



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No. 561/2021 ,563/2021,
492/2021, 1371/2022
CA No. 397/2019
in
CP (IB) No. 198/Chd/Chd/2018
(Admitted Matter)**

In the matter of:

Punjab National Bank

....Petitioner-Financial Creditor

Vs.

Ria Constructions Ltd.

...Non-Respondent-Corporate Debtor

And In the matter of IA No 561/2021

Mr. Desh Deepak

in the matter of Ria Constructions Limited
having its registered office at
H. No. 1099/1, Sector 37B,
Chandigarh-160036

...Applicant/Resolution Professional

Vs.

M/s. GGSDS College Society,

GGSDS College, Sector 32-C, Chandigarh-160030

...Respondent

And In the matter of IA No. 492/2021

Mr. Desh Deepak

in the matter of Ria Constructions Limited
having its registered office at
H. No. 1099/1, Sector 37B,
Chandigarh-160036

...Applicant/Resolution Professional

Vs.

**Himachal Pradesh Cricket Association,
Through its Chairman/President**



HPCA Stadium, Dharamshala,
Himachal Pradesh-176215

...Respondent

And In the matter of IA No. 563/2021

Mr. Desh Deepak

in the matter of Ria Constructions Limited
having its registered office at
H. No. 1099/1, Sector 27B,
Chandigarh-160036

...Applicant/Resolution Professional

Vs.

M/s. Country Colonisers Pvt. Ltd.,
Sector 85, Sahibzada Ajit Singh Nagar,
Mohali, Punjab-140308

...Respondent

And In the matter of CA No. 397/2019

Mr. Desh Deepak

in the matter of Ria Constructions Limited
having its registered office at
H. No. 1099/1, Sector 27B,
Chandigarh-160036

...Applicant/Resolution Professional

Vs.

M/s. Multi Tech Towers (P) Ltd.,
SCO No. 139-141, Sector 17-C,
Chandigarh

...Respondent

And In the matter of IA No. 1371/2022

Mr. Sanjeev Azad

Promoter & Shareholder of
Ria Construction Ltd., MSME
S/o Mr. MG, Azad
R/o # 545, Sector-8,
Panchkula-134109

...Resolution Applicant

Vs.

Mr. Desh Deepak

in the matter of Ria Constructions Limited
having its registered office at
H. No. 1099/1, Sector 27B,
Chandigarh-160036



Punjab National Bank

in the matter of Ria Constructions Limited
having its registered office at
Sector 17, Chandigarh-160036

...Respondents

Order delivered on: 29.05.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For Applicant in IA Nos. 561/2021 ,
492/2021, 563/2021, CA No. 397/2019 : Mr. Arun Kumar, Advocate

For the Applicant in IA No. 1371/2022 : Ms. Divya Sharma, Advocate

For the Respondent No. 1 in IA No. 1371/2022 : Mr. Arun Kumar, Advocate

For the Respondent No. 2 in IA No. 1371/2022 : Mr. Arpit Chawla, Advocate

For the Respondent in IA No. 563/2021 : Mr. Viraj Gandhi, Advocate

For the Respondent IA No. 492/2021 : Mr. Shubham Gupta, Advocate
Mr. Pranav Chada, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

The IAs 492/2021, 561/2021, 563/2021 and 397/2019 being on similar facts and with identical prayers are taken up together.

IA No. 561/2021

The present application has been filed by the applicant-Resolution Professional under Section 60(5) read with Sections 3 (37) and 238 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') with a prayer to direct the respondents to pay amount Rs. 9,72,973/- including interest which is pending from the respondent to the corporate debtor.



2. It is stated in the application that the applicant-Resolution Profesional took over the charge of the Corporate Debtor and upon reviewing the list of Debtors and list of Litigations, discovered an outstanding operational debt amounting to Rs. 9,72,973 owed by M/s GGDSD College Society for construction work conducted at M/S GGDSD College in Village KheriGurna, Banur-Ambala Road Tehsil Rajpura, District Patiala-140417.

