(2023) 01 NCLT CK 0056

In the National Company Law Tribunal

Case No : CA No. 309 Of 2019 in CP (IB) No.10/Chd/Hry/2018

M/s Educomp Infrastructure & School Management Limited Vs Andhra Bank & Ors ?

Date of Decision : 25-01-2023

Acts Referred:
Insolvency and Bankruptcy Code, 2016 — Section 60(5)

Citation : (2023) 01 NCLT CK 0056

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

Bench : Division Bench

Advocate : Rohit Khanna, Raghav Kapoor, Charu Bansal

Final Decision : Disposed Of

Judgement

CA No. 309/2019

1. This application has been filed by the whole time Director and a part of the suspended board of Directors of the corporate debtor. In the present application, the applicant has inter-alia prayed for an early conclusion of CIRP, and details of monies paid by the Resolution Professional for the expenses incurred by CoC. Further, seeking direction against the Resolution Professional not to release any payment for expenses incurred by CoC in view of the IBBI Circular Dated. 12.06.2018.

2. It is submitted by the applicant as per IBBI Circular bearing No.IBBI/IP/013/2018, dated 12.06.2018, only the costs incurred by the IRP/RP are to be paid as the Insolvency Process Cost, and cost incurred by the CoC can not be included in the Insolvency Process Resolution Process Cost. On various occasions, Resolution Professional has sought extension and exclusion of the time period in completion of CIRP, on account of the pendency of various applications before this Adjudicating Authority and the same has been granted. It is alleged that Resolution Professional as well as the CoC are not interested in completing the CIRP process in time bound manner. Since, the matter is getting prolonged, the same is resulting in an unnecessary increase in the CIRP cost.

3. The applicant has further stated that the CIRP process cost has been multiplied on the grounds i.e. engagement of Senior Counsel before Hon'ble High Court as per 12 CoC Meeting, towards legal and professional charges. The applicant has sought details of the CIRP cost incurred by Resolution Professional through e-mails but has not received a response from Resolution Professional. Further, the cost of the fee payable to the counsels of the CoC has been was sought by the applicant. It is submitted that payment of the monies on behalf of the CoC by the Resolution Professional must be returned by the CoC as per above mentioned IBBI Circular dated 12.06.2018.

4. Reply has been filed by Resolution Professional vide Diary No. 579 dated 21.11.2020, wherein, it is stated that the present application was filed prior to the Resolution Plan being approved by the CoC on 23.09.2019 with 100% voting. It is submitted that the application for approval of the Resolution Plan is pending before the Adjudicating Authority. Further, all costs associated with the CIRP are part of the Resolution Plan. The applicant has also filed a complaint before the IBBI against the respondent to which the necessary response has been complied with. The applicant has filed, multiple applications in various forums including Hon'ble Delhi High Court to derail the CIRP.

5. A short reply on behalf of the Committee of Creditor has been filed vide Diary NO.774 dated 28.01.2020 wherein it is stated that the IBBi circular dated 12.06.2018 is currently a subject matter of challenge before the Hon'ble Delhi High Court in writ petition (civil) No.692/2020 and the allegations raised against the Resolution Professional fall within the purview/jurisdiction of the IBBI and the same is being looked into by the IBBI on the basis of a complaint filed by the present applicant.

6. It is submitted by the CoC that the Resolution Professional vide email dated 08.12.2019 has informed members of the CoC regarding the expenses incurred by the CoC and the members of the CoC are in process of making necessary reimbursement to the Resolution Professional. As payment of legal fees to the lawyers has been made by Resolution Professional, the allegations in this regard are unfounded and baseless.

7. Rejoinder has been filed by the applicant vide diary No.1745 dated 03.03.2020 wherein the applicant has denied the averments made by the respondents.

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

9. A perusal of the allegations made by the applicant reveals that due to the efflux of time, most of the reliefs claimed have become irrelevant. The CoC has already approved the Resolution Plan in the case on 23.09.2019 with 100% voting. The cost of CIRP is already included in the Resolution Plan. Even otherwise, these allegations are not corroborated by facts on record and as pointed out by the respondents, the implementation of the IBBI Circular dated 12.06.2018 falls in the jurisdiction of the IBBI.

10. In view of the above, this application is dismissed and disposed of accordingly.

