

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) Insolvency No. 971, 972 & 973 of 2023

IN THE MATTER OF:

M/s Dauphin Cables Private Limited,
KH. No. 300, Gopi Ram Building,
Sultanpur Village, New Delhi-110030

...Appellant

Versus

Mr. Praveen Bansal,
Resolution Professional
M/s. Abloom Infotech Pvt. Ltd.
E-10A, Kailash Colony,
New Delhi - 110048

...Respondent

Present:

For Appellant : Mr. Abhimanyu Bhandari, Mr. Manish Paliwal, Mr. Sushant Pal, Advocates.
For Respondents : Mr. Mohit Jolly and Mr. Veenu Drall, Advocates for RP.

J U D G M E N T

ASHOK BHUSHAN, J:

1. This Appeal has been filed against the Order dated 05.06.2023 passed by the National Company Law Tribunal, Court VI, New Delhi (hereinafter referred to as “**The Adjudicating Authority**”) deciding I.A. No. 1756 of 2023.

2. Brief facts of the case necessary to be noticed for deciding this Appeal are:-

- a) The Adjudicating Authority initiated ‘Corporate Insolvency Resolution Process’ (CIRP in short) against the Corporate Debtor-M/s Abloom Infotech Pvt. Ltd. on an Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter

referred to as “**The Code**”) filed by DMI Finance Pvt. Ltd. vide Order dated 11th March, 2021. In pursuance of the publication issued by the IRP, Claims were filed by DMI Finance Pvt. Ltd. and Chandgi Ram Real Estate Consultants Pvt. Ltd.

b) I.A. No. 5981 of 2022 was filed by the Appellant praying for following reliefs:

“a. Direct the resolution professional to give documents and calculation based on which applicant admitted the claim of Financial Creditor.

b. Direct the resolution professional to place documents and calculation based on which applicant admitted the claim of Financial Creditor.

c. Direct the Resolution Professional redetermine the claim amount of the Financial Creditor in accordance with the provisions of the IBC.

d. That to pass any other order as this Hon’ble Tribunal may see fit in lieu of justice.”

c) The Adjudicating Authority passed an Order dated 14.02.2023 observing that there are no provisions in the Code in which the shareholders can ask for such documents from Resolution Professional. However, in the interest of justice and fair play, the Adjudicating Authority directed the Resolution Professional to file an additional affidavit stating the claims admitted by the Resolution Professional with all the supporting documents and calculations within 7 days.

d) This Tribunal on 16.03.2023 dismissed the Appeal against Order dated 14.02.2023 observing that it is open for the Appellant (Resolution Professional) to file an appropriate

application along with affidavit seeking appropriate direction from the Adjudicating Authority and it is for the Adjudicating Authority to consider the said prayers and pass appropriate order.

- e) After the Order of this Tribunal dated 16th March, 2023, the Resolution Professional filed an I.A. No. 1756 of 2023 in which I.A., Resolution Professional prayed for following reliefs:

- “1. To allow the present application*
- 2. To direct the resolution professional to file an Additional Affidavit stating the claim of DMI Finance Private Limited admitted by the Resolution Professional with all the supporting documents and calculations, in a sealed cover envelope without e-filing to comply with the order dated 14.02.2023 passed by this Hon’ble National Company Law Tribunal, New Delhi in I.A. No. 5981 of 2022 in CP(IB) No. 2115/ND/2019.*
- 3. Pass such other and further order(s) as this Hon’ble Adjudicating Tribunal may deem fit and proper in the facts and circumstances of the present case.”*

- f) The Adjudicating Authority by the Impugned Order dated 05th June, 2023 disposed of the Application and in Paragraph 6, following directions has been issued:

- “6. Taking into consideration the facts and circumstances of the present case, we allow the Resolution Professional to file the documents, as directed in IA 5981/2022 vide order dated 14.02.2023, in a sealed cover without e-filing. The objections raised by the shareholders with respect to the Resolution Plan, as well as the documents on the basis of which the claims of the CoC members were admitted, as well as*

the additional documents submitted by the RP in sealed cover will be considered and examined before approval of the Resolution Plan.”

g) The Appellant aggrieved by the order dated 05th June, 2023 has come up in this Appeal.

