

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
23-12-2022 AT 01:30 PM THROUGH VIDEO CONFERENCE

IA(IBC) 1392 /2022 in CP(IB) No. 17/9/HDB/2020
u/s. 9 of IBC, 2016.

IN THE MATTER OF:

Thirumala Logistics Pvt Ltd

...Operational Creditor

Vs

Sathavahana Ispat Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SHRI. AJAY DAS MEHROTRA, HON'BLE MEMBER (TECHNICAL)**

ORDER

Order in IA No.1392/2022 in CP IB No.17/9/HDB/2020 pronounced, recorded vide separate sheets.

In the result, the Application deserves to be dismissed with exemplary costs. We accordingly dismiss this Application with costs of Rs.1,00,000/- payable by the Applicant through ***Bharatkosh.gov.in(NTRP)*** within one week from the date of receipt of this order and file proof of payment in the Registry.

SD
MEMBER (T)

SD
MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1 HYDERABAD**

IA No. 1392 of 2022

in

Company Petition (IB) No. 17/9/HDB/2020

Appeal under Section 60 (5) of IBC, 2016 R/w Section 24(3)(c)

In the matter of M/s Thirumala Logistics *versus* Sathavahana Ispat Ltd

Filed by

M/s Maa Tara Enterprises
Naba Kailash Building
Flat No.2F, Ballygunge
Circular Road, Kolkata – 700019

...Applicant/
Operational Creditor

VERSUS

1. M/s. Sathavahana Ispat Limited

Represented by its Resolution Professional, Mr. Bhuvan Madan,
A-103, Ashok Vihar Phase -3
Delhi-110052

...Respondent/
Corporate Debtor

2. JC Flowers Asset Reconstruction Private Limited

12th Floor, Crompton Greaves House,
Dr. Annie Besant Road, Worli, Mumbai, Mumbai City
Maharashtra – 400030, Represented by its authorised signatory

...Respondent/
Committee of Creditor member

3. Jindal Saw Limited

A-1, UPSIDC Industrial Area,
Nandgaon Roadkosi Kalan,
Mathura, Uttar Pradesh - 281403
Also at, Jindal Centre, 12 Bhikaiji Cama Place
New Delhi - 110066
Represented by its authorised signatory

...Respondent/
Prospective Resolution Applicant

Date of order: 23.12.2022

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Sh. Ajai Das Mehrotra, Hon'ble Member (Technical)

Appearance:

For Applicant: Shri Deepak Agarwal, Advocate
For Respondent: Shri Shashank Agarwal, Advocate

PER: BENCH

ORDER

1. The present application is filed by M/s Maa Tara Enterprises/One of the Operational Creditors of the Corporate Debtor/Respondent No.1 herein, seeking the following reliefs:-
 - (a) Declare all meetings held by CoC post 10.01.2022 illegal and void ab-initio;
 - (b) Direct the Resolution Professional to serve notice to all operational creditors to enable them to participate in CoC meetings.
 - (c) Take appropriate actions against Resolution Professional for non-compliance of provisions of IBC and replace him with another Resolution Professional since the incumbent has acted in collusion with other Respondents to the detriment of other stakeholders of Respondent No.1.
2. The gist germane to the application is that:-
 - 2.1 The Applicant is engaged in the business of providing services including supply of manpower. The Applicant herein is an admitted operational creditor of Respondent No.1.

- 2.2 That prior to CIRP against Respondent No.1, the Respondent No.1 had entered into an operation, maintenance and Management Agreement with Respondent No.3 and this fact was informed to Bombay Stock Exchange by Respondent vide letter dated 02.8.2019. It is further averred by the Applicant that Respondent no.3 had complete control over Management of Respondent No.1 even prior to the initiation of CIRP i.e. in 2019.
- 2.3 That prior to CIRP against Respondent No.1, the financial debt owed to three major financial lenders i.e. Canara Bank, State Bank of India and Union Bank of India, along with non-banking Financial Company i.e. IFCI to the tune of Rs. 16,60,20,00,000/- was assigned under Swiss Challenge auction to Respondent No.2 for a sum of Rs. 5,32,00,00,000/- which is the sole Financial Creditor and member of CoC of Respondent No.1.
- 2.4 The Applicant has detailed the mode of consideration made by Respondent No.2 towards the assignment of the financial credit as under, and further allege that both these companies operate and function under Jindal Group and Respondent No.3 through their promoters and to demonstrate that Respondent No.3 has complete control over Respondents 1 and 2.
- (i) 15% by pledge of security receipts in Securitization Trust. Out of this 87% was raised by way of issuing Non-Convertible Debentures (NCDs) to Siddeshwari Tradex Private Limited via Axis Trustee Services Limited and remaining 13% from equity investment.
 - (ii) 85% from Hexa Securities and Finance Co. Ltd.

