

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM Nos.201 & 202
Item No.201 – **IA/166(MP)2023**
Item No.202 – **IA/253(MP)2023**
in
TP 123 of 2019 [CP(IB) 137 of 2019]

Proceedings under Section 7 IBC

IN THE MATTER OF:

Indian Bank
(earlier known as Allahabad Bank)
V/s
Indison Agro Foods Ltd

.....Applicant

.....Respondent

Order delivered on 05/01/2024

Coram:

P. Mohan Raj, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

IA/166(MP)2023 & IA/253(MP)2023

Both cases are fixed for pronouncement of the order.

The common order for both cases is pronounced in open Court *vide* separate sheet.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Narendra

Sd/-

P. MOHAN RAJ
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

IA/166(MP)2023 & IA/253(MP)2023
in
TP 123 of 2019 [CP(IB) 137 of 2019]

IA/166(MP)2023

(An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 and 13 of the National Company Law Tribunal Rules, 2016)

State Bank of India

Through Mr. Raj Kumar Sharma,
Stressed Assets Management Branch,
Bhopal, 1st Floor, SBI Building, Plot No. 1,
Arera Hills, Jail Road,
Bhopal, M.P. 462011

.....Applicant

Versus

Ms. Teena Saraswat Pandey

Interim Resolution Professional
of M/s Indison Agro Foods Limited
387-F, Scheme No. 114, Sant Nagar,
Indore M.P. (cirp.indisonagro@gmail.com)

.....Respondent No. 1

Indian Bank

(earlier known as Allahabad Bank)

Embassy Tower,
New Palasia, Indore, M.P.-452001

.....Respondent No. 2

Omkara Assets Reconstruction Private Limited

No.9, M.P. Nagar First Street,
Kongu Nagar, Extension,
Tirupur, Tamil Nadu-641607

Also at:

47th Floor, N.C. Kelkar Marg,
R.G. Gadkari Chowk, Dadar (West)
Mumbai-400028
Through its authorized signatory
Aniket Joshi
E-mail: aniket.joshi@omkaraarc.com

.....Respondent No. 3

IA/253(MP)2023

(An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 and 13 of the National Company Law Tribunal Rules, 2016)

State Bank of India

Through Mr. Raj Kumar Sharma,
Assistant General Manager,
State Bank of India,
Stressed Assets Management Branch,
Bhopal, 1st Floor, SBI Building, Plot No. 1,
Arera Hills, Jail Road,
Bhopal, M.P. 462011

.....Applicant**Versus****Ms. Teena Saraswat Pandey**

Interim Resolution Professional
of M/s Indison Agro Foods Limited
387-F, Scheme No. 114, Sant Nagar,
Indore M.P.
(cirp.indisonagro@gmail.com)

.....Respondent**In the main matter of: TP 123 of 2019 [CP(IB) 137 of 2019]***(An application under section 7 of the Insolvency and Bankruptcy Code, 2016)***Indian Bank****(earlier known as Allahabad Bank)**

Embassy Tower,
New Palasia, Indore, M.P.-452001

...Applicant/Financial Creditor**Versus****M/s Indison Agro Foods Limited**

CIN: U01111MP2003PLC016196
310, Pathar Mudla Road, Palda,
Indore, Madhya Pradesh- 452010

....Respondent/Corporate Debtor**Order pronounced on: 05-01-2024****Coram: P. Mohan Raj, Hon'ble Member (J)****Kaushalendra Kumar Singh, Hon'ble Member (T)****Appearance:**

For Applicant/SBI : Ld. Sr. Adv. Mr. Navin Pahwa a.w.
Ld. Adv. Mr. Rohit Dubey & Ld. Adv. Mr. Sandeep
Pandey (IAs 166 & 253/2023)

For the IRP/RP : Ld. Sr. Adv. Mr. Saurabh Soparkar a.w.
Ld. Adv. Mr. Madhav Lahoti &
Ms. Teena Saraswat Pandey

For the Indian Bank : Ld. Adv. Mr. Saumitra Chaturvedi

For the Omkara Assets : Ld. Adv. Mr. Abhinav Malhotra a.w.
Ld. Adv. Mr. Pranjal Kalantari (R-2) (IA 166/2023)

ORDER**IA/166(MP)2023 & IA/253(MP)2023**

1. The IA/166(MP)2023 has been filed by the State Bank of India seeking replacement of the Interim Resolution Professional Ms. Teena Saraswat Pandey (with any other Insolvency Professional) whereas IA 195 of 2023 is filed by the State Bank of India seeking direction against the IRP to admit the claim of the applicant in entirety and also to direct the IRP not to take further steps in the Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor until the time, the claim of the applicant is under pending verification and is not admitted in entirety.

