



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. NO. 2611/ND/2022

IN

Company Petition No. (IB)-1913(ND)/2019

IN THE MATTER OF:

Indian Bank (Erstwhile Allahabad Bank)

...Applicant

Versus

Nimitaya Hotel & Resorts Private Limited

...Respondent

AND IN THE MATTER OF IA. NO. 2611/ND/2022:

Mr. Sanjeev Mahajan

No. 3, Ashoka Avenue,
Westend Greens, Rajokari,
New Delhi - 110038

...Applicant

VERSUS

1. Indian Bank (Erstwhile Allahabad Bank)

Through Authorized Representative

Head office at :

Netaji Subhash Road,
Kolkata – 700001

Also at :

SAM – Large Branch at 17,
Parliament Street, New Delhi - 110001

...Respondent No. 1

2. Nimitaya Hotel & Resorts Private Limited

Through IRP (Navneet Gupta)

Registered office at :

No.6, Golden Gate,,
Westend Greens, Rajokari,
New Delhi - 110038

...Respondent No. 2


3. Committee of Creditors

Through Indian Bank
(erstwhile Allahabad Bank)

...Respondent No. 3

Order Delivered on : 16.12.2022

SECTION: Section 65 of IBC 2016

IA. No. 2611/ND/2022 in (IB)-1913/(ND)/2019
Indian Bank Vs Nimitaya Hotel and Resorts Ltd. 



CORAM:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Rajesh Kr. Gautam, Adv. Ananat
Gautam, Adv. Nipun Sharma, Adv. Sachin
Singh, Adv. Vidur Ahluwalia, Adv. Kumar
Anurag Singh Adv. Zain A. Khan
For the RP : Adv. Manuj Nagrath

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present IA No. 2611 of 2022 has been filed by Mr. Sanjeev Mahajan (hereinafter referred to as the "**Applicant**") under Section 65 of IBC, 2016 seeking the following reliefs:

- "a) *Allow the instant Application and punish the Respondent with the maximum fine as provided under the Code of Rs. 1 Crores. And//or;*
- b) *Direct the CoC (Committee of Creditors) to re-consider the settlement proposal of the Applicant in accordance with the Insolvency and Bankruptcy Code 2016, and/or;*
- c) *Direct the Committee of Creditors as well as the Resolution Professional to keep the CIRP of the Corporate Debtor in abeyance till the instant application is decided on merits and/or;*



- d) *Direct the Resolution Professional not to finalize the Resolution plan till the pendency of this Application and/or;*
- e) *Any other order or order(s) as this Hon'ble Tribunal deems think fit and proper and the facts and circumstances of the present case.”*

2. To put succinctly, the facts of the case are that the Indian Bank (hereinafter, referred to as the “**Financial Creditor**”), had filed an Application bearing No. IB-1913(ND)2019 under Section 7 of IBC, 2016 for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor M/s Nimitaya Hotel and Resorts Ltd. The said Application was admitted by this Tribunal vide Order dated 24.12.2021 and Mr. Navneet Gupta is appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor.

3. The Applicant had sought multiple reliefs through this Application. First, we would like to examine the Prayer made at serial (a) of the Application as to whether any case is made out against the Indian Bank for imposition of penalty as stipulated under Section 65 of IBC, 2016. At this juncture, we would like to refer to the order dated 24.12.2021 in IB-1913(ND)2019, wherein the fact of admission of debt as averred by the Applicant herein in his Reply to the main IB Petition has been extracted. The same is reproduced overleaf:



8. On issuance of Notice, the Corporate Debtor has filed its reply and admitted the debt claimed by the Applicant. The relevant averment depicting admission of debt in the Reply is reproduced below:

“25. However, the Corporate Debtor is in process of raising funds through in order to protect it from coercive actions and proceedings initiated by the Applicant Bank in different forum. In this regard, the Corporate Debtor has again requested the Applicant Bank vide its letter/email dated 12.10.2019 to provide sometime in view of the present market conditions which is evident from applicants bank own reply to the RTI Application, as aforesaid...”

4. Since the debt and default was admitted by the Corporate Debtor itself during the hearing on admission of CIRP of the Corporate Debtor, therefore, in our considered view, at this stage, the Applicant cannot claim that the said IB Petition was filed by the Financial Creditor/Indian Bank with malicious and fraudulent intent.

