

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH
(through web-based vide conferencing platform)**

**IA No.1381 of 2022 & IA No.1355/2022
In
CP(IB) No.35/Chd/HP/2018
(Admitted)**

**Under Section 60(5) of the
Insolvency and Bankruptcy Code,
2016**

In the matter of:-

Phoenix ARC Private Limited

...Financial Creditor

Versus

GPI Textiles Limited

...Corporate Debtor

And in the matter of:-

Phoenix ARC Private Limited
Acting in its capacity as Trustee of
Phoenix Trust FY 12-4
Registered Office at:
5th Floor, Dani Corporate Park 158,
CST Road, Kalina, Santa Cruz (East),
Mumbai, Maharashtra- 400 098
Through Gurleen Chhabra, Associate Vice President
Email:- gurleen.chhabra@phoenixarc.co.in
M:- 9167930326

(IA No.1381/2022)

...Applicant

Versus

1. M/s Shreeji Cotfab Limited
Plot #SP/14B, RIICO, Industrial Area,
Neemrana, Alwar, Rajasthan
Through its Director
Email: pankajbhatia2000@gmail.com
2. Jalesh Kumar Grover
Resolution Professional of M/s GPI Textiles Limited,
SCO 818, NAC Manimajra, Chandigarh
Email: ip.gpitextiles@ducturus.com

...Respondents

And in the matter of:-

(IA No.1355 of 2022)

Raghav Jain
S/o Mohit Jain, House No.18,
Sukh Enclave, New Officers Colony,
Patiala (Punjab)- 147001
raghavjaingpi@gmail.com

...Applicant

Versus

1. Jalesh Kumar Grover
Resolution Professional
GPI Textiles Limited,
Address: First Floor (Above Yes Bank)
SCO 818, NAC Manimajra, Chandigarh- 160101
Email: jk.grover27@gmail.com
ip.gpitextiles@ducturus.com
2. Committee of Creditors
(Through the Lead Financial Creditors)
Phoenix ARC Private Limited
5th Floor, Dani Corporate Park 158,
CST Road, Kalina, Santa Cruz (E),
Mumbai, Maharashtra- 400 098
E-mail: ajit.kewin@phoenixarc.co.in
3. State Bank of India,
SAM Branch, Local Head Office,
Sector 17A, Chandigarh- 160017
sbi.04262@sbi.co.in, team5samb.cha@sbi.co.in

...Respondents

Order delivered on 04.11.2022

**Coram: HON'BLE SHRI HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SHRI SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing :-

IA No.1381 of 2022

For the Applicant	:-	Mr. Manish Jain, Advocate Ms. Divya Sharma, Advocate Mr. Siddhant Jain, Advocate
For Respondent No.1	:-	Mr. Aalok Jagga, Advocate Mr. A.P.S Madaan, Advocate
For Respondent No.2	:-	Mr. Abhishek Anand, Advocate Mr. Viren Sharma, Advocate

IA No.1355 of 2022

For the Applicant	:-	Mr. Sangram Patnaik, Advocate Mr. Vishav Bharti Gupta, Advocate
For Respondent No.1	:-	Mr. Abhishek Anand, Advocate Mr. Viren Sharma, Advocate
For Respondent No.2	:-	Mr. Manish Jain, Advocate Ms. Divya Sharma, Advocate Mr. Siddhant Jain, Advocate
For Respondent No.3	:-	None

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

ORDER

Both these applications i.e. IA No.1381 of 2022 and IA No.1355 of 2022 are taken up together for discussion, being interrelated and interconnected.

IA No.1381/2022

This application has been filed on behalf of Phoenix ARC Private Limited, which is majority stakeholder in the Committee of Creditor having voting share of 92.55%, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the '**Code**') seeking clarification of order dated 10.10.2022, passed by this Adjudicating Authority.

2. Brief facts necessary for adjudication of the present application are that this Adjudicating Authority, vide order dated 10.10.2022 partly allowed IA No.656 of 2022, and passed a specific direction in Para 54 of the said order to the Resolution Professional and Committee of Creditors of the corporate debtor to invite respondent No.1 herein and other resolution applicants of the earlier round i.e. Navraj Mittal (H2), M/s Shivani Trendz Private Limited (H3) and Pankaj Bhatia & Shreeji Cofab (H4) and also other resolution applicants (under the new process) for the purpose of

negotiations for finalization of the resolution plan in accordance with law. For ready reference, Para 54 of order dated 10.10.2022 is reproduced below:-

“54. As a sequel to above discussion and reasons assigned aforesaid, the present application is partly allowed to the extent that Resolution Professional and Committee of Creditors are directed to invite the present applicant alongwith other earlier resolution applicants namely Navraj Mittal and Others (H2); M/s Shivani Trendz Private Limited (H3); and Pankaj Bhatia & Shreeji Cotfab (H4) and also fresh resolution applicants for the purpose of negotiations in finalization of Resolution Plan in accordance with law. It is made clear that steps, if any, taken by the Resolution Professional or Committee of Creditors during the interregnum between the date of reservation of this order i.e. 19.09.2022 till today, would be subject to this order. Thus, IA No.656/2022 is disposed of accordingly.”

