

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 217 of 2019

IN THE MATTER OF:

LIC Housing Finance Ltd.

...Appellant

Vs

Sripriya Kumar & Ors.

....Respondents

With

Company Appeal (AT) (Insolvency) No. 218 of 2019

IN THE MATTER OF:

LIC Housing Finance Ltd.

...Appellant

Vs

Sripriya Kumar & Ors.

....Respondents

Present:

**For Appellant: Mr. D. Srinivasan and Ms. Madhusmita Bora,
Advocates.**

For Respondents: Ms. Rohini Musa, Advocate for R-3.

ORDER

07.03.2019: The Corporate Insolvency Resolution Process was initiated against – ‘M/s Rayala Corporation Pvt. Ltd.’ (Corporate Debtor) pursuant to application under Section 7 filed by ‘Vijay R. Vakharia and 6 others’ (Financial Creditors). The application was admitted on 12th October, 2018. In the said petition, the Resolution Professional filed application for exclusion of certain period during which interim stay was granted by Hon’ble High Court of Madras. In another petition prayer was made with regard to issuance of Expression of Interest.

2. The Adjudicating Authority (National Company Law Tribunal), Single Bench Chennai, passed two separate orders on 21st February, 2019. While excluding 16 days period, in the said order, direction was also given to Resolution Professional to file application under Section 33 of the I&B Code for liquidation of the Corporate Debtor on or before the completion of Corporate Insolvency Resolution Process, which reads as follows:-

“ORDER

The Resolution Professional (RP) along with Counsel is present, filed an Application praying for exclusion of the period of time during which the CIR Process is stated to have not progressed. For a period of 16 days there was an Order of stay issued by the Hon’ble High Court of Madras. It is further stated in the Application that another 16 days could not be utilized because of the replacement of IRP to RP, and 7 days for handling over the documents by the IRP to the RP. Therefore, the exclusion of 39 days from the CIRP is sought by the RP.

Perused the Application, heard the RP. The 16 days’ time during which the Hon’ble High Court of Madras has issued stay order is excluded from the maximum period of time of the CIRP, the rest of the prayers are rejected on the ground that 16 days or 7 days time is usually taken for the purposes stated, which does not stop the progress of the CIRP.

Accordingly, the CIRP Period will continue till 25.04.2019. The RP is directed to expedite the CIR Process and to get the

*Resolution Plan approved, if any, by issuing Expression of Interest (EoI) at the earliest possible opportunity. In case no Resolution Plan is approved by the CoCs during the time period of the CIR Process, the RP is directed to file Application under Section 33 of the I&B Code, 2016, for liquidation of the Corporate Debtor on or before the completion of the maximum time period of the CIR Process. Accordingly, the Application stands **disposed of.***”

3. Learned counsel appearing on behalf of the Appellant submits that Corporate Insolvency Resolution Process having initiated on 12th October, 2018, the 180 days will be completed on 25th April, 2019. 16 days period is also to be excluded. Thereafter for good reason it is also open to the Adjudicating Authority to extend the period further not exceeding 90 days, but not beyond 270 days. Further according to him, in the light of decision of Hon’ble Supreme Court in ‘*Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*’, Writ Petition (Civil) No. 99/2018 (2019 SCC OnLine SC 73), it is also the duty of the Adjudicating Authority to ensure that the Resolution Process takes place and not the liquidation. Therefore, the Adjudicating Authority should not have observed or directed the Resolution Professional to file application under Section 33 of the I&B Code on completion of 180 days, prejudging that the Corporate Debtor will have to go for liquidation.

4. Ms. Rohini Musa, Learned counsel appearing on behalf of the 3rd Respondent (Promoter) submitted that the Corporate Debtor is solvent, in fact, opportunity should have been given to the Promoter to settle the matter in absence of the Resolution Plan. She further submits that the order of admission dated 12th October, 2018 is already under challenge and pending consideration of this Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 646 of 2018.

