

(2020) 12 NCLT CK 0195

In the National Company Law Tribunal

Case No : Interlocutory Appeal No. 1025 Of 2020 In Company Petition (IB) No. 3010/MB Of 2019

Shailesh Bhalchandra Desai And Anr.

APPELLANT

Vs

Cane Agro Energy (India) Limited

RESPONDENT

Date of Decision : 15-12-2020

Acts Referred:

Insolvency And Bankruptcy Board Of India (Corporate Insolvency Resolution Process) Regulations, 2016 — Regulation 6, 30A, 30A(3)
National Company Law Tribunal Rules, 2016 — Rule 11
Insolvency And Bankruptcy Code, 2016 — Section 7, 8, 9, 12A, 13, 60
Companies Act, 2013 — Section 419(5)

Citation : (2020) 12 NCLT CK 0195

Hon'ble Judges : Janab Mohammed Ajmal, J; Ravikumar Duraisamy, Member (Technical)

Bench : Division Bench

Advocate : Ritesh Mahajan, Rohit Gupta, Adhiraj Malhotra

Final Decision : Dismissed

Judgement

4., "Jankalyan

Nagari Sahkari

Patsanstha", FORM C, 7.66, 27.06.2020

5., "Sangali District

Central Coop

Bank Ltd.", FORM D, 191.24, 27.06.2020

6., Bank of India, FORM C, 80.82, 29.06.2020

7., "Krantiagrani

Dr. G. D. Bapu

Lad Sahakari
Karkhana Ltd", FORM B, 0.65, 26.06.2020
8., Bank of India, FORM F, 157.62, 29.06.2020

,"Total Claims received as
on 6th July 2020", 437.99,
2., "IB 915

(MB)
2019", "SHREE BALAJI
SUGAR CO

(Section 9)", "Matter amicably
settled before
admission. Out of
the total dues 1/3rd
was to be paid
before 12th March,
2020. Hence, Rs. 2
crores out of Rs.
5.92 Cr (including
interest) was paid
on that date.

Remaining 2/3rd
was to be paid on
or before 31st Mar
2020. This amount
is pending due to
the lockdown.

Whereas the CD is
in continuous touch
with the Applicant
therein and the

payments

schedules are

being worked out

afresh.",

3., "IB 3010

(MB)

2019", "ISGEC HEAVY

ENGINEERING

LIMITED

(Section 9)", "The Present

Application",

8. In the instant case the Application has been filed before the constitution of the Committee of Creditors (CoC) under Regulation 30A of the,,,,

Regulations within three days of submission of Form-FA. Hence, considering the facts and circumstances, the submission made and the available",,,,,

record, I am of the considered opinion that the prayer sought by the IRP in the IA No. 1025 of 2020 can be allowed. Hence ordered.",,,,,

ORDER,,,,

The IA 1025/2020 be and the same is disposed of in terms of this order indicated infra. The CP (IB) No. 3010/ MB/2019 is allowed to be withdrawn",,,,,

subject to settlement of the claims of all other creditors within a period of three months hence. The Corporate Debtor shall report compliance by the,,,,

end of the period. Failing which the present CIRP shall get revived and further action under the Code shall ensue, and the present order shall cease to",,,,,

have any effect.,,,,,

Sd/-,,,,

JANAB MOHAMMED AJMAL,,,,

MEMBER (JUDICIAL),,,,,

9. I agree with the facts mentioned above. However, I beg to differ with the order or decision of my Ld Member (Judicial) to the extent that â??The",,,,,

CP (IB) No. 3010/ MB/2019 is allowed to be withdrawn, subject to settlement of the claims of all other creditors within a period of three months",,,,,

hence. The Corporate Debtor shall report compliance by the end of the period. Failing which the present CIRP shall get revived and further action,,,,,

under the Code shall ensue, and the present order shall cease to have any effectâ??.",,,,,

10. In my humble view other Financial, Operational Creditors (Approx. claim amount of Rs 563.60 Crores) are not party in this case, no notices have",,,,,

been issued to them nor any reply of theirs in the file therefore without hearing them no order can be passed against them more so to settle their,,,,,

claims within a period of 3 months. Further in IBC there is no provision, power is vested upon the Adjudicating Authority to direct a settlement more",,,,,

so when the parties are not before us and the fact that Approx. Rs 563.60 Crores is the claims received by the Corporate Debtor.,,,,,

