

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No.924/23
In
CP (IB) No. 161/Chd/Hry/2018**

Under Section 60(5) of IBC 2016

In the matter of:

Allahabad Bank

Vs.

....Petitioner-Financial Creditor

M/s. Skyhigh Infraland Private Limited

....Respondent-Corporate Debtor

And in the matter of IA No. 924/2023

Skyhigh Infraland Private Limited

having its registered office at
41, Randhir Lane, Karnal, Haryana-132001

...Applicant

Vs.

Monitoring Committee of Corporate Debtor
having its registered office at
SCO No. 818, NAC, Manimajra, Chandigarh-160101

...Respondent No. 1

Registrar of Companies NCT of Delhi & Haryana
4th Floor, IFCI, Tower, 61, Nehru Place,
New Delhi-110019

...Respondent No. 2

Judgment delivered on: 28.08.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the SRA
For the applicant in IA
No.924/2023
For the Respondents

:

Mr. G.S. Sarin, PCS
Mr. Vaibhav Sahni, Advocate
Mr. Avtaar Singh

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

That the present application is filed by the Director appointed in M/s Skyhigh Infraland Private Limited in terms of the order dated 06.10.2021 passed by this Adjudicating Authority approving the Resolution Plan of M/s INR Constructions being the successful resolution applicant seeking directions against Registrar of Companies NCT of Delhi and Haryana

2. It is submitted that Allahabad Bank, a financial creditor of the respondent Skyhigh Infraland Private Limited, (the corporate debtor) filed CP (IB) No. 161/Chd/Hry/2018 under Section 7 of the Code before this Adjudicating Authority seeking initiation of CIRP against the said corporate debtor. This Adjudicating Authority vide its order dated 29.10.2018 admitted the said CP to CIRP and declared a moratorium. Further, Mr. Jalesh Kumar Grover was appointed as the Interim Resolution Professional vide its order dated 02.11.2018 in the said CP (IB) No. 161/Chd/Hry/2018. Copy of the said order dated 29.10.2018 is annexed herewith as Annexure A-1 of the Application.
3. Thereafter, the RP published Form G on 16.01.2019 and since no Expression of Interest (EOI) and resolution plans were received within the last date, Form G was republished again on 05.03.2019. It is stated that in response to the second Form G, an Expression of Interest and one Resolution Plan was received. Thereafter, Form G was republished again on 10.06.2019 and 4 resolution plans were submitted within the said extended time.
4. In compliance of the order dated 08.11.2019 passed in CA 944/2019 by this

Adjudicating Authority, RP placed the Resolution Plan of INR Constructions before the CoC members in the 13th CoC meeting and the same was put to vote before the Committee of Creditors, who approved the resolution plan of the INR Constructions with 100% voting rights and further the RP filed an application for approval of resolution plan before this Tribunal.

5. This Tribunal upon being satisfied with the resolution plan of the applicant, allowed the application for approval of the Resolution Plan vide order dated 06.10.2021.

The relevant extract of the order dated 06.10.2021 is reproduced hereinunder:-

"Further, the resolution plan fulfills all the requirements of Regulation 38 and 39 of the CIRP Regulations. A perusal of Regulation 38 would clearly show that by virtue of the mandatory contents of the resolution plan as discussed in the preceding paragraphs in relation to Section 30 and Section 31 of the Code, the requirement of Regulation 38 also stands fulfilled. Even the requirement of Regulation 39 has been satisfied, as the RP has submitted that the resolution plan of the Resolution applicant, as approved by the Committee of Creditors, to this Tribunal along with the compliance certificate in Revised Form H, as per the requirements of Regulation 39(4) of the CIRP Regulations meets all the requirements of the Code and the CIRP Regulations and that the resolution plan has been duly approved by the Committee of Creditors.

