
(2023) 04 NCLT CK 0041

In the National Company Law Tribunal

Case No : IA No. 1613/2022 and 470/2023 In CP (IB) No. 35/Chd/Hry/2018

IDBI Bank Ltd Vs Jalesh Kumar Grover Resolution Professional ?

Date of Decision : 27-04-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 5(8), 5(13), 14, 14(1)(a), 14(2), 60(5)

Insolvency and Bankruptcy Board of India (Insolvency and Resolution Process for Corporate Person) Regulations, 2016 — Regulation 12

Citation : (2023) 04 NCLT CK 0041

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

Bench : Division Bench

Advocate : Harsh Garg, Pulkit Garg, Abhishek Anand, Viren Sharma, Abhishek Anand, Viren Sharma, Anand Chibbar, Vaibhav Sahni, Samrat Anand

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

IA No.1613/2022

1. The present application is filed by IDBI Bank Limited (hereinafter referred to as the applicant); against Mr. Jalesh Kumar Grover, Resolution Professional of GPI Textile Limited (herein referred to as Resolution Professional/Respondent) under Section 60(5) of Insolvency and Bankruptcy Code, 2016.

2. It is prayed by the applicant to set aside the e-mail/order dated 30.06.2022, wherein the claim submitted by the applicant has been rejected by the respondent/Resolution Professional.

3. The brief facts as submitted in the application are that:-

i. The Corporate Insolvency Resolution Process has been initiated against the Corporate Debtor on 06.07.2018. The Resolution Professional published Form A in two newspapers on 14.07.2018.

ii. The applicant has submitted in its Form C dated 14.11.2019 by e-mail dated 20.11.2019 as one of the Financial Creditors of the Corporate Debtor. The Resolution Professional has rejected the claim on the ground that claim was filed after the approval of the Resolution Plan and the same cannot be accepted.

iii. The applicant has filed IA No.511/2021 challenging the rejection of his claim. This Adjudicating Authority has also dismissed the Resolution Plan

in CA No.287/2019 and has also extended the CIRP of the Corporate Debtor by 90 days by order dated 24.05.2022. IA No.511/2021 has also been disposed of by order dated 24.05.2022.

iv. The applicant-Bank has again requested the respondent to consider the claim as the Creditor of the Corporate Debtor.

v. The Resolution Professional has rejected the claim of the applicant by email dated 30.06.2022 on the ground that it was filed beyond the stipulated time period as mentioned in Regulation 12 of IBBI (Insolvency and Resolution Process for Corporate Person) Regulations, 2016. It is also stated by the resolution professional in e-mail dated 30.06.2022 that the claim of the Bank under the category of Form C is also not maintainable as the Bank is claiming to be Preferential Shareholder and the same would not fall within the meaning of Section 5(8) of the Code being Financial Debt.

4. The respondent has filed its reply by Diary No 02445/2 dated 19.01.2022 stating that under Regulation 12 of IBBI (Insolvency and Resolution Process for Corporate Person) Regulations, 2016, the creditor may file claim within a period of 90 days from the insolvency commencement date. It is further stated that the doctrine of res judicata applies to the present application as the issues have already been decided in IA No. 511 of 2021. Moreover, the applicant is not a financial creditor of the corporate debtor as the applicant bank after a series of restructuring approved the one-time settlement of the entire outstanding dues of the corporate debtor envisaging (i) cash payment of Rs. 111.58 crore (ii) conversion of Rs. 8.31 crore into equity shares and (iii) conversion of Rs. 22.26 crore into 4,45,20,000 Nos. of 0.01% Cumulative Redeemable Preference Shares (CRPS) of face value of Rs. 5 each.

5. The applicant has filed the rejoinder by Dairy No. 02445/3 dated 15.03.2023 wherein the submissions made by the respondent is denied and it is submitted that the doctrine of Res Judicata will not apply as the earlier application was rejected when the resolution plan was approved by the CoC and now, the resolution plan is yet to be approved by the CoC.

