

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**IA No.93/2022 and IA No.
837/2020**

**In
CP (IB) No.515/Chd/Chd/2019
(admitted)**

**Under Section 60 read with
Section 31 of the Insolvency &
Bankruptcy Code, 2016**

In the matter of:

Parivartan Investment and Finance Company

....Petitioner-Financial Creditor

Versus

Haryana Telecom limited

....Respondent-Corporate Debtor

And in the matter of:

IA No.93/2022

**The Municipal Corporation, Rohtak
Through its Commissioner**

office at : Ambedkar Chowk, MC Office
Beside Model School, Opp. BSNL Office
Rohtak-124001, Haryana

....Applicant

Versus

Mr. Sanyam Goel,

Resolution Professional for Haryana Telecom Limited

Office at: Unit No. 110, First Floor, JMD Pacific Square
Sector 15, Part II Gurugram,
Haryana-122001

....Respondent

IA No.837/2020

Mr. Sanyam Goel,

Resolution Professional for Haryana Telecom Limited

Office at: Unit No. 110, First Floor, JMD Pacific Square
Sector 15, Part II Gurugram,
Haryana-122001

....Applicant

Versus

The Municipal Corporation, Rohtak
Through its Commissioner
office at : Ambedkar Chowk, MC Office
Beside Model School, Opp. BSNL Office
Rohtak-124001, Haryana

....Respondent

Order delivered on: 29.09.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through video-conferencing in IA No. 93/2022:

For the Applicant : Mr. Prateek Mahajan, Advocate
For the Respondent : Mr. Viren Sharma, Advocate
Mr. Mohit Uppal, Advocate
For Resolution Professional : Mr. Sanyam Goel

Present through video-conferencing in IA No. 837/2020:

For the Applicant : Mr. Viren Sharma, Advocate
Mr. Mohit Uppal, Advocate
For Resolution Professional : Mr. Sanyam Goel
For the Respondent : Mr. Prateek Mahajan, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

IA No. 93/2022

The present application is filed by Municipal Corporation, Rohtak through its Commissioner against the Resolution Professional for rejection of Resolution Plan submitted vide IA No. 823/2020. The CP (IB) No. 515/Chd/Chd/2019 has been admitted by this Adjudicating Authority on 07.02.2020 filed under Section 7 of the Code on behalf of the Financial

IA No.93/2022 and IA No. 837/2020

In

CP (IB) No.515/Chd/Chd/2019
(admitted)

Creditor, Parivartan Investment and Finance Company seeking initiation of Corporate Insolvency Resolution Process ("CIRP").

2. The brief facts of the present application stated by the applicant-operational creditor are herein below:

2.1 It is submitted that the moratorium under Section 14 was declared on 07.02.2020. The Resolution Professional made public announcement on 09.02.2020 under Regulation 6(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in "Financial Express" (English) Chandigarh Edition, "Hari Bhoomi" (Hindi), Chandigarh Edition as per the averment made by Resolution Professional in IA No. 837/2020.

2.2 It is further submitted that the corporate debtor Haryana Telecom Limited have not been paying its due property tax and fire tax for its property having property ID No. 193C6U1 situated near DAV School, Sector 27, Rohtak since the year 2011-2012 and accordingly, the Commissioner, Municipal Corporation, Rohtak passed an order dated 18.11.2020 directing it to pay the outstanding amount of Rs. 19,94,039/- by 23.11.2020 in exercise of his power under Section 130 of Haryana Municipal Corporation Act, 1994. Since the amount was not paid, the demised property was sealed for recovery of tax.

2.3 It is averred that the above said order passed under Section 130 of the Act is an appealable order and the appeal against the said order lies to the Divisional Commissioner as per Section 138 of Haryana Municipal Corporation Act, 1994. However, no such appeal was filed by

Resolution Professional. Therefore, the said assessment order has become final.

2.4 The applicant states that the public announcement made by Resolution Professional under Regulation 6(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is not as per the provisions of the Regulation. As per the said Regulation, the public announcement has to be made in one English and one Regional language newspaper having wide circulation in the location where the corporate debtor has its office and where it conducts material business operation.

2.5 It is contended by the Applicant that the newspapers in which the public announcement has been published, are not having wide circulation either in Chandigarh or in Rohtak where the demised property is situated. Therefore, the applicant never came to know about the said public announcement and could not submit its claim before the Resolution Professional for which the last date was 21.02.2020. The Resolution Plan must provide for the payment of debts of the operational creditors.

3. The respondent-Resolution Professional filed its reply vide Diary No. 0016/01 dated 29.03.2022, whereby, the following averments have been made:

3.1 The Resolution Professional made public announcement in Form A dated 07.02.2020 in terms of Regulation 6(1) of CIRP Regulations, 2016 in the following newspapers, the cuttings are attached as Annexure R-2:

Newspaper	Date	Language	Edition
Financial Express	09.02.2020	English	Chandigarh
Jansatta	09.02.2020	Hindi	Chandigarh
Hari Bhoomi	09.02.2020	Hindi	Rohtak

3.2 It is submitted that on perusal of books of accounts of corporate debtor and information/records/data pertaining to corporate debtor, the respondent observed dues of certain Government Authorities. Accordingly, the respondent vide letter dated 14.02.2020 informed Joint Director, District Industries Center, Rohtak and assessing Authority, Sales Tax Department, Rohtak, Haryana about the initiation of CIRP of corporate debtor. Further, respondent also requested departments to file their claims in appropriate form. The copy of above letter dated 14.02.2020 sent by the respondent is annexed as Annexure R-3.

3.3 It is averred by the respondent-Resolution Professional that vide email and letter dated 22.11.2020, it apprised the applicant about initiation of CIRP against corporate debtor and requested the applicant to submit its claim as per the applicable provisions of the Code. Copy of email and letter dated 22.11.2020 is attached as Annexure R-5. The CoC in its 9th meetings dated 31.10.2020 approved the Resolution Plan submitted by Mr. Abhimanyu Singh Mehlawat ("SRA") with 100% voting share.

3.4 It is submitted that in any event, no such duty has been cast upon the respondent to intimate each and every creditor to file its claim. In fact for the said purpose, a public announcement is caused and all creditors of the corporate debtor are invited.

3.5 In the absence of any claim filed by the applicant before the respondent in the CIRP, the applicant is neither a creditor nor a stakeholder and therefore, the applicant has no locus standi to raise any objection to the Resolution Plan as approved by the Committee of Creditors in its commercial wisdom.

4. After considering the submissions made by the learned counsel for the applicant and respondent-Resolution Professional, and on perusal of the record. The sole contention raised by the applicant for rejection of Resolution Plan that the public announcement has to be made in one English and one Regional language newspaper having wide circulation in the location where the corporate debtor has its office and where it conducts material business operation is devoid of merits as observed from the record submitted, it is published in newspaper "Hari Bhoomi" (Hindi, Rohtak Edition). Therefore, we are of the view that the public announcement made in Form A dated 09.02.2020 is in terms of Regulation 6(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

5. Further, we are aware of the decision of a coordinate Bench in *State Bank of India Vs. Jyoti Structures Limited, IA 1218/MB/2020 in CP(IB) NO. 1137 of 2017 vide order dated 05.10.2020*, held that Resolution Professional is not bound to send notice to the creditors requiring them to file their claim. In fact, it is the responsibility of the creditor concerned to file a claim within the time after the issue of public notice inviting claims by the Resolution Professional.

6. In the present case the moratorium is declared on 07.02.2020 whereas, the order issued by applicant for the outstanding amount is on 18.11.2020 i.e.

during the period of moratorium. Therefore, the above mentioned order passed by the applicant is in violation of Section 14(1)(a). The same is extracted hereinbelow:

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

7. Thus, we hold that the publication made by the respondent is in compliance with the relevant Regulation and that the enforcement for paying the demand during the moratorium period, is in violation of section 14(1)(a) of the IBC.

8. In view of the above discussion, the present application is dismissed without order as to cost and disposed of accordingly.

IA No. 837/2020

The present application is filed by Resolution Professional to quash and set aside the order dated 18.11.2020 whereby, the property of the corporate debtor bearing property ID-193C6U1 situated near DAV School, Sector 27, Rohtak has been attached and sealed by the respondent. Whereas, the CP (IB) No. 515/Chd/Chd/2019 has been admitted by this Adjudicating Authority on 07.02.2020 filed under Section 7 of the Code on behalf of the Financial Creditor, Parivartan Investment and Finance Company seeking initiation of Corporate Insolvency Resolution Process ("CIRP").

2. The brief facts of the present application stated by the applicant-Resolution Professional are herein below:

2.1 It is submitted that the moratorium under Section 14 was declared on 07.02.2020. The Resolution Professional made public announcement on 09.02.2020 under Regulation 6(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in “Financial Express” (English) Chandigarh Edition, “Hari Bhoomi” (Hindi), Chandigarh Edition.

2.2 It is further submitted that the CoC in its 9th meeting dated 31.10.2020 approved the Resolution Plan submitted by Mr. Abhimanyu Singh Mehlawat (“SRA”) with 100% voting share and the Resolution Professional has filed an application under Section 30(6) of the Code seeking approval of the Resolution Plan.

2.3 It is stated that respondent vide order dated 18.11.2020 passed under Section 130 of Haryana Municipal Corporation Act, 1994 attaching the above said property on the ground that corporate debtor has failed to pay the property tax and fire tax amounting to Rs. 19,94,039/- and directed the corporate debtor to pay the said taxes by 23.11.2020, failing which the property will be sold in terms of the Haryana Municipal Corporation Act, 1994.

2.4 It is averred that applicant-Resolution Professional prima facie did not observe any dues of the respondent in books of account of the corporate debtor as a result the applicant did not issue any specific communication regarding the CIRP to the respondent. No claim has been filed by the respondent till date.

3. The respondent has filed its reply vide Diary No. 01883/03 dated 08.02.2022 and also filed written submissions, whereby the respondent has reiterated the submissions made above in IA No. 93/2022.

4. The applicant-Resolution Professional has filed its rejoinder and written submissions, wherein the averments made by the respondents are denied and the Resolution Professional has reiterated the submissions made above and in IA No. 93/2022.

5. To buttress his contentions the Resolution Professional has placed reliance on the decision passed by Hon'ble NCLAT in *Indian Overseas Bank Vs. Mr. Dinkar T. Venkatsubramaniam Resolution Professional for Amtek Auto Ltd.*

[Com Appeal (AT) (Insolvency) No. 267 of 2017]:

"5. Having heard learned counsel for the Appellant, we do not accept the submissions made on behalf of the Appellant in view of the fact that after the admission of an application under Section 7 of the 'T&B Code', once moratorium has been declared it is not open to any person including 'Financial Creditors' and the appellant bank to recover any amount from the account of the 'Corporate Debtor, nor it can appropriate any amount towards its own dues.

6. If the 'Corporate Debtor' has borrowed some amount from the Appellant-Indian Overseas Bank' and the Appellant- Indian Overseas Bank' come within the definition of 'Financial Creditor as defined in Section 5(7) of the 'T&B Code', it is always open to the Appellant- "Indian Overseas Bank' to file its claim before the 'Interim Resolution Professional' for getting the amount back. If the Appellant claims to be 'Financial Creditor' and file's such claim before the 'Interim Resolution Professional' showing the principal amount and interest thereon, the 'Interim Resolution Professional will consider the same and the Appellant being 'Financial Creditor' may be taken in the Committee of Creditors'

7. We find no merit in this appeal, therefore, we are not inclined to interfere with the impugned order dated 13th October, 2017. However, liberty is given to the Appellant-Indian Overseas Bank' to raise its claim before the interim Resolution Professional' and request him to allow it to be a member of the Creditors Committee which should be considered in accordance with law"

6. It is observed that in the case of *State Bank of India v. Debashish Nanda, Company Appeal (AT) (Insolvency) No. 49 of 2018*, the Hon'ble NCLAT has referred abovementioned *Indian Overseas Bank* case.

7. The relevant provisions i.e. Section 14 of IBC which deals with the moratorium is extracted hereinbelow:

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. XXXXXXXX

8. In view of the above, we come to the conclusion there is direct violation of Section 14(1)(b) which creates a bar prohibiting encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein. Besides, there is violation of the order of moratorium passed by this Adjudicating Authority on 07.02.2022.

9. In the above mentioned circumstances, the present application i.e. IA No. 837/2020 is allowed accordingly and the impugned notice dated 18.11.2020 issued by the respondent is set aside.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

September 29, 2022
PB/ASH