5. The other order dated 21st February, 2019 relates to Expression of Interest. In the said order, giving reference of decision of Hon'ble Supreme Court in '*Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*', Writ Petition (Civil) No. 99/2018 (2019 SCC OnLine SC 73), the Adjudicating Authority observed that the Committee of Creditors does not appear to be clothed with the powers to stop the RP from issuance of EoI. The said order reads as follows:-

“ORDER

The Resolution professional (RP) is present, prayed for reliefs as follows:-

- a. Whether an Expression Interest and the consequential formalities of a Resolution Plan, approval etc are relevant when there is no insolvency to resolve and the Corporate Debtor has no threat to the Going Concern assumption;*
- b. Whether the Resolution Professional is bound to act as per the directions of the Committee of Creditors to not issue an Expression of Interest;*
- c. Where the claim as determined by the RP of Rs.14.15 Crs can be settled through out the bank balances of Corporate Debtor after duly addressing other statutory requirements with the consent of 66% of the Committee of Creditors as required for a resolution plan;*

- d. *Should such amount be a full and final settlement or should an option be provided for the petitioning creditors and the Corporate Debtor to approach other appropriate forums to continue their legal remedies;*
- e. *To pass such other orders or further orders in this regard as this Hon'ble Tribunal may deem fit and proper and thus render justice.*

The first prayer appears to be relevant to be considered, it has been submitted by the RP that the CoCs has given the direction to the RP not to issue an Expression of Interest (EoI). She further states that there is no insolvency to resolve and the Corporate Debtor has no threat to the going concern assumption.

The provisions of the I&B Code, 2016 are unambiguous and the vires of the same have already been upheld by the Hon'ble Supreme Court in the case of Swiss Ribbons Pvt. Ltd. & Anr. – vs – Union of India & Ors, Writ Petition (Civil) No.99 of 2018 dated 25.01.2019. The CoC does not appear to be clothed with the powers to stop the RP from issuance of the EoI. This Authority is conscious of situation that the CoC may be disagreeing to the conditions on the basis of which the issuance of the EoI is proposed by the RP. In that kind of situation, the CoC can give the suggestions for improving the basis for issuance of EoI, but cannot stop the issuance of EoI,

because the RP has to follow Model time-line as prescribed under Regulation 40A of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Therefore, this Authority deemed it fit to command to the RP to proceed with the EoI expeditiously in order to complete the CIR Process and the members of the CoC are directed to cooperate with the RP.

*The rest of the reliefs prayed for are matters pertaining to the factual position of the claims of the Financial Creditor, and the proposal for settlement between the Corporate Debtor and the Financial Creditor. Therefore, at this stage this Authority cannot decide the said issues. The said issues are kept open. The RP is directed to file status report about the progress of the CIRP on or before next date of hearing. Put up on **14.03.2019 at 10.30 A.M.**”*

6. Counsel for the Appellant submitted that as per decision of the Hon'ble Supreme Court in 'Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.', Writ Petition (Civil) No. 99/2018, steps should have been taken for proper resolution. Learned counsel appearing on behalf of the Promoter reiterated that the Company is solvent and the Promoter are ready to settle with all the Creditors, subject to decision of the appeal pending before this Appellate Tribunal.

7. In this regard, we are of the opinion that the Adjudicating Authority prejudged the matter relating to the 'liquidation'. In fact no observation should

have been made, nor any direction can be given to the Resolution Professional to file application under Section 33, at the initial stage. It is always open to the Committee of Creditors to ask for more time for proper resolution and if necessary to call for fresh resolution plans. In view of the aforesaid observation, we hold that part of the impugned order dated 21st February, 2019, directing the Resolution Professional to file Application under Section 33 of the I&B Code, 2016, for liquidation of the Corporate Debtor is uncalled for at this stage. Such part of the order is set aside. However, the Resolution Professional and the Committee of Creditors will keep in mind that time is essence in a resolution process and the Resolution Professional should complete the process within the time frame, failing which the Corporate Debtor may be ordered for liquidation.

8. So far as Expression of Interest is concerned, if the Expression of Interest do not reflect all the claims or terms as suggested by the Committee of Creditors, we are of the opinion that the Committee of Creditors is clothed with power to give direction to make necessary corrections in the Expression of Interest. Therefore, the observation of the Adjudicating Authority that the Committee of Creditor cannot stop Resolution Professional from issuance of Expression of Interest was uncalled for. However, if the Expression of Interest is in accordance with law, having taken into note the factors including assets and liability of the Corporate Debtor, in such case, normally the Committee of Creditors should not interfere with the same.

9. For the aforesaid reason, part of the observation made by the Adjudicating Authority in impugned order dated 21st February, 2019 in so far it relates to power of Committee of Creditors is set aside. However, we make it clear that it

does not mean that we have allowed the decision to stop Expression of Interest, which the Committee of Creditors may decide afresh, if so required as per law and in the interest of successful resolution process. Both the appeals stand disposed of with aforesaid observations. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

am/gc