

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II

IA/3525/2022

In
CP(IB)934/MB/2020

*Application filed under section 60(5) of Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of National
Company Law Tribunals Rules, 2016.*

Mr. Amit Sangal, *Proprietor of Nitin Plastic*

...Applicant

V/s

Mr. Kairav Anil Trivedi, *IRP/RP of Prince MFG
Industries Private Limited.*

... Respondent 1

Canara Bank Ltd., *Member of CoC of Prince MFG
Industries Private Limited.*

... Respondent 2

In the matter of

Mr. Amit Sangal, *Proprietor of Nitin Plastic*

...Operational Creditor

V/s

Prince MFG Industries Private Limited

...Corporate Debtor

Order Pronounced on :- 15.05.2023

CORAM:

SHRI SHYAM BABU GAUTAM
HON'BLE MEMBER (T)

SHRI KULDIP KUMAR KAREER
HON'BLE MEMBER (J)

Appearances (through video conferencing)

For the CoC : Adv. Shreyashi Panda

For the RP : Mr. Kairav Anil Trivedi (*In Person*)

ORDER

Per- Kuldip Kumar Kareer, Member Judicial

1. It is an application filed by Amit Sangal, *Proprietor of Nitin Plastic* (Operational Creditor of Prince MFG Industries Private Limited) under sections 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 against Kairav Anil Trivedi, *IRP/RP* of the Corporate Debtor and Canara Bank Ltd., Member of CoC, seeking following reliefs:
 - i.) Allow the present application and take cognizance against the IRP for committing fraud, perjury, misconduct and omission of material fact and punish him in accordance with law.
 - ii.) Reject the Resolution Plan which approved by the CoC and put before this Tribunal vide IA/2977/2022 as IRP obtained all orders by playing fraud and submitting false documents.
 - iii.) Direct to the IRP to file Annual return u/s 92 and financial statement u/s 137 to concerned RoC and/or before this Tribunal.

- iv.) Direct to IBBI for taking disciplinary action against the Respondent no.1 and report to IBBI regarding his malafide acts.
 - v.) Allow and/or Direct to (De-novo) Fresh Start of CIRP.
 - vi.) Allow and/or Direct to Start Corporate Insolvency Process after 30 days from the date of admission application under section 9 of the Code.
 - vii.) Allow and/or direct to the IRP to bear expenses which happened due to his deliberately breach of law and derail the CIRP against Corporate Debtor and impose penalty on him.
 - viii.) To Pass such other and further directions as this Hon'ble Tribunal may deem fit.
2. On perusal of the Application, it reveals that the IRP Mr. Kairav Anil Trivedi has not been appointed as RP in First meeting of COC. The COC has voted against the appointment of IRP as RP and the same is evident from the email dated 20.11.2021 which was received from the Right2Vote Infotech Private Limited (online voting platform) to the COC members. The Applicant submits that the IRP Kairav Anil Trivedi was never appointed and approved as Resolution Professional of the Corporate Debtor by the COC. The IRP has intentionally, willfully and deliberately filed a False and fabricated document of showing himself appointed as RP of the corporate debtor.

The Applicant further submits that the Respondent No.2/Canara bank has also filed an application being I.A. No. 247/2022 in CP (IB)/934/MB/2020 against the IRP for the replacement of RP under section 27 of the Code. The IRP concealed the result of e-voting and intentionally and wilfully misrepresented and appointed him as RP under section 22 of the Code and filed false result of voting of first COC meeting before this Tribunal. The Applicant has further submitted that the IRP has committed fraud by violating Section 28 of the Code by executing MOU with third party in collusion with suspended directors of the Corporate Debtor and handed-over the possession of factory at Haridwar along with plant & machinery, moulds, etc. to third party i.e. M/s. Sarvashree Industries Private Limited for contract manufacturing at Haridwar with retrospective effect from 05.10.2021 (on said date the IRP has not received the order as well as not made public announcement). The same is evident from MOU filed along with additional affidavit by Respondent No.2 (Canara Bank Ltd. one of the Member of Committee of Creditors). Further, the applicant has filed Complaint against the IRP Mr. Kairav Anil Trivedi for misconduct before IBBI vide Complaint No. is COMP-11011/47/2022-IBBI on 03.10.2022.

3. In response to this, the IRP/RP has filed a detailed reply and has submitted that the submission made by the Applicant is based on documents which the Operational Creditor does not have any legal access, as the CIRP process under IBC is a

closed-door confidential process. Further, the grounds mentioned in the application cannot be a basis of rejection of resolution plan u/s 30(2)(e) of the Code.

Further, the Respondent no.1 has submitted that the OC being the applicant who has filed the application u/s 9 of IBC in the CP/934/MB/2020 but has failed to appreciate that after the CIRP order, the Applicant/OC has no role to play in the CIRP process and thus has no locus standi whatsoever to raise any objection on the same. Further this CIRP process is confidential and the OC has no legal access to the documents and therefore the OC cannot be considered as an aggrieved party under IBC in the CIRP process. The RP has further submitted that the CoC has resolved to continue with existing RP and the IA/247/2022 filed for replacement of the RP has already been withdrawn by the COC through IA/3346/2022.

4. After looking into the averments, this bench is of the view that the Applicant/Operational Creditor (*who has filed the application us 9 of IBC*) has raised an objection related to matter much before issuance of FORM G. Therefore, these grounds cannot be considered as a ground for rejection of the Resolution Plan u/s 30(2)(e). The legal implementation of the Resolution plan u/s 30(2)(e) is in no way impacted by the CIRP process followed in the First COC meeting and therefore cannot be considered as an objection us 30(2)(e) as it does not impact the implementation of the Resolution plan. Moreover, the IA/247/2022 filed by the CoC for replacement of the RP has

already been withdrawn by the COC through IA/3346/2022 and this tribunal has passed the necessary orders on 10.11.2022. Further, in relation to misconduct of IRP/RP, the appropriate authority to deal with such matters is IBBI and the applicant has already filed the Complaint before IBBI, as per the submissions made by the Applicant.

In view of the above, IA/3525/2022 is ***dismissed as misconceived.***

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**