IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,
KOLKATA

I.A. No. 1220/KB/2020 &
I.A. No. 1286/KB/2020
in
C.P. (IB) No.1193/KB/2019

<u>In the matter of:</u>

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;

And

<u>In the matter of:</u>

JJ. Plastalloy Private Limited

…. Operational Creditor

Vs

<u>In the matter of:</u>

Prayaas Packaging Private Limited

… Corporate Debtor

And

<u>In the matter of:</u>

Anil Kumar Vijay, Suspended director of Prayaas Packaging Private Limited, DIN: 00574294, Flat 4B, 64B, Ballygunge Circular Road, Karaya Ballygunge, Kolkata 700019, in the state of West Bengal.

… Applicant

Vs

Sandip Kumar Kejriwal, Interim Resolution Professional of Prayaas Packaging Private Limited;

JJ. Plastalloy Private Limited, a company incorporated under the Companies Act, 1956 having its office at A-2, Badshah Bagh Colony, Maldahiya, Varanasi, UP – 221002.

… Respondents

A N D

<u>In the matter of:</u>

JJ. Plastalloy Private Limited

…. Operational Creditor

Vs

<u>In the matter of:</u>

Prayaas Packaging Private Limited

… Corporate Debtor

And

<u>I.A. No. 1286/KB/2020</u>

<u>In the matter of:</u>

Anil Kumar Vijay, Suspended director of Prayaas Packaging Private Limited;

… Applicant

Vs

Sandip Kumar Kejriwal, Interim Resolution Professional of Prayaas Packaging Private Limited;

Indian Bank, (formerly Allahabad Bank), Member of the Committee of Creditors of Prayaas Packaging Private Limited having its office at 7, Red Cross Place, Kolkata 700001;

JJ. Plastalloy Private Limited,

… Respondents

Order reserved on: 09/12/2020

Order pronounced on: 02/02/2021

Coram: Shri Rajasekhar V.K. : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

<u>Appearances (through video conferencing):</u>

Mr. Ratnanko Banerji, Sr. Advocate]
Ms. Sristi Barman Roy, Advocate] Applicant in IA Nos. 1220 & 1286/
Mr. Sidhartha Sharma, Advocate] KB/2020
Ms. Ujjaini Chatterjee, Advocate]

Mr. Sandip Kumar Kejriwal, RP] Self
Mr. Omnarayan Rai, Advocate] For the CoC

COMMON ORDER

(Disposing of I.A. 1220/KB/2020 and I.A. 1286/KB/2020)

Per Rajasekhar V.K., Member (J):

1. **I.A. No. 1220/KB/2020** is an application filed by Mr. Anil Kumar Vijay, member of the suspended Board of Prayaas Packaging Private Limited (the Corporate Debtor) seeking the following reliefs:-

   a. Stay of the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor and dismissal of the underlying CP (IB) No. 1193 of 2019 in view of the settlement arrived at between the applicant and Respondent No. 2 in June, 2020.

2. **I.A. (IB) No. 1286/KB/2020** is an application seeking the following reliefs:-

   a. To hold that the decision of the Respondent No. 1 taken at the third CoC meeting held on September, 28, 2020 to withdraw its consent to filing of the withdrawal application under section 12A of the Insolvency and Bankruptcy Code, 2016, is incorrect and should be set aside;

   b. To hold that the recording of failure of settlement at the second CoC meeting held on July 24, 2020 is incorrect and contrary to records and is liable to be set aside;

   c. To record that there is a settlement of the claim of the operational creditor/Respondent no. 3 in CP (IB) No. 1193/KB/2019 and consequently the company petition should not be proceeded with further;

   d. Stay all further proceedings in C.P.(IB) No. 1193/KB/2019;

   e. The order dated March 13, 2020 be stayed."

3. Since the reliefs claimed in the two IAs are more or less overlapping, they are disposed of by way of this common order.

