

(2021) 06 NCLT CK 0036

In the National Company Law Tribunal

Case No : IA No. 1223 of 2021 in IA No. 1110 of 2021 in Company Petition No. 1385 of 2017

Mr. Suresh Rangachar 5803, Lodha World Crest S.?B. Marg, APPELLANT
Lower Parel Mumbai - 400 012

Vs

Reliance Projects and Property Management Services Ltd RESPONDENT

Date of Decision : 21-06-2021

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 31, 60(5)(c), 61
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 37(1)(f), 39(5)/li>

Citation : (2021) 06 NCLT CK 0036

Hon'ble Judges : Janab Mohammed Ajmal, Member(J);V. Nallasenapathy, Member (T)

Bench : Division Bench

Advocate : Prateek Seksaria, Tushad?Kakalia, Raghavi Sharma, D. J. Kakalia, Vikram Nankani, Ameet Naik, Madhu Gadodia, Deepak Deshmukh, Swati Singh,

Final Decision : Dismissed

Judgement

V. Nallasenapathy, Member (Technical)

1. Â This is an Application filed by one of the erstwhile directors of Reliance Infratel Ltd (Corporate Debtor/RITL), seeking following prayers:

(a) Â The Applicant be joined as a party Respondent in the proceedings in IA No. 1110 of 2021 filed by Reliance Projects and Property Management Services Ltd

(RPPMSL) and be allowed to intervene in the same;

(b) Â The Applicant be provided with all the papers and proceedings in IA No. 1110 of 2021 filed by RPPMSL.

2. The Corporate Debtor was put under Corporate Insolvency Resolution Process (CIRP) by order of this Tribunal dated 15.05.2018. The Respondent

herein is the Successful Resolution Applicant (SRA) of the Corporate Debtor whose plan was approved by this Bench on 03.12.2020.

3. The Applicant submits that RPPMSL has filed IA No. 1110 of 2021 (earlier Application) before this Tribunal, inter alia, against the Committee of

Creditors (CoC) of RITL, State Bank of India, Union Bank of India and others seeking copies of a purported forensic audit report on the basis of

which some banks have allegedly declared a fraud under the purported circular of Reserve Bank of India (RBI) as also copies of complaints filed by

some banks.

4. The Applicant submits that the account of the Corporate Debtor was classified as fraud on 10.11.2020, the resolution plan of the Respondent was

approved on 03.12.2020, the fraud classification was uploaded in the CLERIC WEBSITE ON 21.12.2020 and State Bank of India filed complaint with

Central Bureau of Investigation on 05.01.2021.

5. The Applicant further submits that he has filed a Writ Petition being W.P. (C) 11179 of 2020 before the Hon'ble Delhi High Court

challenging the RBI circular insofar as it relates to the purported declaration of fraud and permits the banks to take proceedings in pursuance of such

purported declaration. The Hon'ble Delhi High Court was pleased to pass the following order dated 06.01.2021:

7. In view of the above, it is directed that the respondents shall maintain status quo until the next date of hearing. The respondents are free to issue a show

cause notice to the petitioners and respondent nos. 3 to 5, and to give them a hearing, through video conferencing, if necessary. The respondents may also pass a

reasoned order in accordance with law. The respondent nos. 1 and 2 are also at liberty to take any steps in the nature of investigation by filing complaint

proceedings against the petitioners or respondent nos. 3 to 5, independent of the impugned action declaring the accounts of respondent nos. 3 to 5 as

fraudulent accounts.

6. The RBI circular in so far as it relates to declaration of fraud is concerned has already been struck down by the Hon'ble Telangana High

Court. An appeal against the said judgement is pending before the Hon'ble Supreme Court and the judgement of the Hon'ble High Court is

not stayed.

7. Any proceedings in the earlier Application or any orders that may be passed therein are liable to and/or bound to severely and adversely affect

the Applicant. The Applicant is vitally interested in the proceedings of IA No. 1110 of 2021.

