
(2023) 07 NCLT CK 0002

In the National Company Law Tribunal

Case No : IA No.460/2021, 192/2022 and 508/2022 In CP (IB) No.97/Chd/Pb/2019

Rajnishpal Singh Dhaliwal Vs Punjab National Bank ?

Date of Decision : 06-07-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 34, 43, 45, 50, 60(5), 66

Citation : (2023) 07 NCLT CK 0002

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

Bench : Division Bench

Advocate : Jatin Singhal, Viren Sharma, Rajat Chawla

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

IA No.460/2021, IA No.192/2022 and IA No.508/2022 have been taken up together as the issues are interconnected and interlinked and on similar facts.

IA No.460/2021

1. The present application is being filed by Mr. Rajnishpal Singh Dhaliwal-Promoter and Suspended Board of Director (herein referred to as Applicant) against Committee of Creditors (herein referred to as Respondent

No.1); Mr. Rajiv Bhambri (herein referred to as Respondent No.2) and U.I. Beverages Private Limited (herein referred to as Respondent No.3) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

2. It is prayed by the applicant that the resolution dated 14.01.2021 for the liquidation may be stayed and the financial creditors may be directed to decide the OTS offered by the Promoters of the Corporate Debtor.

3. The brief facts of the case as mentioned in the applications are that

i. The Corporate Insolvency Resolution Process was initiated against the

Corporate Debtor on 02.03.2020 and Mr. Rajeev Bhambri was appointed as Interim Resolution Professional.

ii. The Resolution Professional has carried out publication into Two newspapers inviting Expressions of Interest. The applicant has submitted the Expression of Interest jointly with other promoters. The last date for submission of the resolution plan was till 14.09.2020. The resolution plan submitted by the applicant was rejected by the CoC in its meeting held on 14.01.2021. The resolution for the liquidation has also been passed in the same meeting.

iii. The promoter has passed a resolution for the liquidation of the Corporate Debtor without acknowledging the fact that OTS of outstanding dues had been submitted by the promotor on 03.06.2020 and after negotiations on various occasions, it was further revised to Rs. 15.60 crores on 28.10.2020.

4. The respondent No. 1 has filed reply by Diary No. 00837/03 dated 28.07.2022 stating that the present application is wholly frivolous, misconceived, groundless and unmaintainable. The present application is merely a counterblast by the applicant in order to halt the liquidation process. The Bank has already rejected the proposals of the applicant as they were on very low side as compared to total outstanding debt. Thus, the resolution plan has also been rejected by the CoC and a resolution for liquidation has been passed. It is further submitted by the Bank that OTS is not a matter of right and the applicant has not cooperated with the Resolution Professional during the CIRP.

5. The Respondent nos. 2 and 3 have filed their reply through Resolution Professional by Diary No.00837/02 dated 28.03.2022 in IA No.460/2021 wherein it is stated that the respondent is not privy to any OTS that is going on between the Financial Creditor and the promoters of Corporate Debtor. The respondent-Resolution Professional has denied the submissions of the applicant.

IA No.192/2022

6. The present application is being filed by Mr. Rajnishpal Singh Dhaliwal-Promoter and Suspended Board of Director (herein referred to as Applicant) against Committee of Creditors (herein referred to as Respondent No.1); Mr. Rajiv Bhambri (herein referred to as Respondent No.2) and U.I. Beverages Private Limited (herein referred to as Respondent No.3) under Section 34 of the Insolvency and Bankruptcy Code, 2016.

7. It is prayed by the applicant that if the Corporate Debtor is ordered to be liquidated then Mr. Sanjay Kumar Aggarwal shall not be appointed as Liquidator and this tribunal may appoint any other Insolvency Professional to act as the Liquidator of the Corporate Debtor.

8. It is stated by the suspended director in the application that the resolution plan has been rejected by the CoC and the resolution for liquidation has also been passed. In the same meeting, the CoC has also purposes for the appointment of the liquidation in place of existing Resolution Professional. It is

alleged that the Punjab National Bank i.e. sole CoC member has exceeded its jurisdiction. As per Section 34 of IBC, only Adjudicating Authority has the power to replace the existing Resolution Professional for the appointment of the liquidator.

