(2023) 04 NCLT CK 0036

In the National Company Law Tribunal

Case No : CA No.1216/2019 & CA No. 818/2019 In CP (IB) No.160/Chd/Pb/2018

Gulshan Rai Vs Rajeev Bhambari ?

Date of Decision : 19-04-2023

Acts Referred:
Insolvency and Bankruptcy Code, 2016 — Section 60(5)
National Company LawTribunal Rules, 2016 — Rule 11

Citation : (2023) 04 NCLT CK 0036

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

Bench : Division Bench

Advocate : Dr. Rajansh Thukral, Sidharth Thukral, Karanveer Jindal

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judical)

CA No. 818/2019

1. The instant application has been filed by Mr. Gulshan Rai-Resolution Applicant, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2011 to place on record additional documents (Annexure A-15 to A-18) along with pleadings made and to be read as part of CA No.616/2019 in CP(IB) No.160/Chd/Pb/2018. The same is taken on record and tagged with CA No. 616/2019 for consideration., CA No. 818/2019 is disposed of accordingly.

CA No. 1216/2019

2. The instant application has been filed by Mr. Gulshan Rai- Resolution Applicant, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, to set aside the second set of minutes of the 9th meeting of COC issued on 19.06.2019 from where the resolution of cancellation of forfeiture made on 08.04.2019 in the 6th meeting of the COC has been arbitrarily deleted by the Resolution Professional and further to set aside Resolution No.5.1 of the 13th meeting of the COC whereby, an amount of Rs.10 lakhs has been forfeited. Further directing Resolution Professional to refund the deposit of Rs.25 lakhs

along with interest.

3. The brief facts of the case are as follows:-

3.1. It is submitted that the petition for CIRP was admitted on 30.10.2018, and Mr. Anjum Goyal was appointed as Resolution Professional. In 1st meeting of COC held on 30.11.2018 and vide order dated 12.12.2018 of this Hon'ble Tribunal, Resolution Professional was replaced with Mr. Rajeev Bhambri. The order of liquidation was passed on 05.08.2019, and Resolution Professional was appointed as Liquidator for Corporate Debtor. In the 3rd meeting of COC held on 11.01.2019, approved the expression of interest, and in its 4th meeting held on 25.03.2019, the Committee noted the provisional list of two prospective Resolution Applicants. Mr. Gulshan Rai submitted Resolution Plan along with Rs.25 lakhs vide demand drafts No.335756 for Rs.6 lakhs, 335755 for Rs.9 Lakhs and a cheque of Rs.10 lakhs. The demand drafts were credited, but the cheque was dishonoured. On account of the dishonour of the cheque, the Resolution Plan submitted by Mr. Gulshan Rai was rejected in the 6th meeting.

3.2. It is further submitted that in the 7th meeting, again invitation of expression of interest was published on 12.04.2019 in Form-G, and the last date of receipt of expression of interest was 27.04.2019. The expression of interest was received from Mr. Krishan Arora and Mr. Gulshan Rai on 06.05.2019. However, there was a delay in the submission of the expression of interest by Mr. Gulshan Rai. In the 7th meeting, Mr. Gulshan Rai agreed to submit Resolution Plan by 17.05.2019 along with the payment of Rs.15 lakhs and Rs.10 lakhs through cheque was received on 18.05.2019, which was dishonoured. So, Resolution Applicant transferred the amount through RTGs on 31.05.2019.

3.3 It is averred that in the 9th Meeting Committee of Creditors resolved to condone the delay by 94.80% voting rights. On 19.06.2019, at the time of issuing the minutes of the 10th CoC, the resolution professional issued revised manipulated minutes of the 9th meeting of the CoC with the intention to forfeit the money deposited by the Resolution Applicant. In the 10th Meeting of the CoC, two sets of minutes were issued, and Resolution Plan was also rejected. In the 12th meeting, Resolution Plan was again submitted, and in the 13th meeting, it was rejected.

4. The reply was filed vide Diary No. 960 dated 04.02.2020, wherein it is submitted that Mr. Gulshan Rai was present in the 10th meeting and was aware that the minutes were duly revised with permission and unanimous approval of COC. The COC, after detailed discussion and deliberation, forfeited the security deposit of the applicant. The forfeiture was duly authorized by unanimous approval of COC. It is further submitted that the declaration and undertaking dated 20.03.2019 was submitted by the Resolution Applicant along with Resolution Plan. In the 6th meeting held on 08.04.2019, the CoC considered information provided in connection with the Resolution Plan regarding the deposit of Rs.25 lakhs as false because Rs.15 lakhs were deposited by the applicant

through a demand draft, but the cheque of Rs.10 lakhs was dishonoured due to insufficient funds. In the expression of interest, no transaction has been reported by the RA with Corporate Debtor. However, in the transaction audited report, many transactions of the Corporate Debtor have been surfaced with the RA. Remuneration, unsecured loan and interest booked on unsecured loan in the Books of the Corporate Debtor have not been reported.

