP(IB) No. 3641 of 2018

Bank of India Vs Rajabhau B Shinde ?

Date of Decision : 28-06-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 33, 33(1)(a), 33(3)
Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 — Regulation 4, 15
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 — Regulation 36B(4A)

Citation : (2023) 06 NCLT CK 0097

Hon'ble Judges : H.V. Subba Rao, Member (J); Anu Jagmohan Singh, Member (T)

Bench : Division Bench

Advocate : Apurva, Samaksh Goyal

Final Decision : Disposed Of

Judgement

Anu Jagmohan Singh, Member (Technical)

IA No. 1281 of 2022

1. The present Application is being filed by Bank of India, sole Financial Creditor and sole CoC member. The present application is filed seeking following prayers:

- a) To pass appropriate Order of Liquidation of the Corporate Debtor under Section 33(3) of the Code,
- b) To order and declare that the performance security amount of Rs.75,00,000 deposited by the Successful Resolution Applicant be forfeited on contravention of Resolution Plan.
- c) To pass any such orders as this Tribunal may deem fit and proper.

Submissions Advanced by the Applicant and Brief Facts of the case:

2. The Applicant submits that this Tribunal has approved the Resolution Plan

submitted by the successful resolution Applicants/Respondents vide order dated 25.03.2021, the said order is annexed as Exhibit "A"

3. The CIRP of the Corporate Debtor was initiated vide order dated 13.08.2019. Mr. Laxman Digambar Pawar was appointed as Interim Resolution Professional ("IRP"). The CoC in its meeting held on 31.10.2019 replaced the IRP with Mr. Deepak Panpaliya as the Resolution Professional of the Corporate Debtor. It is further submitted that the CIRP of the Corporate Debtor was extended to 24.08.2020 vide an order of this Tribunal dated 26.02.2020.

4. The Resolution Professional ("RP") published an advertisement for inviting expression of interests from prospective Resolution Applicants. In response to the invitation, RP received ("EOI's") from the Respondent Nos, 1 and 2 herein. The Respondents being the sole Resolution Applicants submitted their Resolution Plan to CoC on 11.07.2020.

5. In the 9th CoC meeting, the RP and the CoC negotiated with the Respondents with regard to the pay-out being offered to the Secured Creditor, the Respondents agreed to increase the pay-out from Rs.10,00,00,000/- (Rupees Ten Crore only) to 10.5 Crore out of the over-all plan outlay of the Rs. 15,00,00,000/- (Rupees Fifteen Crore only). Further, the CoC also requested the Respondents to provide source of funds documents for obtaining the internal sanction. The Respondents obtained the said documents and the same was considered by CoC.

6. Finally, in the 12th CoC meeting held on 27.11.2020, the Respondents informed the CoC that they have deposited part amount towards performance security and the rest of the amount will be arranged in 7 days. Accordingly, the Resolution Plan was put-up before the CoC for consideration and the same was unanimously approved by voting of 100% the voting share. Hence, the RP issued letter of intent to the Respondents on 30.11.2020.

7. The Corporate Debtor is registered as a Medium Small Micro Enterprise ("MSME"). The Respondent No. 1 is the erstwhile Director-cum-Promoter of the Corporate Debtor. The tenure of the Resolution Plan submitted by the Respondents was for a period of 12 months. The Resolution Plan consisted of a total financial outlay of Rs.15,00,00,000/- (Rupees Fifteen Crore Only). The fair value of the Corporate Debtor was Rs.10,54,78,834/- (Rupees Ten Crore Fifty-Four Lakh Seventy-Eight Thousand Eight Hundred and Thirty-Four only). The Liquidation value was Rs.6,11,64,690/- (Rupees Six Crore Eleven Lakh Sixty-Four Thousand Six Hundred and Ninety only). The summary of the Resolution Plan is reproduced hereinbelow for reference.

(Amount in lakhs)

Sr.

No.

Particulars

Claims Received

Claims Not Received

Claims Admitted

Proposed

Amount

% of Claim

1

CIRP (Going concern cost to extent unpaid)

125

100%

2

Financial Creditors:

a. Secured

1914.1

1914

b. Unsecured

0

Sub Total 2

1914.1

1914.1

1050

55%

3

Workmen and Employees Dues

a. Salary & wages

3.12

3.09

3.09

100%

b. Salary and wages

12.62

12.62

100%

c. PF and EPF dues

1.69

1.69

100%

Sub Total 3

3.12

14.31

3.09

17.4

100%

4

Operational Creditors :

a. Creditors

(other than b to f

3380.17

752.76

90.33

12%

b. Creditors (claim not received)

304.27

36.51

12%

c. DC of Central

Tax Div III

184.6

184.6

22.15

12%

d. Dept of GST

326.1

326.1

39.13

12%

e. TDS

22.04

22.04

2.64

12%

f. Income Tax

0

39.56

0

4.75

12%

Sub Total 4

3912.91

343.83

1285.5

195.52

12%

5

Contingent

Liabilities (Prov)

12.08

6

Working capital

100.00

Total amount

5830.13

3202.69

1500.00

8. The Applicant submits that the Resolution Applicants/Respondents had obtained a sanction letter dated 26.11.2020 issued by one Market Purse Global Corporation, for an amount of Rupees Twenty-Eight Crores to be sanctioned as a loan against property in favour of the Corporate Debtor. The Respondents have also submitted performance security, in form of direct deposit with the CoC for an amount of Rs.75,00,000/- (Rupees Seventy Five Lakh).

