



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT-1

ITEM NO. 302
I.A. No. 450/AHM/2023 in
C.P.(IB) No. 111(AHM)2022

Order under section 60(5)(C) a.w. Sec 18(1)(f) & 22 of IBC

IN THE MATTER OF :

Sachin Naveen Sinha

IRP of Fairdeal Multifilament Pvt. Ltd.

V/s.

Sarawat Co-operative Bank Ltd. & Anr.

....Applicant

....Respondents

Order delivered on: 09.10.2023

Coram:

Mr. Shammi Khan, Hon'ble Member (J)

Mr. Sameer Kakar, Hon'ble Member (T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH –I, AHMEDABAD**

IA/450/AHM/2023 in CP (IB)/111/AHM/2022

(Filed under Section 60(5)(C) a.w. Section 18(1)(f) and Section 22 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of the NCLT Rules, 2016)

In the matter of Fairdeal Multifilament Pvt. Ltd.

Sachin Naveen Sinha

Interim Resolution Professional of
Fairdeal Multifilament Pvt. Ltd.

Having office at:

N-203, Parshwanath Metro City,
Nr. H B Kapadia School,
T. P.-44, Chandkheda,
Ahmedabad-382424.

... Applicants

Versus

1. Saraswat Co-operative Bank Ltd.

Member of Committee of Creditors

Having address at:

Shangrila Arcade, near Shyamal Cross Road,
100 ft. Anand Nagar Road, Anand Nagar,
Ahmedabad-3800015.

2. M/s. Shree Nakoda Impex

Represented through Sanjay Choudhary, Partner,
(Representative of Unsecured Financial Creditors)

Having address at:

310, C-11, Abhishek 1,
Near Haripura Bus Stop,
Aswara, Ahmedabad-380016.

.... Respondents

Order Pronounced on 09.10.2023



CORAM:

SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance

For Applicant : Mr. Vishal Dave, Adv.
: Mr. Sachin Sinha – IRP
For Respondents : Mr. Harshil Patel, Adv. for R -1
: Mr. Nipun Singhvi, Adv. for R-2

ORDER
(Per: Bench)

1. The present application being IA/450(AHM)2023 has been filed by the Applicant under Section 60(5)(C) a.w. Section 18(1)(f) of the Insolvency and Bankruptcy Code, 2016 (“**IBC, 2016**”) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (“**NCLT Rules, 2016**”) seeking the following prayers:
 - a) *Your Lordship may be pleased to allow the present application;*
 - b) *Your Lordship may be pleased to direct Respondent No.1 to handover the key/custody of the Registered office of the Corporate Debtor to the IRP in accordance with Section 18 of the IB Code, 2016;*
 - c) *Your Lordship may be pleased to remove deadlock in the CIRP process and appoint present applicant as RP of the Corporate Debtor and direct Respondents to cooperate with Applicant for smooth functioning of CIRP process.*
 - d) *Your Lordship may be pleased to grant any other relief or relief as may deem fit in the interest of justice;*



2. Corporate Insolvency Resolution Process (“CIRP”) was ordered in CP(IB) No. 111 of 2022 vide order dated 21.02.2022 on Fairdeal Multifilament Pvt. Ltd., and Applicant was appointed as IRP.
3. The Applicant published Form-A on 25.02.2023. Subsequent to receipt of claims, Committee of Creditors (“CoC”) was formed and first meeting of CoC was held on 18.03.2023 consisting of 1 (one) Secured and 32 (Thirty-Two) Unsecured Financial Creditors.
4. It is stated that the corporate office and factory premises of the Corporate Debtor was in possession of Saraswat Co-operative Bank Ltd., who have taken possession under the SARFAESI Act prior to the commencement of CIRP.
5. IRP demanded possession of the factory and corporate office of Corporate Debtor from Respondent No.1 vide letter dated 09.03.2023 which was replied on 10.03.2023 by Respondent No.1 through email. Respondent No.1 stated that they will hand over possession in due course without giving any schedule or timeline.
6. The Applicant reiterated the demand vide email dated 15.03.2023 as the electric meter reading was to take place by UGVCL (Electricity Company). The said email was not replied by R-1. The matter was



raised by IRP in the CoC meeting held on 18.03.2023, however, possession was not given by R-1.

7. It is stated that as the documents were lying at the factory which is the registered office of the corporate Debtor and as the same was in possession of R-1, IRP could not verify the claims and ultimately accepted them provisionally.
8. During the 1st CoC meeting, R-1 informed the IRP, their willingness to replace the IRP and proposed the name of one Mr. Abhijit Gokhale. The necessary resolution was put to vote. The voting concluded on 22.03.2023. However, the CoC gave a fractured mandate with 57.14% (comprising of R-1) voted in favour of the resolution for change of IRP and 43.86% (comprising of R-2) voted against the resolution. As such the resolution was not approved.
9. Thus, the Applicant pleads that: -
 - a) He is unable to perform his duties under Section 18 of the code.
 - b) There is a deadlock between CoC members due to which no RP has been appointed.
 - c) Applicant is unable to carry forward the CIRP and, hence, the present application.



