

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA No.319/2023 IN CP (IB) No. 25/ALD/2020

IN THE MATTER OF:

(An Application under Section 65 of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

JK Jute Mills Mazdoor Morcha
Through its General Secretary Shri Raju Prasad

.....Applicant

AND IN THE MATTER OF:

M/s. Kaledonia Jute and Fibres Private Limited
Through its Director/Managing Director

..Financial Creditor

VERSUS

M/s. Axis Nirman and Industries Limited
Through its Director/Managing Director

..Corporate Debtor

Order pronounced on 22.08.2023

CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

Appearances (via Video Conference)

Sh. Shubham Agarwal alongwith Sh. Ankit Kohli & Sh. Sagar
Mehrotra, Advts. : For the Applicant in IA No.319/2023.

ORDER

1. The present IA has been filed under Section 65 of the Insolvency and Bankruptcy Code, 2016, (I & B Code, 2016) by JK Jute Mills Mazdoor Morcha through its General Secretary Shri Raju Prasad as Applicant. The Applicant herein is seeking the following reliefs:-

(a) declare the initiation of CIRP in CP No. 25/ALD/2020 as fraudulent and all order(s) passed in the proceedings are null and void;

(b) impose penalty upon Govind Sarda and Aditya Sarda upto a sum of Rupees one crore for initiating CIRP with fraudulent and malicious intention;

(c) Direct initiation of appropriate action against the Resolution Professional for collusion in the fraudulent CIRP; and

(d) pass any other/ further order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the present case

2. The facts of the case in brief are as under:

i. The Hon'ble Allahabad High Court vide its order dated 10.03.2016 directed winding up of the Corporate Debtor, i.e. M/s Axis Nirman and Industries Limited (hereinafter

referred as “ANIL”). The Corporate Debtor filed application seeking recall of order dated 10.03.2016 wherein the Hon’ble High Court directed stay on winding up proceedings but directed official liquidator to prepare statement of affairs.

- ii. Meanwhile the Financial Creditor namely, M/s. Kaledonia Jute and Fibres Private Limited (KJFPL) filed an application under section 7 of the I & B Code, 2016 bearing no. CP (IB) 25/ALD/2020 before this Adjudicating Authority. The Applicant alleges that Financial Creditor and Corporate Debtor have acted in collusion.
- iii. The Financial Creditor approached the Hon’ble Allahabad High Court seeking transfer of winding up proceedings from the High Court to this Adjudicating Authority. The Hon’ble High Court refused to transfer the proceedings vide order dated 24.02.2020. Subsequently, the Financial Creditor approached the Supreme Court challenging the High Court order and the Supreme Court transferred the winding up proceeding from High Court to NCLT, Allahabad Bench.

- iv. Thus, according to the applicant, the Financial Creditor saved Corporate Debtor from winding up proceedings. Placing reliance on the Supreme Court's order, this Adjudicating Authority admitted Section 7 petition vide order dated 27.08.2021. Claims were invited by IRP and the Applicant alleges that the IRP was also in collusion with the Financial Creditor and thus, he included Financial Creditor in CoC without verification of his claim.
- v. Settlement took place between Financial Creditor and Corporate Debtor and the financial creditor filed application for withdrawal of CIRP vide IA No. 368 of 2021. This Adjudicating Authority vide order dated 03.01.2022 approved withdrawal of CIRP.
3. In the application under consideration, it has been contended by the applicant that there has been fraudulent initiation of CIRP and that a father-son duo own the Financial Creditor and Corporate debtor respectively. There was no financial disbursement and the real motive behind the CIRP was to defeat winding up proceedings before Allahabad High Court. Since winding up proceedings were transferred from Allahabad High Court to NCLT Allahabad Bench, the Official

Liquidator couldn't investigate into the affairs of the Company as it would have had winding up proceedings not been transferred from Hon'ble Allahabad High Court to NCLT.

4. We have considered the submissions made before us by Applicant and the arguments put up by its Ld. Counsels. We are of the considered view that the admission of CIRP and the subsequent withdrawal of the same was done by this Adjudicating Authority after appreciation of facts presented before it. The withdrawal of the CIRP was ordered by this Tribunal vide order dated 3rd January, 2022 filed vide IA No. 368/2021. The present application has been moved now after one and a half year without there being any justification for such an inordinate delay. There is also apparently no averment in the application as to why and how they were prevented from moving the application during the time when the matter had remained pending from the period when the petition under Section 7 was filed and thereafter eventually admitted vide order dated 27th August, 2021. The application therefore lacks bona-fide and is an abuse of process of law. Moreover, the applicant also has failed to point out in what manner they have locus to file and maintain the present

application. The same is therefore dismissed with a cost of Rs.15,000/- to be paid in the Prime Minister National Relief Fund.

5. Ordered accordingly and hence, IA 319/2023 is hereby disposed of in the above terms.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Aditi Kharbanda
(LRA)