

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No301
IA/953(AHM)2023
in
CP(IB) 268 of 2020

Order under Section Application under any other provisions- IBC

IN THE MATTER OF:

SUNIEL DHANDHANIA & ANR.

.....Applicant

VS

DR. VICHITRA NARAYAN PATHAK IRP/RP FOR GOLDEN
TOBACCO LIMITED

.....Respondent

Order delivered on 17/10/2023

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order

The order is pronounced in open Court vide separate sheet.

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

**IA No. 953 / NCLT / AHM / 2023
IN
MA 09 of 2022
IN
CP(IB) No. 268 / NCLT / AHM / 2020**

**(Under Section 19 of the Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of NCLT Rules, 2016)**

IN THE MATTER BETWEEN

Mr. Suniel Dhandhanja & Anr.

.... Applicant

Versus

**Dr. Vichitra Narayan Pathak
RP of Goldan Tobacco Ltd.**

.... Respondent

AND IN THE MATTER OF

Arrow Engineering Ltd.

... Financial Creditor

Versus

Goldan Tobacco Limited

... Corporate Debtor

Order pronounced on 17 .10.2023

Coram:

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)
MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

1. Mr. Suniel Dhandhania

Director of the Suspended Board
Of the Corporate Debtor,
Golden Tobacco Ltd.

2. Mr. Pawan Malsaria

Director of the Suspended Board
Of the Corporate Debtor,
Golden Tobacco Ltd.

... Applicant

Versus

Dr. Vichitra Narayan Pathak

RP of Goldan Tobacco Ltd.
Having its office at 120,
Jharneshwar Colony,
Madhuvan Vihar. Nr. International Public School
Hoshangabad Road, Bhopal,
Madhya Pradesh-462047
Also at

Goldan Tobacco Ltd.
Having Registered office at
Dajipura,
Post: Amaliya, Vadodara
Gujarat-390022

... Respondent

Present:

For the Applicant : Ms. Purti Gupta, Ld. Adv. a. w. Ms. Henna George
For the RP : Mr. Anurag Bisaria, Adv.

ORDER

1. This application is filed under Rule 49 of the NCLT Rule seeking to recall order dated 23.02.2023 in Company Appeal (AT) (INS) No.285 of

2023 and permitting them to file reply in MA 09 of 2022 as per liberty extended by the Hon'ble NCLAT.

2. The CIRP was initiated against the Corporate Debtor by order dated 07.08.2022 in CP(IB) 268 of 2020. Proceedings were started before the IRP. It is submitted that IRP filed an application u/s 19(2) of the IBC, 2016 bearing MA No.09 of 2022 against the applicants who were members of suspended Board of Director. The applicants have in fact provided most of the information. They were under bonafide impression that they were not called upon to produce any documents for the purpose as the entire CIRP had been stayed. On 27.02.2023, they were informed about passing of impugned ex-parte order. Though it is mentioned in the order that Suspended Management have not appeared inspite of service of notice, no notices were served upon them. It was unreasoned order. Against the said order, applicants have filed Company Appeal (AT) (INS) 285 of 2023 wherein stay was granted by Hon'ble NCLAT. The applicant has also tendered their resignations which were accepted by IRP / RP.
3. The applicant stated that there was stay on the CIRP, therefore, RP was not entitled to act in any manner including moving an application u/s 19(2) of the IBC, 2016. No opportunity was given to them to file reply detailing objections to the application, hence, prayed for setting aside the order dated 23.02.2023 and permitting them to file reply.
4. The respondent filed reply stating that application is not maintainable as the remedy provided under Rule 49(2) is only available to the application heard ex-parte and decided against the respondent which is not in the facts of instant case. The applicant has dishonest motive with malafide intention of not providing documents demanded in order to defraud the

creditors. The applicant resigned from the service of Corporate Debtor during the pendency of MA 09 of 2022 and seeking exemption from sharing information. MA 09 of 2022 is still sub-judice and they have right to file reply in it. The Tribunal has merely directed the applicant to comply one of their bounden duties and obligation to act i.e., cooperate with RP by providing requisite information. The RP requested each of the applicants to provide their representation through official email after their resignation but it was not complied. The applicant might have deleted most of the contents of the email account. Applicant no.1 has duly received email on his official email address in advance. The applicant no.1 was regularly using the service of the Corporate Debtor. During his service in the Corporate Debtor, the applicant no.2 also aware to listing of the matter for hearing from time to time. As per NCLT Rules, service of notice by email process is accepted. MA 09 of 2022 was tagged alongwith IA 690 of 2022 and was always listed together. Thus, they must be having knowledge. In view of Section 114 of Indian Evidence Act, it was presumed that notices have been duly delivered to the applicant. They did not object to the respondent contents in time though they were aware about proceedings, they have not filed reply, hence, prayed for dismissal of the application with cost.

5. We heard Learned Counsels for both sides. There is no dispute that Hon'ble NCLAT has granted liberty to file appropriate application under Rule 49 of IBC, 2016 before this Tribunal. Order dated 23.02.2023 in MA No.09 of 2022 is as under:

“Application is filed u/s 19 of IBC, 2016. Learned Counsel for the IRP appeared. No one appeared for Suspended Management in spite of service of notice. We direct the Suspended Management of the Corporate Debtor to handover all the requisite documents / records of the Corporate Debtor to the IRP within one-week. List for further consideration on 29.03.2023.

6. Bare reading of this order shows that it is an interim order and not final order wherein Resolution Professional has prayed for handing over all/complete record of the Corporate Debtor. On perusing of record, it appears that neither ex-parte order is passed against the respondent i.e., present applicants nor their right to file reply is closed. On perusal of record, it also appears that office of Resolution Professional has issued advance notice to these applicants by email and the email was sent on the official email id of the Corporate Debtor on 07.11.2022. The applicants have not mentioned date of their resignation in the applicaton. It is pertinent to note that all the matters between the parties i.e. Misc. A. 09 of 2022, IA 560 of 2022, IA 597 of 2022, IA 627 of 2022 & IA 692 of 2022 are listed along with MA 09 of 2022. Therefore, it can be presumed that applicants must have knowledge of filing of MA 09 of 2022. Moreover, as the impugned order is not final order, it is not required to recall. The question remains to filing of reply in MA 09 of 2022. As right of applicant is not closed and also no ex-parte order is passed, the applicants have every right to file reply in MA 09 of 2022. In such circumstances, we pass following order.

ORDER

1. Application is partly allowed.
2. The applicants are allowed to file reply in MA 09 of 2022.
3. Prayer with respect of recalling of order dated 23.02.2023 is rejected.
4. No order as to cost.

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Punit Shukla - LRA

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)