

(2024) 03 NCLT CK 0067

National Company Law Tribunal, Mumbai Bench Court II

Case No: Contempt Petition 4 of 2023 In CP(IB) 934(MB)2020

Mr. Amit Sangal Proprietor of M/s.
Nitin Plastic

APPELLANT

Vs

Mr. Kairav Anil Trivedi RP M/s.
Prince MFG Industries Private
Limited

RESPONDENT

Date of Decision: March 28, 2024

Acts Referred:

- Insolvency and Bankruptcy Code, 2016 - Section 9, 60(5)
- Companies Act, 2013 - Section 425
- Contempt of Court Act, 1971 - Section 10, 12
- National Company Law Tribunal Rules, 2016 - Rule 11, 34

Hon'ble Judges: Kuldip Kumar Kareer, Member (J); Anil Raj Chellan, Member (T)

Bench: Division Bench

Advocate: Anuj Solanki, Kairav Trivedi

Final Decision: Dismissed

Judgement

Kuldip Kumar Kareer (Judicial)

1. This IA has been filed by the Applicant i.e. Mr. Amit Sangal Proprietor of M/s. Nitin Plastic (Operational Creditor) seeking the following prayers;

a. to allow the Application and to punish Alleged Contemnor for committing Contempt of Court for intentionally, deliberately, wilfully submitting false documents and concealing material facts and information with intention to mislead this Hon'ble Tribunal;

- b. to initiate Suo motto criminal contempt against the alleged contemnor;
- c. take appropriate action(s) and direct concerned authorities to take action(s) against alleged contemnor;
- d. stay/keep in abeyance the approval of the Resolution Plan filed in IA(IBC) 2977/2022 in CP(IB) 934(MB)2020, during the pendency of this Application; and
- e. Pass any such order(s) or give direction(s) as this Hon'ble Tribunal may deem necessary and proper in the facts and circumstances of this case.

Facts of the Case:

2. The Applicant is the Operational Creditor and had filed an application being CP No. 934/ 2020 under section 9 of the Code for initiation of the Corporate Insolvency Resolution Process against the Prince MFG. Industries Private Limited - Corporate Debtor (hereinafter referred to as 'the CD') before National Company Law Tribunal, Mumbai Bench.
3. The Tribunal admitted the application of the applicant under Section 9 of the Code, initiated CIRP against the CD in CP(IB) 934 (IB)2020 vide order dated 05/10/2021 and appointed Mr. Kairav Anil Trivedi as IRP (Alleged Contemnor).
4. The Respondent/Alleged Contemnor i.e. Mr. Kairav Anil Trivedi Resolution Professional of M/s. Prince MFG Industries Private Limited (hereinafter referred to as 'RP') constituted Committee of Creditor which consists of Canara Bank (67.36% voting rights), Axis Bank (18.72% voting rights) and ICICI Bank (13.92% voting rights).
5. The first CoC meeting was convened through virtual mode on 10.11.2021 by alleged contemnor. Item no. 15 of the first minutes of meeting was to confirm and appoint, Mr. Kairav Anil Trivedi Interim Resolution Professional as Resolution Professional to the Corporate Debtor. The CoC has voted against the appointment of the IRP as RP. The same is evident from the result of voting received by email dated 20.11.2021 which received from the Right2Vote Infotech Private Limited (online voting platform provider) in which para no. 7 of states that the voting result of the aforesaid item no. 15 was mentioned as "DISSENT". However, alleged contemnor intentionally, deliberately and willfully to mislead this Tribunal and to obtain favourable order, never submitted the report of the online voting results of the 1st CoC meeting before this Tribunal nor provided it to the members of the CoC. The alleged contemnor has intentionally concealed material facts and information from this Tribunal and falsely submitted that alleged contemnor was appointed as RP by the CoC in first meeting of the CoC.
6. It is therefore, evident from the result of e-voting that alleged contemnor was never appointed as Resolution Professional by CoC, but he falsely represented himself as RP

appointed by CoC.

