

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT – VI

Item No.1
IA/1703/2023 IN IB-1089/PB/2018

In the matter of:

M/s. Tuf Metallurgical Pvt. Ltd.

...Financial Creditor

Versus

M/s. Albus India Ltd.

...Corporate Debtor

And in the matter of:

Sandeep Kumar Bhatt

Erstwhile Resolution Professional Albus India Ltd.

...Applicant

Order under Section 60(5) of IBC, 2016.

Order delivered on 14.06.2023

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

IA-1703/2023 stands disposed off.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI**

I.A. 1703/2023

IN

Company Petition No. (IB) – 1089/(PB)/2018

*Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law
Tribunal Rules, 2016.*

In the matter of:

M/s. Tuf Metallurgical Pvt. Ltd.

...Financial Creditor

Versus

M/s. Albus India Ltd.

...Corporate Debtor

And in the matter of:

Sandeep Kumar Bhatt

Erstwhile Resolution Professional Albus India Ltd.

83B, Pocket IV, Mayur Vihar-1

Delhi-110091

...Applicant

VERSUS

1. Gaurav Agrawal

S/o Arun Agrawal

R/o H. No 17, Recreation Road

Near Jain Temple, Choubey Colony

Raipur, Distt Raipur (CG)

Erstwhile Director of Albus India Ltd & Albus Conserves Ltd

...Respondent No. 1



2. Gautam Agrawal

S/o Arun Agrawal
R/o H. No 17, Recreation Road
Near Jain Temple, Choubey Colony
Raipur, Distt Raipur (CG)
Erstwhile Director of Albus India Ltd & Albus Conserves Ltd.
...Respondent No. 2

3. Gokul Agrawal

S/o Arun AgraWal
R/o H. No 17, Recreation Road
Near Jain Temple, Choubey Colony
Raipur, Distt Raipur (CG)
Erstwhile Director of Albus India Ltd & Albus Conserves Ltd.
...Respondent No.3

4. Vikas Jain

Director- Tuf Metallurgical Pvt. Ltd.
R/o LSC No 3, Sreshtha Vihar PO No 9237,
New Delhi- 110092
...Respondent No. 4

5. Central Bank of India

Through its Branch Manager
Civil Lines, Raipur (CG)
...Respondent No. 5

6. Station House Officer

Police Station Saraswati Nagar Raipur, Distt Raipur (CG)
...Respondent No. 6

7. Senior Superintendent of Police, Raipur

Raipur, Chhattigarh 492001
...Respondent No. 7

Order Pronounced on: 14.06.2023

Coram:

Shri. Bachu Venkat Balaram Das, Member (Judicial)

Shri. Rahul Bhatnagar, Member (Technical)


For the Applicant: Mr. Sandeep Kumar Bhatt

ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Application has been filed by the Applicant under Rule 11 of the National Company Law Tribunal Rules, 2016 praying for the following reliefs:

- a. Order the Respondent no. 6 and 7 to submit facts to this Tribunal for the FIR lodged against the Respondent no 4 and justify that why the copies of resolution plan, valuation reports, CoC minutes and other documents are required and how the police are concerned in CIRP matter and if deem fit, direct the erstwhile RP accordingly.
- b. Direct the Respondent no. 6 and 7 not to harass, issue notices to the applicant, valuers and the Central Bank of India being CoC member for FIR lodged against the Respondent no. 4 and drop proceedings against the applicant, valuers and the



Central Bank of India being CoC member in terms of provisions of the IB Code, 2016.

- c. Direct the respondent no 1 to 3 who have made the erstwhile RP, valuers and Central Bank of India being CoC member as Respondents deliberately in a petition filed against Respondent no. 4 at the Hon'ble High Court, Bilaspur to bear the cost of Rs 5.00 Lac plus GST.
- d. Pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice and equity.

2. The brief facts as averred by the Applicant for filing the present Application are as follows:

- i. That an application filed by the Financial Creditor, being Respondent No. 4 herein under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted by this Tribunal vide order dated 02.01.2019 and the same was communicated to the IRP on dated 07.01.2019 by mail in the case No. CP No. (IB) 1089/ (ND)/ 2018 wherein Shri Sandeep Kumar Bhatt, the Applicant was appointed as an Interim Resolution Professional, who was directed to take necessary actions in accordance with the relevant provisions of the IB Code, 2016.



