

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I
KOLKATA**

**I.A. (IB) No. 1645 /KB/2022
I.A. (IB) No. 1646 /KB/2022
I.A. (IB) No. 1647 /KB/2022
in
C.P. (IB) No. 1067/KB/2019**

Under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

J.M. Hotels Private Limited

... Operational Creditor

versus

Shraddha Health & Fitness Private Limited

... Corporate Debtor

And

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.

I.A. (IB) No. 1645 /KB/2022

In the matter of:

Sanjeeb Kumar Jha

...

Applicant

versus

Mr.Yogesh Gupta, IRP of Shraddha Health & Fitness Private Limited

...

Respondent

And

I.A. (IB) No. 1646 /KB/2022

In the matter of:

Rohit Kumar

... Applicant

versus

Mr.Yogesh Gupta, IRP of Shraddha Health & Fitness Private Limited

... Respondent

And

I.A. (IB) No. 1647 /KB/2022

In the matter of:

Arun Kumar Bag

... Applicant

versus

Mr.Yogesh Gupta, IRP of Shraddha Health & Fitness Private Limited

...Respondent

Order pronounced on: 19 January 2024

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I

J.M Hotels Pvt. Ltd. v. Shraddha Health & Fitness Pvt. Ltd.

Coram:

Shri Rohit Kapoor : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

**For the Applicants in I.A.(I.B.C) No. 1645/KB/2022, I.A.(I.B.C) No. 1646/KB/2022,
I.A.(I.B.C) No. 1647/KB/2022**

Mr. A.R.K. Sinha, Advocate
Mr. Saurabh Jain, Advocate
Mr. Ananda Mukherjee, Advocate
Mr. S.P. Chattopadhyay, Advocate
Mr. Santosh Kumar Ray, Advocate
Ms. Rituparna Sanyal, Advocate

For the Resolution Professional

Mr. D.N. Sharma, Advocate
Mr. Ranjan Mukherjee, Advocate
Mr. Debdeep Sinha, Advocate
Mr. Yogesh Gupta, RP in person

For the Petitioner in C.P. (IB) No. 1067/KB/2019

Mr. Jishnu Chowdhury, Advocate
Mr. Ratnesh Rai, Advocate
Mr. Ankan Rai, Advocate
Ms. Vipra Garg, Advocate

COMMON ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. The CIRP against the Corporate Debtor was initiated vide office order dated 28.10.2022 The RP made the public announcement as required under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and received the claims in the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I**

J.M Hotels Pvt. Ltd. v. Shraddha Health & Fitness Pvt. Ltd.

prescribed form. Accordingly, the CoC came to be constituted in terms of the provisions of the Code. The Interim Resolution Professional filed its first progress report on 02 December 2022 wherein it is submitted that the CoC was constituted on 20 November 2022, and a report on constitution of the CoC was filed before this Adjudicating Authority on 23 November 2022. However, on 26.11.2022 the IRP by virtue of an e-mail communication has removed three Financial Creditors, who were hitherto on the CoC with the following contentions

- (i) *“Your claim needs affirmation from the Books of Account of the Company for which Cooperation is required from the suspended directors.*
- (ii) *Your claim as an individual financial creditor has been examined with the provisions of The Jharkhand Private Money Lending (Prohibition) Act, 2016. Under the circumstances please clarify in writing how such transaction could be treated as a legal transaction*
- (iii) *Your Claim if read with the provisions of the Companies Act, 2013 may be treated as prima-facie as “Deposit”. Whether the compliances of applicable provisions in this regard has been made or not should be confirmed by the Suspended Directors.*

Under the circumstances, you are requested not to exercise any voting right at the Committee of Creditors Meeting to be held on 27th November, 2022, since your position as financial creditor requires clarification on the above points, for exercising your voting rights.”

3. **I.A.(I.B.C) No. 1645/KB/2022** is an application filed by Sanjeeb Kumar Jha, a Financial Creditor who was inducted into the COC by the IRP after preliminary scrutiny of the documents submitted at the time of filing of the claim and who has now been ousted.
4. The applicant has contended that the IRP has acted in a high-handed manner in removing him from the COC and has prayed for reinstatement in the COC.

