

S.No.2

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
16-04-2024 AT 10:30 AM**

**CP(IB) No.679/7/HDB/2018
AND**

**IA (IBC) 2026/2023 & IA (IBC) 433/2024 in CP(IB) No.679/7/HDB/2018
u/s. 7 of IBC, 2016**

IN THE MATTER OF:

IDBI Bank Ltd

...Financial Creditor

AND

Neueon Towers Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA (IBC) 2026/2023

Learned Counsel Mr Harinath Rao, for Resolution Professional present through Video Conference.

Orders pronounced. In the result **this application is allowed in part. No costs.**

IA (IBC) 433/2024

Learned Counsel Mr Harinath Rao, for Resolution Professional present through Video Conference.

Resolution professional called absent. Counter not filed. Interim order made absolute till disposal of IA No 433/2024. Call on 30.04.2024.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

**I.A. (IBC) No. 2026 of 2023
IN
CP (IB) No.679/7/HDB/2018**

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

BETWEEN

BSE Limited

25th Floor, PJ Towers, Dalal Street, Fort,

Mumbai - 400 001, Maharashtra

Represented by its Authorised Signatory,

Shri Tushar Kamath, Deputy General Manager

... Applicant

Versus

Dr. Madurai Sundaram Sankar

Resolution Professional of M/s Neueon Towers Limited

A1206, S & S Sarvam, 200

Feet Pallavaram, Thuraipakkam Radial Road,

Pallikaranal, Chennai - 600 100, Tamil Nadu.

... Respondent/ Resolution Professional

IN THE MATTER OF:

IDBI Bank Ltd

...Financial Creditor

Versus

Neueon Towers Ltd

...Corporate Debtor

Date of Order: 16.04.2024

Coram:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA

HON'BLE MEMBER (JUDICIAL)

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Parties/Counsels present:

For Applicant : Ranjani Ramesh, Vennela Reddy (Counsels)

For Respondent : B. Harinath Rao (Counsel) along with
Madurai Sundaram Sankar (RP)

PER BENCH

ORDER

1. This is an application filed by BSE Limited (Applicant herein) represented by Shri Tushar Kamath, Deputy General Manager Under Section 60(5) of 'The Insolvency and Bankruptcy Code, 2016' (hereinafter referred as 'IBC') read with Rule 11 of The National Company Law Tribunal Rules, 2016 against Dr. Madurai Sundaram Sankar, Resolution Professional of 'M/s

Neueon Towers Limited' (hereinafter referred as 'Corporate Debtor')

seeking the following reliefs:

(i) To set aside the email and letter both dated August 23, 2023, issued by the RP rejecting the request of the Applicant to include the outstanding ALF with interest payable by the Corporate Debtor to the Applicant for the financial years starting from 2020-21 to 2023-24 (i.e., for 4 financial years) aggregating to Rs. 13,64,242/- (Rupees Thirteen Lakh Sixty Four Thousand Two Hundred and Forty Two Only) in the IRP costs.

(ii) To direct the RP to include the outstanding ALF with interest, payable by the Corporate Debtor to the Applicant for the financial years starting from 2020-21 to 2023-24 (i.e., for 4 financial years) aggregating to Rs.13,64,242/- (Rupees Thirteen Lakh Sixty Four Thousand Two Hundred and Forty Two Only) in the IRP costs;

(iii) To direct the RP to not proceed towards seeking approval of the resolution plan presently, if any, from the COC or this Hon'ble Tribunal as the case may be, pending decision in the present Application;

2. The Corporate Debtor entered into a Listing Agreement with the Applicant herein vide 'LISTING AGREEMENT dated 19.01.2016' (hereinafter referred as 'Agreement'). As per the same, the securities of the Corporate Debtor are to be listed on the platform of the Applicant and that the Corporate Debtor is to comply with the terms of the agreement. In lieu of the same, the Applicant levies fee known as 'Annual Listing Fee' (ALF) on the Corporate Debtor for being listed on the platform of the Applicant which is payable annually by the Corporate Debtor. Accordingly, the securities of the Corporate Debtor were listed on the platform of the Applicant.

3. A Petition vide C.P. No. 679/7/HDB/2018 was filed before this Tribunal against the Corporate Debtor herein by IDBI Bank Ltd seeking initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. The same was allowed and the Corporate Debtor was admitted into CIRP vide order dated 03.06.2019.

