

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 573 of 2020

(Arising out of Impugned Order dated 08.06.2020 passed by the Adjudicating Authority/National Company Law Tribunal, Chandigarh Bench, Chandigarh in CA No. 354/2018 in CP (IB) No. 123/Chd/CHD/2017)

In the matter of

**Navneet Jain
S/o Shri Parveen Kumar Jain
R/o Jain Street, Samana
Patiala 147101**

....Appellant

Vs.

- 1. Manoj Sehgal,
Resolution Professional of Sarbat Cotfab Pvt. Ltd.,
C/o TRC Corporate Consulting Pvt. Ltd.,
Plot No.359, Udyog Vihar, Phase I,
Gurugram-122015. ... Respondent No. 1**
- 2. Tejinder Singh Kocher,
R/o 63/B, Model Town,
Patiala-147001 ... Respondent No. 2**
- 3. Bhupinder Singh Mann,
Suspended Director of
Sarbat Cotfab Private Ltd.,
(Corporate Debtor),
R/o Lutki Majra, Jor Majra,
P.O. Dhanetha, Tehsil Samana,
Distt. Patiala-147001 ... Respondent No. 3**
- 4. Phoenix ARC Private Limited,
Having its office at:-
Dani Corporate Park,
5th Floor, 158, CST Road,
Kalina, Santa Cruz (E),
Mumbai-400098. ... Respondent No. 4**

Present

For Appellant: Shri S.K. Jain, Advocate

**For Respondents: Ms.Varsha Banerjee, Adocate (R-1)
 Shri Mohak Sharma, Advocate (R-2)
 Shri Rajeev Gupta, Advocate (R-3)
 Shri Suresh DuttDobhal and
 Shri Nirmal Goenka, Advocates (R-4)**

Judgment

(Date: 01.06.2021)

{Per: Dr. Alok Srivastava, Member (T)}

1. This appeal has been preferred under Section 32 read with Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called IBC) by Appellant, who is aggrieved by the order dated 8.6.2020 (hereinafter called Impugned Order) passed by the National Company Law Tribunal, Chandigarh Bench (the Adjudicating Authority) in CA No.354/2018 in CP(IB) No. 123/Chd/CHD/2017 in the matter of Phoenix ARC Private Limited vis. Sarbat Cofab Pvt. Ltd. qua which Resolution Plan submitted by the Resolution Applicant (Respondent No. 2 in this appeal) was approved by the Adjudicating Authority.

2. During the consideration of this appeal, M/s Phoenix ARC Private Limited filed application IA No.1661/2020 for joining in this appeal as an intervener. This application was permitted by this

tribunal and Phoenix ARC Private Limited was allowed to join this appeal as Respondent No.4 vide order dated 24.7.2020.

3. The brief facts of the case as presented and argued by the parties is that the Resolution Applicant Tejinder Singh Kocher (Respondent No.2) and Bhupinder Singh Mann, suspended Director of the Corporate Debtor Sarbat Cotfab Pvt. Ltd. (Respondent No.3) were partners in two firms, viz. M/s Prabh Films and M/s Prabh International. It is claimed by the Appellant that during the Corporate Insolvency Resolution Process of the Corporate Debtor, Respondent No.2 (who is allegedly a related party of Respondent No. 3 as per Section 29A of the IBC) filed a resolution plan. The Appellant has claimed that being a related party of an erstwhile Director of the Corporate Debtor, Respondent No. 2 was ineligible to submit Resolution Plan for resolution of the Corporate Debtor as per Section 29A of the IBC.

4. The Appellant's claim is that he is a promoter/shareholder of the Corporate Debtor, holding 1,00,000 equity shares of Rs. 10 each, amounting to 1.05% of the total shareholding. He has also claimed that he effectively controls 6,70,000 shares of his friends, family and associates, which @ Rs.10/- per share amounts to 7.05% of the total shareholding, and therefore he is an interested

party in the resolution of the Corporate Debtor. He has stated that the CIRP was initiated against the Corporate Debtor as a result of admission of Section 7 application under IBC, filed by Phoenix ARC Pvt. Ltd. (Respondent No. 4) as Financial Creditor vide order dated 15.2.2018 of NCLT, Chandigarh Bench, and Manoj Sehgal was appointed as Internal Resolution Professional, who has subsequently been confirmed as Resolution Professional.

