

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER**

IA(IBC)No.231/JPR/2019
In IB No. 707(PB)/2018

IN THE MATTER OF:

M/S INDUS CONTRAINER LINES PVT. LTD.

...Financial Creditor

VERSUS

JADOUN INTERNATIONAL PVT. LTD.

...Corporate Debtor

MEMO OF PARTIES

IA(IBC) No. 231/JPR/2019:

MR. AJIT KUMAR

*Resolution Professional for
M/s Jadoun International Pvt.
Ltd.*

...Applicant

VERSUS

SUSPENDED BOARD OF DIRECTOR

*Represented through Mr.
Sourabh Singh Jadoun
457, Ganesh Nagar, Niwaru
Road, Jhotwara, Jaipur- 302016*

...Respondent No. 1

KANAK MARBLES & GRANITES PVT LTD.

*F-11, 12, 13, RIICO Industrial
Area, Near R.K. Link Road,
Madanganj, Kishangarh,
Rajasthan- 305801*

...Respondent No. 2

FOR PETITIONER (S) : Ashish Saksena, Adv.
FOR RESPONDENT (S) : Archit Bohra, Adv.

Order Pronounced On: 11.08.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present application bearing *IA No. 231/JPR/2019* was filed by the Resolution Professional/Applicant under Section 60(5) read with Section 20 of the Insolvency and Bankruptcy Code ('IBC'/'Code') seeking necessary directions against Respondent No. 2, namely, *M/s Kanak Marbles & Granites Pvt Ltd.* i.e. the Respondent No. 2 be directed to pay the outstanding amount of Rs. 14,55,229/- due to the Corporate Debtor.
2. Before we delve into the facts of the case, it is important to refer to the history of the matter. The Financial Creditor namely *M/s Indus Container Lines Pvt. Ltd.* had preferred an application under Section 7 of IBC seeking initiation of CIRP against *M/s Jadoun International Pvt. Ltd.* ('Corporate Debtor'). This Authority vide order dated 25.01.2019 initiated CIRP of the Corporate Debtor and appointed *Mr. Ajit Kumar* as the IRP. Pursuant to the Order, the RP made a public announcement in accordance with Section 15 on 29.01.2019. Along with the same, a letter was preferred to the Suspended Directors of the Corporate Debtor intimating the initiation of CIRP and declaration of moratorium.

3. The RP after scrutinizing the books of the accounts of the Corporate Debtor found that its assets are significantly insufficient to its liability. Hence, the present application has been filed on the following grounds:

- 3.1. The Applicant preferred a letter dated 26.03.2019 to the Respondent No. 2 asking it to clear the outstanding dues amounting to Rs. 14,55,229/- for rendering the freight services. The outstanding amount was duly reflected in the books of accounts and ledger of the Corporate Debtor. In the said letter, the Applicant has stated that from the list of the Sundry Debtors as provided by the Corporate Debtor, an amount of Rs. 14,53,619/- is shown as debt in the name of the Respondent No. 2.
- 3.2. Pertinently, the Corporate Debtor had raised invoices against the freight services rendered to Respondent No. 2 and the ledger of the Corporate Debtor categorically reflected the amount due from 01.04.2016 to 25.01.2019. The details of the invoices are reiterated in a tabulated form as below:

<i>Sr. No.</i>	<i>Date</i>	<i>Invoice No.</i>	<i>B/L No.</i>	<i>Amount</i>
1.	24.09.2016	JIP/14951	570429992	36,919/-
2.	24.09.2016	JIP/14952	570429992	2,875/-
3.	24.09.2016	JIP/14953	570429992	4,600/-
4.	24.09.2016	JIP/14954	570429992	1,52,621/-
5.	24.09.2016	JIP/14955	570429992	40,670/-
6.	30.09.2016	JIP/14979	604776382	2,53,772/-
7.	30.09.2016	JIP/14980	604776382	2,875/-
8.	30.09.2016	JIP/14981	604776382	27,600/-
9.	30.09.2016	JIP/14982	604776382	7,06,857
10.	30.09.2016	JIP/14983	604776382	2,26,440/-
			TOTAL	14,55,229/-

