NATIONAL COMPANY LAW TRIBUNAL,
BENCH-1 HYDERABAD

IA (IBC) 1492/2022

in

Company Petition (IB) No. 225/7/HDB/2021

Application filed under Section 60 (5) read with Rule 11 of NCLT Rules, 2016

In the matter of **Hindustan Magnesium Products Private Limited**

Between

Bala Anand Jeldi
Promoter & Chairman cum Managing Director
B3/10310, 8121 East, 106th street
Fishers, Indiana-46037 …Applicant

VS

Shri V. Shankar
Resolution Professional for
Hindustan Magnesium Products Private Limited
303, Block-A, Legend Commercial Complex
3-4-770 & 136, Above Keshav Medicals
Barkatpura, Hyderabad
Telangana 500027 …1st Respondent

K. Venkata Ratna Prasad
H. No. 50-52-12/7
NE Layout, Near Shirdi Sai Temple
Seethammadhara, Ward No. 9
Vishakapatnam (Urban)
P & T Colony (VM)
Vishakapatnam Andhra Pradesh

Email: konudulaprasad@gmail.com …2nd Respondent

Date of Order: 17.02.2023

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Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri. Charan Singh, Hon'ble Member (Technical)

Parties/ Counsels present:

For the Applicant: Shri Y. Suryanarayana, Advocate assisted by Shri M. Vishwaraj, Advocate

For the Respondent: Shri S. Ravi, Senior Advocate for Resolution Professional
Shri Santosh Jadhav, Advocate for Successful Resolution Applicant

PER: BENCH

ORDER

1. This is an Application filed by the Applicant who is the Promoter, Director and Shareholder of M/s Hindustan Magnesium Products Private Limited/Corporate Debtor under section 60(5) of Insolvency and Bankruptcy Code, 2013, challenging the Clause 6(r) of the Resolution Plan submitted by Shri Konudula Venkata Ratna Prasad/Respondent No.2 herein.

2. The gist of the application in brief:-

2.1 This Tribunal admitted the Company Petition filed by Respondent No.2 herein under Section 7 of IBC vide order dated 19.04.2022 and Shri V. Shankar was appointed as Interim Resolution Professional.

2.2 In the 5th Committee of Creditors (COC) Meeting held on 21.09.2022, the COC had approved the resolution plan submitted by Respondent No.2 herein. It is further contended that the Resolution Professional failed to provide the Resolution Plan to the Applicant along with the notice.

2.3 It is contended that the Resolution Applicant incorporated clause 6® in the Resolution Plan without any basis as the Corporate Debtor has not developed any technical know-how relating to manufacturing of Aluminium and Magnesium Alloy at any point of time and no intellectual property Right was registered or assigned in the name of the Corporate Debtor in connection with manufacturing of Aluminum and Magnesium. Clause 6 ® of the Resolution Plan is as follows:-

> "HMPPL over the years has developed the technical know how and IP related to manufacturing of Alumium and Magnesium Alloys and components. Any IP and technology developed or assigned to HMPPL shall continue to be the right and

> ownership of HMPPL. I future, the suspended directors of HMPPL shall have no right to claim the IP that was developed or assigned to HMPPL and will have no right to object the operations of design and manufacturing of magnesium and aluminium alloys/components."

2.4 It is also contended that nowhere in the Information Memorandum or Audited Financial Statements indicate about the Corporate Debtor owning Intellectual Property right vis-à-vis manufacturing of Aluminum and Magnesium Alloy and allege that the clause was incorporate for acquiring other properties other than the properties owned by the Corporate Debtor.

2.5 It is further alleged that the Resolution Applicant cannot claim any right or title or any type of interest over the property which does not belong to the Corporate Debtor. As such Clause 6® of the Resolution Plan is illegal and needs to be severed.

2.6. It if further alleged that the Respondent No.2 who is the financial creditor having 76.48% of voting percentage in the CoC has submitted the Resolution Plan according to his own convenience by incorporating clauses which are illegal and detrimental to the interest of the other stakeholders. Thus submitting, the Applicant sought to declare clause 6 ® of the Resolution Plan as illegal and not in accordance with the provisions of Insolvency & Bankruptcy Code, 2016 and Information Memorandum.

3. Respondent No.1 has filed Counter, inter-alia, contending as under:-

3.1 That the Notary Attorney executed in USA (Indiana State) sans signature and stamp of the Notary Attorney.

3.2 In response to the allegation of the Applicant that Information Memorandum does not contain any reference to the Intellectual Property Right (IPR) in favour of the Corporate Debtor is concerned, the Resolution Professional submits that the objection of the Applicant is imaginary, unsustainable without any basis as Clause 6® of the Resolution Plan only states about the Technology and IP developed, if any, relating to the business of the Corporate Debtor, shall be owned and belong to the Corporate Debtor as it is a standard statement made relating to the technology and IPR.

3.3 The Resolution Professional submits that the resolution plan was approved by the CoC in its 5th CoC Meeting held on 21.09.2022 with 98.11% in favour of it. The Resolution Professional further allege that the Applicant has not attended the other four CoC meetings, though proper notice was given. The minutes of the CoC meetings were also circulated to all the members. Thus submitting, the Resolution Professional prayed the Tribunal to dismiss the Application.

