

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 5
(IB)-385(ND)/2021
IA-4140/2021, IA-1130/2024

IN THE MATTER OF:

State Bank of India Petitioner
Vs
Mr. Rajbir Singh Respondent

Order under Section 95(1) of (IBC)

Order delivered on 01.05.2024

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

HEARING THROUGH HYBRID MODE (PHYSICAL & VC)

PRESENT:

For the PG : Sr. Adv. Sunil Fernandes, Adv. Apoorv
Agarwal, Adv. M. Jain, Adv. Rajshree
Chaudhary, Adv. Diksha Dadu
For the RP : Adv. Nibruti Samal, Adv. Sohaib Khan, Mr.
Deepak Maini (RP in person)

ORDER

DICTATED IN OPEN COURT

1. **(IB)-384(ND)/2021, (IB)-385(ND)/2021, (IB)-386 (ND) / 2021, (IB)-457(PB)/2021 & (IB)-458(PB)/2021** is a batch of Section 95 petitions which have been filed against the personal guarantors of the principal borrower namely M/s. C&C Constructions Ltd. It is relevant to state that M/s. C&C Construction Ltd. was brought under CIRP vide order of this Adjudicating Authority dated 14.02.2019.
2. Subsequently, on the failure of any proper resolution plan having been submitted in this matter, it was brought under liquidation vide order of this Adjudicating Authority dated 07.10.2022. At present, the company is undergoing liquidation proceedings.

3. Separate applications have been filed by SBI on behalf of the bank consortium lenders against the various personal guarantors being CP IB Nos. (IB)-384(ND)/2021, (IB)-385(ND)/2021, (IB)-386(PB)/2021, (IB)-457(PB)/2021 & (IB)-458(PB)/2021.
4. On 23.08.2021, Mr. M. K. Tiwari was appointed as IRP and subsequently, he was replaced with Mr. Deepak Maini who took over and filed report in (IB)-385(ND)/2021 as well as other matters also as enumerated above.
5. In all these cases, RP sought inputs from the personal guarantors and from the banks. Thereafter, RP has filed his report under Section 99 of the Code. Vide order dated 19.02.2024, we gave an opportunity to the personal guarantors to appear before us either personally or through counsel and make their submissions in the matter. The same has been done on behalf of the personal guarantors and they have filed their objection to the report filed by the RP.
6. In (IB)-386(PB)/2021, Mr. Sunil Fernandes, Ld. Sr. Counsel assisted by Adv. Apoorv Agarwal, Adv. M. Jain, Adv. Rajshree Chaudhary and Adv. Diksha Dadu appeared on behalf of the personal guarantor Mr. Gurjeet Singh Johar. In other matters, Mr. Apoorv Agarwal, Ld. Counsel on record appeared.
7. In the case of Mr. Gurjeet Singh Johar i.e. (IB)-386(PB)/2021, it is argued by Mr. Sunil Fernandes, Ld. Sr. Counsel that there are 5 issues which have not been fully captured in the report of the RP which are as follows (extracted from the reply dated 01.04.2024 of the Personal Guarantor to the report of the RP under Section 99):-

10. *That the Applicant Bank is a member of the Stakeholders Consultation Committee (“SCC”) of the Company and as per Order dated 20.02.2024 passed by the Hon’ble NCLT in Company Petition (IB) No. 1367 of 2018 titled “ICICI Bank Limited v. C&C Constructions Limited”, the Liquidator of the Company had filed an Application bearing IA No. 704 of 2024 stating that the Liquidator of the Company has received a scheme from a consortium led by Mr. Harish Sharma to acquire the Company as a going concern for Rs. 1,48,00,00,000/-. The True Copy of the Order dated 20.02.2024 passed by the Hon’ble NCLT in Company Petition (IB) No. 1367 of 2018 titled “ICICI Bank Limited v. C&C Constructions Limited” is annexed and marked herewith as ANNEXURE R-3.*

11. *Further, it is noteworthy to mention here that the Consortium Loan Agreement gave the Banks the rights to recover from the sister concerns of the Company, namely, C&C Towers Ltd. However, C&C Towers Ltd. was also admitted under CIRP vide Order dated 10.10.2019 passed by the Hon’ble NCLT, Chandigarh in CP (IB) No. 105 of 2019 titled as “Kussum Chadha Ahuja Vs. C & C Towers Ltd.”. Thereafter, vide Order dated 19.10.2023, the Hon’ble NCLT, Chandigarh approved the Resolution Plan submitted by the Resolution Applicant in C&C Towers Ltd. The True Copy of the Order dated 19.10.2023 passed in CP (IB) No. 105 of 2019 titled as “Kussum Chadha Ahuja v. C&C Towers Ltd.” by the Hon’ble NCLT, Chandigarh is annexed and marked herewith as ANNEXURE R-4.*