11. Further from the above facts its noted that already 2 petitions were withdrawn as per the above table. As per the public Advt dated 17.06.2020,,,,,

issued by the IRP, the last date to receive claims is 29th June 2020 whereas this withdrawal application was filed on 26th June 2020 without even",,,,,

waiting for completion of the due date as per the Advt issued in accordance with regulations. Whereas the total claims received as on the due date of,,,,,

29th June 2020 is approx Rs 563.60 Crores and claims received as on 26th June 2020 is approx Rs 125.61 Crores and claims received between 27 and,,,,,

29th June 2020 is Rs 438 crores. Since the CIRP is a process in REM as held by the Honâ?ble Supreme Court as discussed supra and considering,,,,,

the past history of the Corporate Debtor and its inability to pay few crores of rupees, even some lakhs of rupees as dues and huge amount of claims",,,,,

received (Approx. Rs 563.60 Crores) in this case, exercising powers under Rule 11 of NCLT Rules, 2016 for permitting withdrawal may not be",,,,,

desirable. This is the 3rd petition being dealt by this Tribunal/ Adjudicating Authority against the same Corporate Debtor (which also consumes,,,,,

considerable time of this Tribunal). As per the mandate/preamble of Insolvency and Bankruptcy Code, 2016 considering the financial distress, financial",,,,,

position of the Corporate Debtor, itâ??s a fit case for admitting to evolve a Resolution Process." ,,,,,

12. Further by exercising the powers under Rule 11 of NCLT Rules, in my considered view a cost of Rs 10 Lakhs may also be levied on the",,,,,

Corporate Debtor and the same to be paid to account of PM-CARES Fund within 3 weeks from the date of receipt of copy of this order and report,,,,,

compliance to this registry.,,,,

13. Further I am also of the considered view that suitable action be initiated against the IRP because he did not even wait for the last date to be.,,,,

completed to receive claims as per his own Public Advt inviting claims before filing withdrawal application under Section 12A of the Code read with.,,,,

Regulation 30A (3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. From",,,,

the table its noted that total claims received as on the last date is approx Rs 563.60 Crores whereas the dues of the petitioner operational creditor is.,,,,

settled at Rs 21 Lakhs. Considering the facts of the matter, Adjudicating Authority also fails to understand the urgency in filing this application by IRP",,,,

for withdrawal. Therefore, this matter may be referred to Insolvency and Bankruptcy Board of India, the Regulator to initiate suitable action against",,,,

the Resolution Professional Mr. Shailesh Bhalchandra Desai.,,,,

ORDER.,,,,

The CP (IB) No. 3010/MB/2019 is dismissed with the above directions cost of Rs 10 lakhs to be paid by the Corporate Debtor in to the account of.,,,,

â??PM-CARES Fundâ? within 3 weeks from the date of receipt of copy of this order and report compliance to this registry and referring the matter.,,,,

to IBBI for initiating suitable against the Resolution Professional Mr. Shailesh Bhalchandra Desai.,,,,

Sd/-.,,,,

RAVIKUMAR DURAISAMY.,,,,

Â MEMBER (TECHNICAL),,,,

In view of the divergent opinion as above the following points need to be answered by a larger Bench or by the Honâ??ble President, as the case",,,,

may be.,,,,

i. Whether the IRP can withhold an Application to the Adjudicating Authority after the Application in Form FA is submitted by the Creditor for.,,,,

withdrawal of the Company Petition?,,,,

ii. Whether the IRP is prohibited from making an Application under Section 12A of the Insolvency and Bankruptcy Code read with Regulation 30A of.,,,,

the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, after the issue of the public advertisement under Section 13 of the",,,,

Code read with Regulation 6 of the Regulations in Form A and before the last date for submission of the claims?,,,,

iii. If such an Application is made, would it amount to misconduct on the part of the IRP?" ,,,,

iv. Whether Adjudicating Authority has power to direct settlement of outstanding claims of other creditors who are not before it nor notices have been,,,, issued to them?,,,,

The matter be sent to the Honâ??ble President under Section 419(5) of the Companies Act, 2013 for necessary orders." ,,,,