4. Respondent No.2 has filed counter, inter-alia, contending as follows:-

4.1 That the instant application executed in USA do not contain signature and stamp of the Notary Attorney.

4.2 That pursuant to execution of Subscription and Shareholders Agreement dated 26.12.2018, the 2nd Respondent invested an amount of Rs. 7,00,00,000/- in the Corporate Debtor, out of which Rs. 5,00,00,000/- is for subscribing share capital of the Company and the remaining amount of Rs. 2,00,00,000/- as unsecured loan in the Company.

4.3 As per the said Agreement, the allotment of shares to be made within 15 days of the shareholders agreement i.e. on or before 01.01.2019 for 32% shareholding in the Corporate Debtor. However, the Applicant herein failed to allot shares to the 2nd Respondent.

4.4 The 2nd Respondent gained knowledge through MCA portal that through a resolution dated 23.03.2019, the Corporate Debtor through its Managing Director has cancelled resolution dated 04.01.2019 (under which allotment of shares to 2nd Respondent was made), on the ground that the Applicant has entered into a promissory note of debt with 2nd Respondent and the amount has been transferred in favour the Applicant by allegedly forging the signature of the Applicant. Subsequently, the Applicant got the forensic examination of the signature on the forged promissory note done and the forensic lab in its report indicated that the signature is not valid.

4.5 It is further alleged that the Applicant who is the MD of the Corporate Debtor left India immediately after the Company was put into CIRP. It is stated that the Applicant has only attended the 1st CoC Meeting and was absent in all the other CoC meetings even after receipt of notice, despite that the copy of the Resolution Plan was furnished to the Applicant on the direction of this Tribunal.

4.6 It is stated that clause 6 ® of the Resolution Plan is only a standard statement relating to its business and the objection raised is uncalled for and imaginary, unsustainable and sans merit. Hence, prayed the Tribunal to dismiss the application.

5. In the light of contest aforementioned, the point that emerges for our consideration is:

Whether Clause 6(r) of the Resolution plan can be struck off on the grounds urged in the Application?

6. We have heard Shri Y. Suryanarayana, Ld. Counsel for the Applicant and Shri S. Ravi, Ld. Senior Counsel and Shri Santosh Jadav for Respondents.

Point:

Whether Clause 6(r) of the Resolution plan can be struck off on the grounds urged in the Application?

7. According to the Ld. Counsel for the Applicant, clause 6(r) of the Resolution Plan voted by the CoC with requisite majority, needs to be struck down, mainly on the ground that the Information Memorandum which is supposed to contain the assets and liabilities including contingent liabilities of the Corporate Debtor, did not contain the ‘technical know-how and IP’ related to manufacturing of Aluminium and Magnesium Alloys and components, which was duly developed by the Applicant and exclusively belongs to the Applicant, as such, the same cannot be included in the Resolution Plan.

8. However, the submission of the Ld. Counsel was strongly denied by the Resolution Professional, inter-alia, on the ground that the Applicant failed to produce any piece of evidence to show that the technical know-how and IP relating to manufacturing of Aluminium and Magnesium Alloys and components, referred in Clause 6 ® of the Resolution Plan was developed exclusively by the Applicant and belongs to him.

9. Nextly, it is stated that Clause 6 (r) of the Resolution Plan only states about the technology and IP relating to the business of the Corporate Debtor, shall be owed and belong to the Corporate Debtor, as such none including the Applicant can have any objection for Clause 6(r) in the resolution plan which is a standard clause relating to technology and IP.

10. In the light of the submissions as afore-mentioned, we feel it useful to refer to Clause 6 (r) of the Resolution Plan which is as under:-

> *"HMPPL over the years has developed the technical know how and IP related to manufacturing of Alumium and Magnesium Alloys and components. Any IP and technology developed or assigned to HMPPL shall continue to be the right and ownership of HMPPL. I future, the suspended directors of HMPPL shall have no right to claim the IP that was developed or assigned to HMPPL and will have no right to object the operations of design and manufacturing of magnesium and aluminium alloys/components."*

11. A bare perusal of the clause categorically and unambiguously states that over the years HMPPL/Corporate Debtor, has developed the technical know-how and IP related to manufacturing of Aluminium and Magnesium Alloys and components and in <u>future the suspended Directors of HMPPL shall have no right to claim the know-how and IP that was developed or assigned to HMPPL.</u>

12. Therefore, it is overwhelmingly clear that Clause 6(r) specifically refers to <u>technical know-how and IP that was developed by the Corporate Debtor and not to any technical know-how and IP, developed if any by any individuals</u>. So much so, Clause 6 (r) of the Resolution Plan being in respect of the technical know-how and IP related to manufacturing of Aluminium and Magnesium Alloys and components <u>by the Corporate Debtor</u>, the Applicant's allegation that, under clause 6r) of the resolution plan, the so called technical know-how and IP related to manufacturing of Aluminium and Magnesium Alloys and components allegedly developed by the Applicant will be transferred to Successful Resolution Applicant, is thoroughly misconceived and unsustainable under law. Moreover, as already stated no piece of document has been filed by the Applicant in support of his claim that the technical know-how and IP

related to manufacturing of Aluminium and Magnesium Alloys and components, referred in clause 6 (r) was developed by the Applicant.

13. Therefore, the Applicant being thoroughly misconceived and is liable to the dismissed. Accordingly the IA is dismissed, no costs.

SD/- SD/-

(Charan Singh) (Dr. Venkata Ramakrishna Badarinath Nandula)
Member (Technical) Member (Judicial)

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