7. The alleged contemnor with mala fide intention to transfer and alienate assets of the Corporate Debtor in collusion with Suspended Director of the Corporate Debtor signed an MoU with third party named as Sarvashree Industries Private Limited which is a shell company, by misrepresenting himself as RP duly appointed by the CoC but it is evident from the record that at the time of Execution of MoU alleged contemnor was not appointed as RP by the CoC and alleged contemnor had no authority to transfer the assets of the Corporate Debtor to any third party. The alleged contemnor has executed the MoU with SIPL in collusion with suspended directors who also signed as witness without the prior approval of the CoC and alleged contemnor has handed over the possession of the factory assets at Haridwar along with plant and machinery, moulds, etc. to SIPL without consent of the CoC and without holding any position in the CD. The alleged contemnor intentionally, deliberately, willingly and knowingly represented himself as RP even that he has not appointed as RP at that time.

8. The Applicant has received information from the reliable sources that the alleged contemnor in collusion with Suspended Board of Directors had been illegally selling the movable assets of the Corporate Debtor. It is also evident from the balance sheet of the Corporate Debtor from 13.02.2019 to 31.03.2019 that the balance inventories of Rs. 1,58,76,22,304.67/- was illegally and arbitrarily siphoned off by the alleged contemnor. Hence, the present Contempt Petition.

Submissions of the Respondent:

9. This reply has been filed by the RP challenging the maintainability of this application without going into the detailed point wise reply and thus the RP reserves his rights to file a point wise reply if and when required at a later stage.

10. This application has filed by the Operational creditor u/s 425 of Companies Act, 2013, Section 60(5) of the IBC and Section 10 and 12 of Contempt of Court Rules 11 and 34 of NCLT Rules, was also the Applicant in the matter of CIRP order C.P.(IB) 934(MB)2020 and he has been trying to disrupt the process right from the day one.

11. The Operational Creditor tried to interfere in the Resolution Plan approval by objecting to the Resolution Plan at the very first hearing of the Resolution Plan on 17.10.2022 where it was brought to the notice of this Hon'ble Bench that this Operational Creditor is not a party and thus cannot be heard and accordingly this bench directed that without filling any IA for raising objections to the Resolution Plan, the objections raised cannot be heard.

12. The Operational Creditor filed an Application bearing no. IA 3525 of 2022 under section 60(5) of IBC falsely misrepresenting that the RP has not been appointed properly and therefore, the Resolution Plan needs to be rejected.

13. Further Operational Creditor filed IA 726 of 2023 u/s 47 of the Code where he has again misrepresented that there are undervalued transaction without give any supporting data to support his contention. However, Operational Creditor again through his representative now representing as a Lawyer filed the Contempt Petition 4 of 2023 praying to stay/keep in abeyance the approval of the Resolution Plan filed in IA 2977 of 2022 during the pendency of this Application.

14. The Resolution Plan in IA 2977 of 2022 has been reserved for orders on 23.02.2023 after being approved by 100% of the CoC.

15. The Operational Creditor and his lawyer are fully aware that the Resolution Plan has been reserved for orders on 23.02.2023 even then they keep on filing application under different sections with the same prayer of rejection of Resolution Plan thereby wasting the time and effort of this bench.

16. The Resolution Plan was put for approval before this bench, the Operational Creditor and his PCS/Lawyer has continued his misrepresentation by fraudulently attaching documents which are the proceedings filed in IA 247 of 2022 filed by the CoC wherein this Operational Creditor is not a party and the CoC withdrew this vide IA 3346 of 2022 vide order dated 17.11.2022.

17. The fact that this IA 247 of 2022 has been withdrawn by the CoC on 17.11.2022 vide IA 3356 of 2022 and this is known to this Operational Creditor and his lawyer. Therefore, there is no locus standi of this Operational Creditor to raise false and misleading concerns on matters that have been concluded, especially when he is not a party.

18. This Operational Creditor is not a part of the CoC and therefore, not entitled to the copy of the minutes of the meeting nor the copy of any of the agreements or MoU signed and put before the CoC. Thus, this Operational Creditor and his lawyer has fraudulently and illegally obtained these documents for which he should be fined and penalized also since the same contention/prayer is being repeated again and again.

19. This Application has been filed under Section 10 and 12 of the Contempt of Court and the definition of "contempt of court" means civil contempt or criminal contempt;

a. "civil contempt" means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;

b. "criminal contempt" means the publication (whether by words, spoken or written or by signs, or by visible representations or otherwise) of any matter or the doing of any other act whatsoever which -

- i. scandalizes or tends to scandalize, or lowers or tends to lower the authority or any court; or
- ii. prejudice, or interferes or tends to interfere with, the due course of any judicial proceeding; or
- iii. interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any other manner.

