

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

COMPANY APPEAL (AT)(INSOLVENCY) NO.02 & 09 OF 2019

(Arising out of impugned order dated 1.11.2018 passed in CA No.340/2018, 370/2018 and 371/2018 in CP(IB)No.108/Chd/Pb/2017 and impugned order dated 30.11.2018 passed in CA No.340/2018 and 370/2018 in CP (IB)/Chd/Pb/2017 (Admitted matter) by the Adjudicating Authority, National Company Law Tribunal, Chandigarh Bench, Chandigarh).

In the matter of:

M/s Global Business Corporation,
Through:its Sole Proprietor: Mr Gaganjeet Singh,
S/o Sh Harmeet Singh,
R/o 1660, Goal Masjid, Sharifpura,
Amritsar-143001

Appellant

Vs

1. Punjab National Bank,
Hall Bazar,
Amritsar 143001
Punjab.
2. Ashish Agarwal,
Resolution Professional,
Kochar Overseas Private Ltd,
R/o 400/1, Rani Jhansi Road,
Civil Lines,
Ludhiana 141001

Respondents

Mr. Mansumyer Singh, Advocate for the Appellant.

Ms Nishi Chaudhary, Advocate for Respondent No.1 (PNB).

JUDGEMENT
(23rd JANUARY, 2020)

MR. BALVINDER SINGH, MEMBER (TECHNICAL)

The present appeal has been preferred by the appellant under Section 61 of the Insolvency & Bankruptcy Code, 2016 (in short 'I&B Code') against the impugned orders dated 1.11.2018 and 30.11.2018 passed by the

Adjudicating Authority, National Company Law Tribunal, Chandigarh Bench, Chandigarh Bench (in short 'Tribunal') rejecting the resolution plan submitted by the appellant with the following prayer:

- a) Set aside the impugned orders dated 1.11.2018 and 30.11.2018 passed by the Hon'ble Adjudicating Authority.
- b) Approve the Resolution Plan of the Appellant/Resolution Applicant which will be binding on the creditors, members and other stakeholders of the Corporate Debtor; or in the alternate
- c) To allow the appellant to submit its Resolution Plan with modifications or amendments etc and direct the Resolution Professional and the Committee of Creditors to consider the Resolution Plan submitted by the Appellant.
- d) To call for the Minutes of the Meetings of the Committee of Creditors of the Corporate Debtor for proper adjudication of the present appeal.
- e) Exclude the time period during which the present dispute is pending before the Hon'ble Adjudicating Authority and this Hon'ble Appellate Tribunal from the total time period of the Corporate Insolvency Resolution Process i.e. from 10.8.2018 till the pendency of the present Appeal;
- f) Any other/further order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the interest of justice.

2. The brief facts of the case are that the petition was filed by M/s Kochar Overseas Pvt Ltd (Corporate Debtor) under Section 10 of I&B Code which was admitted by the Tribunal and declaring the moratorium. Interim Resolution Professional was appointed with necessary directions. Thereafter an application was filed by the Financial Creditor (Punjab National Bank) and Mr. Ashish Aggarwal, Registered Resolution Professional was appointed as Resolution Professional. The initial period of 180 days as prescribed in Section 12(1) of the I&B Code for completion of Insolvency Resolution Process was extended by 90 days in terms of sub-section (3) of Section 12 of I&B Code and the period of 270 days expired on 14.08.2018.

3. The Resolution Professional filed an application seeking liquidation of the Corporate Debtor. Appellant herein (Resolution Applicant) filed an CA

No.371/2018 (Pages 300 to 303) before the Adjudicating Authority stating that he had submitted the Resolution Plan to Resolution Professional for Rs.900 lakhs. Resolution Applicant also revised the bid from time to time from Rs.900 lakhs to Rs.1025 lakhs and thereafter again revised the bid from Rs.1025 lakhs to Rs.1200 lakhs vide email dated 10.8.2018 (Page 295 of appeal). Resolution Applicant stated that he was invited to attend the COC meeting on 2.7.2018 for having discussions/negotiations on the resolution plan but was never allowed to attend the said COC Meeting. Resolution applicant stated that after revising the bid vide email dated 10.8.2018, the applicant was never informed of any of the decision of COC/RP.

