NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 15.03.2023 AT 10.30 AM

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
TCP(IB)No.101/7/AMR/2019	Main Case	7 of IBC	IDBI Bank Ltd Vs RVR Marine Products Ltd
	IA(IBC)/247/2022	U/s.60(5) r/W Rule 11 of NCLT Rules	Sun Bitess Pvt Ltd vs. IDBI Bank Ltd (In the matter of RVR Marine Products Ltd)

ORDER

IA(IBC)/247/2022:

Mr.Naresh Kumar Sangam, Counsel for the Applicant present. Mr.T.S.N.Raja, RP in person present. Orders pronounced. IA(IBC)/247/2022 is allowed, vide separate orders.

Sd/-
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

RSN

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI

IA(IBC)/247/2022
IN
TCP (IB)/101/7/AMR/2019

Section 60(5) of the Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of the National Company Law Tribunal Rules, 2016

In the matter of
M/s. **RVR MARINE PRODUCTS LIMITED**
(CIN U05004AP2002PLC038514)

BETWEEN:

Sun Bitess Private Limited
(Formerly Sunbitess, Partnership Firm)
(Resolution Applicant of RVR Marine Products Limited)
2-1-26/2, Flat No. F3, Balajyothi Apartment,
JP Road, Bhimavaram,
West Godavari – 534202, Andhra Pradesh

..... Applicant

AND

1. Mr. TSN Raja
   (Erstwhile Resolution Professional of
   RVR Marine Products Limited)
   Plot No. 16, Shop Cum Flat,
   HUDA Complex, Kothapet,
   Hyderabad - 500035

2. Registrar of Companies, Andhra Pradesh
   29-7-33, First Floor, Vishnuvardhanarao Street,
   Suryaraopet, Vijayawada-520002, Andhra Pradesh

...Respondents

Date of orders pronounced on:15.03.2023

***Coram*:**

Justice Telaprolu Rajani, Member Judicial.

Parties/Counsels present:

For the Applicant : Mr.Naresh Kumar Sangam, Advocate

For the 1st Respondent : Mr.T.S.N.Raja, RP (Party in person)

ORDER

Per: Justice Telaprolu Rajani, Member Judicial

1. This is an Application filed by the Applicant Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking to direct the Respondent to file the Annual Returns and Financial Statements of the Corporate Debtor for the financial years from 31.03.2019 to 31.03.2021; (Or) to permit the existing Directors to file Annual Returns and Financial Statements of the Corporate Debtor for the financial years from 31.03.2019 to 31.03.2021 without any additional fees as per procedure laid down in Circular No.8/2020 dated 06.03.2020.

2. The following are the facts of the case briefly:

   i. The Company Petition i.e., TCP (IB)/101/7/AMR/2019 filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by **IDBI Bank (Financial Creditor)** to initiate the Corporate Insolvency Resolution Process (CIRP) against **RVR MARINE PRODUCTS LIMITED** (Corporate Debtor) was admitted by the Hon'ble Tribunal vide its order dated 30.10.2019 and Mr. Rajesh Chaparia was appointed as Interim Resolution Professional (IRP).

ii. The Committee of Creditors (CoC) meeting held on 30.11.2019, decided to replace the IRP with the Mr. TSN Raja as Resolution Professional and the same is approved by this Tribunal vide order dated 24.12.2019.

iii. As per the provisions of Section 17, 18, 20 and 23 read with other applicable provisions, Insolvency and Bankruptcy Code, 2016, upon the admission of the Corporate Debtor into CIRP the powers of the Board of Directors shall stand suspended and the powers and duties of the management shall vest with Resolution Professional.

iv. As per Section 92 of the Companies Act, 2013 every company is required to file Annual Return with the Registrar of Companies after end of every financial year and further as per Section 137 of the Companies Act, 2013 every company is required to file Financial Statements after end of every financial year. During the CIRP the Board of Directors of the CD are suspended and the Interim Resolution Professional/Resolution Professional was required to file the same with the Registrar of Companies.

v. The Ministry of Corporate Affairs vide its circular No. 8/2020 dated 03.03.2020 has clarified that the Interim Resolution Professionals/Resolution Professionals are required to file all the forms, including Annual Returns and Financial Statements, and also laid down the procedure for filing the same.

vi. The Applicant herein, as Resolution Applicant, submitted that the Resolution Plan was approved by this Tribunal vide its order dated 02.11.2021. The Applicant herein has complied with the Resolution Plan as approved by this Tribunal and implemented the Resolution Plan in letter and spirit.

vii. It has now come to the knowledge of the Applicant that the Annual Returns and Financial Statements of the Corporate Debtor were not filed for the financial years ending by 31.03.2019 to 31.03.2021. Hence the Applicant has approached this Bench seeking appropriate directions for filing the Annual Returns and Financial Statements of the Corporate Debtor for the financial years from 31.03.2019 to 31.03.2021. Hence, this Application.

