

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

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IA No. 1738/MB/2020
in
CP (IB) No. 725/MB/2017

(In the matter of an Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016)

Prakash K. Pandya,
Liquidator of Varun Corporation Ltd.
16, Star Trade Centre, Sodawala Lane,
Borivali (W), Mumbai- 400 092 ... *Applicant*
V/s

Modest & Parsons International Private Limited,
20/21, Floor 17/19, Rex Chambers,
Walchand Hirachand Marg,
Ballard Estate, Mumbai – 400 001 ... *Respondent*

In the matter of:

The Mauritius Commercial Bank ... Financial Creditor
V/s
Varun Corporation Limited ... Corporate Debtor

Order Dated: 28.05.2021

CORAM:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)
Shri V. Nallasenapathy, Hon'ble Member (Technical)

Appearance:

For the Applicant: Mr Tanmay Varadkar, PCS with Ms Sampada
Golamade, Advocate.

For the Respondent: Mr. Harsh L. Behany, Advocate.

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

This is an Application by the liquidator of the Corporate Debtor seeking direction to the Respondent, a member of the Committee of Creditors (CoC) of the Corporate Debtor, for payment of Corporate Insolvency Resolution Process (CIRP) costs and for punishing the Respondent for wilful disobedience of the order dated 07.03.2019 of this Authority in MA No. 671 of 2018.

2. The facts leading to the Application are as follow:
 - a) The Corporate Debtor viz. Varun Corporation Limited went into CIRP by an order 30.06.2017 in the captioned Company Petition. Subsequently this Authority by order dated 18.05.2018 directed to liquidate the Corporate Debtor and appointed the present Applicant (who was the RP) as the liquidator. The Respondent was one of the members of the Committee of Creditors (CoC) of the Corporate Debtor. The Mauritius Commercial Bank and Standard Chartered Bank being the other members.
 - b) The CoC in its meeting held on 30.01.2018 agreed to bear the CIRP costs. The Resolution Professional (RP) of the Corporate Debtor filed MA No. 671 of 2018 seeking appropriate directions from this Authority with regard to the bearing of the CIRP costs. This Authority by order dated 07.03.2019 in MA No. 671 of 2018 directed the members of the CoC to proportionately contribute towards payment of the CIRP costs.
 - c) The other members i.e. the Mauritius Commercial Bank and the Standard Chartered Bank have paid their share of the CIRP costs to the tune of ₹. 23,02,476/- and ₹. 5,99,299/- respectively. The Respondent Company as the member of the CoC was obliged to make payment of ₹.23,20,535/- which included the fees of the RP.

- d) The Applicant by email dated 30.03.2019 *inter alia* requested the Respondent to make the payment within 15 days. The Respondent by its email dated 15.04.2019 informed that it had dissented to the Resolution No. 1 in the 3rd meeting of the CoC held on 30.01.2018. The Respondent then filed an Application bearing MA No. 1895 of 2019 seeking recall of the order dated 07.03.2019. The Application was rejected on 24.09.2019.
- e) The Respondent by its letter dated 02.03.2020 agreed to make payment of ₹. 5,00,000/- and the balance in tranches within 90 days from the date of receipt of amount of ₹. 5,00,000/-. The Applicant thus received initial payment of ₹. 5,00,000/- under cheque No. 000431 dated 10.03.2020. Thereafter however he has not received any payment towards the balance amount of ₹. 18,20,535/-. The Applicant accordingly filed the present Application on 07.10.2020 seeking the following reliefs:
1. *That the present Application be allowed with cost on the Respondent Company;*
 2. *That the Respondent Company be directed to pay an amount of Rs. 18,20,535/- (Rupees Eighteen Lakhs Twenty Thousand and Five Hundred and Thirty Five only) towards the CIRP cost as per the order dated 07.03.2019 of this Hon'ble Adjudicating Authority in M.A. No. 671 of 2018 immediately;*
 3. *That the Respondent Company be punished for wilful disobedience of the order dated 07.03.2019 of this Hon'ble Adjudicating Authority in M.A. 671 of 2018; and*
 4. *Such order(s) as the Hon'ble Tribunal may deem it fit and just in the circumstances of the case.*
3. The Respondent in its reply has refuted the averments made in the Application. It is submitted that there has been no wilful disobedience on its part in carrying out the order dated 07.03.2019. It is submitted that the business operations of the Respondent had been adversely affected and ultimately came to a standstill as

the Joint Commissioner (JC) of the Income Tax had attached the bank account of the Respondent w.e.f. 12.03.2018. Thus the Respondent was unable to comply with the orders.