5. The rejoinder was filed vide Diary No. 01076/01 dated 06.12.2021, wherein it is stated that there is no provision in IBC, 2016 for the Committee of Creditors to review their own decision. The COC cannot review its decision where once condonation of delay is granted. The non-fulfilment of pre-condition for submission of an expression of interest cannot be classified as false information. In the 3rd meeting of the Committee of Creditors with respect to the invitation of the Resolution Plan, Item 4 clearly suggest that a deposit of Rs.25 lakhs is a pre-condition for submission of EOI and if the resolution plan is not accompanied by a deposit of Rs.25 lakh the same would not be entertained. However, it does not suggest that if a partial amount is submitted, it will amount to false information. The receipt of remuneration or an unsecured loan to a Corporate Debtor cannot be construed as a transaction.

6. The Short written submissions were filed by the applicant vide Diary No. 01076/2 dated 02.08.2022 and by the respondent vide Diary No.01076/3 dated 25.08.2022 reiterating the above-mentioned facts.

7. We have heard the learned counsel for the applicant as well as the respondent and perused the material available on record.

8. The chronology of events as recorded in the minutes of successive meetings of the CoC, attached with the application, are extracted below for the sake of clarity:

A. Minutes of 7th meeting of CoC dated 13.05.2019 (Annexure A-8 of the application)

"Resolved that the delay in the submission of Expression of Interest by Mr. Gulshan Rai be and is hereby condoned and for all purposes his Expression of Interest shall be treated as received within the scheduled time"

B. Minutes of 8th Meeting of CoC dated 02.06.2019 (Annexure A-8 of the application)

Members were informed to consider the Resolution Plan tabled in the Meeting besides to consider the following:

a) To consider the Request of Resolution Applicant to adjust Rs.15 lacs D deposited by Resolution Applicant with his earlier Resolution Plan, forfeited by the Committee of Creditors for submission of false/incorrect information. The said false/incorrect information was that Resolution Applicant had informed that along with his Resolution Plan he has provided Rs.25 lacs to fulfill the essential criteria fixed by the Committee, however only Rs.15 lacs were given by him.

b) To consider the delay in deposit of Rs. 10 lacs which was suppose to be deposited on or before 28.05.2019 i.e. the last date for submission of Resolution Plan, however the same was received on 31.05.2019. In case Committee rejected to accept the request of Resolution Applicant made as referred in para (a) above, then to consider the forfeiture of Rs. 10 lacs as the same will amount to false/incorrect information as per of the Criteria fixed by the Committee for submission of Resolution Plan, extracts of the same are as follows:

"The said deposit shall be forfeited if any information and/or records provided in expression of interest is found to be false or incorrect and discovery of any false information or record at any time will render the resolution applicant ineligible to submit resolution plan and attract penal action under the Code"

The said false/incorrect information was that Resolution Applicant had informed that along with his Resolution Plan he has provided cheque of Rs.10 lacs to fulfill the essential criteria fixed by the Committee, however the same was dishonored when presented in the Bank.

Resolution Plan was discussed by the members and matter was deferred till the next meeting of Committee to be held on Friday, the 7th June, 2019.

C. Minutes of 9th Meeting of CoC dated 09.06.2019 (Annexure A-9 of the application)

4. To Consider Resolution Plan

Resolution Plan was discussed by the members and matter was deferred filthe next f3 meeting of Committee to be held on Monday, the 17" June, 2019.

D. Minutes of 10th Meeting of CoC dated 19.06.2019 (Annexure A-11 of the application)

It was further informed that criteria fixed by the COC for submission of Resolution Plan was to deposit Rs.25 lacs along with Resolution Plan. Accordingly, Mr.Gulshan Rai had submitted that that his deposit of Rs.15 lacs is already lying with the Company and the a cheque of Rs. 10 lacs dated 27.05.2019 was provided by him along with his Resolution Plan, however, the fact is Rs. 15 lac were forfeited by the COG earlier and Rs. 10 lacs were received by the Company on 31.05.2019 via RTGS. Thus he has made false information. The criteria fixed by the COC for submitting Resolution Plan provides for as under.

9. From the aforementioned narrations, it is clear that the decision to forfeit the deposit has been taken after due deliberation by the CoC and the same is recorded in details in the minutes of the meeting of the CoC. The allegation that manipulated minutes of the 9th meeting of the CoC were issued with an intention to forfeit the money deposited by the Resolution Applicant is not borne out from the minutes of the meeting of the CoC attached to the application before us.

10. In view of the above, the prayer of the applicant for refunding the deposit of Rs. 25 Lakhs along with interest is not acceded to.

11. In the result, IA No. 1216/2019 is dismissed and disposed of accordingly.

