

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH,
COURT-IV

1. IA-1241/2020,
IA-1609/2020,
IA 375/2021,
IA 47/2021 IN
CP(IB)-3753(MB)/2018

CORAM:

SHRI RAJESH SHARMA
MEMBER (Technical)

SMT. SUCHITRA KANUPARTHI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **30.08.2021**

NAME OF THE PARTIES: Malharshanti Enterprises
V/s
Can Enterprises Pvt. Ltd.

SECTION 9 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

The Court is convened through Video Conference.

IA-47/2021: This is an application filed by the Operational Creditor challenging the rejection of his claim.

IA-1241/2020: This is an application filed by the Operational Creditor challenging his exclusion from the CoC and induction of Financial Creditor who has given a loan of Rs.1 Lakh to the Corporate Debtor.

We have heard Mr. Ankit Lohia - Ld. Counsel for the Operational Creditor, Mr. Abhijeet Sinha a/w Mr. Nausher Kohli and Mr. Rajan Agarwal - Ld. Counsel for the RP, Mr. Manish M. Jaju, RP (in person), Mr. Ashish S. Kamat - Ld. Counsel for two members viz. Mr. Naresh Shah and Mrs. Naresh Shah of the suspended Board of

directors, Mr. Shyam Kapadia - Ld. Counsel for the Financial Creditor and PCS Ashish O. Lalpuria - Ld. Professional appeared on behalf of R-7 to R-9 in IA-1241.

The Ld. Counsel from all the parties were given due opportunity for making their submissions and the Bench has heard the arguments of all the sides for a considerably long period. While as per affidavit on behalf of the RP submitted on 16.08.2021, on page 78 of the said affidavit, there is a claim of Rs. 98 lakhs (roughly) as claimed by the Operational Creditor vide their e-mail dated 08.01.2016 and enclosing a copy of ledger account. While arguing on behalf of the Resolution Professional and two members of the suspended board of directors, the Counsel have confirmed that as per the books of accounts of Corporate Debtor there is nothing which is payable to the Operational Creditor. Further, the Counsel for the Operational Creditor has questioned the very entry of Rs.1 lakh made in the books of account of the Corporate Debtor as the amount received as loan from Financial Creditor.

On a specific question from the Bench the Resolution Professional has confirmed that his decision of rejection of claim of the Operational Creditor was based as non-submission of crucial documents which are required to ascertain the claim of the Operational Creditor, irrespective of repeatedly asking for the same. He showed his inclination for re-verification of the claim of the Operational Creditor and the Bench hereby directs the Operational Creditor to submit the entire required documents to the Resolution Professional to his satisfaction and take an acknowledgement from the Resolution Professional that the required documents have been submitted to him for verification of the claim of Operational Creditor. This exercise up to acknowledgement

from the side of the Resolution Professional about receipt of entire set of documents for verification of the claim of Operational Creditor has to be completed by 03.09.2021. Thereafter, the Resolution Professional is given time to ascertain and verify the claim of the Operational Creditor latest by 10.09.2021.

During the course of argument, it has also been observed by the Bench that there have been issues raised by the arguing counsel with respect to the books of account of the Corporate Debtor. On a specific question from the Bench, the Resolution Professional has confirmed that he has not got the transaction audit of the Corporate Debtor done till date nor any valuation has been done by him. The advertisement for inviting expression of interest seeking applications for resolution plan has also not been done by the Resolution Professional as per decision of CoC. After considering all the facts of the case, this Bench orders a forensic audit of the Corporate Debtor to be conducted by an independent firm of CA of repute. This bench hereby orders the forensic audit of the Books of Account of the Corporate Debtor for the last five financial years preceding immediately the date of admission of the company into CIRP. Mr. Amarjit Chopra, past President of the Institute of the Chartered Accountants of India, Sr. Partner of GSA & Associates (Mobile No.9810100299; email: aic@g8a.net.in) is hereby appointed as Forensic Auditor of the Corporate Debtor.

The Forensic Auditor have to submit their report within 30 days. List all the IAs on **17.09.2021** for hearing.

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)

SVR