



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA NO.247/2022 IN CP (IB) NO.45/ALD/2019

In the matter of

An application under Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Prince Jain
117-P, Gali No. 8, Shankar Nagar Extension,
Krishna Nagar, Delhi-110051
Email: princejain843@gamil.com

..... Applicant/Intervenor

Versus

Alok Kumar Kuchhal, Liquidator
C-154 Sector 51, Noida-201301
Email: irp.ratandeep@gmail.com

..... Respondent

IN THE MATTER OF:

Nitin Jain & Anr.

.... Financial creditors

VERSUS

Ratandeep Infrastructure Private LimitedCorporate Debtor

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Sanjeev Panda alongwith Sh. Sumit Shukla, Adv.
: For the Applicant in IA No. 247/2022



Sh. Yash Tandon, Adv.

: For the Respondent in IA No.247/2022

ORDER

1. The Present application has been filed by the Applicant i.e. Mr. Prince Jain under rule 11 of the NCLT Rules,2016 and Order 1 Rule 10 of CPC for intervention/impleadment in I.A. No. 193 of 2022 in CP (IB) No. 45/ALD/2019. The Applicant is a shareholder in the corporate debtor with a total claim of Rs. 1.85 crores including one lakhs equity shares.
2. The applicant is seeking the following relief in the matter :-

‘.....

- a. *Allow the Present Application and implead the Applicant as a party (Respondent) to the Application bearing Number IA 193/2022 filed by the Respondent in CP NO. (IB) 45/ALD/2019; and/or;*
- b. *Direct the respondent to supply the copy of the Application bearing Number IA 193/2022 in CP NO. (IB) 45/ALD/2019; and/or;*
- c. *Permit the Applicant to file a reply to the said application bearing IA 193/2022 and/or;*
- d. *Direct that the application bearing IA No. 177 of 2022 filed by the applicant as well as the IA bearing number 193 of 2022 filed by the respondent be tagged together and be heard*



*together & disposed off on its own merits;
and/or;*

*e. Pass any other order which this Hon'ble
Tribunal may deems fit in the larger interest
of justice.*

.....'

- 3.** It is submitted by the applicant that liquidator/respondent acted in utter violation of Section 40(2) of the Code,2016 by belatedly acknowledging the claim filed by the applicant initially on 21.02.2022 and 28.02.2022 refilled on 09.03.2022.
- 4.** It is also submitted by the Applicant that this tribunal vide an order dated 05.07.2022 in I.A No. 193 of 2022 allowed the impleadment of M/s Bankey Bihari Infrahomes Private Limited as a party in the said application vide an order dated 01.06.2022 passed in I.A No. 154 of 2022 which was filed by M/s Bankey Bihari Infrahomes Private Limited. Copy of order dated 05.07.2022 has been annexed as **Annexure-2** with the application. The liquidator/respondent filed the I.A No.193 of 2022 without impleading any of the stakeholders as a necessary party in the matter.



5. It is further submitted that this tribunal vide an order dated 03.08.2022 directed applicant to file an impleadment application. Applicant has also filed a separate application i.e. I.A No. 177 of 2022 wherein this tribunal vide an order dated 06.07.2022 directed the liquidator not to continue with the auction process. Copy of order dated 03.08.2022 and 06.7.2022 has been annexed as **Annexure-3 Colly** with the application.
6. Lastly, it is submitted by the applicant that being a majority shareholder, it is important that applicant should be impleaded as a respondent in the array of parties in I.A No.193 of 2022.

REPLY FILED BY THE LIQUIDATOR

7. In response to the said the application, Liquidator/respondent filed his reply wherein he made the following submissions:-

- i. It is submitted by the respondent that applicant doesn't have any *locus standi* in the I.A No. 193 of 2022. Applicant made investment in the corporate debtor during the pending adjudication of initiation of CIRP proceedings against the



corporate debtor. Applicant never raised any issue before filing an I.A No.177 of 2022 with regard to CIRP or liquidation Process. This shows that the applicant is in collusion with erstwhile management of the corporate debtor.

