

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 553 of 2019

In the matter of:

IDBI Bank& Ors.

...Appellants

Vs.

MS. MAMTA BINANI& Ors

... Respondents

Present:

For Appellant: Mr. Abhinav Vasisht, Sr. Adv. with Ms. Nishtha Chaturvedi, Ms. Akshita Sachdeva and Ms. Ria Kohli Advocates

For Respondents:-Mr. Abhijeet Sinha, Ms. MamtaBinani Mr. Saikat Sarkar, Mr. Arjun Asthana, Mr. Sidhartha Sharma, Advocates for Respondent No. 1

Mr. Abhimanyu Bhandari, Sr. advocate alongwith Mr. Rishav Banerjee, Ms. Natasha Garg, Mr. Dipen Chatterjee, Mr. Aditya Vikram Singh, Ms. ShreyasEdupuganti and Mr. Saptarshi Mandal, Advocates for Respondent No. 2

Mr. PBA Srinivasan, Mr. AvinashMohapatra, Ms. P.S Chandralekha, and Mr. Nikitha Ross, Advocates for Respondents No. 3

Mr. AkshatHansaria and ManasiChatpalliwar, Advocates for ICICI

With

Company Appeal (AT) (Ins) No. 982 of 2019

IN THE MATTER OF:

Deccan Chronicle marketeers&Ors.

... Appellants

Vs.

Deccan Chronicle Holidays & Anr.

... Respondents

Present:

For Appellant: Mr. Krutika Raghavan, Advocate

For Respondents:- Mr. Rishav Banerjee, Mr. Dipen Chatterjee, Mr. Aditya Vikram Singh, Mr. Aditya Shukla, Ms. ShreyasEdupuganti, Mr. Aditya Shukla, and Mr. Saptarshi Mandal, Advocates for Respondent No. 1

Mr. Abhijeet Sinha, Ms. Sreenita Ghosh, Mr. Saikat Sarkar, Ms. Mamta Binani, Mr. Arjun Asthana and Mr. Sidhartha Sharma, Advocates for RP.

Mr. Abhimanyu Bhandair, Sr. Advocate with PBA Srinivasan, Mr. Avinash Mohapatra, Ms. Natasha Garg Mr. Ichchha Kalash, Advocates for Respondent No. 2

Mr. Abhinav Vasisht, Sr. Adv. with Mr. Nishtha Chaturvedi, Mr. Akshita Sachdeva, Ms. Ria Kohli, Advocates for Intervenors.

O R D E R

(Virtual Mode)

01-06-2021- Heard the Learned Sr. Counsels / Counsel for the Appellants / Respondents for approximately two hours.

2. The Erstwhile Resolution Professional of Deccan Chronical Holdings Limited ('DCHL') acting through the supervisory committee has sought a direction to direct the Successful Resolution Applicant viz. SREI Multiple Asset Investment Trust – Vision India Fund to infuse funds to the extent of at least Rs.100 Crores on an immediate and urgent basis in order to keep the corporate debtor a going concern.

3. The counsel representing the supervisory committee has further stated that the concerned financial creditors/Appellant in Company Appeal (AT)(Ins) No. 553 of 2019 and Company Appeal (AT)(Ins) No. 982 of 2019 are also in agreement that there is an urgent need of infusion of funds to keep the corporate debtor a going concern.

4. The corporate debtor / DCHL was incorporated in December, 2002 by Registrar of Companies at Hyderabad ('ROC') and has been in the business

of printing, publishing and selling daily newspapers under the trademark 'Deccan Chronicle' (English) and 'Andhra Bhoomi' (Telugu) and generated huge and extensive goodwill in the said trademark.

5. The Adjudicating Authority ('National Company Law Tribunal, Hyderabad Bench') has admitted the Petition on 19.07.2017 under section 7 of Insolvency and Bankruptcy Code, 2016 ('Code') on a petition filed by Canara Bank on 05.07.2017. It was also submitted that the Successful Resolution Applicant has submitted the Resolution Plan on 12.05.2018 at the first instance. The Committee of Creditors (CoC) in its 10th Meeting held on 14.05.2018 reviewed the Resolution Plan submitted by three parties – Bennett Coleman and Company Limited, ARM Infra and Utility Pvt. Ltd. and the Resolution Applicant. The Resolution Applicant was declared as the highest bidder in the 12th CoC meeting held on 14.06.2018. The Resolution Plan went into several iterations and finally was approved by majority of Committee members with 81.39% voting shares e-voting and the same was approved by the Adjudicating Authority on 03rd June, 2019.