4. The Corporate Debtor was admitted to CIRP on 13.03.2020 based on the application made by Respondent No. 2 herein. Respondent No. 2 is the sole constituent of the Committee of Creditors (CoC). Respondent No. 1 is the IRP appointed in respect of the Corporate Debtor.

5. Mr. Ratnanko Banerji, Ld. Sr. Counsel submitted that the applicant came to know of the initiation of CIRP against the Corporate Debtor on 17.03.2020 vide e-mail sent by R1. However, nothing could be done because the lockdown was announced and he was not able to contact the Operational Creditor to try and arrive at a settlement. On 16.05.2020 the applicant received the proposal for settlement from R2 by e-mail, a copy of which was also shared with Respondent No. 1 via whatsapp message.

6. On 04.06.2020 the applicant e-mailed Respondent No. 2 whereby it was agreed that payment of Rs.5,00,000/- (Rupees Five Lakh Only) would be made by way of post dated cheques to R2. On the same day i.e. 04.06.2020 R2 agreed to the proposal of the applicant and requested the applicant to communicate the draft settlement papers, copies of cheques etc. The applicant all along kept R1/IRP informed of all the developments towards settlement of outstanding dues of R2. On 19.06.2020 the applicant informed R1/IRP that a settlement was being finalised. R1/IRP's fee of Rs.50,000/- was paid in two instalments on 09.06.2020 and 19.06.2020.

7. On 25.06.2020 the first CoC meeting was held. The minutes of the meeting are placed as Annexure "H" to the application. In the first CoC meeting it was resolved that signed hard copies of the settlement agreement along with Form FA shall be handed over to the IRP on or before the 3rd July, 2020. It was the stand of the applicant that on 04.07.2020 the demand drafts were all kept ready and intimated to the IRP. The draft settlement agreement along with copy of the demand draft

of Rs.4,50,000/- (Rupees four lakh fifty thousand only) which was the whole settlement amount was e-mailed to R1/IRP. However, on 06.07.2020 R1/IRP intimated the applicant that since all the documents were not submitted by 3rd July, 2020, he proceeded to take over the factory at Uluberia on 07.06.2020.

8. The applicant pointed out that the documents could not reach in time due to the travel restrictions on account of Covid 19 Pandemic and hence no adverse steps may be taken. Moreover, 50% of the agreed fee of Rs.1,00,000/- (Rupees one lakh only) was also paid to Respondent No. 1/IRP. However, R1/IRP through his e-mail of the same date expressed that his fee was Rs.1,50,000/- (Rupees One lakh fifty thousand only).

9. On 07.07.2020, the applicant preferred an application before this Adjudicating Authority seeking leave to make payment of the settlement amount to R2 and recalling of the order of admission dated 13.03.2020. However, while filing the application the case number was wrongly mentioned as CP(IB) 1472/KV/2018 instead of CP (IB) No. 1193/KB/2019 and therefore the same has not been listed for hearing.

10. On 11.07.2020, the applicant submitted form FA along with a copy of the demand draft of Rs.4,50,000/- to R1/IRP for taking steps for filing the application under section 12A. However, it is the case of the applicant that R1/IRP refused to act on the said e-mail.

11. On 24.07.2020, the second CoC meeting was conducted, which the applicant could not attend since he was advised home quarantine and this fact was also duly communicated to the IRP vide e-mail dated 23.07.2020. On 27.07.2020 R2 requested the applicant not to send anyone to its Varanasi office since the same was located in containment zone and hence the office was shut. On 10.08.2020, R2 informed the applicant that his office was opened and that the applicant could

get the signed settlement agreement collected from his office on 24.08.2020. The hard copy of the settlement agreement and Form FA was collected and handed over to R1/IRP. However, R1/IRP did not accept the Form FA and the hard copies of the settlement agreement.

12. To cut the long story short, on 28.09.2020 when the matter of settlement was placed at the third CoC meeting, the CoC withdrew its consent for filing the withdrawal application.