	Debtor Ledger Account	Amount Due in Rs.
1	M/s. GGDSD College Society	9,72,973/-

3. The affidavit of service filed vide Dairy No. 01119/01 dated 23.12.2021. The same fact have been repeated in the short written submission filed by the applicant vide Dairy No. 01119/03 dated 06.03.2023.

IA No. 563/2021

4. The present application has been filed by the applicant-Resolution Professional under Section 60(5) read with Sections 3 (37) and 238 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') with a prayer to direct the respondents to pay amount Rs. 33,20,676/- including interest which is pending from the respondents to the corporate debtor.

5. The brief facts of the case are that application under Section 7 was admitted vide order dated 11.12.2018. The applicant was appointed as IRP. The CoC meeting was held on 10.01.2019 and IRP was appointed as RP. The RP observed ledger of debtors pertaining to respondent-Company that there is unpaid operational debt of Rs. 33,20,676/- due from respondent. The applicant wrote letter of Representation to respondent-Company for recovery of outstanding



balance shown in Books of Corporate Debtor and treated the same as Demand Notice. The Corporate Debtor was awarded two work orders:-Work Order bearing Number 600000893 dated 28.07.2015 for an amount of Rs. 9,99,582/- and Work Order bearing Number 6100000901 dated 02.09.2015 for an amount of Rs. 3,42,20,599/-. Respondent-Company vide its reply dated 21.08.2021 stated that it has to recover unadjusted mobilization/material advance to Rs. 10,68,808/-. Vide reply dated 21.08.2021, respondent-Company retained an amount of Rs. 13,89,743/- on account of poor quality of work. On 21.03.2017, legal notice for recovery of Rs. 19,67,194/- was served to M/s Wave Estate. PNB filed OA No. 2353 of 2017 for recovery of amount due. Summons were issued by DRT, Chandigarh. The respondent-Company has not made any payment to the PNB.

6. The affidavit of service was vide filed Diary No. 01116/01 dated 23.12.2021. The reply was filed by Diary No. 01116/2 dated 08.06.2023 wherein it is stated that the claim has been sought to be recovered by the applicant based only upon Ledger Account maintained by Corporate Debtor. There are no provisions to allow NCLT to convert into a debt collection or recovery Forum and issue recovery certificates against Third party. The dispute pertaining to alleged amount is already pending before Debt Recovery Tribunal-II, Chandigarh and cannot be adjudicated by NCLT as multiple application relating to same subject is barred by res judicata. The Letter of Representation cannot be construed as Demand Notice. The same fact have been repeated in the rejoinder filed vide Diary No. 01116/3 dated 15.12.2022. the short written submissions by applicant filed vide Dairy No. 01116/4 dated 06.03.2023 and by respondent vide Dairy No. 01116/5 dated 23.03.2023.



IA No. 492/2021

7. The present application has been filed by the applicant-Resolution Professional under Section 60(5) read with Sections 3 (37) and 238 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') with a prayer to direct the respondents to pay amount Rs. 16,91,193.83/- including interest which is pending from the respondents to the corporate debtor.

8. The brief facts of the case are that application under Section 7 was admitted vide order dated 11.12.2018. The applicant was appointed as IRP. The CoC meeting was held on 10.01.2019 and IRP was appointed as RP. The RP observed ledger of debtors pertaining to respondent-Company that there is unpaid operational debt of Rs. 16,91,193.83/- due from respondent. The applicant wrote letter of Representation to respondent-Company for recovery of outstanding balance shown in Books of Corporate Debtor and treated the same as Demand Notice. On 21.03.2017, legal notice for recovery of Rs. 16,91,194/- was served to M/s Wave Estate. PNB filed OA No. 2353 of 2017 for recovery of amount due. Summons were issued by DRT, Chandigarh.

