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 20.12.2024 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA(IBC)/1789/2024, IA (IBC)/508/2024 and IA (IBC) (LIQ)/10/2024 in CP (IB) No.104/7/HDB/2020
NAME OF THE COMPANY	Sri Mata Infratech Limited
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Sri Mata Infratech Limited
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1789/2024

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

IA (IBC)/508/2024

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

IA (IBC)(LIQ)/10/2024

Orders pronounced, recorded vide separate sheets. In the result, the liquidation application is allowed.

Sd/MEMBER (T)

Sd/MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL HYDERABAD BENCH – II

IA No. 508 of 2024 in CP(IB) No.104/7/HDB/2020

In the matter of:

M/s. Sri Mata Infratech Limited, Corporate Debtor

Between:

M/s. Varma Steels Private Limited

in consortium with Mr. AVP. Varma, Address M/s Varma Steels Private Limited Door No.1-104/22/A,Plot No. 16 The address Home, Madhapur, Hyderabad-500 081 TG

E-mail: avpvarma@gmail.com

...Applicant/Successful Resolution Applicant Versus

1. State Bank of India
Stressed Assets Management branch
Secunderabad D.No.5-9-76,
2nd floor Prabhat Towers, Opp. SBI,
Amaravathı LHO Chapel Road,
Gunfoundry, Hyderabad-500 001

...Financial creditor/Respondent No.1

2. Monitoring Committee of M/s Sri Mata Infratech Limited Registered Office 503, TOPAZ Building, Panjagutta, Hyderabad-500 082

..Respondent No.2

3. Shri B.Naga Bhushan, Resolution Professional IBBI/IPA-001/IP-P00032/2016-17/10085
Sri Mata Infratech Limited 1-1-380/38,
Ashok Nagar Extension
Hyderabad - 500 020
e-mail - rp.matainfratech@gmail.com,
bnagabhushan@yahoo.com

...Resolution Professional- Respondent No. 3

Date of order: 20.12.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial) Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For the Applicant : Mr. Sathakarni

For Respondent No.1 : Mr. G.P. Yash Vardhan

For Respondent No.2 : None appeared

For Respondent No.3 : Mr. G. Nagabhushan

Per: BENCH
ORDER

- 1. This application is filed by the M/s. Varma Steels Private Limited in consortium with Mr. AVP. Varma, Successful Resolution Applicant (**Applicant**) of M/s Sri Mata Infratech Limited (**CD**) under Section 60(5) of Insolvency and Bankruptcy Code 2016 (**IBC**) seeking to stay any proceeding with regard to the cancellation of the Resolution plan, to direct the Respondents not to demand further payments until FC fulfills its obligation to take physical possession of the CD, etc.
- 2. The FC had filed an application seeking initiation of a Corporate Insolvency Resolution Process (**CIRP**) against the CD under Section 7 of IBC and the application was admitted vide order dated 28.04.2022. The Committee of Creditors consisting of sole member FC along with RP issued the Request for Resolution Plan (**RFRP**). The SRA submitted the resolution plan on 30.11.2022. The CoC with 100% approval in favour of the Applicant. This Authority vide order dated 02.03.2023 duly approved the Applicant as the SRA of the CD.

Application:

- 3. The applicant states there is a delay in implementing the resolution plan due to the following reasons:
 - a. there is no demarcation with respect to the lands owned by the CD
 - b. Neither FC nor the Monitoring Committee had any physical possession over Ac.100.00 guntas of the land, which forms almost 50% of the property of the CD.

- c. The lands' records pertaining to the CD were also not updated in the Dharani portal which confers that the Corporate Debtor cannot claim any kind of right or Title/interests over the property as per The Telangana Rights in Land And Pattadar Pass Books Act, 2020. (Act No. 9 Of 2020).
- d. Upon making a 25% payment by the SRA, as required for the purchase of Ac.40.00 guntas of land, the FC is obligated to issue a sale certificate under the SARFAESI Act, 2002, in accordance with the Resolution Plan, which has not been processed yet.
- e. There are several encroachments over the Corporate Debtor's subject property.
- 4. Due to the above-mentioned reasons, the Applicant is not in a position to control and revive the CD. Despite the above issues the applicant has paid 8,38,00,000 (including 10% of the resolution amount i.e Rs 3,30,00,000, Operational Creditor payment of Rs 8,00,000, and 1st Tranche toward FC i.e 5,00,00,000).
- 5. The applicant further states that they already paid over 13 crores, although 50% of the assets of the CD as per the information memorandum are non-existent or in serious encroachment.
- 6. The Applicant states that the factory of the CD is non-operational for the last 10 years. In order to revive the operations of the factory the applicant asked to release the Performance Guarantee given by the applicant as the necessary bonafide and commitment of the SRA towards implementation of the Resolution Plan.
- 7. Additionally, the Applicant paid Rs 1,36,00,000 (One Crore Thirty-Six Lakhs) towards the private treaty of related lands of the CD for the purchase of immovable property Sy.no 425 Doc no 2846/2005, belonging to the erstwhile director of the CD, which is mortgaged with the FC. No security has been in the applicant's name in lieu of the above amount paid so far.
- 8. In the revised resolution plan page no 31, the FC should clear all impediments as it is imminent to acquire all the properties of the CD

for the revival of the CD and to restart the operations, With the above issues the applicant prayer this Authority to adjust the said payment into actual amount payable by the SRA in the payment tranches due for the CD owing to the fact that the disputes cannot be resolved amicably as assured and to pass an order that implementation as well as payment of the remaining amount under the approved repayment plan by the applicant will commence only after taking control of the landed property of the CD

Counter by Respondent No 1

- 9. The Respondent No 1 i.e. FC states that the applicant does not have locus as the present application is seeking modifications to the approved Resolution Plan.
- 10. It is submitted that through Information Memorandum (IM) and the Request For Resolution Plan (RFRP) the Applicant was categorically informed that Resolution Applicants should carry out their own investigations and analysis of the Corporate Debtor and should consult their own advisers before submitting a Resolution Plan. Further, in the IM, it was categorically mentioned about the split charge of the Property of the Corporate Debtor and its associate company i.e., M/s. Mata Energy Limited. The relevant clause of the IM is extracted below for ready reference.

SECURITY INTEREST HELD BY FINANCIAL CREDITORS:

In the Form C lodged by the financial creditor viz. State bank of India, the Bank has claimed security coverage of properties mortgaged in the ratio of 60:40 (60% favouring Sri Mata Infratech Limited and 40% favouring Mata Energy Limited). However, there is no document provided by the Bank to confirm the apportionment as mentioned above. The Resolution Applicant is advised to make independent legal assessment and due diligence in this matter.

