

IN THE NATIONAL COMPANY LAW TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

IA No. _____
CP (IB) No.9/GB/2019

In the matter of:

An application under Section 19 read with Sec.23(2) of the Insolvency and Bankruptcy Code, 2016;

And

In the Matter of:

Stressed Assets Stabilization Fund [SASF].

.....Financial Creditor

And

In the Matter of:

National Plywood Industries Limited.

.....Corporate Debtor

And

In the Matter of:

Mr. Sandeep Khaitan, Resolution Professional

.....Applicant/Resolution Professional

And

And

In the Matter of:

1. Piyush Periwal, Chairman cum Managing Director of Suspended Board of NPIL, 12e, Judges Court Road, Alipore, Kolkata – 700 027, West Bengal

2. Narendra Sureka, CA, Accounts (Head) of NPIL, 5, Fancy Lane, 7th Floor, Kolkata – 700 001

.....Respondents

Date of Hearing 20th My 2020

Order Delivered on 20th May 2020

For the Applicant

: Mr. Sandeep Khaitan (RP) & Mr. Nishant
Kalilka Pr.CA &
Ashok Kumar Tibrewala, Pr.CA.

For the Respondents : Advocate.Mr. Abhijit Sarkar.

ORDER

Present Jinan K.R., Member (Judicial)

The applicant, Shri Sandeep Khaitan, Interim Resolution Professional (IRP), is appointed by this Tribunal vide order dated 25/8/2019 in this case as IRP, has filed this application against the respondents with the prayer for directions upon the promoters, directors of the corporate debtor to hand over the management of the affairs of the company for smooth running and completion of the CIRP.

2. Brief facts of the case, as stated in the application, are that this Tribunal vide order dated 25/8/2019 while admitting the petition declared moratorium and public announcement in accordance with Sec.13 and 15 of the IBC, 2016 and appointed IRP for ascertaining the particulars of creditors and convening of CoC for evolving a resolution plan. In terms of the order, the IRP made Public Announcement for CIRP with respect to the corporate debtor in different newspapers – both at Guwahati as well as at Kolkata.

3. In the said public announcement, the IRP invited claims from the creditors. The suspended Board of Directors since very beginning were trying to delay the time bound CIRP. The corporate debtor had 19 bank accounts whereas details of 17 bank accounts were shared with IRP. The corporate debtor did not properly cooperate with the CIRP. The CIRP made several correspondences followed by reminders with the corporate debtor.

4. The RP further would submits that the unaudited provisional accounts prepared casually without following mercantile system of accounts and shared

with the CIRP almost 6 weeks thereafter, which contains too many anomalies which were communicated to CD by the IRP for necessary correction and furnishing substantiating details.

5. With a motive to CIRP initiation quashed, Directors of the suspended Board of the corporate debtor / respondent No.1 moved an application to NCLAT praying that the application filed by the financial creditor was not within limitation and the admission order passed by this Tribunal for initiation CIRP be quashed. The Hon'ble NCLAT vide its order dated 25/11/2019 dismissed the appeal.

6. Thereafter, the Directors of the suspended Board of the corporate debtor moved before the Hon'ble Supreme Court and till the date of passing of the order by the Apex Court on 20/1/2020, the transaction audit could not be completed due to pendency and incompleteness of the requisite details sought for by the auditors. The erstwhile management was not fully cooperating with the applicant as being over confident of getting a clear order quashing the CIRP proceedings. The erstwhile Directors of the suspended Board of the corporate debtor also tried to derail the IRP process by an order dated 25/2/2019 passed by Hon'ble Guwahati High Court in one of the ongoing matters of National Boards Ltd. and illegitimately claiming the stay of CIRP process. This was the first of the series misinterpretation of court order. One of the unit of CD at Hosur Plant was suspended since 27/11/2017 due to strike of workmen. However, the valuation of assets and stock as required by Regulation 27 has to be done on plant site. In order to that several requests were made by Valuers to plant head of Hosur unit, the desired inspection was not arranged till date.

7. In the meanwhile against the appeal filed by the shareholder of CD Hon'ble Supreme Court passed an order dated 20/1/2020 which reads as under: -

“In view of the fact that the NCLAT noted 21/2/2002 instead of 21/2/2003 while computing the limitation, we set aside the order passed by the NCLAT. We request the NCLAT to consider the matter afresh in accordance with law. All questions including the submissions raised on behalf of the respondent as to the effect of the earlier proceedings initiated are kept open.”

8. Both the Directors of the suspended Board of the corporate debtor never serious to submit the plan and their primary motive was to delay so that the process could be frustrated and derailed. Subsequent to passing of the order by the Apex court the erstwhile Directors of the suspended Board of the corporate debtor has become whimsical and had gone berserk carrying two hoots, almost making a complete mockery of the law and making blatant violation of IBC, 2016.

9. The Directors of the suspended Board of the corporate debtor on the basis of the order of the Hon'ble Supreme Court wrote several letters to bankers insisting it that his signature be restored and the IRP's signature be removed emphasizing that CIRP has been terminated.

10. One of the independent directors Mr. Arbijit Sarkar of the suspended board obstructed the functioning of RP by threatening over phone call. The Company Secretary of CD called two board meetings of CD on 30/1/2020 and 1/2/2020. In that meeting Shri Arun Jhunjunwala has been inducted as an independent director with effect from 1/2/2020. Further, the Company Secretary informed SEBI vide letter dated 29/1/2020 that the CIRP process has

been abated vide Apex Court order dated 20/1/2020.

