

THE NATIONAL COMPANY LAW TRIBUNAL

COURT ROOM NO. 1,

MUMBAI BENCH

Sr. No. 30

IA No. 1405 of 2024

in

C.P. (IB) No. 2156/MB/2019

Interlocutory Application under Section under Section 60(5) of the
Insolvency and Bankruptcy Code, 2016 read with Regulation 39(9) of the
IBBI (Insolvency Resolution Process for Corporate Persons) Regulations,
2016

Mr. Pankaj Sham Joshi,
Chairman of Monitoring Committee/
Resolution Professional of
KGS Sugar & Infra Corporation Limited

...Applicant

In the matter of

Canara Bank

...Financial Creditor

V/s

KGS Sugar & Infra Corporation Ltd

...Corporate Debtor

Order dated 18.06.2024

CORAM:

Hon'ble Member (Judicial) Shri Justice V.G. Bisht (Retd.)

Hon'ble Member (Technical) Shri Prabhat Kumar

Appearance:

For the Applicant : Ms. Neha Naik, Advocate

Per : **CORAM**

ORDER

1) The present Interlocutory Application has been filed by the Applicant praying for the following reliefs:

- i. Declare the Resolution Plan submitted by Gangamai Industries and Construction Limited as non- implemented;*
- ii. Cancel the approval of the resolution plan under order dated 11 August 2023 passed in I.A. No. 2194 of 2021 and effect thereof;*
- iii. Declare that the performance security of INR 5 Crore provided by Gangamai Industries and Construction Limited as forfeited due to non-implementation of the resolution plan.*
- iv. Re-instate the Chairman of the Monitoring Committee (erstwhile Resolution Professional) as the Resolution Professional of the Corporate Debtor;*
- v. Direct the resolution professional to publish Form G, seeking EoI from the potential resolution applicants;*
- vi. Allow the COC/ Monitoring Committee to file a separate application seeking liquidation of the Corporate Debtor should the need arise.*

2) It is submitted that the SRA has wilfully failed to implement the Resolution Plan submitted by it in respect of the Corporate Debtor

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(Resolution Plan) as per the time schedule mentioned in the order dated 01.12.2023 passed by this Tribunal in I.A. No. 4062 of 2023, filed by the Respondent seeking extension of timelines. Therefore, the members of the monitoring committee, being the secured Financial Creditors, being aggrieved by non-implementation of the Resolution Plan, is seeking necessary and appropriate directions from. this Tribunal under Regulation 39(9) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- i.** This Bench has approved the Resolution Plan in the case of the Corporate Debtor herein on 11.08.2023. During the 2nd Monitoring Committee meeting, the SRA sought extension of time for making payments under the approved Resolution Plan. Pursuant to the directions of this Tribunal, the Monitoring Committee considered the request made by the SRA and granted extension of time till 17.03.2024 to make payment of the first instalment of Rs. 56 Crores plus interest plus CIRP costs at actuals and granted time till 17.08.2024 to make payment of the second instalment of Rs. 79 crores plus interest.
- ii.** Further, Gangamai Industries and Construction Limited, has filed an Affidavit in IA 4062 OF 2023 stating that they will

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make payment of the first instalment of Rs. 56 crores under the Resolution Plan by 31.01.2024. Admittedly, the first instalment of Rs. 56 crores was not paid by GIACL by 31.01.2024, and hence, the SRA has failed in implementing the Resolution Plan as approved by this Tribunal. Thus, the resolution plan which is binding on the SRA has failed for failure to adhere to the timeline for payment. The SRA has breached the provisions of the Section 31 (1) of the IBC and has contravened the orders of this Adjudicating Authority. Hence, the Resolution Plan of GIACL has failed, and is thus "not implemented".

- iii.** The performance security of INR 5 Crore provided by the SRA stands forfeited to the account of the Corporate Debtor. The Committee of Creditors proposes to use this towards CIRP cost incurred in the process till date.
- iv.** Record reveals that the matter was listed on Board on 10.06.2024, on which date, Ld. Counsel for the Successful Resolution Applicant tendered Two Cheques amounting to Rs. 28 Crores each dt. 10.06.2024 & 10.08.2024. However, on 18.06.2024, Ld. Counsel for the erstwhile Resolution

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Professional makes a statement that the Cheque of Rs. 28 Crores, promised to be cleared on 10.6.2024, has bounced back and the Counsel, on instructions, submits that the Monitoring Committee has lost faith in the Successful Resolution Applicant.

- v. In view of the above, Applicant seeks reinstatement of the Chairman of the Monitoring Committee (erstwhile Resolution Professional) as the Resolution Professional of the Corporate Debtor. Applicant further seeks leave of this Bench for publishing Form G, seeking EoI from the potential resolution applicants; and allow the COC/ Monitoring Committee to file a separate application seeking liquidation of the Corporate Debtor should the need arise.

- 3) It is submitted that the Corporate Debtor has the potential to be revived and it is a commercially viable company. As a sugar factory sourcing sugarcane from over 90 villages in and around Nashik, the Corporate Debtor's operations hold significant socio-economic importance in the region. By leveraging their relevant expertise and assuming control of the Corporate Debtor, a fresh resolution plan has the potential to revive the company and 'stimulate the regional economy. Further, it is

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imperative that outstanding dues to the farmers, who are major stakeholders in the sugar industry, are settled promptly.

- 4) Admittedly, the implementation of the Resolution Plan has failed in the present case, however, the Committee of Creditors has resolved to re-run the process. Section 33(3) provides that, where the Resolution Plan approved under Section 31 is contravened by the Corporate Debtor, any person whose interest is prejudicial affected by such contravention may make an Application before the Adjudicating Authority for Liquidation. Admittedly, there is no such Application has been filed by any Creditors seeking Liquidation of the Corporate Debtor.
- 5) In view of CoC resolving for re-run of the process, we consider it appropriate to allow the erstwhile Resolution Professional Mr. Pankaj Sham Joshi as the Resolution Professional of the Corporate Debtor (which has also been recommended by CoC), on such fee already determined by the CoC in relation to his earlier engagement. Committee of Creditors shall contribute necessary funds for carrying out the Corporate Insolvency Resolution Process.
- 6) Needless to say, Resolution Professional shall issue Fresh Form G, for inviting Expression of Interest from the Prospective Resolution Applicants as the Liquidation would be the last resort as distribution

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under the prescribed waterfall mechanism may result in no payment being made to the other Stakeholders including the Government Authorities. It is made clear that if no prospective buyer has shown their interest to submit the Resolution Plan for the Corporate Debtor, then the Applicant can file a separate Interlocutory Application seeking Liquidation of the Corporate Debtor, if the need arises.

- 7) In view of the above, the Interlocutory Application bearing IA No. 1405 of 2024, is disposed of as Allowed. There will, however, be no order as to costs. Ordered Accordingly.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

VIRENDRASINGH G. BISHT
MEMBER (JUDICIAL)

Vedant Kedare