

S.No.2

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
08-05-2024 AT 10:30 AM**

**CP(IB) No.299/7/HDB/2018
AND
IA(IBC) 897 & 898/2024 & IA (IBC) 976/2024 in IA (IBC) 924/2024 in
CP(IB) No.299/7/HDB/2018
u/s. 7 of IBC, 2016**

IN THE MATTER OF:

Punjab National Bank
(erstwhile Oriental Bank of Commerce)

...Financial Creditor

AND

NCS Sugars Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA(IBC) 897/2024

Orders pronounced. In the result, **this application is allowed. No costs.**

IA(IBC) 898/2024

In the light of the orders passed in IA(IBC) 897/2024, this application becomes infructuous. Accordingly, **this application is disposed of as infructuous.**

IA (IBC) 976/2024

Learned Counsel Mr Y Suryanarayana, for applicant present physically.
Matter adjourned to 09.05.2024.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I, HYDERABAD**

IA. Nos. 897 & 898 of 2024
In
CP (IB) No. 299/7/HDB/2018

[u/s. 60(5) of Insolvency and Bankruptcy code, 2016 and rules 11 of NCLT rules, 2016]

IN THE MATTER OF M/s NCS SUGARS LIMITED

BETWEEN:

Mr. Narayanam Nageswara Rao,
S/o. Narasimha Murthy
Aged about 68 years,
Plot No. 9, Huda Enclave, Road No. 69,
Nandagiri Hills, Jubilee Hills,
Hyderabad – 500033

... Applicant

Versus

1. Mr. K. Sivalingam,
Resolution Professional of
M/s. NCS Sugars Ltd.,
R/o Flat No. 1603, Tulive Horizon Residences,
16/01 Arunachalam Road, Saligramain,
Chennai, Tamil Nadu - 600093.

2. Committee of Creditors,
of M/s. NCS Sugars Ltd.,
Represented by the Alchemist ARC Limited

...Respondents

IN THE MATTER OF:

Punjab National Bank

...Financial Creditor

Versus

M/s. NCS Sugars Ltd.

...Corporate Debtor

Date of order: 08.05.2024

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant : Ms. Siva Praneetha, Advocate

For Respondent no. 1 : Mr. Y. Suryanarayana, Advocate

PER: BENCH

COMMON ORDR

IA.No.897 of 2024 IA.No.898 of 2024;

1. IA.No.897 of 2024

This application is filed under section 60 (5) of the insolvency and bankruptcy code, 2016 herein after referred to as "Code" and Rule 11 of the National Company Law Tribunal Rules, 2016, by the suspended director herein after referred to as the "Applicant" of M/s NCS Sugars Ltd herein after referred to as the "Corporate Debtor", against the Resolution Professional and Committee of Creditors herein after referred to as the "Respondents no. 1 & 2" respectively,

- *To Set aside the decision taken by the Respondent No.2 in the 18th Committee of Creditors meeting dated 07.03.2024 to the extent of Agenda No.8;*
- *To Declare that the Applicant is eligible to submit a Resolution Plan and consequently, permit the Applicant to participate as a Resolution Applicant.*

IA.No.898 of 2024;

- *To Stay all further proceedings in furtherance of Form-G dated 24.02.2024 issued by the Respondent No.1 or alternatively*

- *To Direct the Respondent No. 1 to provide the evaluation matrix and Information Memorandum to the Applicant and permit the Applicant to participate as a Resolution Applicant;*

1) Brief of averment in the Application:

- 1.1. That vide order dated 24.06.2022 the Corporate Debtor was admitted into Corporate Insolvency Resolution Process herein after referred to as “CIRP”. Subsequently, the Resolution Professional published Form-G on 06.10.2022, inviting bids for the submission of Resolution Plans. The Applicant being a suspended director/promoter, submitted a Resolution Plan in October 2022. However, the Applicant was initially excluded from the provisional list of eligible Resolution Applicants on 30.10.2022, due to missing documents. A revised list on 03.11.2022, included the Applicant, contingent upon providing the required documentation.
- 1.2. It is averred that due to various factors, the Resolution Professional issued a notice on 24.02.2024, inviting fresh bids. The Applicant was under the impression that previous Expressions of Interest would remain valid unless they opted to submit new one. Despite having submitted an Expression of Interest earlier, the Applicant intended to submit a fresh one. However, the Respondents disqualified the Applicant from participating in the CIRP in the 18th Committee of Creditors meeting on 07.03.2024, citing Section 29A(b) &(f) of the Code based on the following allegation;
- a. That the Applicant and a related party of the Applicant have been declared as willful defaulters.

- b. That a connected party of the Applicant herein has been prohibited by the Securities and Exchange Board of India from trading in securities and accessing securities markets.
- 1.3. It is averred that first allegation of having been declared as ‘willful defaulter’, is currently being challenged in the High Court of Telangana, and an order suspending the willful defaulter tag has been temporarily suspended since 27.04.2023, thus, making the disqualification of the applicant invalid. The second allegation pertains to the connected party of the Applicant, which allegedly barred from the securities market, which was denied by the applicant in an exchange of emails between the applicant and 1st respondent.
- 1.4. It is averred that the allegation regarding the Securities and Exchange Board of India (SEBI) prohibiting the Applicant or its alleged connected party (Corporate Debtor) lacks supporting documentation. The objection was raised based on documents supposedly obtained from the Bombay Stock Exchange (BSE India). The Applicant asserts he has no knowledge of any such order against the Corporate Debtor or himself. Stating the above reliance was placed on Section 11(4)(b) of the SEBI Act, 1992, which mandates that any order restraining individuals from accessing the securities market or prohibiting them from dealing in securities must be accompanied by written reasons.
- 1.5. It is averred that during the 18th CoC meeting, Resolution Professional raised concerns about the uncertainty surrounding SEBI's debarment. However, this information was disregarded, and a decision was made to

exclude the applicant from the resolution process due to supposed SEBI debarment and pending litigations. It is further claimed that the CoC attributed disqualification criteria arbitrarily, exceeding the scope outlined in Section 29A of the Code.

- 1.6. It is averred that on 10.01.2023, the Resolution Professional sent an email to the Applicant containing a link to the SEBI debarred list and an attached Excel sheet from BSE India's website. The Applicant was surprised by the data in the Excel sheet. It mentioned that the Unique Client Code (UCC) of the Corporate Debtor was disabled but did not affect the Applicant's trading access. The sheet also showed other entities being restrained from accessing the securities market, but no such order was found against the Applicant. The disablement of UCC only prevents the Corporate Debtor from trading, not the Applicant. This disablement was based on SEBI's recommendation to stock exchanges, not a direct order against the Applicant. The Applicant informed the Resolution Professional about this via email on 02.02.2023.
- 1.7. It is averred that the Applicant requested the Information Memorandum in the 20th Committee of Creditors meeting and via email but was denied by the Resolution Professional, citing that it contained details discussed in CoC meetings. However, it was represented that the Applicant, as a potential resolution applicant, has the right to access this information. Due to the lack of access to the Information Memorandum, the Applicant couldn't submit its Expression of Interest within the specified timeline and was consequently excluded from the list of prospective resolution applicants. This denial goes against the Insolvency and Bankruptcy Code's

mandate. Hence, the Applicant has filed this application, feeling aggrieved by the situation.

2) In reply to the Application, the 1st Respondent Resolution Professional averred in brief as below:

- 2.1. That the Resolution Professional denied all allegations made by the Applicant, stating the same as false and devoid of merit. It is averred that the Applicant, being a promoter and member of the suspended board of the Corporate Debtor, is subject to certain disqualifications under Section 29A of the Insolvency and Bankruptcy Code. Although exemptions exist for MSME Corporate Debtors, they only pertain to certain clauses of Section 29A, not all.
- 2.2. It is averred that subsequent to the issuance of Form G dated 05.10.2022 and invitation for Expression of Interest (EOI). The Applicant submitted his EOI in response to the first invitation. However, after reviewing EOIs and conducting due diligence, critical issues regarding the Applicant and connected parties arose: such as firstly, the Applicant and connected parties were categorized as willful defaulters by banks, with outstanding amounts totaling crores of rupees. Secondly, the Corporate Debtor, connected to the Applicant, is barred from accessing the securities market and appears on SEBI's debarred entities list on various stock exchange websites such as NSE/BSE/MCX SX. The said observations were brought to the notice of the Applicant vide email dated 28.12.2022.

