



SL. No.3

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 12.09.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO	IA (IBC)/1578/2022 in CP(IB) No.666/7/HDB/2018
NAME OF THE COMPANY	Splendid Metal Products Ltd
NAME OF THE PETITIONER(S)	Punjab National Bank
NAME OF THE RESPONDENT(S)	Splendid Metal Products Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1578/2022

Orders pronounced, recorded vide separate sheets. In the result, this application is disposed of.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

I.A. No.1578 of 2022 in
IA No.981 of 2020 in
C.P. (IB) No. 666/7/HDB/2018

In the matter of:

M/S. PUNJAB NATIONAL BANK

vs.

M/S. SPLENDID METAL PRODUCTS LIMITED

Between:

Mr. T. Sathisan,
Monitoring Committee Chairman of
M/s. Splendid Metal Products Limited,
A-1001, Mahindra Splendor,
LBS Marg, Bhandup,
Mumbai – 400 078.

....Applicant

And

M/s. Invent Assets Securitisation and
Reconstruction Private Limited,
A-903, Building No.125,
Chembur Ratnadeep CHS,
Tilaknagar, Chembur,
Mumbai – 400 089.

....Respondent

Date of Order: 12.09.2024

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel present:

For the Applicant : Mr. T. Ravi Chandran

For the Respondent : Ms. Aakanksha Nehra



Per : Bench
ORDER

1. This application has been filed under Section 33(3) of IBC¹ by the Chairman of the Monitoring Committee & Erstwhile Resolution Professional (**RP**) of **M/s. Splendid Metal Products Limited**, the Corporate Debtor (**CD**), seeking Orders for Liquidation of the CD, as the Resolution Plan approved by this Tribunal has not been implemented by the Successful Resolution Applicants (**SRAs**).
2. In this case, on an application filed under Section 7 of IBC by the Punjab National Bank, the Financial Creditor, the CD was admitted into CIRP² by this Tribunal vide Order dated 04.04.2019 and the Applicant herein was appointed as an Interim Resolution Professional (IRP). Pursuant to which, the IRP issued public announcement on 17.04.2019 calling upon the creditors of the CD to submit their proof of claim, and also appointed two valuers to value the assets of the CD.
3. The Committee of Creditors (**CoC**) in its 1st meeting held on 15.05.2019, resolved to appoint the Applicant IRP as Resolution Professional (RP). The RP with the approval of CoC, issued Form G, on 15.07.2019 inviting Expression of Interest (**EoI**) from the Prospective Resolution Applicants (PRAs). The RP received 4 EoIs and the list of PRAs was approved by CoC in its meeting held on 21.08.2019. The RP had prepared the Information Memorandum and the same was circulated among CoC members vide email dated 10.06.2019.

¹ Insolvency and Bankruptcy Code, 2016

² Corporate Insolvency Resolution Process



4. The Applicant appointed the Transaction Auditor namely NBS & Co, to conduct Transaction Audit of the CD and found that there was no transaction falling under sections 43, 45, 50 & 66 of the Code.
5. The Respondent along with Antanium Holdings Pte Ltd jointly submitted their final Resolution Plan³ on 28.09.2020 and the same was approved by CoC with 91.1% voting share, which was also approved by this Tribunal vide Orders⁴ dated 08.04.2021. In terms of the Resolution Plan, it was imperative on part of the Resolution Applicants to make the payments under Clause 1.2(v) of the Resolution Plan, which is extracted hereunder:

Instalments	1 st	Rs 60,00,00,000	On or before the expiry of 90 days from the effective date.
	2 nd	Rs 50,00,00,000	At the completion of 12 months from the effective date.
	3 rd	Rs 50,00,00,000	At the completion of 24 months from the effective date.
	4 th	Rs 50,00,00,000	At the completion of 36 months from the effective date.
	5 th	Rs 62,00,00,000	At the completion of 48 months from the effective date.
	6 th	Rs 62,00,00,000	At the completion of 60 months from the effective date.
	7 th	Rs 113,10,60,000	At the completion of 66 months from the effective date.

6. The Resolution Applicants paid the first instalment of Rs 60 Crores in accordance with the Plan, but committed default in making the payment of 2nd instalment of Rs 50 crores which fell due on 18.06.2022. Even after expiry of 90 days cure period which was ended on 16.09.2022, 2nd instalment was not paid. In this connection, the

³ Pg 43-164 of the application.

⁴ Order Dated 08.04.2020 in IA/981/2020 at Pg 165-176 of the application.



Applicant RP has drawn our attention to that part of the Resolution Plan which defines the term 'Event of Default in the following manner:

“Event of Default - Shall be deemed to occur if the Resolution Applicant(s) defaults in making payments to the Financial Creditors after expiry of 90 days from the timelines mentioned in Clause 1.2(v).”