10. Reply was filed by R-1 under Dairy No. D1799 on 15.05.2023. The summary of reply of R-1 is as below: -
- a) R-1 has handed over custody of the registered office and factory of the CD to the IRP on 19.04.2023. This was not denied by the counsel of RP.
 - b) Applicant has without verification provisionally admitted claims of 32 individuals as unsecured financial creditors thereby reducing the share of R-1 to 57.14%.
 - c) R-1 has proposed to change the IRP by appointing Mr. Abhijit Gokhale, however, the necessary resolution could not muster 66% positive votes of CoC. R-1 relies on judgment in Company Application No. 811(PB)/2018 in IB- 02(PB)/2017 in Nikhil Mehta & Sons V/s AMR Infrastructure Ltd. dated 29.08.2018 and requests appointment of the said Mr. Abhijit Gokhale.
11. Taking cognizance of the deadlock in the matter of CIRP of the Corporate Debtor, this Tribunal vide order dated 04.07.2023 directed CoC to reconsider the issue of appointment of RP and take matters to the publication of Form-G.



12. Under Diary No. 3006 dated 07.08.2023, an additional affidavit was filed by the Applicant attaching therewith the minutes of the 4th COC held on 19.07.2023 in pursuance of the directions of this Tribunal vide order dated 04.07.2023.
13. A perusal of COC meeting minutes **reveals** the following: -
- a) Resolution seeking appointment of Mr. Abhijit Gokhale failed.
 - b) Resolution seeking appointment of Mr. Sachin Sinha was withdrawn.
 - c) Resolution seeking approval of (CIRP) cost failed.
 - d) Resolution to authorize deemed RP to appoint valuers within remuneration of Rs.1.25 lakh and not to exceed 2.50 lakh- approved.
 - e) Resolution seeking appointment of Statutory Auditors of Corporate Debtor deferred.
 - f) Resolution seeking approval of minimum eligibility criteria for Prospective Resolution Applicant- approved.
14. Additional affidavit was filed by the R-1 under Diary No. D-3717. Para 3 of the said affidavit is reproduced below.

“ I say that in both the aforesaid meetings resolution for change of present IRP-Applicant was approved by more than 50% voting, however less than 66% voting. Accordingly, I say that in the interest of removing deadlock for an effective CIRP of the



Corporate Debtor, the Respondent No.1 hereby agrees and requests this Hon'ble Tribunal to either appoint Mr. Abhijit Gokhale as Resolution Professional or appoint an independent Resolution Professional from the penal of Insolvency Professionals, by issuing its discretionary powers.

15. Order dated 26.09.2023 records as under:-

“...Today, Mr. Nipun Singhvi appears on behalf of respondent no. 2 in the IA. Across the bar, a statement was made by Mr. Nipun Singhvi, that Respondent no. 2 is not having any issue, if an independent RP from the penal is appointed. Heard both the sides. The order is reserved....”

16. We have heard the parties and perused the pleadings placed before us.

Both sides agree that prayer (b) has been addressed by R-1 and has become infructuous. Corporate Insolvency Resolution Process commenced in the matter vide order dated 21.02.2023, as such more than 7 months have passed in the matter without a Form-G being issued. IRP has not been confirmed as RP and no new person appointed as RP in the matter by CoC. There exists a deadlock in CoC on all important matters.

17. The present situation is detrimental to the interest of the Corporate Debtor and steps should be taken to resolve the same. The CoC is



divided in two factions. One side is secured financial creditor and other side is unsecured financial creditor.

18. In view of consent of both the sides of CoC for the appointment of a new RP from IBBI approved panel of RP and exercising our powers vested under Rule 11 of NCLT Rules, we hereby appoint **M/s. Fintech Restructuring LLP, having Registration No. IBBI/IPE-0132/IPA-3/2022-23/50048, Email: fintechipe@gmail.com** as RP in the matter. Outgoing RP to hand over charge, assets, documents & records of Corporate Debtor within 30 days of this order to incumbent RP.
19. New RP to convene CoC meeting within 10 days of this order. The CoC and suspended management to cooperate with the new RP. Fee of the outgoing RP to be paid within 15 days of this order.
20. With the above directions, **IA/450(AHM)2023** is disposed off. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)**

**-Sd-
SHMMI KHAN
MEMBER (JUDICIAL)**

Rajeev/P.S