
(2022) 09 NCLT CK 0043

In the National Company Law Tribunal

Case No : IA No.514/2021 & 519/2021 In CP (IB) No.250/Chd/Pb/2018

Devdeep Cotton Industries through its Partner

APPELLANT

Vs

Sh. Nipan Bansal. Resolution Professional

RESPONDENT

Date of Decision : 12-09-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 31, 36(4)(iii), 60(5), 60(6)

Citation : (2022) 09 NCLT CK 0043

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

Bench : Division Bench

Advocate : Jatin Singhal, Harsh Garg, G.S. Sarin, Munisha Gandhi, Salina Chalana

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

IA No.514/2021

1. The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by Devdeep Cotton Industries (herein referred as "Applicant"); and Sh. Nipan Bansal, Resolution Professional of M/s KSM Spinning Mills Limited (herein referred as "Respondent").

2. The applicant has prayed that late submission of the claim may be condoned and the respondent-RP is directed to consider, accept and include Form B in the list of operational creditors along with the amount of interest.

3. The present interlocutory application states that the applicant being unaware of due process of submitting its claim, could not submit it in required Form B before the last date of submission of claim, which was 31.12.2019 as mentioned in Form A of Public Announcement. It is further stated that the Resolution Professional did not inform the applicant about the status of the claim and also

that the submission of documents for the claim needs to be submitted in Form B as late as when the applicant had sought the update through e-mail on 29.07.2021. Subsequently, however, the Resolution Professional had informed the applicant that since the claim was not in Form B and it was sent on a different e-mail ID the claim has not been admitted.

4. The respondent-RP in its reply filed by Diary No.01255/01 dated 03.12.2021 stated that the applicant had filed its claim in Form B on 10.09.2021, and it was way beyond the period of 90 days stipulated as the last date to file claims before the Resolution Professional as per Regulation 12(2) of the CIRP Regulations. The total delay in filing of the claim is more than 543 days from the last date. In the present case, the CIRP was initiated on 17.12.2019, and the resolution plan was approved on 13.11.2020, whereas the applicant filed his submission in Form B only on 10.09.2021.

5. The facts narrated above are not disputed by either party.

6. We have heard the learned counsel for the applicant as well respondent and have perused the records carefully.

7. The applicant has placed reliance on the following judgements, but the same in no way advance his case:-

(i) Hon'ble Supreme Court in the matter of Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. - Writ Peition (Civil) No.99 of 2018 dated 25.01.2019;

(ii) Hon'ble NCLAT in the matter of M/s Prasad Gempex Vs. Star Agro Marine Exports Pvt. Ltd. & Ors. and SREI Infrastructure Finance Ltd. Vs. Kannan Tiruvengandam (R.P.) & Anr. (Company Appeal (AT) (Insolvency) Nos.291 & 591 of 2018); and

(iii) Hon'ble NCLAT in the matter of M/s Dynepro Private Limited Vs. Mr. V. Nagarajan (Company Appeal (AT) (Insolvency) No.229 of 2018) dated 30.01.2019

8. The respondent-RP has placed reliance on the decision of Hon'ble NCLAT in the case of Mukul Kumar RP of KST Infrastructure Ltd. Vs. M/s RPS Infrastructure Ltd. order dated 30.07.2021, in which these issues have been discussed in detail and has observed as under:-

"34. With the aforesaid, we are of the view that when the Resolution Plan has already been approved by the CoC and it is pending before the Adjudicating Authority for approval, at this stage, if new claims are entertained the CIRP would be jeopardized and the Resolution Process may become more difficult. Keeping in view the object of the IBC which is resolution of Corporate Debtor in time bound manner to maximize the value, if such request of claimant is accepted the purpose of IBC would be defeated."

9. We are also conscious of the decision of the Hon'ble Supreme Court in the case of CoC of Essar Steel India Ltd., which have been extracted in the

aforementioned decision of the Hon'ble NCLAT as below:-

"88. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count."

10. It is an established position that the Resolution process is a time-bound one, and any action resulting in delay of the process, and consequent loss in value of the assets of the CD, is against the objectives of the Code. In the present case, the delay in filing of the claims have been way beyond the approval of the resolution plan by the COC. Any acceptance of such delay will violate the basic tenets of IBC, and, hence, the prayer of the applicant can't be acceded to.

11. Keeping in view the above discussion, the prayer of the applicant is not acceded to, and the present IA No.514/2021 is dismissed and disposed of accordingly.

IA No.519/2021

The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by Mr. Bal Krishan, Ex-Employee and Ex-workers of M/s KSM Spinning Mills Limited (herein referred as "Applicants"); against Asset Care & Reconstruction Enterprises Ltd. & Ors. (herein referred as "Respondents No.1 to 8/CoC Members/Financial Creditors"); Mr. Nipan Bansal, Resolution Professional (herein referred as Respondent No.9); and C Mohan International, Resolution Applicant (herein referred as Respondent No.10).

2. The applicants have prayed to cancel/modify the resolution plan of C Mohan International, which is stated to be against the provisions of Section 36(4)(iii) of the IBC, 2016, as per which the provident fund and gratuity fund cannot be included as assets of the corporate debtor; or direct the respondent to disburse the amount of provident fund along with the interest and gratuity fund of the applicants estimated around Rs.4.0 Crores.

3. In the said application, several allegations were made against the functioning of the Resolution Professional, though a specific case was not made out in this

regard during the present proceedings.

4. The reply filed by respondent No.9/Resolution Professional by Diary No.01299/1 dated 25.10.2021 and rejoinder thereto by Diary No.01299/3 dated 28.02.2022 and 01299/7 dated 03.08.2022 have been perused.

5. In this background, it needs to be mentioned that in the course of the present proceedings, the SRA has filed a compliance affidavit by Spl. Diary No.268 dated 30.08.2022 stating as under:-

"That in compliance of the above order dated 05.08.2022, the deponent/SRA hereby states that he will pay the contribution and other sums due from the corporate debtor under the provision of the Employees Provident Funds and Misc. Act, 1952 of the Scheme or the Pension Scheme or the Insurance Scheme, and under the Payment of the Gratuity Act, 1972, as the case may be, in respect of the period up to the date of approval of the resolution plan by the Adjudicating Authority, without prejudice to the right of the deponent to avail available remedies with respect tot eh treatment/levy of the dues of the aforesaid dues."

6. In view of the aforementioned compliance affidavit by SRA, the present application IA No.519/2021 is rendered infructuous and disposed of accordingly.