- 11. The Respondent FC pointed out that the Applicant had to make payment of the First tranche of Rs.6,50,00,000 (including Rs 1,50,00,000 worth of equity shares) within 30 days from the Effective date i.e., 02.03.2023. However, the applicant paid only 5,00,00,000 to the FC in part payments with a delay of 90 days. The Applicant has not made any other payments to the FC after the first tranche.
- 12. Further, the FC states that the Applicant agreed to purchase the immovable property Sy.no 425 Doc no 2846/2005, belonging to the erstwhile director of the CD, which is mortgaged with the FC at a reserve price of Rs 5.44 Crores. The Applicant had to make a 25 % payment toward the escrow account and a balance of 75% to be deposited by the Applicant within 30 days. The Applicant also defaulted in paying the balance consideration of 75%.
- 13. It is submitted by the Respondent FC that the Applicant has failed to implement the Resolution Plan. Therefore, the present Application should be dismissed as the Applicant is seeking relief that modifies the approved Resolution Plan.

Counter by Respondent No 3

- 14. The RP states that there has been no change in the situation with respect to the physical lands either before or after the CIRP. The Applicant was aware of the condition and status of the assets of the Corporate Debtor and only after taking into consideration the said fact, has submitted the Resolution Plan. As such, the Applicant is estopped from raising any objections after approval of the Resolution Plan.
- 15. The Applicant claims that there are encroachments on the land of the CD, the details of the CD are not updated in the Dharani portal and are without merits. The RP disclosed all the relevant facts available from the record of the CD with the advice to the resolution applicant to conduct due diligence including physical inspection of the assets.

The Applicant submitted the Resolution plan only after agreeing to the terms and conditions of the RFRP. The applicant has given an undertaking to unconditionally accept the terms of the RFRP.

16. We have heard the learned counsels for the Petitioners and Respondents and also perused the records.

Findings

- 17. The applicant had to make payments in 7 tranches, the 1st tranche within 30 days from the effective date i.e., 02.03.2023 of Rs 5,00,00,000 along with 15,00,000 equity shares of face value of INR 10/- per share aggregating to INR 1,50,00,000, to the FC for no consideration. However, the applicant made the payment of Rs 5,00,00,000 in multiple installments with a delay of 90 days. The applicant failed to provide 15,00,000 equity shares to the FC which is pending to date exceeding the time frame. The applicant has also failed to repay the subsequent installments.
- 18. Additionally, the Applicant paid Rs 1,36,00,000, which is 25% of the consideration, for the purchase of the immovable property Sy.No. 425 Doc no 2846/2005, as per Clause g at page 29 of the resolution plan, as and requested this authority to convert this amount into the actual amount payable by the Applicant in Payment tranches. The Applicant contends that this purchase transaction of the immovable property, is likely to fail due to the non-availability of physical possession of the land or its encroachment. This request effectively seeks a modification of the approved Resolution Plan. Referring to the Resolution plan para 24.
 - 24.the Successful Resolution Applicant is entitled to purchase the immovable property covered by Doc. No. 2846/2005, Survey No. 425, belonging to the erstwhile Managing Director of the Corporate Debtor/Company, Mr. Satyanarayana Raju Kalidindi, which is under mortgage with the Financial Creditor, at a reserve price of Rs.5.44 crores in

accordance with Rule 8(5)(d) of the rules made under the SARFAESI Act, as a "Private Treaty Sale", by depositing 25% of the agreed sale consideration as DD or deposit in a no lien/escrow account and the balance 75% amount shall be deposited by the Resolution Applicant within 30 days from the date of the approval of this Resolution Plan and upon making such deposit, the sale certificate having effect of transfer of title in the said property be executed in the name of M/s Sri Mata Infratech Limited or in the name as deemed fit by the Resolution Applicant.

- 19. Once the resolution plan is approved by the CoC the same cannot be modified later. This principle was set out by the Hon'ble Supreme Court in the case of **SREI Multiple Asset Investment Trust Vision India Fund v. Deccan Chronicle Marketeers & Others**¹ wherein, it was held that once the Resolution Plan stands approved by the Committee of Creditors, no modifications are permissible.
- 20. Referring to the decision of *Hon'ble Supreme Court in Ebix Singapore v. CoC of Educomp Solutions*²where it was held that the Adjudicating Authority under the IBC cannot use its residuary powers to permit withdrawal or modification of a resolution plan after submission. Allowing such changes would undermine the IBC's objectives, invite litigation, and risk delaying the insolvency process.
- 21. Thus, the applicant cannot seek modification or alteration of the Resolution Plan. Moreover, the applicant has been given the right to purchase the property in question and he exercised that option, and now he cannot say that the FC should do certain things before he pays the remaining amount. Further, updation of the revenue records will not affect the title.
- 22. The Applicant has requested for the release of the Performance Bank

¹ 2023 SCC OnLine SC 298.

² (2022) 2 SCC 401.

Guarantee given by the Applicant to use the same as working capital for operations of the factory of the CD, because it is of vital importance. the clause of the RFRP is as follows,

Clause 3.8(b) of the Resolution Plan

Invocation of Performance Bank Guarantee

The Resolution Professional acting on behalf of the Corporate Debtor shall have the right to invoke the PG as per this RFRP and appropriate the proceeds, which includes the following events:

i) the Successful Resolution Applicant fails to complete the Proposed Transaction in accordance with the terms of the RFRP, the Resolution Plan, the Definitive Agreements and/or the Applicable Law; or

23. This issue is no more res integra in the view of the judgment **State Bank of India Vs the Consortium of Murari Lal Jalan & Others**³

where the Hon'ble Supreme Court held that the Adjustment of the Performance Guarantee contravenes Regulation 36B (4A) and the binding terms of the Resolution Plan. The Hon'ble SC referred to the case of **Ebix Singapore Private Ltd. vs. Committee of Creditors of Educomp Solutions Ltd.**⁴, the Court reiterated:

"Resolution Plans are irrevocable once approved and cannot be altered mid-implementation."

24. The Applicant states that there was a delay in the implementation of the resolution plan due to the lack of land demarcation, absence of physical possession by the Financial Creditor or Monitoring Committee over a significant portion of the land, outdated land records on the Dharani portal, and encroachments on the Corporate

³ 2024 INSC 852 dated 07.11.2024

⁴ Supra note 2

Debtor's property. The Applicant's reasons are not justified as the Applicant was aware of these issues before submitting the Resolution plan.

- 25. The Applicant was given the RFRP and Information Memorandum for their own investigations, due diligence, and analysis before submitting a Resolution Plan. Additionally, the RFRP specifies that the applicant must unconditionally and irrevocably release the Resolution Professional and CoC members from all liabilities, claims, losses, damages, costs, or expenses related to or arising from their rights and obligations under the RFRP.
- 26. Furthermore, the Chapter XI- Q. 5 in the Resolution Plan, states as
 - 5. We hereby agree to all the Terms and Conditions for submission of the Resolution Plan as mentioned in the RFRP.
- 27. A bare reading of the above also strengthens the conclusion that the SRA has to remain compliant with the terms of the RFRP, at all times, in addition to being obedient to the terms of the Resolution Plan. The Applicant is duty bound to implement the Resolution plan effectively. The Applicant cannot abandon the plan merely because of issues that he was aware of before submitting the resolution plan.
- 28. From the above observations and findings, it appears that the present IA which was filed in the month of January 2024, was only meant to delay the payment of the resolution amount.
- 29. For the above-mentioned reasons, there is no merit in the present application. Hence, this interlocutory application is dismissed and disposed of accordingly.