2. The issues raised in both the above applications or interconnected and accordingly the same have been heard together and being disposed of by this common order.

3. **Background facts of the case: -**

(i) The Corporate Insolvency Resolution Process ('CIRP') of M/s Indison Agro Foods Limited got initiated vide order dated 03.03.2023 of this Adjudicating Authority on an application filed by the Allahabad Bank (which was continued by the Indian Bank after its merger) Bank under Section 7 of the IBC in **TP 123 of 2019 [CP(IB) 137 of 2019]**. Ms. Teena Saraswat Pandey has been appointed as Interim Resolution Professional ('IRP').

(ii) Following initiation of the CIRP, the Interim Resolution Professional so appointed had admitted the claim of the Financial Creditors as under:

Sr No.	Name of the Creditor	Amount of claim Received (in Crores)	Amount of Claim admitted (in Crores)	Percentage of voting share in CoC
1.	SBI	329.37	237.48	51.43%
2.	Indian Bank (Allahabad Bank which merged with Indian Bank)	236.25	171.50	37.14%
3.	ICICI Bank Ltd	64.27	52.77	11.43%
Total-		629.90	461.75	100%

(iii) The above three Financial Creditors had advanced loan (working capital) to the Corporate Debtor through their consortium agreement dated 01.11.2013 as under:

Sr No.	Name of the Creditor	Total loan amount (working capital) (in Crores)	Ratio of percentage
1.	SBI + (State Bank of Patiala)	90.00	51.43%
2.	Indian Bank (Allahabad Bank which merged with Indian Bank)	65.00	37.14%
3.	ICICI Bank Ltd	20.00	11.43%
Total-		175.00	100%

(iv) Later vide master restructuring agreement dated 23.12.2014, the total amount of loan (working capital) given by that consortium stood as under:-

Sr No.	Name of the Creditor	Total loan amount (working capital) (in Crores)	Ratio of percentage
1.	SBI	94.40	51.43%
2.	Indian Bank (Allahabad Bank which merged with Indian Bank)	68.20	37.14%
3.	ICICI Ltd	21.00	11.43%
Total-		183.60	100%

4. IA/166(MP)2023 was filed by the applicant State Bank of India against the IRP as a respondent party. *Vide* order dated 28.07.2023 in IA 195 of 2023 and order dated 21.09.2023 in IA 265 of 2023, the Indian Bank and Omkara Assets Reconstruction Pvt. Ltd were allowed to be impleaded respectively as respondent parties in IA 166 of 2023. The ICICI Bank Ltd had assigned its loan to Omkara Assets Reconstruction Pvt. Ltd.

5. The averments as stated in the applications and presented by the learned Senior Counsel Mr. Navin Pahwa are summarized here as under:-

(i) Pursuant to the commencement of the CIRP of Indison Agro Foods Limited, the State Bank of India had filed its claim of Rs. 329.37 Crore which was admitted by the IRP at Rs. 321.85 Crores and thereby

the State Bank of India attained 61.87% voting share in the CoC of the of the Corporate Debtor.

(ii) The first meeting of CoC got convened on 01.04.2023 in which the applicant placed its decision of not appointing the respondent as the Resolution Professional (“RP”) and to appoint another person as the RP in place of the respondent and requested for the agenda for replacement of IRP to be placed for E-voting. Pursuant to the conclusion of the meeting on 01.04.2023, the Indian Bank and ICICI Bank on 01.04.2023 (collectively holding 38.13% of CoC) vide their emails made requests for deferment of voting. Thereafter the IRP for the ulterior motives she had, didn't place the agenda of its replacement for voting as requested by the Applicant and went ahead with deferment by taking the pretext of the instructions of CoC members holding 38.13%.

(iii) Prior to convening of 2nd CoC meeting, the admitted financial debt of the applicant was reduced to INR 2,37,48,10,828.74 out of the total claimed amount of INR 3,29,37,57,441.46. This reduction in admitted portion brought the Applicant to a voting share of 51.43% in the CoC.