In respect of the reliefs and concessions, as set forth in Schedule 2 of the resolution plan dated 11.11.2019 along with its Addendum dated 17.01.2020, it is not possible for us to issue any direction except to say that the resolution applicant may take appropriate steps in accordance with the law, in respect of the said reliefs and concessions. It is needless to say the public authorities/ government authorities/ any other party would duly consider the requests/ applications of the resolution applicant in accordance with Jaw. We make it clear that we are not expressing any opinion on the claim concerning reliefs and concessions nor any part of this order shall be understood in that spirit. Moreover, these reliefs and concessions/prayers are also not condition precedent for the acceptance of the resolution plan. It would not be any impediment for us to accept the resolution plan.

In view of our finding that the resolution plan dated 11.11.2019 along with the addendum dated 17.01.2020, as approved by the COG satisfies all the requirements of the Code and Regulations made thereunder. We pass the following orders:-

- a. *The Resolution Plan, as approved by the Committee of Creditors and submitted by INR Constructions (Successful Resolution Applicant) is approved and the same is binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any Local Authority to whom a debt is due in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and the other stakeholders involved in the Resolution Plan.*
- b. *The Resolution Applicant is directed to obtain the approval of the Competition Commission of India within a period of one year of approval of (this resolution plan by this Tribunal as stated under Section 31 (4) of the Code, as the plan does not provide for any combination, in terms of Section 5 of the Competition Act, 2002.*
- c. *The moratorium order passed by the Adjudicating Authority under Section 14 shall cease to have effect.*
- d. *The RP shall forward all records relating to the CIRP and the resolution plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code.*

Accordingly, IA No.1085/2019 is disposed of"

Copy of Resolution plan and order dated 06.10.2021 is annexed as Annexure A-2 of the application.

6. It is submitted that upon approval of the Resolution Plan by this Tribunal the successful resolution applicant on 06.12.2021 represented before the Registrar of Companies, Haryana for removal of the earlier Directors and the appointment of new Directors as envisaged under the resolution plan submitted by the applicant.
7. Further, the applicant on 06.12.2021 also filed Form No. DIR -12 with the Registrar of Companies for removal of the erstwhile management and also for the appointment of new management (Directors).
8. In terms of the approved resolution plan, the list of the directors appointed on the Board of Directors of M/s Skyhigh InfraInd Private Limited as reflected in the Master Data is annexed as Annexure A-10 of the Application.
9. Furthermore, the present application is being moved by the applicant since the

applicant is facing difficulty in making the statutory compliances with the office of Respondent No. 2 in as much as of filing Form No. INC-22 A. It is submitted that whenever the applicant tries to upload form INC-22 on the portal of the Ministry of Corporate Affairs the same is denied and the following error is shown "In case AR is not filed for the FY 2017-18, filing shall not be allowed for the companies which are not marked for management dispute."

10. It is stated that when the applicant approached the office of respondent No. 2, it was informed that the applicant must file annual previous returns and balance sheets failing which the Corporate Debtor would continue to remain in default of its statutory obligations.
11. The Resolution Plan as approved by this Tribunal is binding on one and all including respondent No. 2. It is submitted that the compliances that are being asked to be complied with pertain to the year prior to the approval of the resolution plan, meaning thereby the said compliances were to be carried out by the erstwhile management of Corporate Debtor.
12. The inability of statutory authority to accept the current financial statement and returns post approval of the resolution plan is only because of the reason that the returns prior to the approval of the plan are not filed with it.
13. The applicant further submits that as both the ex directors are absconding in nature from the date of initiation of CIRP and no record/information/data was available with the Resolution Professional of the Corporate Debtor except for the bank statement and data which were available in public domain. However, now the Successful resolution Applicant on the basis of the data collated by the erstwhile RP of the Corporate Debtor wishes to comply all the pending compliances of the Corporate Debtor but heavy penalties are being imposed.

