

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.121/2021 in
C.P. (IB) No.35/BB/2021
U/s. 60(5) of the I&B Code, 2016

Between:

**Shri Siddeshwar Souhard Sahakari
Niyamit Co-Operative Bank**
Near Bus Stand, Bilagi,
Karnataka 587116

... Applicant

And

Mr. Kondisetty Kumar Dushyantha
*(Interim Resolution Professional for
M/s. Manali Sugars Limited)*
No.404/2, 7th Main,
9th Cross, 2nd Block,
Jayanagar,
Bengaluru - 560 011

... Respondent/IRP

Date of Order: 20th April, 2021

- Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Applicant : Mr. Chethan Kumar.K
The Respondent/IRP : Mr. K. Dushyantha Kumar

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.121/2021 in C.P. (IB) No.35/BB/2021 is filed by M/s. Shri Siddeshwar Souhard Sahakari Niyamit Co-Operative Bank,


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('Applicant'), U/s. 60(5) of the I&B Code, 2016, by inter-alia seeking to direct the Interim Resolution Professional to reconstitute the Committee of Creditors to include the Applicant as the Member of Committee of Creditors etc.

2. Brief facts of the case, which are relevant to the issue in question, are as follows:

- (1) Initially, the main Petition bearing C.P. (IB)No.35/BB/2021 filed by M/s. Shri Siddeshwar Souhard Sahakari Niyamit Co-Operative Bank (Petitioner/Financial Creditor) against M/s. Manali sugars Limited (Corporate Debtor), U/s.7 of IBC, 2016 R/w Rule 4 of I&B (AAA) Rules 2016, was admitted by the Adjudicating Authority, vide its Order dated 22.03.2021, by initiating CIRP in respect of the Corporate Debtor, appointing Mr. Kondisetty Kumar Dushyantha as IRP, imposing moratorium etc. Subsequently, the IRP made a public announcement on 25.03.2021, in Indian Express and Samyuktha Karnataka, newspapers intimating the commencement of CIRP against the Manali Sugars Limited and calling the Creditors to submit their with proof by 06.04.2021.
- (2) In pursuant to the above, the Applicant submitted its claim for an amount of Rs.49, 90,10,000/- to the IRP in Form-C through email dated 02.04.2021. Further, the Applicant received an email from the IRP on 12.04.2021 confirming the acceptance of claim of Rs.49,90,10,000/- on provisionally basis. Subsequently, a representation was submitted to IRP by stating that the Applicant and the Corporate Debtor are under the same management and thus it is related party and cannot come under as Member of COC. Accordingly, the IRP has treated the



Applicant as the related party to the Corporate Debtor and rejected to include it as a Member of COC.

- (3) Further, the Chairman of the Shri Siddeshwar Souhard Sahakari Niyamit, Mr. Jagadeesh Gouda T Patil is brother of Mr. Shivan Gouda T Patil, the Director of the Manali Sugars Limited. However, as per the provisions of Section 5(24) of the I&B Code, 2016, the Applicant being the Co-operative bank is not a related party to the Corporate Debtor. The Applicant states that the interest and rights of the Applicant shall be affected if not included in the Committee of Creditors of the Corporate Debtor.
3. Heard Mr. K.Chethan Kumar, learned Counsel for the Applicant and Mr. K. Dushyantha Kumar, Learned IRP **through Video Conference**. We have carefully perused the pleadings of the Parties and also extant provisions of the Code and Rules made thereunder.
4. Mr. K.Chethan Kumar, learned Counsel for the Applicant, has interalia submits that the Applicant is a Registered Cooperative entity registered u/s 6(1) of Karnataka Souharda Sahakari Act, 1997. The Applicant is a separate legal entity and a body corporate consisting of 1242 members and it has total 14 Directors. The office bearers of the Applicant are elected by its Members by way of elections, which will be held once in 5 years. The Applicant has issued capital of Rs 1.75 crores shares to its Members. Mr.Jagadeesh Gouda T Patil is the brother of Mr.Shivan Gouda T Patil (who is also one of the Directors of Manali Sugars Limited). Mr.Jagadeesh Gouda T Patil holds shares to the tune of Rs.1,00,000/- (which is less than 1% of total issued shares) in the Applicant entity. Mr.Jagadeesh gouda T Patil or any other Directors



do not hold any shares or controlling rights in any manner in the Corporate Debtor. None of the office bearers of the Applicant is involved in the day to day affairs of the Corporate Debtor. The Applicant has made a total claim of Rs.49,90,10,000/- (Forty Nine Crores Ninety Lakhs Ten Thousand only), which was duly verified and accepted by IRP, and the Corporate Debtor has also accepted the liability as per records. The funds which has been lent to the Corporate Debtor is a public money.

The Applicant does not fall under the definition of related party as defined under section 5(24) of the Code. And none of the Board of Directors, Managing Director or Manager of the Applicant entity acts on the advice, directions or instructions of the Director of the corporate Debtor as detailed in Section 5(24)(f) of the Code. Further the Applicant entity is not a holding, subsidiary or associate of the Corporate Debtor. As such the Applicant entity does not full fill any of the criterion to be considered as related party to the Corporate Debtor. Therefore, it is just and necessary to include the Applicant in the Committee of Creditors and if the same is not done it would adversely affect the rights and interests of the Applicant entity and its Members.

5. Mr. K. Dushyantha Kumar, learned IRP, on other hand, has strongly opposed the claim of Applicant, as he has taken the impugned decision, after considering representations received in this regard and following relevant provisions of Code. Therefore, he has urged the AA to dismiss the Application.
6. It is relevant to refer Section 5 (24)(f) of Code, which is in question, , it defines related party in relation to a Corporate Debtor means anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice,



directions or instructions of a director, partner or manager of the Corporate Debtor. As submitted supra, the Board of Directors, MD or Manager etc are not acting on their advice. Moreover, Chairman of the Shri Siddeshwar Souhard Sahakari Niyamit Co-operative Bank, (Mr. Jagadeesh Gouda T Patil) is brother of Mr. Shivan Gouda T Patil, who is Director of the Manali Sugars Limited (CD). And the facts and circumstances as detailed by Learned Counsel of Applicant, as detailed supra, shows that the Applicant do not fall under definition of related party so as to deprive it to be part of COC of CD. We are convinced with reasons furnished by the Applicant in support of prayer. Therefore, rejection to include the Applicant in COC by IRP is unsustainable and contrary to law. Hence, the Application deserved to be allowed, as prayed for, in the interest of justice.

7. In the result, **I.A No. 121 of 2021** in CP (IB) No. 35/BB/2021 is hereby allowed by directing the Respondent (IRP) to re-constitute the Committee of Creditors of CD by including the Applicant as Member of Committee of Creditors of CD. No order as to costs.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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