Thus, in view of the above, it is submitted by the applicant that it seeks to invite all the Resolution Applicants of the earlier round/process for their participation in terms of the directions passed by this Adjudicating Authority in order dated 10.10.2022.

3. It is contended by the applicant that so as to not give the other remaining participants any ground of grievance and without prejudice to the rights and contentions of the applicant, Committee of Creditors be permitted to invite all the other resolution applicants of the earlier negotiation process as well. It is further contended that invitation to the other Resolution Applicants of the earlier round of negotiation process would aid in maximization of the value of the assets of the corporate debtor, which is the underlying objective of the order passed by this Adjudicating Authority.

Thus, it is prayed by the applicant that its application may be allowed and order dated 10.10.2022 passed by this Adjudicating Authority be clarified to the extent permitting the Resolution Professional and the Committee of Creditors to invite all the Prospective Resolution Applicants for the negotiation process.

IA No.1355/2022

This application has been preferred by Mr. Raghav Jain, under Section 60(5) of the Code, seeking the following reliefs:-

- 1) *Direct the resolution professional to consider the resolution plan of the applicant being most eligible resolution applicant in the present case.*
- 2) *Direct the resolution professional to withdraw the new expression of interest being illegal.*
- 3) *Stay the proceedings arising out of the new Expression of Interest/Form G, published on 02.06.2022.*

2. The brief facts, as stated in this application are that the resolution plan given by the applicant was submitted after satisfying Section 30 & 31 of the Code, however, for the reasons best known to the respondent No.1/Resolution Professional and respondent No.2/Committee of Creditors, without considering the resolution plan given by the applicant, the Resolution Plan of M/s Aggarsain Spinners Limited was accepted.

3. It is further stated that once admittedly a sum of Rs.25 Lacs was paid and still lying with the resolution professional, the minimum which is expected from the Resolution Professional is to examine the resolution plan of the applicant and put it before the Committee of Creditors for consideration and approval particularly when Resolution Plan was prepared on the basis of information memorandum and was submitted by the applicant or rejected before going for any other resolution plan from any other prospective resolution applicant. Thus, it is submitted that the Resolution Professional would not have invited fresh resolution plans when there are already plans pending for consideration.

4. It is alleged by the applicant that Resolution Professional is involved in money minting and recipient of CIRP cost of more than Rs.8 Crores (which was supposed to be Rs.1 Crores only) at the beginning and therefore, the action of the Resolution

Professional is to delay the process so that he could get maximum gains in the shape of various fee and rewards in the benefit of Phoenix ARC Private Limited- respondent No.2 herein. It is further alleged that the behavior of the Resolution Professional is also prejudicial to the State Bank of India, respondent No.3 i.e. minority financial creditor.

5. According to the applicant, the Resolution Professional is having specific instructions from respondent No.2 to not approve any plan wherein the stake of HSBC claim is not sacrificed in favour of respondent No.2 and he is putting every effort to harass the resolution applicant.

6. The applicant is claiming himself to be the most eligible Resolution Applicant as all the other Resolution Applicants have withdrawn their earnest money deposits, but admittedly the earnest money deposited by the applicant herein is still lying with the Resolution Professional and it has been submitted that the applicant is still willing to give a revised and better resolution plan in comparison to the Resolution Plan of ineligible Resolution Applicant, namely, M/s Aggarsain Spinners Limited and request to that effect has already been made to the Resolution Professional, vide e-mail dated 28.08.2022 (Annexure A-5). Thus, it is prayed by learned counsel for the applicant that in view of the above circumstances, the present application be allowed in the interest of justice.

7. Upon notice, it is submitted by learned counsel for respondent Nos.1 and 2 in IA No.1381 of 2022 that there is no need to file the reply and they will argue the matter directly. Similarly, it is submitted by learned counsel for respondent Nos.1 and 2 in IA No.1355/2022 that there is no need to file the reply as a similar application being IA No.1381/2022 has been filed on behalf of the Committee of Creditor inviting the other

resolution applicants of the earlier round of negotiation process including the applicant in IA No.1355 of 2022. There is no need to issue notice to respondent No.3 in IA No.1355/2022 as it is a minority financial creditor and its interest is being watched by the applicant (in IA No.1381/2022) itself, as pleaded above.

8. We have heard learned counsels for the parties in both these applications and have carefully gone through the records.