- ii. It is also submitted that applicant purchased 32% shares of the corporate debtor few days before the commencement of CIRP of the Corporate Debtor. It is significant to note that the Applicant initially submitted their claim during the Corporate Insolvency Resolution Process (CIRP) period of the Corporate Debtor. At that time, the Resolution Professional, who is also referred to as the Respondent or Liquidator in this context, placed the Applicant's claim on hold. This decision was based on the fact that the shares in question had not been transferred, preventing the Applicant from being recognized as a member of the Corporate Debtor.
- iii. The Resolution Professional found the transactions in question highly suspicious and



chose not to admit the Applicant's claim. This decision was explicitly documented in the minutes of the 6th Committee of Creditors (COC) meeting. However, it's worth noting that the Applicant, with possible collusive intent, managed to resolve these suspicious transactions with certain COC members. Consequently, the COC decided not to take further action against the Applicant. As a result of the COC's decision, the RP was bound by their choice and had to include the Applicant and their related parties in the list of claimants. Importantly, due to this development, the Liquidator did not pursue a formal application regarding the Applicant's suspicious transactions.

- iv. Eventually, it is submitted by the liquidator /respondent that applicant cannot be impleaded as an necessary party in I.A No. 193 of 2022, contending that*The Applicant is not considered as a necessary party in the application*



filed by the Liquidator for seeking directions from this Hon'ble Tribunal as the said issue of impleadment has been decided by the Hon'ble NCLAT bench in a catena of cases, the very recent is in the matter of Mr. Chinna Rao vs. Venkatasivakumar Erstwhile Liquidator of M/s The Jeypore Sugar Co. Ltd. [I.A. Nos. 584 & 585 of 2022 in Comp. App (AT) (CH) (INS) No. 269 of 2022] wherein the Hon'ble NCLAT Chennai Bench had vide order dated 12.08.2022 held that it must be borne in mind that there is no provision in the Code, 2016, that enables the Creditors other than those who triggered the Insolvency Resolution Process, to be impleaded as Parties. In law, the Impleadment of Parties, is ultimately, within the ambit of exercise of discretion by a Tribunal/Authority, as the case may be. More importantly, no person, can be added, unless he is a necessary party. A necessary party means that a person is very much necessary to the Constitution of Suit/an Appeal in a given



*Proceeding before a Court of Law/Tribunal/Authority. In fact, whether a person has an enforceable legal right is to be looked into by a Tribunal in regard to the impleadment of parties. To array a person as a prospective / proposed Respondent(s) is not a Substantive Right, but undoubtedly, it is one of the procedures and the Tribunal is to exercise its judicial discretion, of course, in a subjective manner, diligently. [Copy of order dated 12.08.2022 passed by the Hon'ble NCLAT Chennai bench in the matter Mr. Chinna Rao vs. V. Venkatasivakumar Erstwhile Liquidator of M/s. The Jeypore Sugar Co. Ltd. is annexed herewith and marked as **Anneure-3.**]*

9. We have heard learned counsels for the parties and submissions placed on record. We are of the considered view that averments made in the present application have already been made in the I.A. 177 of 2022. The applicant thus has failed to showcase his *locus* in the I.A No. 193 of 2022. Therefore, we are not inclined to grant the relief sought by the



applicant in the present application. Similar pleas and objections as taken in this I.A. have already been adjudicated in our order dated 21.09.2023 passed in I.A No. 177 of 2022 filed by the applicant and therefore, this application also becomes infructuous.

10. I.A No.247 of 2022 hereby stands disposed of.

Ordered Accordingly.

-Sd-

**(Ashish Verma)
Member (Technical)**

-Sd-

**(Praveen Gupta)
Member (Judicial)**

Ankita Sharma
(LRA)