



\$~42

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 12189/2019 & CM APPL. 49819/2019**

MAHENDER KUMAR KHANDELWAL

..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Dhruv Dewan, Mr. Sumesh Dhawan, Ms. Ankita Bajpai, Mr. Aditya Nayyar and Ms. Harshita Choubey, Advocates.

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA AND ANR.

..... Respondents

Through: Ms. Madhavi Divan, Mr. Vikas Mehta, Ms. Anushree Menon and Mr. Ayush Puri, Advs. for R-1.
Mr. Ramji Srinivasan, Senior Advocate with Mr. Bishwajit Dubey, Ms. Surabhi Khattar, Mr. Yash Patel and Ms. Sylona Mahapatra, Advocates for respondent no. 2

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% 25.11.2019

1. In this writ petition, challenge is laid to the order 14.11.2019 passed by respondent no.1/IRBI. The operative directions are contained in paragraph 5.2.3 of the impugned order. The said paragraph is extracted hereafter:



“5.2.3 Mr Mahender Kumar Khandelwal shall not accept any new assignment either as IRP or RP till:

- i. he deposits the monetary penalty of Rs. 29,24,167/- (Twenty Nine Lacs Twenty Four Thousand One Hundred and Sixty Seven only) with the Board; and*
- ii. produces evidence to the Board of deposit of Rs. 12,09,90,185/- (Twelve Crores Nine Lacs Ninety Thousand One Hundred and Eighty Five only) in CD's Account.*

2. Notice in this petition was issued on 19.11.2019 when the following was recorded:

“3. For the moment, Mr. Sethi, learned senior counsel, who appears on behalf of the petitioner, says that without prejudice to the rights and contentions of the petitioner, the petitioner will deposit a sum of Rs.29,24,167/-, imposed as penalty by respondent No. 1 with the Registry of this Court within two days. Upon deposit of the amount, the Registry will invest the same in an interest bearing fixed deposit.

4. Issue notice. Mr. Puneet Jain accepts notice on behalf of respondent No. 1, while Mr. Biswajit Dubey accepts notice on behalf of respondent No.2.

5. Respondent No.2/COC shall obtain instructions as to whether or not it would be willing to deposit Rs.12,09,90,185 in the Corporate Depositor's account.

6. To be noted, the Corporate Depositor in this case is M/s Bhushan Power and Steel Limited.

7. This direction has been issued keeping in mind the Resolution passed by respondent No.2/COC at its meeting held on 10.10.2018.

8. Pertinently, the said Resolution had the approval of 96.53% of the creditors. This aspect of the matter emerges upon the perusal of pages 442 and 448 of the paper book.

9. Renotify the matter on 25.11.2019.

10. In view of the order passed today, the petitioner is given liberty to place this order before the COC concerned



with M/s K.S.K. Mahanadi Power Company Limited (KSK). The COC concerned with KSK will be free to act in accordance with the law.

11. Dasti under signatures of the Court Master.”

2.1 Insofar as the writ petition and the pending application is concerned, respondent no.2/COC was represented on that day by advocates.

3. Learned counsel for respondent no.2/COC says that they are *ad idem* with the petitioner insofar as the IRP costs are concerned. It is, however, the submission of the counsel for respondent no.2/COC that they are in the process of filing an action for impugning the circular dated 12.6.2018 which forms, *inter alia*, the basis on which respondent no.1/IRBI has issued the directions contained in the impugned order.

3.1 Learned counsel for respondent no.2/COC says, therefore, not only the aforementioned circular but also the impugned order will be challenged.

4. As noted by me on 19.11.2019, respondent no.2/COC at its meeting held on 10.10.2018, had passed the following resolution;

“7. TO CONSIDER, VERIFY AND APPROVE THE PENDING BILLS OF CYRIL AMARCHAND MANGALDAS & TO AUTHORISE PAYMENT BY CORPORATE DEBTOR AFTER AUTHENTICATION BY PUNJAB NATIONAL BANK OR STATE BANK OF INDIA, ON BEHALF OF COC, WITH STIPULATION OF PORTIONATE REIMBURSEMENT (IN PROPORTION OF VOTING SHARE) BY EACH OF THE COC MEMBERS TO THE CORPORATE DEBTOR OF THE AMOUNT OF FEES AND OTHER CHARGES (TOTAL BILLS) PAID TO CYRIL AMARCHAND MANGALDAS IN CASE ANY CONCERNS



OR OBJECTIONS ARE RAISED BY THE RESOLUTION
PROFESSIONAL DUE TO ANY LEGAL
CONCERNS/CHALLENGES RAISED ON SUCH
PAYMENTS BEING PAID FROM THE CORPORATE
DEBTOR'S FUNDS.

