

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT)(Insolvency) No. 730 of 2019

[Arising out of order dated 11th July, 2019 passed by the Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in I.A. No. 399 of 2019 in/with CP(IB) No. 388/NCLT/AHM/2018]

IN THE MATTER OF:

Mr. Sandip Patel,
10-11, Anand Nagar Society,
Behind Abhishek Hospital
Mora Bhagal, Rander Road,
Surat-395 006
Gujarat

.. Appellant

Versus

1. **Central Bank of India,**
Mid Corporate Finance Branch,
Surat 2nd Floor, M.G. Road,
Kanpith, Surat,
Gujarat
2. **Cure Life Care Pvt. Ltd,**
20, Gurukrupa Society,
Behind New Kotak Bank, GhodDod Road,
Surat- 395 007
3. **Premraj Ramratan Laddha,**
304 Abhujit-3, Above Pantaloon,
Mithakhali- Law Garden Road,
Ellisbridge,
Ahmedabad,
Gujarat

.. Respondents

Present:

For Appellant: **Mr. Rahul Chitnis and Mr. Aaditya Pandey,**
Advocates

For Respondents: **Mr. H.S. Kohli, Advocate for Respondent**
No. 1

**Mr. Vinit Trehan, Advocate for Respondent
No. 2**

J U D G M E N T

(24th June, 2020)

KANTHI NARAHARI, MEMBER (TECHNICAL)

The present Appeal arises out of the order dated 11th July, 2019 in I.A. No. 399 of 2019 in/with CP(IB) No. 388/NCLT/AHM/2018 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench), Ahmedabad.

Brief Facts:

2. Learned Counsel for the Appellant submitted that the Appellant initially filed Company Petition(IB) No. 157 of 2017 under Section 7 of Insolvency and Bankruptcy Code, 2016 (in short '**IBC**') in prescribed Form-1 before the Adjudicating Authority i.e., National Company Law Tribunal, Ahmedabad Bench, Ahmedabad against 2nd Respondent herein who is Corporate Debtor.

3. While so, 1st Respondent herein filed Company Petition No. CP(IB) No. 388/NCLT/AHM/2018 under Section 7 of IBC before the same Adjudicating Authority against the same 2nd Respondent herein being Corporate Debtor. The Company Petition filed by 1st Respondent herein was admitted on 31.05.2019 by the Adjudicating Authority and declared moratorium as per Section 14(1) of IBC.

4. Having initiated Corporate Insolvency Resolution Process against 2nd Respondent- Corporate Debtor i.e., M/s Cure Life Care Private Limited, the Application CP(IB) No. 157/7/NCLT/AHM/2017 filed by the Appellant was disposed of as infructuous vide order dated 04.06.2019. Order reads as under:

“The parties are represented through their respective learned Counsel and the PCS.

In view of the order passed in CP(IB) No. 388/2018 admitting the petition against the same Corporate Debtor, the present IB petition becomes infructuous. However, the Operational Creditor is at liberty to file their claim before the RP.

With the above said observations the present IB petition stands disposed of”

5. Learned Counsel for the Appellant submitted that since the Application filed by 1st Respondent herein was admitted on 31.05.2019 against the same Corporate Debtor viz., M/s Cure Life Care Pvt. Ltd. their Application i.e., CP(IB) No. 157/7/NCLT/AHM/2017 became infructuous. However, the Adjudicating Authority gave liberty to the Appellant to file claim before the Resolution Professional.

6. It is submitted that later on 1st Respondent however filed an Application being I.A. No. 376 of 2019 in CP(IB) No. 388/NCLT/AHM/2018 seeking withdrawal of the Company Petition. It

is submitted that the Appellant filed Caveat Petition before the Adjudicating Authority anticipating any order in CP(IB) No. 388/NCLT/AHM/2018 without hearing them. However, the learned Adjudicating Authority directed the Petitioner as well as the Registry to serve notice on the parties and directed to list the matter on 21.08.2019. It is submitted that the representative of the Appellant was present in the Court Room when this order was passed by the Adjudicating Authority.

7. While so, the 3rd Respondent herein i.e., Interim Resolution Professional filed I.A. No. 399 of 2019 in CP(IB) No. 388/NCLT/AHM/2018 under Section 12 A of IBC seeking withdrawal of CP(IB) No. 388/NCLT/AHM/2018. While passing the order, the Adjudicating Authority observed that 1st Respondent (herein) being Financial Creditor and Sole Member of the Committee of Creditors and taking note that the matter has been settled with the Corporate Debtor as the Central Bank of India (Financial Creditor) was able to make e-auction of the assets (Property of the Company) and has realised the amount towards full satisfaction of its debts, therefore the Petitioner-Bank (1st Respondent herein) does not wish to continue with the Corporate Insolvency Resolution Process. Accordingly, I.A. No. 399 of 2019 was allowed and CP(IB) No. 388/NCLT/AHM/2018 disposed of and consequently, Corporate Insolvency Resolution Process was recalled.