Sd/-**SANJAY PURI** Sd/-

MEMBER (TECHNICAL)

RAJEEV BHARDWAJ MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL HYDERABAD BENCH – II

IA No. 1789 of 2024 in CP(IB) No.104/7/HDB/2020

In the matter of:

M/s. Sri Mata Infratech Limited, Corporate Debtor

Between:

M/s. Varma Steels Private Limited in consortium with Mr. AVP. Varma, Address M/s Varma Steels Private Limited Door No.1-104/22/A, Plot No. 16 The address Home, Madhapur, Hyderabad-500 081 TG E-mail: avpvarma@gmail.com

...Applicant/Successful Resolution Applicant

Versus

State Bank of India
 Stressed Assets Management branch
 Secunderabad D.No.5-9-76,
 2nd floor Prabhat Towers, Opp. SBI,
 Amaravathi LHO Chapel Road,
 Gunfoundry, Hyderabad-500 001

..Financial creditor- Respondent No.1

2. Monitoring Committee of M/s Sri Mata Infratech Limited Registered Office 503, TOPAZ Building, Panjagutta, Hyderabad-500 082

..Respondent No.2

3. Shri B. Naga Bhushan, Resolution Professional IBBI/IPA-001/IP-P00032/2016-17/10085
Sri Mata Infratech Limited 1-1-380/38,
Ashok Nagar Extension, Hyderabad - 500 020
e-mail - rp.matainfratech@gmail.com, bnagabhushan@yahoo.com
...Resolution Professional- Respondent No. 3

Date of order: 20.12.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial) Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For the Applicant : Mr. Sathakarni

For Respondent No.1 : Mr. G.P. Yash Vardhan

For Respondent No.2 : None appeared

For Respondent No.3 : Mr. G. Nagabhushan

Per: BENCH

ORDER

- 1. This application is filed by the M/s. Varma Steels Private Limited in consortium with Mr. AVP. Varma, Successful Resolution Applicant (**Applicant**) of M/s Sri Mata Infratech Limited (**CD**) under Section 60(5) of Insolvency and Bankruptcy Code 2016 (**IBC**).
- 2. The FC had filed an application seeking initiation of a Corporate Insolvency Resolution Process (**CIRP**) against the CD under Section 7 of IBC and the application was admitted vide order dated 28.04.2022. FC along with the RP issued the Request for Resolution Plan (RFRP). The SRA submitted the resolution plan on 30.11.2022. The CoC approved the plan with 100% approval of the sole member of COC. This Authority vide order dated 02.03.2023 duly approved the Applicant as the SRA of the CD.

Application:

3. The Applicant is seeking direction to extend the timelines for implementing the Resolution Plan, including the payments from Successful Resolution Applicant to the Financial Creditor until the management of the Corporate Debtor and its immovable assets are handed over to the Successful Resolution Applicant, as per the Resolution Plan.

- 4. It is stated that the revival and implementation of the Resolution Plan cannot continue without transferring the physical possession of the property, including the Corporate Debtor's and its Directors' mortgaged assets or collateral security property, located in Sy. No. 425, 436, 438, and 492 under SRO, Kodada which hold the mining permissions and lease rights. The said transfer aids in the revival of the CD.
- 5. The Applicant states that this Authority alone has absolute and sole authority to extend the time for implementation of the Resolution Plan as per the Rule 15 of National Company Law Tribunal Rules, 2016 that provides for extension of time which reads as follows:

Rule 15. Power to extend time. The Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed.

- 6. The Applicant relied upon the case of **Tottempudi Sailalith Vs. State Bank of India & Ors.**, "IBC is designed not merely as a debt recovery mechanism but primarily as a tool for corporate revival, underscoring the imperative for all parties to act in alignment with this rehabilitative mandate."
- 7. It is averred that, as per clause 4(b) under Chapter 6, of the Resolution plan, it was mentioned that the handover of management and management of CD is not complete till the physical possession of the immovable properties is also done².
- 8. The applicant states that the consideration of the amount proposed in the resolution plan is the security interest charges (assets of the CD) created by the CD. Hence the FC cannot demand the amount proposed

¹(2021) ibclaw.in 277 NCLAT

²At page 99 of the Application

without handing over the properties owned by the CD. The Applicant referred to Clause H (6)- 37(d) under the Chapter V of the Resolution plan

- 9. The applicant states there is no demarcation w.r.t to land owned by the CD. The same is necessary for the revival of the CD. The Applicant refers to Clause H under Chapter V of the Resolution plan.
- 10. The Applicant states that the ownership of the CD's property and renewal of its mining permission are essential for the CD's revival. The applicant states the monitoring committee failed to perform the requirements of the Resolution Plan and because of the following grounds: -
 - there is no demarcation with respect to the lands owned by the CD
 - ii. Neither FC nor the Monitoring Committee constituted has no physical possession over Ac. 100.00 guntas of the land which forms the major portion almost 50% of the property of the CD.
 - iii. The lands' records pertaining to the Corporate Debtor were also not updated in the Dharani portal which confers that the Corporate Debtor cannot claim any kind of right or Title/interests over the property as per The Telangana Rights In Land And Pattadar Pass Books Act, 2020. (Act No. 9 Of 2020).
 - iv. Upon making a 25% payment by the SRA, as required for the purchase of Ac.40.00 guntas of land, the FC is obligated to issue a sale certificate under the SARFAESI Act, 2002, in accordance with the Resolution Plan, which has not been processed yet.
 - v. There are several encroachments over the Corporate Debtor's subject property.
- 11. Due to the above-mentioned reasons, the Applicant is not in position to

control and revive the CD. Despite the above issues, the applicant has paid 8,38,00,000 (including 10% of the resolution amount i.e., Rs 3,30,00,000, Operational Creditor payment of Rs 8,00,000 and 1st Tranche toward FC i.e., 5,00,00,000).

