

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

*IA.(IB)No.746/KB/2022
In
C.P (IB) No 349/KB/2017*

An application under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 .

In the original matter of

Ramsarup Industries Limited

.. Corporate Debtor

And

In the matter of:

CFM Asset Reconstruction Private Limited

...Applicant

Versus

1. Mr. Kshitiz Chhawchharia
2. SS Natural Resources Private Limited

... Respondents

Order Pronounced on: 04/04/2024

Coram:

Mr.Rohit Kapoor, Member (Judicial)

Mr.Balraj Joshi, Member (Technical)

Counsels appeared through Physically/ Video Conference

Mr. Deep Roy,Adv.] For the ex RP and ex Chairman of the Monitoring

Mr. Dhaval Savla, Adv.] Agency

Mr. Prajjwal Tiwari , Adv.]

Mr. Aditya Goptu, Adv.]

Mr. Siddhartha Mitra, Sr. Adv.] For CFM ARC in IA746/2022, IA 94/2023,

Mr. Siddhartha Datta, Adv.] IA 96/2023, IA 312/2023, IA 509/2023, IA

Mr. Sakya Sen, Adv.] <u>1894/2023, IA 1881/2023 For Respondent in</u>
Mr. Shubhan Kar Nag, Adv.] <u>IA 1116/2023, For R2-R7, R9-R10 in Cont. A</u>
Mr. Deepanjan Dutta Roy, Adv.] <u>8/2023</u>
Ms. Sanjana Jha, Adv.]
Mr. Joy Saha, Sr. Adv.] <u>For R2 in IA no. 746/2022</u>
Mr. Shounak Mitra, Adv.	
Ms. Vaibhani Pandey, Adv.	
Mr. Deep Roy, Adv.] <u>For Ex-RP</u>
Mr. Rahul Auddy, Adv.]
Mr. Dhaval Savla, Adv.]
Mr. Aditya Goptu, Adv.]

ORDER

Per: Balraj Joshi , Member (Technical)

1. IA (IB) No. 746/KB/2022 has been filed by the CFM Asset Reconstruction Private Limited in its capacity as Trustee of CFMARC Trust 81 against Mr. Kshitiz Chhawchharia, the Chairman of the erstwhile monitoring committee being respondent no. 1 and SS Natural Resources Private Limited, who is Successful Resolution Applicant (“SRA”) for the Corporate Debtor viz. Ram Sarup Industries seeking various reliefs given in Para 59 of the IA. The reliefs are such that seek to virtually nullify~~ing~~ the entire resolution process due to the reason that the Chairman of the Monitoring committee has violated the terms of the approved Resolution Plan and unilaterally modified the same in that the applicant has not been given its legitimate share as envisaged in the plan.
2. In this regard it is pertinent to mention here that this Adjudicating Authority had disposed of another IA being IA (IB) No. 724/KB/2022, which was filed by the SRA seeking directions upon the respondent (who is the applicant in IA 746) to execute the assignment agreements and further hand over the title deeds of the Corporate Debtor which are in the custody of the Respondent, to the SRA forthwith. In the order dated 27 June 2023 of this Adjudicating Authority at para 29 to 32, following observations have been made by this Adjudicating Authority.

“ 29. Finally, we make a remark that the object of Code is to revive a Corporate Debtor and not to drag it to the grave. The SRA, despite of the huge number of litigations and passage of time has not backed out and wants to revive the Corporate Debtor. The Respondent should try to take a logical approach and not stand as a wall in the revival of the Corporate Debtor and the implementation of the Plan after three years.

30. The SRA has deposited the amount as given in the Resolution Plan in the controlled account and hence, he has fulfilled his part. The Respondent is therefore under due obligation to provide the NDC and execute the assignment agreements and further hand over the title deeds of the Corporate Debtor which are in the custody of the Respondent, to the SRA forthwith. The revival of the Corporate Debtor not be hampered any further.

31. The MA shall determine and appropriate the amounts to be borne out by various parties as outlined above, preferably within two weeks from the date of issue of this order. A compliance affidavit be filed by the Chairman of the Monitoring Committee within two weeks of completion of the above transactions. We order accordingly.

32. With these direction I.A.(IB) No. 724/KB/2022 is disposed of, with the liberty to the Chairman of the monitoring agency to approach this Adjudicating Authority in case of any difficulty in implementation of the above protocol.”

3. Aggrieved by the order passed by this Adjudicating Authority dated 27th June, 2023, an Appeal was preferred by the appellant i.e. Financial Creditor viz. CFM Asset Reconstruction Pvt. Ltd. before Hon’ble NCLAT in CA (AT) (Insolvency) no. 960 of 2023.
4. Hon’ble NCLAT vide order dated 20th October, 2023 modified the order of this Adjudicating Authority and directed as follows: -

“ ‘30. In view of the above discussion and our conclusion, we are of

the view that Order of the Adjudicating Authority needs to be modified and I.A. No. 724/KB/2022 deserves to be disposed of in following manner:-