6. We have heard learned counsel for the applicant and respondents and have perused the record carefully.

7. In the case under consideration, the applicant bank had previously filed an IA No. 511 of 2021 challenging the rejection of the same claim, which is being pressed again after the rejection of the original resolution plan by this

Adjudicating Authority by our order dated 24.05 2022 in CA No.287/2019. The following observations made in that order are extracted below for the sake of clarity:

"27. XXXXXXXX

Therefore, Resolution Plan submitted by the Successful Resolution Applicant cannot be considered for approval by this Bench and the same stands rejected. However, to avoid liquidation of the corporate debtor, vide separate order of even date passed in IA No.348 of 2021, period of Corporate Insolvency Resolution Process is extended by 90 days for exploring the possibility of resolution of the corporate debtor. Accordingly, matter is referred back to the Committee of Creditors, which is ordered to be reinstated and revived to make another attempt for consideration of other resolution plans in accordance with law. Thus, IA No.287 of 2021 stands dismissed and disposed of accordingly."

8. It is, therefore, clear that the direction was to consider only the resolution plans filed in response to Form G reissued by the Resolution Professional. In the process, nine resolution plans were received, and the CoC in its 39th meeting on 12.01.2023, approved one of the plans before it. In view of such facts, the resolution professional was not mandated to consider any claim afresh against the corporate Debtor.

9. In our order dated IA No. 511 of 2021, the claim of the applicant has been rejected vide order dated 24.05.2022 on the ground of delay with the following observation:

"13. In the present case, it is surprising that a well-established Bank like the applicant filed its claim more than fifteen months from the date fixed for submission of claims. Furthermore, the claim was submitted nearly seven months after the approval of the resolution plan by the CoC and filing of applications for approval of the same before this authority. The law on this issue is already laid down in the various judicial decisions mentioned in the foregoing paragraphs. It is further observed that the Books of Accounts of the corporate debtor is an indicator of the existence of liability but can't be entirely relied upon in the absence of supporting documents as proof and necessary clarifications from the claimant. Regulation 12 of the Insolvency Resolution Process for Corporate Persons Regulation 2016 mandates the creditor to submit the proof of claim by the date mentioned in the public announcement. There is no justification to exempt any party to bypass such compliance as the same would vitiate the verification of claims process."

The appropriate remedy available to the applicant in IA No. 511 of 2021 was to file an appeal if so advised, against our order. No appeal has been filed against our order in IA No. 511/2021. In these circumstances, we hold that the issue before us is covered by the principle of res judicata and the prayer, therefore, is rejected. We, however, clarify that we have not expressed any opinion on the merits of the claim.

10. In the result, IA No.1613/2022 is dismissed without any order of costs and is disposed of accordingly.

IA No.470/2023

11. The present application is filed by Mr. Jalesh Kumar Grover, Resolution Professional of GPI Textile Limited (hereinafter referred to as the applicant); against Himachal Pradesh State Electricity Board Limited Through Its Chairman (Respondent No. 1), Himachal Pradesh State Electricity Board Limited Through Its Managing Director, (Respondent No. 2); The Chief Engineer (Op) (Respondent No. 3); Senior Executive Engineer (Respondent No. 4); Assistant Executive Engineer (Respondent No. 5) under Section 60(5) of Insolvency and Bankruptcy Code, 2016.

12. It is prayed by the applicant to direct Himachal Pradesh Electricity Board not to disconnect the electricity of the Corporate Debtor and to issue the necessary direction to the Electricity Board to cooperate with the applicant for the successful revival of the Corporate Debtor and not to discontinue the essential service to run the business of the Corporate Debtor.