Thus, in view of the above no case of imposition of penalty is made out against the Financial Creditor/Indian Bank. Prayer (a) is, therefore, out rightly rejected.

5. As regards to reliefs sought vide prayer (b) to (e), we have been informed that the Suspended Board of Directors of the Corporate Debtor had challenged the CIRP Admission Order dated 24.12.2021 passed by this Adjudicating Authority. When we refer to the Judgement dated 04.07.2022 passed in **Company Appeal (AT) (Insolvency) No. 03 of 2022**, we find that the Hon'ble NCLAT has, *inter alia*, held the following:



“4. The CoC under the IBC has been given full freedom to grant an approval of 90% voting share to a proposal under Section 12A only thereafter Application can be filed before the Adjudicating Authority. The freedom of decision of the CoC is unfettered. However, in the facts of the present case, we are of the view that CoC while taking a decision for accepting or rejecting of proposal under Section 12A may also take following factors into consideration:-

(i) The Bank had issued a proposal for sale of NPA of the Corporate Debtor to the Asset Reconstruction Companies (ARC's)/ Non-Banking Financial Companies (NBFC's)/ Financial Institution (FI's) for an amount of Rs.81 Crores

(ii) Whether the Financial Creditor looking to the assets of the Corporate Debtor shall be able to realise an amount more than offered by the Appellant either in the insolvency resolution process by Resolution Plan or a liquidation process.

(iii) The maximisation of the assets of the Corporate Debtor is one of the objectives, equally important is the recovery of the financial dues of the Bank and we have no doubt that CoC while taking a decision shall take decision under which it shall be able to realise its dues to the maximum.

(iv) The CoC having been constituted after our order dated 15.03.2022 may also proceed to issue Form-G and receive the Resolution Plans. However, till the decision on proposal under Section 12A is not taken, CoC shall not proceed to take a vote on any of the Resolution Plans.

15. In view of the foregoing discussions, we dispose of this Appeal with following directions:-



(i) Appellant shall submit a fresh Application under Section 12A to the IRP/RP for placing it before the CoC which contains an offer of more than Rs.81 Crores.

(ii) The said Application shall be filed within two weeks from this date.

(iii) The CoC shall consider the Application under Section 12A after obtaining approval of the Competent Authority of the Bank keeping into consideration the factors as have been mentioned in paragraph 14, as above.

(iv) The CoC shall complete the process of taking decision on Section 12A Application within a period of two months from this date. For a period till CoC takes a decision on a proposal under Section 12A, CoC may not put any Resolution Plans, if any, to vote.

16. In result, we dispose of this Appeal with above directions without interfering in the impugned order passed by the Adjudicating Authority.”

6. Further, during the hearing of the matter on 21.11.2022, Ld. Counsel appearing for the Applicant and the Ld. Counsel appearing for the (main petitioner) Indian Bank pointed out that the Hon'ble NCLAT vide its order dated 21.11.2022 passed in **Contempt Application (AT) No. 25/2022 and IA. No. 3410 of 2022 in Company Appeal (AT)(Insolvency) No.03/2022**, has passed certain directions. The relevant extracts of the said order are reproduced below:

“10. Mr. Abhijeet Sinha, Learned Counsel for the Appellant submitted that the Judgement passed by this Tribunal on 04.07.2022 has not been correctly understood both by the Resolution Professional and CoC in its true



spirit. Judgment of this Tribunal contemplated that CoC shall consider the proposal submitted by the Appellant under Section 12A as well as Resolution Plans received in the Corporate Insolvency Resolution Process. The intent and purpose of the Judgment was that Appellant was also entitled to be given opportunity in deliberation and negotiation in relation to the Resolution Plans submitted in the CIRP to find out as to which are best for the maximisation of the value of the corporate debtor. It is submitted that without giving opportunity to the Appellant to negotiate and enhance his proposal, the Settlement Proposal of the Appellant cannot be outrightly rejected.

