



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

I.A. (IB) No. 299 of 2023

In

Company Petition (IB) No. 166/KB/2018

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**Resolution Applicant/SRA)** against **UCO Bank** (hereinafter referred as **Respondent/Financial Creditor**) seeking following reliefs:

- “a) An order be passed directing the respondent to reverse the interest/principal charged to the Corporate Debtor’s account for the period prior to the date of approval of resolution plan or amount due as per resolution plan and also to reverse the penal interest charged if any and consequential interest charged during the implementation plan period;*
- b) An order be passed directing the respondent bank to furnish correct accounts in terms of the approved resolution plan whereby calculating the interest de-novo from the date of approval of Resolution plan;*
- c) An order be passed directing the respondent to upgrade the account from NPA to standard asset category on payment of the overdue amount as per the calculation stated in Annexure – E;*
- d) An order restraining the bank from initiating any action against the Corporate Debtor and/or Successful Resolution Applicants for recovery of dues till disposal of this application or*
- e) Alternatively, pass necessary orders under Section 74(3) of the Code in view of contravention of the Resolution Plan by the respondent no. 1;*
- f) Ad-interim order in terms of prayers above;*
- g) Pass such further and/or other order or orders as this Hon’ble Tribunal may deem fit and proper;”*

**Factual Matrix:**

- 4.** The Applicant is a Successful Resolution Applicant of **M/s. Darjeeling Rolling Mills Private Limited** (hereinafter referred as
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**Corporate Debtor**). As per the approved resolution plan, the settlement plan to various creditors as detailed below:

| <b>Sl. No.</b> | <b>Parameters</b>                                     | <b>Amount Payable (INR Lakhs)</b> | <b>Source of funds</b>          | <b>Description of Proposal</b>  |
|----------------|---|-----------------------------------|---------------------------------|---|
| <b>1.</b>      | Upfront case recovery to financial creditors          | 200                               | Own fund out of Family Property | The RA proposed payment of Rs.100 lakhs in the bank account of UCO Bank within 7 days of approval of plan by CoC and balance 100 lakhs within 30 days of approval of Plan by Hon'ble NCLT or 31/03/2019 whichever is later. |
| <b>2.</b>      | NPV based on evaluation matrix as provided in the RFP | 496.50                            | Do                              | Rs. 141 lakhs over a period of 3 years treated as WCTL Remaining Rs. 150 lakhs to be continued as cash account.   |

- 5.** Thus, as per resolution plan dated 31.01.2019, the SRA claims to have paid respondent no. 1 the CIRP cost and an amount of Rs. 200 lakhs upfront and the balance repayment of Rs.141 lakhs over the period of commencement of resolution plan from April 2019 to March 2022 which has to be paid in 36 monthly equal instalments. The cash credit facility of Rs. 150 lakhs to be continued for the purpose of operations of the corporate debtor.
- 6.** The SRA had paid the initial upfront payment of Rs. 100 lakhs upon approval of plan by CoC. Due to financial constraints, the SRA failed to pay the balance upfront which is payable within 30 days of the plan approved by the Adjudicating Authority and also the

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instalments proposed in the resolution plan. The applicant also defaulted in payment of CIRP cost. Consequent to this default, the resolution professional of the corporate debtor filed an application before the NCLT, Kolkata Bench for liquidation of the corporate debtor.

- 7.** The application was heard and after being satisfied that SRA made payment of substantial part of due amount till date, NCLT passed an Order that SRA shall make balance payment and also interest to the respondent No. 1 for the pending period.
- 8.** Consequent to this Order, the respondent No. 1 bank has to maintain two accounts:
  - i.** For WTCL facility where instalments will have to be made in three years and
  - ii.** A continuing cash facility with a current limit of Rs. 150 lakhs.
- 9.** It is a claim of the applicant that the respondent bank began charging the corporate debtor interest much higher than as mentioned in the plan. Interest was also claimed by the respondent bank on the outstanding dues as on the date of CIRP when moratorium under Section 14 of the IBC, was in force.
- 10.** It is the claim of the applicant that repeated reminders and requests were made by SRA to the respondent bank to charge interest as per the plan and reverse interest charged during moratorium period, the respondent bank did not meet the request and instead, categorised the account of the corporate debtor as NPA on 20.04.2021, for non-payment of dues which included excess interest as mentioned above.

