

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

11th January, 2023

Subject: Judgment¹ dated 9th January 2023 in the matter of Hindalco Industries Ltd. V/s. Hirakud Industrial Works Ltd. & Ors. [CA AT (Ins) No. 42, 43, 52 and 53 of 2022]

Background -

An application for initiation of CIRP was filed by Nandakini Contractors (P) Ltd. (FC) claiming to be a financial creditor on 06.03.2019. On 04.06.2019, CIRP was initiated against the CD. The resolution plan of Regus Impex Private Limited (SRA) was approved by the Adjudicating Authority (AA) on 22.12.2021. The Appellant has filed this appeal challenging the approval of resolution plan and *inter-alia* claiming fraudulent initiation of CIRP and illegal constitution of CoC in the matter.

Findings and observations of the Hon'ble NCLAT -

A. Fraudulent initiation of CIRP and inadequate scrutiny of application by AA

The NCLAT found that –

- a. CD failed to clear the outstanding dues of the workers (quantified at Rs. 45,66,67,133/-) and accordingly, auction of assets of the CD was directed by the Deputy Labour Commissioner on 08.04.2019.
- b. The default claimed in section 7 application was not supported with any loan agreement, balance sheet, ledger account, or any document or record regarding entries in the banker books in accordance with the Bankers Book Evidence Act, 1891. Also, none of the documents mentioned in Part V of the Form 1 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 were attached with the application by the FC.
- c. The FC and CD belonged to the same group of companies and the admission order was passed with inexplicable speed and alacrity when the AA does not even appeal to undertake proper scrutiny and necessary examination of section 7 application.

NCLAT concluded by observing that section 7 application was submitted by FC fraudulently in collusion with the CD to seek an admission order for CIRP, and such an admission order was given by the AA without proper and adequate scrutiny and examination of the contents of the section 7 application.

B. Illegal constitution of CoC

The NCLAT found that –

- a. On piercing the corporate veil, there exists collusion between the FC and the CD.

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- b. There were ‘*related parties*’ in the CoC falling under clause (f) of section 5(24A) of the Code.
- c. There was inter-connections between the CD, FC, members of the CoC and the holding companies of the Successful Resolution Applicant (SRA) through common directors sitting on the board of more than one company, different levels of shareholdings and common registered addresses and working-email IDs and they belonged to the same group.

It concluded that these companies were acting ‘in concert’ and were being guided and led by a controlling mind as part of a fraudulent project to defraud the creditors of the CD by misusing the instrumentality of the IBC. Section 65 of the case was attracted.

C. Illegal conduct of the IRP/RP

The NCLAT found that –

- a. The IRP/RP did not place the proof of debts before the Adjudicating Authority, even when directed so.
- b. The CoC was formed without admission and verification of claims of the FCs, violating regulation 12(3) of the CIRP Regulations.
- c. The RP, who is supposed to play the role of a non-partisan functionary, could have advised the workers’ union to submit the claim of workers so it could be considered in the resolution plan of the CD, since he was aware that the workers had been making concerted efforts for payment of their long-pending dues. However, he failed to do so.
- d. RP did not make any meaningful attempt to even enquire into allegations of fraud, collusion, involvement of related parties, and interrelationships between all entities involved in the CIRP.
- e. The RP had put his signature on an affidavit made in the name of SRA, not being a related party and therefore, not ineligible under section 29A.

Accordingly, the action of the IRP/RP in the matter were condemned by the Hon’ble NCLAT.

Conclusion -

Hon’ble NCLAT observed that is a case of fraudulent and malicious initiation of CIRP and it directed that –

- a. The admission order shall stand abated and the approval of resolution plan is quashed.
- b. Rs. 50 Lac as penalty is imposed on the FC and the CD respectively, under section 65 of the Code.
- c. The payment and creation of any rights under the resolution plan, should be reverted.
- d. This case must be investigated by IBBI, *inter-alia* regarding any possible collusion between RP on one side and CD, FC and SRA on the other side.
- e. The workers are at liberty to pursue their interests regarding payment of their dues by the CD.