4. By an order dated 14.10.2021 in I.A. No. 1114 of 2020 in C.P. No. 679/7/HDB/2018, this Tribunal rejected the Resolution Plan submitted for the Corporate Debtor and the Corporate Debtor was put into Liquidation. Subsequently vide order dated 12.06.2023 in Company Appeal (AT) (CH (Ins) No.181 of 2022, 'The Hon'ble National Company Law Appellate Tribunal, Chennai Bench' (hereinafter referred as NCLAT) set aside the order of this Tribunal dated 14.10.2021 in I.A. No. 1114 of 2020 in C.P. No. 679/7/HDB/2018 and the Corporate Debtor was restored into CIRP.

5. Case of the Applicant:

5.1. It is alleged that the Corporate Debtor failed to pay the ALF dues including interest for the financial years 2020-21 to 2023-24 which amounts to Rs. 13,64,242/- (Rupees Thirteen Lakhs Sixty-Four

Thousand Two Hundred and Forty-Two Only) as per the applicable terms and regulations.

- 5.2 It is stated that the Applicant addressed an email dated 28.06.2023 (**Annexure 3**) to the Respondent/Resolution Professional asking the Respondent to include the ALF charges of the Corporate Debtor incurred for being listed on the platform of the Applicant in the ‘insolvency resolution process costs’ (hereinafter referred as ‘IRP costs’) under Section 5(13) of IBC and the relevant documents were attached to the said communication.
- 5.3 It is also stated that the Applicant also filed a claim in Form B with the Resolution Professional on 04.07.2023 for an amount of Rs.2,49,77,178/- (Rupees Two Crores Forty-Nine Lakhs Seventy-Seven Thousand One Hundred and Seventy-Eight Only) towards fines arising due to non-compliances with various provisions under the Agreement. That the Respondent vide email dated 04.07.2023 (**Annexure 4**) expressed inability to consider the claim of the Applicant stating that the Resolution Plan of the Corporate Debtor (vide IA No. 1124 of 2022 which was subsequently withdrawn) is under consideration by this Tribunal.

- 5.4 It is stated that the Applicant addressed an email dated 07.07.2023 (**Annexure 5**) with respect to the outstanding ALF dues to be payable by the Corporate Debtor and to include the same in the IRP costs. That the Applicant in this email communication did not mention about the rejection of the claim of Rs. 2,49,77,178/- of the Applicant pertaining to fines claimed on 04.07.2023 under Form B.
- 5.5 That on 19.07.2023, the Respondent addressed an email (**Annexure 6**) and reiterated about the rejection of claim in Form B pertaining to the fines claimed but did not mention about the ALF dues along with interest for an amount of Rs. 13,64,242/-.
- 5.6 That the Applicant on 19.07.2023 (**Annexure 7**) addressed an email to the Respondent informing the obligation of the Corporate Debtor as a going concern to make payment of ALF dues and that the same forms part of IRP costs under Section 5(13)(c) of IBC. It is stated that the Applicant further followed up with the Respondent with respect to the status of ALF dues by way of email dated 16.08.2023 (**Annexure 9**). The Respondent vide email and letter (both dated 23.08.2023) (**Annexure 10**) informed the Applicant about the rejection of the

claim of the Applicant by the CoC in the 36th meeting held on 16.08.2023.

- 5.7 It is the contention of the Applicant that the ALF dues along with interest incurred during the running of the business of the Corporate Debtor as a going concern are not in a nature of claim and they form part of IRP costs of the Corporate Debtor and that the same to be included in the Resolution Plan, if any, of the Corporate Debtor. It is the contention of the Applicant that these ALF dues were wrongly construed by the Respondent as a claim, but that they form part of IRP costs of the Corporate Debtor.
- 5.8 It is stated that the delay, if any, in submitting the request for including the ALF dues in the IRP costs is not negligent or reckless and that the rejection of IRP costs on account of delay would defeat the purpose and objective of IBC.
- 5.9 It is submitted that pursuant to the rejection of Resolution Plan by this Tribunal vide order dated 14.10.2021 in I.A. No. 1114 of 2020 in C.P. No. 679/7/HDB/2018, the grounds for rejection of IRP costs as requested by the Applicant pertaining to ALF dues have become

infructuous and that the Respondent is to reconsider the decision pertaining to the request of the Applicant.

