

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 10.01.2022 AT 10.30 AM

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.159/10/AMR/2019	IA No.107/2020	10 of IBC	NITHIN PROTEINS PVT LTD

Counsel for Petitioner(s):

Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA No.107/2020 is dismissed, vide separate orders.

Handwritten signature in green ink

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT HYDERABAD**

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**IA No. 107/2020
IN
CP (IB) No. 159/10/AMR/2019**

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

**In the matter of
M/s. NITHIN PROTEINS PRIVATE LIMITED**

Between:

Bank of India,
Rep by its Zonal Manager and Dy.General Manager,
Tirupathi Branch,
18-1-24/C, Vaishnavi Towers, K T Road,
Tirupathi, Chittoor District, A.P. - 517501.

... **Applicant/ Committee of Creditor**

And

1. M/s.Nithin Proteins Pvt. Ltd.,
18-3-60/C, Road No.II, Sri Hari Colony,
Tirupathi – 517501, Chittoor District, A.P.
Rep by R.P Mr.Pavan Kankani,
C/o.P.K.Associates, F-45, 5-9-1121,
Agarwal Chambers, King Koti,
Hyderabad – 500001.
2. Mr.P.Sudhir Reddy,
R/o.Yarrathivaripally Village,
Sadum Mandal, Chittoor District.
3. Mr.T.Sahith Reddy,
S/o.Siva Sankar Reddy,
R/o.Nutanakalva Village,
K.V.Palle Mandal, Chittoor District.

... **Respondents**

Date of Pronouncement of Order: 10.01.2021

CORAM:

Justice Telaprolu Rajani, Member Judicial

7/10/20

Appearance:

For Applicant : Mr. M.Sethu Madhava Rao, Advocate
For Respondent No.1 : Mr.Pavan Kankani, Erstwhile RP
For Respondent Nos.2&3: Mr.V.K.Sajith, Advocate

Per: Justice Telaprolu Rajani, Member Judicial

ORDER

1. This is an Application filed by the Bank of India, as the sole member of the Committee of Creditors (CoC) constituted by the erstwhile Interim Resolution Professional (IRP) against the Corporate Debtor i.e., M/s. Nithin Proteins Private Limited represented by the erstwhile IRP Mr.Pavan Kankani and Respondent No.2 and Respondent No.3 who have submitted their claims during the period in which Mr.Pavan Kankani was the IRP. Later Mr.Pavan Kankani was replaced by one Naga Bhushan Bhagawati by virtue of the orders of the NCLAT in Company Appeal (AT) (Ins) No.501/2020. After the said replacement the voting share of the Applicant was restored to 100%. But the grievance of the Applicant expressed in this Application is against the acts of the erstwhile IRP in admitting the claims of the Respondent No.2 and Respondent No.3 and consequently reducing the voting share of the Applicant Bank proportionately.
2. The reliefs sought for are 3 in number, the first being to declare the voting share of 44.16% allotted to Respondent No.2 and 30.73% allotted to Respondent No.3 as arbitrary and illegal. The second relief sought for is to declare all the costs and expenses incurred under the CIRP till date to be borne by the Corporate Debtor and not to include the same in the CIRP, cost as the CP filed by the Corporate Debtor is a gross abuse of process of law.

The third relief sought for is to impose Rs.1 Crore on the IRP Mr.Pavan Kankani, Corporate Debtor and Respondent Nos.2 &3 for abusing the process of law.