- 12. The applicant further states that they had already paid over 13 crores, although 50% of the assets of the CD as per the information memorandum are non-existent or in serious encroachment.
- 13. The Applicant states the factory of the CD is non-operational for the last 10 years. In order to revive the operations of the factory the applicant asked to release the Performance Guarantee given by the applicant as the necessary Bonafide and commitment of the SRA towards implementation of the Resolution Plan.
- 14. Additionally, the applicant paid Rs 1,36,00,000 (One Crore Thirty-Six Lakhs) towards the private treaty of related lands of the CD for the purchase of immovable property Sy.no 425 Doc no 2846/2005, belonging to the erstwhile director of the CD, which is mortgaged with the FC. No security has been in the applicant's name in lieu of the above amount paid so far.
- 15. The Applicant refers to the clauses (h),(i),(j),(k),of the resolution plan which states that the FC should clear all impediments as it is imminent to acquire all the properties of the CD for the revival of the CD and to restart the operations.
- 16. With the above issues, the applicant prays this Authority to adjust the said payment into actual amount payable by the SRA in the payment tranches due for the CD, owing to the fact that the disputes cannot be resolved amicably as assured and to pass an order that implementation as well as payment of the remaining amount under the approved repayment plan by the applicant will commence only after taking control

Counter By Respondent No.1

- 17. Respondent No 1, i.e., FC, states that the application is liable to be dismissed, as an application bearing IA.No.508/2024 has already been filed with identical issues and therefore this Application is not maintainable based on sub-judice. The Applicant is seeking modifications to the terms of the approved Resolution Plan and an indefinite extension for timelines for implementing the Resolution Plan and conditions that are not permissible under the Code.
- 18. The Respondent referring to Clause 9 of Chapter V, page 41 of the resolution plan, stated that if the payment was not done before the due date, due to unforeseen factors, the Applicant had to discuss and mutually agree with the CoC and then file a captioned application.

"37 (g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;

None. Payment to the creditors shall be only in accordance with the terms of our resolution plan.

However, in case the payment to be made as per this resolution plan is not completed before the due date due to unforeseen factors, the RA shall, on consultation and approval of the COC, file an I.A. with the NCLT for approving such arrangements as may be mutually discussed and agreed between the COC and the RA."

- 19. The implementation of the Resolution Plan is not conditional, and the implementation of the Resolution Plan is on an "as is where is" basis.
- 20. The Applicant, to avoid and circumvent the repercussions due to non-implementation of the Resolution Plan, has earlier filed I.A. No.508 of 2024 seeking reliefs which are in the nature of the modification of the Resolution Plan and I.A. No. 10/2024 was filed by R2 seeking liquidation

due to non-implementation of the resolution plan. The act of filing the captioned application is to prevent the passing of the liquidation orders. Filing multiple applications is causing irreparable loss to SBI and defeating the objective of the Code.

21. The Applicant emphasizes Chapter VI 4(b) of the Resolution Plan, after the Resolution Plan's approval by the Authority, they must nominate and constitute a new board of directors, take control of the Corporate Debtor as a going concern, and receive all assets (both movable and immovable).

CHAPTER_VI COMPLIANCE UNDER REGULATION 38

1. Compliance under Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016:

Mandatory contents of the resolution plan as per Regulation 38 (b). the management and control of the business of the corporate debtor during its term;

In relation to the disclosure regarding "persons who will be promoters or in the management or control of the business of the Corporate Debtor during the implementation of the Resolution Plan," please note that from the Effective Date, Resolution Applicant shall nominate and constitute the board of directors to be in control of the business, as we shall be given taking over the Company as a going concern along with all the immovable Assets, movable assets, Subsidies/Incentives receivables from Statutory authorities even though the change in ownership, intellectual property rights, products, all current assets, including receivables and other actionable claims of the Corporate Debtor, equity interests of subsidiaries, etc.

Counter By Respondent No.3

22. It is submitted, that they have repeatedly requested the Applicant during MC meetings to comply with clause 4(b) of Chapter VI of the Resolution

Plan by inducting a new board of directors. Despite these repeated requests and reminders, the Applicant has neither inducted the new board of directors nor made the payment of the Resolution Plan amount.

- 23. According to the terms of the Resolution Plan, once this Authority approves the Plan and upon the total amount being paid to SBI, all rights, entitlements, and collateral security established in favor of financial creditors on the Assets, Lands, and Buildings, will be transferred to the Corporate Debtor, post repayment of the amount as proposed by the Resolution Applicant.
- 24. It is submitted that through Information Memorandum (IM) and the Request for Resolution Plan (RFRP) the Applicant was categorically informed that Resolution Applicants should carry out their own investigations and analysis of the Corporate Debtor and should consult their own advisers before submitting a Resolution Plan. Further, in the IM, it was categorically mentioned about the split charge of the Property of the Corporate Debtor and its associate company i.e., M/s. Mata Energy Limited. The relevant clause of the IM is extracted below for ready reference.

SECURITY INTEREST HELD BY FINANCIAL CREDITORS:

In the Form C lodged by the financial creditor viz. State bank of India, the Bank has claimed security coverage of properties mortgaged in the ratio of 60:40 (60% favouring Sri Mata Infratech Limited and 40% favouring Mata Energy Limited). However, there is no document provided by the Bank to confirm the apportionment as mentioned above. The Resolution Applicant is advised to make independent legal assessment and due diligence in this matter.

25. It is submitted that in Chapter X of the Resolution Plan, on the completion date and upon confirmation from FC regarding the payment

completion as outlined in the Resolution Plan, FC will issue a certificate of discharge and a no-claims certificate to the Applicant. Additionally, FC will return the security documents to the Applicant and release all securities held by them as of the completion date.

- 26. The Respondent states that the Applicant had to make payment of the First tranche of Rs.6,50,00,000 (including Rs 1,50,00,000 worth of equity shares) within 30 days of the Effective date, i.e. 02.03.2023. However, the Applicant paid only 5,00,00,000 to the FC in 7 installments with a delay of 90 days from the Effective Date. The Applicant has not made any other payments to the FC after the first tranche.
- 27. The respondent averred that, the Applicant also submitted the Resolution Plan of the associate company of the CD i.e., M/s Mata Energy Limited was also approved by the NCLT Hyderabad Bench I. However, the Applicant has failed to implement the Resolution plan in the matter of M/s Mata Energy Limited.
- 28. It is submitted that, although FC is not obligated to represent the Applicant post-approval of the Resolution Plan, it has, upon the Applicant's request, issued letters dated 26.09.2024, 04.12.2023, and 25.06.2024 to various authorities, including the District Collector of Suryapet District, the Revenue Divisional Officer of Suryapet District, the Tahasildar of Mellacheruvu District, and SRA Kodada of Suryapet District. These actions were taken with a bona fide intention to revive the CD and assist the Applicant.
- 29. The MC's primary purpose is to supervise the implementation of the Resolution Plan, specifically ensuring the timely payment of the Resolution Plan amount by the Applicant. Moreover, Clause 4(b)(i) does not impose any obligation on the MC to resolve issues concerning the lands/assets of the CD.