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- 11.** It is the claim of the applicant that they have fully paid the upfront amount of Rs. 200 lakhs, the CIRP costs amounting to Rs. 12.30 lakhs and the instalments amount of Rs. 141 lakhs along with interest due as well as interests on delayed payment in accordance with the resolution plan. Thus, total amount paid by the applicant is Rs. 3,08,99,952/-. Whereas, as per the applicant they are liable to pay only Rs. 2,53,29,562/-.
- 12.** It is the claim of the applicant that huge difference between the amount payable and amount paid and amount charged by the respondent bank is on account of two reasons.
- i.** Extra and higher interest than what has been contemplated in the resolution plan, charged, for the outstanding dues and delayed payment charges.
  - ii.** Charging of interest during moratorium period on the outstanding due.
- 13.** The applicant claims meanwhile, in utter disregard, despite repeated requests and reminders to correct the situation, the respondent bank has proceeded to invoke SARFAESI Act and issued a notice on 21.06.2021, under Section 30(2) of the SARFAESI Act 2002, calling upon the corporate debtor to pay an amount of Rs. 3,78,79,375/-.

**Ld. Counsel for the Applicant:**

- 14.** Ld. Counsel submits that an amount of Rs. 3,08,99,952/- has been paid as against due as per the resolution plan which is Rs. 2,53,29,562/-. The extra payment made by the applicant is on account of interest payable on delayed remittance and charges for delay. Thus, the entire plan as on date has been implemented and the scope of the application is only to the extent of the resolution of
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extra interest that has been charged by the bank during the moratorium period for Rs. 31.65 lakhs as on date of filing this application and reversal of further enhanced interest over interest cumulating to Rs. 54,51,011/-.

**Ld. Counsel for the Respondent:**

- 15.** Ld. Counsel for the respondent submits that in the application at page 13, para 7, SRA has given details of settlement plan to various creditors under the approved resolution plan in the form of a table/chart. From the said table, it is evident that payment under the plan including CIRP costs were to be made in a time-bound manner by March, 2022 and a Cash Credit facility of Rs. 150 lakh was to be continued for operations of CD and that interest rate applicable both the WCTL as well as CC facility was to be as per Bank norms at the prevailing rate (refer to page 14, paragraph 7 of IA). From the aforesaid, it is evident that:
- i.** The Cash Credit facility of Rs. 150 lakh was part of the resolution plan and
  - ii.** Interest is to be applied as per bank norms and at prevailing rate both in respect of WCTL and CC facility.
- 16.** Ld. Counsel for the respondent submits that there is clear admission of delay and default in payment in terms of the approved resolution plan by the SRA.
- 17.** Ld. Counsel further submits that due to such delay and default on the part of the SRA to adhere to the approved resolution plan, the respondent No. 2 at the instance of respondent No. 1 / Bank filed an application for liquidation being C.A. (I.B) No. 1308/KB of 2019 before this Hon'ble Tribunal. After filing the said application, SRA
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regularized the shortfall in payment as on the relevant date and, as such, the liquidation application was withdrawn by an order dated 19.02.2020. However, this Hon'ble Tribunal directed the SRA to consider the bank's demand of interest for pending period and payment of monitoring cost within two weeks.