9. The respondent No. 1 has filed reply by Diary No. 00426/01 dated 29.07.2022 and The name of the Liquidator was passed by 100% voting percentage in the CoC meeting and the said liquidator has all the required credentials to be appointed as Liquidator. No illegality has been pointed out by the applicant either in the Cirp Process not in the appointment of the Liquidator. It is further submitted that there is no contravention of Section 34 of the Insolvency and Bankruptcy Code, 2016 and the relevant provisions doesn't create embargo upon CoC to propose the liquidator.

IA No.508/2022

10. The present application is being filed by Mr. Rajnishpal Singh Dhaliwal-Promoter and Suspended Board of Director (herein referred to as Applicant) against Punjab National Bank (herein referred to as Respondent No.1); Mr. Rajiv Bhambri (herein referred to as Respondent No.2) and U.I. Beverages Private Limited (herein referred to as Respondent No.3) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

11. It is prayed by the applicant to nullify the appointment of M/s B Rattan & Associates for the conduct of the forensic audit.

12. In IA No.508/2022, it is stated by the applicant that the resolution professional has got the transaction/ forensic audit concluded and formed the opinion that there are transactions which are covered under Section 43, 45, 50 or 66 of the IBC and the same fact was recorded in the CoC meeting held on 06.06.2020. IA No. 859/2020 is filed on the basis of the opinion formed and the determination made by the Resolution Professional. It is alleged that the CoC has exceeded its jurisdiction to appoint Forensic Auditor M/s B. Rattan and Associates when such audit has already been performed by Resolution Professional. The Punjab National Bank has intimated the appointment of auditor by letter dated 28.12.2021. It is contended that the Financial Creditor has no right to step into the shoes of the Resolution Professional.

13. The Bank has also submitted reply by Diary No. 00725/01 dated 28.07.2022 stating that there is no restriction on the audit being conducted by the Resolution Professional in order to identify fraud committed by the Suspended Director and Erstwhile Management. The report submitted by the Auditor under the provisions of IBC would be having a limited scope. The appointment of the Forensic Auditor is in line with the RBI circular titled ' Master directions on frauds-Classification and Reporting by Commercial Banks and select F.Is' dated 01.07.2016. The reliance is placed on the judgement of Hon'ble Supreme Court in case of Partap Technocrats Pvt. Ltd. Vs. Monitoring Committee of Reliance Infra Tech. Civil Appeal No 676 of 2021 dated 10.08.2021.

14. We have heard the learned counsel for the applicant and respondent and have pursued the records carefully.

15. In these applications, the suspended directors/applicants have prayed, inter alia, for

i. Staying the liquidation proceedings till the decision on the OTS offered by the promoters.

ii. For not appointing Mr Sanjay Kumar Agarwal as liquidator.

iii. To nullify the appointment of the forensic auditor.

16. In this regard, we note the fact that the OTS proposal was submitted by the promoters on 28.10.2020; sufficient time has lapsed since the submission of the OTS proposal. The applicant has not informed any positive development in this regard during the current proceedings. While noting the fact that submitting a proposal for OTS is not a matter of right for stalling any proceedings under the IBC, we also point out that the proceedings under the code are strictly time bound and any delay in the same will causes severe loss in the value of the assets of the corporate debtor because sufficient time has lapsed, we are of the view that the prayer for stalling liquidation proceedings has become otiose.

17. We observe that the proposal for liquidation needs to be considered on merits and should not be stalled at the request of the applicant. Regarding the appointment of the liquidator and forensic auditor, we observed that the applicant has failed to point out any procedural defect in these appointments. The Code provides for strict procedures to be followed in the appointments made by the CoC and also lays down several preconditions which need to be fulfilled. The Adjudicating Authority is mandated to ensure that these procedures are followed. In the absence of any evidence of a violation of these procedures laid down for the appointment of the liquidator as well as the forensic auditor, we are of the opinion that no interference in the same is called for.

18. In view of the aforesaid discussions, IA Nos. 460/2021, 192/2022 and 508/2022 are dismissed and disposed of accordingly.