4. As already indicated in the Application the Respondent had paid ₹. 5,00,000/- out of ₹. 23,20,535/- by 10.03.2020 and had agreed to pay the balance amount by 10.06.2020. But after two weeks of the initial payment of ₹. 5,00,000/-, the country was hit by Covid-19 Pandemic and resultant lockdown.
5. The Respondent by its letter dated 08.06.2020 brought the facts and difficulties faced by it to the notice of the Applicant and sought extension of time to pay the balance amount. The Applicant however did not appreciate difficulties faced by the Respondent in these unprecedented times and demanded immediate payment of balance amount. Soon thereafter the present Application was filed. It is accordingly submitted that there has been no 'wilful disobedience' of the order dated 07.03.2019. The Application thus needs to be dismissed.
6. We have heard the learned counsel for both the parties and have perused the documents. This Authority by order dated 07.03.2019 *inter alia* passed the following order.

“Given the Resolution passed by CoC in its meeting dated 30.01.2018 with vote share of more than 75%, it is clear that CIRP costs not exceeding Rs. 52,54,160/- is to be paid by the CoC and shall form part of the CIRP costs and the same shall be payable on priority and all other claims in full either under the Resolution Plan or upon liquidation of Varun Corporation Ltd.

Given the Resolution of CoC dated 30.01.2018, we at this moment allow M.A. 671 of 2018 and pass an order for making a payment not exceeding Rs. 52,54,160/- as CIRP costs to the Resolution Professional within 15 days from today by CoC in proportion to their voting right.

MA 671 of 2018 is disposed of accordingly”.

7. The Respondent sought variation of the order by an Application bearing MA No. 1895 of 2019. This Tribunal by order dated 24.09.2019 declined to interfere with the order and rejected the Miscellaneous Application. Thereafter the Respondent paid ₹. 5,00,000/- on 10.03.2020 and agreed to pay the rest within next three months. The payment thus was to be made on or before 10.06.2020.
8. Section 425 of the Companies Act, 2013 (the Act) confers jurisdiction on the Authority to punish for contempt in the following words:

“425. Power to punish for contempt.—

The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971 (70 of 1971), which shall have the effect subject to modifications that—

(a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and

(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.”

9. The ‘contempt of court’ is defined under Section 2(a) of the Contempt of Courts Act, 1971, which means civil contempt or criminal contempt. The facts alleged would not come within the definition of ‘criminal contempt’. The allegation may have to be dealt with under the definition of ‘civil contempt’ defined under Section 2(b) of the Contempt of Courts Act which reads as follows:

“2. Definitions.— *In this Act, unless the context otherwise requires,—*

(a).....;

(b) “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(c).....”

10. The *sine qua non* for civil contempt is ‘wilful disobedience’. The disobedience or otherwise of an order would have to be gleaned from the conduct of the contemnor subsequent to the order. In the instant case there is no allegation of any disobedience of the order prior to 10.06.2020. The order dated 07.03.2019 directed the Respondent to make the payment within fifteen days. The Respondent however sought recall of the order under Application bearing MA No. 1895 of 2019 and the same was disposed of on 24.09.2019. Thereafter, the Respondent by letter dated 02.03.2020 agreed to make the payment and in fact paid a part of the amount on 10.03.2020, promising to pay the rest by 10.06.2020. However, barely a fortnight after the initial payment the world was struck by the unprecedented Covid-19 Pandemic. Our country is still reeling under its influence and is making all efforts to cope with the calamity.
11. The Hon’ble Supreme Court by its order dated 23.03.2020 extended the timeline of limitation and compliance of any order from time to time. The Hon’ble Court by an order dated 08.03.2021, in *Suo Moto Writ Petition (Civil) No. 03 of 2020*, have also *inter alia* extended the limitation period at least by a period of 90 days from 15.03.2021. The Central Government have also extended the timeline by appropriate amendment to Regulation 40 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by inserting Regulation 40C w.e.f. 29.03.2020 to the following effect.

“40C. Special provision relating to time-line.

Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”

12. Considering the related facts and the extension of timeline by the Hon'ble Apex Court due to the unprecedented situation arising out of the pandemic, the date of payment i.e. 10.06.2020 of the balance amount would effectively get extended, despite the same being a private promise by Respondent to the Applicant.
13. Besides facts narrated in the reply clearly indicate that the Respondent has not consciously violated the order. It cannot be said that the Respondent deliberately did not wish to comply with the order. The mandatory requirements of 'wilful disobedience' are squarely lacking. The Respondent accordingly cannot be held to be in contempt of the order dated 07.03.2019.
14. Considering the present situation, the period for payment of the balance amount in our opinion may be extended. Hence ordered.

ORDER

The Application be and the same is allowed in part on contest. The Respondent is directed to pay the balance amount of ₹. 18,20,535/- in terms of the order dated 07.03.2019 within a period of six months hence. The period may be extended by this Authority under appropriate circumstances, if sought by the Respondent. The prayer for punishing for contempt is refused. There would however be no order as to costs.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Janab Mohammed Ajmal
Member (Judicial)