

(2023) 07 NCLT CK 0001

In the National Company Law Tribunal

Case No : IA No.202/2020 In CP (IB) No.631/Chd/HP/2019

Ashish Dhillon Vs M/s Ram Hari Motors Pvt. Ltd ?

Date of Decision : 06-07-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 60(5), 235A
Income Tax Act, 1961 — Section 269SS

Citation : (2023) 07 NCLT CK 0001

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Dharam Paul Garg

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

IA No.202/2020

1. The present application is being filed by IDBI Bank Limited (herein referred to as applicant) against Mr. Ravinder Kumar Goel, Interim Resolution Professional (herein referred to as Respondent No. 1) and Other respondents who are Members of Committee of Creditors under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

2. It is prayed by the applicant for cancellation of CoC constituted by the respondent-IRP with further directions to IRP for reconstitution of CoC after due verification of claims of the Financial Creditors. It is further prayed to declare all the resolution passed by the CoC in first meeting and subsequent meetings as null and void.

3. The brief facts of the case as mentioned in the application are that

i. The Corporate Insolvency Resolution Process was initiated against the Corporate Debtor on 14.02.2020 and Mr. Ravinder Kumar Goel was appointed as Interim Resolution Professional.

ii. It is alleged that the IRP did not act bonafide and has admitted the claims of the alleged private Financial Creditors amounting to Rs. 9,42,00,944/- without any basis and due verification. The claim of the applicant who is the sole banker of the Corporate Debtor amounts to Rs. 6,55,93,920/-. The voting percentage of the applicant was 41.50% at the time of first CoC meeting. In the first meeting of CoC held on 16.03.2020, the bank has objected to the admission of claims of other Financial Creditors without verification as per Rules and Regulations. The applicant has also requested the IRP to provide the documentary evidence but the IRP has given evasive replies.

iii. The IRP has called second CoC meeting on 28.05.2020 and has not provided copies of the claims of alleged Financial Creditors. In order to serve his own cause to get himself appointed as a Resolution Professional, the respondent has reduced the voting percentage of the bank as 32.83%.

iv. It is further stated that as per Section 269SS of the Income Tax Act, 1961, any deposit or loan should not be accepted or taken from any person if the amount of deposit or loan is Rs. 20,000/- or more and the IRP has completely ignored this Rule and accepted the claims of the alleged Financial Creditors. The promotor of the Corporate Debtor, Smt. Gagan Deep Kaur is also the guarantor and has mortgaged two properties situated at Village Mauja Chadhiara Dist. Mandi, HP which is standing in the personal name of the Director. The IRP has illegally and wrongly taken over the possession of land and building belonging to guarantor Smt. Gagan Deep Kaur so as to nullify the SARFAESI action on the applicant bank. The respondent has also deployed Security Guards on properties which do not belong to the Corporate Debtor. The title deeds of the properties of the guarantor standing in her name is attached as Annexure-A9 of the application.

4. By the order dated 10.11.2020, the amended memo of parties has been taken on record and the notice of this application was issued to the respondent. The applicant has filed the affidavit of service vide diary No.01067/01 dated 23.12.2020 wherein it is seen that notice were served to all respondents and the copy of the original postal receipt along with tracking reports are attached as Annexure A/1 to A/3 of the aforesaid affidavit. The notice were also served by way of e-mail and the copies of the same are attached as A/4 of the aforesaid application. However, there is no reply from Respondent No. 2 to 14.

5. The respondent has filed its reply by Diary No. 1065/3 dated 27.08.2021 wherein it is stated that on account of the subsequent events, the present application has been rendered infructuous as the relief claimed by the applicant does not survive and the same cannot be granted at this stage. In the third meeting of CoC held on 12.10.2020, it was discussed that no useful purpose will be served by continuing the CIRP as there is no business of the Corporate Debtor and the agenda of liquidation was put to vote and the CoC members including the present applicant has voted in favour of liquidation. The minutes of the third CoC meeting is attached with the reply as Annexure-R1/1. This Tribunal has also

passed an order for the commencement of liquidation on 20.12.2020 in IA No. 709/2020. The present application praying for reconstitution of CoC has become redundant as there is no CoC after passing of liquidation order. It is further averred that the present application is defective and is not in accordance with the basic rules with the pleadings. The respondent cannot be treated as representative of financial creditors and the financial creditors should be impleaded in their personal capacity. The CoC has been constituted by the IRP after verifying the claims of the Financial Creditors. All the Financial Creditors filed their claims in Form-C along with the other relevant documents which has been verified from the Balance Sheets of the Corporate Debtor. The function of verification of claims falls within the exclusive domain of IRP/RP and CoC has no authority to direct RP to accept or reject the claim.