- 2.5 The Interim Resolution Professional appointed for Respondent No.1 issued Request for Proposal (RFP) for repair and maintenance works for Respondent No.1 on 04.09.2021 and subsequently addendum was issued to the RFP on 17.09.2021 and Respondent No.3 was chosen as contractor for carrying out maintenance works w.e.f. 18.10.2021 for a total consideration of Rs. 2,66,00,00,000/- to be completed within seven months and the current Resolution Professional had materially changed the scope and contour of repair and maintenance contract.
- 2.6 The Applicant further has made the following allegations against the Resolution Professional as under:-
- (a) That Respondent No.3 has taken over control of the Management of the Corporate Debtor even though the Company is not in the business of repair and maintenance of Coke Oven as per Memorandum of Association of Respondent No.3.
- (b) The Resolution Professional has received operational creditors claim of Rs. 1,97,23,57,392/- which is more than 10% of total claim i.e. Rs. 19,44,37,36,082.12 and he had failed to give prior notice and intimation of all the meetings of the CoC to the Operational Creditors to foreclose the scope of any objections to the proposed resolution plan submitted by Respondent No.3 by the Operational Creditors, which has deprived the Operational Creditors to file their objections. As such sought directions to declare all the CoC meetings post 10.01.2022 as illegal and void ab-initio.

- (c) That the entire CIRP is stage managed for the benefit of Respondent No.3 and that the Resolution Professional has acted in concert with all the Respondents knowing fully well that Respondent No.3 is a related party under IBC provisions.
- (d) That the financial debt of the Corporate Debtor was purchased by Respondent No.2 for the Respondent No.3 group of Companies at just less than half the amount, and subsequently R-3 was chosen as contractor for carrying out maintenance works w.e.f. 18.10.2021 for a total consideration of Rs. 2,66,00,00,000/- to be completed within seven months and thereafter the present RP materially changed the scope and contours of the repair and maintenance contract.
- 2.7 Despite requesting the Resolution Professional by the Applicant to provide a copy of the Resolution Plan and intimate their entitlement under the same, the Resolution Professional failed to adhere to their request.
- 2.8 That there exists a clandestine arrangement between Respondent No.2 and 3 to sell the Corporate Debtor to Respondent No.3 at throw away price.
- 2.9 Thus submitting, Ld. Counsel for the Petitioner prayed to grant an ad interim order of stay of all further proceedings.
3. Before we could consider the above submissions of the Ld. Counsel for the Applicant, the Ld. Counsel Shri Shashank Agarwal represents that the Resolution Professional/1st Respondent, was present and submitted that the Applicant who is one of the creditors of the Corporate Debtor (now

under CIRP) herein had earlier filed IA 717/2021 in the above Company Petition, assailing the communication of the Resolution Professional dated 20.10.2021, where-under the Resolution Professional had allowed the claim of the Applicant only to an extent of Rs. 86,54,439/- as against the total claim of Rs. 3,97,43,398.50 and this Tribunal, after having heard the Ld. Counsel for the Applicant herein as well as the Resolution Professional, dismissed the said IA 717/2021 vide order dated 05.05.2022 and that the said order has attained finality.

4. Ld. Counsel would submit further that by completely suppressing the order in IA 717/2021, the Applicant had filed the present application once again reiterating its plea that despite Applicant's claim being in excess of 10% of the total claim received, the Resolution Professional who is under statutory obligation in terms of Section 24 (3) (c) of IBC to give notice to the Applicant of all the meetings of CoC, completely breached the said obligation, as such all the meetings of CoC held post 10.01.2022 are illegal and liable to be set aside, as such the present Application is liable to be dismissed *in limine* with exemplary costs.
5. In the light of the submissions as afore-stated, the points that emerges for consideration of this Tribunal are;
 - (1) Whether the Applicant filed the present application by wilfully suppressing the material facts which are in the knowledge of the Applicant? If so, can the application be dismissed with exemplary costs on this sole ground?