- 18.** At page 18, paragraph 26 of IA, the SRA has clearly admitted as follows:

*"The applicants also submit at present only the amount of cash credit facility for Rs. 150 lakh along with interest thereupon is payable by them which approximately comes out to be Rs. 2,08,00,000/- (Rupees Two Cores Eight Lakhs Only) as on 31.12.2022.*

*It is further pertinent to mention that as per the Successful Resolution Applicants, an amount of Rs. 208 lakhs only is due and if the cash credit is maintained only Rs. 58 lakhs being overdue amount is payable whereas as per the calculation of the bank, an amount of Rs. 110 lakhs as overdue amount is payable."*

- 19.** Ld. Counsel submits that according to the applicant, difference between the overdue amount of Rs. 58 lakhs as against Rs. 110 lakhs allegedly claimed by bank is the interest charged by the bank in the account of CD for the period when CD was under CIRP period and moratorium under Section 14 of the Code was ongoing. This contention is not only utterly false but also grossly contradictory to the SRA's own contention that the charged interest during moratorium period was only Rs. 31.65 lakhs approximately.
- 20.** Ld. Counsel further submits that the SRA is a defaulter under the approved resolution plan and also in respect of the loan accounts,
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reason whereof the account of the CD was classified as NPA on 20.04.2021 and SARFAESI proceedings have been initiated against the CD.

- 21.** Ld. Counsel submits that the plan has been approved as early as on 01.03.2019. After passing of the resolution plan, this Hon'ble Tribunal had become *functus officio*. As such, the present application, which is filed with an oblique motive to indirectly prevent the Bank from proceeding with SARFAESI action against the applicant or CD, is not only misconceived by also vexatious and clearly is an abuse of process of law and it should be nipped in the bud.
- 22.** The present application is filed to jettison the SARFAESI proceedings instituted by the Bank and is an attempt to regularize the accounts of the CD which are NPA since April, 2021. It is material to note that there is no reply and/or representation given to the Notice under Section 13(2) issued by the Bank on 21.06.2021, neither is there any objection to the NPA classification. As such, granting of Prayers (a) or (c) for direction upon the Bank to upgrade the account from NPA to Standard Asset Category or Prayer (d) praying for restraining the Bank from initiating any action against CD or SRA for recovery of dues does not and cannot arise and such Prayers are wholly misconceived and are directed and reflective of the applicant's attempt to abuse the process of law and Court.
- 23.** Ld. Counsel submits that once the plan is approved, the SRA cannot invoke IBC jurisdiction in respect of other accounts maintained by the CD with the Bank. Once the moratorium period is over apropos approval of the resolution plan, Bank is at liberty to proceed and
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initiate actions against the applicant in accordance with law as applicable on the occurrence of default apropos the other accounts.

- 24.** Ld. Counsel submits that the applicant has grossly suppressed the letter dated 06.08.2020, by which the Bank proposed for reversal of interest charged during the moratorium period. However, question of reversal does not arise since the amount outstanding, due and payable by SRA to the Bank is over and in excess of amount charged during the moratorium period. The Bank cannot be expected to make any payment to a defaulter who has acted in gross contravention of approved resolution plan.
- 25.** Ld. Counsel further submits the upon appreciation of facts and circumstances and submissions made by all the parties hereto, this Hon'ble Tribunal has already passed an Order on 20.11.2023, thereby, directing for payment of at least 50% of the due amount in terms of the resolution plan. No appeal has been filed from the said Order by the applicant. Despite such direction, not a single payment has been made by the applicant. This again shows that the applicant is acting in gross contravention of the Orders passed by this Hon'ble Tribunal.

**Analysis and Findings:**

- 26.** We find that the applicant who is a Successful Resolution Applicant has submitted resolution plan containing following important elements of the plan in relation to the case in hand which is reproduced as under:

Brief outline of the proposed resolution plan is given below:

| <b>Sl. No.</b> | <b>Particulars</b> | <b>Key Terms/Amount</b> |
|----------------|--------------------|-------------------------|
|----------------|--------------------|-------------------------|