3. We have heard Learned Counsel-Mr. Abhimanyu Bhandari appearing for the Appellant and Mr. Mohit Jolly appearing for the Resolution Professional.

4. Learned Counsel for the Appellant challenging the Impugned Order submits that the Adjudicating Authority has committed error in allowing the Resolution Professional to file documents in a sealed cover. It is submitted that there is no provision in the Code and Regulation that documents can be kept confidential from the shareholders of the Corporate Debtor. It is submitted that the only confidentiality that the Code provides is with respect to the information memorandum under Section 29(2) of the Code. It is submitted that claim of the Financial Creditor has been admitted for a higher amount. Shareholders asked for documents and calculations on which claims of Corporate Debtor has been admitted. Resolution Professional had contended confidentiality. Learned Counsel for the Appellant in support of his submission has relied on Judgment of Hon'ble Supreme Court in '**Cdr. Amit Kumar Sharma V. Union of India**, 2022 SCC OnLine SC 1649 and in '**Madhyamam Broadcasting Limited V. Union of India & Ors.**, 2023 SCC OnLine SC 366 and the Judgment of Hon'ble Supreme Court in '**S.P. Velumani V. Arappor Iyakkam**', (2022) 12 SCC 745.

5. Learned Counsel appearing for the Resolution Professional submits that this Appeal has become infructuous since the Adjudicating Authority vide Order dated 01st August, 2023 has approved the Resolution Plan. After approval of the Resolution Plan by the Adjudicating Authority, issues sought to be raised by the Appellant needs no consideration. The plan having been approved, the Appeal challenging the Order passed on an application filed by the RP has served its purpose and while approving, the Adjudicating Authority has looked into the relevant facts and circumstances.

6. We have considered the submissions of Learned Counsel for the parties and perused the record.

7. This Appeal has been filed by the Shareholders of the Corporate Debtor who have filed I.A. No. 5981 of 2022 on which direction was issued by the Adjudicating Authority directing Resolution Professional to file the documents. The Impugned Order dated 05th June, 2023 was passed on I.A. No. 1756 of 2023 filed by the Resolution Professional with a prayer to permit the Resolution Professional to file Additional Affidavit stating claim of DMI Finance Pvt. Ltd. admitted by the RP with all the supporting documents and calculations in a sealed cover envelope without e-filing to comply with the Order dated 14.02.2023 which prayer was granted by the Adjudicating Authority by the Impugned Order. In the Order which we have extracted above, the Adjudicating Authority has observed that the objections raised by the shareholders with respect to the Resolution Plan as well as documents on the basis of which the claims of the CoC members were admitted, will be considered and examined before the approval of the Resolution Plan.

8. The Copy of the Order passed by the Adjudicating Authority approving the Resolution Plan on 01st August, 2023 has been placed by Resolution Professional for consideration of the Court.

9. In paragraph 10 of the Order, the Adjudicating Authority has held:

“10. The next objection is with respect to the wrongful admission of claim of Financial Creditor i.e., DMI Finance Private Limited, this Tribunal had directed the Resolution Professional to submit the claim admitted of DMI Finance with all the supporting documents and calculations. In compliance of the above, the RP had submitted the details via additional affidavit. We have gone through the documents. We are satisfied with the calculations and supporting documents as provided by the Resolution Professional.”