5. It has been claimed by Respondent No. 2 that Respondent No. 3 retired as Director from the aforementioned two firms, M/s Prabh Films and M/s Prabh International, vide two retirement deeds w.e.f. 31.10.2017. These retirement deeds were presented to the Resolution Professional (Respondent No.1) who on finding Respondent No.2 as eligible to file Resolution Plan submitted these retirement deeds before the Adjudicating Authority in CA No. 852 of 2019.

6. Upon invitation of Expressions of Interest, Respondent No. 2 submitted a Resolution Plan jointly with two other persons, which was taken into consideration by the Adjudicating Authority for approval in CA No. 354 of 2018. When the Appellant came to know that Respondent No.2, who has filed a Resolution Plan, and who is a business partner of Respondent No. 3 in two firms viz. M/s Prabh

Films and M/s Prabh International, he informed the Resolution Professional through e-mail dated 29.6.2019 about the relatedness of Respondents Nos. 2 & 3, and hence the ineligibility of Respondent no. 2 to file a resolution plan. When the Resolution Professional did not act on his e-mail, the Appellant filed CA No. 492 of 2019 before the Adjudicating Authority on 10.7.2019 agitating this issue. This application was dismissed vide order dated 9.10.2019 by the Adjudicating Authority.

7. The Appellant claims that he again sent an e-mail to the Resolution Professional on 21.9.2019 alongwith some documents showing the fraudulent activities of Respondent No. 3 in disposing off assets of the Corporate Debtor. When the Resolution Professional did not act on this information, the Appellant filed CA No. 787 of 2019 and CA No.788 of 2019 before the Adjudicating Authority on 24.9.2019 placing on record additional facts and information in the form of GST and Income Tax returns of two firms, M/s. Prabh Films and M/s. Prabh International, to show that Respondent No.2 and Respondent No.3 were still partners in the two aforementioned firms. The Adjudicating Authority dismissed both these applications (CA no. 787/2019 and CA no. 788/2019) with liberty given to the Applicant (Appellant) to file appeal in case he is unable to get favourable order in CA No. 492 of

2019. Upon being unsuccessful, the Appellant filed CA No. 850/2019 on 4.10.2019 before the Adjudicating Authority with additional information about the connection between Respondent No.2 and Respondent No. 3. In the meanwhile, as mentioned earlier, the Resolution Professional also filed CA No. 852/2019 placing before the Adjudicating Authority the record of retirement deeds to show that Respondent No.3 Bhupinder Singh Mann had retired from two aforesaid firms w.e.f. 31.10.2017.

8. In CA No. 850/2019, the Applicant Navneet Jain, who is shareholder of the Corporate Debtor, submitted information extracted from GST portal and Income Tax Returns pertaining to M/s. Prabh Films and M/s. Prabh International before the Adjudicating Authority to show the relationship between Respondent No.2 and Respondent No.3. The Adjudicating Authority vide order dated 25.2.2020 in CA No.850/2019 and CA No. 852/2019 relied on the retirement deeds submitted by Respondent No. 3 and signed by the continuing partner (Respondent No. 2) and retiring partner (Respondent No. 3) to dismiss the CA No. 850/2019. This was despite the fact that GST and Income Tax returns which were extracted from public portals and filed by the Applicant Navneet Jain were public documents and their authenticity was not disputed by the Respondent No.2.

9. The Appellant, thereafter, preferred appeal CA No.1168/2019 before this Tribunal, which was disposed off vide order dated 13.12.2019, whereby the Adjudicating Authority was directed to look into all documents submitted by the Appellant regarding ineligibility of Respondent No. 2 as Resolution Applicant and take decision in CA No. 354/2018 while considering the Resolution Plan for final approval. Consequent to this order of the Adjudicating Authority, the Adjudicating Authority again had an opportunity to look at the eligibility of Respondent No. 2 under Section 29A vis-a-vis the two retirement deeds and the GST and Income Tax returns. The Adjudicating Authority vide order dated 8.6.2020 in CA No. 354/2018 approved the Resolution Plan submitted by Tejinder Singh Kochar, inter alia, accepting the eligibility of the Resolution Applicant, Tejinder Singh Kochar under Section 29A of IBC.

