

(2023) 04 NCLT CK 0016

In the National Company Law Tribunal

Case No : IA No.1394/2022 In CP (IB) No.515/Chd/Chd/2019

Sita Chaudhary Vs Haryana Telecom Ltd ?

Date of Decision : 12-04-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 5(24)(a), 7, 21(2), 29A, 60(5)

Citation : (2023) 04 NCLT CK 0016

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

Bench : Division Bench

Advocate : Aadil Singh Boparai, Somer Singh Boparai, Sidhant Saraswat, Gurlakh Singh, Abhishek Anand, Viren Sharma

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

IA No.1394/2022

1. In the present application, the applicant i.e., Ms Sita Chaudhary, the promoter/director (powers suspended) of Haryana Telecom Limited (corporate debtor), is seeking direction for rejection of the Resolution Plan and dismissing IA No. 823/2020. And, further direction to the respondent-Resolution Professional to constitute a fresh Committee of Creditors.

2. In the present matter, CIRP was initiated against the corporate debtor, i.e. Haryana Telecom Limited on 07.02.2020 on an application filed by Parivartan Investment and Finance Company under Section 7 of the Code. It is submitted by the applicant that the instant proceedings have been initiated based on fraud and undue influence exercised by the Director of the financial creditor, i.e. Ms. Sunaina Singh, over the applicant of the Suspended Director of the corporate debtor, i.e. the applicant. Further, it is alleged that Ms. Sunaina Singh (grand-daughter of the applicant) & the director of the sole financial creditor and her husband, Mr. Ajay Kadyan, exerted undue influence over the applicant. It is stated by the applicant that the corporate debtor was incorporated by late

Devinder Singh Chaudhary, i.e. the husband of the applicant. It is submitted that after the death of the late Devinder Singh Chaudhary, Ms. Sunaina Singh gained the trust of the applicant and hatched a conspiracy in connivance with her husband to usurp the assets of the corporate debtor and got a notice for demand of interest issued by the financial creditor i.e. to the corporate debtor.

3. It is further submitted by the applicant that the Hon'ble Delhi High Court in C.S. (O.S) 589 of 2021 has given a prima facie finding that the applicant was under undue influence and coercion by the said Ms. Sunaina Singh. Subsequently, the Hon'ble Delhi High Court vide order dated 29.07.2022 has granted interim relief in favour of the applicant and injuncted Ms. Sunaina Singh and her associates from transferring and siphoning off the assets of the family estate of late Devinder Singh and further affirmed the allegations of the applicant that the transfer of shares through Form-36 was made through a forged document prepared by Ms. Sunaina Singh and the same were executed by the applicant in favour of her under undue influence.

4. It is averred by the applicant that the SRA in the CIRP of the corporate debtor, Mr. Abhimanyu Singh Mehlawat, is an acquaintance and business associate of Ms. Sunaina Singh and her husband. Further, the SRA has been serving as a director of Bluedenz Industries Private Limited and Kedaar Stainless India Private Limited- companies owned by Mr. Ajay Kadyan, husband of Ms. Sunaina Singh, who is also a director in these companies. In view of such facts, it is alleged that the Resolution Plan of Mr. Mehlawat was considered favourably and approved by the sole financial creditor, i.e. the CoC. It is further submitted that CoC and the SRA are attempting liquidation under the garb of the Resolution Plan, and they have failed to maximise the assets of the corporate debtor.

5. The respondent has filed its reply vide diary No. 02620/01 dated 24.01.2023 stating that in the present case, the CIRP commenced on 07.02.2020, and the present application has been filed after a period of almost three years, i.e. on 14.10.2022. Further, the applicant is all along aware of all the facts but is coming before this Adjudicating Authority now with the sole intention to derail and cause hindrance in the CIRP of the corporate debtor. Thus, it is submitted that she has failed to demonstrate sufficient cause. Therefore, the present application deserves to be dismissed on the ground of being barred by delay and laches.

6. It is further submitted that the applicant's contention that the financial creditor is a related party of the corporate debtor has already been rejected by this Adjudicating Authority in IA No. 344/2020 vide order dated 05.03.2021, wherein it was held as follows:

"14. The Hon 'ble Apex Court held that, in a given case, if it is established that the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating in the COC and to sabotage the CIRP, by diluting the vote share of other creditors or otherwise, can be debarred from the COC, though the said

financial creditor was not a related party as on the date of filing of the CP. But in the present case, since the applicant failed to establish any such intention on the part of the third respondent, the decision of the Hon'ble Apex Court is also not applicable."

(Emphasis supplied)

7. It is further submitted by the respondent that the order dated 29.07.2022 passed by the Hon'ble Delhi High Court being relied on by the applicant is in a matter wherein neither the corporate debtor nor the financial creditor is not even a party. The same can be inferred from the memo of parties in the suit filed by the applicant at page 38 of the application.

8. The applicant has filed the rejoinder vide diary no. 02620/3 dated 03.02.2023, wherein the averments similar to the application have been made, the same is not repeated herein for the sake of brevity.

