
(2023) 01 NCLT CK 0043

In the National Company Law Tribunal

Case No : IA 1463 Of 2022 In C.P. (IB) 1258 Of 2020

Intec Capital Limited Vs Atharva Auto Logistics Private Limited ?

Date of Decision : 17-01-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 60(5)
National Company Law Tribunal Rules, 2016 — Rule 11
Insolvency and Bankruptcy Board of India. (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 14(2)

Citation : (2023) 01 NCLT CK 0043

Hon'ble Judges : Kuldeep Kumar Kareer, Member (J); Anuradha Sanjay Bhatia, Member (T)

Bench : Division Bench

Advocate : PBA Srinivasan, Prerana Sabharwal, Srishti Bansal, Sumit Swami, Akshay Petkar, Pranav Shah

Final Decision : Dismissed

Judgement

Kuldeep Kumar Kareer, Member (Judicial)

1. This application has been filed by the M/s Intec Capital Limited which incidentally has also filed the main application Under section (7) IBC, admitted by this Bench vide order dated 18.02.2022 followed by the appointment of an IRP.
2. The case of the applicant, as pointed out in the application, is that after the initiation of the CIRP public announcement was issued on 24.02.2022 inviting claim against the Corporate Debtor. The Applicant submitted the claim Form dated 08.03.2022 which was initially provisionally accepted by the IRP. Later on, the IRP constituted the CoC vide order dated 17.03.2022, wherein the Applicant was stated to be the sole member having 100% voting rights. First meeting of CoC was called on 25.03.2022 which was attended by an authorize representative of the Applicant. However, the Respondent IRP has not followed the proper procedure while conducting the CIRP. The Respondent IRP communicated resolution of the CoC dated 29.06.2022, mentioning therein that the resolution of the of the Board of the Director's had not authorized, the

Applicant i.e. Intec Capital Limited to disburse a loan of Rs. 1,30,00,000/- to Atharva Associates. The Respondent IRP further communicated vide E-mail dated 19.04.2022, stating that the claim of the applicant has been accepted to the tune of Rs. 3,16,90,306/- only as against the original claims, that has of Rs. 6,52,42,330/- The Applicant claims that the IRP has reduced the voting rights of the Applicant from 100% to 33.88% which against law and arbitrary. The IRP had ascertained the amount of Rs. 3,16,90,306/- on the basis of some arbitration award dated 19.01.2018 whereby, the Corporate Debtor was held liable to pay the principle amount of Rs. 1,35,35,770/- alongwith future interest at the rate of 19% per annum w.e.f 16.08.2017. According to the applicant, IRP has absolutely no right to modify or reduce the claim amount thus the act of the IRP is totally against law. The IRP has no adjudicatory powers and is acting ground his brief and with a malicious intention. The applicant has further, stated that when the Respondent was requested to call a second CoC meeting to discuss the matter, the IRP wrote an E-mail dated 15.04.2022 stating that he would call the second CoC meeting only after verifying the claim of another Financial Creditor i.e., Pravara Shakari Bank Limited. In the end, the Applicant has requested that IRP be directed to accept the claim of the applicant to the extent of Rs. 6,52,42,330/- and be further directed to determine the voting share of the Applicant accordingly.

3. In the reply filed by the IRP, it has been claimed, that after the receipt of the claim of the Applicant of Rs. 6,52,42,330/-, the same was verified and after checking records, it was found that the applicant had sanctioned and disbursed an amount of Rs. 1.30 crores to Atharva Associates a sole propriety Firm of Ms. Manisha Pachange who is the one of the Director of the suspended Board of Director of the Corporate Debtor. The loan agreement also includes the name of the Ms. Manisha Pachange and that of Mr. Satish Pachange who is also a member of the this suspended Board of the Corporate Debtor. After verification of record, it was found that the financial statements of the Corporate Debtor until the year ending 31.03.2020 did not reflect any such loan. However, as per the arbitration award dated 19.01.2018 passed by this sole arbitrator Rajesh Rai, the Corporate Debtor alongwith the Ms. Manisha Pachange and Mr. Satish Pachange have been jointly and severally held liable to pay an amount of Rs. 1,35,35,770/- alongwith future interest at the rate of 19% per annum from 16.08.2017 till the date of actual payment. The Respondent on the basis of the arbitration award admitted the claim of Rs. 3,16,90,306 as on 18.02.2022 inclusive of the interest awarded by the arbitrator. It is further stated in the reply that no record has been found to show that the debt was secured by the Corporate Debtor in any manner nor any right or lien has shown to have been created on the property of the Corporate Debtor. In the claim Form, the Applicant has claimed interest at the rate of Rs. 36% per annum which is not as per the loan agreement or any other contractual arrangement between the applicant and the Corporate Debtor. Therefore, the claim of the applicant is sustainable only to the extend Rs. 3,16,90,306/- which has been determined by the Respondent on the basis of the arbitration award

dated 19.01.2018 copy of which is annexed with the reply. The Respondent has prayed for the dismissal of the Application.

4. We have heard, Counsel for the parties and have gone through the record.

5. It has been contended by the Counsel for the Applicant that the Respondent IRP has acted illegally and without jurisdiction. According, to the Counsel for the Applicant, once the application Under section 7 of the Court was admitted by this Bench in respect of the amount mentioned in the application, the IRP has no legitimate right to vary the claim amount. The IRP has no such discretion or adjudicatory powers. Therefore, a direction must be issued to the IRP to revise the claim to the original amount of Rs. 6,52,42,330/- instead Rs. 3,16,90,306/-.

6. On the contrary, the Counsel for the IRP has pointed out that no legality or infirmity has been committed by the IRP while determining and calculating the claim amount. According to the Counsel for the IRP, the amount has been arrived at after taking into consideration the loan agreement between the applicant and the Corporate Debtor and also the arbitration award which has been passed in favour of the Applicant and till date the award is not shown to have been challenged at any forum by either of the Parties or much less the Applicant.

7. Having thoughtfully considered, the entire matter and after going through the record, we are of the considered view that no legality has been committed by the IRP while determining the claim amount of the Applicant. Here, it is pertinent to mention that the claim amount mentioned in the Applicant Under Section 7, cannot be taken to be a final amount for the purposes to be determining the voting percentage of the Applicant. It is not disputed that initially an amount of Rs. 1.3 crores were advanced as loan to the Corporate Debtor alongwith the certain other persons/entities. The dispute with regard to the said loan went into an arbitration and culminated into award dated 19.01.2018 the copy which has been attached with the reply file by the Respondent. The principle amount initially lent to the Corporate Debtor is mentioned as Rs. 1.3 crore. By way of this award the Corporate Debtor has been held liable to pay a sum of Rs. 1,35,35,770/- alongwith pending and future interest at the rate of 19% per annum from 16.08.2017 till realization. The award has not been challenged at any forum till date and appears to have attained finality considering the fact that the period of limitation to challenge the award by either of the parties has already expired. The IRP has calculated the interest on the principle amount of Rs.1,35,35,777/- as awarded in the award therefore, in our considered view, the claim of the applicant has been rightly calculated for the purposes of determining the voting rights of the applicant and no legality or infirmities seems to have been committed by the IRP while doing so. Even otherwise as per Regulation 14(2) of CIRP Regulations 2016, the Resolution Professional has right to revise the amounts of the claim admitted as and when he comes across any additional information warranting such revision. Therefore, the IRP could already vary the amount on the basis of the Award passed in favour of the Petitioner.

8. As a result of above discussion we find no merit in the application which is hereby dismissed.