(2023) 02 NCLT CK 0025

In the National Company Law Tribunal

Case No : I.A. (I.B.C) No.797 /KB/2022 I.A. (I.B.C) No.1140 /KB/2022 I.A. (I.B.C) No.1150 /KB/2022 IN CP (IB) No. 1380/KB/2020

Union Bank of India Vs Santanu Brahma ?

Date of Decision : 10-02-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 60(5)
Commercial Courts Act, 2015 — Section 12A

Citation : (2023) 02 NCLT CK 0025

Hon'ble Judges : Rohit Kapoor, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : A.Rao,. A. Basu, Vedika Sureka, Rakhi Purnima Paul, Pratap Mukherjee, Sonal Shah, Aniket Chaudhury, Shaunak Mitra, Manas Das

Final Decision : Disposed Of

Judgement

Rohit Kapoor, Member (Judicial)

1. This Court convened through hybrid mode.

2. I.A. (I.B.C) No.797 /KB/2022, I.A. (I.B.C) No.1140 /KB/2022 and I.A. (I.B.C) No.1150 /KB/2022 have been filed seeking to condone the delay in filing claims before the RP.

3. Brief details and the delay in each of these IAs is summarized as under:

I.A. (I.B.C) No.797 /KB/2022

4. The present application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016. by Union Bank of India, Overseas Branch on 02.08.2022 against Santanu Brahma i.e., the Resolution Professional of the Corporate Debtor which is under CIRP.

5. The applicant is the Financial Creditor of one Amboota Tea Exports Private Limited in which the Corporate Debtor was the Corporate Guarantor.

6. The applicant had filed its claim before the Resolution Professional on

27.07.2022 after he came to know about the public notice on 22.06.2022 through his fellow bankers but the same was rejected by stating that the claim was filed beyond the prescribed date in the public notice i.e., 18.04.2022. The delay is of 100 days.

I.A. (I.B.C) No.1140 /KB/2022

7. The present application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016. by Pratap Mukherjee who is the Resolution Professional of Limtex (India) Ltd, on 10.10.2022 against Santanu Brahma i.e., the Resolution Professional of the Corporate Debtor which is under CIRP.

8. The applicant is presently under CIRP and was engaged in the business of producing, manufacturing and importing of Indian tea both in domestic and international market. In the course of business, the applicant had supplied various orders to the Corporate Debtor and sent tax invoices for the same but the Corporate Debtor failed and/or neglected to pay its dues. The Resolution Professional was appointed on 29.07.2022 and as soon as it came to his knowledge that the Corporate Debtor is liable to pay some dues, he filed his claim before the Resolution Professional on 29.08.2022. However, the same was rejected by the Resolution Professional on the same day stating that the claim was filed beyond the prescribed date in the public notice i.e., 18.04.2022. The delay is of 133 days.

I.A. (I.B.C) No.1150 /KB/2022

9. The present application has been filed under Regulation 12(2) of the of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by Pankaj Coal Enterprises on 22.09.2022 against Santanu Brahma i.e., the Resolution Professional of the Corporate Debtor which is under CIRP.

10. The applicant had some dues pending from the Corporate Debtor. The applicant in order to recover such dues and for the purposes of filing a Commercial Suit had filed an application for Pre-Institution Mediation under Section 12A of the Commercial Courts Act, 2015 in November 2021 but the said attempt for Mediation had however failed.

11. The applicant came to know about the initiation of CIRP when the Corporate Debtor on 07.04.2022 filed a petition with a copy of the order passed by this Adjudicating Authority. After obtaining knowledge about the same, the applicant informed the Respondent herein about the pendency of the commercial suit but the Respondent. However, the Respondent did not appear in the said suit on any occasion.

12. Thereafter on 04.08.2022, the applicant had filed its claim before the Respondent. The said claim was rejected by the Respondent on 09.08.2022 stating that the claim was filed beyond the prescribed date in the public notice i.e., 18.04.2022. The delay is of 108 days.

Reply by the Respondent i.e., the Resolution Professional

13. The Respondent has filed Reply to the above IAs filed by the applicants. The main points of which are summarized as hereunder:

13.1 The Respondent submits that the applications are not maintainable on the very fact that the claims have been filed beyond the statutory time period and the Respondent is under no obligation to accept such claims.

13.2 The Respondent further submits that they have already received EOI from prospective resolutions applicants and thereby a Resolution Plan on 18.08.2022 in terms of Form G is being actively considered by the CoC for approval. Therefore, under no circumstance can the present applications be considered as allowing the applicants claim at a belated stage will not only be unfair to the creditors who were unable to file their claims as also to the resolution applicant who cannot suddenly be faced with undecided claims but would also dilute the purpose of publication of Form A as envisaged under the rules and regulations framed under the Code.

13.3 The Respondent also submits that Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that – 'if a creditor fails to submit its claim with proof within time stipulated in the public announcement may submit its claim with proof to the IRP/RP on or before the ninetieth day of the Insolvency commencement date and therefore, the prayers of the applicants are not liable to be considered under any circumstance even under Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Analysis and Findings

14. We have considered the submissions made by both the parties and perused the records.

15. The Respondent i.e., the Resolution Professional has filed its Reply affidavit objecting to the directions sought in these IAs on the ground that there is a delay in filing the claims. It is also stated that the Resolution Professional received the Expression of Interests (EOIs) from Prospective Resolution Applicants (PRA) and a Resolution Plan is being actively considered by the Committee of Creditors (CoC) for approval. Therefore, it is not possible to allow the applicants' claims at a belated stage.

16. Suffice it to say, allowing these claims at this stage will delay the CIR Process which is already underway and this may also prejudice the Prospective Resolution Applicants.

17. Timelines prescribed in the Insolvency and Bankruptcy Code, 2016 have a definite purpose and are significant to achieve the object of the Code i.e., maximization of value of assets of the Corporate Debtor.

18. After Form G was published, the whole world knew and the Applicant too could have also filed the claims within the prescribed period. Therefore, the plea of the applicants that they have no knowledge is incorrect and untenable under law. They are coming at a stage when Resolution Plans have already been received and one Resolution Plan is under active consideration of CoC.

19. In view of the fact that the Resolution Professional has already received EOIs from Prospective Resolution Applicants and one Resolution Plan is already under active consideration of the CoC, we are of the considered opinion, applicants who chose not to participate in the CIRP earlier within the time cannot and should not be permitted at this stage.

20. For the foregoing reasons, the applications being IA 797/KB/2022, IA 1140/KB/2022 and IA 1150/KB/2022 are hereby rejected.

21. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

