

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 615 of 2020

IN THE MATTER OF:

P.M. Cold Storage Pvt. Ltd.

Through Interim Resolution Professional,
Having its registered office at
1A, Madan Mohan Burman Street,
Kolkata-700007. West Bengal.

... Appellant

Versus

Goouksheer Farm Fresh Pvt. Ltd.

Having its registered office at
63/3B, Sarat Bose Road,
Kolkata-700025. West Bengal.

...Respondent No. 1

Mr. Sanjeev Jhunjunwala,

Resolution Professional,
Siddha Weston, Suit No. 134,
1st Floor, 9, Weston Street,
Kolkata – 700013. West Bengal.

...Respondent No. 2

Present

**For Appellant: Mr. Vijay Singh and Mr. Prabhat Ranjan,
Advocates. Mr. Pyanshu Upadhyay, Advocate
for Ex-Directors.**

**For Respondents: Mr. Soumya Dutta, Advocate for Respondent
No. 2.**

JUDGMENT

(Date: 14.09.2022)

[Per: Dr. Alok Srivastava, Member (Technical)]

This appeal has been preferred under section 61(1) of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC') assailing the order dated 17.6.2020 (hereinafter called 'Impugned Order') passed in IA(IB) No NIL/KB/2020 in C.P (IB) No. 1582/KB/2019 passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata). The Adjudicating Authority has dismissed the application filed by the Applicant P.M. Cold Storage Pvt. Ltd. (Appellant in this appeal), whereupon the claim filed by the New Hind Silk House Pvt. Ltd. has been considered admissible in the Corporate Insolvency Resolution Professional (CIRP) of the corporate debtor Gouksheer Farm Fresh Pvt. Ltd.

2. In brief, it is the case of the Appellant that after initiation of CIRP consequent to the order by the Adjudicating Authority in C.P (IB) No. 1582/KB/2019, a Committee of Creditors (CoC) was constituted by the Interim Resolution Professional (IRP) with the Appellant as the sole financial creditor in the CoC with 100% voting rights. He has further stated that after the initiation of CIRP on 13.12.2019, the first CoC meeting took place on 8.1.2020, wherein the IRP informed the CoC that the claim of the Appellant as financial creditor was the only claim received upto 26.12.2019 amounting to Rs.65,80,505.00. He has further stated that certain decisions were taken in this CoC meeting relating to fee of

Resolution Profession (in short RP), appointment and engagement of “I.P.E Egress Insolvency Professional LLP”, estimated CIRP cost alongwith expenses relating to registered valuers and statutory auditor. He has further stated that the sole financial creditor requested for an urgent meeting of the CoC vide e-mail dated 23.1.2020 regarding the expenses and appointment of professionals done in the previously held CoC meeting and not being satisfied with the projected expenses, he filed IA 392/KB/2020 on 13.2.2020 for replacement of RP. He has later informed by the Resolution Professional in the 4th CoC meeting held on 11.3.2020 that the CoC had been reconstituted, with the admission of claim of another financial creditor New Hind Silk House Pvt. Ltd. (in short ‘NHS’) and its inclusion in the CoC with admitted claim of Rs.1,96,63,603.00 and with this addition of the second financial creditor, the voting share of the Appellant was reduced to 25.07% from 100% in the CoC.

3. The Appellant has further stated that the claim filed by NHS was suspicious because of various discrepancies in the documents filed with Form C. He has also stated that the IRP being aggrieved by the action of the Appellant by filing IA No. 392/KB/2020 for his replacement went on to admit this doubtful claim of NHS to the detriment of the Appellant, and aggrieved by

this action of the RP, he filed IA (IB) No. NIL/KB/2020, which was dismissed by the Impugned Order dated 17.6.2020, whereupon aggrieved by this order, the appellant has preferred this appeal.

4. We heard the arguments of both sides in the appeal and also perused the record.

5. The Learned Counsel for Appellant has argued that the claim of NHSH admitted by the RP is barred by limitation and therefore his inclusion in the CoC on the basis of such a claim is not legal. He has elaborated that the claim in Form C submitted by NHSH on 26.2.2020 is verified by NHSH on 26.12.2020, which raises doubt about its authenticity. He has further submitted that the acknowledgment of debt of NHSH which is purportedly signed by the corporate debtor and referred in the Impugned Order in paragraph 10, is unclear about the person who has signed it. He has argued that the last payment in the repayment of the said debt was made by the corporate debtor on 5.8.2016. The claim has been taken to be within limitation on the basis of acknowledgment of debt signed by an unknown person belonging to corporate debtor on 1.4.2017 and since this document is unauthentic, the claim is barred by limitation.