10. Learned Counsel for the Appellant has placed reliance on the Judgment of Hon’ble Supreme Court in “Cdr. Amit Kumar Sharma” (supra). Hon’ble Supreme Court in the aforesaid case was considering a challenge to order of Armed Forces Tribunal which had dismissed the Applications challenging the denial of Permanent Commission in the Indian Navy. Before the Armed Forces Tribunal, the Respondents had placed certain proceedings and materials in a sealed cover which was looked into by the Adjudicating Authority while deciding the Application. Hon’ble Supreme Court in the said Judgment held that the non-disclosure of relevant material to the affected party and its disclosure in a sealed cover to the adjudicating authority sets a dangerous precedent. In paragraph 27 and 28, following has been held:

“27. The elementary principle of law is that all material which is relied upon by either party in the course of a judicial proceeding must be disclosed. Even if the

adjudicating authority does not rely on the material while arriving at a finding, information that is relevant to the dispute, which would with 'reasonable probability' influence the decision of the authority must be disclosed. A one-sided submission of material which forms the subject matter of adjudication to the exclusion of the other party causes a serious violation of natural justice. In the present case, this has resulted in grave prejudice to officers whose careers are directly affected as a consequence.

28. The non-disclosure of relevant material to the affected party and its disclosure in a sealed-cover to the adjudicating authority (in this case the AFT) sets a dangerous precedent. The disclosure of relevant material to the adjudicating authority in a sealed cover makes the process of adjudication vague and opaque. The disclosure in a sealed cover perpetuates two problems. Firstly, it denies the aggrieved party their legal right to effectively challenge an order since the adjudication of issues has proceeded on the basis of unshared material provided in a sealed cover. The adjudicating authority while relying on material furnished in the sealed cover arrives at a finding which is then effectively placed beyond the reach of challenge. Secondly, it perpetuates a culture of opaqueness and secrecy. It bestows absolute power in the hands of the adjudicating authority. It also tilts the balance of power in a litigation in favour of a dominant party which has control over information. Most often than not this is the state. A judicial order accompanied by reasons is the hallmark of the justice system. It espouses the rule of law. However, the sealed cover practice places the process by which the decision is arrived beyond scrutiny. The sealed cover procedure affects the functioning of the justice delivery system both at an

individual case- to case level and at an institutional level. However, this is not to say that all information must be disclosed in the public. Illustratively, sensitive information affecting the privacy of individuals such as the identity of a sexual harassment victim cannot be disclosed. The measure of nondisclosure of sensitive information in exceptional circumstances must be proportionate to the purpose that the non-disclosure seeks to serve. The exceptions should not, however, become the norm.”

11. The Hon’ble Supreme Court in the above case was considering a case of officials who were denied permanent commission. In the aforesaid background, aforesaid observations were made. The present Appeal arises out of Insolvency Process under I&B Code and Regulations framed thereunder. Another judgment relied by Learned Counsel for the Appellant is **“Madhyamam Broadcasting Limited”** (supra) where Hon’ble Supreme Court was examining the issue pertaining to Sealed Cover Procedure and public interest claims, as observed above the present is a case arising out of IBC Proceedings and for the reasons that Resolution Plan stood approved on 01st August, 2023, we see no necessity to dwell any further on the submission which has been advanced by Learned Counsel for the Appellant.

12. The Judgment of Hon’ble Supreme Court in **“S.P. Velumani V. Arappor Iyakkam & Ors.”** was a case when State has not pleaded any specific privilege which bars disclosure of material utilised in the earlier preliminary investigation. In the above case, the Hon’ble Supreme Court held that in the above background there is no good reason for the High Court to have permitted the report to have remained shrouded in a sealed

cover. The above case arose out of criminal proceeding and does not has any application in the facts of the present case.

13. The claims submitted by Creditors in the Insolvency Resolution Process are collated by the IRP/RP and verified as per CIRP Regulations, 2016. From the information received including details of creditors' amounts admitted, the Resolution Professional is required to prepare Information Memorandum under Section 29 which is provided to Resolution Applicant. There is statutory requirement that information shall not be shared with third party. Section 29 is as follows:

“29. (1) The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.

