
(2023) 09 NCLT CK 0021

In the National Company Law Tribunal

Case No : IA No. 3758 of 2022 IN CP (IB) No. 1070/MB/C-II/2017

Anil Jadhav Vs Yashraj Ethanoll Processing Pvt Ltd ?

Date of Decision : 14-09-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7

Citation : (2023) 09 NCLT CK 0021

Hon'ble Judges : Kuldip Kumar Kareer, Member (J); Anil Raj Chellan, Member (T)

Bench : Division Bench

Advocate : Suyesha Kakarla, Nancy Singh, Gayatri Mohite

Final Decision : Partly Allowed

Judgement

Anil Raj Chellan, Member Technical

1. The Applicant is one of the erstwhile promoters of the Corporate Debtor who filed the present application for the purpose of obtaining a copy of Miscellaneous Application No.394 of 2018 containing the Resolution Plan upon such conditions as the Adjudicating Authority may deem fit and proper.

2. The brief facts leading to the present application are that the Yashraaj Ethanoll Processing Pvt. Ltd ("Corporate Debtor") was admitted to Corporate Insolvency Resolution Process (CIRP) on 20.07.2017 upon an application filed by Phoenix Erectors Pvt Ltd under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code). Mr.Jitendra Palande, the Resolution Professional(RP) appointed in the case filed Misc. Application No.39 of 2018 seeking approval of the Resolution Plan approved by the Committee of Creditors of the Corporate Debtor, and Adjudicating Authority vide its order dated 13.07.2018 approved the Resolution Plan. The Resolution Plan is under implementation. The Applicant vide his email dated 17.10.22 requested the RP to furnish him with a copy of the Resolution Plan but RP did not respond to the above request. The Applicant, therefore, filed the present application.

3. The Applicant submitted in the application that he is an erstwhile promoter cum guarantor of the Corporate Debtor, the Resolution Plan, once approved is

binding on all stakeholders including the Applicant, and that approved Resolution Plan is not a confidential document and can be made available to a genuine claimant. In support of the above, the Applicant relied upon the decision of the Hon'ble Supreme Court in the case of Vijayakumar Jain v. Standard Chartered Bank and others (2019) 20 SCC 455, and the decision of the Hon'ble NCLAT in the case of Association of Aggrieved Workmen of Jet Airways (India) Ltd v. Jet Airways (India) Ltd; 2022 NCLAT 36.

4. On the other hand, the new management of the Corporate Debtor (Respondent No.2) submitted that the Resolution Plan contains five year business plan and cash projections for revival, there is a need to maintain the Resolution Plan as confidential, and that the Applicant should have exercised the above right before the Committee of Creditors. The Respondent further submitted that the present application is belated and filed to protract the successful implementation of the Resolution Plan and entangle the Respondent No.2 in frivolous litigation.

5. We have heard the learned counsel for the parties and perused the records.

6. It is evident that the successful Resolution Applicant has already started implementation of Resolution Plan (stated to be in the final stage) and is presently in the management/Board of the Corporate Debtor. No reason has been stated in the application for the belated request for the copy of the Resolution Plan.

7. In the above background, the limited question arising for our consideration is whether the Applicant is entitled for a copy of the Resolution Plan at this stage. The Hon'ble Supreme Court in the case of Vijayakumar Jain v. Standard Chartered Bank and others, supra held that:

"....a combined reading of the Code as well as the Regulations lead to the conclusion that members of the erstwhile Board of Directors, being vitally interested in resolution plans that may be discussed at meetings of the committee of creditors, must be given a copy of such plans as part of "documents" that have to be furnished along with the notice of such meetings."

The above decision was in reference to CIRP proceeding. However, the Honble NCLAT in the case of Association of Aggrieved Workmen of Jet Airways (India) Ltd v. Jet Airways (India) Ltd supra examined whether the Resolution Plan after being approved by the Adjudicating Authority continues to be a confidential document, so as to deny access to any of the claimants and observed that:

" after Resolution Plan is submitted to the Adjudicating Authority and it is approved by the Adjudicating authority, it no longer remains a confidential document, so as to preclude Regulator and other person from access the said document."

It further held that:

".....it is true that the Resolution Plan even though it is not a confidential

document after its approval, cannot be made available to each and to everyone who has no genuine claim or interest in the process. On various grounds the access to Resolution Plan even if it is not a confidential document, after approval can be denied in proper and appropriate cases”.

8. In the present case, the Applicant has sought copy of Resolution Plan after four years from the date of approval, without giving any explanation for the long delay. In the circumstances, we are of the considered view that it is not an appropriate case to provide entire copy of Resolution Plan. However, considering the fact that the Applicant was a guarantor who is vitally interested in Resolution Plan to the extent it affect him, we direct furnishing of relevant part of the Resolution Plan which deals with debts of the Corporate Debtor.

9. Accordingly, the Application 3758 of 2022 is partly allowed to the extent indicated above. Decided accordingly.