9. This Tribunal being satisfied with the Resolution Plan as approved by the CoC allowed IA No. 126 of 2021 filed by the RP for approval of Plan vide Order dated 25.03.2021.

10. Further, the Resolution Professional in order to supervise the implementation of the Resolution Plan formed a monitoring committee comprising of three members namely---

a) Deepak Panpaliya, RP and Chairman of the Committee.

b) Smt. Amola Darekar, Representative of Bank of India, the Applicant herein.

c) R.B. Shinde, Respondent No. 1 and representative of the Resolution Applicants as well as representative of Corporate Debtor.

11. The Applicant submitted that in terms of the Resolution Plan the Respondents were to infuse an amount of Rs. 2,25,00,000/- (Rupees Two Crore Twenty-Five Lakh only) within a period of 90 days from the date of the approval Order. Thereafter, the amount was to be distributed to the creditors within a period of 6-12 months from the Plan approval Order. The Resolution Applicants vide letter dated 25.06.2021 communicated the progress towards arranging the necessary funds to the monitoring committee.

12. The Respondents had obtained sanction letter dated 26.11.2020 from one NBFC namely Market Purse Global Corporation, the said sanction was initially valid for a period of 30 days and extendable up to 60 days. However, the Respondents communicated to the monitoring committee vide letter dated 25.06.2021 that the sanction letter was not extended by the said NBFC.

13. The Respondents further informed the monitoring committee that they had approached a co-operative Bank in Pune for fresh sanction of funds and they are awaiting the sanction letter. Apart from this, the Respondent informed the CoC that they are expected to receive Rs.5,00,00,000/- (Rupees Five Crore only) from a settlement which is to be executed before the Hon'ble Magistrate Sessions

Court, Kalyan, however, due to Covid-19 the same could not be done.

14. The Resolution Applicants/Respondents once again assure the Applicant that they are able to make financial arrangement of Rs. 15,50,00,000/- (Rupees Fifteen Crore Fifty Lakh only) from one Finlander Capital Consultancy Private Limited and they have obtained a letter of intent dated 20.04.2021. However, the Respondents once again cited that due to Covid-19 due diligence could not be carried out.

15. The Respondents requested monitoring committee for an extension of 15 days from the date of receipt of the letter i.e., 25.06.2021 to make necessary arrangement of Rs.2,25,00,000/- (Rupees Two Crore Twenty-Five Lakh only) and assured that they will not default on payment of instalments which became due and payable within a period of 6 months from the date of approval of the Plan.

16. The RP appraised this Tribunal by filing a Progress Report dated 06.07.2021. The Respondents vide e-mail dated 14.07.2021, once again requested additional time to arrange for necessary funds and informed that they have received in principle sanction from one of the NBFC's. Subsequently, the meeting of the monitoring committee was held on 11.08.2021 in the said meeting the Respondents were asked to provide a copy of the sanction letter promised vide e-mail dated 14.07.2021. However, the Respondents vide another e-mail dated 12.08.2021 stated that they will endeavor to clear the outstanding dues before 15.09.2021 and provided clarifications on the various proposal received.

17. The Applicant submitted that despite granting the Respondents sufficient time since June 2021, the Respondents have failed to provide any concrete evidence of receipt of funds and also failed to deposit any amount in Escrow account. In the aforesaid backdrop, the Resolution Professional being the Chairman of the Monitoring Committee vide e-mail dated 31.08.2021 directed the Respondents to provide a concrete Plan for implementation of the Resolution Plan within 48 hours failing which the process will be concluded. The said communication from July 2021 to August 2021 has been conveyed to this Tribunal by the RP vide 2nd Progress Report dated 25.09.2021.

18. The Applicant submits that the Respondents have failed to comply with the timelines prescribed under the Resolution Plan and have failed to infuse the funds. Therefore, the Applicant in its capacity as the sole financial creditor has filed the present Application seeking liquidation under Section 33(3) of the Code.

19. The Applicants submits that the Respondents have contravened the Resolution Plan which has affected the interests of the Applicant prejudicially. Further, the Applicant submits that in terms of Clause 11.1 of the Resolution Plan it was entitled to receive an amount of Rs.10,50,00,000/- from the Respondents within a period of 12 months from the date of the plan approval Order. Further, Clause 11.2 stipulates the methodology for payment of the aforesaid amount to the Applicant. The Respondents have neither followed the said methodology nor have they deposited any amount in the Escrow account. Moreover, the Applicant

submits that in terms of Clause 13.3 of the Resolution Plan the respondents were to make payment of Rs.6,96,69,000/- to the Applicant within a period of 6 months from the date of the approval order. Hence, the Applicant was entitled to receive the said amount on or before 25.09.2021. Since no amount has been received by the Applicant, Respondents herein are in breach of the Resolution Plan.

20. Apart from the above, The Applicants have to the attention of this bench that the Respondents have failed to pay the CIRP costs and dues of other creditor and workmen/employees mentioned in the Application.

Submissions advanced by the Respondents vide Affidavit-in-Reply dated 25.07.2022 and IA No. 1570 of 2022 filed by the Resolution Applicants

21. The Resolution Applicants/Respondents herein have filed IA No. 1570 of 2022 seeking extension of time for compliance of the Resolution Plan approved by this Tribunal vide the Order dated 25.03.2021 for a further period of 12 months from 25.03.2022 on such terms and conditions as this Tribunal may deem and proper.

22. At the outset, the Respondents in their Reply dated 25.07.2022 submit that averments made in IA No. 1570 of 2022 should be considered as part and parcel of their reply for the sake of brevity and to avoid repetition.

23. The Resolution Applicants/Respondents submit that that have taken immense efforts for implementing the resolution plan and have simultaneously taken us through the correspondence exchanged with multiple financial institutions and the Resolution Applicants for sourcing of funds. However, the Respondents submits that the economy and market was badly effected due to Covid-19 pandemic, due to which the there was a delay in sourcing funds by the Respondents.

24. The Respondents submits that they approached NBFC namely HHBS MH India Nidhi Limited for finance and the said NBFC has granted in principal sanction of finance facilities to the tune of Rs.20 Crore vide letter dated 08.10.2021. Further, HHBS MH India Nidhi Limited by letter dated 22.11.2021 informed Bank of India that they will disburse the loan payout in terms of Order dated 25.03.2021.

25. The Respondent submits that HHBS MH India Nidhi Limited has on affidavit affirmed on 29.01.2022 stated about disbursal and sanction of loan of Rs.20 Crores to the Respondents. Further, the Respondents have approached Tata Capital Housing Finance Limited for finance and Tata Capital Housing Finance Limited by letter dated 21.03.2022 has granted in principal sanction loan of Rs.20 Crores. The Respondents submits that the unit of the of the Corporate Debtor has potential to do business of Rs. 30 to Rs.40 Crore every year, hence they should be granted an extension of 12 months for compliance of the Resolution Plan.

Findings:

26. We have perused the records and considered the submissions advanced by the parties.

27. It is evident that the term of the Resolution Plan was 12 months. The Resolution Plan was approved by this Tribunal vide Order dated 25.03.2021 and a period of 12 months was available with Resolution Applicants to pay the Creditors.

28. The reasons cited by the Resolution Applicants for delay in implementation is that they could not procure funds from financial institutions due to Covid-19 pandemic. Further, we have perused the correspondences annexed by the Resolution Applicants with multiple financial institutions for sanction of funds. The Resolution Applicants have merely procured sanction letters and nothing really has materialized as no funds were sanctioned by any of these institutions.

29. In fact vide letter dated 28.02.2022 HHBS MH India Nidhi Limited sought extension of time till 21.03.2022 for disbursal of loan amounting Rs.20 Crore to Mr. Rajabhau Shinde i.e. the Resolution Applicants. However, no funds were received by Bank of India, they had no option but to file an Application for Liquidation of the Corporate Debtor under Section 33 of the Code. The CIRP was initiated on 13.08.2019. The Resolution Plan submitted by the Resolution Applicants was approved on 25.03.2021, we note that considerable time has elapsed since the approval of Resolution Plan and any further delay in ordering Liquidation of the company would diminish the value of assets of the Corporate Debtor, thereby jeopardizing the interest of the stake-holders.

30. Therefore, we hold that reasons cited by the Resolution Applicants are nothing but after-thoughts and merely moonshine defenses raised by the Resolution Applicants to evade the consequences of failure in implementation of the Resolution Plan.

31. In the aforesaid backdrop of facts, this bench has no option but to Liquidate the Corporate Debtor. The performance security to the tune of Rs.75 lakh shall be forfeited in terms of Regulation 36-B(4A) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

32. Since, the consent of the erstwhile RP to act as the Liquidator is not placed on record. Therefore, we hereby appoint Mr. Anil Seetaram Vaidya, having IBBI Registration No IBBI/IPA-002/IP-N00067/2017-18/ 10145 as the Liquidator of the Corporate Debtor Trans-Fab Power India Private Limited.

33. This order for liquidation shall 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.

34. The fees payable to the Liquidator shall be in accordance with Regulation 4 of the IBBI (Liquidation Process) Regulations, 2016.

35. The Liquidator shall submit progress reports as per Regulation 15 of the IBBI

(Liquidation Process) Regulations, 2016.

36. The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.

37. With the aforesaid observations Application IA No. 1281 of 2022 in CP(IB) No. 3641 of 2018 u/s. 33 (1) (a) stands disposed of as Allowed. IA No. 1570 of 2022 in CP(IB) No. 3641 of 2018 is, therefore, dismissed as rejected. Order Accordingly.