- ii. That the said Interim Resolution Professional was confirmed and then subsequently appointed as the Resolution Professional (RP) on 18.02.2019.
- iii. That the resolution plan was approved in the 4th CoC meeting on 08.08.2019 by 100% votes and the same was filed for approval in C.A. No 34/ND/2019 on 22.08.2019 and this Tribunal vide order dated 05.11.2019 was pleased to approve the resolution plan.
- iv. That the suspended director(s) being the respondent no 1 to 3 never raised any objections to the resolution plan either in the meeting of the CoC or before this Tribunal.
- v. That the Respondent no. 1 to 3 being suspended directors of the CD never preferred any appeal to the Hon'ble NCLAT against the order of this Tribunal approving the resolution plan and never filed any compliant or objection against the act of the erstwhile RP, Valuers and the Central Bank of India, being CoC member, before any forum. After keeping a hiatus of over three years, the Respondent no. 1 to 3 filed FIR with SHO, Police Station Saraswati Nagar Raipur, Distt Raipur (CG) being Respondent no 6 against the Respondent no - 4- being the



resolution applicant and put frivolous allegations against the erstwhile RP, valuers and the Central Bank of India being CoC member.

- vi. That the Local Police is harassing the erstwhile RP, valuers, successful resolution applicant (R-4) and the Central Bank of India being CoC member (R-5) in connivance with the Respondent no. 1-3 and are issuing unwarranted notices demanding several information/documents related to the CIRP process, which is the domain of the IBBI and this Tribunal only.
- vii. That with a view to support the investigation, the Erstwhile RP has already provided the valuation Reports and other required information on 14.11.2022. The police have no authority or powers to investigate the CIRP proceedings and actions taken by different stakeholders in the process. It is misuse of power and if allowed may derail the intent of IB Code, 2016.
- viii. That with bad intent and by submitting all wrong facts, the Respondent no 1-3 being erstwhile directors of the CD had filed a petition bearing IA no. 3 to the Hon'ble High Court at Bilaspur, Chhattisgarh making the Erstwhile RP, valuers and the Central Bank of India being CoC member as Respondents



and notices have been issued. Interestingly, such petition has been filed by Albus Conserves Ltd. of which the erstwhile RP, valuers, successful resolution applicant (R-4) and the Central Bank of India being the CoC member (R-5) have no connection but made as a party to such petition.

ix. That the IB Code, 2016 supersedes all Laws which are inconsistent with the provisions of the IB Code, 2016 as per Section 238 of the IB Code, 2016. Further, the erstwhile RP and other professionals are granted complete immunity u/s 233 of the IB Code, 2016.

3. The present I.A has been filed by the Applicant seeking issuance to necessary directions to Respondent No. 1-3 & 6-7. The Respondent No. 1-3 have filed an FIR with Respondent No. 6 against Respondent No. 4 wherein serious allegations have been made against the Applicant. The Respondent no. 6 has issued notices against the Applicant seeking information related to the CIRP Process. The Applicant has alleged that the police have no authority or powers to investigate the CIRP proceedings and actions taken by different stakeholders in the process.



4. The Applicant has relied on Section 233 of the IBC, 2016 which is reproduced herein below:

233. Protection of action taken in good faith. - No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government, or the Chairperson, Member, officer or other employee of the Board or an insolvency professional or liquidator for anything which is in done or intended to be done in good faith under this Code or the rules or regulations made thereunder.

5. We have heard the parties and gone through the submissions of the Applicant. Section 233 of the IBC, 2016 grants immunity to the Resolution Professional for actions taken in good faith. Further, jurisdiction with respect to offences committed under the IBC, 2016 is with Special Courts established in terms of Section 236 of the IBC, 2016. A proper procedure is laid down under the Code for filing complaint against the Resolution Professional. Chapter VI of the Code dealing with Inspection and Investigation lays down the proper procedure to file a complaint against the Resolution Professional. Section 217 clearly provides that any person aggrieved by the functioning of the Resolution Professional



may file a complaint to the Board (IBBI). The IBBI is empowered to investigate such complaints. In the instant matter, the Respondent No. 1-3 failed to file any such complaint with IBBI or even with this Adjudicating Authority and directly approached the police. The NCLT, Chennai Bench in the matter of *Subrata Monindranath Maity (Bhatia Coke and Energy Ltd) Vs. Surender Singh Bhatia & 4 Ors IA/05/2021 in IBA/307/2019* held as under:

“If there are any irregularities on the part of the RP or his team, the erstwhile could have filed necessary applications before this Tribunal and also could have registered complaints with IBBI. No application has been before this Tribunal. For lawful discharge of duty as RP, accelerating criminal charges and using police to register complaint of criminal nature is not appropriate.

If every Resolution Professional is bombarded with criminal prosecution and police investigation, then no RP shall be able to conduct CIRP without fear and favour. Since the entire allegation in FIR relates to CIRP under IBC by RP, this Tribunal ought to protect the RP and his team. The RP is to take out necessary actions to protect and safeguard including quash of F.I.R. concerned courts.”



6. In light of the above, we direct the Respondent No. 6 & 7 to not take any coercive action against the Applicant. Further, the Respondent No. 1-3 are directed to approach the IBBI for any complaints against the Applicant. I.A. 1703/2023 is accordingly disposed off.

File be consigned to records.

Let a copy of order be served to parties.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)