(iv) Thereafter, the 2nd CoC meeting was convened on 24.04.2023, in which the IRP, placed the agenda for its appointment as RP, which got failed owing to non-receipt of adequate votes. Meaning thereby, the IRP has failed to be appointed as the RP owing to lack of adequate votes in favour of its appointment as required under Section 22(3)(a) of the IBC.

(v) Pursuant to the submission of claim by the applicant, which was complete in all respects [included requisite documents as specified in Regulation 8(2) of the CIRP Regulations] and at the same time a proved debt in terms of Banker Book Evidence Act, 1891, the IRP had kept a significant portion of the claimed amount under the status of “pending verification”, and in an attempt to justify its misdeed the IRP has on various occasions raised frivolous queries from the applicant regarding its claimed amount. All of the queries raised had been duly responded

by the applicant in a timed manner. [the table showing timeline of communications amongst the IRP and the applicant is there in IA No. 253 of 2023 at page nos. 17-22].

(vi) In order to assist the IRP to the fullest extent, on the objections as to the amount of penal interest by the IRP, the applicant made suitable modifications in its calculation keeping in mind the established position of law and the claim amount was suitably modified on 01.05.2023 at INR 3,08,32,23,492.34/-. However, even after the revised calculation been shared the IRP has kept a substantial portion of the claimed amount under the verification, this shows that all of its objections to claim were merely with an object of coercing the applicant to vote for its appointment.

(vii) That the IRP has failed to be appointed as the RP owing to lack of adequate votes in favour of its appointment as required under Section 22(3)(a) of the IBC. Henceforth, such a situation had come in place that the majority financial creditor (i.e. applicant, even at its arbitrarily reduced voting share of 51.43%) is in interest of replacement of the IRP, but the IRP is staying to act as IRP/deemed RP even in absence of 66% majority being in its favour. In this situation of impasse, it became extremely necessary for this Hon'ble NCLT to provide ends of justice by replacing the IRP with any insolvency professional this Hon'ble NCLT deems fit and proper.

(viii) That, the IA No. 166 of 2023 was then filed by the applicant seeking replacement of the IRP and appointment of any other insolvency professional in its place.

(ix) Aggrieved by non-admission of the claim by the IRP, the applicant filed the IA No. 253 of 2023 before this Hon'ble Tribunal seeking directions to IRP to admit the claim of the applicant in entirety.

(x) The IRP in the instant case has made a gross error in collating the claim of the applicant. Instead of collating and admitting it on the basis of the proof of debt submitted alongwith the claim as per

Regulation 8 of the CIRP regulations, it went ahead with a baseless presumption that the ratio of sanctioned amount of SBI vis-à-vis other financial creditors will remain in the CoC as well. Apart from being baseless and illegal, this presumption cannot be correct for the mere reason that the outstanding financial debt as on the date of Insolvency Commencement Date includes interest and penal interest which have been different for all the lenders.

6. We have heard learned Senior Counsel Mr. Navin Pahwa appearing for the applicant State Bank of India, learned Senior Counsel Mr. Saurabh Soparkar for the IRP, learned counsel Mr. Saumitra Chaturvedi for Indian Bank and learned counsel Mr. Abhinav Malhotra for Omkara Assets Reconstruction Private Limited. We also heard the IRP Ms. Teena Saraswat Pandey. It is noted that the issue has arisen on account of the approach adopted by the IRP in admitting the claims of the aforesaid three financial creditors. Initially she kept part of the claim made by the each of these three creditors under verification. She appears to have admitted their respective claim as generated by the system and had not accepted the amount which was manually computed and included in the total claim. In that context, she had called for further supporting documents and required the State Bank of India to provide the basis of interest calculations. However, not being satisfied with the replies, she finally adopted the admitted claims of all the three financial creditors which is commensurate to the percentage contribution of the consortium as per agreement dated 01.11.2013 and 20.03.2014. It is noted that as per both these agreements the percentage contribution in advancement of the loan (working capital) to the corporate debtor stood at 51.43%(SBI), 37.14%(Indian Bank) and 11.43%(ICICI Bank). During the arguments a plea was taken by the learned counsel Mr. Saumitra Chaturvedi appearing for the Indian Bank that their outstanding as on the day of initiation of CIRP would also be at the same ratio as recovery from time to time made from the corporate debtor has been distributed amongst the three banks/financial creditors in that ratio itself. The learned Senior Counsel Mr. Navin Pahwa however, referred to the relevant clauses of the consortium

agreements and stated that the interest rate was to be charged by respective banks as per their sanction letter and stated that the rate of interest charged by all the three banks had deferred.