20. The RP confirms that there is no willful disobedience to any judgment, decree, direction, order, writ or other process of a court nor any willful breach of an undertaking given to the court and thus there is no civil or criminal contempt. Therefore, the RP prays for the dismissal of the application.

Analysis and Findings:

21. We have heard the Counsel for the parties and have gone through the records.

22. During the course of the arguments, the Counsel for the Applicant has argued that the appointment of the Respondent as RP was never confirmed by the CoC but despite that Respondent falsely recorded the minutes of the first CoC meeting that he had been appointed as RP. In this matter, the Respondent fabricated the minutes of first CoC meeting to gain the wrongful advantage. It has further been argued by the Counsel for the Applicant that the Respondent with mala fide intention to alienate the assets of the Corporate Debtor signed an MoU dated 10.11.2021 with a third party i.e. Servashree Industries Private Limited (SIPL). The said MoU was executed in connivance with the Suspended Board of Directors and also by representing himself as RP appointed by the CoC. The Respondent had absolutely no authority to transfer the assets of the Corporate Debtor to any third party.

23. It has also been argued by the Counsel for the Applicant that Respondent has violated the order dated 15.05.2023 passed by this Tribunal approving the Resolution Plan of the Corporate Debtor. In this regard, the Counsel for the Applicant has pointed out that as per order dated 15.05.2023, period of payment of consideration was 45 days from the date of the receipt of the certified copy of the order or such period of 45 days from the disposal of the appeal, if an appeal is filed against the order approving the Resolution Plan. The Counsel for the Applicant has further contended that even though an appeal has been filed against the order dated 15.05.2023, the Respondent has implemented the Plan on 30.06.2023 and this act on the part of the Respondent amounts to contempt of court.

24. In support of his arguments the Counsel for the Applicant has relied upon Dhananjay Sharma vs. State of Haryana (1995) 3 SCC 757 whereby it has been held that the filing of false affidavit or making false statements on oath of Courts aims at striking

a blow at the Rule of Law and no Court can ignore such acts. Counsel for the Applicant has further relied upon Chandramani Kanhar vs. State of Odisha (MANU/OR/0331/2020) whereby it has been held that any one who takes recourse to fraud and deflects the course of judicial proceedings or if anything is done with an oblique motive, the same interferes with the administration of justice, such persons are required to be properly dealt with not only to punish them for the wrong done but also to deter others from indulging in similar acts which may shake the faith of people in the system of administration of justice.

25. On the other hand, the Counsel for the Respondent has argued that the Application is not maintainable and no case of contempt of court is made out on the basis of the averments made in the Application. The Counsel for the Respondent has further pointed out that the Applicant in the habit of filing the same Application time and again. He has further pointed out that previously the Applicant filed an Application bearing IA no. 3525 of 2022 on 23.02.2023 which was decided on 15.05.2023. The Counsel for the Respondent has further pointed out that the Application is utmost frivolous in nature and further that the Applicant is referring to documents which he could never had access to as an Operational Creditor whose claim was less than 10 per cent of the aggregate dues of the Corporate Debtor.

26. Having considered the contentions raised by the Counsel for the parties, we are of the considered view that the allegations made in the Application for initiating contempt proceedings against the Respondent are not even prima facie proved. The Applicant has claimed that the Respondent manipulated the minutes regarding his appointment as RP and also that he executed an MoU dated 02.11.2021 with third party in connivance with the Suspended Board of Directors without any authority or approval of the CoC and also syphoned off funds of the Corporate Debtor in connivance and collusion with the Suspended Board of Directors. However, to substantiate the allegations no worthwhile evidence or documents have been brought on record. Even otherwise it has been pointed out that the Resolution Plan has been approved and an Appeal against the order approving the Resolution Plan is pending before the Hon'ble NCLAT. It has also been claimed that the Respondent has implemented the plan even though an Appeal was pending. However, it has not been shown if there was any stay order by the Appellate Court against the implementation of the plan. Thus, on the basis of the averments made in the Application and the documents relied upon by the Counsel for the Applicant, in our considered view, no case for initiating the contempt proceedings against the Respondent is made out. The allegations are rather vague and ambiguous in nature, who do not appear to be enough to initiate action under Section 12 of the Contempt of Courts Act. As a result of the above discussion, the present Application is dismissed being devoid of any merit.