9. After hearing all the parties and careful perusal of order dated 10.10.2022, we are of the considered view that there is no ambiguity in the said order for which clarification is required as sought in IA No.1381/2022 by the Committee of Creditors. It seeks to invite all the resolution applicants of the earlier round/process including the applicant in IA No.1355 of 2022. Now the cardinal question for determination in both these applications is 'whether Committee of Creditors can be allowed to do so in order to avoid any grievance of such resolution applicants'?

10. The reply to this question is already recorded by this Adjudicating Authority in Paragraph 47 of order dated 10.10.2022, which is reproduced hereinbelow for ready reference:-

"47. The answer to this question is very simple and straight. After the rejection of the Resolution Plan submitted by Aggarsain Spinners Limited, erstwhile Successful Resolution Applicant, there were other three Resolution Plans, namely Navraj Mittal and Others- H2; M/s Shivani Trendz Private Limited- H3; and Pankaj Bhatia & Shreeji Cotfab- H4 and obviously, these Resolution Plans were to be considered by the Committee of Creditors and all the three Resolution Applicants were required to be called for negotiations and for maximization of the value of the assets of the corporate debtor. Now, when the Resolution Plan of Aggarsain Spinners Limited has been rejected by this Bench, being ineligible under Section 29A(f) of the Code, then certainly to meet the ends of justice an opportunity is required to be given to the remaining three Resolution Applicants, who submitted their resolution plans simultaneously with erstwhile Successful Resolution Applicant- Aggarsain Spinners Limited."

Thus, when other Resolution Applicants were not included in the final list of H1 to H4 by the Committee of Creditors then it can be safely deduced that they were not in the fray of competing Resolution Applicants finally. If other Resolution Applicants of the earlier round including the applicant in IA No.1355/2022 were/are interested to compete then none stopped them to apply when fresh EOI/Form G inviting fresh resolution plans was approved by the Committee of Creditors and issued by the Resolution Professional. In these circumstances when order dated 10.10.2022 has become final as no appeal has been stated to be preferred against it, then no other earlier Resolution Applicants including the applicant in IA No.1355/2022 except H2, H3 & H4 can be allowed to participate in negotiations of Resolution Plan. Moreover, the claim of the applicant in IA No.1355/2022 is stinking stale, particularly when he kept sleeping upon his right, if any, for last more than 3½ year as Committee of Creditors in its 12th Meeting held on 27.03.2019 had drawn the final list of Prospective Resolution Applicants, excluding the applicant in IA No.1355/2022. This unexplained inordinate delay is not only culpable but also suicidal. Although, IA No.1355/2022 deserves dismissal with heavy costs but we refrain ourselves from imposing such costs because Committee of Creditors itself has prompted to file IA No.1381/2022, wherein it sought clarification of unambiguous order dated 10.10.2022.

11. Consequently, both these applications i.e. IA No.1381/2022 and IA No.1355/2022 deserve dismissal and ordered accordingly. The Committee of Creditors is directed to complete the CIRP within the time frame strictly, granted by this Adjudicating Authority.

Sd/-
(Subrata Kumar Dash)
Member (Technical)
November 4th, 2022
MK

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH
(through web-based vide conferencing platform)**

**IA No.1381 of 2022 & IA No.1355/2022
In
CP(IB) No.35/Chd/HP/2018
(Admitted)**

**Under Section 60(5) of the
Insolvency and Bankruptcy Code,
2016**

In the matter of:-

Phoenix ARC Private Limited

...Financial Creditor

Versus

GPI Textiles Limited

...Corporate Debtor

Present through Video Conferencing :-

IA No.1381 of 2022

For the Applicant	:-	Mr. Manish Jain, Advocate Ms. Divya Sharma, Advocate Mr. Siddhant Jain, Advocate
For Respondent No.1	:-	Mr. Aalok Jagga, Advocate Mr. A.P.S Madaan, Advocate
For Respondent No.2	:-	Mr. Abhishek Anand, Advocate Mr. Viren Sharma, Advocate

IA No.1355 of 2022

For the Applicant	:-	Mr. Sangram Patnaik, Advocate Mr. Vishav Bharti Gupta, Advocate
For Respondent No.1	:-	Mr. Abhishek Anand, Advocate Mr. Viren Sharma, Advocate
For Respondent No.2	:-	Mr. Manish Jain, Advocate Ms. Divya Sharma, Advocate Mr. Siddhant Jain, Advocate
For Respondent No.3	:-	None

Vide separate detailed order of even date, IA No.1381 of 2022 & IA No.1355/2022 have been dismissed.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

November, 4th 2022
MK

IA No.1381 of 2022 & IA No.1355/2022
In
CP(IB) No.35/Chd/HP/2018
(Admitted)