6. No doubt, in between the financial creditors, there are issues relating to distributions of the proceeds under the Resolution Plan and some issues with the ownership of the trademark/valuation of the Company considering present situation after getting some arbitration awards in its favour.

7. Mr. Abhivav Vasisht, learned Senior counsel for the Appellant in Company Appeal (AT)(Ins) No. 553 of 2019 has raised the issues of relating to distribution of proceeds and some issues on trademark. Other learned counsels have also made submissions on the same pattern.

8. In the elaborate submissions, Mr. Abhijeet Sinha learned counsel has thrust on the issue of non-availability of funds resulting into non-payment of wages and salaries from March 2021 onwards to the employees of the Corporate Debtor and has also pointed out that lot of statutory and other maintenance and infrastructure dues are getting outstanding. Hence the supervisory committee of which erstwhile Resolution Professional is a part, has requested for releasing at least first tranche of dues of Rs.60 crore immediately on urgent basis, if the newspaper organisation is to continue as a going concern. He has also pointed out that Resolution Applicant has so far not paid directly any money to the corporate debtor for approx. last two years after approval of Resolution Plan and is taking shelter of NCLAT Order dated 22.05.2019 as extracted below:

22.05.2019— The grievance of the Appellant is that similarly situated ‘Financial Creditor’ has been discriminated which is against the decision of this Appellate Tribunal in “Binani Industries Limited vs. Bank of Baroda & Anr.— Company Appeal (AT) (Insolvency) No. 82 of 2018 etc.” and the Hon’ble Supreme Court decision in “Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.— Writ Petition (Civil) No. 99 of 2018”. Therefore, the ‘Resolution Plan’ was not in accordance with Section 30(2) of the Insolvency and Bankruptcy Code, 2016 and was required to be substituted/corrected by the Adjudicating Authority (National Company Law Tribunal).

Let notice be issued on Respondent by speed post.

Requisite along with process fee, if not filed, be filed by 23rd May, 2019. If the Appellant provides the e-mail address of Respondent, let notice be also issued through e-mail. Post the case ‘for admission’ on 22nd July, 2019.

In the meantime, decision, if any, taken by the Adjudicating Authority for implementation of the 'Resolution Plan' shall be subject to the decision of this appeal.

The order in the last paragraph as stated above has been communicated to them by one of the financial creditor and has asked them that the proceeding has been stayed by this Tribunal.

9. Mr. Rishav Banerjee, learned counsel for the Resolution Applicant has submitted through his elaborate submissions that Resolution Applicant is fearing that once they invest the money thereafter money should not be blocked. The counsel cited the case of attachment of certain properties by Enforcement Directorate, Hyderabad where the matter is pending with Adjudicating Authority for getting the assets released from Enforcement Directorate in view of extant provisions of the 'Code'. The counsel also submitted that they have invested an amount of Rs. 7.5 Crore on different dates. However, this was countered by Mr. Abhijeet Sinha, learned counsel and this fund has only been organised by Resolution Applicant through third party. It was also pointed out that some impleading application is also pending for consideration in this Tribunal.

10. It is also not in dispute that Resolution Plan has been approved by the Adjudicating Authority. The only major point which is in dispute is about the distribution of funds amongst financial creditors. The other issue involved is the stay of implementation of Resolution Plan by this Tribunal order dated 22.05.2019 whereas it is not so. The Resolution Applicant has

not been barred from making payments as stipulated in the approved Resolution Plan.

11. In view of the above submissions and documents as produced during the virtual hearing through sharing on the screen, we are of the firm view that four years have lapsed and implementation of Resolution Plan has still not happened. Even after approval of Resolution Plan, two years have lapsed and still the Resolution Applicant has not injected any fund in the corporate debtor. We also confirm that this Tribunal order dated 22.05.2019 as stated above is not a stay order for implementation of Resolution Plan. The Resolution Applicant is hereby directed to go ahead and implement the plan and make payments and take other actions as finally approved by the Adjudicating Authority.

12. List the case for 'final hearing' on **16th June, 2021**. All the parties are directed to complete the pleadings in e-format and upload the same to NCLAT Website/Registrar by 11th June, 2021.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

Rs/Md