14. The applicant further submits that the default of the erstwhile management cannot be fastened upon the present applicant as the present applicant acquired the Corporate Debtor upon successful approval of the resolution plan vide this Tribunal vide order dated 06.10.2021.
15. The default committed by the erstwhile management is creating a hindrance for the applicant in filing the statutory returns post approval of the resolution plan by this Tribunal. It is further submitted that the Companies Act, 2013 provides for penalties in cases of non-compliance by the companies, which the applicant also fears will be fastened upon it as statutorily mandated by the Companies Act, 2013.
16. It is submitted that the NCLT Mumbai Bench in IA No. 1077 of 2020 is CP (IB) No. 1329/MB/2017 in the case titled ***Kamla Industrial Park Limited Vs. Monitoring Committee of Corporate Debtor and Another*** has dealt with a similar situation and has allowed the application of a successful resolution applicant seeking reliefs similar to that of the present applicant. Further, the Bench has also issued directions in respect of the same to the Registrar of Companies, Maharashtra.
17. We have heard the learned counsel for the parties and have perused the available records carefully.
18. Reliance has been placed on the decision of the NCLT Mumbai Bench in IA No. 1077/2022 dated 19.05.2021, wherein after referring to the decision of the Hon'ble Apex Court in ***Committee of Creditor of Essar Steel India Limited vs. Satish Kumar Gupta & Ors.*** (2019) SCC OnLine SC 1478, it was held that the management of the corporate debtor could not be held liable and responsible for malfeasance committed by the former promoters and directors of the corporate debtor. It further held that:

20. Though the present predicament faced by the Applicant is not in respect of any new claim, the principle and sentiment echoed by the Hon'ble Court can be applied to resolve the present imbroglio. Rules of procedure are but handmaidens of justice (**Mr. Shaik Salim Haji Abdul v. Mr. Kumar & others:**

AIR 2006 SC 396. The Hon'ble Court in **Sardar Amarjit Singh Kalra v. Pramod Gupta:** (2003) 3 SCC 272 observed that laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizens under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. In the same vein the Hon'ble Court in **N. Balaji v. Virender Singh:** (2004) 8 SCC 312 observed that the procedure would not be used to discourage the substantial effective justice but would be so construed as to advance the cause of justice. The Hon'ble Court in **Collector, Land Acquisition v. Mst. Katiji:** AIR 1987 SC 1353 ruled that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. The principle has also been echoed by the Hon'ble Supreme Court in **Laxmibai v. Bhagwantbuva** (Civil Appeal No. 2058 of 2003 decided on 29.01.2013).

21. Taking the facts and circumstances of the case into consideration and the principles decided, it would accordingly be appropriate to pass the following orders. Hence ordered.

ORDER

The Application be and the same is allowed on contest.

- i. The present management of the Corporate Debtor shall be permitted to approve the Accounts and Returns of the Corporate Debtor for the period prior to 16.10.2019 in its next meeting. The Applicant shall file the relevant Returns and Statements for the period within three months hence. The action shall not invite any penalty whatsoever from Respondent No. 2.
- ii. The Corporate Debtor is permitted to file Accounts and Returns subsequent to 16.10.2019, within a period of three months hence and the same shall be accepted without any penalty.
- iii. It is made clear that the present management of the Corporate Debtor shall not in any manner be held accountable for the default committed by the Corporate Debtor or its promoters/directors prior to 16.10.2019.
- iv. The RoC (Respondent No. 2) or the appropriate authority shall consider accepting Returns and Statements in physical form in case of incompatibility in online submission / e-filing.
- v. The implementation of the Plan is extended till 31.03.2022. All concerned shall make all endeavors to facilitate the implementation

of the Plan within the period.

19. Keeping in view the facts of the case and the aforementioned decision, we direct the ROC:

- i. Not to hold the present management of the corporate debtor accountable for the default committed by the corporate debtor or its promoters/director prior to 29.10.2018;
- ii. Allow the applicant to file the returns and the financial statements as required under the provisions of the Companies Act 2013 and other related acts;
- iii. If the returns/statements by the new management of the corporate debtor cannot be accepted online through e-filing due to technological issues, the same be accepted in the physical mode;
- iv. No penalty or interest arising out of the default committed by the erstwhile management prior to 29.10.2018 can be fastened to the present corporate debtor under the new management.
- v. In the result, IA No. 924/23 is allowed and disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

August 28, 2023
JGS/PKA

Sd/-

(Harnam Singh Thakur)
Member (Judicial)