- 3.3. Hence the present application has been filed by the Applicant seeking directions against the Respondent No. 2 to pay the outstanding debt.
4. The Respondent No. 2 preferred reply vide Diary No. 1856/2019 dated 11.09.2019, wherein the Respondent has contended the following:
- 4.1 This Application has been filed in the nature of a recovery suit which is contrary to the admitted position of law stating that IBC was not introduced with an intention to be used as a recovery code. The Code was intended to restructure the defaulted Corporate Debtor and find Successful Resolution Plans to revive the Corporate Debtor within a time bound procedure and upon failure, to initiate liquidation process.
- 4.2 It has been mentioned that the Answering Respondent had to recover an amount of Rs. 21,79,908/- from a proprietorship firm namely, *M/s Jagannath Marbles & Granites*, wherein Ms. Akansha Singh W/o Mr. Saurabh Singh (erstwhile director of the Corporate Debtor) is the sole proprietor. Mr. Saurabh Singh handled the usual course of business of the sole proprietorship firm and after settlement it was agreed that the outstanding amount against the Answering Respondent would stand cleared and the outstanding amount against *M/s Jagannath Marbles & Granites* would be effectively reduced to Rs. 7,29,164/- recoverable by the Answering Respondent, which has not been received.
- 4.3 It has also been submitted that the Answering Respondent was neither made aware of the alleged books of accounts and ledgers of the

Corporate Debtor nor the same has been produced before this Authority to prove the alleged claim.

5. The Respondent No. 2 filed its Written Submissions vide Diary No. 2058/2019 dated 24.09.2019 submitting that the Applicant ought to have filed an Application under Section 9 of the Code for Operational Debts. Moreover, this matter requires consideration qua the evidence and conduct of the Suspended Directors. Also, since there was no communication between the Corporate Debtor and the Respondent No. 2 for making the payments, the accounts stood settled between the parties.
6. The Applicant preferred Written Submissions vide Diary No. 2090/2019 dated 26.09.2019 wherein a list has been enclosed with the written submissions delineating the important dates in the present matter. Further, the Applicant has emphasised on Section 20 and 25 of the Code to contend that it has ample powers and authority to file an application seeking recovery of dues owed to the Corporate Debtor for protecting and preserving the value of the property of the Corporate Debtor. Reliance has been placed on the judgment of NCLT, Principle Bench in *Bhanu Ram and Ors. vs. HBN Diaries and Allied Ltd. in IB No. 547/PB/2018*. It has also submitted that set-off can be claimed only against dues from a common entity and not from distinct legal entities on the basis of some cash transactions. The classic case of *Solomon Versus Solomon* establishing the fundamental principle of a Company's distinct legal entity has completely been ignored herein.

Moreover, it is clear from the 5th meeting of CoC that the CoC was duly apprised of the proposed action of the RP.

7. Later, the Resolution Plan was approved by this Adjudicatory Authority vide Order dated 16.07.2021 and the Successful Resolution Applicant was Mr. Yusuf Khan. The Resolution Professional was discharged vide Order dated 02.03.2022. Hence, the Successful Resolution Applicant filed 2 sets of Written Submissions vide Diary No. 3294/2022 dated 09.11.2022 and Diary No. 1534/2023 dated 14.06.2023 which are being summarized as below:

- 7.1. It is mentioned that the defence taken by the Respondent No. 2 regarding the set-off of debt of Sole Proprietorship firm namely *M/s Jagannath Marbles & Granites* with that of the Corporate Debtor is not tenable in law. In Para 14 of the Resolution Plan, it is provided that the recovery in the IA as mentioned therein shall be pursued and 50% of the recovered amount from the debt shall be paid to the secured creditors. The answering respondent have failed to object to the said approval of the Resolution Plan. The debt of the Respondent was also considered in the 7th and 8th meeting of the CoC dated 12.11.2019 and 18.12.2019 respectively.

- 7.2. Moreover, the issue of instant application being pending before this authority had been considered in the 6th meeting of CoC dated 22.10.2019, 7th meeting of CoC dated 22.11.2019 and 8th meeting of CoC dated 18.12.2019. After concurrence of CoC, it become part of the

Resolution Plan and the said Resolution Plan was approved by this Authority on 16.07.2021. The objection raised with regard to the maintainability of the instant application after approval of the Resolution Plan is not sustainable in view of the fact that these applications were part of the Resolution Plan along with the future plan mentioned therein. The Respondent neither challenged the CoC approval nor the order of the Authority. Moreover, no suit has been preferred by the Corporate Debtor against the Respondent No. 2 in any Court of law.

8. Written submissions were preferred by the Respondent No. 2 vide Diary no. 1560/2023 dated 19.06.2023 wherein the following has been contended:
 - 8.1. It has been submitted that the present is a typical case which cannot be adjudicated summarily by this Authority and needs to be adjudicated by the competent civil court having jurisdiction. Reliance has been placed on the Judgment of the Hon'ble NCLAT in *Shri Ramachandra D. Choudhary vs. Bansal Trading Company & Ors* in *Company Appeal (AT)(INSOLVENCY) No. 810 of 2020*.
 - 8.2. Additionally, the Resolution Professional failed to obtain necessary permission under Section 28(1)(K) from the CoC. Moreover, the Respondent No. 2 submits that this Adjudicatory Authority does not have the jurisdiction to pass a recovery decree as prayed since it is against the objective of IBC.

