

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI
BENCH III

Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)
SHRI H.C. SURI, MEMBER (TECHNICAL)

CA-260-261/C-III/ND/19
IN
IB-22(ND)/2018

APPLICATION UNDER SECTION 60 (5) OF THE IBC, 2016 FOR SEEKING
FINANCIAL INFORMATION FROM THE RESOLUTION PROFESSIONAL TO
THE EX-MANAGEMENT.

IN THE MATTER OF:

ORIENTAL BANK OF COMMERCE

...FINANCIAL CREDITOR

VERSUS

SHEKHAR RESORTS
THROUGH IRP
MR. VIKRAM KUMAR
REGISTRATION NO. IBBI/IPA-001/IP-P00082/2017-18/10178
J- 6A, KAILASH COLONY
DELHI
NEW DELHI- 110048

..CORPORATE DEBTOR

AND IN THE MATTER OF:
NARESH KUMAR SHARMA
EX-MANAGEMENT OF THE CORPORATE DEBTOR
J-1817, GF, CHITTRANJAN PARK,
NEW DELHI-110019

..APPLICANT

CA-260-261/C-III/ND/2019
SHEKHAR RESORTS LTD.

COUNSEL FOR THE APPLICANT: RAKESH KUMAR, PRANAV VERMA AND
PREETI KASHYAP (ADVOCATES)

COUNSEL FOR THE RESPONDENTS: ABHISHEK ANAND, ADVOCATE

COMMON ORDER

Delivered on: 26.08.2019

1. The present applications have been filed by the ex-management of the Corporate Debtor, under section 60 (5) of the IBC, 2016 seeking for the following directions namely:- 4

In CA No. 260/ND/19:

“ a) Direct the Resolution Professional to provide the Financial details of the Corporate Debtor specially the financial details with respect to the hotel operations of the Corporate Debtor; “

In CA No. 261/ND/19;

“ a) Direct the Resolution Professional to provide the necessary financial details of the value of the properties of the Corporate Debtor and to place on record the Valuation Report before the Hon'ble Tribunal, and to provide all the necessary financial information to the Ex-Management in terms of the email dated 07.04.2019;”

Since both the applications have issue common in relation to making available particulars to the applicants on the part of the Resolution Professional both the applications are dealt in common as under; 4

2. The applicant represent that the CIRP was initiated against the Corporate Debtor vide order dated 11.09.2018. That there were 10 CoC meetings that were convened from 11.10.2018 to 28.03.2019. That the Resolution Professional has not shared any financial information considering the Valuation Report of the properties of the Corporate Debtor with the Ex-management. That the valuation ascertained by the Resolution Professional of the Corporate Debtor of the properties is approximately Rs. 160 Crores. That as per the information of the Ex-Management, the asset value of the Corporate Debtor is to the extent of approximately Rs. 432 Crores. The contention of the Ex-Management is based on the following

- a. That there are three separate properties in the name of the Corporate Debtor, One property is the prime property , i.e. the hotel property at Agra, with the circle rate of the year 2017 is Rs. 64,000/- per sq. The said circle rate is now Rs. 70,000/- per sq. yard. The total value of the said property comes to Rs. 360 Crores.
- b. That the other property of the Corporate Debtor is in Noida which comes under the category of Institutional Green. The said land is approximately to the worth of 40,000 sq. yards. The valuation of the said land comes to Rs. 60 Crores.
- c. That there is one piece of land at Rajpura, Agra which measures approximately 7200 sq. meter, valued at Rs. 10 Crores.
- d. That the Corporate Debtor entered into an MOU where the cost of the property was valued as Rs. 490 Crore on 28.05.2015.



e. That it is also represented further, huge cash amount has been collected by the RP during the CIRP process from the hotel operations. That one Mr. Sangeet Anand, to whom powers have been delegated by the IRP and that the said person is involved in committing theft of the assets of the hotel.

3. The applicant relies on the Judgement of the Supreme Court of India in Civil Appeal No. 8430/2018, rendered in Vijay Kumar Jain vs. Standard Chartered Bank & Ors. at para 14 to 18 in which it has been held that every financial decision in the CoC meeting has the bearing on the Ex-Management as they are also personal guarantors to the Financial Institution. Further, the applicant represents that the applicant has also sent an email to the RP dated 07.04.2019 asking him to provide the information memorandum, copy of all valuation reports, minutes of all the COC meetings and various status reports being filed before the this Tribunal and the copy of expression of interest and the copy of the resolution plan being received from the Resolution Applicant.