9. We have heard the learned counsel for the applicant and the respondent and carefully perused the record available.

10. In the present case, the applicant has mainly relied on the interim reliefs in the order of the Hon'ble Delhi High Court dated 29.07.2022, granted in favour of the applicant, i.e. Ms. Sita Chaudhary, and the injuncting director of the financial creditor, i.e. Ms. Sunaina Singh and Associates from transferring and siphoning off the assets of the family assets of late Devinder Singh Chaudhary, i.e. the husband of the applicant. The details of the shareholding pattern and these companies, which were under dispute before the Hon'ble High Court, mentioned on pages 71 to 13, have been perused. We note that the name of the corporate debtor, i.e. Haryana Telecom Limited, does not feature anywhere in the said order of the Hon'ble Delhi High Court even though the list of defendants contains the names of as many as seven companies in which late Shri. Davinder Singh Chaudhary had substantial shareholdings. It is also noted that the applicant has got very negligible shareholding in the corporate debtor.

11. We note that in the present case, the CIRP was initiated on 07.02.2023, and the applicant being suspended director was in complete knowledge of the facts right from the beginning. Resolution proceedings in the case of the corporate debtor under the IBC are in progress. Despite the same, the present application is being filed when the Resolution Plan is placed before this Authority for approval. The reference to Ms. Sunaina Singh, Director of the financial creditor in the order of the Hon'ble Delhi High Court, on which much reliance has been placed by the applicant, is in the context of the distribution of the assets of late Devinder Singh Chaudhary, who happened to be the husband of the plaintiff in that application i.e., Ms. Sita Chaudhary. Prima facie, the only connecting link between the case before the Hon'ble Delhi High Court and the present application is the plaintiff/applicant, Ms. Sita Chaudhary, who happens to be one of the directors of the suspended Board of the corporate debtor. Even if, for the sake of argument, the allegation of wielding undue influence is accepted, the decision by

the Delhi High Court was delivered in a totally different context of inheritance of a third party's estate. We do not find any reason to allow it to cast any shadow over the initiation of CIRP by order of this Adjudicating Authority, as the same has been initiated after considering the debt and default committed by the corporate debtors. The present applicant has not been able to show any ground for disputing the debt and default committed by the corporate debtor resulting in the initiation of the CIRP.

12. We further note that the issues of the financial creditor being a related party of the corporate debtor and the re-constitution of CoC in the matter of the corporate debtor have been adjudicated by this Adjudicating Authority by its order dated 05.03.2021 in IA No. 344/2020, and order dated 02.11.2021 in IA No. 728/2020, and the prayers have been rejected.

13. It is noted that one of the prospective resolution applicants, namely "One City Infrastructure Private Limited", had assailed the Order dated 02.11.2021 passed by this Adjudicating Authority in I.A. No. 728/2020 in Company Appeal (AT) (Ins) No. 1065 of 2021. The Hon'ble NCLAT, vide its judgment dated 14.07.2022 dismissed the Appeal and upheld the order passed by this Adjudicating Authority stating that the COC of Corporate Debtor has been rightly constituted in terms of the provisions of the Code and underlying Regulations. The relevant observation in the Judgment dated 14.07.2022 is extracted below:

We are, thus, satisfied that present is a case where Smt. Sunaina Singh in present was not a related party having resigned six months prior to filing of Section 7 Application. There is no averment or material on record to show that Smt. Sunaina Singh has resigned to cease to be Director of the Corporate Debtor with the sole intention of participating in the CoC and to sabotage the CIRP, by diluting the vote share of other creditors or otherwise. Present is not a case covered by exception as elaborated in Para 103 of judgment of Hon'ble Supreme Court in Phoenix ARC Pvt. Ltd.' (supra). We, thus, are satisfied that no error has been committed by the Adjudicating Authority in rejecting I.A.No. 723 of 2020 filed by the Appellant.

Thus, the contention of the applicant in the present application that the respondent is a 'related party' of the corporate debtor has been rejected and cannot be re-agitated by filing the present application.

14. The other allegation that the Successful Resolution Applicant, Mr. Abhimanyu Singh Mehlawat, is a co-director with the husband of Ms. Sunaina Singh (director of the financial creditor) also does not carry any weight as he is not even the 'connected person' as defined in the explanation 1 below 29A (J). For the sake of clarity, the said provision is as below

"Section 29A: Persons not eligible to be resolution applicant-

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person-

(a) xxxxxxxxxxxxxxxx

(j) has a connected person not eligible under clauses (a) to (i).

Explanation 8[I].— For the purposes of this clause, the expression “connected person” means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):”

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As this Bench has already dismissed IA No. 344/2020, holding that Ms. Sunaina Singh is not a related party of the corporate debtor in terms of Section 5(24)(a) read with Section 21(2) and, further, she or her husband Mr. Ajay Kadyan, is not even a ‘connected person’ as defined above of the Successful Resolution Applicant, no adverse conclusion in this regard can be drawn.

15. In view of the aforementioned discussions, we are of the considered opinion that the issues raised in this application have already been decided against the applicant in earlier proceedings, and now an effort has been made to take the help of the above referred totally unrelated decision of the Hon’ble Delhi High Court to repeat the allegations made in the earlier applications which have been decided against the applicant and confirmed by the Hon’ble NCLAT.

16. In view of the same, this application bearing IA No. 1394/2022 is dismissed and shall disposed of accordingly.