

(2019) 02 NCLT CK 0022

In the National Company Law Appellate Tribunal, Principal Bench, New Delhi

Case No : Company Application No. 22/C-IV/ND Of 2019, Company Petition No. C-IV (IB)-275/(ND) Of 2018

M/s. Khandelwal Busar Industries Pvt. Ltd. And Anr. APPELLANT

Vs

Mansfield Cable Company Ltd. RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 5(8)(a), 5(8)(b), 5(8)(c), 5(8)(d), 5(8)(e), 5(8)(f), 5(8)(g), 5(8)(h), 5(8)(i), 9

Citation : (2019) 02 NCLT CK 0022

Hon'ble Judges : Dr. Deepti Mukesh, J

Bench : Single Bench

Advocate : Gautam Singh, Pankaj Khetan, Ashok Kriplani

Final Decision : Dismissed

Judgement

1. Present application is filed by one of the creditors claiming to be declared as financial creditor with a prayer:

â??(a) to admit the claim of the applicant along with interest; and/or

(b) to allow the applicant to join Committee of Creditors; and/or

(c) pass any other or further orders as may be deemed fit and proper in the circumstances of the case.â??

2. The applicant submits that applicant was approached by the Corporate Debtor M/s. Mansfield Cable Co. Pvt. Ltd. and offered for sale, a property

owned by the corporate debtor situated at C-3, Site C, Surajpur, NOIDA, UP. The applicant having inclination to buy the said property, both the

parties entered into an agreement to sell and the total sale consideration was fixed for Rs.3,65,00,000/-. The applicant further submits that an amount

of Rs.51,00,000/- was paid to the Corporate Debtor on 5th February, 2016 and the agreement to sell was signed on 8th February, 2016. Copy of

agreement is annexed. The applicant further states that as per clause 10 of the said agreement to sell, the ingredient of interest was included in the

agreement which reads as under: -

10. That if the vendor does not execute the Transfer Deed within the given time then he/she has to return the advance money to the Vendee

along with interest @ 2% per month.

3. The applicant further claims that as per the clauses of agreement, the Corporate Debtor failed to transfer the plot in the name of the present

applicant and to execute any transfer or sale deed in favour of the applicant. Hence, various meetings were conducted and minutes of the meetings

were signed by both parties. All the minutes of the meetings held on various dates, on 16.11.2016, 21.05.2017, 18.08.2017 are also annexed. The

applicant further claims that the Corporate Debtor had issued various cheques of different amounts in favour of the applicant. Copies of cheques are

also annexed. It is not revealed by the applicant whether the said cheques were presented for encashment or not. Though another contention was

raised that further sum of Rs.23,00,000/- has been paid by Ms. Hannya Dhir on behalf of applicant to CD which is also due but no satisfactory proofs

were shown Ms. Hannya Dhir as creditor is annexed. On 15.05.2018 the application filed under Section 9 by M/s. Khandelwal Busar Industries Pvt.

Ltd. being the operational financial creditor, was admitted against the corporate debtor and the order was passed in IB-275/ND/2018 initiating CIRP

was passed appointing Mr. Pankaj Khetan as IRP of Corporate Debtor. Thereafter, the present applicant filed its claim before the IRP/RP in Form C

on 12.12.2018 claiming an amount of Rs.2,57,78,538.52 being the amount due to the present applicant by the Corporate Debtor. Said claim was

adjudicated by the IRP/RP, Mr. Pankaj Khetan and after calling for proper record, and based on record submitted by the applicant through his email

dated 04.01.2019 intimated this applicant that he has rejected to consider the applicant as financial creditor but accepting the claim under other

creditor categories. The intimation of the IRP reads as under:-

Hence collectively reading the definition of the Financial Creditor and Financial debt, and after going through supporting documents which you

provided me along with your claim Form, I have come to the conclusion that you will not fall in the category of financial creditor. You will be treated

under Other Creditor category. â??

4. Being aggrieved by the said rejection of its claim as financial creditor the applicant has filed the present application.

5. Ld. RP has filed its reply. The justifications given by the IRP for not allowing the applicant to be categorized as financial creditor are as follows:

i) That the vendor has received a sum of Rs.51,00,000/- vide cheque No. 008962 dated 04.02.2016 from the vendee as advance money, the receipt of

which the Vendor hereby acknowledges, in anticipating of executing the agreement to sell on 8.2.2016-.

(ii) The applicant has not provided any of its balance sheet reflecting the said debt as the financial debt.

Thus, the explanation given by the RP is that money received by Corporate debtor is in a category of advance money against the purchase of property

and with no stretch of imagination can be termed as loan advanced as financial creditor. Though there is a mention about payment of interest but the

same is arising out on the failure of the execution of the agreement, and merely including the ingredient of interest in any contract does not convert

any creditor, to category of financial creditor as defined under the Insolvency & Bankruptcy Code.

6. In view of above the RP observed that applicant did not grant any financial debt to the corporate debtor but money given was an advance in lieu of

purchase of property from the corporate debtor, albeit the said property being already hypothecated to Allahabad Bank. The RP further contended

that applicant has not given any financial debt as defined in Section 5(8)(a) to (i) and the same is reproduced as under, for clarification:

â??Section (5) â?| â?| â?|

(8) ""financial debt"" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includesâ?

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian

Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the

value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank

or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

7. Considering the submissions made by the Id. counsel for both the parties and the documents produced on record no doubt remains, in siding with the

view taken by the RP that the claim of the applicant cannot be categorized as a financial debt though the debt in other category can be accepted.

Surprisingly the prayers

(a) to admit the claim of applicant along with interest: and

(b) to allow the applicant to join in committee of creditors of applicant are also ambiguous.

8. Nowhere the applicant has prayed to be declared as a financial creditor and in absence of such prayer in the first instance the prayer becomes

redundant. Language of the prayer itself is indirectly indicating that capacity of the applicant is limited to being the creditor but not financial creditor. It

is important to mention that the RP has rightly rejected the claim of the applicant as the financial creditor but has specifically mentioned that applicant

will be treated as other creditor. In my opinion, the decision of the RP is as per law. Application deserves to be and is dismissed and the RP is directed

to adjudicate the claim of the applicant as per provisions of the Code.