5. **I.A.(I.B.C) No. 1646/KB/2022** and **I.A.(I.B.C) No. 1647/KB/2022** are similar in nature and prayer by other Financial Creditors namely Rohit Kumar and Arun Kumar Bag who have prayed for quashing the said e-mail.
6. Ld. Counsel appearing for the IRP submits that it is a fact that these Financial Creditors were included in the COC on the basis of **preliminary examination**. However, later on, upon verification thereof, it was found that these so-called Financial Creditors had advanced cash amount in the shape of a loan to the Corporate Debtor for which no details of disbursement though could be made available to the IRP for verification purposes. Since, as per Income Tax Act, 1961 cash transaction for an amount of Rs.20,000/- (Twenty Thousand Only) is prohibited, therefore, it is evident that in order to get illegitimate entry to the CoC, the Financial Creditors have resorted to this gimmick of advancing a loan in cash and that too for which no transactions details are given.
7. It has been contended that this is also obvious from the fact that the said loans have been advanced only a few days before the date of initiation of CIRP , when it became clear to the Corporate Debtor that the CIRP proceedings against it are likely to succeed.

Analysis and Findings

8. We have heard the submissions made by the Ld. Counsel appearing for both the sides and also perused the pleadings. Section 21 of the IBC deals with the Committee of Creditors and stipulates as follows:

Committee of creditors.- (1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

Further the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in Chapter-4 thereof, provides the detailed procedure for establishing the claims by various Creditors Section-10 reads as follows:

Substantiation of claims-The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.

Further Regulation 13 thereof provides a detailed methodology for verification of the claims and provides as under:

Verification of claims- (1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

9. Further we allude to the definitions of the Financial Creditors and the financial debt, which is as below:

(7) “**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;

(8) “**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 dematerialised 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 non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

1[Explanation. -For the purposes of this sub-clause, -

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I**

J.M Hotels Pvt. Ltd. v. Shraddha Health & Fitness Pvt. Ltd.

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and (ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(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-clause (a) to (h) of this clause;

10. From the above, it is discernible that a complete flow chart to be followed by the IRP for constitution of the committee has been given in the said Regulations which comprises of public announcement, receipt and collation of claims, substantiation of the claims by the creditors (as per the definitions supra) , submission of proof of claims followed by the verification by the claims of the IRP.
11. It has been contended by the RP that the loans have been advanced by the purported financial creditors at a time when the prospect of CIRP was looming large over the company so as to get a seat on the CoC so as to drive the CIRP. However, under the present frame work the acknowledgment of a financial creditor in the context of insolvency and bankruptcy proceedings typically focuses on the creditor's status as a financial creditor and does not take care of other sundry circumstances or concurrent conditions etc. as seen from the above definitions of the financial debt and the Financial Creditors.
12. Thus, the claims of the creditor to be included in the CoC shall have to pass through the above rigor before they can be given a place in the CoC. However, it appears that in the present case, the IRP has hastily formed the CoC without proper verification of the claims just on a “**preliminary examination**”, which finds no place either in the act or in the Regulations. The IRP should have

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I**

J.M Hotels Pvt. Ltd. v. Shraddha Health & Fitness Pvt. Ltd.

followed the stipulations of the statute including the regulations before forming of the CoC.

13. We restrain ourselves at this stage from passing any orders against the Financial Creditors but we direct the RP to re-examine the entire process of formation of the CoC and ensure that the Statute including relevant rules and regulations are properly complied with and then proceed to reconstitute the COC if required.
14. In view of the above facts, these IAs being **I.A.(I.B.C) No. 1645/KB/2022**, **I.A.(I.B.C) No. 1646/KB/2022** and **I.A.(I.B.C) No. 1647/KB/2022** are disposed of.
15. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their learned Counsel and Authorised Representative for information and for taking necessary steps.
16. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
17. File to be consigned to record.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

This order is pronounced on the 19th day of January, 2024