



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH (COURT – II)

Item No. 206
(IB)-2582(ND)2019

IA-3596/2022 IA-70/2022 IA-4926/2021 IA-1984/2020
IA-2000/2020 IA-4122/2020 IA-3825/2021 IA-655/2021
IA-2593/2022 IA-934/2021 IA-1195/2021 IA-2129/2022
IA-1688/2022 IA-47/2023

IN THE MATTER OF:

M/s. Jakson Limited

... **Applicant/Petitioner**

Versus

M/s. Three C Universal Developers Pvt. Ltd. ...

Respondent

Under Section: 9 of IBC, 2016

Order delivered on 12.09.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ,
HON'BLE MEMBER (J)

SH. L. N. GUPTA,
HON'BLE MEMBER (T)

PRESENT:

- For the Applicant** : Adv. Rakesh Kumar, Adv. Preeti Kashyap, Adv. Ankit Sharma, Adv. Aman Agarwal, Adv. Rishabh Arora, Adv. Varun Pandit in IAs-934/1195/2021, Adv. Angna Dewa, Adv. Shaleen Srivastav in IA. No. 70/2022, Adv. Saurabh Kalia, Adv. Ridhima Verma, Adv. Shashwat Tripathi in IA-47/2023, Adv. Saurabh Kalia, Adv. Sonam Sharma, Adv. Madhu Ayachit, Adv. Riddhi Jain, Adv. Mohd. Asad Saeed in IA. No. 4926/2021, Mr. Tanweer Alam (Party in Person) in IA No. 3825/2021 for the Applicant
- For the Respondent** : Adv. Ridhima Verma, Adv. Shashwat Tripathi in IA-3596/2022 for R-12 & 13
- For the RP** : Adv. Meghna Rao, Adv. Aadhar Nautiyal in IA No. 1984, 2000, 4122 of 2020 Adv. Mrinal Harshvardhan

ORDER

IA-3596/2022: As prayed by Mr. Mrinal Harshvardhan Ld. Counsel appearing for the Applicant, he seeks to withdraw the captioned application.

In view of the prayer made by him, the application is dismissed as withdrawn.

IA-1688/2022: The captioned IA came up for consideration before this Adjudicating Authority on 18.04.2022 and the following order was passed:

“IA-1688/2022: *By filing this IA under Section 49, the Applicant has prayed for the following main reliefs:*



“(a) direct respondent no. 2 to provide to the applicant all the relevant information with respect to information memorandum and resolution plans received by respondent no. 2;

b) direct respondent no.2 to admit the claim of the Applicant on behalf of COC of Three C Green Developers Pvt. Ltd. as per **ANNEXURE A-10**

c) Declare the non-lodging of claim of M/s Three C Green Developers Pvt. Ltd. with M/s Three C Universal Developers Pvt. Ltd. to be an act defrauding the creditors of M/s Three C Green Developers Pvt. Ltd.;

d) Reverse the effect non-lodging of financial claim/relinquishment/giving up of claims/security interest of M/s Three C Green Developers Pvt. Ltd. in favour of M/s Three C Universal Developers Pvt. Ltd. while directing respondent no. 2 to prepare fresh information memorandum while accepting and considering the financial claims of M/s Three C Green Developers Pvt. Ltd.

e) Pass necessary order staying and quashing resolution plan proposed by respondent no. 7 and in the interim stay approval of resolution plan proposed by respondent no. 7.

f) Direct respondent no. 2 to invite proposals for resolution plans only after accepting claims of applicant or in the alternative initiate process for liquidation.

g) direct enquiry under S. 46 (2) of the Insolvency Code by an independent expert to evaluate the entire transaction and the collusion between the management of M/s Three C Green Developers Pvt. Ltd. and M/s Three C Universal Developers Pvt. Ltd. and other person as may be involved;

Heard the Ld. Counsel appearing for the Applicant and perused the averments and the prayers made by the Applicant. Before considering the prayer, we would like to refer to Section 49 of the IBC Code, 2016, and the same is reproduced below:

“Transactions defrauding Creditors

49. Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor—

(a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor;
or

(b) in order to adversely affect the interests of such a person in relation to the claim,

the Adjudicating Authority shall make an order—



- (i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and
- (ii) protecting the interests of persons who are victims of such transactions:

Provided that an order under this section—

(a) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.”