8. Learned Counsel for the Appellant submitted that the Appellant has submitted claim before the 3rd Respondent on 25.06.2019. However, 3rd Respondent did not consider the claim of the Appellant and filed an Application seeking withdrawal of the Company Petition. He submitted that the Appellant initially filed petition under Section 7 of IBC prior to filing of petition by the 1st Respondent herein. In view of admission of petition by 1st Respondent and initiation of Corporate Insolvency Resolution Process, the Petition filed by the Appellant became infructuous. It is submitted that as per direction of the Adjudicating Authority, vide order dated 04.06.2019 in CP(IB) No. 157/7/NCLT/AHM/2017, the Appellant submitted claim hoping that their claim will be considered and settled. Per contra, the Appellant being a Financial Creditor, their claim has been deprived of. He requested the Bench to allow the Appeal by setting aside withdrawal of Company Petition.

9. Learned Counsel appearing for the 1st Respondent submitted that after admission of CP(IB) No. 388/NCLT/AHM/2018 on 31.05.2019, Interim Resolution Professional issued public announcement on 07.06.2019 and the last date for submission of claim was 21.06.2019. The Appellant filed its claim in Form-C on 28.06.2019 after constitution of Committee of Creditors. Moreover, the Appellant claimed as Unsecured Creditor and the claim was defective and not supported by requisite documents as per Regulation 8(b) of the Adjudicating Authority Regulation in spite of reminders by Interim

Resolution Professional. Therefore, the claim of the Appellant was not admitted by Interim Resolution Professional. However, learned Counsel for 1st Respondent stated that the Appellant was a related Party to the Corporate Debtor. As per Section 21(2) of IBC, related Party shall not have any right of representation. He submitted that I.A. No. 376 of 2019, which was filed by 1st Respondent herein for withdrawal of Corporate Insolvency Resolution Process was under Section 60(5) of IBC and not under Section 12 A of IBC as contended by the Appellant. He submitted that the latter Application i.e., I.A. No. 399 of 2019 was filed by Resolution Professional under Section 12 A of IBC read with Regulation 30-A of CIRP Regulation, 2016 and the Adjudicating Authority having satisfied with the Committee of Creditors in its first Meeting held on 05.07.2019 whereby it was resolved with 100% voting to withdraw Corporate Insolvency Resolution Process against the Corporate Debtor on the ground of full and final settlement of debt of 1st Respondent herein.

10. Learned Counsel appearing for 2nd Respondent submitted that the claim of the Appellant was received on 28.06.2019 after constitution of Committee of Creditors and not on 25.06.2019 as contended by the Appellant. He submitted that 3rd Respondent received the claim from Appellant jointly with other Creditors on 28.06.2019. 3rd Respondent sent email dated 03.07.2019 stating that the claim submitted by Appellant is not in conformity with Regulations and asked requisite documents for verification of the claim. The

Appellant submitted that modified claim was submitted on 09.07.2019. Interim Resolution Professional conducted its duties as per law and constituted Committee of Creditors on 05.07.2019 wherein the Committee of Creditors took a decision with 100% voting to file Application seeking withdrawal of Company Petition bearing No. CP(IB) No. 388/NCLT/AHM/2018.

FINDINGS:

11. Heard learned Counsel appearing for the respective parties, perused pleadings and documents filed in their support. It is a fact that the Appellant filed Company Petition under Section 7 of IBC before the Adjudicating Authority in the year 2017 itself. Subsequently, 1st Respondent herein filed CP(IB) No. 388/NCLT/AHM/2018 against the same Corporate Debtor and the Company Petition came to be admitted on 31.05.2019 and Corporate Insolvency Process was initiated by imposing moratorium under Section 14(1) of IBC.

12. In view of admission of Company Petition filed by 1st Respondent and initiation of Corporate Insolvency Resolution Process against the same Corporate Debtor, there was no option except to dispose of the Petition. Accordingly, in presence of the representatives of the Appellant as well as Respondent, the C.P.(IB) No. 157/7/NCLT/AHM/2017 was disposed of as infructuous for the reason that CP(IB) No. 388/NCLT/AHM/2018 was admitted against the same Corporate Debtor.