9. The affidavit of service was vide filed Diary No. 01118/01 dated 23.12.2021. The reply was filed by Diary No. 01118/4 dated 22.03.2023 wherein it is stated that the claim has been sought to be recovered by the applicant based only upon Ledger Account maintained by Corporate Debtor. There are no provisions to allow NCLT to convert into a debt collection or recovery Forum and issue recovery certificates against Third party. The dispute pertaining to alleged amount is already pending before Debt Recovery Tribunal-II, Chandigarh and cannot be adjudicated



by NCLT as multiple application relating to same subject is barred by res judicata. The Letter of Representation cannot be construed as Demand Notice.

CA No. 397/2019

10. The present application has been filed by the applicant-Resolution Professional under Section 60(5) read with Sections 3 (37) and 238 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') with a prayer to direct the respondents to pay amount Rs. 6,44,71,000 including interest which is pending from the respondents to the corporate debtor.

11. The brief facts of the case are that application under Section 7 was admitted vide order dated 11.12.2018. The applicant was appointed as IRP. The CoC meeting was held on 10.01.2019 and IRP was appointed as RP. The RP appointed registered valuers for determining the Fair Value and liquidation value of the corporate debtor. while pursuing the records, RP found that the Arbitration award amounting to Rs. 3,67,72,000 plus interest cost was passed in favour of corporate debtor against respondent on 08.02.2014. Work Order was assigned to Corporate Debtor vide letter of intent dated 01.05.2007 and date of completion was 31.07.2008, however, work was not completed on the date fixed and contract was abandoned by Corporate Debtor on 31.10.2009. The Corporate Debtor referred the matter to architect for settlement of dispute and moved an application under Section 9 before District Judge, Chandigarh which was dismissed. Vide order dated 03.08.2010 both parties agreed to settle the matter by referring to arbitration and Arbitrator passed an award in favour of Corporate Debtor for Rs. 3,67,72,000+SI @ 12%. The respondent moved a petition under Section 34 for setting aside the majority award. The applicant wrote twice to respondent for



recovery of outstanding balance shown in books of Corporate Debtor and respondent gave reply dated 11.05.2019 that they have filed an appeal against the award. Further respondent informed that they have not finally accepted the award and are availing legal remedies against the same.

12. The affidavit of service was vide filed Diary No. 3177 dated 03.07.2019. The reply was filed by Diary No. 560 dated 21.01.2020 wherein it is stated that the Section 34 application has been dismissed and appeal was filed before the Hon'ble Punjab and Haryana High Court i.e. FAO No. 4508 of 2019 wherein notice was issued and served upon Respondent. No proof of amounts mentioned have been brought on record. The same fact have been repeated in the rejoinder filed vide Diary No. 00839/01 dated 06.03.2023.

13. We have heard the learned counsels and perused the material available on record. In the present case, the aforementioned amount pertaining to the respondent were found as a result of the Transaction Audit of the Books of Accounts of the Corporate Debtor.

14. The relevant provision from the Insolvency and Bankruptcy Code, 2016 is extracted as below:-

Section 25. Duties of resolution professional. -

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(Emphasis Supplied)



15. In the aforementioned four IAs, the RP has prayed for the recovery of the amounts standing against the respondents in the Books of the Corporate Debtor, while in IA No. 561/2021, none appeared on behalf of the respondent, and hence there are no explanations in this regard available on record. In IA No. 563/2021, IA No. 492/2021 & CA No. 397/2019, various explanations have been given by the respondents justifying the non-payment of the dues reflected in the books of the accounts. However, in these three IAs, we note that though the respondents have disputed the amounts, there is no clear verdict in their favour in this regard by any authority. In view of this, we hold that as on the date of initiation of CIRP, the outstanding amounts against the respondents stood crystallised subject to the outcome of the various proceedings initiated by the respondents. Considering these facts, we hold that the impugned amounts are assets of the corporate debtor as on the date of initiation of CIRP and are to be taken into custody and control of the Resolution Professional as per the provisions in Section 25 of the Code. In view of the aforementioned facts, we direct the respondents to pay the amounts standing against their names in the books of the corporate debtor within 14 days of this order.