When we consider the prayer of the Applicant in terms of the provisions contained under Section 49 of the IBC Code 2016, we are of the considered view that none of the prayers of the Applicant are maintainable in terms of Section 49 of the IBC Code, 2016. Accordingly, we have no option but to reject the prayers of the Applicant.

Hence, the IA is Dismissed.”

The order was taken before Hon'ble National Company Appellate Tribunal by way of Company Appeal (AT) (Ins) No. 471/2022 dated 28.09.2022. In the said appeal, Hon'ble NCLAT could take a view that this Adjudicating Authority could examine the plea of the Applicant only with reference to Section 49 of IBC, 2016 and its plea under Section 60(5) of IBC 2016 could be ignored. Now, with reference to the said provision of IBC, Mr. Mrinal Ld. Counsel appearing for the Applicant espoused that the Applicant had given an amount of Rs.413 crores as a loan to the CD in the present matter viz. M/s Three C Universal Developers Pvt. Ltd. In his submission, the amount is reflected in the balance sheet of the corporate debtor. Opposing the plea, Mr. Abhishek Anand Ld. Counsel appearing for RP submitted that the Applicant in the captioned IA is related to CD as the Respondent Nos. 4 & 5 in the captioned IA were also directors qua the CD represented by the applicant. The further submissions put forth by Mr. Abhishek Anand is that the last date for submission of a claim by a creditor in the captioned CIRP was 31.12.2019 and the Applicant



herein submitted its claim only on 06.04.2022 i.e., much beyond the scheduled time limit for the purpose. According to him, by now the plan qua the resolution of insolvency of CD has also been approved and the resolution in this regard was passed by CoC on 16.01.2021 as has been ruled by Hon'ble Supreme Court as recently as on 11.09.2023 (i.e., yesterday) in **Civil Appeal No. 5590/2021** that after approval of resolution plan by CoC, the claims u/s 13 read with Section 15 of IBC cannot be entertained. Para 21 of the Judgment reads thus:

“21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, 8 the Court cautioned against allowing claims after the resolution plan has been accepted by the COC. “

It would not be gainsaid that directing the RP/CoC, to examine the claim of the applicant at this stage, would amount to reopening the whole issue and would be contrary to the spirit of the aforementioned judgment passed by Hon'ble Supreme Court.

In the wake, the application is found devoid of merits and is accordingly rejected.

IA-70/2022: The salient plea espoused in the captioned IA is that the RP could not take the required steps to recover a certain amount due to the corporate debtor. The plea is espoused in para 23 & 24 of the application which reads thus:

“23. It is worthwhile to mention that the RP deliberately did not look into the financial frauds, like the one in respect to NSGPL, as explained above, gets sufficient credence from the fact that while in the Financial Statements, for the Financial Year 2018-19 of this company available on the MCA website, confirms that even as on 31.03.2019, this company owed Rs. 7,04,71,309/- to the Corporate Debtor, yet none of the intentionally publicized, 565 so called recovery notices, do not include NSGPL A true copy of the relevant Financial



Statements of FY 2018-19 has been marked and annexed as Annexure - Q(Colly).

24. It is further submitted that as per the letter dated 26.08.2020 addressed by the RP to Applicant and other two promoters i.e., Mr. Vidur and Mr. Nirmal, the RP has clearly recorded that Lotus Greens Pvt. Limited had sold 15 % of the shares of Xanadu Infratech Pvt. Ltd. for a value of Rs 18,00,00,000 (Rupees Eighteen Crores Only) to Three C Universal Developers Pvt Ltd. Notably, Three C Universal Developers Pvt Ltd sold said 15% shares to Three C Projects for similar price. At the same, Laurel Residency Limited sold 25% of equity shares of Xanadu Infratech Pvt Ltd for a value of Rs 1,00,000 (Rupees One Lakhs) only to Three C Universal Developers Pvt Ltd, which shares were immediately sold by Mr. Vidur to Three C Projects for an amount of Rs 30,00,00,000 (Rupees Thirty Crores Only). Subsequently, Mr. Vidur rigged the books of the Corporate Debtor to pass on the benefit of the difference to himself and his wife Richa Bhardwaj. Thereafter, Ms. Richa Bhardwaj showed in her books that an amount Rs 14,00,00,000/- (Rupees Fourteen Crores Only) as loan to Three C Universal Developers Pvt Ltd.”