12. *That it is pertinent to mention here that the Applicant in the captioned Application, namely, the State Bank of India (“SBI/ Applicant Bank”), which is also the lead member of the consortium of banks was recognized as a financial creditor in the CIRP of C&C Towers Ltd. Thus, under Section 53(1) of the Code, SBI must have received a part of its claim, if not the entire claim during the resolution of C&C Towers Ltd.*

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17. *That it is pertinent to note that the Applicant Bank is the lead member of the consortium and has filed several*

Applications against the borrower Company along with the personal guarantors and corporate guarantors before various judicial authorities, namely, the Hon'ble National Company Law Tribunal and the Ld. Debt Recovery Tribunal for recovery of the amount under the consortium loan agreement.

18. *That the Respondent herein is the Director of the Borrower Company with his powers suspended, and as such, is not directly or indirectly linked with the resolution of the Borrower Company. However, it is noteworthy to mention here that there was an arbitration proceeding initiated by the Borrower Company against the Himachal Pradesh Road Infrastructure Development Corporation Ltd ("HPRIDC") for a contract bearing no. PW.SRP/RIDC/HP/5/NCB/PKG-II which was given by the HPRIDC in favour of the Borrower Company herein for completion of the balance work of widening and strengthening of Kotkhai – Kharapathar – Hatkoi – Rohru road from 48km to 80+684km.*
19. *That the Ld. Arbitral Tribunal pronounced its Arbitral Award on 25.06.2023 and the arbitration proceedings were decided in favour of the Claimant, and an amount to the tune of Rs. 61,65,57,042/- was awarded to the Claimant. The True Copy of the Arbitral Award dated 25.06.2023 passed by the Ld. Arbitral Tribunal in favour of the Borrower Company is annexed and marked herewith as ANNEXURE R-5.*
20. *Further, it is submitted that there was another arbitration proceeding initiated by the Borrower Company against the HPRIDC for a contract bearing no. PWSRP/RIDC/Procurement-ICB-3/2008 which was given by the HPRIDC in favour of the Borrower Company herein for works related to widening and strengthening of Una-Barsar-Jahu-Kalkhar-Nerchowk Road, Section Una to Barsar from 45km to 90+800km. The Ld. Arbitral Tribunal passed the award in favour of the Borrower Company on 17.08.2019 and an amount to the tune of Rs. 35.49 crores were awarded to the Borrower Company herein. However, the said Arbitral Award was challenged under Section 34 of the Arbitration & Conciliation Act, 1996 by HPRIDC before*

the Hon'ble High Court of Himachal Pradesh, Shimla. On 05.12.2022, the Hon'ble High Court of Himachal Pradesh, Shimla dismissed the petition filed by HPRIDC and observed that "Accordingly, in view of the above discussion, as this Court is of the considered view that the petitioner has not been able to make out any case for interference therein in terms of Section 34 (2)(b)(ii) of the Act, the present petition being devoid of any merit is dismissed. Pending miscellaneous applications, if any, stands disposed of. Interim order, if any, stands vacated." The True Copy of the Order dated 05.12.2022 passed by the Hon'ble High Court of Himachal Pradesh, Shimla is annexed and marked herewith as ANNEXURE R-6.

21. *Thereafter, it is appropriate to mention here that the Applicant Bank has filed an Application before the Hon'ble Debts Recovery Tribunal, New Delhi bearing Original Application No. 1032 of 2019 titled "State Bank of India v. C&C Constructions Ltd. & Ors." under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for recovery of sum of Rs. 1028,62,11,807/- along with pendente lite and future interest @11% p.a. on working capital and @11.50% p.a. on term loans from the date of filing of the Original Application until its full realization. As per Order dated 18.12.2019 passed by the Ld. Presiding Officer, Debts Recovery Tribunal-II, Delhi, the Company along with the personal guarantors were restrained from alienating or creating any sort of encumbrance in respect of the properties. However, the Applicant Bank has failed to disclose such relevant information and the RP has also failed to verify the amount claimed by the Applicant Bank in its Application filed under Section 95 of the Code. The True Copy of the Order dated 18.12.2019 passed by the Ld. Debts Recovery Tribunal-II, Delhi in Original Application No. 1032 of 2019 titled "State Bank of India v. C&C Constructions Ltd. & Ors." is annexed and marked herewith as ANNEXURE R-7.*

8. Similar stand has been taken by Mr. Apoorv Agarwal appearing on behalf of the personal guarantors in the reply filed in other cases.