- 30. It is submitted that the Applicant in the Resolution Plan has stated that none of the terms mentioned in the resolution plan are a pre-condition for implementation for the plan.
- 31. It is submitted that, clause 4 (iii)(g) of the Resolution Plan, the Applicant was aware of the condition and status of the assets of the Corporate Debtor and only after taking into consideration the said fact, submitted the Resolution Plan. As such, the Applicant is estopped from raising any objections after approval of the Resolution Plan.
- 32. It is averred that this application has been filed to delay and frustrate the implementation of the Approved Resolution Plan and it has been submitted that the RP disclosed all the relevant facts as available from the records of the CD with an advice to conduct due diligence including physical inspection of the unit before submitting the Plan.
- 33. Referring to the 9th MC meeting held on 20.06.2024 and stated that the Applicant was aware of the encroachments of few acres of land in the total mass belonging to CD whose lands were sold to him under private treaty and the act of acquiring the land was a conscious call.
- 34. In the 10th MC meeting held on July 20, 2024, the RP highlighted several points discussed in the previous meeting on June 20, 2024, which were agreed to be complied with. These included the RP and FC's responsibility to submit an application to the revenue authorities for a land survey, which was completed and shared with the members. Additionally, the Applicant was committed to making payments according to the resolution plan, including interest for delayed payments, and agreed to clear the dues payable in Mata Energy, ensuring no need for liquidation. The Applicant also agreed to pay the RP's professional fees, security charges, and advocate fees by June 30, 2024.
- 35. The matters were reviewed in the 10th MC meeting, and the Applicant

confirmed that he would pay the amount owed by September 2, 2024. However, when it was suggested that the amount be deposited into a "No Lien Account", the Applicant was evasive, leading the FC to believe that the SRA needed to prepare the necessary funds.

- 36. In the 11th MC meeting held on August 7, 2024, the SRA reiterated his agreement to pay the professional fees, security charges, and advocate fees by August 15, 2024. The SRA also paid Rs 5 Lakh on August 7, 2024.
- 37. The Applicant has committed to paying the resolution plan amount, including interest for delays, and has stated that he will submit a clear strategy to the MC within two to three weeks. The Applicant expressed his intent to acquire the company and assured us that all payments would be made. However, further payments or proposals are yet to be made.
- 38. The Applicant was aware of the company's issues before submitting the resolution plan. In November 2022, he provided an undertaking acknowledging the unclear demarcation of land owned by the company and confirmed that the resolution plan was unconditional and independent of all conditions stipulated in the resolution plan. His track record with plan implementations has raised doubts, contributing to the FC's recommendation for liquidation. Additionally, the first payment tranche of Rs 5 Crores, due by March 31, 2023, was paid in installments by June 30, 2023.
- 39. We have heard the learned counsel of the Applicant and have also gone through the entire records.

Findings

40. The applicant had to make payments in 7 tranches, the 1st tranche

within 30 days from the effective date i.e., 02.03.2023 of Rs 5,00,00,000 along with 15,00,000 equity shares of face value of INR 10/- per share of the CD aggregating to INR 1,50,00,000, to the FC for no consideration. However, the applicant made the payment of Rs 5,00,00,000 in 7 installments with a delay of 90 days. The applicant also failed to provide 15,00,000 equity shares to the FC which is pending to date, exceeding the time frame. The applicant has also failed to repay the subsequent installments which shows that he has failed to implement the Resolution plan properly.

- 41. The contention of Applicant is that there is a delay in the implementation of the resolution plan due to the lack of land demarcation, absence of physical possession by the Financial Creditor or Monitoring Committee over a significant portion of the land, outdated land records on the Dharani portal, and encroachments on the Corporate Debtor's property is not substantiated by the review of the records.
- 42. Referring to the decision of **Hon'ble Supreme Court in Ebix Singapore v. CoC of Educomp Solutions**³where it was held that the Adjudicating Authority under the IBC cannot use its residuary powers to permit withdrawal or modification of a resolution plan after submission. Allowing such changes would undermine the IBC's objectives, invite litigation, and risk delaying the insolvency process.
- 43. Thus, the applicant cannot seek modification or alteration of the Resolution Plan. Moreover, the applicant has been given the right to purchase the property in question and he exercised that option, and now he cannot say that the FC should do certain things before he pays the remaining amount. Further, updation of the revenue records will not affect the title.

³ (2022) 2 SCC 401.

44. About the management and control of the business of the CD as a going concern. There is Chapter VI Clause 4b of the Resolution Plan which states "the management and control of the business of the CD during its term."

"In relation to the disclosure regarding "persons who will be promoters or in the management or control of the business of the Corporate Debtor during the implementation of the Resolution Plan", please note that from the Effective Date, Resolution Applicant shall nominate and constitute the board of directors to be in control of the business, as we shall be given taking over the Company as a going concern along with all the immovable Assets, movable asses. Subsidies/Incentives receivables from Statutory authorities etc. through change in ownership. intellectual property rights, products, all current assets, including receivables and other actionable claims of the Corporate Debtor, equity interests of subsidiaries etc."

- 45. Perusal of the aforesaid clause makes it clear that the resolution plan has a requirement to nominate and constitute a Board of Directors to take control of the business. However, to date, no BoD was constituted.
- 46. Linked with the aforementioned clause, the other clauses in respect to the transferring the business, which are as below: -

Chapter IV (G)(iii)(e) of the Resolution Plan

"all the rights, entitlements and collateral security created in favor of financial creditors on the Assets, Lands and Buildings, any other asset registered on the name of the company including but not limited to Assets mortgaged or hypothecated shall be transferred to the Company free of any charge, post repayment of the amount as proposed by the Resolution Applicant."

Chapter X of the Resolution Plan

"M. Steps to completion and completion date actions:

1.Hand - Over by the Resolution Professional

The financial creditors shall hand over all the original documents

that are held as security through Resolution Professional on complete repayment of the total Resolution Plan consideration."

2. Satisfaction of existing charges

On the Completion Date, upon confirmation from the Resolution Applicant on the completion of payment envisaged in the plan. The Secured Financial Creditors shall issue a certificate of discharge and no-claims to the Resolution Applicant and also return the security documents to the Resolution Applicant and forthwith and unconditionally release all security available to them as on the Completion Date.

Chapter V of the Resolution Plan

"6.37 (d) satisfaction or modification of any security interest.

Modification of security interest according to the Resolution Plan. The total proposed resolution plan consideration amount shall be adjusted to the complete satisfaction of all any security interests/charges created by the creditor on the assets of the CD. The stage at which the modification shall take place could be discussed during the implementation in the MC and amicably discussed and settled for benefit of the Company not contravening any law."

- 47. From the aforesaid clauses, we are of the view that,
 - 1. Once the applicant makes a full settlement as per the Plan, the FC shall transfer the secured interests/charges of the CD to the applicant.
 - 2. The applicant is fully aware of the encroachments of the property and has consciously decided to submit the Resolution Plan. Now, he can no longer shift the responsibility to the FC to eliminate the current encroachments.
 - 3. Regarding the mining permissions, it is the obligation of the applicant to approach the authority concerned and obtain the necessary permissions to uphold the rights in favor of the CD as

ordered by this Authority vide order dated 02.03.2023.

48. The Applicant was given the RFRP and Information Memorandum for their own investigations, due diligence, and analysis before submitting a Resolution Plan. Additionally, the RFRP specifies that the applicant must unconditionally and irrevocably release the Resolution Professional and CoC members from all liabilities, claims, losses, damages, costs, or expenses related to or arising from their rights and obligations under the RFRP.