- i. The Respondents are directed to make the payment of principal balance amount of Rs. 248,02,09,427/- along with accrued interest of Rs.14,94,28,383/- (upto 10th July, 2024) along with further interest payable upto date of payment within one week from this order which amount shall be transferred in the account, details of which has already been communicated by the Appellant to the ex-RP.*
- ii. Out of Rs. 4.01 Crores which has been deducted towards COC expenses and future Litigation Fund, only CoC Expenses are required to be deducted and any amount towards Future Litigation Fund need not be deducted from the upfront payment. The Ex-RP shall recalculate the account towards COC Expenses which need only to be deducted from the upfront payment and any amount kept under Future Litigation Fund need to be distributed to the Financial Creditors as per their Security Interest, which amount need to be paid to the Appellant as per its share of security interest and shall be paid by the Resolution Applicant. Both the proceedings i.e. calculation of the amount be completed by Ex-RP within one month and payment accordingly shall be made by the SRA within further period of two weeks to the Appellant.*
- iii. After receipt of the amount as directed above in (i) the Appellant shall issue a No Dues Certificate and execute the assignment agreement in terms of approved resolution plan and hand over title deeds of the corporate debtor within two weeks from the date of the receipt of the payment.”*

5. This order came to be further modified by Hon'ble NCLAT *vide* order dated 08/12/2023:-

“3. In view of the above, we allow the application and amount of INR 248,02,09,427/- is modified as 2,63,53,60,652/- and the date as mentioned in Prayer (b) is modified as 10.07.2023. In so far as, prayer made in Prayer (c) Mr. Krishnendu Datta is right in his submission that the said prayer seeks in fact modification /review of the judgment, as contained in Paragraph 26 of the Judgment.”

6. When this matter was taken up for further consideration on 14th December, 2023 by this Adjudicating Authority, the aforesaid orders were brought to our notice. It was submitted by the respondent herein that the requisite payments have now been made to the Financial Creditor *viz.* CFM Asset Reconstruction Pvt. Ltd. and therefore, it must be directed to issue NDC. However, this statement was again controverted by Ld. Sr. Counsel appearing on behalf of CFM Asset Reconstruction Pvt. Ltd., who stated that the payments have not been made as per the order *ibid.*

7. Upon hearing this argument, we directed the Ld. Counsel for the Ex.RP/Chairman of the Managing Committee to file an affidavit stating that the payments have been made in compliance to the order of Hon'ble NCLAT dated 20/10/2023 and as modified order dated 08/12/2023.

8. The said affidavit has been filed by the Chairman of the Managing Committee undertaking therein that payments as directed to be made by Hon'ble NCLAT has been made and corresponding Bank details were also furnished in the said affidavit.

9. In para 6, following has been submitted :

“ In accordance with the directions issued by the Hon'ble NCLAT pursuant to its order dated 20.10.2023 read with its order dated 08/12/2023, the following amounts were paid / transferred to the Applicant:

(In INR)

<i>Particulars</i>	<i>Date of Payment</i>	<i>Principal</i>	<i>Interest</i>	<i>Total</i>
<i>Payment pursuant to paragraph 30(i) of the order dated 20.10.2023</i>	<i>30.10.2023</i>	<i>2,480,209,427</i>	<i>192,217,369</i>	<i>2,672,426,796</i>
<i>Payment pursuant to paragraph 30(ii) of the order dated 20.10.2023</i>	<i>21.11.2023</i>	<i>13,739,556</i>	<i>NIL</i>	<i>13,739,556</i>
<i>Payment pursuant to the order dated 08.12.2023</i>	<i>16.12.2023</i>	<i>155,151,225</i>	<i>10,11,883</i>	<i>156,163,108</i>

10. It has been further mentioned in para 7 & 8 as under: -

“7. Accordingly, as directed by the Hon’ble NCLAT vide its order dated 20/10/2023, a sum of INR 17,843,148, being the Future Litigation Expenses deducted from the consideration had to be redistributed amongst the lenders by the Ex.RP. As indicated above, out of the said amount, a sum of INR 13,739,556, being the relevant amount payable to the Applicant, has been fully paid by the Ex. RP on 21.11.2023. A copy of the evidence of payment of the relevant amounts and the calculation of the share payable to the Applicant is annexed as Annexure –E.

“ 8. It is abundantly clear that the entire share of the Applicant being INR 263.53 crores along with accrued interest as on the date of payment along with the relevant amounts out of the Future Litigation Fund has been fully paid by the Ex.RP as on 16.12.2023 as per the directions of the Hon’ble NCLAT vide its orders dated 20.10.2023 and 08.12.2023. Accordingly, it is abundantly clear that all the amounts payable to the Applicant pursuant to the orders of the Hon’ble NCLAT have been duly paid and the Applicant is unnecessarily delaying the compliance of the Resolution Plan without any cause.”

11. We have examined the matter as above, and find from the bank statements Annexed with the Affidavit filed by the Chairman of the erstwhile Monitoring Committee that the total amount as directed by Hon'ble NCLAT vide order 20/10/2023 amounting to Rs. 267,24,26,796/- has been paid on 30th October, 2023. Similarly amount pursuant to paragraph 30(ii) of the order dated 20th October, 2023 a sum amounting to Rs. 1,37,39,596/- has been paid on 21st November, 2023 and the remaining amount pursuant to order dated 08/12/2023 amounting to Rs. 156,163,108/- have been paid on 16th December, 2023.
12. We have examined the detail calculations given at page 6-7 of the said affidavit, based on the provided figures and are convinced that the payments as required to be made in compliance of the Hon'ble NCLAT cited (supra) have been made and therefore there is no impediment in the way of issuance of NDC by the Financial Creditor viz. CFM Asset Reconstruction Pvt.Ltd. as directed by Hon'ble NCLAT in para 30 (iii) of its order dated 20th Oct, 2023.,
13. Since the grievance of the applicant in IA 746 (KB)2022 has been addressed, as brought out above, the same is disposed of in above terms.
14. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on this, the 4th day of April, 2024

PJ