IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.10325 of 2019 (O&M)
Date of decision:18.04.2019

Ravi Prakash Goyal ... Petitioner

Vs.

Punjab National Bank and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL
HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Arvind Sharma, Advocate and
Mr. Diwan Adlakha, Advocate with
Mr. Ashish Kalsy, Advocate
for the petitioner.

AMIT RAWAL J.

The present writ petition has been filed by Mr. Ravi Parkash Goyal, who is a Director in Bhushan Power & Steel Limited. The said company (Corporate Debtor) was admitted into Corporate Insolvency Resolution Process (CIRP) by an order dated 26.7.2017 in C.A./C.P (IB) No.202/(PB)/2017 passed by adjudicating authority (NCLT).

Learned counsel for the petitioner alleged that the CIRP process has not been carried out in accordance with the Insolvency & Bankruptcy Code 2016, as the erstwhile Board of Directors (BoD) have not been provided with all the documents including all resolution plans, liquidation value report, fair value report, report on section 29A etc, which are relevant to the matters to be discussed by the Committee of Creditors (CoC) in accordance with Sections 24, 25 and Regulations 19 and 21 etc of

Insolvency Code. As such, the erstwhile Board of Directors were not able to effectively participate before the CoC and the whole CIRP process is vitiated.

He placed strong reliance on the directions contained in para 22 of the judgment of the Hon'ble Supreme Court rendered in **Vijay Kumar Jain Vs. Standard Chartered Bank Ltd. And others 2019 SCC OnLine SC 103.** In the said matter, the Hon'ble Supreme Court directed that a copy of the resolution plan should be provided to the petitioner Director and CoC meeting should be recalled to consider the submissions of the appellant Director within two weeks and resolution plan will be considered afresh by the CoC.

Reference was also made to various letters to show that Board of Directors (BoC) had repeatedly requested for copy of the resolution plan to be supplied, but on 26.7.2018, were given a limited inspection of some resolution plans, however, various pages of the said resolution plans were found to be missing. They protested in the CoC meetings and also through letters but to no avail.

It was next contended that after the said limited inspection in July 2018, the present resolution plan which has been passed by CoC is a Revised Consolidation Resolution Plan of October 2018 of which neither any copy nor any inspection had been provided to BoD during the CIRP process and now in February 2019 Resolution Professional (RP) has filed an application bearing CA No.254 of 2019, Annexure P-17, for approval of the

Consolidated Revised Resolution Plan of October 2018 before the Adjudicating Authority (NCLT) on 14.02.2019 and the next date is 22.04.2019. The BoD has filed an application bearing CA No.286 of 2019, Annexure P-19, for providing all documents including Resolution Plans.

The petitioner was aggrieved by the fact that NCLT has taken the application CA No.254 of 2019 filed by RP for approval of Resolution Plan without first deciding the preliminary issue of non-supply of all documents as only a redacted copy of the consolidated revised resolution plan of October 2018, which is under consideration by NCLT for approval, was provided during the course of hearing but the same has not only missing, blackened, redacted portions and pages. No opportunity has been provided to present its views before the CoC for consideration. In this view of the matter, the petitioner has filed the present writ petition and prayed that the CIRP process and the proceedings before NCLT may be quashed and directed to be started afresh.

Apprehension was expressed that it has become a general practice in the CIRP process of various companies not to provide the copy of the resolution plan and various other documents to the Board of Directors during CIRP Process.

Reliance was also laid upon the recent judgment rendered by the Hon'ble Supreme Court in **Transfer Petition No.1399 of 2018 passed in Dharani Sugars & Chemicals Ltd. Vs. Union of India, decided on 02.04.2019** which was again in relation to the Insolvency Code wherein the

Supreme Court has reiterated the procedure prescribed by law should be strictly followed.

Needless to state that the law laid down by the Hon'ble Supreme Court is binding on all the Courts and Tribunals under Article 141 of the Constitution of India. No past practice, order or direction of NCLT and NCLAT can be passed, enforced, implemented or practiced in derogation of the directions of the Hon'ble Supreme Court in the matter of Vijay Kumar Jain's case (supra).

We have heard the learned counsel for the petitioner, appraised the paper book and of the view that we are not inclined to quash the Corporate Insolvency Resolution Process in regard to Bhushan Power & Steel Ltd, at this stage. We dispose of the present petition with the following directions:-

i) The issue raised by the present petitioner for providing all aforesaid documents and thereafter to convene a meeting of the CoC "afresh" to deliberate and consider the suggestions and objections of the erstwhile Board of Directors before passing any Resolution Plan (including CA No.286 of 2019) (P-19) will be treated as a preliminary issue.

ii) The preliminary issue will be decided by the Adjudicating Authority before considering other Applications or before approval of any Resolution Plan (CA No.254 of 2019).

iii) In deciding the said preliminary issue, Adjudicating

Authority will be guided by the judgment of Hon'ble Supreme Court in Vijay Kumar Jain's case (supra) and shall not take into consideration any other past practice, procedure, directions, judgments or orders of Adjudicating Authority/NCLAT which are in contravention, contradiction or derogation of the directions of the Hon''ble Supreme Court in the matter of Vijay Kumar Jain's case (supra).

iv) Any judgment and order passed by the Adjudicating Authority on the aforesaid preliminary issue is directed to be kept inoperative for two weeks enabling the affected parties to exercise their appellate remedies in accordance with law.

v) All other issues of fact, law, priorities, all other applications before Adjudicating Authority etc arising out of or in relation to the insolvency Process of Corporate Debtor are left open for decision by the appropriate and competent Court of Law/Tribunal.

With the aforementioned directions, the writ petition stands disposed of.

(AMIT RAWAL)
JUDGE

(ARVIND SINGH SANGWAN)
JUDGE

April 18, 2019
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No