The representative of RP team read the following Resolution to be voted upon:

“RESOLVED THAT pursuant to Section 21(8) of the Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made thereunder, approval of the Committee of Creditors be and is hereby accorded to verify and approve the pending bills of Cyril Amarchand Mangaldas.

FURTHER RESOLVED THAT Mahender Khandelwal, Resolution Professional, is hereby authorised to make the payment of fees of Cyril Amarchand Mangaldas on behalf of the Committee of Creditors after authentication of such fees by Punjab National Bank or State Bank of India.

FURTHER RESOLVED THAT in case of any concerns or objections are raised by the Resolution Professional due to any legal concerns/challenges raised on payments being paid from the Corporate Debtor's funds in regard to the payment of fees of Cyril Amarchand Mangaldas by the Resolution Professional, the approval of the Committee of Creditors is accorded to reimburse the Corporate Debtor of the amount of fees and other charges total bills) [paid to Cyril Amarchand Mangaldas during the corporate insolvency resolution process in proportion to their respective voting shares.”

The representative of Punjab. National Bank ("PNB") suggested a slight modification with respect to the above Resolution. He, suggested, that "authentication" should be changed to “confirmation”. The representative of SBI supported the views of PNB and stated that it is not possible for them to authenticate each and every bill of CAM. the representative of SBI further stated that the fees of CAM is



currently being paid out of CIRP cost and in case of any legal concerns, challenges or objections are raised in regard to the same, it has to be reimbursed from SBI or PNB as per the current resolution however, he clarified that they do not have any authority to debit the said expenses out of their accounts. Hence, he suggested that the said expenses should be deducted from the upfront payment proposed to the lenders as per Resolution Plan of JSW.

Thereafter, the Resolution was modified as follows:

"RESOLVED THAT pursuant to Section 21 (8) of the Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made thereunder, approval of the Committee of Creditors be and is hereby accorded to verify and approve the pending bills of Cyril Amarchand Mangaldas.

FURTHER RESOLVED THAT Mahender Khandelwal, Resolution Professional, is hereby authorised to continue to make the payment of fees of Cyril Amarchand Mangaldas in line with their, mandate letter, after confirmation of invoices and payment by Punjab National Bank or State Bank of India, on behalf of the Committee of Creditors.

FURTHER RESOLVED THAT in case, any concerns or objections are raised by the Resolution Professional due to any legal concerns / challenges raised by IBBI or any other regulatory/statutory authorities on payments being paid from the Corporate Debtor's funds in regard to the payment of fees of Cyril, Amarchand, Mangaldas by the Resolution Professional, firstly It has to be reimbursed from the amount that the Resolution Applicant is paying to the creditors or from payments received from the Resolution Applicant in this respect, and secondly, in the event of legal concerns arising before Resolution Applicant pays, in that case it will be reimbursed on a pro-rata basis by the members of the Committee of Creditors based on the voting share of the members."

There were no further comments from the members on the same and the said Resolution with necessary modifications was put to vote.



The Chairman asked the members to vote on the above resolution through e-voting facility as per the instructions for e-voting.”

(emphasis is mine)

4.1 This resolution, as noted on that very date, had the approval of 96.53 percent of the creditors present and voting.

5. Given the aforesaid circumstances, respondent no.2/COC is directed to deposit Rs.12,09,90,185/- with the Registry of this Court without prejudice to its rights and contentions. The money will be deposited on or before 14.12.2019.

6. Learned counsel for the petitioner informs me that pursuant to the order dated 19.11.2019, the petitioner has deposited Rs.29,24,167/- with the Registry of this Court. The statement of the counsel is taken on record.

7. Under these circumstances, for the moment, the operation of the impugned order, insofar as it prevents the petitioner from accepting a new assignment as an Interim Resolution Professional (IRP) or Resolution Professional, is stayed.

8. This direction was required to be passed as despite the impugned order stating that the restraint *qua* the petitioner will kick in only if amounts mentioned therein were not paid, respondent no.1/IRBI refused to relent notwithstanding the aforementioned direction for deposit of monies in court.



9. The counter-affidavit(s), if any, be filed by the respondents before the next date of hearing.
10. Renotify the matter on 28.2.2020.

NOVEMBER 25, 2019
rb

RAJIV SHAKDHER, J

W.P.(C) 12189/2019

Page 7 of 7