6. Case of the Respondent:

6.1. It is alleged that pursuant to the orders of this Tribunal dated 14.10.2021 in I.A. No. 1114 of 2020 in C.P. No. 679/7/HDB/2018, wherein Liquidation Process of the Corporate Debtor was initiated, the Applicant herein suspended the Trading of the shares/stocks of the Corporate Debtor. By an order dated 12.06.2023, when NCLAT in Company Appeal (AT) (CH (Ins) No.181 of 2022, was restored into CIRP, the Applicant did not list the Corporate Debtor on its platform. It is stated that the same was informed by the Respondent to the Applicant by way of a letter dated 15.06.2023 (**Page 14 of Counter**) asking the Applicant to restore the Trading of shares/stocks of Corporate Debtor. It is alleged that the Applicant did not respond to the said communication dated 15.06.2023 and that the Corporate Debtor was not listed on the platform of the Applicant even after restoring the Corporate Debtor to CIRP and as such the Corporate

Debtor is not liable to pay the ALF dues amounting to Rs. 13,64,242/- as claimed by the Applicant.

- 6.2 It is alleged that the Corporate Debtor maintained all the obligations under the Agreement till commencement of the Liquidation of Corporate Debtor on 14.11.2021. It is further stated that there cannot be any dues arising after 14.11.2021 payable to the Applicant as the Corporate Debtor was not listed on the platform of the Applicant.
- 6.3 It is submitted by the Respondent that the Applicant vide email dated 28.06.2023 asked for the ALF dues with interest for the years 2020-21 to 2023-24 and that by then there is a delay of 4 years one month one day and hence the claim of the Applicant is barred by limitation. It is stated that the Respondent intimated the reasons for rejecting the claim of Applicant by way of email dated 19.07.2023. It is further submitted that the Respondent informed the Applicant by email and RPAD dated 23.08.2023 that the claim of the Applicant was rejected by the CoC in the 36th meeting held on 16.08.2023.
- 6.4 It is submitted that this Tribunal permitted for fresh issuance of Form G for calling EOI (Expression of Interest) on 24.07.2023 in view of withdrawal of I.A. No. 1114 of 2020 and not for consideration of fresh

claims in respect of the Corporate Debtor. Hence, the claim of the Applicant cannot be considered by the Respondent.

- 6.5 It is contended that Section 5(13)(c) of IBC does not say that the CIRP costs of the Corporate debtor includes the costs of Applicant in paying the listing fee of the Corporate Debtor.

7. In the light of the contest as aforementioned, the point that emerges for our consideration is:

Point:

Whether Annual Listing Fee arising out of Listing Agreement forms part of CIRP costs of Corporate Debtor? If so, for what period the ALF dues can be included in this case?

8. We have heard learned counsel for Applicant Ms. Ranjani Ramesh, and Shri Vennela Reddy (Counsels) and learned Counsel for Respondent Shri.B. Harinath Rao (Counsel) along with Shri Madurai Sundaram Sankar (RP). Perused the written statements and other documents submitted by both the parties to the Tribunal.

Point: Whether Annual Listing Fee arising out of Listing Agreement forms part of CIRP costs of Corporate Debtor? If so, for what period the ALF dues can be included in this case?

Submissions :

9. The counsel for the Applicant submits that the ALF dues of Rs. 13,64,242/- along with interest are not in the nature of claim and they form part of CIRP costs of the Corporate Debtor and that the same is to be included in the Resolution Plan, if any, of the Corporate Debtor. Applicant further contends that these ALF dues were wrongly construed by the Respondent as a claim, but that they form part of CIRP costs of the Corporate Debtor. The applicant further submits that though there is a delay in submitting the request for including the ALF dues in the CIRP costs but rejection of ALF dues which are part of CIRP costs on account of delay would defeat the purpose and objective of IBC.
10. The learned counsel for the respondent submits that pursuant to the orders of initiation of Liquidation Process of the Corporate Debtor by this Tribunal on 14.10.2021 , the Applicant suspended the Trading of the shares/stocks of the Corporate Debtor and the Applicant did not list the Corporate Debtor on its platform after CIRP of Corporate Debtor was restored pursuant to an order dated 12.06.2023 of NCLAT. The respondent further submitted that applicant was

informed of the same by way of a letter dated 15.06.2023 asking the Applicant to restore the Trading of shares/stocks of Corporate Debtor. The respondent alleged that the Applicant did not respond to the said communication dated 15.06.2023 and that the Corporate Debtor was not listed on the platform of the Applicant even after restoring the Corporate Debtor to CIRP and as such the Corporate Debtor is not liable to pay the ALF dues amounting to Rs. 13,64,242/- as claimed by the Applicant.