(2) Whether the Applicant is entitled for a declaration that the meetings of CoC post 10.01.2022 are in violation of Section 24 (3) (c)? If so, the said meetings of the CoC are liable to be set aside.

6. We have heard the Ld. Counsel Shri Deepak Agarwal for the Applicant and Shri Shashank Agarwal, Ld. Counsel for Resolution Professional, perused the record and case laws.

Point (1):

Whether the Applicant filed the present application by wilfully suppressing the material facts which are in the knowledge of the Applicant? If so, can the application be dismissed with exemplary costs on this sole ground?

7. At the outset we may state that the facts and circumstances of this case have prompted us to refer to the ruling of the Hon'ble Supreme Court of India *in re, Ramjas Foundation & Ors vs. Union of India & Ors in Civil Appeal No.6662 of 2004* , wherein the Hon'ble Supreme Court has held as follows:-

“The Principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also the cases instituted in other courts and judicial forums” (Emphasis is ours).

8. Therefore, it needs to be seen whether the Applicant herein has indulged in suppression of any fact which is “material” and well within the knowledge of the Applicant. Needless to say that a material fact is

a fact that a reasonable person would recognize as relevant to a decision to be made, as distinguished from an insignificant, trivial, or unimportant detail. In other words, it is a fact, the suppression of which would reasonably result in a different decision.

9. There cannot be any denial of the fact that the very same Applicant had earlier filed IA 717/2021 assailing the communication of the Resolution Professional dated 20.10.2021 where under the Resolution Professional allowed the claim of the Applicant only in part. This Tribunal after hearing both sides, dismissed the said IA 717/2021, vide order dated 05.05.2022 and the same had attained finality. Therefore, it cannot be said that the Applicant is not in knowledge of the fact that its claim to the extent of Rs. 86,54,439/- only has been admitted and therefore, the Applicant is not qualified to be included as a member of CoC in terms of Section 24 (3) (c) of IBC and consequently, the Resolution Professional is not under any statutory obligation to issue notice to the Applicant. However, suppressing all these facts, which in our opinion are undoubtedly material facts and undoubtedly in the knowledge of the Applicant, filed this application in order to make a wrongful gain for itself and to prevent the ongoing CIR process of the Corporate Debtor.
10. In fact, the present application has been couched in such a way as if the Applicant's claim exceeds 10% of the total claim received/admitted by the Resolution Professional and therefore, but for the revelation by the Resolution Professional, that IA 717/2021 filed by the Applicant claiming

membership in CoC has been dismissed, we would have been in dark about the earlier proceedings. Thus, suppression of material facts which are well within the knowledge of the Applicant, being as clear as crystal in this case, the ruling of the Hon'ble Supreme Court in *re Ramjas Foundation & Ors*, applies with all force. Therefore, on this ground alone the application is liable to be dismissed with exemplary costs. We, therefore impose costs of Rs. 1 lakh (Rupees One Lakh only) on the Applicant to be paid by the Applicant through bharatkosh.gov.in (NTRP) within one week from the date of receipt of this order.

POINT (2)

Whether the Applicant is entitled for a declaration that the meetings of CoC post 10.01.2022 are in violation of Section 24 (3) (c)? If so, the said meetings of the CoC are liable to be set aside.

11. In our discussion under Point (i) above, we have categorically held that by virtue of the communication of the Resolution Professional dated 20.10.2021 and our order in IA No. 717/2021 dated 05.05.2022, the Applicant is not qualified to be a member of CoC in terms of Section 24 (3) (c) of the IBC. As such, the question of declaring any of the meetings of the CoC as void *ab initio* much less post 10.01.2022, does not arise at all. We therefore find no merit whatsoever in the plea raised by the Applicant. That apart, we have already held that the Applicant has indulged in suppression of material fact which is well within the knowledge of the Applicant at the time of filing this application.

Point (ii) is answered accordingly,

12. In the light of the discussion on the above points, the application deserves to be dismissed with exemplary costs. We accordingly dismiss the application with costs of Rs. 1,00,000/- (Rs. One Lakh only) payable by the Applicant through ***bharatkosh.gov.in*** (NTRP) within one week from the date of receipt of this order and file proof of payment in the Registry.

SD/-

(AJAI DAS MEHROTRA)
MEMBER TECHNICAL

SD/-

(DR. VENKATA RAMAKRISHNA BADARINATH NANDULA)
MEMBER JUDICIAL

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