11. This Tribunal vide order dated 20/3/2020 directed the RP to act as per law and RP had served several emails to suspended board and officers for cooperation but all senior executives of the company are illegitimately discard the CIRP completely. On 18/4/2020 an amount of Rs.32.50 lakh have been siphoned off during the ongoing nationwide lock down. The RP filed FIR with Margherita Police Station about the unauthorized transactions. Due to continuous non cooperation of the CD with the RP the process of corporate insolvency resolution process is getting unduly hampered and the RP is not able to perform his duty in a smooth manner.

12. The Ld. RP further would submit that the directors of the suspended board of CD are not only acting illegally and wrongfully but also mala fide which amounts to interference with the administration of justice. The conduct of the respondents amounts to rampant violation of IBC, 2016 and also interference with the administration of justice and prays for issuing directions to co operate with the RP and also prays for issuing direction to refund the amount withdrawn from the bank account of the CD without the knowledge and permission of the RP.

13. This application was taken up for hearing on today through Video conferencing. Ld. RP Mr. Sandeep Khaitan ; Mr. Nishant Kalilka Pr.CA & Ashok Kumar Tibrewala, Pr.CA. Representing RP were present for the hearing. On the side of the respondent Ld. Counsel Mr. Abhijit Sarkar appears. Both sides were heard at length.

14. The short point for determination is as to whether a direction for cooperation with RP in order to complete the CIRP even in these difficult time of lock down is to be issued as against the suspended directors of the CD. In the

meanwhile the Ld. RP also submits that the directors are in the habit of transferring funds from the two bank accounts maintained in ICICI Bank and an amount of approximate 35 lack already withdrawn by the directors without his knowledge and permission and also prays for issuing directions to them to refund the money.

15. In answer to the allegations that transaction audit could not be completed by the auditors the Ld. Counsel for the respondents submits that the auditors office is located in New Delhi and therefore, due to the lock down they could not open their office and it is why it is pending. In respect of not permitting the valuers to inspect Hosur Plant he would submits that the said plant was suspended since 27/11/2017 due to strike of workmen and that if the adequate police protection is granted inspection can be permitted.

16. One another allegation on the side of he RP is that Mr. Arbijit Sarkar who is representing the respondents was the independent director and he obstructed the functioning of RP by threatening over phone call. To the said allegation the Ld. Counsel/independent director has not tendered any explanations.

17. It is further alleged that on 18/4/2020 an amount of Rs.32.50 lakh have been siphoned off during the ongoing nationwide lock down from ICICI Bank and another four and odd lacks rupees also was withdrawn by the directors in violation of the moratorium. According to the Ld. Counsel for the respondents the withdrawal was not amount to siphoning the fund , but was withdrawn for payment of raw material cost due to the supplier. However no proof to prove that the amount was withdrawn for discharging debt due to the supplier. Even if it amount to discharge of debt, the withdrawal if any amount during the CIRP without permission and knowledge of the IRP/RP is in violation of section 14 of

the Code.

18. In view of the matter discussed above it is certain that the directors of the CD not giving maximum assistance to see that their company is to be resolved with in the timeline. It is submitted by the RP that CD is an MSME, and nothing prevent them in submitting any viable resolution plans and that no such plan also forthcoming from them. As per section 19 of the Code the directors of the CD and any other person associated with the management of the CD shall extend all assistance and cooperation to the IRP as may be required by him in managing the affairs of the CD. Being satisfied that the directors and their associates are not inclined to extend cooperation to the IRP this is a fit case wherein directions as prayed for is to be issued. At this juncture the Ld. Counsel for the respondents prays for filing detailed reply to the applications. Since allegations are seriously raised against he directors as well as the Ld. Counsle/independent director,I am giving an opportunity to them to counter the allegations in writing as also prayed for by the Ld.Counsel. However, despite directions to submit brief defence, no written submissions were forthcoming on the side of the respondents. Accordingly, I am inclined to pass the following directions for the smooth and fast completion of the CIRP:

- I. The directors of the suspended board of the CD is directed to cooperate with the IRP and to provide all assistance to him to complete the CIRP In time.
- II. The auditors are hereby directed to complete the transaction audit immediately, preferably within two weeks from the date of receipt of this order by way of email. RP is directed to serve a copy to the auditors on receipt of the order by him.
- III. The directors of the suspended board of the CD are hereby directed to

refund the amount withdrawn less the amount if any paid to the alleged supplier as the cost of raw materials subject to the satisfaction of RP with sufficient proof of payment during the CIRP period, within two weeks of the receipt of this order. Failing which the IRP can move an application for contempt.

IV. The SP of the SHO whose jurisdiction the Hosur Plant is located is directed to issue necessary directions to the SHO of the local Police Station for necessary police protection for enabling the valuer/RP to inspect the Hosur plant.

V. The respondents are allowed to submit reply affidavit within two weeks or within one week of the date of lifting the lock down in the Tribunal by serving advance copy to the RP.

Registry is directed to serve email copy of the order forth with to the parties forthwith.

This IA is posted before the regular bench for hearing after lifting the lock down.

The DR of the NCLT, Guwahati Bench is directed to post the IA along with the CP after the lock down by giving notice to the parties.

(Jinan K.R.)
Member (J)

Signed on 20th May 2020