6. It is further submitted that the loan has been given to the Corporate Debtor for the construction which comprises of showroom and workshop along with the residential accommodation and it was the duty of the IRP to take possession of the property. The documents submitted by the applicant bank clearly establish that the properties of the Corporate Debtor is the primary Security of the loan.

7. The applicant has filed its rejoinder vide Diary No. 01065/4 dated 05.05.2022 wherein it is stated that the claims filed by respondent nos. 2 to 14 are not genuine and action under Section 235A of IBC is warranted against them for filing false claim. The respondent no. 14 in connivance with the private financiers have manipulated the claims to give the majority voting shares at the cost of public banks. It is alleged that claims were admitted on the basis of receipts and agreement but no financial statement as evidence of the debt were submitted with the claims of the respondent nos. 2 to 14. The claims should have been rejected as the cash transactions above Rs. 20,000/- are illegal as per Section 269SS of Income Tax Act, 1961 and the claims admitted by the respondent no. 1 were exorbitant higher and different from what is reflected in the Balance Sheets of the Corporate Debtor. The IRP has admitted the claim in the first meeting of CoC for Rs. 9,42,00,944/- and when he could not get appointed as Resolution Professional, the claims were enhanced to Rs. 11.83 crores before calling the second meeting. It is mentioned that the claim of M&M Financial Services was admitted for an amount of Rs. 1.59 crores as against Rs. 6.06 lakhs shown in the Balance Sheet of Corporate Debtor. The Balance Sheet of M/s Geoxa Steels does not show any amount advance to the Corporate Debtor and the respondent no. 1 has admitted a claim of Rs. 2,42,76,070/-. Similarly, respondent no. 8 Amanpreet Singh Sodhi has also filed a financial claim of Rs. 80 lakhs, who is the promotor of Geoxa Steels and the claim has been admitted without any proper application. In view of the aforesaid deliberate acts of omission and commission, the present application may kindly be allowed and action under Section 70(2) be taken against the respondent no. 1. It is further prayed that appropriate action against the Respondent Nos. 2 to 4 under Section 235A of the IBC, 2016 be ordered against them for filing false & frivolous claims.

8. The applicant has filed written submissions by Diary No. 01065/6 dated 06.04.2023. In order to support the contention of the applicant, reliance is placed on the judgement of Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 348 of 2020 titled as Jayanta Banerjee Vs. Shashi Agarwal, liquidator of INCAB Industries Ltd. & others wherein it has been held that 'it is also pertinent to mention that when the constitution of the Committee of Creditors itself is found to be tainted, then the decision of that CoC cannot be validated on the pretext of exercise of commercial wisdom.'

9. The respondent no. 1 has filed written submissions by Diary No. 01065/5 dated 30.03.2023 stating that the bank has concealed the fact that they have filed a statutory complaint with the IBBI on the same allegation as mentioned above and the IBBI did not find merit in the allegation and choose not to proceed with the matter.

10. We have heard the learned counsel for the applicant and respondent and have pursued the records carefully.

11. In the present case, the allegations levelled by the applicant bank are mainly focussed on the alleged wrongdoings of the Resolution Professional. At the outset, we take note of the fact that the main issue of this application relating to the re-constitution of the CoC has become redundant as this Bench has already approved the proposal for liquidation by the CoC by its order dated 22.12.2020.

12. We also note that the agenda for liquidation was passed by 76.95% votes, and the present applicant had also cast its vote for liquidation in favour of the corporate debtor. From a perusal of the meetings of the COC, it is clear that the present applicant had actively participated in these meetings. In any case, the issue of reconstitution of the COC has now become otiose as the corporate debtor is under liquidation.

13. We also find that apart from making general allegations of admission of claims of various parties, no case was made out by the applicant to suggest that the same has been admitted without any basis. Even the decision of the Hon'ble NCLAT in Jayanta Banerjee (Supra) relied upon by the applicant does not support his contention as this case discusses the result of including "related parties in COC", which is not the allegation in the present case.

14. We also take note of the fact that the applicant bank is stated to have filed a statutory complaint with the IBBI in this regard, and the latter did not find any merits in the complaint.

15. In view of the aforementioned discussion, IA No. 202/2020 is dismissed and disposed of.