6. It is claimed by the Learned Counsel for the Appellant that two acknowledgments of the debt dated 1.4.2016 and 1.4.2017 are ostensibly signed by directors of the corporate debtor. He has reproduced the signatures of the directors who were on the board of directors of the corporate debtor from the record of Ministry of Corporate Affairs' website to show that Shrestha Jha, Sandeep Agarwal and Dhruv Agarwal, who were directors on the corporate debtor company on 1.4.2016 (which is the date on which the acknowledgment of debt is given on the Ledger account Statement) have different signatures than the one that appears on the document showing acknowledgment by the corporate debtor of the debt (at page 196 of the appeal paperback). In a similar manner, the document which is produced to show confirmation of debt as on 1.4.2017 (attached at page 197 of the appeal paperback) is supposed to be signed by a person and the signature does not match the signature either of Shrestha Jha, Sandeep Agarwal and Dhruv Agarwal as appearing in record uploaded on Ministry of Corporate Affairs website. He has further submitted that Shrestha Jha resigned from the board of directors of corporate debtor on 30.3.2019 and Sandeep Agarwal and Dhruv Agarwal both resigned from the board of directors of corporate debtor on 8.1.2019. He has argued that the mismatch of signatures raises distinct doubt about the authenticity of two documents at pages 196 and 197 of

the appeal paperbook and therefore, these documents which are the basis for considering the claim to be within limitation should not be relied upon.

7. The Learned Counsel for Appellant has further stated that the claim filed by the NHSH is purported to be given by hand, even though it is a normal practice in the present times that claims are filed either by electronic mail or registered/speed post, so that date of submission is certain.

8. The Learned Counsel for Appellant has claimed that the RP has failed to perform his duty which is stipulated in regulation 13 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short 'CIRP Regulations') in verifying the genuineness and authenticity of the documents submitted by NHSH, which is a serious dereliction of duty and the Appellant is pursuing action with respect to the conduct of the RP before the Hon'ble Delhi High Court. He has further argued that the Adjudicating Authority has failed to appreciate the fact that the balance sheets for the financial years 2016-17, 2017-18 and 2018-19 were prepared by the RP through auditors, on 12.3.2020, after the RP had admitted the claim of NHSH. He has also submitted that the Appellant has

filed application IA-392/KB/2020 for change of RP on 13.2.2020 and it is quite probable that the RP, hurt by such action of Appellant, admitted a time-barred claim to NESH on 2.3.2020, thereby inducting NESH in the CoC with 74.93% voting rights, which has severely harmed the interest of the Appellant in the insolvency resolution process of the corporate debtor. He has also submitted that the application before the Adjudicating Authority and also the present appeal do not suffer from any non-joinder of two directors of the corporate debtor since the Appellant has assailed the action of the RP in admitting the claim of NESH in the CIRP of the corporate debtor.

9. The Learned Counsel for RP/Respondent No. 2 (R-2 in short) has argued that only ground on which the Appellant is challenging the admission of NESH's claim relates to limitation. He has argued that in the light of confirmation of balance dated 1.4.2017, which is signed by the corporate debtor, the said claim is clearly within limitation as the Section 7 petition was filed on 25.9.2019. He has further submitted that the Appellant was the lone member of the CoC at the beginning of CIRP, and it was only after 27.2.2020, when a claim of Rs.1,96,63,603/- of NESH was admitted that the Appellant felt that his interests were being severely affected and it started raising question that the claim of NESH was time-barred.

10. The Learned Counsel for R-2 has further submitted that NHSH has submitted ledger account showing balance dues, which confirmed by the corporate debtor on 1.4.2016 and again on 1.4.2017, bank statement of NHSH showing initial payment to the corporate debtor and Form 26AS showing TDS deposited by the corporate debtor in support of its claim. He has further submitted that the RP has verified the claim in accordance with Regulation 14 of CIRP Regulations, 2016 and it was only after complete verification of the said claim that he proceeded to admit it.

