

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI (COURT III)**

IA-4994/2022, IA-3926/2022 and CA-453/2020

In

IB-944(ND)/2018

**IN THE MATTER OF:**

M/s. Shree Shyam Enterprises

..... **Operational Creditor**

**VERSUS**

M/s. JNS Infratech Private Limited

..... **Corporate Debtor**

**AND IN THE MATTER OF IA-4994/2022:**

Mr. Naresh Kumar Bhutani

..... **Applicant/Resolution Professional**

**Versus**

Ms. Shikha (Proprietor of M/s. Shree Shyam Enterprises)

..... **Respondent/Operational Creditor**

**AND IN THE MATTER OF IA-3926/2022:**

Mr. Santosh Kumar Singh

Director of the Ex-Management of the Corporate Debtor

..... **Applicant**

**Versus**

Mr. Naresh Kumar Bhutani

..... **Respondent/Resolution Professional**

**AND IN THE MATTER OF CA-453/2020:**

Mr. Naresh Kumar Bhutani

..... **Applicant/Resolution Professional**

**Versus**

Mr. Santosh Kumar Singh & Anr.

..... **Respondents**

**Pronounced On: 18.10.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**IA-4994/2022, IA-3926/2022 and CA-453/2020 In IB-944(ND)/2018**

**Date of order: 18.10.2023**

**PRESENT:**

For the Applicant : Mr. Ashok Juneja, RP in person  
Mr. Santosh Kumar, Advocate for the Ex-  
Management/ Applicant  
For the Respondent :

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**IA-4994/2022:**

1. This application has been filed by the Resolution Professional under Section 60(5) read with Section 65 of the Insolvency and Bankruptcy Code, 2016 for taking action against the Operational Creditor for fraudulent and malicious initiation of Corporate Insolvency Resolution Process under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. JNS Infratech Private Limited, the Corporate Debtor herein.

2. It is submitted that in C.P. No. (IB) 944 (ND)/2018, this Adjudicating Authority initiated CIRP vide order dated 13.09.2019 and one Mr. Naresh Kumar Bhutani, was appointed as the IRP. The IRP took necessary steps as provided under the Code and made public announcements in two newspapers.

3. The IRP made several efforts to contact the Operational Creditor and issued a letter dated 03.12.2019 by Speed Post which was returned back with remarks - "office locked".

4. It is submitted that no claim has been filed by the Operational Creditor in spite of repeated requests made by the RP. It is alleged that the Operational Creditor settled the matter with the Directors of the Suspended Board of Directors and never brought it to the notice of the present Applicant.

5. The RP has therefore filed the present application seeking action under Section 65 of IBC against the Operational Creditor for initiating Insolvency proceedings with fraudulent and malicious intent for a purpose other than for the Resolution of the Company.

**IA-4994/2022, IA-3926/2022 and CA-453/2020 In IB-944(ND)/2018**  
**Date of order: 18.10.2023**

**IA-3926/2022:**



6. This application has been filed under Rule 11 of NCLT Rules, 2016 read with Section 12A of IBC, 2016 by one Mr. Santosh Kumar Singh, Director of the Ex-management of the Corporate Debtor seeking the following directions:

*(a) "allow present Interlocutory application and pass appropriate direction to the Resolution professional and Applicant to complete the process of withdrawal of the present Corporate Insolvency Resolution Process pending against the Corporate Debtor, JNS Infrastructure Pvt. Ltd.,*

*(b) alternately in the aforesaid facts and circumstances, kindly may be pleased to pass an order for withdrawal of the present Corporate Insolvency Resolution Process pending against the Corporate Debtor JNS Infrastructure Pvt. Ltd."*

7. On a bare reading of the contents of the above-mentioned applications, the only aspect which emerges is that the Operational Creditor at whose instance the Corporate Insolvency Resolution Process was initiated has failed to take any follow-up action in as much as the Operational Creditor failed to inform the IRP regarding the appointment. The Operational Creditor also delayed the payment of Rs. 2 Lakhs as directed by this Adjudicating Authority in its order dated 13.09.2019 and it is only after the warrants were issued by this Adjudicating Authority vide order dated 07.01.2021 against the Operational Creditor that the Operational Creditor paid an amount of Rs. 2 Lakhs to the Resolution Professional on 29.09.2021 i.e. after more than two years from the date of the order passed by this Adjudicating Authority on 13.09.2019.

8. Further, the Operational Creditor did not file any claim before the IRP/RP despite repeated requests made by the RP. The Resolution Professional has also made an allegation in the present application that the Operational Creditor has settled the matter with the Directors of the Suspended Board of Directors of the Corporate Debtor.