Our Findings

11. We observe that it is not in dispute that the Agreement dated 19.01.2016 was entered into between the Corporate Debtor and Applicant and that as per the terms of the agreement, the ALF dues which are incurred on account of listing the Corporate Debtor on the platform of the Applicant are to be paid annually. We further find that CD was paying ALF during CIRP process as per the agreement and it stopped paying it only after the applicant suspended trading on its platform consequent to the order of this Tribunal, putting Corporate Debtor into liquidation. It is the contention of the Respondent that the claim of Applicant for ALF dues along with interests for the years

2020-21 to 2023-24 was submitted on 28.06.2023 and that by then there is a delay of four years one month one day. Hence, the same was not considered by the Respondent. But, the respondent contend that ALF dues are part of CIRP costs and not in the nature of a claim as construed by the respondent. Therefore, the only dispute is that whether the ALF dues along with interest arising out of this Agreement forms part of CIRP costs or not .

12. Before we proceed to decide on the above issue , we feel it proper to refer Section 5(13)(c) of IBC which reads as follows:

“Section 5: Definitions

In this Part, unless the context otherwise requires,

(13) “insolvency resolution process costs ” means—

.....

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;”

13. From the above definition, it is clear that the costs incurred for running the business of the Corporate Debtor as a going concern are the insolvency resolution process costs. Admittedly, the Corporate Debtor was put into CIRP by an order dated 03.06.2019 in C.P. No. 679/7/HDB/2018 of this Tribunal. The CIRP of the Corporate Debtor was to be carried out as a going concern and in lieu of this fact , the

Corporate Debtor is required to be listed on the platform of Applicant even when the Corporate Debtor is undergoing CIRP. Consequently, as per the terms of the Agreement, the ALF dues incurred on account of listing the Corporate Debtor on the platform of the Applicant are to be paid even during CIRP as the same is required to be listed on the platform of the Applicant. This is further confirmed by the fact that CD was paying ALF during CIRP process as per the agreement and it stopped paying it only after the applicant suspended trading on its platform consequent to the order of this Tribunal, putting Corporate Debtor into liquidation.

14. In the light of our discussion we firmly hold that, ALF dues forms part of CIRP costs.

15. Having held so, we now proceed to find for what period the ALF dues are payable by the Corporate Debtor the case on hand. In disputably, the order of this Tribunal, initiation of liquidation of the Corporate Debtor dated 14.10.2021 has been set aside as per orders of Hon'ble NCLAT on 15.06.2023 *consequently*, the trading was suspended. Therefore it is quite clear that listing of Corporate Debtor remained suspended during full FY of 2022-23, however during other financial

years it was operational for part of those Financial Years, hence listing fees being annual payment is payable for these financial years , whether it is operational for full FY or part of FY .

16. We therefore, hold that ALF is payable only for 3 financial years, i.e. 2020-21, 2021-22, 2023-24 and not for 4 financial years as claimed by the applicant. We also decide that no interest is payable to the applicant as the annual listing fees could not be paid on account of genuine reasons and also applicant has delayed the process of listing of corporate debtor on its platform.

The point is decided accordingly.

17. In the light of our discussion and finding on the Point above, we pass following order:

(i) The applicant is directed to raise a revised invoice of ALF for three FYs 2020-21, 2021-22, 2023-24 without levying any interest within one week from the date of the order and accordingly the respondent is directed to include it into CIRP cost and pay it immediately from the available funds.

(ii) The applicant is directed to start trading of shares of corporate debtor on its platform immediately , if not done till date , and submit compliance within one week from the date of this order.

(iii) The respondent is directed to include ALF for subsequent financial years as part of CIRP costs and pay as per law.

18. This application is therefore allowed to the extent indicated as above however without costs.

19. In the result this application is allowed in part. No costs.

SD

Charan Singh
Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Anil/Pavani