

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA Nos.133/2022, 582/2022
and 807/2022**

In

**CP (IB) No.174/Chd/Chd/2018
(Admitted)**

Under Section 60(5) of IBC, 2016

In the matter of:

Small Industries Development Bank of India (SIDBI)

....Petitioner-Financial Creditor

Versus

M/s. International Mega Food Park Limited

....Respondent-Corporate Debtor

And in the matter of:-

IA No.133/2022

M/s International Fresh Farm Products India Limited,
registered office: House No.3,
Sector-5, Chandigarh

Vs.

**Mr. Sumat Kumar Gupta,
Resolution Professional**
resident of 2581/3, B-1, Near Zoom Hotel Building,
Industrial Area-A, Transport Nagar, Ludhiana

I.A. No.582/2022

Sukinder Singh, Suspended Director,
International Mega Food Park Limited
having its registered office at
House No.3, Sector-5, Chandigarh.

...Applicant

Vs.

**Mr. Sumat Kumar Gupta,
Resolution Professional**

resident of 2581/3, B-1, Near Zoom Hotel Building,
Industrial Area-A, Transport Nagar, Ludhiana

....Respondent

IA No.804/2022

1. Sukinder Singh, Suspended Director.
2. Simarinder Singh, Suspended Director

Vs.

1. Mr. Sumat Kumar Gupta,
Resolution Professional
International Mega Food Park Limited
2. Committee of Creditors
International Mega Food Park Limited
3. M/s Ajay Yadav & Co. through its Director namely
 - I. Ajay Yadav, Director of M/s Ajay Yadav,
Resident of B-20, Sushant Lok-II,
Golf Course Road, Gurgaon, Haryana.
 - II. Lata Yadav, Director of M/s Ajay Yadav,
Resident of B-20, Sushant Lok-II,
Golf Course Road, Gurgaon, Haryana.

....Respondents

Order delivered on: 02.06.2023

**Coram: Hon'ble Mr Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr Subrata Kumar Dash, Member (Technical)**

Present :

For the Applicant: Mr. Manuj Nagrath with Mr. Sahil Thakur,
Advocates in all IAs.
For the respondent: Dr. Rajansh Thukral, Advocate with Mr. Sumat
Kumar Gupta, RP in all IAs.

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No.133/2022

1. The present application is being filed by International Fresh Farm Products India Limited (herein referred to as the "Applicant") against Mr Sumat Kumar Gupta, the Resolution Professional of International Mega Food Park Limited (herein referred to as Resolution Professional or Respondent) under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 11 of NCLT Rules, 2016.
2. It is prayed by the applicant to direct the Respondent to pay the outstanding rent of Rs.25,56,728/- plus GST @18% for the usage of office premises situated at the First Floor, Plot No.30, Industrial Area, Phase I, Chandigarh and to pay future rents as applicable.
3. The brief facts of the case, as stated in the application, are that a lease agreement dated 20.03.2014 was executed between Mr Pardeep Gupta and Mr Sukinder Singh, Managing Director of the applicant for the premises situated at the First Floor, Plot No. 30, Industrial Area, Phase I, Chandigarh. The said premises has been maintained by Corporate Debtor and the applicant was charging rent to the extent of 80% as the management and some of the employees were also common. The Resolution Professional has also started his office from this premises only. The applicant has sent e-mails to the respondent to pay the outstanding amount. However, the same has not been done. Even today, the staff of the Corporate Debtor is using the office premises and other common utilities.

