

**IN THE NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**I.A. No. /2020
In
CP (IB) No. 09/GB/2019**

In the matter of:

An application under Rule 154 read with Rule 155 of the National Company Law Tribunal Rules, 2016;

And

In the matter of:

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016;

And

In the matter of:

Stressed Assets Stabilization Fund (SASF)

... Financial Creditor

- versus -

National Plywood Industries Limited (NPIL)

... Corporate Debtor

And

Mr. Sandeep Khaitan, Resolution Professional for National Plywood Industries Limited appointed under Section 22(2) of the Insolvency and Bankruptcy Code, 2016

... Applicant / Resolution Professional

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

Counsels Present

Mr. Sandeep Khaitan, RP]

Mr. Ashok Kumar Tibrewala, Pr.CA] For the RP

Date of hearing: 05 .06.2020

Order delivered on: 05 .06.2020

ORDER

Per Jinan K.R. Member (Judicial)

1. This is an application filed by the Resolution Professional, Mr. Sandeep Khaitan as per Rule 154 and 155 of the NCLT, Rules,2016, praying for reviewing an interim order of this Adjudication Authority (AA) dated 20.05.2020. After hearing both sides the AA issued interim orders as extracted below:

1. The directors of the suspended board of the CD is directed to cooperate with the IRP and to provide all assistance to him to complete the CIRP In time.
2. The auditors are hereby directed to complete the transaction audit immediately, preferably within two weeks from the date of receipt of this order by way of email. RP is directed to serve a copy to the auditors on receipt of the order by him.
3. The directors of the suspended board of the CD are hereby directed to refund the amount withdrawn less the amount if any paid to the alleged supplier as the cost of raw materials subject to the satisfaction of RP with sufficient proof of payment during the CIRP period, within two weeks of the receipt of this order. Failing which the IRP can move an application for contempt.
4. The SP of the SHO whose jurisdiction the Hosur Plant is located is directed to issue necessary directions to the SHO of the local Police Station for necessary police protection for enabling the valuer/RP to inspect the Hosur plant.
5. The respondents are allowed to submits reply affidavit within two weeks or within one week of the date of lifting the lock down in the Tribunal by serving advance copy to the RP.

2. Dissatisfied with the above said orders, the applicant filed this application for modification of order No.(iii) referred to above, reiterating the very same allegations pleaded in the application wherein the impugned orders were passed.

3. Heard the Ld. RP and Pr.CA who have represented the RP.

4. The short question for consideration is whether there is any apparent error or mistake in the orders under challenge so as to allow modification of the order No.(iii) referred to above?. No data neither pleaded nor argued at the time of hearing highlighting any errors or omissions so as to invoke the power of the AA to correct or modify the order under Rule 154 or under 155 of NCLT Rules. According to the Ld. RP, there has been an inadvertent inconsistency in the interim order dated 20.05.2020 by granting a legal recognition to the banking transactions performed by the erstwhile management on 18.04.2020 which are very much illegitimate & devoid of any authority in an ongoing CIRP, therefore are legally liable to be rescinded forthwith. He would submit that the suspended board of Directors should pay back the amount transferred of Rs. 32.50 lakhs from the CD's bank account and Rs. 3.29 lakh spent for purchasing raw materials etc. as they have done it during the currency of the CIRP process and they do not have any authority to undertake any banking transactions. In addition to the submission of the RP, Ld. Chartered Accountant Mr. Ashoke Kumar Tibrewala, submits that when the CIRP is progressing there is no authority to anybody even the suspended board of directors to operate the bank account which is in violation of CIRP hence the amount transferred or spent during that period is void by violation and should be reversed. The Ld. RP further reiterate that the respondents/directors of the suspended board of directors transferring fund from the two bank accounts of the CD maintained at strand road at Kolkata & Zaveri Bazar at Mumbai with ICICI bank & illegitimately transferred Rs 35.79 lakhs on 18.04.2020 through unauthorized internet banking (*which was otherwise blocked by the RP since initiation of the CIRP*) out of which Rs 32.50 lakhs had been transferred to its own associate company namely JSVM Plywood Industries Limited. According to him the order is to be modified directing the erstwhile management to reinstate the entire funds so embezzled to uphold the spirit of IBC which mandates that it's only the RP who is exclusively vested with necessary powers to manage the affairs of the CD.

5. I am not at all convinced with the submissions on the side of the RP. Before going in detail, it is good to have a look at the Rule,154 and 155 of the NCLT, Rules, 2016. It is extracted below:

“154: Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may at any time be corrected by the Tribunal on its own motion or on application of any party by way of rectification.

155: The Tribunal may, within a period of thirty days from the date of completion of pleadings, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceedings before it, and all necessary amendments shall be made for the purpose of determining the real question or issue raised”.

6. I have considered the rival submissions on the side of the RP as well as on the side of the respondents. Upon the reasons highlighted in the impugned order the respondents are found prima facie liable to refund the amount unauthorisedly withdrawn from the account of the CD. From which bank the money was withdrawn is specifically mentioned in the IA, although not specified in the order portion. Accordingly, in passing the interim orders I have not committed any clerical or arithmetical mistakes in the order or error therein arising from any accidental slip or omission in order to invoke my power under Rule 154 and 155. More over this tribunal being a Quasi Judicial Authority, has no power of review. If the applicant is not satisfied with the orders, remedy lies elsewhere. I do not find any justifiable reason to entertain this application. The order makes it clear that the respondents if failed to refund the amount unauthorisedly withdrawn in violation of section 14, is liable for contempt as also liable to be punished under sub-section 2 of section 74 of the Code.

7. The Hon'ble NCLAT has laid down the procedure to be followed in case the directors commits any offences falls under section 74(2) of the I&B Code, in **Lagadapati Ramesh v. Mrs. Ramanathan Bhuvaneshwari, [2020] 114 taxmann.com 348 (NCL-AT). Company Appeal (AT) (Insolvency)No. 574 of 2019 and Company Appeal (AT) (Insolvency)No. 592 of 2019.** It is also significant to note here that the directors of the suspended board of CD were not made as the respondents in this application. In view of the matter, this application is liable to be dismissed.

Accordingly, dismissed. No order as to cost.

The Registry is directed to send e-mail copies of the order forthwith to all the parties.

(Jinan K.R)
Member (Judicial)
In charge of NCLT,Guwahati Bench.

Signed on this 5th day of June, 2020.