3. Counter filed by the 1st Respondent denies the allegations made in the Application and states that Mr.Rebba Satyanarayana, Suspended Director of M/s.RVR Marine Products Ltd, deliberately shifted the Registered Office of the CD, which fact was not revealed to the RoC, which is a mandatory requirement and did not inform about the present Registered Office and deliberately failed to file annual returns in time since 2012, handover the records despite several notices and informed the IRP, that Farmers & Creditors have come to the factory for asking their dues. They are not able to pay the dues at that time and hence they destroyed the computers and records. However, there is no police compliant lodged and he has no answer for that. The issues were placed before the CoC and subsequently on persuasion,

the suspended director furnished certain reports which has no schedules, nor any supporting documents.

The suspended director leased the facility to some merchant exporters. As per the records shared, one of the leases was to M/s.Supreme Exports on a conversion charges per Kg at Rs.11/-. The Applicant M/s. Sunbitess, also has one such lessee of the facility, which is Rs.5 Lakhs per month and the same amounts were paid to the Secured Financial Creditor IDBI Bank by the Applicant as per directions of DRT. The books of accounts were not handed over and hence, R1 filed an application i.e., IA(IBC)/44/2020 before this Bench and the same was allowed by this Bench, directing the Applicant herein to take appropriate action. Complying with the order in IA(IBC)/44/2020, the Applicant escalated the issue to IBBI, the regulator, for taking appropriate action against the suspended director. The respondent, as per the master circulars cited by the Applicant, appointed the representative of the SRA, Mr.T.Ravibabu, as director and completed the process of transfer, after handing over the assets of the CD. It is further stated that financial reports for any financial year need to be prepared based on the previous year's reports. In the instant case, they are non-existent, and the records were not available for R2, to get the reports prepared afresh. The shares certified copies of transactions done during the tenure of the RP were prepared by the respondent and he volunteered to support signing the statements as and when they were ready and also supported by entrusting the job of scrutinising the statements prepared, since the SRA identified his own auditor. Further states that the reports were not finalised nor filed with

the ROC at least ten years prior to initiation of CIRP, did not receive the records and any supporting records with regard to the statement of affairs as on the date of admission and he is ready and willing to abide by the direction of this Bench, in attesting the financial reports since he took over charge as RP.

4. Rejoinder was filed by the Applicant reiterating the facts mentioned in the Application and in addition to that it is stated as follows:

   a) On 08.02.2022, 1st Respondent sent an email calling for First Meeting of Monitoring Committee and confirmed the receipt of full amount and also promised to support the Applicant herein in filing statutory documents.

   b) The Implementation and Monitoring Committee, in the first meeting held on 25.02.2022, to which the 1st Respondent is a chairman, has acknowledged the receipt of total plan amount and further authorised the 1st Respondent to file necessary documents with the Registrar of Companies/2nd Respondent. The said minutes were signed by the Respondent as Chairman on 03.03.2022. But the 1st Respondent did not file the Statutory Returns with 2nd Respondent.

   c) The Applicant and new management of the Corporate Debtor have agreed to assist the Respondent in preparing the financial statements. In this regard, the 1st Respondent has suggested that they should co-ordinate with his Chartered Accountant Mr. SSR Teja. Accordingly, the Applicant and the new management of the

Corporate Debtor have appointed a Chartered Accountant Mr. Mahesh Mandadapu. Accordingly, Mr. Mahesh Mandadapu prepared the financial statements in consultation with Mr. SSR Teja. Mr. SSR Teja vide his email dated 07.12.2022 to the 1st Respondent, confirmed that he has verified the financial statements and can proceed for further process.

d) Very surprisingly the 1st Respondent is now claiming that he does not have records for filing statutory records and referring to the following documents:

i. Letter dated 25.11.2019 allegedly addressed by the 1st Respondent to IRP.
ii. Minutes of 4th COC of the Corporate Debtor held on 22.01.2020.
iii. Minutes of 5th COC of the Corporate Debtor held on 22.05.2020.
iv. Minutes of 7th COC of the Corporate Debtor held on 24.07.2020.
v. IA No. 44 of 2020 dated 11.02.2020 and

vi. Email dated 03.12.2020, which is very much prior to the meetings stated above the undertaking by Applicant for filing returns with Registrar of Companies.

e) On 08.02.2022, 1st Respondent sent an email calling the First Meeting of Monitoring Committee held on 25.02.2022, to which the 1st Respondent is a chairman and has acknowledged the receipt of total plan amount and further authorised the 1st Respondent to file necessary documents with the Registrar of Companies. After agreeing and undertaking to file the returns in

February 2022, the 1st Respondent very surprisingly is refusing to file the returns under some false pretext.

f) The applicant further denied the averments made at para 3. On 29.11.2022, when the present Application was listed, 1st Respondent was not present, hence this Tribunal has allowed the Application and passed an exparte order. However, 1st Respondent filed an IA (IBC)/390/2022 seeking to set aside the exparte order and the same was allowed by this Tribunal vide order dated 29.11.2022 and restored this present application.