4. The respondent has filed a reply by diary No.00328/2 dated 27.04.2022 stating that after the commencement of CIRP on 28.03.2019, the abovementioned premises was immediately vacated by the RP and the entire staff was transferred on 31.03.2019. Currently, the respondent is neither having any possession nor having any occupation in the abovementioned office premises. The respondent is operating from its office situated at Ludhiana. It is averred that the applicant has concealed that the applicant is a related party of the corporate debtor. All three Directors are common between the Corporate debtor and applicant i.e. International Fresh Farm Products India Limited. Both companies are under the same ownership. It is further stated by the respondent that behind the veil, the Directors are transferring the financial benefit to the applicant Company in one way or the other way. The respondent-Resolution Professional has also filed an avoidance application against the applicant in CA No.1121/2019. Another application bearing IA No.942/2020 seeking recovery of vehicle hiring charges and the refrigerated vehicle has been filed and the amount of hiring charges is due towards the applicant. The RP further states that the applicant has also failed to show any document in which such a building was taken on rent by the Corporate Debtor. The respondent has denied payment of any outstanding rent to the applicant as alleged in the application.

5. The applicant has filed an application by Diary No. 00328/3 dated 18.11.2022 wherein it has been contended that the outstanding rent is covered under Section 5(13) of IBC as the Insolvency Resolution Process passed.

6. We have heard learned counsel for the applicant and respondents and have perused the record carefully.

7. In the present case, the applicant, i.e. International Fresh Farm Products India Limited, is claiming rent from the Resolution Professional of International Mega Food Park Limited. Records indicate that a lease deed dated 20.03.2014 has been entered between Mr Pardeep Gupta, the lessor and Mr Sukinder Singh-Director of the applicant company. Mr Singh is also the Suspended Director of the corporate debtor. In the lease agreement, there is no mention of the corporate debtor through Sh. Sukinder Singh is a director of the corporate debtor. The present respondent-RP states categorically that the said premises were never used by the corporate debtor. We further note that the RP states that the applicant is a related party of the corporate debtor and is holding 49.33% shareholding.

8. It is worthwhile to note that the agreement is between two individuals and has nothing to do with the corporate debtor. The use of the premises by the corporate debtor, if any, could have been an internal arrangement by the parties who are signatories to the agreement and the said tenant Sukinder Singh is also the Director of the corporate debtor. This, however, does not create any legal obligation on the part of the corporate debtor to pay the rent to the applicant.

9. In view of the discussion above, IA No. 133/2022 is dismissed and disposed off accordingly.

Both the IAs, i.e., IA No. 582/2022 and 807/2022 have been filed by the Suspended Directors against the RP for alleged omissions and commissions committed by the Resolution Professional. The facts and issues being interrelated, both the IAs are taken up together for discussion.

IA No.582/2022

10. The present application is being filed by Mr Sukinder Singh, Suspended Director (herein referred to as the "Applicant") against Mr Sumat Kumar Gupta, the Resolution Professional of International Mega Food Park Limited (herein referred to as Resolution Professional or Respondent) under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 11 of NCLT Rules, 2016.

11. It is prayed by the applicant to issue necessary directions to the Resolution Professional to manage the affairs of the Corporate Debtor as a going concern and further to pay damages equivalent to the losses which have occurred to the Corporate Debtor. It is further prayed to direct a resolution professional to file a report regarding the working of the corporate debtor for the financial year 2019-20 and for 2020-2021

12. The brief facts as stated in the application are that the resolution professional and COC have failed to keep the corporate debtor as a going concern. The turnover of the corporate debtor during the financial year 2017-18 was Rs.63 Crores out of which Rs.43 Crores pertaining to the Dairy plant only. The Resolution Professional has stopped the operations of Dairy Plant, therefore, in the financial year 2019-2020 the turnover has Fallen to Rs.10 Crores. It is alleged that the value of the corporator has fallen as the RP has failed to keep the Corporate Debtor as a going concern. As per the Buyback Agreement executed with the PSPCL, the Corporate Debtor was also exporting power and raising invoices to Punjab State Power Corporation Limited, (PSPCL). After RP has taken over the charge, the said operations also stopped. It is the duty of the

Resolution Professional to preserve and protect the assets of the Corporate Debtor including continuing the business operation.

13. It is further averred that the corporate debtor was even operational as far as Instant Quick Freezing and Silos were was profitable business Unit of the Corporate Debtor and the RP neither tried to make use of it nor give it on lease which might help the corporate debtor to increase its valuation. It is further averred that there are certain litigations pending with NCDRC, New Delhi and NCLT, Chandigarh Bench with regard to the insurance claim of loss that occurred due to fire and the amount of the same should be adjusted towards the outstanding liability of the Corporate Debtor.