9. We have heard the Ld. Counsels for the parties and perused the averments made in the Interlocutory Application and reply along with the documents enclosed with the application.
10. Section 18 of the Code talks about the duties of the IRP including collection of all financial information relating to the Corporate Debtor, receipt and collation of debt claims, constitution of a Committee of Creditors etc. Section 20 on the other hand lays down that the IRP has to manage the affairs of the Corporate Debtor as a going concern to enable him to protect and preserve the value of the property of the Corporate Debtor. Whereas Section 25 simultaneously sets out the duty of the Resolution Professional to preserve and protect the assets of the Corporate Debtor and lays down the functions to be performed for the same.
11. The duties imposed upon the RP/IRP, by virtue of the aforementioned sections, does not entitle the Adjudicating Authority to exercise jurisdiction in matters where recovery of a particular amount is sought on behalf of the Corporate Debtor. For adjudication of disputes and recovery of sums the RP is empowered to approach relevant competent authorities. At this juncture, we place reliance upon the Judgment of the Hon'ble Supreme Court in the matter of *Gujarat Urja Vikas Nigam Limited vs. Amit Gupta (2021) 7 SCC 209* wherein the following has been observed:

“ 65... Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which

arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing do, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist.”

12. The Hon’ble NCLAT while relying on the *Gujarat Urja (supra)* in the matter of *Shri Ramachandra D. Choudhary vs. Bansal Trading & Ors.* vide Order dated 01.09.2022 held as below:

“ Keeping in view the aforementioned ratio in ‘Gujarat Urja Vikas Nigam Limited’ (Supra), we hold that the remedy for recovery of debts, disputed or not, cannot be determined in summary proceedings and the Code does not contemplate adjudication of any such nature. Any such steps taken under Section 60(5) of the Code before the Adjudicating Authority, would tantamount to bypassing/short-circuiting the Judicial Proceedings. Keeping in view the submissions of the Respondents, to adjudicate whether the amount is due and payable by the ‘sundry debtors’ who have raised disputes, would require calling for evidence and cannot be proceeded under the Code. The Appellant is well within its powers to take appropriate steps to file legal proceedings, if the circumstances so warrant. The Code expressly provides for the Liquidator to institute or defend any Suit, Prosecution or other Legal Proceedings, Civil or Criminal, in the name or on behalf of the ‘Corporate Debtor’.”

13. Moreover, it has been time and again held that NCLT is not a recovery forum. The Hon’ble Supreme Court vide Order dated 03.12.2019 passed in *M/s Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka & Ors.* (2020) 13 SCC 308 held as below:

“ The NCLT is not even a Civil Court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognizance is either expressly or impliedly barred. Therefore NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which, it is called upon to administer.”

14. The Resolution Professional in the present matter had approached this forum for recovery of debt which is allegedly owed by the Respondent No. 2 to the Corporate Debtor whereas it has forgotten the underlying principle which enunciates that this is not a debt recovery forum. There is no doubt that the Resolution Professional has ample powers to proceed and protect the debts of the Corporate Debtor, but it cannot do so by merely filing an Application under Section 60(5) of the Code in the pending CIRP of the Corporate Debtor. The Hon’ble Supreme Court in the matter of *Gluckrich Capital Pvt. Ltd. Vs. The State of West Bengal & Ors.*, on 19.05.2023 held:

“We are of the considered opinion that in such circumstances, it is for the Resolution Professional or the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to corporate debtor, which may be available in law. The remedy against third party, however, is not available under Section 66 of IBC, and the civil remedies which may be available in law, are independent of the said Section.”

15. The Applicant has attached a list of invoices as pending payment against the Respondent No. 2. The Respondent No. 2 has challenged the debt on the ground that the said amount was set-off against the claim of the Respondent No. 2 due from the proprietorship firm *Jagannath Marbles and Granites*,

which is managed by the erstwhile director of the Corporate Debtor and the said proprietorship firm in turn owes certain debt to the Respondent No. 2 Company.

16. We are not divulging into the merits of the case which has been presented by both the parties. While the Applicant at the time of filing of the Application, with the intention to protect the assets of the Corporate Debtor, approached this Authority, the recovery prayed for cannot be granted. We cannot divert from the principles and ratio which has evolved in pursuance to the IBC over a period of time. The Adjudicating Authority does not have the jurisdiction to allow the Application filed by the Resolution Professional. The Successful Resolution Applicant is at liberty to proceed against its debtors by filing appropriate application with the competent court of law and for the purpose of the same, the period of this Application shall be excluded from limitation.
17. In view of the foregoing, the Application bearing *IA(IBC) No. 231/JPR/2019* is rejected and disposed off accordingly.

**-Sd-
DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

**-Sd-
ATUL CHATURVEDI,
TECHNICAL MEMBER**