

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT V

INTERVENTION PETITION. No. 11/2022

In

INTERLOCUTORY APPLICATION No. 3191/2022

In

CP(IBC)No. 3434/MB/C-V/2019

Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the N.C.L.T Rules, 2016.

In the matter of

Bank of Baroda

...Applicant

V/s

UTI Structured Debt Opportunities Fund-1

And Others.

...Respondent

In the matter between:

Halliburton Offshore Services IncPetitioner

v/s

Mercator Petroleum Limited ...Corporate Debtor

Order Pronounced on :- 02.11.2023

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Intervention Petition No. 11 of 2022

In

I. A. No. 3191/2022

In

CP No. 3434/MB/C-V/2019

Coram:

Smt. Anuradha Sanjay Bhatia : Member (Technical)

Shri. Kuldip Kumar Kareer : Member (Judicial)

Appearances:

For the Applicant : AVP Partners.

For the Respondent : I.C. Legal.

ORDER

Per: Shri. Kuldip Kumar Kareer (Judicial Member)

1. This is an application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of N.C.L.T Rules, 2016 by the Applicant herein seeking intervention in an Interlocutory Application No. 3191 of 2022 filed by the Respondent herein. The Respondent No.01 is UTI Structured Debt Opportunities Fund-1, the Respondent No.02 is Mr. Satish Kumar Gupta, a Resolution Professional of Mercator Petroleum Ltd and the Respondent No.03 is the Insolvency and Bankruptcy Board of India.

Submissions of the Applicant in brief:

2. The present Application is being filed by Bank of Baroda, a financial creditor of Mercator Petroleum Limited ("Corporate Debtor") holding 31.80% voting share in the committee of creditors of the Corporate Debtor ("CoC"). The present Application has been filed inter alia seeking impleadment of the Applicant as a necessary party to the Interlocutory Application No. 3191 of 2022 filed by UTI inter alia challenging the reduction of its claim by Respondent No. 2 ("UTI Application") in order to enable the Applicant to file necessary replies in relation to the allegations made against it by UTI in the UTI Application. The present application also seeks to bring on record the necessary facts that show how UTI has inflated its claims in the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor to roughshod the CIRP of the Corporate Debtor in complete abuse of the process of law thereby causing prejudice to the stakeholders of the Corporate Debtor. This Applicant has also filed Interlocutory Application No. 3233 of 2022 depicting the highhanded conduct of UTI.

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3. The Corporate Debtor was admitted to CIRP pursuant to an order of this Hon'ble Tribunal dated August 31, 2020 in Company Petition No. 3434 of 2019. The erstwhile Resolution Professional ("RP") was replaced and Respondent No.02 was appointed by an order of this Hon'ble Tribunal dated August 11, 2022 at the behest of UTI. UTI has filed a claim in the CIRP of the Corporate Debtor as a beneficiary of a corporate guarantee issued by the Corporate Debtor in respect of non-convertible debentures issued by Mercator Limited. In this regard, UTI conveniently failed to inform the Respondent No. 2 about the recoveries made by UTI from Mercator Limited (the principal borrower) and update its claim in respect of Regulation 12A of the CIRP Regulations in respect of the Corporate Debtor. Respondent No 2 was apprised about the said recoveries by the Applicant and has now requisitioned additional information from UTI to update and revise UTI's claim in accordance with the provisions of the Code.

4. Respondent No. 2 was apprised of the said recovery as realised by UTI vide email dated October 3, 2022 addressed by the Applicant. Subsequently, Respondent No. 2 revised UTI's claim vide its email and letter dated October 19, 2022 in its own course after verifying the information as furnished by the Applicant and consequently adjusted UTI's claim to the extent of the recovery from Prem Mala. As Respondent No. 2 is acting in a manner which is not in the interest of UTI, although in

accordance with the applicable law, UTI has now again sought to replace the Respondent No. 2 and appoint Mr. Amit Rastogi as the resolution professional of the Corporate Debtor. UTI has sought to make certain allegations as well as raise certain defences in reply to the Applicant's Interlocutory Application No. 3233 of 2022 which is currently pending adjudication without impleading the Applicant as a party to the UTI Application.

5. In light of the foregoing and in the interest of justice, this Hon'ble Tribunal be pleased to take on record the aforesaid conduct of UTI and allow the present Application.

Submissions of the Respondent in brief:

6. The Intervenor has no locus to intervene the IA No. 3433 since there exists no provision under the law for the intervenor to be impleaded and made a party to IA 3433.
7. The Intervenor is seeking to mislead the Hon'ble Tribunal and expand the scope of proceedings. It is not for the Intervenor to adjudicate and label the already admitted claim of the Applicant as illegally obtained. Further, by way of stating such baseless and erroneous allegations, the Intervenor is seeking to diverge the entire proceedings under the present IA, to an altogether a different path, thereby jeopardising the claims of the Applicant,

the interests of the Corporate Debtor and the purpose of IA No. 3433 of 2022.

8. The Applicant apprehends and strongly believes that this entire exercise is either done to prolong the CIRP process or to deliberately send this Corporate Debtor into liquidation. There is no reason or justification for a nationalised bank to approach this Hon'ble Tribunal and oppose the claim of fund managed by some other institution of which the Intervenor is also a large shareholder and in such hostile manner. This appears to be a concerted attempt in collusion with other persons and as part of a litigation strategy to defeat the Applicant's legitimate rights.
9. In view of the aforesaid, the Respondent No.01 submits that the intervention petition is liable to be dismissed with costs.