5. Heard both the counsel and perused the written submissions filed by both the counsel.

6. The counsel for the Applicant submits that on the admission of the CD into Corporate Insolvency Resolution Process (CIRP), the Board of Directors shall stand suspended and the powers shall be vested in the IRP/RP. As per Section 92 of the Companies Act, 2013 every company is required to file Annual Return with the Registrar of Companies after end of every financial year. As per Section 137 of the Companies Act, 2013 every company is required to file Financial Statements after end of every financial year. During the CIRP, since the Board of Directors are suspended, the IRP/RP was required to file the same with the Registrar of Companies (RoC). The circular of the Ministry of Corporate Affairs (MCA), circular No.8/2020 clarified that the IRP/RP is required to file all the forms, including Annual Returns and Financial Statements, and also the procedure for filing the

same is laid in the said circular. The Resolution Plan is approved by the Adjudicating Authority (AA). The Applicant has complied with the Resolution Plan as approved by the Adjudicating Authority. On 08.02.2022, R1 sent an email calling for the First Meeting of Monitoring Committee, which was confirmed as having been received and R1 promised to support the Applicant in filing statutory documents. In the first meeting of the Monitoring Committee held on 25.02.2022, R1 acted as a chairman and acknowledged the receipt of total plan amount and further authorised R1 to file necessary documents with the RoC. Though, R1 agreed to file the documents, he did not file the same. The Applicant and new management of the CD have agreed to assist R1 in preparing the financial statements. In this regard R1 suggested that they should co-ordinate with his Chartered Accountant. A Chartered Accountant was appointed and he prepared the financial statements in consultation with Mr. SSR Teja. The Respondent is now claiming that he does not have records for filing statutory reports, which is false.

7. The Respondent/R1 who is the erstwhile RP in the written submissions contended that the Appellate Authority in ***Mr.Mukund Choudhary vs. Mr.Subhash Kumar Kundra in Company Appeal (AT) (Insolvency) No.452/2021*** upheld that the master Circular No.4 & 8 of 2020 of the MCA is only issued for the purpose of filing of forms with the RoC and the same cannot be interpreted to disown the duty. The liability to sign the financials lies with the directors. Thus as per the Companies Act, 2013, the primary responsibility lies with the directors to prepare and submit the statements till the date of initiation

of CIRP. It is also stated that the above facts were placed before the CoC. The statement of accounts and related Financial Reports can only be prepared based on the previous year's statements and based on the records of the CD. It is ultimately prayed that a direction may be given to the suspended director Mr.Rebba Satyanarayana to prepare and sign the financial statements till the date of initiation of the CD into CIRP, along with auditor certified copies in support of the Financial Statements.

8. It can be seen that since the Resolution plan is already approved, the erstwhile IRP is ceased of the matter. According to Section 137 of the Companies Act, 2013 a copy of the Financial Statements, including consolidated financial statement if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the Annual General Meeting (AGM) of the Company shall be filed with the RoC within 30 days of the date of AGM. But the contention of the Applicant's counsel is that the RP is the person with whom all the records were available till the date of approval of the resolution plan and hence unless he assists in preparing the financial statements the same cannot be done. The RP, irrespective of all the contentions made in the counter and in the written submissions, at the time of hearing, expressed that he does not have any objection to assist the management in preparing the financial statements. The Circular No.8/2020 dated 06.03.2020, is to the effect that in respect of Companies which are marked under CIRP in the Registry, Annual Returns and Financial Statements and other documents under the provisions of Companies Act, in accordance with

the directions issued by the NCLT shall be filed as attachments with e-Form GNL-2 against the payment of one-time normal fee only, till such time, the company remains under CIRP. It does not specify as to who has to file. However, considering the peculiar circumstances of this case and also considering the concession given by the RP that he would assist the management in filing the financial statements and annual returns, the Application is allowed and existing directors are permitted to file Annual Returns and Financial Statements of the CD for the Financial Years from 31.03.2019 to 31.03.2021 and there shall be a direction to R1 to render all assistance to the new management of the CD in filing the financial statements and annual returns for the Financial Years from 31.03.2019 to 31.03.2021 and no additional fee shall be charged and fee charged to be in accordance with Circular No.8 of 2020. The applicant shall pay commensurate fee of the RP for the assistance rendered by him. Accordingly, IA(IBC)/247/2022 is disposed of.

Sd/-

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu