(2023) 04 NCLT CK 0032

In the National Company Law Tribunal

Case No : IA No.1287 Of 2022 In CP (IB) No.214/Chd/Hry/2020

Harsh Garg Vs Seok Ho Chang ?

Date of Decision : 17-04-2023

Acts Referred:
Insolvency and Bankruptcy Code, 2016 — Section 9, 19(2), 66, 236

Citation : (2023) 04 NCLT CK 0032

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

Bench : Division Bench

Advocate : Mohinder Singh

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. The instant application has been filed under Section 66 of the Insolvency and Bankruptcy Code, 2016 seeking directions against respondents for indulging into fraudulent trading and referring the matter to Insolvency and Bankruptcy Board of India/Central Government u/s 236 of IBC, 2016 for carried out fraudulent transactions to defraud the creditors.

2. The brief facts of the case are:-

2.1. The application u/s 9 of Insolvency and Bankruptcy Code, 2016 for initiation of CIRP was admitted vide order dated 10.08.2022 and Mr. harsh Garg was appointed as Insolvency Resolution Professional (IRP).

2.2. The Committee of Creditors with one operational creditor having voting share of 100% was constituted after collating all claims submitted. Thereafter, the name of the Corporate Debtor was changed from M/s YSSS India Construction Pvt. Ltd. to M/s SNH Construction Private Ltd. on 15.06.2019.

2.3. At the time of incorporation there were three directors including Her Seung Hwi, Seok Ho Chang and Kannan. The director Her Seung Hwi resigned on 10.05.2019 and Kannan resigned on 06.01.2020.

2.4. There were several transactions between the Corporate Debtor and respondent No.2 which transpires that payment of Rs.50 Lakhs was made by the Corporate debtor to respondent No.2 on 17.05.2019 and an amount got debited in the bank account of the Corporate Debtor on 21.05.2021.

2.5. It is submitted that the corporate debtor was incorporated on 22.02.2019 and just after three months of incorporation a huge amount of Rs.50 lacs was credited in the account of respondent No.2 without any justification. Further, it is submitted that thereafter, certain purchases were made by the corporate debtor from respondent No.2 but the payment for the same was made on regular basis to respondent No.2 and till date, an amount of Rs.50 lacs is due against respondent No.2.

2.5. It is averred that the director of respondent No.2, namely, Sang Hoi Hur is the brother of the ex-director of the Corporate Debtor, namely, Her Seung Hwi and is a Korean national as respondent No.1.

2.6. It is further averred that the applicant came to know about the transaction and wrote an e-mail dated 01.09.2022 but the respondent failed to respond to the said e-mail. It is stated that the said transaction is a fraudulent transaction done by the Suspended Director of Corporate Debtor in connivance with respondent No.2.

3. The notice of this petition was issued to respondents vide order dated 07.10.2022. The Affidavit of Service vide Diary No.02198/01 dated 18.11.2022 was filed. Vide the order dated 01.02.2023 of this adjudicating authority, it is noted that there are two respondents in the present application but none appeared despite being informed through e-mail about the last opportunity given in the previous date of hearing. In view of this fact, it appeared that the respondents were not interested in cooperation in these proceedings and their right to file a reply is therefore closed.

4. It is deposed by the applicant by way of compliance affidavit filed vide diary No.02198/02 dated 30.01.2023 wherein, it is stated that the Corporate Debtor Company does not have any running business activities nor was in function when RP had taken control of the same. Further, it is deposed that there was no office of the Corporate Debtor at the given address as per Master Data and Corporate Debtor had already left the same. As per the balance sheet of the Corporate Debtor for Financial Year ending 31.03.2020, there are no immovable/fixed assets of the Corporate Debtor. However, the balance sheet of the Corporate Debtor reflects that it has various current assets; however, complete details of the same are not available with the RP as there has been complete non-corporation from the Suspended Board of Corporate Debtor for which the RP has filed IA No.1549/2022 u/s 19(2) of IBC, 2016.

5. We have heard the learned counsel for the applicant and perused the material available on record. We find no justification for the credit of Rs. 50 Lakhs in the account of Respondent No. 2. No effort was made by the respondent also to

explain the nature of this transaction in the course of the present proceedings. Also, the contention of the Resolution Professional that the director of respondent No. 2 is related to the ex-director of the corporate debtor has not been refuted. In view of the same, we hold that the impugned transaction of Rs. 50 Lakhs as a fraudulent transaction and respondent No. 2 is directed to refund Rs. 50 Lakhs within 30 days of this order to the corporate debtor.

6. Accordingly, IA No. 1286/2022 is allowed and disposed of.