14. The respondent has filed its reply vide diary No.01068/3 dated 11.08.2022 stating that the applicant is making allegations against CoC without impleading it as a party. The respondent has denied the allegations of diminishing the value of assets of the Corporate Debtor. It is stated that the applicant did not initiate any action against the Insurance Company for the under-assessment of the loss and the respondent has agitated the matter before NCDRC, New Delhi. It is submitted that the Dairy Plant, Silos and Turbine were not functional at the time of CIRP and restarting these plants required enormous investment, skill, financing and technical support. It is also denied that the valuation of the Corporate Debtor has been diminished by the actions/non-action on the part of the Resolution Professional.

15. The applicant has filed the replication by Diary No. 01068/5 dated 18.11.2022 stating that the fact regarding the operations of the Dairy Plant was not disputed. However, the ownership of Ghee and butter was in dispute.

Therefore, the pleading of the respondent cannot be relied on. It is further added that the Instant Quick Freezing and Silos were a separate unit and the same can be given on lease.

IA No.807/2022

16. The present application is being filed by Mr Sukinder Singh, Suspended Director (herein referred to as the "Applicant") against Mr Sumat Kumar Gupta, the Resolution Professional of International Mega Food Park Limited (herein referred to as Resolution Professional or Respondent No. 1) and Committee of Creditors (herein referred to as Respondent No. 2) and M/s Ajay Yadav & Company (herein referred to as Respondent No. 3) under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 11 of NCLT Rules, 2016.

17. It is prayed by the applicant to cancel the bid made in favour of the H-1 bidder i.e. Respondent No. 3 as the same is against the wisdom of COC. It is further prayed to take action against Respondent No. 1 for the violation of the order dated 30.05.2022 and further refer the matter to COC in compliance of the order dated 30.05.2022.

18. The brief facts as stated in the application are that RP has committed illegalities by accepting the bank guarantee of Rs. 6.40 crores, which is in contravention of the condition of the Resolution Plan and against the wisdom of COC. In the third meeting of COC held on 13.05.2019, the eligibility of criteria as required under Section 25(2)(h) of IBC and as per eligibility criteria, the PRA has to make the minimum upfront payment of 25% (10% at the time of approval of Plan from COC and rest 15% after the approval of the plan from AA). In the COC

meeting dated 25.02.2020, the Resolution Plan of Respondent No. 3 has been approved in which the total amount offered was Rs. 75 crores. As per the terms and payment period, performance security of Rs. 1 crore is to be deposited along with mortgage of properties equivalent to Rs. 14 crore within 15 days of approval. The respondent No. 3 has not pledged the properties equivalent of Rs. 14 crores when the resolution plan was approved.

19. The Resolution Professional has also filed IA No. 716 of 2020 to direct the Respondent-RA to deposit the performance guarantee immediately or to forfeit the EMD and in case the Resolution Applicant fail to comply with the condition of the Performance Guarantee, then the RP may be permitted to withdraw the applications for the approval of Resolution Plan. In the order dated 30.05.2022, this adjudicating authority has directed the Resolution Applicant to deposit the performance guarantee within one month. In this regard, it is alleged that the resolution professional has accepted the bank guarantee of Rs. 6.40 crores, which is illegal. Further, there is a clear non-compliance of 2nd condition qua payment of 25% of the amount of the Resolution Plan within 15 days of the approval by NCLT, Chandigarh. The applicant has also filed an appeal bearing CA (AT) (Ins) No. 715/2022 wherein H-1 bidder has submitted that compliance has been made. However, the same has been disputed by the present applicant.