Mr. Abhishek Anand Ld. Counsel appearing for RP submitted that he would examine the contents of the IA and would ensure that no amount due to the corporate debtor is left unrecovered. He further says that the necessary steps would be taken to nab the PUFEE transactions qua the CD if any, omitted/left out.

In view of the statement made by Mr. Abhishek Anand, **the application is disposed of.** The RP would file a special report, qua the action taken regarding the examination of the contents of the application indicating specifically the steps if any, taken in terms of the same.

IA-1984/2020 & IA-2000/2020: As prayed by Ld. Counsel appearing for the Applicant, **the IAs are dismissed as withdrawn.**

IA-4122/2020: The prayer in the application is for the execution of the order dated 07.08.2020 passed in IA-2102/2020 and IA-2276/2020. Ld. Counsel appearing for Respondents pointed out that the order dated 07.08.2020 has been challenged before Hon'ble NCLAT by way of Company Appeal (AT) (Ins)



No. 702/2020 and the next date of hearing fixed in appeal before Hon'ble NCLAT is 22.09.2023.

Let the captioned IA come up for hearing on 17.10.2023.

IA-3825/2021: The plea espoused in the captioned application is regarding non-collation/admission of the professional charges of Juristica Legal Services (LLP). Ld. Counsel appearing for the Petitioner submitted that the RP is not justified in not collating/admitting the entire claim of the LLP referred to in the application. Mr. Abhishek Anand Ld. Counsel appearing for RP submitted that when Juristica Legal Services (LLP) could be incorporated only on 06.09.2016, the letter of engagement is dated 01.06.2016. He could also draw our attention to the stamp affixed on the letter in the name of Juristica Legal Services (LLP). Having submitted so, he raised doubt regarding the bonafide of the claim. According to him, the claim referred to in the application is quite skeptical. He further submitted that the claim of the applicant could be verified with reference to the books of accounts of CD and the amount which was reflected in the books could be admitted.

Rejoining the submission Ld. Counsel appearing for the Petitioner referred to a letter dated 07.10.2020 to espouse that the plea raised by the RP is that the legal services provided by Juristica Legal Services (LLP) were not only to CD but was to a consortium. The argument advanced by Ld. Counsel for the Petitioner in rejoinder does not lead to any conclusion favourable to the applicant.

Indubitably, the RP is supposed to verify the claim of the claimants raised under Section 13/15 of IBC 2016 only with reference to the books of accounts of the CD. It is not the case of the Petitioner that there is any amount different from the amount admitted by the applicant as his claim reflected in the books of accounts of the CD. We cannot ignore the plea raised by Mr. Abhishek Anand that Juristica Legal Services (LLP) was incorporated on 06.09.2016 and the letter of engagement by CD is dated 01.06.2016. Taking a holistic view qua the matter, **we are not inclined to grant the relief sought in the application and the same is rejected.**



IA-2593/2022: As prayed by Ld. Counsel appearing for Applicant hearing in the captioned IA is deferred to 13.09.2023.

IA-655/2021: List on 13.09.2023.

IA-2129/2022: Mr. Dhananjay Jain Ld. Counsel sought to advance submission on behalf of the Applicant in IA-2129/2022. According to him, he is instructed by Advocate Bhoop Singh to advance the argument in support of the Applicant. Mr. Abhishek Anand Ld. Counsel appearing for RP submitted that Mr. Dhananjay Jain has a conflict of interest in this case as he is also appearing for Mr. Vidur Bhardwaj one of the suspended promoters qua the CD before Hon'ble Delhi High Court. Let Mr. Dhananjay Jain file his Vakalatnama before making further submissions in the matter.

Let the IA come up for hearing on 13.09.2023

IA-4926/2021, IA-934/2021, IA-1195/2021 & IA-47/2023: List the IAs on 13.09.2023.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)