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| <b>1.</b> | Amount of upfront payment to creditors (upfront cash recovery)                        | Rs. 200 lakhs  |
| <b>2.</b> | Balance repayment obligation to creditors (other than 1 above)                        | Rs. 141 lakhs over a period of 3 years treated as WCTL.<br>Remaining Rs. 150 lakhs to be continued as Cash Credit Account.   |
| <b>3.</b> | Interest rate/coupon and frequency of payment   | As per bank norm and prevailing rate.  |
| <b>4.</b> | Repayment schedule  | Repayment shall commence from April 2019 and end in March 2022 and repayment shall be done monthly (principal amount along with interest due thereon)  |
| <b>5.</b> | Security  | (Primary)<br>Hypothecation of stock of raw materials, finished goods, WIP and book debts.<br><br>(Collateral)<br>Hypothecation of Plant and Machinery/equipment/Furniture Fixture installed/to be installed valued at 100 lakhs.<br><br>EMTD of land and factory shed in the name of the company, situated at Panchkulguri, Mirik Road, JL. No. 59, LR, Khatian-91, RS Plot-97, LR. Plot- 329, Area- 1.00 acre. Market Value around 180 lakhs. |
| <b>6.</b> | Amount of fresh equity proposed to be infused for improving operations of the Company | Rs. 100 lakhs  |
| <b>7.</b> | Additional Collateral/security being offered by the Resolution Applicant              | All existing additional collateral/security shall continue to be mortgaged with bank for further period of one year from the date of implementation of plan. Thereafter, the bank may released any   |

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|  |  | <p>additional collateral security held apart from below:</p> <p>1<sup>st</sup> charge over vacant land in the name of Md. Shamim Akhtar, Director situated at Champasari, Mouza – Palas, JL. 43, Khatian 64/1 (old). 984(new). Plot No. 622,623,624,625, area 17.00 katha, Market Value: 34 lakhs</p> <p>1<sup>st</sup> charge over vacant land in the name of Md. Quararuzzama, and Asgari Begum (Guarantor) situated at Bardhaman Road (near Kishor Sangha), Siliguri, Mouza- Siliguri, JL 110. Khatian 2015(LR), 2315(RS), Plot No. 8259. Area 4.64 dec or 2.784 katha. Market Value: 55 lakhs.</p> <p>1<sup>st</sup> charge over the land structure in the land of Md. Quamaruzzama, situated at Panchkolguri, Mouza-Panchkolguri, JL. 59, Khatian 91, Plot No. 97(RS), 329(LR), Area-60.45 decimal. Market Value:120 lakhs</p> |
|--|--|---|

**27.** It is very clear that upfront payment of Rs.200 lakhs and balance payment of Rs. 141 lakhs to be paid over a period of three years charged as WCTL. As per the plan, the remaining Rs. 150 lakhs to be continued as cash credit account.

**28.** We find that upfront cash recovery for financial creditors as per the plan has been paid to the tune of Rs. 200 lakhs however, there has been a delay in making this payment for which the applicant has paid interest along with delay charges. The balance Rs.141 lakhs were to be paid in 36 equal instalments. Even this was delayed by

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the applicant and the same has been disputed. Though applicant has claimed that he has paid Rs. 3,08,99,952/- and have attached bank statement in support of the claim, in the absence of specific markings in bank statement, we are unable to verify and confirm.

- 29.** We find that the respondent bank has charged interest to the tune of Rs. 31.65 lakhs during the moratorium period which has to be reversed, as it is legally not sustainable.
- 30.** Further, we find that respondent bank has charged interest more than the interest rate prevailed at the time of approval of the resolution plan. We also note that as per the resolution plan, the cash credit facility of Rs. 150 lakhs will have to be continued and Clause VIII of the resolution plan clearly provides that interest payable to corporate debtor will be a prevailing interest i.e. the rate of interest payable at the time of the resolution plan.
- 31.** In view of the above finding, we are of the view that interest charged during the moratorium period for amount of Rs. 31.65 lakhs will have to be reversed and extra interest charged over and above the interest rate prevailed at the time of approval of resolution plan will also need to be reversed. After considering the above facts, balance payment, if any, will have to be paid by the applicant along with interest and delayed payment charges, if any, and upon payment of the same, the respondent bank is directed to restore the account as non-NPA and allow the corporate debtor to function as a going concern. If applicant fails to make the balance payment with interest, the respondent is at liberty to proceed against the applicant as per applicable laws.

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- 32.** Accordingly, this application along with the CP is **disposed of**.
- 33.** Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**Signed on this, the 10<sup>th</sup> day of April, 2024.**

*PH(PS)*