10. In the oral arguments, the Ld. Counsel of Appellant has urged that it is the Adjudicating Authority's responsibility under the IBC to examine that the Resolution Plan complies with Sections 30(2) and 30(4) of the IBC, and therefore, infringement, if any, of Section 29-A of IBC is a matter to be looked into by the Adjudicating Authority.

11. The Learned Counsel for Respondent No.1 has claimed that his action has been in accordance with the retirement deeds, wherein Respondent No. 3 Bhupinder Singh Mann has shown his retirement from 31.10.2017 from both the firms, and therefore having no relationship with the Resolution Applicant Tejinder Singh Kochar. Therefore, he has not infringed on Section 29A of the IBC while submitting the resolution plan.

12. The Learned Counsel for Respondent No 2 objected to the Appellant filing latest Income Tax returns when the arguments were at final stage on 09.04.2021. We ignore this document of Income Tax Return for the Assessment Year 2020-21, which the Appellant proposed to file.

13. Presenting his arguments, the Learned Counsel for Respondent No. 2 has urged that the Appellant has raised question about the authenticity of the retirement deeds, thereby seeking an enquiry about their correctness, which is not in the purview of Section 29A IBC. He has stated that the Impugned Order dated 8.6.2020 in CA No. 492/2019 approving the Resolution Plan is appealable under Section 61(3) and the Appellant has not made out any case under this provision of the IBC. According to him, the question of eligibility of the Resolution Applicant was raised at an

earlier date which was adjudicated upon by the Adjudicating Authority, and since no appeal was preferred against this order, it has achieved finality. Therefore, the issue of eligibility of the Resolution Applicant cannot be raised now once the Resolution Plan has been approved.

14. The Learned Counsel for Respondent No.2 has pointed out the date of execution of partnership deeds (showing partnership of Respondent No. 2 and Respondent No.3 in the two firms viz. M/s. Prabh Films and M/s. Prabh International) the date of retirement from both the firms of Respondent No. 2 and the date of execution of the two retirement deeds. These are given in the table below:-

S.No.	Firm Name	Partnership Deed executed on	Date of retirement as per Retirement Deed	Date of execution of Retirement Deed
1.	Prabh Films	25/05/2017	31/10/2017	01/11/2017
2.	Prabh International	03/10/2016	31/10/2017	01/11/2017

He has also pointed out the following relevant dates:-

- (i) Resolution Plan submitted to Resolution Professional:
06.06.2018.
- (ii) Resolution Plan approved by COC: 14.08.2018.
- (iii) Resolution Plan approved by the Adjudicating Authority:
08.06.2020.

15. On the basis of the dates given above, the Learned Counsel for Respondent No. 2 has claimed that, as per the two retirement deeds, Respondent No. 3 had retired as partner in the two firms w.e.f. 31.10.2017. Hence, Respondent No. 2 was not a related party to Respondent No.3 on the date he submitted the Resolution Plan to the Resolution Professional on 06.06.2018. Furthermore, he has pleaded that he had enquired from the Resolution Professional about his eligibility as Resolution Applicant which was duly clarified by the Resolution Professional in his favour.

16. The Learned Counsel for Respondent No. 3 (Bhupinder Singh Mann) has reiterated that Respondent No. 3 retired as Director of both the firms w.e.f. 31.10.2017 and, therefore, the Respondent No. 2 was not connected party when the Resolution Plan was submitted.

17. The Learned Counsel for M/s. Phoenix ARC Pvt. Ltd. (Respondent No. 4), who was granted permission by this Tribunal to join the appeal as intervener, has claimed that the Appellant is trying to indirectly do what he has not been able to do directly - which is to challenge and reopen the order dated 25.2.2020 in CA 850/2019 passed by the Adjudicating Authority which had

achieved finality since it had not been appealed against. He has also stated that the assets of the Corporate Debtor were handed over to the Resolution Applicant and the approved Resolution Plan has been executed and many actions have been successfully implemented with regard to payment to stakeholders, shareholders, government departments and CIRP cost have been settled.

18. We have considered averments made in the Appeal, replies of the Respondents and the rejoinders of Appellant thereon, written submissions and the oral arguments advanced by the parties.

19. The main issue on which this Appeal rests is whether Respondent No.2 and Respondent No. 3 are related parties as defined under Section 29A of the IBC, and if that were so, was Respondent No.2 eligible to submit a Resolution Plan for the resolution of with regard to the Corporate Debtor?