13. Mr. Omnarayan Rai, Ld. Counsel appeared on behalf of the CoC and submitted that nowhere in the CoC meeting it was mentioned that there could be a settlement of the matter and therefore the allegation that the CoC withdrew its consent at the third meeting held on 28.07.2020, was factually incorrect. However, he did not dispute the other factual averments made in the application. The CoC also did not choose to file a reply to the present application.

14. We have considered the submissions made by the Sr. Counsel Mr. Ratnanko Banerji for the applicant, Mr. Sandip Kumar Kejriwal, R1/IRP appearing in person and Mr. Omnarayan Rai, Ld. Counsel appearing on behalf of R2/CoC.

15. From the documents placed on record, we find that there was a meeting of minds as regards settlement if made on or before 3rd of July, 2020. Since the minutes of the first CoC meeting held on 25.06.2020 records the following:-

> *"The erstwhile directors of the Corporate Debtor are trying to settle with Operational Creditor since last one month, but could not be settled by some reasons. However, assured in the meeting that it will be settled within 03.07.2020. Financial Creditor and IRP agreed to give time to erstwhile directors to settle within the given time with the following terms and conditions:-*
> *Within 03.07.2020, Erstwhile Directors/Operational Creditor will give to IRP original copy of Settlement Agreement, duly signed by both the parties i.e. Corporate Debtor and Operational Creditor.*

Within 03.07.2020, Operational Creditor will give to IRP Original copy of Form FA along with Affidavit for withdrawal of case (as required in Section 12A of IBC for withdrawal of case). Form FA also states that either IRP received full amount (IRP fee and other expenses incurred by IRP upto the date of signing form FA on account of CIRP) at the date of FA or a Bank Guarantee will be given for the due amount."

(sic)

16. From the above, it is clear to our minds that the Operational Creditor was willing to go for settlement provided the formalities were completed by 03.07.2020. While it is not disputed that there was a delay of one day in communicating the bank draft details, we find from the application that there was just and sufficient cause which prevented the applicant from communicating the details on or before 3rd July, 2020. In any case one day's delay cannot be fatal to the settlement agreement itself. The further delay in not being able to handover the physical copy of the demand draft and collecting the settlement agreement physically from the office of R2 at Varanasi has also been sufficiently explained, as the office was located in a containment zone due to Covid 19 Pandemic and hence was shut.

17. We feel that respondents should have duly considered these facts and circumstances. The object of the Code is to enable a resolution of the Corporate Debtor rather than getting bogged down in minor procedural details and failing to see the wood for the trees. If only the IRP had appreciated this, there would not have been any need for the present application.

18. Blind adherence to the letter of the law without appreciating the spirit of it will only be a case of "operation successful, patient dead." Such an approach should be frowned upon.

19. In view of the above, we hereby order as follows:-

(a) The settlement agreement is taken on record and full satisfaction thereof is recorded;

(b) The CIRP initiated against the Corporate Debtor vide an order dated 13.03.2020 is closed and the Corporate Debtor is released from the rigours of the Code;

(c) The Board of Directors of the Corporate Debtor is restored to its original position;

(d) R1/IRP is discharged of his responsibility. He is directed to hand over the possession of the Corporate Debtor and all books and documents of the Corporate Debtor to the Board of Directors of the Corporate Debtor;

(e) The IRP fee for the assignment is fixed at Rs.1,00,000/- (Rupees One Lakh Only) which shall be paid by the Corporate Debtor within a period of 15 days from today, if not already done, failing which this order shall be a nullity and of no legal consequence.

(f) The IRP shall intimate the jurisdictional ROC regarding closure of the Corporate Insolvency Resolution Process (CIRP)

(g) I.A. (IB) No.1220/KB/2020 and 1286/KB/2020 in C.P. (IB) No. 1193/KB/2019 **are disposed of** with the above directions. Consequently, **CP (IB) No. 1193/KB/2019 shall also stand disposed of, as withdrawn.**

20. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

21. Certified Copy of this order be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Order signed on 02 February, 2021.

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