(2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes—

(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;

(b) to protect any intellectual property of the corporate debtor it may have access to; and

(c) not to share relevant information^{1A} with third parties unless clauses (a) and (b) of this sub-section are complied with.

Explanation. —For the purposes of this section, “relevant information” means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes

by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.”

14. CIRP Regulations, Regulation 36, deals with Information Memorandum. As per Regulation 36, sub-Regulation (2), (d) Information Memorandum is to contain a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims. Regulation 36, Sub-Regulation 2 (d) is as follows:

“36. (2) The information memorandum shall contain the following details of the corporate debtor-

.....

(d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;”

15. Sub-Regulation 3 of Regulation 36 of CIRP Regulations, 2016 provides that a member of the Committee may request the Resolution Professional for further information of the nature described in this Regulation which Resolution Professional is obliged to provide. Further, Information Memorandum is shared to the Member of CoC after receiving an undertaking from the member of the committee that such member shall maintain confidentiality of the information and shall not use such information. Sub-Regulations 3 and 4 are as follows:

“(3) A member of the committee may request the resolution professional for further information of the nature described in this Regulation and the resolution professional shall provide such information to all members within reasonable

time if such information has a bearing on the resolution plan.

(4) The resolution professional shall share the information memorandum after receiving an undertaking from a member of the committee to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information 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.”

16. The scheme of IBC thus does not indicate that all information collected by the Resolution Professional has to be shared with Shareholders who asks for the information. In the present case, the Adjudicating Authority on an application which application is under Section 60(5) has issued direction to the Resolution Professional to file the documents in a sealed cover without e-filing. Under the NCLT Rules, 2016, the Adjudicating Authority under Rule 43 is empowered to call for any information or evidence. Rule 43 is as follows:

“43. Power of the Bench to call for further information or evidence. - (1) *The Bench may, before passing orders on the petition or application, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary:-*

(a) for the purpose of satisfying itself as to the truth of the allegations made in the petition or application;

or

(b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders in the petition or application.

(2) Without prejudice to sub-rule (1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, written communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant laws.

(3) Where any party preferring or contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication of any statutory records, then it shall be at liberty to move an appropriate application for forensic examination and the Bench hearing the matter may, for reasons to be recorded, either allow the application and send the disputed records for opinion of Central Forensic Science Laboratory at the cost of the party alleging fabrication of records, or dismiss such application.”

17. The Adjudicating Authority is thus fully empowered for calling information or evidence from the parties. The power under Rule 43 shall also encompass power to call information from Resolution Professional. As noted above, the Adjudicating Authority by an Order dated 14th February, 2023 directed the Resolution Professional to file Additional Affidavit along with all supporting documents and calculations and subsequent to order dated 14.02.2023, on an application I.A. No. 1756 of 2023, the Adjudicating Authority directed the Resolution Professional to submit documents in a sealed cover without e-filing which order is under challenge in this Appeal.

18. As noticed above, Resolution Plan with regard to Corporate Debtor has already been approved by the Adjudicating Authority on 01st August, 2023 in which plan the Adjudicating Authority in paragraph 10 as extracted above
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has already observed that it has looked into the documents and materials provided by the Resolution Professional. In the facts of the present case where Resolution Plan has already been approved the Order which was passed by the Adjudicating Authority on 05th June, 2023 has outlived its purpose. As observed above, the Adjudicating Authority is fully empowered to issue any direction to Resolution Professional or any other party to give any information or evidence. The Resolution Professional has complied the Order dated 05th June, 2023 and filed the relevant evidence. At this stage, where Resolution Plan has already been approved, we are of the view that issues raised by the Appellant has become academic and needs no further consideration in this Appeal. In the facts of the present case, we see no reason to interfere with the Order dated 05th June, 2023, the Appeal is dismissed with the observations as made above.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**New Delhi
11th September, 2023**

Basant B