49. Furthermore, in the Chapter XI- Q. 5 in the Resolution Plan, states as,

5. We hereby agree to all the Terms and Conditions for submission of the Resolution Plan as mentioned in the RFRP.

- 50. A bare reading of the above also strengthens the conclusion that the SRA has to remain compliant with the terms of the RFRP, at all times, in addition to being obedient to the terms of the Resolution Plan. The Applicant is duty bound to implement the Resolution plan effectively. It appears that the present IA was filed in the month of January 2024, only meant to make a delay in payment of the resolution amount.
- 51. For the above-mentioned reasons, this Authority rejects the extension of the timeline. Hence, this interlocutory application is dismissed and disposed of accordingly.

Sd/-SANJAY PURI MEMBER (TECHNICAL) Sd/-RAJEEV BHARDWAJ MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL HYDERABAD BENCH - II

I.A. No.10 of 2024 in C.P. (IB) No. 104/7/HDB/2020

In the matter of M/S. STATE BANK OF INDIA vs M/S. SRI MATA INFRATECH LIMITED

Between:

Mr B Naga Bhushan, Resolution Professional/Monitoring Committee Chairman of M/s Sri Mata Infratech Limited, H.No. 1-1-380/38, Ashok Nagar Extension, Hyderabad – 500 020.

....Applicant

And

Consortium of M/s Varma Steels Private Limited & Mr A.V.P. Varma, Successful Resolution Applicant Door No. 1-104/22/A, Plot No.16, Madhapur, Hyderabad – 500 081.

....Successful Resolution Applicant

Date of Order: 20.12.2024

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial) Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel present:

For the Applicant :Ld. Counsel Mr. P. Ramesh Babu and Mr. B Naga

Bhushan

For the Respondent :Mr. Sathakarni

Per: Bench ORDER

 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 Sri Mata Infratech Limited, the Corporate

¹ Insolvency and Bankruptcy Code, 2016

NCLT, Hyderabad Bench-II IA No.10 of 2024 in CP (IB) No.104/7/HDB/2020 Date of Order :20.12.2024

Debtor (**CD**), seeking cancellation of the approved Resolution Plan owing to failure of implementation of the same by the Successful Resolution Applicant (**SRA**), and orders for Liquidation of the CD.

- 2. In this case, an application filed under Section 7 of IBC by the State Bank of India (the Financial Creditor/FC), the CD was admitted into CIRP² by this Authority vide Order dated 28.04.2022 and the Applicant RP herein was appointed as an Interim Resolution Professional (IRP), and subsequently, he was confirmed as Resolution Professional (RP) by the Committee of Creditors (CoC) in its 1st meeting held on 01.06.2022.
- 3. On 09.01.2023, the CoC approved the Resolution Plan submitted by the Consortium of M/s. Varma Steels Private Limited and Mr. AVP Varma with 100% voting. Accordingly, the RP issued Letter of Intent (**LoI**) to the SRA and advised to remit 10% of the Resolution Plan amount, and the SRA issued Bank Guarantee bearing No. 021GT02230240012 dated 24.01.2023 for Rs 3.30 Crores, being 10% of the resolution plan amount as Performance Guarantee and has given the acceptance of LoI.
- 4. The Applicant RP filed an application on 25.01.2023 for approval of the Resolution Plan submitted by the SRA, which was allowed by this Authority vide order dated 02.03.2023.
- 5. The Monitoring Committee (**MC**) was formed with the following members:
 - Mr. C. Ravi Sankar, AGM Representative of SBI
 - Mr. Prasanna SR Kandula, Representative of SRA
 - Mr. Naga Bhushan, RP
- 6. The SRA was required to remit an amount of Rs 5.47 Crores to the RP within 30 days of the approval of the Resolution Plan by the Authority, to meet the following:

- CIRP expenses - Rs 39 lakhs (Actuals)

Operational Creditors
 Financial creditors
 Rs. 8 lakhs
 Rs. 500 lakhs

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² Corporate Insolvency Resolution Process

- 7. Apart from this, the SRA was also required to allot 15,00,000 shares at face value of Rs 10 amounting to Rs 1.50 Crores to the Financial Creditors, as part of the Plan within 30 days i.e. by 31.03.2023 which is yet to be done. The Applicant RP advised the SRA from time to time to initiate the process for the appointment of a new Board of Directors representing the SRA, and the allotment of shares for the amount infused by the SRA, but this was not done.
- 8. The synopsis of the payments as per the approved resolution plan was as below:

Particulars	Time frame for payment	Amount (Rs)
	PAYMENTS MADE	
CIRP expenses	Within 30 days from the date of the order i.e. 31.03.2023.	39,00,000 (Actuals)
Operational Creditors	Within 30 days from the date of the order i.e. 31.03.2023.	8,00,000
Financial Creditors	Within 30 days from the date of the order i.e. 31.03.2023.	5,00,00,000
	SCHEDULED PAYMENTS BUT YET TO BE FULFILLED	
	Within 30 days from the date of the order i.e. 31.03.2023 – Allotment of shares to FC, as part of plan.	1,50,00,000
	Within 4 months from the date of the order i.e. 02.07.2023.	1,00,00,000
	Within 6 months from the date of the orderi.e. 02.09.2023.	6,50,00,000
	Within 9 months from the date of the order i.e. 02.12.2023.	1,00,00,000
	Within 12 months from the date of the order i.e. 02.03.2024.	8,00,00,000
	FUTURE SCHEDULED PAYMENTS	
	Within 15 months from the date of the order i.e. 02.06.2024.	2,00,00,000
	Within 18 months from the date of the order i.e. 02.09.2024.	8,00,00,000
TOTAL AMO	OUNT	33,47,00,000

9. It is submitted that, at the request of the SRA, a complaint was lodged by the RP and FC with the Tahasildar, Mellacheruvu and Revenue Development officer, Huzurnagar on 27.09.2023 with respect to the part of

the land (mining land owned by the CD) which has been in the custody of some encroachers and is not reflecting in recently introduced DHARANI portal.

- 10. It is asserted that, despite several reminders in the MC meetings and e-mail communications sent to SRA for the payment of installments that fell due, SRA did not make payments.
- 11. It is submitted that, during the 4th MC Meeting held on 18.11.2023, the Applicant RP apprised about the delay in payment by the SRA as per the schedule of the approved resolution plan, and the SRA requested time till the month end for arranging payment. During the 5th MC Meeting held on 13.12.2023, the SRA informed that he is in the process of mobilizing the required funds and making payment by month end, but subject to the condition that clarity on inclusion of all the land details owned by the CD in the DHARANI Portal.
- 12. During 6th MC meeting on 09.01.2024, the SRA informed that he would be able to inform the date of payment of the amount due, after consulting his partners and requested for postponement of the meeting to 11.01.2024, but during the meeting on 11.01.2024 at 6.30 p.m. the Applicant RP informed that the SRA had sent a request seeking postponement of the meeting to 19.01.2024.
- 13. The Applicant RP filed the progress report on the implementation of the resolution plan in IA 1669 of 2023 on 11.10.2023 wherein delay in remittance of amount by the SRA and consequent delay in implementation of the approved resolution plan were reported. The same was heard, and during the hearing on 06.02.2024, the Applicant RP was also directed to implead the SRA. Accordingly, the Applicant RP had filed a memo on 23.02.2024, impleading the SRA. A neat copy incorporating all the suggested changes was also filed on the same day. During the hearing held on 27.02.2024, the impleaded party was asked to submit his counter, and the matter was adjourned to 22.4.2024. Meanwhile, the SRA filed an application on 28.01.2024 in IA No.508 of 2024, seeking certain reliefs.