9. The Resolution Professional, on the aforesaid facts and circumstances has prayed for initiation of action against the Operational Creditor under Section 65 of the Code for initiating the Insolvency Resolution Process fraudulently and with a malicious intent for any purpose other than the Resolution of the Corporate Debtor.

10. We also noted that IA-3926/2022 has been filed by the Director of the Ex-management of the Corporate Debtor seeking a direction to the Resolution Professional and the Applicant to complete the process of withdrawal of the present CIRP and pass an order of withdrawal under Section 12A of IBC.

11. Be that as it may, on the one hand, the Resolution Professional seeks action under Section 65 of the Code, against the Operational Creditor, whereas on the other hand, the Director of the Ex-management of the Corporate Debtor is praying for an order of withdrawal of the present CIRP against the Corporate Debtor under Section 12A of the Code.

12. In the present case, no Committee of Creditors could be constituted, since, the Resolution Professional did not receive any claims even from the Operational Creditor. It is submitted by the Ld. Counsel for Resolution Professional that the Operational Creditor is not traceable. Under the peculiar facts and circumstances of the present case, we do not consider it appropriate to pass any orders in exercise of the powers under Section 65 of the Code in IA-4994/2022. According to the submissions made by Ld. Counsel appearing for the Resolution Professional, the Operational Creditor is not traceable. Further, no orders under Section 12A IBC directing withdrawal of the CIRP as prayed for in IA-3926/2022 filed by the Director of the Ex-management of the Corporate Debtor can be passed. Firstly, due to the reason that such an application at the instance of the Director of the Ex-management of the Corporate Debtor is not maintainable and secondly, because no CoC has been constituted and mandatory requirement of passing of resolution by CoC by 90% votes can be met in the present case. Therefore, we deem it appropriate to pass an order directing the termination of CIRP and discharge the Resolution Professional from his responsibilities



in exercise of powers under Rule 11 of the NCLT Rules, 2016 to meet the ends of justice and to prevent abuse of the process of the Adjudicating Authority.

13. For the sake of convenience Rule 11 of NCLT Rules is reproduced below:-

*“11. Inherent powers. - Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”*

14. The language used in Rule 11 of NCLT Rules, 2016 clearly shows that the Tribunal has the inherent power to pass such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Adjudicating Authority.

15. The Hon’ble NCLAT while dealing with the power conferred under Rule 11 of the NCLAT Rules, 2016, in the case of **Action Barter Private Limited Vs. SREI Equipment Finance Limited and Another**, reported in 2020 NCLAT Del 2734 in IA No. 811/2020 in Company Appeal (AT)(Insolvency) No. 1434 of 2019, has held that- *“Rule 11 is merely declaratory in the sense that this Tribunal is armed with inherent powers to pass orders or give directions necessary for advancing the cause of justice or prevent abuse of the Appellate Tribunal's process. Even in the absence of Rule 11 this Appellate Tribunal, being essentially a judicial forum determining and deciding rights of parties concerned and granting appropriate relief, has no limitations in exercise of its powers to meet ends of justice or prevent abuse of its process. Such Powers being inherent in the constitution of the Appellate Tribunal, Rule 11 can merely be said to be declaring the same to avoid ambiguity and confusion.”*

16. From the above, it is very clear that this Tribunal is clothed with powers under Rule 11 of NCLT Rules, 2016 to pass any order in order to meet the ends of justice or to prevent abuse of the process of the Tribunal.



17. In the present case, according to our considered view, no order can be passed in terms of Section 65, IBC which has been filed by the Resolution Professional, since, the Operational Creditor is not traceable.

18. Further, in IA No. 3926/2022 which has been filed by the Director of the Ex-management of the Corporate Debtor since necessary ingredients that are required to be complied with for filing an application under Section 12A have not been met. Particularly, because of the fact that there is no mandate of law i.e. 90% voting share of the CoC for filing an application under Section 12A of the Code in the present case.

19. From the conspectus of the facts and circumstances of the case as discussed above, in exercise of under Rule 11 of NCLT Rules direct termination of CIRP and discharge the Resolution Professional from his responsibilities.

20. IA-4994/2022 and IA-3926/2022 are **disposed of**, in terms of the above order.

**CA-453/2020:**

21. This application has been filed by the Interim Resolution Professional under Section 19(2) of the IBC, seeking a direction to the promoters of the Corporate Debtor to assist and co-operate with the Interim Resolution Professional.

22. In terms of the order passed in IA-4994/2022 and IA-3926/2022, no order is required to be passed in this application. Accordingly, **CA-453/2020** is **disposed of**.

**-SD-**

**(ATULCHATURVEDI)  
MEMBER (TECHNICAL)**

**-SD-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**