IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH – V
Contempt Application No. 2/2021
In
Company Petition (IB) No. 2863/ND/2019

In the matter of :
SUNIL KUMAR

…….Operational Creditor/Applicant

VERSUS

NESA INDIA PRODUCER COMPANY LIMITED
…………Corporate Debtor/Respondent

AND
IN THE MATTER OF:

MR. SUDHANSHU GUPTA
311, AGARWAL CHAMBER -2,
PLOT NO. 30-31, VEER SAVARKAR BLOCK,
OPP. METRO PILLAR NO. 58, SHAKARPUR
DELHI-110092

….Applicant/Interim Resolution Professional

VERSUS

MR. SUNIL KUMAR
OPERATIONAL CREDITOR
HOUSE NO. D-157, GALI NO. 10
NEAR SHANTI DAL PUBLIC SCHOOL,
HARPHOOL VIHAR, JAI VIHAR, PHASE-3,
BAPRAULA, WEST DELHI-110043

………Contemnor/Respondent

ORDER DELIVERED ON: 25.01.2022

CORAM :
Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)
Sh. Avinash K. Srivastava, Hon'ble Member (Technical)

For the Applicant: Adv. Mansij Arya and Adv. Priyanka
For the Respondent: Adv. Manas Tripathi

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL

The present application is filed under Rule 11 of the National Company Law Tribunal Rules, 2016 by the Applicant, who is appointed as the Interim Resolution Professional in the matter of IB 2863 (ND) 2019 to initiate contempt of court proceedings against the Respondent for the gross, wilful and deliberate disobedience of the order dated 25.11.2019 passed by this Tribunal and direct the Respondent to deposit the Rs.2 lakhs as directed by this Tribunal with the Applicant/IRP as Initial Cost of the Corporate Insolvency Resolution Process.

2. Brief Facts of the case are as follows:

i. On a Petition under Section 9 of the Code filed by Mr. Sunil Kumar (herein referred to as the Operational Creditor), this Tribunal vide order dated 25.11.2019 admitted the petition, and initiated Corporate Insolvency Resolution Process of M/s Nesa India Producer Company Limited and also appointed the present Applicant, Mr. Sudhanshu Gupta as the Interim Resolution Professional (IRP) subjected to stipulated conditions.

ii. As per Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the Applicant/IRP had made public announcement in Form A of the schedule, which was published in two newspapers, one English namely Financial Express and one Hindi namely Jansatta dated 10th January, 2020 (not later than 3 days after receiving the certified copy of the order).

iii. As per Regulation 6(2) (C) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the last date of submission of claims was 21st January, 2020, which was also specified in Form A i.e. Public Announcement. However, it is relevant to note here that the Applicant/IRP has not received any claim till date. Moreover, no claim has been received from Respondent, Mr. Sunil Kumar (who had filed the application u/s 9 of the Code; against which the National Company Law Tribunal admitted the petition for initiating Corporate Insolvency Resolution Process of the Corporate Debtor).

iv. On 13th January, 2020 the applicant/IRP had visited the registered office of the Corporate Debtor to take control of the management of the Corporate Debtor wherein Mr. Ashfaq Aalam had handed over few of the documents and assured the applicant/IRP that all other requisite documents and information as required and asked as per the email dated 08.01.2020 will be provided in the next 2 (two) days. Even after rigorous follow ups and requests the applicant/ IRP is not having all the documents and information.

v. The Applicant/IRP has not yet prepared the list of the Creditors as per Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 as neither any claim has been received from any creditors nor are books of account and other requisite documents of the Corporate Debtor accessible to him.

vi. It is submitted that the applicant had filed an application under Section 19(2) and 19(3) of the Code but neither the directors of the suspended Board of the Corporate Debtor nor the Operational Creditor was present on the hearings dated 12.02.2020, 28.02.2020, 18.03.2020 and 17.12.2020 so far.

vii. Due to non-availability of contact details of Operational Creditor, the Applicant/IRP had also contacted to Mr. Deepak Anand, counsel of Mr Sunil Kumar, Operational Creditor for depositing the sum of Rs. 2 lakhs as directed vide order dated 25th November, 2019 for meeting out the immediate expenses of the Corporate Insolvency Resolution Process. However, it was verbally informed to the Applicant/IRP that the Operational Creditor/Respondent is already in financial crisis due to non-receipt of salary from the Corporate Debtor and he is not in the position to deposit the amount of Rs. 2,00,000/- as directed by the Adjudicating Authority due to his financial constraint and the Section 9 application was filed by him with the only intention to get his outstanding salary from the Corporate Debtor.

viii. It is submitted that the said non-compliance by the Respondent in depositing a sum of Rs. 2 lakhs as directed by vide order dated 25th November, 2019 is a clear violation of the order of this this Tribunal and is therefore, the contempt of court.

3. We have heard the Learned Counsel appearing for the applicant as well as the contemnor. The Learned Counsel appearing for the Contemnor submitted that since the applicant was not in a position to deposit Rs. 2 lakhs as directed by the Adjudicating Authority; therefore, the amount could not be deposited. On the other hand, the Learned Counsel appearing for the applicant submitted that the Adjudicating Authority vide order dated 18th November, 2019 while admitting the application on the request of the Respondent / contemnor directed him to deposit Rs. 2 lakh to meet their immediate expenses of IRP but this order has not been complied by the Applicant.

4. Considering the submissions, we notice that no reasons has been explained by the contemnor for not depositing the amount, therefore, at this juncture, we would like to refer to the operative portion of the order passed in IB-2863 of 2019 on 18th November, 2019 and the same is reproduced below: -

> "The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the operation Creditor to be recovered as CIRP Cost."

5. Since the CIRP was initiated at the instance by this contemnor and at the time of admitting the application, the specific direction was given to the Operational Creditor to deposit Rs. 2 lakh, of course, that shall be reimbursed by the CoC but that order has not been complied by the contemnor as yet.

6. At this juncture, we would like to refer to Section 424 of the Companies Act, and the same is reproduced below: -

Section 424 - Procedure before Tribunal and Appellate Tribunal.

(1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act or of the Insolvency and Bankruptcy Code , 2016 and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing a representation for default or deciding it ex parte;

(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(h) any other matter which may be prescribed

(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit

pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situate; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

7. A bare perusal of the provision shows that under Section 424 sub-Section 2 of the Companies Act 2013 says that The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, or under the Insolvency and Bankruptcy Code, 2016, the same powers as are vested with Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit.

8. At this juncture, we would like to refer to Section 425 of the Companies Act, 2013 and the same is reproduced below: -

Section 425 - Power to punish for contempt.—

The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971 (70 of 1971), which shall have the effect subject to modifications that—

(a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and

(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.

9. On conjoint reading of these two provisions show the Tribunal and the Appellate Tribunal while exercising the powers under the Companies Act or under the Insolvency and Bankruptcy Code, 2016 shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971.

10. So, by exercising this power, we are of the considered view that the contemnor / respondent has disobeyed the direction of the Adjudicating Authority exercising its power under the Insolvency and Bankruptcy Code, 2016 and he is liable to be punished under Section 425 of the Companies Act, 2013. Accordingly, we find and hold that Respondent / Contemnor, namely, Mr. Sunil Kumar, is guilty for disobeying the directions of the Tribunal and he is held guilty for disobedience of the order passed by this Adjudicating Authority, hence guilty for contempt.

11. List this matter for hearing on the point of sentence on 31.01.2022

Sd/-

Avinash K. Srivastava
(Member Technical)

Sd/-

Abni Ranjan Kumar Sinha
(Member Judicial)