8. The counsel for the Applicant, to buttress his point that the Applicant should be impleaded in the Application filed by the Successful Resolution

Applicant relied on para 12 of the judgement of the Hon'ble Supreme Court in the case of Vijay Kumar Jain Vs. Standard Chartered Bank

and Ors. (MANU/SC/0111/2019) wherein it was held as below:

This would certainly include a guarantor who may be a member of the erstwhile Board of Directors. Further, Under Regulation 37(1)(f), a resolution plan may provide for reduction in the amount payable to the creditors, which again vitally impacts the rights of a guarantor. Last but not least, a resolution plan

which has been approved or rejected by an order of the Adjudicating Authority, has to be sent to "participants" which would include members of the erstwhile

Board of Directors-vide Regulation 39(5) of the CIRP Regulations. Obviously, such copy can only be sent to participants because they are vitally interested in the

outcome of such resolution plan, and may, as persons aggrieved, file an appeal from the Adjudicating Authority's order to the Appellate Tribunal Under Section

61 of the Code. Quite apart from this, Section 60(5)(c) is also very wide, and a member of the erstwhile Board of Directors also has an independent right to

approach the Adjudicating Authority, which must then hear such person before it is satisfied that such resolution plan can pass muster Under Section 31 of the

Code.

9. It is submitted that the Applicant herein is vitally interest in this case and the impleadment does not cause any prejudice to anybody.

10. The submission of the Respondent is as below:

a. The Intervention Application is frivolous, mis-conceived, devoid of any merits/substance and therefore, liable to be dismissed. The Applicant has no locus or role in the implementation of the approved resolution plan and who is not affected by any of the reliefs sought in the IA No. 1110 of 2021.

b. The Applicant has not established his locus to intervene in the IA and explain how he is vitally interested in the outcome of the said Application.

c. Â On the commencement of CIRP, the powers of board of directors stands suspended and the management of the affairs of the corporate debtor vest with the

interim resolution professional and the then resolution professional. Therefore, the erstwhile management has no locus with respect to the affairs of the corporate

debtor or the resolution plan process.

d. Â The proceedings that may have been initiated against the erstwhile management of RITL by some of the financial creditors pursuant to the forensic audit report

are independent and separate to proceedings relating to the implementation of the resolution plan.

e. Â IA No. 1110 of 2021 is for seeking information in the capacity of the successful resolution applicant. If the Applicant wants any information, he will have to take

out appropriate proceedings in a manner known to law. Any indulgence to the erstwhile management, who is not interested or connected to the implementation of the

resolution plan, will merely result in further delay of the resolution plan implementation.

f. Â IA No. 1110 of 2021 was filed seeking (i) complete copy of Forensic Audit Report dated 15.10.2020, on the basis of which the banks have declared the account of

RITL as â??Fraudâ?, under RBI Master circular on Frauds dated 01.07.2016; (ii) copies of the communications exchanged by R3 to R5 therein with the RBI in relation

to declaring the account of RITL as â??fraudâ?, (iii) direction to the Respondents therein to provide copies of any or all complaints filed by the Respondents therein

with the CBI, Enforcement Directorate (ED) or any other investigating or regulatory agencies, inter alia against RITL. The said Application has been filed only to get

the requisite information which will aid in expeditious implementation of the approved resolution plan for RITL. As the SRA, the Respondent herein has right under

the provisions of the Code and is entitled for the information.

g. Â The reliefs claimed in IA No. 1110 of 2021 could in no manner cause prejudice to the Applicant and the Applicant is no manner concerned with the

outcome of

the said IA.

h. The Applicant's Writ Petition before the Hon'ble Delhi High Court and the IA No. 1110 of 2021 filed by the Respondent have no nexus with one another.

The outcome of the IA could by no stretch of imagination have bearing on the outcome of the writ petition pending.

i. The counsel for the Respondent submitted that the judgement relied on by the Applicant in the case of Vijay Kumar Jain (supra) is entirely on a different context

and does not have any bearing on the present Application.

11. On hearing the counsel for the parties and on perusal of the respective pleadings, the following are the observations of this Bench:

A. Certain banks have initiated proceedings against the Corporate Debtor under the RBI Circular based on the Forensic Audit Report obtained by the Resolution

Professional.

B. The Applicant in IA No. 1110 of 2020 who is the SRA of the Corporate Debtor may be concerned with the developments and interested in knowing the contents

of the Forensic Audit Report and complaint to CBI relating to the happenings in the Corporate Debtor.

It would be between the Financial Creditors and the SRA.

C. But the present Applicant would not be concerned as far as the prayers made in the earlier Application. The decision in that Application would have nothing to

do with the Applicant. It is not

necessary to hear the erstwhile director or promoter of the Corporate Debtor. The Applicant in the earlier Application is seeking the reports and details for the smooth

implementation of the resolution plan. Hence we feel that there is no necessity to implead the Applicant in the earlier Application (IA No. 1110 of 2021).

D. The judgement relied on by the Applicant is entirely on a different context and does not support the contention of the Applicant.

E. Hence this Application is rejected on contest. No costs.