16. In the result, IA Nos. 492/2021, 561/2021, 563/2021 and 397/2019 are allowed and disposed of accordingly.

IA No. 1371/2022

17. The present application has been filed by the applicant-Resolution Applicant against Resolution Professional and Punjab National Bank under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') directing the respondents to re-consider/ set aside their decision of



liquidation of corporate debtor passed in its CoC meeting dated 03.09.2019 and further direct the CoC/RP to take appropriate steps to recover the debts of corporate debtor amounting to Rs. 19,25,46,787.70 as well as Rs. 58,68,010/- from M/s Lafarge.

18. The brief facts of the case are that the admission order was passed on 11.12.2018. Prior to the passing of the admission order against the corporate debtor and as per last audited Balance Sheet for the Year 2017-18, as on 31.03.2018, the trade receivables were to tune of Rs. 8,92,86,199.23/-. The respondent issued Legal Notices to Sundry Debtors stating that the corporate debtor owes a debt of Rs. 11.43 crores to the Bank and thus, no payment be made to it. Eventually, payments were altogether stopped and the corporate debtor could no longer continue with his operation. Respondent No. 2 issuing notices to Sundry Debtors disrupted its business by stopping the work and on other hand, pushed the company initially into CIRP and now into liquidation. The corporate debtor filed an arbitration claim against the company namely M/s Multitech Towers (P) Ltd. for termination of contract and award dated 08.02.2014 for Rs. 3,67,72,000/- was granted in favour of the applicant with 12% interest. Multitech filed an appeal against the award and same was dismissed. The total amount of Rs. 15,47,73,475.97/- and amount of Rs. 18 lakhs was recoverable. A winding up petition was filed for M/s Lafarge Aggregates and Concrete India (P) Ltd. against corporate debtor claiming a sum of Rs. 1,34,61,646/-. The corporate debtor paid total amount of Rs. 1,17,17,849/-. The corporate debtor paid excess amount of Rs. 41,24,213/- based on invoices. The applicant provided the RP all information, material/documents and dues that are recoverable. It is further



submitted that the admission order was passed in December, 2018 and for more than 3 ½ years the RP has not been able to realize the accruing dues which are final and binding as no appeal has been filed by M/s Multitech Tech Towers (P) Ltd. The corporate debtor filed an application to refund the excess amount received by M/s Lafarge Aggregates and the applicant made a further payment of Rs. 17,43,797. The total amount of recoveries to be made on behalf of the Corporate Debtor is Rs. 19,25,46,787.70 to realise debt of the financial creditors of the company. Further, sum of Rs. 58,68,010 is recoverable from M/s Lafarge.

19. The affidavit of service vide filed Diary No. 02239/01 dated 17.2.2023. The reply filed by Respondent No. 1 vide Diary No. 02239/02 dated 17.03.2023 and by respondent No. 2 vide Dairy No. 02239/03 dated 29.03.2023. In its reply respondent No. 1 has clarified that he has taken several steps to realise the outstanding debts of the corporate debtor and the statement made by the applicant that M/s Multitech (P) Ltd. has not appealed against the award passed on 08.02.2014 is false and the applicant should be prosecuted for perjury on that count.

20. We have heard the learned counsels and perused the material available on record.

21. After going through the allegations made by the Resolution Applicant and also the reply of the respondent, it is obvious that the issues raised by the applicant have been in knowledge of the CoC before approving the proposal for liquidation of the corporate debtor in their meeting dated 03.09.2019. The facts relied upon by the applicant relate to the recovery of an arbitration claim from a third party and the same is stated to be under appeal by the third party. We also



underline the fact that the Code envisages the CoC to consider all the commercial issues, which also includes recovery of dues from third parties, before approving the proposal for liquidation. The petitioner-Resolution Applicant has no vested right to challenge the wisdom of the CoC in this regard.

22. In the result, IA No. 1371/2022 is dismissed and disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

May 29, 2023

VN/TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)