20. It is noted that while the Resolution Plan was approved by the Committee of Creditors in its meeting held on 14.12.2019 and submitted for approval to the Adjudicating Authority, the Appellant sent communication to the Resolution Professional raising the issue of ineligibility of Respondent No. 2 to submit a Resolution Plan as he was related party to Respondent No.3, the suspended

Director of Corporate Debtor. This CA No. 850/2019 was dismissed by the Adjudicating Authority vide order dated 25.02.2020, whereupon the Appellant preferred appeal No. CA(AT)(Ins)1168/2019 before the NCLAT. The NCLAT disposed off this appeal vide order dated 13.12.2019 directing the Adjudicating Authority to look into the documents filed before the Adjudicating Authority regarding eligibility when considering the Resolution Plan for final approval in CA No. 354/2018. The Resolution Plan was approved vide order dated 8.6.2020 of the Adjudicating Authority in CA 354/2018. The eligibility of Tejinder Singh Kochar as Resolution Applicant was looked into and a final order was passed approving the Resolution Plan.

21. We find surprising that the Resolution Professional while filing CA No. 852/2019 did not give credence to the GST and Income Tax Returns and later the Adjudicating Authority vide order 25.2.2019 in 850/2019 chose to rely on private documents i.e. two retirement deeds, whose authenticity had been disputed by the Appellant and dismiss the said Application No. 850/2019. The applicant approached the NCLAT in appeal against this order but was not granted leave. Hence he could not file appeal. In the meanwhile, final order in CA No. 354/2018 dated 8.6.2020 came to be passed approving the Resolution Plan.

22. We accept the claim of the Appellant that the order of Adjudicating Authority in CA No. 850/2019 and 852/2019 could not be formally challenged before the NCLAT for want of necessary permission by the NCLAT and in the meantime the resolution plan was approved in CA No. 354/2018 vide order dated 08.06.2020. Further we find strength in the argument of the Appellant that the order in CA NO. 850/2019 has since got merged into the order of Adjudicating Authority dated 8.6.2020 approving the Resolution Plan on which he has come in appeal before us. Even otherwise in Appeal against approval of Resolution Plan, which opens grounds which are present in Section 61(3) of IBC, we do not wish to shut out Appellant on technicalities, in the interest of justice.

23. It is worth reiterating that the Appellant has placed on record, in CA NO. 850/2019, GST returns and Income Tax returns of both the companies, viz. M/s Prabh Films and M/s Prabh International, to show that the successful Resolution Applicant Tejinder Singh Kocher and the Suspended Director of the Corporate Debtor Bhupinder Singh Mann are related parties, and hence the Successful Resolution Applicant was not eligible under Section 29A of IBC to submit a Resolution Plan vis a vis the resolution of Corporate Debtor. He has contended that the Respondents have

relied upon the Retirement Deeds presented by Respondent No. 2 to show that Respondent No.3 had retired from two aforesaid firms w.e.f. 31.10.2017.

24. Respondent No. 1's claim that the retirement deeds should be accepted as Section 29A of IBC does not envisage any inquiry in the authenticity of retirement deeds is not sustainable because the retirement deeds have been, at the first instance, being disputed by the Appellant and the Appellant has placed documents in the form of GST and Income Tax returns which point towards the discrepancy in the retirement deeds. Moreover, none of the Respondents have disputed the GST and Income Tax returns, which are matters of public record. In the face of these documents the alleged retirement deeds appear suspect.

25. Now coming to the contents of the Income Tax Returns, it is seen that the Income Tax return for the Assessment Year 2018-19 filed by Tejinder Singh Kocher on behalf of M/s Prabh Films (attached at page 136 of the Appeal) include the name of Bhupinder Singh Mann as a partner of Prabh Films (pg. 139 of the Appeal). It is filed on 13.8.2018, much after 31.10.2017, the alleged date of retirement as claimed by Respondent No. 3. Similarly, the Income Tax return for the Assessment Year 2019-20 filed on behalf of M/s.

Prabh Films by Tejinder Singh Kocher on 29.8.2019 includes the name of Bhupinder Singh Mann as a partner (attached at pages 192-193 of the Appeal).