11. *Learned Counsel for the Appellant in support of his contempt Application submitted that CoC action after the Judgement of this Tribunal dated 04.07.2022 is in clear violation of the directions issued by this Court. Hence, the Contempt Application have been moved by the Appellant.*

12. *Mr. Rajesh Kr. Gautam -Learned Counsel appearing for the Bank which is the sole Member of CoC submits that there is no question of any violation on behalf of CoC of the Order passed by this Court. CoC is proceeding in accordance with the directions issued by this Court on 04.07.2022. It is submitted that Appellant was very much present when the plans which were received in the CIRP, were discussed and the Appellant is also aware of the value which was offered in two plans. Hence, it is not necessary to give any further opportunity to the Appellant in the process.*

13. *Learned Counsel for the RP submits that the RP has also acted in accordance with the Judgment of this Tribunal dated 04.07.2022. The Appellant has not*



submitted EMD or Rs. 5 Crores which was submitted by other two Resolution Applicants and he cannot claim consideration of his settlement proposal along with the Resolution Plans received by the two Resolution Applicants.


14. *We have considered the submissions of Learned Counsel for the Parties and have perused the record.*

15. *The 06th, 07th and 08th CoC Meetings which have been brought on record in the Contempt Application clearly indicate the substantial part of discussions in the minutes of the CoC where with regard to the interpretation of the Order of this Tribunal dated 04.07.2022, there was divergence in the views of the Resolution Professional and the CoC with regard to the interpretation of the Order dated 04.07.2022. The Appellant has filed this Application with the prayers as noted above. The Order dated 04th July, 2022 contemplated that CoC while considering the Application under Section 12A was to keep in mind the factors as has been mentioned in paragraph 14 of the Judgment dated 04.07.2022. It has already been noticed in the Judgement that maximisation of the assets of the Corporate Debtor is one of the objectives and equally important is recovery of the financial dues of the Bank. The proposal of Applicant under section 12A for Settlement has naturally to be weighed against the Resolution Plans received in the process unless the Resolution Plans are opened and deliberated side by side with the proposal of settlement submitted by the Appellant, the objective as contemplated in paragraph 14(iii) cannot be achieved. We thus are of the view that the Order dated 04.07.2022 clearly entitled that the CoC to weigh the Resolution Plans as well as Settlement Proposal together.*



16. *It is well settled that it is the commercial decision of the CoC which is paramount in the CIRP. The Appellant who is suspended Director of the Corporate Debtor who has already submitted Settlement Proposal was permitted to participate in the meeting of the CoC which is apparent from the minutes of the CoC brought on record. We are of the view that Appellant who was representing the Corporate Debtor and has submitted the Settlement Proposal is entitled to participate in deliberation and negotiation undertaken by the CoC. CoC can very well ask the Resolution Applicants to revise their plans similarly the Appellant can always be asked to revise his proposal to match the Resolution Applicants' Offer. It goes without saying that ultimate decision is of the CoC. We thus are of the view that carrying out purpose and intendment of the judgment dated 04.07.2022, the CoC is to deliberate on the two Resolution Plans received in the CIRP as well as Settlement Proposal under Section 12A submitted by the Applicant/ Appellant and thereafter to take a final decision. The CoC is also fully entitled to negotiate with the Resolution Applicant as well as the Appellant to optimise the maximum value.*

17. *Learned Counsel for the Respondents submitted that period of CIRP is coming to an end on 28th November, 2022. In view of the fact that there was debate with regard to the interpretation of the Order dated 04.07.2022 and hence no final decision has been taken as on date, we are of the view that CIRP period needs to be extended for a period of 15 days after 28th November, 2022. We dispose of I.A. No. 3410 of 2022 to the above extent.*



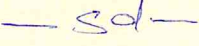
18. Now coming to the Contempt Case (AT) No. 25 of 2022, from the facts which have been brought on record, we are of the opinion that no violation of the Order dated 04.07.2022 can be imputed to the Committee of Creditors. Minutes of the CoC clearly indicate that there was certain difference of opinion regarding the interpretation of the order and views expressed in the CoC meetings regarding the interpretation of the Order dated 04.07.2022 cannot amount to any contempt. We are satisfied that there is no ground to initiate any proceeding for contempt for disobedience of the Order dated 04th July, 2022. The Contempt Application (AT) No. 25 / 2022 deserves to be dismissed.

19. In result, I.A. No. 3410 of 2022 is disposed of as above and Contempt Application is rejected.”


(Emphasis Supplied)

7. Since the Hon'ble NCLAT vide order (supra) has already passed certain directions with respect to the reliefs sought by the Applicant in its Prayers at serial (b) to (e), therefore, we find no requirement of passing any direction to CoC/RP/Respondents.

