

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

26th July, 2022

Subject: Order¹ dated 18th July, 2022 of the NCLT in the matter of Infinity Infotech Parks Limited Vs. Electroparts (India) Private Limited & Anr. [I.A (IBC) No.907 /KB/2021 in C.P. (IB) No. 140/KB/2021]

The NCLT *vide* its order dated 18th July, 2022 terminated the corporate insolvency resolution process (CIRP) initiated against Videocon Infinity Infrastructure Private Limited (CD) and imposed a penalty of penalty of Rs.50 lakh on FC under section 65 of the Code.

I. Brief Background:

The order of CIRP in respect of the Corporate Debtor (CD) was passed by AA on 14.09.2021. An interlocutory application was filed by the shareholder of the CD praying that the Financial Creditor (FC) be held guilty of practicing and committing fraud on this Tribunal and as per section 65 of the Code, and penalty be imposed on the alleged FC and the CIRP be terminated. The applicant contended that the order of admission was obtained on the basis of fraudulent and manufactured documents for a fictitious and imaginary transaction in collusion with unknown third parties claiming to represent the CD without any authority, who fraudulently admitted liability though there was none. It was further submitted that the order of CIRP is a nullity, since the claimed date of default was 15.12.2020 which is hit by section 10A of the Code, which prohibits any application from being filed in respect of any date of default within the period from 25.3.2020 to 24.3.2021.

II. Observations of AA:

- a) FC and the CD had obtained orders of CIRP fraudulently and in complicity with each other by filing a collusive petition and later on settled the matter by payment of Rs.30 Lacs, which cheques although were given on behalf of the CD by some unknown person and are stated to have not been encashed by the FC. Both the parties have given a somewhat shady picture which does not bring out a real truth in this matter. This matter needs to be further investigated.
- b) The entire transaction as narrated in the Section 7 application is plainly imaginary,

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concocted and fraudulent. The CD does not appear to have had any genuine liability towards the alleged FC and the entire documentation has evidently been prepared by the alleged FC in collusion with Videocon Group entities. The alleged documents disclosed in the Supplementary Affidavit of the alleged FC, far from helping its case, further demonstrate the fraudulent nature of the documents.

- c) Section 7 petition was not maintainable due to the prohibition in section 10A of the Code.
- d) There is no question of allowing any settlement to take place based on the alleged documents disclosed in the Supplementary Affidavit of the alleged FC, since the same is evidently a sham and a mala fide ruse to avoid adverse scrutiny by this Tribunal on the wholly fraudulent action of the alleged FC in instituting the section 7 petition and initiation of CIRP based thereon by practicing fraud on the Tribunal. The story of settlement also clearly appears to be an afterthought.
- e) Apart from the consequences under section 65 of the Code, by reason of which the CIRP stands vitiated and terminated and penalty imposed on the alleged FC as stated above, in view of the glaringly fraudulent actions of the alleged FC as discussed above, it appears that the same would have far reaching implications going even beyond this case and therefore, it would be proper for a full investigation to be conducted into the transaction set up by the alleged FC in the section 7 petition.
- f) The matter is referred Ministry of Corporate Affairs and Central Government.

III. Conclusion:

AA held that FC is guilty of practicing and committing fraud. As per section 65 of the Code, a penalty of Rs.50 lakh was imposed on the FC and the CIRP was terminated.