4. The resolution Professional has filed a detailed reply to the application, and represents that the respondent vide email dated 27.09.2018 has sought for clarifications relating to the payment of dues to the employees; complete details for the employees hired by the Corporate Debtor, their appointment letter, details of amounts due and not paid to the employees; upto date books of accounts as on the date of

commencement of insolvency. That the applicant and the other directors of the Corporate Debtor failed to cooperate with the respondent, thus the Respondent has filed C.A. No. 308 of 2018 dated 18.10.2018 before the Hon'ble Adjudicating Authority under section 19(2) of the IBC, 2016 for seeking directions to the directors of the corporate debtor to cooperate and provide the information sought by the answering respondent and to give custody and control of the assets of the Corporate Debtor. That this Tribunal while disposing off the said application has recorded the statement of the Ld. Counsel for the corporate Debtor that due cooperation will be extended to the Answering Respondent for CIR process. That the respondent vide email dated 23.10.2018 and 30.10.2018 have requested the directors to cooperate and provide with the audited accounts of the Corporate Debtor. However the directors did not reply to the said emails. The resolution professional has also further filed emails dated 27.11.2018 seeking for information regarding employees of the corporate debtor, even during the third CoC meeting however, the issue of information not being provided by the directors. That as per Regulation 19 (1) of the CIRP regulations, notice and minutes of all the 13 meetings which had been convened have been duly served upon the Directors. That the applicant vide email dated 07.04.2019 have sought for information as mentioned in paragraph 8 of the said application, to which the respondent has replied vide email dated 08.04.2019, the answering respondent informed the applicant that in terms of the judgment passed

α

by the Hon'ble Supreme Court the applicant is required to sign a Non-Disclosure Agreement upon receipt of the same, Information Memorandum, Expression of Interest and Resolution Plan shall be provided to the applicant. However, the applicant has failed to give non-disclosure agreement even as of date but has filed the present application.

5. The applicants have also filed a detailed rejoinder to the reply filed by the respondents, on 25.04.2019.

6. As held in Vijay Kumar Jain Vs. Standard Chartered Bank and ors. By Supreme Court in Civil Appeal No. 8430 of 2018, decided on 31.01.2019, and as observed in para 13, which is as follows;

"13. It is also important to note that every participant is entitled to a notice of every meeting of the committee of creditors. Such notice of meeting must contain an agenda of the meeting, together with the copies of all documents relevant for matters to be discussed and the issues to be voted upon at the meeting vide Regulation 21(3) (iii). Obviously, resolution plans are "matters to be discussed" at such meetings, and the erstwhile Board of Directors are "participants" who will discuss these issues. The expression "documents" is a wide expression which would certainly include resolution plans."

(Underline supplied)



7. As seen from the above mentioned judgement, which observes that every participant is entitled to the notice of the meeting of the committee of creditors, which must contain the agenda of the meeting, as well as the documents for the matters to be discussed and the issues to be voted upon the meeting. The applicant in the present application seeks direction to the resolution professional, to provide with the valuation report to the Ex-management of the Corporate Debtor but, this tribunal is of view that since the Code does not contemplate the sharing of a valuation report with the board of directors whose powers stand suspended, and that in view of the IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016, regulation 35, which is reproduced below;

35. Fair value and Liquidation value.

(2) After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29:

(Underline supplied)

As seen above, the resolution professional shall provide the fair value and its liquidation value to every member of the committee and

does not mention participant. Had the intention been to provide the same with the ex-management of the Corporate Debtor, the word 'participant' would have been used instead of 'member'. A committee and participant are differently defined under the IBBI (Insolvency Resolution Process for Corporate persons) Regulation 2016. And the ex-management of the Corporate Debtor does not constitute the members of the Committee of Creditors coming within the parameters u/s. 21 of the IBC, 2016 whereas "participant" means a person entitled to attend a meeting of the committee under section 24 or any other person authorized by the committee to attend the meeting as defined under regulation 2 (l) of the IBBI (Insolvency Resolution Process for Corporate persons) Regulation 2016. Further it is also seen from the records that applications have been filed by the Resolution Professional seeking cooperation of the erstwhile management of the corporate debtor repeatedly and despite directions and undertakings given, all of which the management has failed to abide and assist the Resolution Professional with the documents as required by him, as being the duty of the Corporate Debtor to give all co-operation, thus on the ground of equity, the applicants are not entitled to the details as sought for. Further it is also to be seen that consistently as evident from the records, the erstwhile management of the Corporate Debtor has not been aiding the process of CIRP as incumbent on them and in this regard it is also to be seen nor have they filed any Resolution plan, if eligible to do so or at the least provide valuation certificate in contesting the valuation, all of which necessarily connotes that these Application

Q


have not been filed bonafide and only to hinder the CIRP of the Corporate Debtor , which they had been managing prior to the initiation of CIRP and with a view to harass the Resolution Professional. In light of the above we do not find any merit in the above applications and dismiss both the Applications.

Sd-
(H.C.SURI)
MEMBER (TECHNICAL)

Sd-
26/08/2019
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta/K

Pronounced today under Rule 151 of the NCLT Rule 2016 as Hon'ble Member (T) Mr H.C. Suri is not holding court today.


COURT OFFICER