7. During the course of the hearing, we had required all the three banks to furnish the copy of sanction letters where the rate of interest and penalty provision, if any, were mentioned. We had also directed all the three financial creditors to sit together and after the discussion, place an affidavit before this Adjudicating Authority as to whether there has been any variance in-charging of the interest and penalty by the respective banks/financial creditors for arriving at the outstanding amounts and as to whether that was consistent with the interest rate mentioned in sanction letters. Following that, the additional affidavits/written submissions have been filed by the three financial creditors. It is noted that all the three banks have adopted different rate of interest and penal interest as per their respective sanction letters while arriving at the outstanding amount as on the day of initiation of CIRP. This leads to the conclusion that outstanding amount may not be in the same ratio as while extending the loan by way of consortium agreement. In the context all the three banks were directed to furnish computation of outstanding amount giving interest and penal interest separately. The total outstanding amount of the State Bank of India, Indian Bank, and ICICI Bank (Now Omkara Assets Reconstruction Private Limited) is shown in their computations at Rs. 329.37 crore, 236.25 crore and 64.27 crore respectively. It is also noted that the State Bank of India has revised its claim of Rs. 329.37 crores to 308.32 crores keeping in view the objections raised by the IRP as regards to the amount of penal interest.

8. Having considered these facts we are of view that the outstanding amount as computed by the three banks/financial creditors keeping in view the interest & penal interest rate as per their respective sanction letters will have to be considered for arriving at the percentage of voting shares of three financial creditors.

9. We also note that the IRP has acted in a *bona fide* manner. She had noted the difference in the methodology as adopted by the other two banks and in that context had admitted the claim to the extent of the balances which were generated through their accounting systems. However, as discussed hereinabove, we make it very clear that the outstanding amount has to be computed by considering principal amount advanced, recoveries made, interest and penal interest charged as per their respective sanction letters and accordingly the claims are to be admitted by the IRP. We accordingly direct all the three banks/financial creditors to provide the detailed computation, as given before us during these proceedings, to the IRP alongwith sanctioned letters; and the IRP is directed to verify the computation of charging of interest and penal interest as per their sanctioned letters and admit the claim accordingly.

10. We note that the State Bank of India's move for replacement of the IRP is on account of the fact that their total claim was not accepted by her in entirety. Nevertheless, we find that while admitting the claim she had adopted methodology whereby the voting percentage were commensurate with the percentage of loan advanced by them through the consortium.

11. We also note that sufficient majority of the CoC could not be reached for replacement of the IRP. In such circumstances, this Adjudicating Authority has discretion to replace the IRP by appointing any other Insolvency Professional from the approved panel. But we also note that the CIRP is a time bound process. The Resolution Plan has already been received and placed for consideration of the CoC. In such circumstances, we do not find any rational to replace the IRP at this stage. Further as pointed out by the learned counsels for Indian Bank and Omkara Assets Reconstruction Private Limited, in view of the amended provisions of Section 16(5) the IRP can continue till the date of appointment of the Resolution Professional under Section 22. It is noted that earlier to the amendment the IRP was to function for the period not exceeding 30 days from the date of his appointment but after the amendment the IRP can continue till appointment of the RP. In the matter before us, there is no conscientious between the CoC members to appoint the RP either by

allowing the same IRP to function as an RP or by way of replacement. In such circumstances, the IRP can work as deemed RP. In view of these facts and keeping in view that the IRP has acted *bona fide*, we do not intend to replace her by appointing any other Insolvency Professional. Accordingly, the IRP is directed to proceed ahead and complete the CIRP as per the provisions of the Code.

12. As a result, the application in **IA/166(MP)2023** requiring for replacement of the IRP is **dismissed**. The application in **IA/253(MP)2023** as regards directing the IRP to consider the entire claim of the State Bank of India is **allowed** to the extent of as directed hereinabove in para 10.

13. With this, both the applications are **disposed of** accordingly.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Narendra S. Tomar/Stenographer

Sd/-

P. MOHAN RAJ
MEMBER (JUDICIAL)