- 14. The FC felt that SRA was using delay tactics and advised the Chairman of MC to make arrangements for filing an application seeking cancellation of the approved Resolution Plan, if the SRA does not pay the overdue amount by 05.02.2024.
- 15. In the 8th MC meeting, the Applicant RP apprised that despite repeated reminders through email, telephonic conversations and during the meetings, the SRA had failed to make the following payments as per the approved resolution plan.

Time frame for payment	Amount (Rs)
Within 4 months from the date of the order i.e. 02.07.2023	100,00,000
Within 6 months from the date of the order i.e. 02.09.2023	650,00,000
Within 9 months from the date of the order i.e. 02.12.2023	100,00,000
Within 12 months from the date of the order i.e. 02.03.2024	800,00,000

- 16. Apart from the above, the allotment of shares to the tune of Rs 1.50 crores which was to be done in the name of the FC before 31.03.2023 has not been done. Further, the SRA has failed to make payment of the fees of the Chairman of the MC as agreed in the approved resolution plan amounting to Rs 12.98 lakhs, security charges of Rs 9.01 lakhs and also the legal counsel fees.
- 17. It is averred that, FC felt that since the SRA has not been adhering to the payment schedule of the approved resolution plan, and since an amount of Rs 16.50 crores has already fallen due for payment apart from allotment of shares to the tune of Rs 1.50 crores, resulting in a deviation from the approved plan, the Applicant RP shall initiate the process of informing the Tribunal about the delay in implementation of the plan and also their recommendation for cancellation of the resolution plan along with forfeiture of the amounts that have already been paid. FC also felt that the bank guarantee provided by the SRA shall be invoked. Hence, this application as resolved by the lone FC, seeking to;
 - pass an order under Section 33(3) of the Code directing initiation of the Liquidation of the CD and appoint a Liquidator of the CD.

- pass an order forfeiting the amounts paid by SRA till date.
- direct the SRA to make payment of the outstanding fees of the Chairman of the Monitoring Committee and the security charges from the time of approval of the resolution plan by NCLT till date along with the legal counsel charges.

Counter reply

- 18. In its reply, the SRA averred that there is no physical boundary or demarcation of the lands held by the CD as well as its associate company. Further, there is ambiguity on the split of charges held by the creditor on both the companies as stated in the resolution plan page No.29 under clause 4 (iii)(g), and the third parties are encroaching the company assets and the CD's land is not reflecting in recently introduced DHARANI portal. Also, there is some physical activity going on in the lands owned by the CD especially in Sy No. 425, 436, 438 and 492 falling under SRO, Kodada with a large number of mud trucks and manpower deployed for land filling etc. Some of the people are claiming as owners of the above pieces of land as per DHARANI portal.
- 19. It is contended that, the RP has no control on the assets of the CD, and no follow-up was made to the correspondence initiated by SBI to sort out the issue. It is further contended that the Monitoring Committee is constituted for the purpose of implementation of the Resolution Plan, and the implementation does not only mean payments proposed in the approved resolution plan but also other terms and conditions of the plan.
- 20. It is asserted that, in spite of the above issues, the SRA has initially paid an amount Rs 3.30 Crores on 24.01.2023 towards 10% of the resolution plan amount as per the request of RP and subsequently paid CIRP expenses in full besides an amount of Rs 8.0 lakhs to operational creditors as per the approved resolution plan. In addition to the above the SRA has also paid an amount of Rs.5.0 Crores on different dates between 31.03.2023 to 30.06.2023. Neither any agreement made nor any security

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was transferred in the name of the SRA in lieu of the above amount paid so far.

- 21. It is further contended that the Applicant RP's insistence on the payment of the remaining amounts, without addressing the significant issues faced by the SRA, is a flagrant disregard of its duties and responsibilities under the Resolution Plan.
- 22. With these submissions, the Respondent SRA seeks dismissal of this application.

Written Submissions filed by the Applicant RP

- 23. It is asserted that, out of Rs 33.0 Crores to be paid to the lone FC (SBI), the SRA had paid Rs 5.0 Crores in the first tranche, staggering over a period of three months. Despite assurances, the SRA failed in making payments to meet plan commitments, and failed to induct their directors and formation of new Board for taking over the functioning of the CD after making upfront payment as per the approved resolution plan.
- 24. It is further averred that, the SRA was fully aware of the various issues concerning the CD's assets in general and land encroachments, absence of proper demarcation of lands and issues concerning the DHARANI portal before submission of the Plan itself, and the same is evidenced through 9th MC meeting. As per the resolution Plan document, the plant shall be handed over to SRA after the payment of upfront amount, and the SRA never raised this issue in any of the MC meetings.
- 25. The Applicant RP has also submitted his willingness³ to act as Liquidator. With these submissions, the Applicant RP prayed to allow this application.

Decision

26. The Corporate Debtor was put in CIRP vide order dated 28.04.2022. Regarding the Resolution Plan, this Authority had given a concrete finding

³ Page 24 of the written submission of the Applicant

in the Interim Application bearing no. 1789 of 2024 by mainly relying on the law laid down by the Supreme Court in **Ebix Singapore Private Limited Vs. Committee of Creditors of Educomp solutions Limited &Anr**⁴ and rejected the Application considering that once the Resolution Plan is approved by the COC, it cannot be allowed to be withdrawn or modified by the Successful Resolution Applicant by approaching the Adjudication Authority.

- 27. In the instant case, the 8th meeting of the Monitoring Committee of Corporate Debtor was held on 05.03.2024 and notice of which was sent to SRA also through e-mail but the SRA did not attend the said meeting.
- 28. In the said meeting following resolutions have been passed by the lone Financial Creditor for filing an application, seeking liquidation of the Corporate Debtor and cancellation of the approved resolution plan:

"RESOLVED THAT the approved resolution plan of the Successful Resolution Applicant viz Verma Steels Pvt. Ltd. in consortium with Mr. AVP Varma which was approved by Hon'ble NCLT vide order dt. 02.03.2023 be cancelled as the SRA has not complied with the terms of the plan by not paying the instalments that have fallen due on the dates mentioned below amounting in all to Rs 16.50 crores apart from allotment of shares to the tune of Rs 1.50 crores"

"RESOLVED FURTHER THAT the Corporate Debtor may be Liquidated under Section 33(3) of IBC 2016 as the Successful Resolution Applicant has contravened the implementation of the approved resolution plan"

"RESOLVED FURTHER THAT the performance bank guarantee for Rs 3.30 crores provided by the SRA be invoked and forfeit the amount already paid"

"RESOLVED FURTHER THAT the Resolution professional and Chairman of the meeting Mr. B. Naga Bhushan be and hereby authorized to make an appropriate application before the Hon'ble NCLT under Section 33(3) read with Regulation 39(9) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

29. Consequently, on the basis of the above said resolution passed in the 8th meeting of the Monitoring Committee of Corporate Debtor, the Resolution Professional filed this application for liquidation of the Corporate Debtor.