3. The first relief sought for was given up as the voting share of the Applicant was restored to 100% and the counsel does not press upon the said relief. As regards the other two reliefs, the allegations are that the erstwhile IRP admitted the claims with proof of claim by Respondent Nos.2 &3, beyond the limitation period of 90 days from the date of commencement of Insolvency Resolution Process.
4. According to the averments in the application, the CP was admitted on 15.11.2019 as per the minutes of the 4th CoC and the claims with proof can be received only within 90 days as per Regulation 12 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. It is also alleged that there is no whisper in the CP, financial statements as on 31.03.2019 about the alleged claim of Respondent Nos.2 & 3 and same was not routed through the Bank Accounts maintained by the Respondent with the Applicant. Hence it is alleged that the action of the IRP admitting the claims is tainted with malafides and is done with a sole intention to deprive the sole Secured Financial Creditor its 100% voting rights. It is also alleged that the Corporate Debtor was classified as NPA with effect from 30.06.2016 and in that circumstance, lending money by Respondent Nos.2 & 3 is strange. It is also alleged that no charge of Respondent Nos. 2&3 on the assets of the Corporate Debtor is registered with Registrar of Companies (RoC) under Section 78 of the Companies Act, 2013.

7/10/20

5. Respondent Nos.2 & 3 lent money, though as per Balance Sheet as on 31.03.2019 of the Corporate Debtor shows, that the net worth of the Corporate Debtor is negative.
6. The Special Resolution as required by Section 180(c) of the Companies Act, 2013 for borrowing money is not passed. The documents sought for by the Applicant were not furnished by the IRP in violation of Section 21 (9) & (10).
7. Mr.V.K.Sajith, is the counsel for the Corporate Debtor, he also represented Respondent Nos.2 & 3 in the 4th CoC meeting dated 15.03.2020 and the RP has been acting as per the directions of said Mr.V.K.Sajith.
8. In order to stall the proceedings initiated by the Applicant the Corporate Debtor in collusion with the RP filed the CP under Section 10 of IBC. Hence this application seeking the above mentioned reliefs.
9. Though Respondent No.1 is the Corporate Debtor represented by the erstwhile IRP, the present RP Mr.Naga Bhushan Bhagawati filed his reply stating that he has restored 100% voting share of the Applicant hence the first relief sought for become infructuous. As regards the other two prayers of the Applicant he undertakes to abide by the directions of the Tribunal.
10. Respondent No.2 & 3 filed its counter denying the allegations made in the application and contending that the IRP cannot be replaced after the first meeting of the COC as per Section 22 of IBC. This issue has been resolved by the NCLAT in Company Appeal (AT) (Ins) No.501/2020. As per Section 18 & 25 of the

IBC, 2016, the duty of the IRP is only to collate all claims and they do not cast a duty upon the IRP to verify and admit or reject the claims. The duty to verify the claims by the IRP is provided under Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016.

11. The Respondents are not aware about the communications made by the Applicant through emails seeking to provide documents submitted by these Respondents. Moreover, there is no provision in the IBC giving power to the IRP to provide those documents.
12. The Respondents came to know that the Corporate Debtor is classified as NPA by the Applicant Bank on 30.06.2016, but nowhere these Respondents stated that the claim of this Respondents is after the Applicant Bank declared the account of the Corporate Debtor as NPA. As regards the allegation that no charge on the assets of the Corporate Debtor was created by Respondent Nos.2 &3 with RoC, it is stated that every claim need not be registered with RoC. Only the debt which includes the property of the Company made as security has to be registered with RoC as a charge. The relevant provision Section 78 is also extracted which is as under:

“Section 78:

where a Company fails to register the charge within the period of thirty days referred to in sub-section (1) of Section 77, without prejudice to its liability in respect of any offence under this chapter, the person in whose favour the charge is created may apply to the Registrar for registration of the charge along with the

instrument created for the charge, within such time and in such form and manner as may be prescribed and the Registrar may, on such application, within a period of fourteen days after giving notice to the Company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of such fees, as may be prescribed:

Provided that where registration is affected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge.

