(2022) 07 NCLT CK 0010

In the National Company Law Tribunal

Case No : IA. No. 843/2020 In CP(IB)No. 3603/MB/C-II/2018

Marathe Hospitality APPELLANT

Vs

Mahesh Sureka RESPONDENT

Date of Decision : 08-07-2022

Acts Referred:

Citation : (2022) 07 NCLT CK 0010

Hon'ble Judges : P.N. Deshmukh, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Avinash Khanolkar, Shyam Kapadia

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam, Member Technical

1. The present Interlocutory application is filed by M/s Marathe Hospitality thereby objecting the approval of the Resolution Plan on the ground that the Resolution Professional (RP) had included the assets belonging to the Applicant herein in the information memorandum and the valuation would have to be done excluding the assets of the Applicant.

2. It is seen from the records that the Applicant and the Corporate Debtor entered into a lease Agreement dated 18.05.2016 for the property situated at Lonavala.

3. The said agreement was put forth by the RP by way of an IA No. 3031 of 2020 same being as preferential, fraudulent and to defraud the Corporate Debtor and its Creditors.

4. Further it is observed that the said IA 3031 of 2019 was allowed by this Tribunal vide order dated 20.03.2020 by observing that the rent amount for the said property was very meagre. It was also noted that the partner Applicant was a related party of the Corporate Debtor and therefore the said lease Agreement was declared as null and void as it was entered with malafide manner without

the consent of the Financial Creditors. The said Order was challenged before Hon'ble National Company Law Appellate Tribunal (NCLAT) and the same is pending for adjudication. However, Applicant has also not obtained any stay Order or protection whatsoever.

5. The Applicant was asked by the RP to submit the details of the assets lying at the said property but the details were never submitted by the Applicant.

6. The Lease Agreement stated that the lease property included all furniture, fixtures, tanks, air condition systems etc. and the same belonged and to be returned to the Corporate Debtor upon the expiry of the said lease.

7. As the lease agreement was declared null and void by the Tribunal, the said furniture and fixtures vest in the Corporate Debtor and the Applicant being hand in gloves with the ex-directors of the Corporate Debtor are not entitled to any such assets.

8. As also alleged by the Applicant that the repairs/renovations had been carried out by the Applicant, the RP in its meeting with the Applicant had asked to submit the details of the repairs carried out by the Applicant. However, till date the RP had not received any details form the Applicant.

9. The Applicant had also filed a claim of Rs. 36.54 Lakhs on 24.04.2019 with the RP. However, the claims lodged were without any proof of any supporting documents. Thereafter, several opportunities were granted by the Tribunal to the Applicant to provide explanations, reasons, documents and also list of assets that were claimed. But the Applicant failed to provide any such details and could not produce on record any documents to substantiate its claim.

10. On hearing the submissions and averments made by both the parties, this Bench is of the considered view that the assets as alleged and claimed by the Applicant were already in the possession of the RP and the same is evident from the order dated 20.03.2020 passed in IA 3031 of 2019 wherein this Tribunal had directed the RP to take the possession of the fixed assets of the Corporate Debtor and the Lease Agreement executed with the Applicant herein was declared as null and void. In the said Order the transaction was determined to be a preferential transaction as the partner of the Applicant Company was a Tax Advisor to the Corporate Debtor. Hence, it is observed that the present Application is nothing but an attempt to disrupt the proceedings in IA 3969 of 2019 pending for approval of Resolution Plan. Hence, in light of the above facts and circumstances, prayers in present Application are rejected.

11. In view of the above, IA 843 of 2020 is dismissed as not allowed.