⁴ Civil Appeal No. 3224 of 2020 with other appeals

We find that the application satisfies the contents as mentioned under section 33(3) of IBC, 2016.

- 30. Furthermore, this Authority had also observed that the Resolution Applicant had defaulted on multiple counts to make payments as proposed in the Resolution Plan and made all attempts to regain the company through the back door without implementing the Resolution Plan.
- 31. It is noteworthy to mention here that even after the approval of the Resolution Plan, it is observed that SRA paid only 1st Tranche i.e., Rs 5,00,00,000 towards the Resolution Plan. Pursuant to this, the only issue that needs to be decided is whether the Adjudicating Authority should liquidate the Corporate Debtor under section 33(3) of the IBC in a case of contravention/ non-implementation of the Resolution Plan without the mandate of the Implementation and Monitoring Committee (IMC)?
- 32. The SRA had to make payments in 7 tranches, the 1st tranche within 30 days from the effective date i.e., 02.03.2023 of Rs 5,00,00,000 along with 15,00,000 equity shares of face value of INR 10/- per share aggregating to INR 1,50,00,000, to the FC for no consideration. However, the SRA made the payment of Rs 5,00,00,000 in multiple installments with a delay of 90 days. The SRA failed to provide 15,00,000 equity shares to the FC which is pending to date exceeding the time frame. The SRA has also failed to repay the subsequent installments.
- 33. In view of the above-mentioned facts, it is established beyond the doubt that, the non repayment of the amounts as per the Resolution Plan by the Resolution Applicant is a wilful act leading to the contravention and stalling the implementation of the Resolution Plan. On the grounds of blatant violation, this Authority has left with no choice except to put the Corporate Debtor into Liquidation as per the Code as well as also to protect the asset of the Corporate Debtor from further deterioration.

- 34. Further the Resolution Applicant has breached the Resolution Plan not only by contravening the timelines but also defeating the purpose and objectives envisaged under IBC Code. Therefore, the Resolution Applicant will attract penal provision envisaged under Section 74 of the Code. In reference to this, the Hon'ble NCLAT in Liberty House Group Pte Ltd. Vs. Mr. Dinkar T. Venkatasubramanian & Ors., held that the non-implementation of the Resolution Plan constitutes an offence under Section 74 of the Insolvency Bankruptcy Code, 2016.
- 35. In respect of prayer (c) in this application which is to pass an order forfeiting the amounts paid by SRA till date, we have carefully perused the RFRP and the Resolution Plan submitted by the SRA and we do not find any clause or condition in these documents, which stipulate forfeiture of amount already paid by the SRA. Regulation 36B (4A) provides that if the Resolution Applicant fails to implement or contributes to the failure of implementation of the plan, the performance security shall stand forfeited. We reproduce here under Regulation 36B(4A) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:
 - "[(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule. Explanation I- For the purposes, of this sub-regulation, "performance security" shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor. Explanation II - A performance security may be specified in absolute terms such as quarantee from a bank for Rs. X and Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc...]"
- 36. In addition to the provision contained in Regulation 36B (4A) of Insolvency

and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 about the forfeiture of performance bank guarantee, the Clause 3.7(b) and 3.7(d) of the Request for Resolution Plan which has been received and accepted by the SRA, also provides for forfeiture of performance bank guarantee in case of failure of implementation of resolution plan. We therefore order invocation of performance bank guarantee and its forfeiture.

- 37. Keeping in view, Regulation 36B (4A) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 we hereby decide that performance bank guarantee given by SRA can be invoked and liquidated. However, keeping in view that there is no supporting provisions in RFRP and resolution plan to forfeit the other instalments/amount (other than performance bank guarantee) paid by SRA, we are of the view that, the amount already paid by the SRA be returned, after recovering the CIRP cost. Also, to recover outstanding fees of the Chairman of the Monitoring Committee and the security charges from the time of approval of the resolution plan by NCLT till date along with the legal counsel charges.
- 38. After considering the SRA's contentions we are of the view that the SRA cannot seek changes to the Resolution Plan after submission or demand that the FC take certain actions before paying the remaining amount. It is clear that updating revenue records does not affect the title. The SRA was aware of the alleged property encroachments and cannot shift the responsibility for addressing them to the FC. Obtaining mining permissions is the SRA's obligation, as directed by the Authority's order dated 02.03.2023.
- 39. From the perusal of the documents, it is apparent that the SRA's reasons were meant only to delay the payment of the Resolution Plan. The SRA made payment of 1st Tranche of Rs 5,00,00,000 towards the FC in delay of 90 days. Additionally, the SRA has failed to allot equity shares worth Rs 1,50,00,000 and has not repaid the subsequent installments. In the event

the RP as authorized by the monitoring committee in its 8th meeting on 05.03.2024, has filed this application for the liquidation of the CD.

40. In view of the above facts, we opine that this is a fit case for ordering Liquidation of the Corporate Debtor and also appoints Mr. Mr.Naga Bhushan having Registration No.: IBBI//IPA-001/IP-P00032/2016-17/10085, herein as the Liquidator as prayed in the application to carry out the Liquidation process of the Corporate Debtor subject to the following terms of the directions:

ORDER

- 41. The above IA (IBC)/LIQ/10 OF 2024 is allowed and the Corporate Debtor, **M/S SRI MATA INFRATECH LIMITED** is ordered to be liquidated.
 - a. The Liquidator shall strictly act in accordance with the provision of IBC, 2016 and the attendant Rules including Rules and regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended up to date.
 - b. 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.
 - c. The Liquidator appointed under section 34(1) of the Code will have 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.
 - d. The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.
 - e. The Liquidator shall investigate the financial affairs of the

Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.

- f. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad and to the Insolvency and Bankruptcy Board of India
- g. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- h. The order of moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.
- i. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- j. The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- k. The Liquidator shall submit a Preliminary report to this Authority within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the

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relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

- l. Copy of this order be sent to the Financial creditors, Corporate Debtor, Resolution Professional, Resolution Applicant and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation., 2016.
- 42. With the above directions, this application i.e. I.A. No. 10 of 2024 is hereby allowed and disposed of.

Sd/- Sd/-

(SANJAY PURI)
MEMBER (TECHNICAL)

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

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