13. The brief facts as mentioned in the application is that the applicant is making payment in respect of the electricity dues during the CIRP period as per the direction passed by this Adjudicating Authority by order dated 15.12.2020 in IA No.335/2020 and 04.03.2021 passed by the Hon'ble Appellate Tribunal. The Corporate Debtor has started paying the dues relating to the post-CIRP liability of the Electricity Board @ Rs.10 lakh per month as allowed by this Adjudicating Authority by order dated 15.12.2020 in IA No.335/2020. The Hon'ble NCLAT by order dated 04.03.2021 has also directed the applicant to pay Rs.12 lakh each month in order to clear the outstanding dues of the electricity department. The applicant has also got the power load enhanced from 5000 KVA to 6000 KVA and has also discharging pre-CIRP dues to the tune of Rs.40 lakhs per month. The applicant was regularly paying old dues of Rs.12 lakh till December 2022. However, due to the downtrend in the textile industry production had completely stopped w.e.f. 01.02.2023. The details of the month-wise payment towards electricity dues are attached as Annexure A-12 of the application. The dues of the electricity department will be paid within 30 days of the approval of the resolution plan on priority as it is covered under the CIRP cost.

14. It is submitted that the 'electricity' is an essential supply with reference to the Corporate Debtor for running the business of the Corporate Debtor and crucial for maintaining it as a going concern. The Code inter-alia under Section 14(2) lays down that there shall not be termination, suspension or interruption of the supply of essential goods to the Corporate Debtor. By declaring a moratorium under Section 14, protection is given to the Corporate Debtor during the CIRP from recovering any kind of debt due by the Corporate Debtor even at the stage of execution in any Court of Law, tribunal, Arbitral panel or other authority. The words "other authority" used in Section 14(1)(a) of the Code includes the

electricity authority. There must be a continuous supply of essential goods including electricity during the period of moratorium which is to ensure that the Corporate Debtor functions as a going concern during the period of moratorium / CIRP. If the Electricity gets disconnected, the interest of the successful resolution applicant might be affected due to the forced closure of the factory. The Applicant vide mail dated 09.02.2023 requested the Respondents to consider the request for downward Revision of contract demand from 5000 KVA to 400 KVA with immediate effect till further information. However, reply of the said mail dated 09.02.2023 is awaited. A copy of the email dated 09.02.2023 is attached as Annexure A-14.

15. The respondents have filed their reply by Diary No 00512/2 dated 15.03.2023 wherein the averments were made with regard to the outstanding dues prior to the commencement of CIRP and the fact with regard to the converting the defaulted amount to monthly instalment which was made by letter dated 02.04.2018 i.e. prior to the initiation of CIRP dated 16.07.2018. The respondents are directed by an office order dated 17.09.2018 issued by Himachal Pradesh State Pollution Control to disconnect the power supply of the Corporate Debtor for non-compliance of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. The applicant has deposited a certain amount of money on various occasions but the respondent has stopped paying the amount despite the order of the Hon'ble NCLAT dated 04.03.2021.

16. We have heard learned counsel for the applicant and respondents and have perused the record carefully.

17. We have considered the rival submissions. Admittedly, the electricity charges incurred during the CIRP are included in the CIRP cost as defined in Section 5(13) of the Code. We are also conscious of the fact that the Hon'ble NCLAT in its order dated 04.03.2021 had directed the corporate Debtor to pay Rs. 12 lakhs each month to the respondents. Failing this, the respondent was given the liberty to discontinue the supply of electricity in accordance with the provisions of the law. We also note the fact that the resolution plan filed by the resolution professional is being approved by this bench by order of even date. This will ensure that the electricity charges raised by the respondents will be paid under the head CIRP expenses within a period of one month from this order as stipulated in the resolution plan. We also note that it is in the interest of all stakeholders besides the corporate debtor that the current operations are not paralysed by disconnecting the electricity supply at this juncture. Thus, though the liberty has been accorded by the Hon'ble NCLAT to the respondent to disconnect the electricity supply in the event of non-payment of dues, it will be prudent for the respondent and expedient in the given circumstances not to derail the resolution plan by disconnecting the electricity supply particularly when the entire outstanding amount of electricity is going to be shortly paid to the respondent in accordance with the provisions of the resolution plan.

18. In the result, IA No. 470/2023 is allowed and disposed of accordingly.