4. Resolution Professional in reply stated that no Resolution Plan was approved in the COC, therefore, the application under Section 33(1)(b)(i), (ii) and (iii) and 33(2) of I&B Code for liquidation of the Corporate Debtor. Resolution Professional further stated that MR. Vikramjit Singh, the suspended director of Corporate Debtor had been operating certain bank accounts of appellant as authorised signatory thereby making him “a person in management or control of the Resolution Application. Therefore, the appellant was an extended arm of the Corporate Debtor. Resolution Professional further stated that an independent agency has pointed out that appellant was having many doubtful transactions with corporate debtor such as transfer of assets, sale of goods and rental income from the Resolution Applicant. Appellant was also conducting business in the same brand name as that of Corporate Debtor. Information was sought from the appellant but he did not provide the same inspite of repeated requests. Resolution Applicant vide email dated 28.5.2018 that Mr. Vikramjit Singh, the director of Corporate

Debtor was authorised by the Appellant to operate/sign cheques in Resolution Applicant bank accounts. Resolution Applicant also admitted that there was sale of innova car by the Corporate Debtor to appellant. Appellant also admitted that the Corporate Debtor was receiving rental income from the Resolution Applicant for using part of Corporate Debtor's factory premises. Resolution Professional stated that the Resolution Applicant was more interested in bailing out the guarantors of the Corporate Debtor when he reiterated repeatedly that with the acceptance of his Resolution Plan, the individual guarantors of Corporate Debtor would be discharged/absolved of their personal liabilities as guarantors. Resolution applicant vide his letter dated 10.8.2018 did not express his intention to be part of the discussions on the Resolution Plan.

5. After hearing the parties the Adjudicating Authority passed the impugned order dated 1.11.2018. Relevant portion of the impugned order is as under:-

“21.xxxxxx the Committee of Creditors considered the merits of the plan and rejected it. It is mentioned in the Agenda Item No.4 that the Resolution Plan includes all the properties of the corporate debtor, the guarantors and discharge of individual guarantees. Further, Punjab National Bank, Amritsar has acknowledged that they have not approved the bid and not prepared to discharge the guarantees. Even Punjab National Bank, the only financial creditor has not accepted the offer/bid and therefore, the Committee of Creditors recommended for liquidation of the corporate debtor. The issue about the Resolution Applicant having not being called was also taken up by Vikramjeet Singh Kochar and requested for reasons for non-acceptance of the Plan. The Resolution Professional had informed the Committee that the extended period of Insolvency Resolution Process was going to expire on 14.8.2018 and therefore, further extension was not possible because within the statutory period the Insolvency Resolution Process was supposed to be finalised.

22. In view of the aforesaid discussion and circumstances fo the case, we are unable to agree to the applicant's contention that the Committee of Creditors may be directed to reconsider the Resolution Plan of the

Resolution Applicant by giving him an opportunity of explaining the circumstances and to make further modifications, as may be required. The application is found to be absolutely without merits and the same is dismissed.”

6. The matter was again taken up on 30.11.2018 by the Adjudicating Authority. After hearing the parties the Adjudicating Authority ordered the liquidation of the corporate debtor, Kochar Overseas Pvt Ltd and appointed Mr. Ashish Aggarwal, as Liquidator to take steps as per law.

7. Being aggrieved by the impugned orders the appellant has preferred this appeal and seeking furnishing of a plan with modification.

8. Learned counsel for the appellant argued that the appellant is not ineligible under Section 29A of the Insolvency and Bankruptcy Code, 2016. Learned counsel further argued that the appellant had intimated the Resolution Professional vide letter dated 28.5.2018 (Page 284 of appeal) that the business transaction with the Corporate Debtor does not mean that the appellant is the related party because the transactions were at the prevailing price. Learned counsel for the appellant further argued that Mr. Vikramjit Singh was temporarily authorised by the appellant to sign the cheques and the appellant had been out of city for a particular period time and when the appellant returned, the authorisation to send cheque was withdrawn. Learned counsel for the appellant argued that MR. Vikramjit Singh was never a part of management of the appellant. Learned counsel for the appellant further argued that there was no transfer of assets between corporate debtor and the appellant except a INNOVA car. Learned counsel for the appellant further argued that the appellant has made payments of rent for using the part of the factory of corporate debtor. Learned counsel for the appellant argued that

payment of rent does not mean it is a related party. Learned counsel for the appellant further argued that the brand name “Double Bull Basmati” is owned privately in the name of Ajit Singh Kochar, Dalip Singh and thus does not belong to Kochar Overseas Pvt Ltd but relates to persons individually. Learned counsel for the appellant argued that with mutual consent Mr. Ajit Singh had allowed appellant to use their brand name. Learned counsel for the appellant stressed that the appellant is not related party as per provisions of IBC 2016.

9. Learned counsel for the appellant argued that the resolution plan has been rejected on the sole ground that the Plan contemplates release of personal guarantees/collateral of the promoters of the Corporate Debtor held by financial creditor. Learned counsel for the appellant argued that the appellant is ready to modify the Resolution Plan to exclude the said terms. Learned counsel for the appellant further argued that it is without prejudice to the fact that the appellant being a Resolution Applicant is well within its rights to seek release of the personal guarantees of the promoters of the Corporate Debtor.