20. Reply has been filed on behalf of Respondent Nos. 1 & 2 by Diary No. 01688/2 dated 31.10.2022 stating that the amount of performance guarantee is not mentioned in RFRP (Request for Resolution Plan) and it is within the domain of CoC to specify the amount or performance guarantee. In the 22nd meeting of CoC held on 03.02.2020, the SRA had given the final bid and the said bid was

also documented and the Respondent No. 3 is declared as H-1 bidder in the 24th meeting of CoC, it was decided that SRA was required to give performance guarantee of 10% and SRA has offered to give the performance security of 20% and Rs. 14 crore by way of mortgage of immovable property. As the SRA has not complied with the condition, the RP has filed IA No. 716 of 2020 and necessary directions were issued on 30.05.2022, in which it is directed by this adjudicating authority to SRA to furnish performance security “*to the satisfaction of CoC*”. The SRA has submitted bank guarantee of Rs. 6.40 crores in addition to that Rs. 1 crore was already deposited by SRA and Rs. 10 Lakhs was deposited as EOI linked EMD. Therefore, the total performance security comes out to be Rs. 7.5 crores, which is 10% of bid amount of Rs. 75 crores. It is totally denied that the Respondent has gone against the wisdom of CoC.

21. We have heard learned counsel for the applicant and respondents and have perused the record carefully.

22. The major objections of the applicant-suspended director are that:

- i. The Resolution Professional and CoC have failed to keep the corporate debtor as a going concern;
- ii. The Resolution Professional is responsible for discontinuing the profitable business units of the corporate debtor.
- iii. The Resolution Professional has to adjust the amount which are recoverable in litigations towards the outstanding liability of the Corporate Debtor.

iv. The bid made in favour of H-1 bidder should be cancelled. The RP has failed in making the proper compliance of the order dated 30.05.2022.

23. Before delving into the merits of the allegations made by the suspended director, we would like to refer to Section 24(3) (b) of the Code which provides that the RP shall give notice to each meeting of the CoC members of the Suspended Board of Directors or the partners of the corporate persons, as the case may be.

24. The purpose behind this provision is the fact that the Suspended Directors, who were in charge of the running of the corporate debtor before the initiation of the CIRP have experience in running the business of the corporate debtor. Their suggestions in running the operations of the corporate debtor during the CIRP period are of value to the CoC and RP. Therefore, the issues that are being agitated by the applicant-suspended director in these applications, and which relate to the business operations of the corporate debtor, should have been raised first in the Coc meetings. Nothing in this regard has been stated by either parties during the proceedings. The Code mandates the CoC to take the decision with regard to the running of the business of the corporate debtor as per its commercial wisdom with the object to maximise the value of the corporate debtor. The Code does not envisage any intervention by this Adjudicating Authority in the commercial decisions and day-to-day running of the corporate debtor. We are aware of the fact that under exceptional circumstances when serious violations of the provisions of the Code are pointed out to the Adjudicating Authority, the latter is mandated to consider the same and ensure that the objects of the Code are safeguarded.

25. The aforementioned allegations levelled by the Suspended Director relates to the day-to-day operations and compliance to be made by the Resolution Professional. Prima facie, no case has been made out of any serious deviation from the procedures laid down in the IBC by the CoC/Resolution Professional in these applications.

26. The issues relating to the stoppage of power generation and discontinuation of the business of Instant Quick Freezing and Silos are strictly for the consideration of the CoC. With regard to the compliance of the order dated 30.05.2022, we note that this Bench has directed the Successful Resolution Applicant to furnish a performance guarantee *"to the satisfaction of the CoC"*. The records indicate that the same has been compiled with and the CoC members have given their assent for accepting the performance guarantee of Rs. 6.40 Crores, which is equivalent to 10% of the bid amount less of one Crore which is already deposited by the SRA along with 10 Lakhs deposited as EMD.

27. In view of the above discussion, we are constrained to note that some of these objections raised by the Suspended Directors borders are 'frivolous', however, this bench would refrain from imposing any cost as such deviation is noticed for the first time.

28. Thus, IA Nos. 582/2022 and 807 of 2022 are dismissed and disposed of accordingly.

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

June 02, 2023

SA/PRF

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