13. After admission of CP(IB) No. 388/NCLT/AHM/2018, the Interim Resolution Professional had issued Public Announcement on 07.06.2019 and invited claims in respect of the Corporate Debtor. It is seen from the records that the last date of submission of claims was on 21.06.2019. From the Reply of Interim Resolution Professional at Annexure-C, page no. 45 on Form-C (Proof of claim by Financial Creditor) i.e. from the Appellant to Interim Resolution Professional dated 28.06.2019, 10:52 AM IST shows that the proof of claim by the Appellant to the Interim Resolution Professional was sent from Yahoo mail on 28.06.2019 at 10:52 am IST. At page 47 & 48, the proof of claim by the Appellant was filed.

14. We are not going into the technicalities of the aspects as alleged by Interim Resolution Professional and the 1st Respondent herein. However, it is admitted fact that the Appellant filed the Application under Section 7 IBC before the Adjudicating Authority against M/s Cure Life Care Pvt. Ltd. prior in point of time. Subsequently, Respondent No. 1 also filed Petition under Section 7 IBC before the Adjudicating Authority against the same Corporate Debtor i.e. M/s Cure Life Care Pvt. Ltd. The said Application was admitted on 31.05.2019. On admission of the petition, the Appellant's Petition became infructuous for the reason that Corporate Insolvency Resolution Process was initiated against the same Corporate Debtor. Learned Adjudicating Authority gave liberty to the Appellant to file their claim. However, the claim of the Appellant has not been

considered by Interim Resolution Professional. 1st Respondent is aware that when they filed I.A. No. 376 of 2019 in CP(IB) No. 388/NCLT/AHM/2018 seeking withdrawal of the Petition even though Section 60(5) IBC, the representative of the Appellant was present and the Appellant already lodged caveat before the Adjudicating Authority.

15. We observe that without considering the claim of the Appellant, the Committee of Creditors took a decision to withdraw the Petition in their first meeting itself i.e., on 05.07.2019. From the Minutes of the Meeting of the Committee of Creditors, as extracted by the Adjudicating Authority, in its order dated 11.07.2019 which is impugned. At para-ii under the heading “3) Constitution of COC” it is stated that the “IRP shared the List of Creditors with members of COC and informed that only one claim from Central Bank of India as financial creditor was received till the last date of submission of the claims. However, some claims were received after the last date are under process of verification.” Having recorded in the Minutes of the Meeting that the IRP received the claim after the last date and it was under process of verification, could have adjourned the meeting of the Committee of Creditors to afford opportunity to verify the claims. Without affording an opportunity, a decision was taken to file an Application under Section 12 A of IBC to withdraw CP(IB) No. 388/NCLT/AHM/2018.

16. Learned Counsel for Appellant submitted that the Respondent No. 1 had initiated actions against the only Asset of Corporate Debtor

which were incomplete when Appellant filed CP(IB) No. 157/7/NCLT/AHM/2017 or when CP(IB) No. 388/NCLT/AHM/2018 of Respondent No. 1 was admitted. Moratorium applied since 31.5.2019 and Respondent No. 1 took disadvantage with regard to the only Asset to itself take all the advantage of the asset and then withdrew the Proceeding on 11.07.2019. It is argued that even the Sale Certificate was issued later, on 16.07.2019 as seen from Diary No. 18979 (page -39) although Sale Confirmation letter (page-34) was issued on 23.05.2019 and Respondent No. 1 took away 25% of the consideration. Learned Counsel for Appellant claims Appellant feels cheated in the circumstances and asking to restore his own CP(IB) No. 157/7/NCLT/AHM/2017 will not help. And thus, claims restoration of CP(IB) No. 388/NCLT/AHM/2018. We find substance in these submissions. Further the records do not show that the Appellant was heard. For the aforesaid reason, the Adjudicating Authority should give hearing to Appellant.

17. We are of the view that the said decision taken in the meeting of the Committee of Creditors on 05.07.2019 and filing of Application in pursuance thereof under Section 12 A of IBC seeking withdrawal of the Petition before the Adjudicating Authority is arbitrary and against conscience of legal jurisprudence. Accordingly, we set aside the order of the Adjudicating Authority dated 11.07.2019 passed in IA No. 399 of 2019 and Company Petition being CP(IB) No. 388/NCLT/AHM/2018 is restored to its original position. The Adjudicating Authority shall

afford an opportunity to the Appellant to be heard before taking any decision whether or not withdrawal should be allowed.

Appeal is allowed as above. No orders as to cost. Parties to appear before Adjudicating Authority on 9th July, 2020 at 10:30 A.M.

[Justice A.I.S. Cheema]
Member (Judicial)

[Justice Anant Bijay Singh]
Member(Judicial)

(Kanthi Narahari)
Member(Technical)

New Delhi

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