26. Further in the Income Tax return of M/s. Prabh International (the second firm) for Assessment Year 2018-19 filed by Tejinder Singh Kocher on 17.8.2018, Bhupinder Singh Mann is shown as a partner (attached at pages 249-294 of the Appeal). Also, in the Income Tax return for the Assessment Year 2019-20 filed on 20.09.2019, on behalf of Prabh International by Tejinder Singh Kocher (attached pages 295-352 of the appeal), Bhupinder Singh Mann is shown as a partner.

27. Looking at the GST Returns, we find that in the GST Returns filed on 24.6.2019 (attached on page 62 of the Appeal) of M/s. Prabh Films, Bhupinder Singh Mann is shown as a partner. Furthermore, in the GST Return for M/s. Prabh International filed on 26.6.2019 (attached at page 75 of the appeal) Bhupinder Singh Mann has been shown as a partner.

28. The retirement deeds show the date of retirement of Respondent No. 3 from the two firms w.e.f 31.10.2017. Even if we presume that on the date Respondent No. 2 submitted the

Resolution Plan to Resolution Professional i.e. on 06.06.2018, Respondent No. 3 was not a partner in the two firms, and became a partner again later. Some document should have been presented to show when Respondent No. 3 again became a partner. Such a document or evidence has not been presented. Hence, it would be logical to infer that the authenticity of retirement deeds is suspect in the face of continued relationship appearing from the Income Tax and GST returns.

29. Furthermore, a discrepancy in the age of Bhupinder Singh Mann observed in the partnership deed (which is shown as 43 years) and in the Retirement Deed (which is shown as 45 years) pertaining to M/s Prabh Films also strengthens suspicion as to the reliability of the retirement deed. A similar discrepancy has also been observed in Bhupinder Singh Mann's age shown in partnership deed and retirement deed pertaining to M/s Prabh International, wherein his age is shown as 42 years and 47 years respectively, while the difference between the dates of execution of these deeds is a little over one year. These discrepancies also make the authenticity of the two retirement deeds suspect.

30. The judgment of Hon'ble Supreme Court in **Arcelormittal India Private Limited V. Satish Kumar Gupta &Ors (2019) 2**

SCC I, which has been cited by the Respondent No. 2 does not help Respondent No. 2 in his case since the two retirement deeds are not found authentic and reliable.

31. In the light of the aforesaid discussion, we are convinced by the contention of the Appellant that Tejinder Singh Kocher (Respondent No. 2) and Bhupinder Singh Mann (Respondent No. 3) were connected parties as per Section 29A of IBC at the time the Resolution Plan was submitted by the Respondent No. 2. This leads to the obvious and inevitable conclusion that Tejinder Singh Kocher was not eligible to submit the Resolution Plan and hence the Resolution Plan so submitted and approved by the Adjudicating Authority was bad in law.

32. We pass the following Orders:-

- (A) The Impugned Order dated 08.06.2020 in CA No.354/2018 in CP(IB) No. 123/Chd/CHD/2017 approving the Resolution Plan is, therefore, set aside. The Resolution Plan is rejected as it was submitted by a person hit by Section 29A of IBC. All actions taken in implementation of the Resolution Plan which were approved by the order dated 08.06.2020 are declared null and void as the approved Resolution Plan

contravenes Section 30(2) of IBC. The matter is remitted back to Adjudicating Authority. The Adjudicating Authority is requested to pass orders of liquidation under Section 33 of IBC and further incidental orders in that context.

(B) Since the earlier Resolution Professional failed to examine Resolution Plan as required under Section 30(1) read with Section 30(2) and an ineligible person was supported in the face of documents to the contrary, he shall be replaced and another appropriate Resolution Professional shall be appointed as Liquidator under Section 34(4) of IBC.

(C) In the facts of the matter, Respondents No. 2 and 3 are saddled with costs Rs. 4 lakhs of this Appeal as follows:-

Each of Respondents No. 2 and 3 shall pay costs of Appeal Rs. 1 lakh to the Appellant (i.e. total Rs. 2 lakhs) and Rs. 1 lakh each (i.e. total Rs. 2 lakhs) to be deposited in the Prime Minister's Relief Fund within a month of this order. In case of default, the

Adjudicating Authority to take appropriate action for non-compliance and recovery.

(Justice A I S Cheema)
Officiating Chairperson

(Dr. Alok Srivastava)
Member(Technical)

New Delhi
1st June, 2021

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