8. **The Application is accordingly Dismissed.**



(L. N. GUPTA)
MEMBER (T)



(BACHU VENKAT BALARAM DAS)
MEMBER (J)



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. 3204/ND/2022
IN
Company Petition No. (IB)-1913(ND)/2019

IN THE MATTER OF:

Indian Bank (Erstwhile Allahabad Bank) ...Applicant

Versus

Nimitaya Hotel & Resorts Private Limited ...Respondent

AND IN THE MATTER OF IA. NO. 3204/ND/2022:

Mr. Sanjeev Mahajan

No. 3, Ashoka Avenue,
Westend Greens, Rajokari,
New Delhi - 110038

...Applicant

VERSUS

1. Indian Bank (Erstwhile Allahabad Bank)

Through Authorized Representative

Head office at :

Netaji Subhash Road,
Kolkata – 700001

Also at :

SAM – Large Branch at 17,
Parliament Street, New Delhi - 110001

...Respondent No. 1

2. Nimitaya Hotel & Resorts Private Limited

Through IRP (Navneet Gupta)


Registered office at :

No.6, Golden Gate,,
Westend Greens, Rajokari,
New Delhi - 110038

...Respondent No. 2

Order Delivered on: 16.12.2022

SECTION: Rule 11 of NCLT RULES 2016

IA.3204/ND/2022 in (IB)-1913/(ND)/2019 
Indian Bank Vs Nimitaya Hotel and Resorts Ltd.



CORAM:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Rajesh Kr. Gautam, Adv. Ananat
Gautam, Adv. Nipun Sharma, Adv. Sachin
Singh, Adv. Vidur Ahluwalia, Adv. Kumar
Anurag Singh Adv. Zain A. Khan
For the RP : Adv. Manuj Nagrath

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present IA No. 3204 of 2022 has been filed by Mr. Sanjeev Mahajan (hereinafter, referred to as the '**Applicant**') Rule 11 seeking the following reliefs:

- "a) *Allow the instant Application and punish the Respondent with the maximum fine as provided under the Code of Rs.1 Crores. And//or;*
- b) *Direct the CoC (Committee of Creditors) to re-consider the settlement proposal of the Applicant in accordance with the Insolvency and Bankruptcy Code 2016, and/or;*
- c) *Direct the Committee of Creditors as well as the Resolution Professional to keep the CIRP of the Corporate Debtor in abeyance till the instant application is decided on merits and/or;*



d) *Direct the Resolution Professional not to finalize the Resolution plan till the pendency of this Application and/or”*

2. We notice that with the similar prayers, the Applicant has preferred another IA No. 2611 of 2022. For the sake of convenience, the prayers made in IA No. 2611 of 2022 are reproduced below:

- “a) *Allow the instant Application and punish the Respondent with the maximum fine as provided under the Code of Rs. 1 Crores. And//or;*
- b) *Direct the CoC (Committee of Creditors) to re-consider the settlement proposal of the Applicant in accordance with the Insolvency and Bankruptcy Code 2016, and/or;*
- c) *Direct the Committee of Creditors as well as the Resolution Professional to keep the CIRP of the Corporate Debtor in abeyance till the instant application is decided on merits and/or;*
- d) *Direct the Resolution Professional not to finalize the Resolution plan till the pendency of this Application and/or;*
- e) *Any other order or order(s) as this Hon'ble Tribunal deems think fit and proper and the facts and circumstances of the present case.”*

3. We further notice that during the pendency of IA No. 2611 of 2022, which was filed on 28.05.2022, the Applicant has filed the present IA No. 3204/2022 on 12.07.2022. In our considered view, the same reliefs cannot be sought in two parallel Applications against the same party.



4. The Application is barred by the doctrine of *Res Sub-judice*. Since, the applications have resulted in multiplicity of proceedings and in wastage of precious judicial time, we discourage such practice. The Application is accordingly dismissed with a cost of Rs 1,00,000/- (one lakh) only to be deposited by the Applicant herein in the Prime Minister's Relief Fund within 15 days, the receipt of which shall be filed with the NCLT Registry.

(L. N. GUPTA)
MEMBER (T)

(BACHU VENKAT BALARAM DAS)
MEMBER (J)