



NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT VI

Item No. 6.

IA1879(MB)2023 In C.P. (IB)/ 1306(MB)2022

CORAM:

SHRI SANJIV DUTT,
MEMBER (TECHNICAL)

MS. LAKSHMI GURUNG
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **14.09.2023**

NAME OF THE PARTIES : **Sri Girija Prasanna Cotton Mills Ltd**

Vs

DDK Infratech Private Limited

Section 60(5) r/w Section 66, 7 of IBC, 2016

ORDER

CS Ashish Lalpuria appeared for the Financial Creditor. Adv. Mily Ghosal a/w Adv. Sophia Hussain appeared for the Corporate Debtor.

IA 1879/2023 :-

1. The present IA has been filed by the Corporate Debtor under section 60(5) r/w section 66 of IBC, 2016 with the request to dismiss the CP being bad in law. Counsel for the Applicant submits that Financial Creditor/ Respondent No. 4 i.e. Nanda Paike Kumari had entered into a Settlement Agreement with a sister concern of the Corporate Debtor i.e. Siddharth Enterprises and her claim had been settled. It is submitted that Respondent No.4 (hereinafter referred to as "R-4") had suppressed the said agreement from the Tribunal and was guilty of playing perjury on the Tribunal besides intending to invoke CIRP against the Corporate Debtor with malicious intention.



2. The applicant submits that R-4 had made investment of Rs.50,00,000/- in NCDs of the Corporate Debtor. R-4 residing in Bengaluru had approached the local Police station on 14.06.2019 and sought for registering of FIR against the Corporate Debtor and accordingly the accounts of the Corporate Debtor were frozen. R-4 and the Corporate Debtor had entered and executed a Settlement Agreement dated 17.11.2021 with one of the sister concerns of the Corporate Debtor i.e. M/s Siddharth Enterprises.

3. Accordingly, in the said settlement agreement, it was inter-alia agreed between the parties that the payments shall be made in the below mentioned manner :-
 - a. First Installment amounting to Rs. 12,56,164/- by way of cheque dated 15.07.2022 bearing cheque no. 000039.
 - b. Second Installment amounting to Rs. 12,56,164/- by way of cheque dated 15.08.2022 bearing cheque no. 000042.
 - c. Third Installment amounting to Rs. 12,56,164/- by way of cheque dated 15.09.2022 bearing cheque no. 000035.

4. In accordance with the said agreement, R-4 had received a further amount of Rs.12,56,164/- by way of cheque bearing no. 000039 dated 15.07.2022 which was duly received and acknowledged by her. Accordingly, the applicant submits that R-4 had in fact given up her rights against the Corporate Debtor and Siddharth Enterprises had subrogated instead of the Corporate Debtor. Thus, it is submitted that R-4 has no rights against the Corporate Debtor and any alleged breach of payment by the Corporate Debtor should in fact be agitated against Siddharth Enterprises.



5. Heard the parties and perused the records. It is seen from the averments in C.P. 1306/2022 filed by the Financial Creditor that the factum of police complaint lodged by R-4 at Bengaluru against the Corporate Debtor as well as the payments subsequently received by R-4 towards the Principal amount of NCDs has already been mentioned therein. It is also noticed that R-4 had duly accounted for such payments received by her in the computation of outstanding amount mentioned in the main Company Petition. Thus, the allegation of perjury on the part of R-4 is found to be not sustainable. The applicant has also not been able to demonstrate as to how the filing of the present application is malicious under section 60(5).
6. In view of the above, the present IA lacks merit and is **dismissed** and **disposed of**.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
LAKSHMI GURUNG
MEMBER (JUDICIAL)

//Manish//