IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

IA (IB) No.1462/KB/2020
in
CP (IB) No.668/KB/2019

In the matter of:
An application under rule 11 of the National Company Law Tribunal Rules, 2016

and

In the matter of:
Prasun Sengupta … Operational Creditor

Versus

New Kolkata International Development Private Limited
…Corporate Debtor

and

In the matter of:
Santanu Bhattacharjee
(Interim Resolution Professional of
New Kolkata International Development
Private Limited) … Applicant

Versus

1. Prasun Sengupta
2. Anandarup Bandhopadhyay
3. Retno Savitri Soeprijadi
4. Prasoon Mukherjee … Respondents

Date of hearing: 03.05.2021

Date of pronouncement: 14.06.2021

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Harish Chander Suri	:	Member (Technical)

Appearances (through videoconference):

For Applicant	:	Mr. Saurav Jain, Advocate
For Corporate Debtor	:	Mr. Anirban Ray, Advocate Mr. Arindam Guha, Advocate Mr. Nirmalya Dasgupta, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This court convened *via* video conference today.

2. The present application has been field by Mr. Santanu Bhattacharjee, the Interim Resolution Professional (IRP) of New Kolkata International Development Private Limited, the Corporate Debtor, praying for –

   a. *Direction on the Operational Creditor and the Corporate Debtor to execute the agreement of the settlement and the Corporate Debtor to deposit such consideration as per the settlement agreement.*

   b. *Recall of the order dated 16th March, 2020 passed by this Hon'ble Tribunal upon settlement of disputes between the parties;*

   c. *Ad interim reliefs for stay of operation of the corporate insolvency resolution process till disposal of the present proceedings;*

3. The Applicant's case in brief is as follows:-

   a. By the order of this Adjudicating Authority, the Corporate Debtor was admitted into the Corporate Insolvency Resolution Process (CIRP) on 16.03.2020 and the Applicant was appointed as the IRP in the matter. The Adjudicating Authority's order dated 16.03.2020 is annexed with the application as **Annexure B** at **pages 41-48.**

   b. The Applicant published a public announcement in Form A on 19.03.2020 in *Financial Express (English)* and *Ekdin (Bengali)* fixing 30.03.2020 as the last date of submission of claims.

   c. On 07.04.2020, the Applicant received an email issued on behalf of the Corporate Debtor that the parties have settled the dispute amicably on 24.03.2020 upon payment of ₹4,10,00,000/- (Rupees four crore ten lakh only) and have requested him not to proceed with the CIRP. A copy of email dated 07.04.2020 is annexed to the application and marked as **Annexure E** at **pages 52 & 53**.

   d. On 06.06.2020, the IRP received an email from the Operational Creditor that the parties had arrived at a settlement, therefore, the IRP should not proceed with the CIRP. A copy of email dated 06.06.2020 is annexed to the application and marked as **Annexure F** at **page 5**4.

e. On 21.07.2020, the IRP received an email from the Corporate Debtor reminding him of the settlement; the email also contained a draft copy of Memorandum of Understanding (MoU). A copy of email dated 21.07.2020 is annexed to the application and marked as **Annexure G** at **page 55**.

f. Moreover, the IRP did not receive any claim in response to the Form A published on 19.03.2020. Further, the CIRP could not proceed due to the lockdown imposed on account of the global pandemic.

g. The IRP has not been able to comply with the order of this Adjudicating Authority due to aforementioned circumstances and prays for directions on the parties to execute the agreement of settlement.

4. We have heard the parties and perused the records.

5. The Applicant's case is that a settlement has been arrived between the Operational Creditor and the Corporate Debtor on 24.03.2020 whereby an amount of ₹4,10,00,000/- (Rupees four crore ten lakh only) has been paid[1] against the total amount of debt being ₹4,04,23,264/- (Rupees four crore four lakh twenty-three thousand two hundred sixty-four only).[2]

6. However, upon perusal of the email dated 07.04.2020, it appears that it has only been agreed between the parties that the Corporate Debtor would pay an amount of Rs.4,10,00,000/- (Rupees four crore ten lakh only) as full and final settlement and the same had not been paid at least till the said date.

7. The mail further reads that due to the lockdown imposed, they could not execute a formal settlement agreement and the Operational Creditor could not file the application for withdrawal of the underlying Company Petition. They would execute the MoU and the Operational Creditor would withdraw the underlying Company Petition soon. Therefore, the IRP should not proceed with the CIRP.

[1] Para (e) at page 11 of the application.

[2] Page 28 of the application.

8. As per Regulation 30A of the Insolvency And Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), an application for withdrawal may be made before constitution of Committee of Creditors (CoC) under section 12A of the Code through the IRP to the Adjudicating Authority.

9. The aforesaid application for withdrawal shall be filed in Form FA of the Schedule of the CIRP Regulations accompanied by a bank guarantee towards estimated expenses incurred on or by the IRP for purposes of regulation 33, till the date of filing of the application.

10. However, more than a year has passed since the Corporate Debtor was admitted into the CIRP. Although, it is the contention of the Applicant that a settlement has been arrived at, there is neither a settlement agreement nor an application under section 12A for withdrawal of the underlying Company Petition before this Adjudicating Authority.

11. This appears to be a classic case of wastage of time. The lockdown had been lifted long before the application under consideration had been filed. If there had been a settlement at all, an application under section 12A should have been filed.

12. Unless an application for withdrawal were filed, it was IRP's duty to conduct the CIRP in the time bound manner. However, nothing seems to have moved in the present case expect for publication or Form A after the admission of the Corporate Debtor into CIRP. All the parties involved have taken the CIRP proceedings for a ride.

13. The submissions made and the documents produced by the Applicant do not disclose that a settlement has been arrived at.

14. Even if a settlement has been arrived at, the prayers made by the Applicant herein do not fall within the ambit of powers of this Adjudicating Authority.

It is our understanding that under section 12A of the Insolvency and Bankruptcy Code, 2016, this Adjudicating Authority may allow an application for withdrawal of the underlying Company Petition, however, the Adjudicating Authority cannot direct the parties either to execute the agreement of settlement or to deposit the consideration as per the settlement agreement which has not been produced before us.

15. In the light of aforesaid discussions the present application is misconceived and is an abuse of process. Resultantly, **IA (IB) No.1462/KB/2020 shall stand dismissed as being devoid of merit.**

16. Needless to say, the parties and the Applicant, however, are at liberty to take recourse under appropriate provisions of law for withdrawal of the underlying Company Petition. Until it is done, the IRP is directed to proceed with the CIRP as per the provisions of the Code.

17. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

18. A certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Rajasekhar V K
Digitally signed by Rajasekhar V K
Date: 2021.06.14 14:34:16 +05'30'

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

14.06.2021

SR (LRA)