7. It is submitted that, the Respondent being the Co-Applicant did not take necessary steps for reviving the business operations of CD as per the approved Resolution Plan. In these circumstances, the Applicant called upon the Respondent vide his letter dated 19.11.2022 to make the payment of 2nd instalment and to take necessary steps for revival of the CD.
8. In the meanwhile, the Co-Resolution Applicant Antanium Holdings Pte Ltd filed an application under the Creditor's voluntary winding scheme under the Laws of Singapore and a Liquidator was appointed.
9. In the 4th and 5th Monitoring Committee meetings held on 29.08.2022 & 03.09.2022 and on 19.09.2022, the issue with regard to the non-implementation of Resolution Plan by the Resolution Applicants were discussed in detail.
10. It is submitted that the circumstances set out as above would reveal that, the Resolution Applicants have acted in utter disregard of the terms and conditions of Resolution Plan by (i) not making payment as contemplated under the Resolution Plan, (ii) by not reviving the business of the CD as contemplated in the Resolution Plan and (iii) Co-Resolution Applicant has filed an application under the Creditor's voluntary winding scheme under the Laws of Singapore—and a Liquidator was appointed, as set out in the preceding paragraph.



11. It is submitted that, in terms of Section 33(3) of the Code, where the Resolution Plan approved by the Adjudicating Authority is contravened, any person other than the CD, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a Liquidation Order. Therefore, in as much the resolution plan approved by this Tribunal has not been implemented by the Resolution Applicants, it is necessary for the Applicant to file an application, seeking liquidation of the CD.
12. It is further submitted that, as the Co-Resolution Applicant is under liquidation, the Applicant restricts adding Invent Assets Securitization and Reconstruction Private Limited as party Respondent to the present application and reserves his right to file appropriate application against the company under liquidation if necessary. Needless to state that the payment of Rs.60 crores made by the Respondents is liable to be forfeited, it is asserted.
13. In view of the above, in the interest of all the stakeholders, the Applicant is filing the present application as authorized by the Monitoring Committee in its 8th meeting held on 03.12.2022, and seeking orders for liquidation of the CD.

Respondent's Counter:

14. It is averred that, as on 30.09.2021, the Resolution Applicants had completed the payment of first instalment of Rs 60 crores in accordance with the Resolution Plan. Further, the Respondent and the Co-Resolution Applicant have faced various impediments while implementing the Resolution Plan. These include:



- a. A transaction of the CD with Ramco Cement Limited, who had inadvertently transferred an amount of Rs 95,01,366.54 on 29.07.2022 payable to CD, to the dormant account of the CD in Bank of Baroda. This amount has not been returned by Bank of Baroda despite sustained follow-up, resulting in filing of IA No. 1491 of 2023, which is pending.
- b. Telangana State Southern Power Distribution Co. Limited (TSPDCL) wrongfully failing to supply electricity to the CD's principal Plant, and thereby blocking its principal source of revenue. Hon'ble High Court of Telangana is stated to have granted interim directions for reconnection of electricity vide Order dated 10.01.2024. However, despite the said directions the electricity supply has not yet been provided.
- c. In contravention to the approval order passed by this Tribunal dated 08.04.2021, the Commercial Tax Department of Tamil Nadu issued Orders for the attachment on one of the CD's properties, also causing hindrances in implementing of the Resolution Plan.
- d. The Tamil Nadu Generation and Distribution Corporation Limited despite accepting the payments made to it in accordance with the said Resolution Plan, has refused to restore power to the Re-rolling unit located at Manjakarni village, Uthukottai Taluk, Tamil Nadu..
- e. Issues with regard to a leasehold property held by the CD belonging to Sri Ganga Steel Enterprises Pvt Ltd (Ganga Steel), which was also admitted into CIRP during the pendency of the



resolution plan of the CD herein. It is claimed that the developments post the CIRP of Ganaga Steel impeded implementation of the resolution plan that was approved for the CD by this Authority.

- f. Matters regarding Handum Industries Ltd, with which the CD had executed a slump-sale agreement in 2012. This company also was reportedly admitted into CIRP in March 2020 and later approved for liquidation in June 2021. The issues arising from the handing over of the property covered in the slump-sale are claimed to have come in the way of implementation of the resolution plan for the CD.

15. It is thus submitted that, in the light of these issues, the Respondent Resolution Applicant had filed IA 540 of 2023, seeking for postponement of the timelines to pay the instalments that have become due. It is stated that in the Monitoring Committee meetings, all these issues have been discussed and deliberated and a conclusive solution was yet to be provided by them.
16. It is asserted that the SRA is committed to meet its obligations and had offered to deposit a sum of Rs 50 crores without prejudice to its rights and contentions. However, due to certain unforeseen circumstances, the complete amount could not be deposited in a timely manner. Nevertheless, the SRA had deposited a sum of Rs 10 crores on 15.02.2024 and the balance was also to be deposited at the earliest possible. It is submitted that grave efforts have been made by the SRAs in reviving the affairs and hence, this is not a case for orders of liquidation being passed.



17. It is pleaded that, there are catena of judgements which state that revival of CD and to make it a going concern is one of the objectives of the Code, and that every attempt should be made to revive the CD with liquidation being the last resort. Hence, an appropriate opportunity deserves to be granted in the current case and the Monitoring Committee deserves to be directed to provide a conclusive resolution to the issues being faced by the Successful Resolution Applicants. It is further prayed that, no amounts should be forfeited.
18. With these submissions, the Respondent SRA seeks dismissal of this application.

Decision:

19. We have heard the Learned RP and perused the records. The Resolution Plan in this case was approved on 08.04.2021, which required payment of Rs 60 crores by the SRAs within 60 days. This was done. However, thereafter, the SRAs have continued to default on making payments as per the Approved Resolution Plan.
20. The Second tranche of Rs 50 crores which was due on 18.06.2022 was not paid even after the cure period of 90 days, which expired on 18.09.2022. With no further payment forthcoming, the Applicant RP, as Monitoring Agent, filed the present application on 21.12.2022, after informing the Monitoring Committee about non-implementation of the Approved Resolution Plan (**ARP**).
21. The present application for the liquidation of the CD due to the non-implementation of the ARP has been repeatedly postponed, to allow the submission of counter-reply by the SRAs, and also with the



expectation that the ARP would be revived through payments by the SRAs.

22. In the meantime, by 31.03.2024 the SRAs paid the Second tranche of Rs 50 crores in five instalments after more than 18 months from the due date of 18.09.2022. The Third instalment due on 18.09.2023 (after the cure period of 90 days) has not been paid.
23. Be that as it may, another IA No.1159/2024 was filed by one of the SRAs, seeking to sell Manjakaranai Unit, to enable payment of the Third instalment towards ARP. This application was rejected by this Authority on 02.08.2024, by holding that:

“permitting the Applicant to monetize the Manjakaranai unit prior to the payment of the third installment would be contrary to the approved Resolution Plan”

While rejecting this application, it was also noted that:

“It is thus clear that in order to avoid its inability to pay the instalments, the Applicant has started making every possible endeavour to delay the implementation of the Resolution Plan on one pretext or the other. The third instalment was to be paid on or before 18.09.2023 which includes 90 days cure period, but till date not even a single penny has been paid.”

Yet another IA No.540/2023 filed earlier, seeking extension of time to pay the remaining instalments, was also rejected by this Authority on 02.08.2024.



24. It has already been noted in our Order in IA No.1159 of 2024 that:

“...the Applicant also does not appear to be financially sound to honour its commitment and therefore, they want to delay the CIRP process which is not the spirit of law...”

25. In this case, even after filing of the present application in December 2022, seeking liquidation for the reason of contravention of the Approved Resolution Plan, we have allowed several opportunities over last 21 months to the SRAs to make payments agreed under the Plan. We did so in the hope of reviving the CD and to make it a going concern as per the objective of the Code. By repeatedly failing to meet the deadlines for making payments towards the Approved Resolution Plan, the SRAs have belied our hope.

26. It is under these circumstances that, we have now taken up the present application seeking liquidation of the CD filed by the RP as Monitoring Agent of the CD, under Section 33(3)⁵ of IBC. However, under that Section, the application for liquidation order can be made by any person, other than the CD, whose interests are prejudicially affected by the contravention of the Approved Resolution Plan.

27. In his application, the RP has not elaborated on whose interests, other than the CD, have been prejudicially affected by the contravention of the Approved Resolution Plan by the SRAs. We also

⁵**Section 33. Initiation of liquidation.**

(3) Where the resolution plan approved by the Adjudicating Authority 3[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 interests 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).



note that in the 8th meeting⁶ of the Monitoring Committee, where the lenders to the CD were present either as members or invitees, the RP as the Monitoring Agent was only authorized to file “application for non-implementation” of Approved Resolution Plan in the background of SRAs inability to meet their commitment under the Plan.

28. There is no clear indication in the application of the interests of any person, other than the CD, being prejudicially affected by the non-implementation of the Plan by SRAs. Such being the case, we are unable to proceed with the present application seeking liquidation of the CD.

This application is disposed of with the above remarks.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

VL

⁶ Page 190 – 191 of the Application