11. The Learned Senior Counsel for R-2 has further argued that since inclusion of NHSH's claim severely affected the vote share of the Appellant in the CoC, it started raising frivolous objections regarding admission of NHSH's claim and inclusion in the CoC and this issue was discussed threadbare in the 5th meeting of CoC on 3.6.2020, when the RP had suggested taking legal opinion in the matter, which was also done. He has claimed that the RP has issued a detailed response to the objections of Appellant vide e-mail dated 7.6.2020 and in the light of documents, particularly, the balance confirmation by the corporate debtor on 1.4.2017 and also the of in the outstanding debt in the balance sheet, the said claim is clearly within limitation. Regarding receiving the claim of

NHSH in person, the Learned Counsel for R-2 has said that there is no bar in the CIRP Regulations that the claim cannot be received by hand. Also, an issue raised by the Appellant that the date of verification of Form C is 26.12.2019, even though the Form was submitted on 26.2.2019 is due to typographic error. He has further argued that suspended directors of the corporate debtor have confirmed to the RP that the balance confirmations were signed by the corporate debtor and made available to NHSH, and therefore, they are the actual confirmations provided by the corporate debtor to NHSH.

12. The Learned Counsel for R-2 has argued that this appeal is not maintainable because the Appellant has challenged the action of suspended directors in signing the balance confirmation documents, but they have not been impleaded in the appeal, and therefore, the appeal suffers from the deficiency of non-joinder of necessary parties. In any case, he has argued that acceptance of NHSH claim is a matter between RP and NHSH and the Appellant cannot have any grievance against acceptance of such claim. He has finally submitted that in view of the documents submitted regarding the claim of NHSH, it is well within limitation and has been correctly admitted by the RP, which has also been upheld by

the Adjudicating Authority and, therefore, the appeal should be dismissed.

13. The main issue that arises in this appeal is whether the claim submitted by NHSH is under limitation based on the documents submitted alongwith the claim in Form C, and whether the RP has looked into the veracity and genuineness of the said claim in the light of provisions of IBC and regulations 13 and 14 of CIRP Regulations.

14. We note that the Adjudicating Authority has considered various documents submitted by NHSH regarding its claim along with Form C and held that RP has considered and screened all the documents properly as per the provisions of IBC and CIRP Regulations and further the allegations made by the Appellant have not been substantiated. In addition, he has held that the application is also bad for non-joinder of two directors of the corporate debtor, who had signed the confirmations of ledger account. As a result, the IA filed by P.M. Cold Storage Pvt. Ltd. before the Adjudicating Authority was dismissed by the Impugned Order.

15. We also note that the Appellant had filed IA-392/KB/2020 on 13.2.2020, for replacement of the RP and the grounds stated in this Interlocutory Application were relating to high expenses of the RP, appointment of Transaction Auditor and professional fee of other personnel engaged by the RP. He had sent e-mail dated 23.01.2020 requesting for an urgent meeting of the CoC and this Interlocutory Application IA-392/KB/2020 was accepted for hearing by the Adjudicating Authority and dismissed vide order dated 26.5.2020.

16. We now look at the veracity or otherwise of documents filed by NESH alongwith Form C regarding its claim in the light of contentions of the rival parties and on basis of record.

17. The RP has accepted the confirmation of ledger accounts of the corporate debtor with respect to NESH as on 1.4.2016 and 1.4.2017 (attached at pp.196-197 of the appeal paperbook respectively). The Learned Counsel for Appellant has challenged the signatures of the representatives of corporate debtor on both these documents and stated that the corporate debtor has shied away from disclosing identity of directors, who have signed the balance of statement acknowledging the said debt. In the counter affidavit filed on behalf of RP that in paragraph 12, it is stated that