9. We have perused the documents namely report filed by the RP, reply filed by the personal guarantors and response of the bank to the queries raised by the RP. The RP in his report stated that he has asked the SBI about the exact amount of outstanding loan and the breakup of the principal amount as well as interest amount to which the bank has replied as follows:-

From: AGMCL404109 <team4samb1.del@sbi.co.in>
Sent: 22 February 2024 11:14 AM
To: Deepak Maini <deepak.maini@insolvencyservices.in>
Subject: Re: REMINDER: RE: Request to provide details of outstanding debt against M/s C&C Constructions Limited as on date to be recovered from its Personal Guarantors – Reply of Mr. Sanjay Gupta, Personal Guarantor in response to Notice dated 6th February, 2024

Dear Sir,

As on date, outstanding debt towards C&C Construction Limited is as under-

Fund based- Rs. 581.21 crore

Non fund based (bank guarantee)- Rs. 24.21 crore.

Total- Rs. 605.42 crore.

During CIRP/ Liquidation process, till date we have not received any amount in the account towards recovery, neither from C&C Construction Limited nor from C&C Towers Limited. Only bank guarantees worth Rs. 50.25 crore has been reversed during the period.

Submitted for your information and necessary action.

If any further information is needed, please let me know.

Regards

AGM & CLO

SBI

SAMB Delhi

10. In any case, it is seen that the submissions with respect to the recovery of amounts as stated by the personal guarantors in the replies referred to the recoveries to be effected in future. Likewise, the contention of the Ld. Sr. Counsel that the company is likely to be sold as a going concern is still under consideration and in any case it may or may not fetch the full amount of the debt.

11. In any case, the liability of the personal guarantor being co-extensive with that on the principal borrower, IRP against the personal guarantor can go alongwith the liquidation proceeding of M/s. C&C Construction Ltd. Outcome of these section 95 petitions shall be subject to the final payment received by the creditors in the case of liquidation proceedings against the principal borrowers and other proceedings which is highlighted by the Ld. Sr. Counsel in the reply to the Section 99 report. Further, the RP if allowed to proceed further as per the Code, will seek repayment plan where the personal guarantors will have an opportunity to put-forth their plan before the RP.
12. We find that the RP and the Financial Creditor in the present case have complied with the relevant provisions of the Code namely issuance of demand notice under Rule 7 of IBC (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by SBI, seeking of inputs from the personal guarantors by RP and sending of report under Section 99 of the Code by RP to the personal guarantors and creditors.
13. In view of the above, we are inclined to admit the present petition bearing No. **(IB)-385(PB)/2021** under the Provisions of Section 100(1) of IBC, 2016 for initiation of Insolvency Resolution of the Personal Guarantor.
14. **Accordingly, the present petition bearing No. (IB)-385(PB)/2021 stands admitted under Section 100 of IBC, 2016.**
15. The RP is directed to proceed further in accordance with the provisions of the Code. Interim moratorium which came into

effect in terms of Section 96(1)(a) on the date of filing the application shall cease to have effect. A moratorium in terms of Section 101 of the Code shall commence as applicable. RP is directed to take all further steps in accordance with Part III, Chapter III of the Code.

16. We direct the RP to issue a public notice on our behalf in terms of the provision of Section 102 to invite the claims from the creditors at large. For this purpose, he will be paid a consolidated amount of **Rs. 2 lacs** by the SBI to meet the cost arising out of issuing public notice and inviting claims etc.
17. Copy of this admission order along with the report of RP be made available to SBI in terms of Section 100(3) of the Code, by the RP.
18. Copy of this order be also sent to IBBI by the Registry.
19. Ld. Counsel for the Respondent Personal Guarantor requested that he may be allowed to participate in resolving the issue. He is at liberty to proceed in accordance with the law.

-Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT

-Sd/-
(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)

01.05.2024
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