10. Learned counsel for the appellant further argued that the appellant was never invited to attend the COC Meeting where its Resolution Plan was considered by the COC and the same is in violation of Section 30(5) of the I&B Code.

11. Learned counsel for the Respondent argued that the Resolution Applicant is the connected person with the director of Corporate Debtor as

the said director was operating the bank accounts of the appellant as authorised signatory. Learned counsel for the Respondent further argued that it is quite clear that a person connected with the Corporate Debtor is ineligible for submitting a resolution plan. Learned counsel further argued that there are transactions between the corporate debtor and resolution applicant which are transfer of assets, sales of goods and rental income from resolution applicant and the appellant and the corporate debtor were carrying out their business in the same brand name and the appellant and the corporate debtor are hand in glove. Learned counsel also drew the attention of the Tribunal to Section 29A of I&B Code, 2016. Learned counsel argued that the financial creditor is well within the provisions of I&B Code to reject the claim in terms of Section 29 A of I&B Code. Learned counsel for the financial creditor further argued that the resolution plan of the appellant was rejected in 7th Meeting of Committee of Creditors by 100% voting.

12. Learned counsel for the Respondent further argued that the appellant has vested interest in Corporate Debtor which is clear from Resolution Plan submitted by appellant whereby the appellant is asking the COC to release the personal guarantees and collateral securities of the promoters and guarantors and vacate the charge from all the collateral securities of promoters and guarantors.

13. Learned counsel for the Respondent further argued that the appellant vide email dated 28.5.2018 admitted that Mr. Vikramjit Singh, suspended director of Corporate Debtor acted as an authorised signatory for the bank

accounts of appellant company and he was authorised to issue the cheques and authorised to sign the same.

14. Learned counsel for the Respondent argued that though the appellant increased the bid value of Resolution Plan to Rs.1200 lacs but put the condition that the increased value includes all the properties of Corporate Debtor, guarantors and discharge of individual guarantees. The Resolution Plan was rejected by Financial Creditor with 100% voting and the reasons for non-acceptance of the Resolution Plan were duly communicated to all the Members.

15. Learned counsel for the Financial creditor drew this Tribunal attention to Minutes of 7th COC Meeting and argued that in the said Meeting one suspended director of Corporate Debtor and one representative of suspended director of Corporate Debtor were also present when the resolution plan of the appellant was rejected and it was recommended liquidation of the Corporate Debtor. In the said COC Meeting the reasons for non-acceptance of Resolution Plan were also recorded.

16. We have heard the parties and perused the record.

17. On hearing the parties we note that Mr. Vikramjit Singh, Suspended Director of the Corporate Debtor has operated the bank accounts of Resolution Applicant as authorised signatory. Appellant has also admitted that Mr. Vikramjit Singh was temporarily authorised to operate the bank account including signing of cheques of the appellant when the appellant was out of city. It is therefore established that the appellant is a related party to the said suspended director who is in the management of corporate debtor.

18. We also note that the 7th Meeting of Committee of Creditors was also attended by the suspended director, Mr. Vikramjit Singh. In the previous para it is already established that the appellant and the said suspended director, Mr. Vikramjit Singh is a related party, therefore, the appellant cannot raise any question that he was not informed 7th COC Meeting, however, appellant's authorised signatory Mr. Vikramjit Singh had attended the meeting and the appellant is very well aware of the proceedings of the COC Meeting.

19. We also note that the appellant has also admitted that the innova car owned by the corporate debtor was purchased by the appellant and the appellant is also using the brand name 'Double Bull Basmati' which the brand name of the corporate debtor. This also establishes that the appellant is related party and is not eligible as per Section 29A of the Insolvency & Bankruptcy Code, 2016.

20. We note that the Resolution Plan has been duly considered by the Committee of Creditors. In their commercial wisdom, COC have decided not to accept the Resolution Plan with conditions contained therein. We have also noted that the process cannot be kept pending endlessly that revision of a plan after plan may be considered by the Committee of Creditors without considering the mandatory period within which the insolvency resolution is completed as per the provisions of Insolvency & Bankruptcy Code. Even though the suspended Board of Directors has a right to attend the meeting and may offer any suggestion but they cannot force their decision on their terms to Committee of Creditors especially when the suspended Board of

Directors has no right to vote on the Resolution Plan. We also note that Committee of Creditors has rejected the resolution plan with 100% voting.

21. In view of the foregoing discussions and observations we find no merit to interfere in the impugned order. The impugned order is upheld. No order as to costs.

**(Justice Venugopal M.)
Member (Judicial)**

**(Mr. Balvinder Singh)
Member (Technical)**

**(Dr. Ashok Kumar Mishra)
Member (Technical)**

**New Delhi
Bm**