“the directors of the corporate debtor have also confirmed the genuineness of the balance confirmations’, but nowhere the name or identity of such directors has been disclosed. The Appellant has looked at the record relating to the corporate debtor uploaded on the Ministry of Corporate Affairs’ website to find out the name of directors who were on the board of corporate debtor as on 1.4.2016 and also 1.4.2017, and also looked at their signatures as they appear on Form DIR-22 filed by the corporate debtor with the Registrar of Companies (and uploaded on the MCA portal). He has reproduced these signatures in Document 2 titled “Comparisons Chart of the signatures of the CD” (attached at pp. 29-30 of the Short Synopsis filed vide dy. No. 38883 dated 26.8.22) to show that the signatures, as they appear in the balance confirmations given by the corporate debtor’s directors and the signatures of the corporate debtor’s directors, who were part of the board of corporate debtor on the relevant dates do not match at all. We also take note of the fact that the said directors, namely Shrestha Jha resigned on 30.3.2019 and Sandeep Agarwal and Dhruv Agarwal resigned on 8.1.2019 from the position of directorship of corporate debtor and the new directors Atul Kumar Mandal and Nilay Swarnakar were inducted into the board of directors on 5.1.2019. It does not stand to reason and logic as to how the present directors could authenticate the signatures of past

directors who supposedly signed the confirmation of documents on 1.4.2016 and 1.4.2017. Moreover, these balance confirmations were ostensibly given in person to the RP as claimed by the RP, hence, they should normally contain signature of the person receiving these documents in the office of RP. In view of the afore-stated reasons, we are not persuaded about the authenticity and veracity of ledger account confirmations and are of the opinion that they cannot be taken as written acknowledgement of the balance debt.

18. We also note that the balance sheets for FY 2016-17, FY 2017-18 and FY 2018-19 were prepared by the RP through Auditors on 12.3.2020. We note that at the point of initiation of CIRP, only balance sheet for the FY 2015-16 was available. Thus, the inclusion of the debt of NHHH in the balance sheet for FY 2015-16 in the 'Notes to Financial Statement' (attached at pp.125-130 of the appeal paperbook) also does not appear to be reliable as the relevant page 127 of the appeal paperbook does not contain the seal of the Chartered Accountant M.D. Deboo and the company. Thus, we are unable to place reliance of balance sheets for the relevant FY 2016-17, FY 2017-18 and FY 2018-19 regarding acknowledgment of debt. Since they were prepared on 12.3.2020, and contain the admitted claim of NHHH which is in

question. Thus, in view of the fact that the last payment by the corporate debtor was made to the financial creditor NHSH on 5.8.2016 and the claim was filed on 26.2.2019. We find that the claim is barred by limitation.

19. We also consider the point raised by the Learned Counsel for R-2 that the appeal suffered from non-joinder of two directors, who have signed the ledger account confirmations but were not enjoined parties in the Section 7 application before the Adjudicating Authority nor in this appeal. We are of the view that the acceptance/admission of claim of NHSH was done by the RP and the Appellant is affected by this action of RP. He has joined the RP as respondent in the appeal and therefore, we hold that the appeal is properly constituted.

20. The fact that the corporate debtor has paid TDS on interest payable cannot be considered as acknowledgment in writing of the liability by the corporate debtor and therefore, such TDS payment will not have any effect of being an acknowledgment of said debt.

21. We also find that rule 13 of CIRP Regulations, which is regarding verification of claims by the IRP/RP, enjoins on the IRP/RP the responsibility of verifying every claim submitted and

maintain a list of creditors for inspection by members and other stakeholders in the CIRP. We are, therefore, of the view that since the voting share in the CoC is extremely relevant and important element in the CIRP insofar as the insolvency resolution of the CD is concerned. It was the duty of the RP to exercise necessary care and diligence in verifying the claims and scrutinise the documents submitted with Form C for genuineness and authenticity. Such exercise does not appear to have been done by the RP in the present case. We would, therefore, urge the Insolvency and Bankruptcy Board of India to investigate this matter further regarding the conduct of RP and take necessary action under the regulation.

22. In view of the detailed analysis and discussion above, we come to clear conclusion that documents on which the RP relied on in accepting and admitting the claim of NHSH and inducting it as a member of CoC does not inspire confidence and should not have been relied upon by the RP in admitting the claim of the NHSH being within limitation. The Adjudicating Authority has, therefore, committed an error in upholding the admission by RP of claim of NHSH. Accordingly, we set aside the Impugned Order and direct that NHSH shall not be a member of CoC in the CIRP of

Goouksheer Farm Fresh Pvt. Ltd. The appeal is disposed of with these directions.

23. There is no order as to costs.

(Justice Rakesh Kumar Jain)
Member (Judicial)

(Mr. Kanthi Narahari)
Member (Technical)

(Dr. Alok Srivastava)
Member (Technical)

New Delhi
14th September, 2022

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