Section 3 (4) of IBC, 2016 “charge” means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage;

Section 3(6) of IBC, 2016 “claim” means-

- (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;
- (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured,

unmatured, disputed, undisputed, secured or unsecured;

Section 3 (11) of IBC, 2016 “debt” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

Section 3(12) of IBC, 2016 “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;

Section 5(7) of IBC, 2016 “financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

Section 5(8) of IBC, 2016 “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian

Accounting Standards or such other accounting standards as may be prescribed;

- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;*
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.”*

13. Respondent No.1 i.e., erstwhile IRP keeping in view the above provisions and its supported definitions admitted the claims of these Respondents. *As per Section 3 (13) of IBC, 2016 financial information means- in relation to a person means one or more of the following categories of information, namely:—*

- (a) records of the debt of the person;*
- (b) records of liabilities when the person is solvent;*

- (c) records of assets of person over which security interest has been created;
- (d) records, if any, of instances of default by the person against any debt;
- (e) records of the balance sheet and cash-flow statements of the person; and
- (f) such other information as may be specified.

14. Financial information is different and claim documents are different. The information with respect to financial information of the Corporate Debtor Company was already provided to the Applicant Bank at the time of taking charge also. Hence erstwhile IRP did not commit any illegality and the claims of Respondent Nos.2 & 3 are admitted on the basis of supporting documents placed before him. Hence application has to be dismissed.

15. Heard the arguments of both the sides. The counsel for the Applicant submits that since this application is filed to defeat the claim of the Financial Creditor i.e., Applicant herein, the expenses of the IRP should be borne by the Corporate Debtor and should not be included in the CIRP cost. This issue has come up before the NCLAT in the above mentioned appeal and the finding rendered therein is as follows:

“The appeals are allowed. Impugned orders in these Appeals are set aside. We allow the Committee of Creditors in each of these matters to engage Shri.B.Naga Bhushan as Resolution Professional in each of the matters, if there is no proceeding pending against him.”

In so far as fees and costs incurred by IRP, Pavan Kankani in each of these matters, he will place the evidence in support of the fees and costs incurred by him and CoC will decide the same and admitted dues to be released in his favour by COC, which will be adjusted from the resolution costs. Mr.Pavan Kankani is directed to hand over charge to Shri B.Naga Bhushan.”

16. This Tribunal also by virtue of orders in I.A.No.150/2020 in CP (IB) No.157/10/AMR/2019, I.A.No.151/2020 in CP (IB) No.158/10/AMR/2019, I.A.No.152/2020 in CP (IB) No.159/10/AMR/2019, I.A.No.153/2020 in CP (IB) No.160/10/AMR/2019 and I.A.No.154/2020 in CP (IB) No.174/10/AMR/2019, directed the fee of the erstwhile IRP to be fixed on par with the present RP and the same is subject to ratification of the CoC. It is the Applicant alone, who is member of CoC at present, and hence the ultimate discretion is vested with the CoC by virtue of the above said orders. Moreover, the erstwhile IRP who is the effected person is not individually made a party to this application. Hence no order affecting him can be passed in his absence. Hence the second prayer is dismissed.
17. With regard to the third prayer, the allegation is that the claims were admitted beyond the limitation prescribed under Regulation 12 of IBBI Regulations, 2016. Regulation 12 IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 permits the claims to be submitted with proof within the time stipulated in public announcement on or before the 90th day of the insolvency commencement date. Going by the dates there seems to be two days delay in admitting the claims. There is an

amendment to the regulations, Regulation 12 (A) IBBI Regulations was inserted with effect from 15.03.2021 which is as follows:

“12A.-Updation of claim.

A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.”

Going by the spirit of the said regulation this Tribunal understands that the limitation prescribed under Section 12 of IIBI Regulations, 2016 for receiving the proof of claims is not mandatory and the discretion rests with the IRP. Moreover, it is the IRP who has to verify the claims. As already observed the erstwhile IRP is not made a party individually. Respondent Nos.2 & 3 and Corporate Debtor cannot be found fault with, as they are not burdened with any responsibility with regard to the verification of the claims. So also the allegation pertaining to non-furnishing of documents, it is against the IRP. Hence compensation as sought for against the Corporate Debtor and Respondent No.2 and Respondent No.3 cannot be granted. Hence, the Application is dismissed.

Accordingly, I.A.No.107/2020 in CP (IB) No.159/10/AMR/2019 is dismissed. Hence this Order.


JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL