

(2023) ibclaw.in 936 HC

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Mr. Farooq Ali Khan

v.

Punjab National Bank

Writ Petition No.483 of 2023 (GM - RES)
Decided on 21-Nov-23

Coram: Mr. Justice M. Nagaprasanna

Add. Info:

Corporate Debtor: Associate Décor Ltd.

Present for Petitioner(s): Sri C.K.Nandakumar, Sr. Advocate For Sri Sivaramakrishnan M.S., Advocate

Present for Respondent(s): Sri Cyril Amarchand Mangaldas, Advocate For R1 To R3; Sri Ajay Rao, Advocate For R4; Sri Srinivasa Raghavan, Senior Advocate A/W., Sri Nikhilesh Rao, Advocate For R5; R6, R7 And R9 Are Deleted Vide Order Dated 27.01.2023 Sri Madhukar Deshpande, Advocate For R8.

Brief about the decision:

Facts of the case

- The Resolution Professional issues Form-G through which he invites expression of interest (EOI) for submission of resolution plans in respect of the Corporate Debtor.
- The resolution plans submitted by two of the resolution applicants were discussed and further negotiated in the 19th meeting of the Committee of Creditors. The 19th meeting was originally convened to be held on 07-02-2020.
- On 10-02-2020 resolution plans of both resolution applicants were discussed and further negotiated.
- The next day i.e., on 11-02-2020 an e-mail is sent communicating that the second meeting of 19th Committee of Creditors which was sought to be adjourned on 10-02-2020 is scheduled on the same day i.e., 11-02-2020 at 3.00 p.m. The mail was received at 12.20 p.m. Though the earlier resolution resulted in adjournment of proceedings, this was varied at and directed to be done on 11-02-2020 at 3.00 p.m.
- Respondents 1 to 3 on the said day approved the resolution plan dated 10-02-2020.

Decision of the High Court

A. Notice of adjournment of meeting of CoC

- On 11-02-2020 at about 12.31 p.m. electronic mail is communicated to the petitioner fixing the meeting of the Committee of Creditors which had stood adjourned on the previous day, to be held at 3 p.m. on the same day. What is surprising is that it is termed to be an adjourned meeting and fixing of a date of adjourned meeting. If it were to be an adjournment simpliciter, the petitioner could not have any grievance. It is adjourned with modified agenda. Though the petitioner was heard when the agenda was drawn on 10-02-2020 and the meeting held on 11-02-2020 had been adjourned, the meeting could not have been re-scheduled contrary to the Code. **(p14)**
- **Sub-section (3) of Section 24 mandates that the Resolution professional shall give notice of each meeting of the Committee of Creditors. The obligation does not end here. The section does not depict the manner in which notice should be given. It only indicates that notice shall be given of each meeting to the Committee of Creditors. In the considered view of this Court, 'each' would mean each and every.(p14)**
- CIRP Regulation 19(2) mandates notice period to be 5 days prior to the said meeting which can also be reduced to 24 hours as it would deem fit. It further provides that the Committee may reduce the period to such other period of not less than 48 hours if there is any authorized representative. **(p14)**
- What would emerge from Regulation 19 is mandatoriness of serving of notice of each and every meeting 5 days prior to the said intended date of meeting which is undoubtedly reducible, if the Committee of Creditors through the Resolution Professional, deems it fit to 24 hours. **(p15)**
- The issue is whether this mandate has been followed or otherwise. On 10-02-2020 the meeting had been adjourned with a specific agenda. On 11-02-2020 the meeting is scheduled to be held at 3.00 p.m. This is the notice received by the petitioner on electronic mail. The meeting no doubt was carried forward from 10.02.2020. **But, the agenda had changed.(p15)**
- The time limit for issuance of notice of meeting was reducible to 24 hours. **(p15)**
- This should be in the considered view of the Court, **for reasons to be recorded in writing, as the words used are 'as it deems fit'. The deeming fitness would only to be discerned in an order reducing the notice period from 5 days to 24 hours, if it is in writing.(p15)**
- No document of that kind is placed on record for having reduced it from 5 days to 24 hours. What has been done in the case at hand is it is reduced to 2½ hours which is on the face of it contrary to Regulation 19 of the Regulations r/w Section 24(3) of the Code. If the petitioner is not given adequate notice or the notice that is given is completely contrary to the Code and the Regulations, the resolution of the day would be rendered unsustainable. **(p15)**
- Therefore, the resolution of the day, I mean 11-02-2020, is undoubtedly unsustainable and non est in the eye of law. Non estness of the resolution dated 11-02-2020 would lead to all consequential action taken becoming a nullity. **(p15)**

B. Action against Resolution Professional

- This Court, in exercise of its jurisdiction under Article 226 of the Constitution of India would not enter into venturing a fact finding enquiry to examine whether the resolution professional has acted in accordance with the duties and responsibilities under the Act. The Code has in itself a specific grievance redressal mechanism to deal with the allegations of the kind that is projected in the case at hand.
- In terms of Section 196(1)(q) of the Code it is for the Board to redress the grievances of the

kind projected hereinabove. Therefore, I reserve liberty to the petitioner to submit a representation/complaint before the Board within a fortnight from the date of receipt of the copy of this order and if such a complaint is received, the Board would decide the issue, in accordance with law.(p16)

C. Restructuring proposal in terms of Section 12A of the Code at this level

- In terms of Section 33 of the Code, once the CIRP is over, the corporate debtor would be forced into liquidation. In the light of the aforesaid reasons, the Committee of Creditors shall reconsider the restructuring proposal submitted on behalf of the petitioner in terms of Section 12A of the Code.
- Therefore, the prayer for quashment of the resolution dated 11-02-2020 as sought in prayer No.(vi) deserves to be allowed and the consequent prayer that is sought at prayer No.(i) sequentially to be granted.(p17)

D. Conclusion

For the aforesaid reasons, I pass the following:

- (i) Writ Petition is allowed in part.
- (ii) The resolution plan of respondent No.5 approved in the 2nd adjourned 19th Committee of Creditors meeting dated 11-02-2020 stands quashed.
- (iii) Consequent to the above, the minutes of the 22nd meeting of the Committee of Creditors of Associate Décor Limited held on 21-12-2022 also stand quashed.
- (v) The petitioner is at liberty to submit a complaint under Section 196 of the Code to the Board within 15 days from the date of receipt of the copy of the order. If such a complaint is submitted, the Board shall consider the same and pass appropriate orders, in accordance with law, bearing in mind the observations in the course of the order.
- (v) In the light of Section 33 of the Code, as observed in the course of the order, I deem it appropriate to leave it open to the Committee of Creditors to reconsider the restructuring proposal submitted by the petitioner under Section 12A of the Code.
- (vi) It is declared that consequences of the aforesaid quashments and directions shall follow.

Consequently, I.A.No.1 of 2023 also stands disposed.(p18)

Judgment/Order:

ORDER

The petitioner is before this Court seeking a slew of prayers and in effect seeking to quash minutes of the 22nd meeting of the Committee of Creditors of Associate Décor Limited held on 21-12-2022 as non est and illegal and other prayers are sequel to the said prayer.

2. Heard Sri C.K. Nandakumar, learned senior counsel appearing for the petitioner, Sri Cyril Amarchand Mangaldas, learned counsel appearing for respondents 1 to 3, Sri Ajay Rao, learned counsel appearing for respondent No.4, Sri Srinivasa Raghavan, learned senior counsel appearing

for respondent No.5 and Sri Madhukar Deshpande, learned counsel appearing for respondent No.8.

3. The facts, in brief, adumbrated are as follows:-

Between 2007 and 2011 a Company in the name and style of Associate Décor Limited (hereinafter referred to as 'the Company' for short) is established to be in the business of manufacture of wood products, particle boards, laminates and other wood panel products. Between 2010 and 2015 the Company requested the 1st respondent/Punjab National Bank to grant a term loan and other several credit facilities for the purpose of meeting its capital expenses and working capital requirement. The consortium of Banks i.e., respondents 1, 2 and 3/Punjab National Bank, Union of Bank of India and Bank of Baroda granted about 582 crores to the Company to which the petitioner had executed further term loan agreements by offering huge collaterals as security in favour consortium of Banks. In the year 2016 various disputes arose inter se between the promoters of the Company on account of unexpected changes in the market and Company's operations resulting in irregular loan repayments and categorization of account of the Company in the Banks as a Non Performing Asset ('NPA' for short).

4. The Banks then instituted recovery proceedings against the Company before the Debt Recovery Tribunal 1 & 2 at Bengaluru. Simultaneously, the 1st respondent/Punjab National Bank files a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code' for short) before the National Company Law Tribunal ('NCLT' for short) seeking initiation of Corporate Insolvency Resolution process ('CIR' for short) against the Company on account of default in repaying the term loan. The application was entertained on the file of NCLT, Bengaluru Bench.

5. During the pendency of proceedings before the NCLT, the Company's operations had picked up significantly and monthly turnover in the range of Rs.30/- crores was generated. Therefore, the Directors of the Company began to negotiate with the consortium of Banks for regularization and restructuring of the loan account of the Company. The Corporate Debtor i.e., the Company filed an interlocutory application seeking adjournment of proceedings before the NCLT on the ground that certain amounts had to be realized by the Company which would far exceed the liabilities of the Company to the consortium of Banks. Pending the application, the NCLT appointed an Interim Resolution Professional for the Company under the Code and the petitioner then ceased to be the Director of the Company as respondent No.4 who is appointed as Interim Resolution Professional took over the affairs of the Company. Thereafter, the 4th respondent made it public that the CIR process had commenced with regard to the Company.

6. Pursuant to all the aforesaid, a Committee of Creditors of the Company came to be constituted wherein the 1st respondent had 24.16% voting share and 2nd and 3rd respondents had 41.18% and 34.66% voting share respectively. The first meeting of the Committee of Creditors was held on 26.12.2018. The Committee of Creditors then appointed the 4th respondent as a Resolution Professional of the Corporate Debtor in place of him already being appointed as Interim Resolution professional. The Resolution Professional issues Form-G through which he invites expression of interest for submission of resolution plans in respect of the Corporate Debtor. Things go on in this manner.

7. On 09-10-2019 the 4th respondent in the 11th meeting of the Committee of Creditors reveals that about 22 prospective resolution applicants had confirmed their interest and draws a provisional list

of resolution applicants. Thereafter the 4th respondent issues a request for resolution plan along with updated information memorandum to the prospective resolution applicants. The resolution plans submitted by two of the resolution applicants were discussed and further negotiated in the 19th meeting of the Committee of Creditors. The 19th meeting was originally convened to be held on 07-02-2020. The agenda for the said meeting was also set out for discussion. On 10-02-2020 resolution plans of both resolution applicants were discussed and further negotiated. The resolution plans were scored on evaluation matrix with Archidply receiving a total score of 57.20 and respondent No.5 receiving 72.64. The next day i.e., on 11-02-2020 an e-mail is sent communicating that the second meeting of 19th Committee of Creditors which was sought to be adjourned on 10-02-2020 is scheduled on the same day i.e., 11-02-2020 at 3.00 p.m. The mail was received at 12.20 p.m. Though the earlier resolution resulted in adjournment of proceedings, this was varied at and directed to be done on 11-02-2020 at 3.00 p.m. Respondents 1 to 3 on the said day approved the resolution plan dated 10-02-2020. On 13-02-2020 during the period of CIR process, the petitioner addresses a letter to respondents 1 to 4 expressing the intention to pay Rs.250 crores to clear the outstanding loan amount of the Company if re-structuring or settlement proposal in order to revive the Company would be accepted.

8. Pending all the aforesaid process, the resolution professional marches ahead and seeks to recover the assets of the Company. It is then the petitioner knocks at the doors of this Court in the subject petition calling in question certain decision of the Resolution Professional and orders passed by the NCLT accepting the resolution process initiated by respondents 1 to 3 without reconsidering the case of the petitioner.

9. The learned senior counsel appearing for the petitioner would though urge several contentions, he would point out the conduct of the Resolution Professional in hurrying the resolution process contrary to the spirit of the Code. It is his contention that the Resolution Professional had convened the second adjourned 19th meeting of the Committee of Creditors in a hasty manner as he had issued notice on 11-02-2020, which was served upon the petitioner at 12.31 p.m., convening the meeting at 3.00 p.m. on the very day. It is the submission of the learned senior counsel that it is contrary to the mandatory requirement of Section 24 of the Code r/w Regulation 19(1) & (2) of the Insolvency and Bankruptcy Board of India Regulations as the duration was less than 5 days or even 24 hours prior to the meeting. It is for this reason, he would submit that all proceedings attached to the said notice issued by the Resolution Professional would become a nullity in law and this process having been accepted by the NCLT the same is unsustainable.

10. Per-contra, the learned counsel representing respondents would vehemently refute the submissions to contend that a borrower who has lost all rights cannot now contend that the resolution process has been erroneously conducted or the Resolution Professional has re-scheduled the dates to his convenience. It is his submission that it was only an adjournment notice of the previous day and it was perfectly justified and permissible for the Resolution Professional to have re-scheduled the date and time of the meeting. He would submit that for an adjournment the rigour of Section 24 of the Code need not be followed. He would seek dismissal of the petition.

11. The learned senior counsel Sri Srinivasa Raghavan representing the 5th respondent, the successful resolution applicant of Tanzania would also toe the lines of the learned counsel representing respondents 1 to 3 as also the 4th respondent/Resolution Professional. In unison, all the learned counsel representing the respondents would seek dismissal of the petition.

12. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

13. The afore-narrated facts, link in the chain of events or even the dates are not in dispute and as such, they would not require any reiteration. Several submissions are made across the Bar, which in the considered view of this Court, would not merit any consideration at this juncture, more particularly, when the entire proceedings are pending before the NCLT. What merits consideration is the submission qua the meeting notice of the Resolution Professional dated 11-02-2020. As observed hereinabove, on 10-02-2020 the resolution plan of the 5th respondent was accepted and approved by the Committee of Creditors. The meeting of the 19th Committee of Creditors was directed to be held on 11-02-2020. After modifications and negotiations the Committee of Creditors adjourned the 19th meeting that was slated to be held on 11-02-2020. The modified and revived approved resolution plan of the resolution applicant was sought to be discussed in the adjourned meeting of the Committee of Creditors, the date of which was not communicated.

14. On 11-02-2020 at about 12.31 p.m. electronic mail is communicated to the petitioner fixing the meeting of the Committee of Creditors which had stood adjourned on the previous day, to be held at 3 p.m. on the same day. What is surprising is that it is termed to be an adjourned meeting and fixing of a date of adjourned meeting. If it were to be an adjournment simpliciter, the petitioner could not have any grievance. It is adjourned with modified agenda. Though the petitioner was heard when the agenda was drawn on 10-02-2020 and the meeting held on 11-02-2020 had been adjourned, the meeting could not have been re-scheduled contrary to the Code. It is, therefore, necessary to notice Section 24 of the Code. Section 24 of the Code reads as follows:

“24. Meeting of committee of creditors.—(1) *The members of the committee of creditors may meet in person or by such electronic means as may be specified.*

(2) *All meetings of the committee of creditors shall be conducted by the resolution professional.*

(3) *The resolution professional shall give notice of each meeting of the committee of creditors to—*

(a) members of committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6-A) of Section 21 and sub-section (5);

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt.

(4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings:

Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

(5) Subject to sub-sections (6), (6-A) and (6-B) of Section 21, any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors:

Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

(6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

(7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

(8) The meetings of the committee of creditors shall be conducted in such manner as may be specified.”

Sub-section (2) of Section 24 deals with all meetings of the Committee of Creditors shall be conducted by the Resolution Professional. Sub-section (3) mandates that the Resolution professional shall give notice of each meeting of the Committee of Creditors. The obligation does not end here. The section does not depict the manner in which notice should be given. It only indicates that notice shall be given of each meeting to the Committee of Creditors. In the considered view of this Court, ‘each’ would mean each and every. The notice to be given is regulated under Chapter-VI of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (‘the Regulations’ for short) which is notified in furtherance of the provisions of the Code. Regulation 19 reads as follows:

“19. (1) Subject to this Regulation, a meeting of the committee shall be called by giving not less than five days’ notice in writing to every participant, at the address it has provided to the interim resolution professional or the resolution professional, as the case may be, and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with Regulation 20.

(2) The committee may reduce the notice period from five days to such other period of not less than twenty-four hours, as it deems fit:

Provided that the committee may reduce the period to such other period of not less than forty-eight hours if there is any authorised representative.”

Regulation 19 mandates that subject to the Regulations, a meeting of the Committee shall be called by giving not less than 5 days notice in writing to every participant at the address it has provided to the Resolution Professional and such notice may be sent by hand delivery or by post and can also be served by electronic means in terms of Regulation 20, which permits service of notice by electronic means. Sub-Regulation (2) of Regulation 19 mandates notice period to be 5 days prior to the said meeting which can also be reduced to 24 hours as it would deem fit. It further provides that the Committee may reduce the period to such other period of not less than 48 hours if there is any authorized representative.

15. What would emerge from Regulation 19 is mandatoriness of serving of notice of each and every meeting 5 days prior to the said intended date of meeting which is undoubtedly reducible, if the

Committee of Creditors through the Resolution Professional, deems it fit to 24 hours. The issue is whether this mandate has been followed or otherwise. As observed hereinabove, on 10-02-2020 the meeting had been adjourned with a specific agenda. On 11-02-2020 the meeting is scheduled to be held at 3.00 p.m. This is the notice received by the petitioner on electronic mail. It is a matter of record and not in dispute. The meeting no doubt was carried forward from 10.02.2020. But, the agenda had changed. This is also not in dispute. The time limit for issuance of notice of meeting was reducible to 24 hours. This should be in the considered view of the Court, for reasons to be recorded in writing, as the words used are 'as it deems fit'. The deeming fitness would only to be discerned in an order reducing the notice period from 5 days to 24 hours, if it is in writing. No document of that kind is placed on record for having reduced it from 5 days to 24 hours. What has been done in the case at hand is it is reduced to 2½ hours which is on the face of it contrary to Regulation 19 of the Regulations r/w Section 24(3) of the Code. If the petitioner is not given adequate notice or the notice that is given is completely contrary to the Code and the Regulations, the resolution of the day would be rendered unsustainable. Therefore, the resolution of the day, I mean 11-02-2020, is undoubtedly unsustainable and non est in the eye of law. Non estness of the resolution dated 11-02-2020 would lead to all consequential action taken becoming a nullity. The petitioner has vehemently contended with regard to the conduct of the resolution professional, in particular, about the mortal hurry in moving through the proceedings and preparation of information memorandum, which according to the learned senior counsel for the petitioner is incomplete and erroneous. The allegation is that the audited balance sheets of the corporate debtor for the years 2015-2019 are not included in the information memorandum, which has resulted in truncated proceedings. It is submitted that this was brought to the notice of the resolution professional, who according to the learned senior counsel, has deliberately ignored the inclusion in collusion with the members of the Committee of Creditors.

16. The aforesaid are in the realm of allegations or contra allegations. This Court, in exercise of its jurisdiction under Article 226 of the Constitution of India would not enter into venturing a fact finding enquiry to examine whether the resolution professional has acted in accordance with the duties and responsibilities under the Act. The Code has in itself a specific grievance redressal mechanism to deal with the allegations of the kind that is projected in the case at hand. Section 196(1)(q) of the Code reads as follows:

“196. Powers and functions of Board.—(1) The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions, namely:—

(q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;”

In terms of Section 196(1)(q) of the Code it is for the Board to redress the grievances of the kind projected hereinabove. Therefore, I reserve liberty to the petitioner to submit a representation/complaint before the Board within a fortnight from the date of receipt of the copy of this order and if such a complaint is received, the Board would decide the issue, in accordance with law.

17. In terms of Section 33 of the Code, once the corporate insolvency resolution process is over, the corporate debtor would be forced into liquidation. In the light of the aforesaid reasons, the Committee of Creditors shall reconsider the restructuring proposal submitted on behalf of the

petitioner in terms of Section 12A of the Code. Therefore, the prayer for quashment of the resolution dated 11-02-2020 as sought in prayer No.(vi) deserves to be allowed and the consequent prayer that is sought at prayer No.(i) sequentially to be granted.

18. For the aforesaid reasons, I pass the following:

ORDER

(i) Writ Petition is allowed in part.

(ii) The resolution plan of respondent No.5 approved in the 2nd adjourned 19th Committee of Creditors meeting dated 11-02-2020 stands quashed.

(iii) Consequent to the above, the minutes of the 22nd meeting of the Committee of Creditors of Associate Décor Limited held on 21-12-2022 also stand quashed.

(v) The petitioner is at liberty to submit a complaint under Section 196 of the Code to the Board within 15 days from the date of receipt of the copy of the order. If such a complaint is submitted, the Board shall consider the same and pass appropriate orders, in accordance with law, bearing in mind the observations in the course of the order.

(v) In the light of Section 33 of the Code, as observed in the course of the order, I deem it appropriate to leave it open to the Committee of Creditors to reconsider the restructuring proposal submitted by the petitioner under Section 12A of the Code.

(vi) It is declared that consequences of the aforesaid quashments and directions shall follow.

Consequently, I.A.No.1 of 2023 also stands disposed.

**Sd/-
JUDGE**

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