Brief Submissions of the Petitioner in Rejoinder:

10. This Hon'ble Tribunal vide its orders dated January 21, 2021 and/or March 16, 2022 has admitted the Respondent No. 1's claim to the tune of INR 257 crores and that the Applicant, hence, cannot challenge the claim or intervene in the UT! Application. It is submitted that the quantum of the Respondent No. 1's claim was not adjudicated by the Hon'ble Tribunal. A bare perusal of the said orders would show that the limited question before the Hon'ble Tribunal was to ascertain whether the Respondent No. I can be

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admitted as a financial creditor in the corporate insolvency resolution process ("CIRP") of the Corporate Debtor basis the corporate guarantee executed by the Corporate Debtor. It is submitted that the Respondent No. 1 is misrepresenting the facts of the case.

11. It is denied that the Applicant is seeking to mislead the Hon'ble Tribunal and has no locus/right to maintain the Petition. It is submitted that the committee of creditors of the Corporate Debtor ("CoC") consists of two financial creditors viz. the Applicant and the Respondent No. I. Thus, any inflation of claims by Respondent No. I has a direct impact on the voting share of the Applicant and hence, the Applicant has every right to be made party to the UTI Application.

12. It is denied that there exists no provision under law for the Applicant to be impleaded and made a party to the UTI Application and that the Applicant has no role or nexus in the UTI Application. It is further denied that persons can be joined as parties to a proceeding only where any relief, arising out of the same transaction is alleged to exist against such person or where the presence of such persons before the Court is necessary to effectively adjudicate upon and settle the questions involved in the proceedings. It is a settled law that any affected party has a right to be heard. It is submitted that the inflation of claims by the Respondent No. 1 has a direct bearing on the reduction of the Applicant's claim in the CoC of the

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Corporate Debtor. Hence, the Applicant has every right to be impleaded and heard before passing any orders in the UTI Application.

13. It is submitted that the Respondent No. I has suppressed the information pertaining to the recovery of INR 10,17,66,553 on July 20, 2021 from Mercator Limited and has further inflated its claim by capitalizing penal interest and charging further interest on the penal interest. This had resulted in the Respondent No.1 having an inflated and increased voting share of 68.20% in the CoC causing grave prejudice and disadvantage to the Applicant. It is denied that the Applicant is not entitled to challenge the Respondent No. I's claim or intervene in the proceedings. The Respondent No. I's submissions regarding there being no reliefs claimed or prayed against the Applicant are irrelevant and forms no defence to the impleadment of the Applicant in the UTI Application. The Applicant being a member of the CoC and the rights of which are directly impacted, by inflation of claims by the Respondent No. 1 has the right to be heard and being added as a necessary party to the UTI Application.

14. The Respondent No. 1 has deliberately chosen to not make the Applicant a party. Instead the Respondent No. 1 is trying to misrepresent the facts of the case and make a false case in relation to the fees of the Resolution Professional in the UTI Application, where none such dispute exists. This is nothing but a feeble attempt to misrepresent the facts in order to wriggle out of the wrongdoings and inflation of claims at the behest of the

Respondent No. 1. Hence, it is imperative that the Applicant be made a party to the UTI Application to set the correct facts on record.

ANALYSIS AND FINDINGS

15. Heard the learned Counsels for the Applicant and the Respondent and gone through the pleadings, records and documents placed before us.

16. The present petition has been filed seeking impleadment of the Petitioner as a necessary party to Interlocutory Application No. 3191 of 2022 filed by the UTI Structured Debt Opportunities Fund (hereinafter referred to as “the UTI”) challenging, inter-alia, the reduction of its claim by Respondent No.02-Mr. Satish Kumar Gupta, who happens to be the Resolution Professional (‘RP’) of the Corporate Debtor M/s. Mercator Petroleum Limited.

17. In Company Petition No.3434 of 2019, I.A. Nos. 3191 of 2022 and I.A. No. 3433 of 2022 had been filed by the UTI challenging the reduction and further reduction in its claim by the RP. IA No. 3541 of 2022 was filed by the RP inter alia to seek order/direction from this Tribunal to change the rate of interest charged by the UTI in order to reduce the claim of UTI and also seeking a recall of the Order passed by this Bench on 16th March, 2022

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read with Order dated 07th January, 2021 by which the claim of UTI of over INR 257 crores was confirmed and upheld and the necessary directions were given to include the UTI in the Committee of Creditors.

18. Pursuant to the filing of aforementioned applications, there were several rounds of negotiations and discussions between the UTI and Bank of Baroda. The UTI and the Bank of Baroda agreed to mutually resolve the differences. It was agreed that the resolution plan proposed will be approved by both the parties. Based on this understanding, the resolution plan was considered by UTI and the Bank of Baroda and thus, approved. This approved resolution plan is now pending approval of this Hon'ble Tribunal in IA No.1124 of 2023.

19. Therefore, when the parties herein, i.e. the Intervention Petitioner and the Respondent No.01-UTI, have already settled the controversies between them and that the resolution plan has been approved by the CoC and currently pending for approval by this Tribunal u/s 31 of the Code, we are of the considered view that the intervention petition filed by the Petitioner has become wholly infructuous and serves no practical and meaningful purpose.

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ORDER

20. In view of the facts and circumstances of the case and in the view of the aforesaid findings, we pass the following order:

- a. Intervention Petition No. 11 of 2022 in Interlocutory Application No.3191 of 2022 in Company Petition (IB) No. 3434 of 2019 is hereby **dismissed**.
- b. There shall be no order as to costs.
- c. Accordingly, this I.A. stands disposed off.

Sd/-

ANURADHA SANJAY BHATIA

(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER

(MEMBER JUDICIAL)