- 2.3. It is averred that the Applicant contends he was unaware of his categorization as a willful defaulter. But parallelly, obtained interim suspension of this categorization from the High Court of Telangana. However, it's important to note that it is temporary, and the final verdict from the High Court is still pending.
- 2.4. That the Resolution Professional disputed the Applicant's claims regarding their disqualification under Section 29A(f) of the Code. They argue that the absence of a specific order from SEBI restraining the Applicant from accessing the securities market doesn't negate their disqualification. The Resolution Professional contends that Section 29A(f) indeed requires such a prohibition order from SEBI, as outlined in Section 11(4)(b) of the SEBI Act, 1992. They assert that the notices of disablement issued by stock exchanges were based on a circular from NSEL, which clearly marked certain entities, including NCS Sugars Limited, as defaulters, resulting in the immediate disabling of their Unique Client Codes in consultation with SEBI and other exchanges.
- 2.5. That the Resolution Professional challenges the Applicant's assertions regarding the disablement of the Unique Client Code (UCC) of the Corporate Debtor. It is averred that despite the Applicant's status as an MSME promoter, they are still subject to disqualifications under Section 29A(b) and 29A(f) read with Section 29A(j) of the Code. The decision to exclude the Applicant as an eligible resolution applicant was made by the CoC based on commercial considerations and the Applicant's antecedents, as recorded in the minutes of the 18th CoC meeting.

2.6. While stating the above-mentioned facts it is averred that there are currently 16 eligible potential resolution applicants (PRAs) for the Corporate Debtor. The original deadline for submitting the resolution plan was May 9, 2024. However, following directions from the Hon'ble Bench on May 1, 2024, the Resolution Professional sought instructions from the Committee of Creditors (CoC). The majority of the CoC, via email dated May 2, 2024, conveyed that since the extension of the deadline for plan submission is scheduled to be discussed in the upcoming CoC meeting on May 3, 2024, and no resolution plan has been received thus far, the last date for plan submission may be extended by one month. During this extended period, no agenda for voting on resolution plans will be placed before the CoC.

3) In the light of the facts as above mentioned the point that arises for our consideration is:

Whether the decision of the Committee of Creditors dated 07.03.2024 disqualifying of the Applicant warrants the interference of Tribunal? If so, for what relief?

4) We heard the Ld. Counsel Ms.Siva Praneetha and Learned Senior Counsel Mr. P Vikaram appearing for the applicant, and Learned Counsel for Resolution Professional/ 1st Respondent Y. Suryanarayana and perused the record.

Point.

Whether the decision of the Committee of Creditors dated 07.03.2024 disqualifying of the Applicant warrants the interference of Tribunal? If so, for what relief?

- 5) Learned counsel for the applicant submits that applicant being a suspended director of corporate debtor which is an MSME unit, intends to participate in the CIRP of the corporate debtor by submitting a resolution plan but respondents are not qualifying him as potential resolution applicant on the unsustainable grounds. The applicant further submits that the Respondents disqualified the Applicant from participating in the CIRP in the 18th Committee of Creditors meeting on 07.03.2024, citing Section 29A(b) &(f) of the Code based on the following allegation;
- A. That the Applicant and a related party of the Applicant have been declared as willful defaulters.
 - B. That a connected party of the Applicant herein has been prohibited by the Securities and Exchange Board of India from trading in securities and accessing securities markets.
- 6) Learned counsel for the applicant further submits that he has challenged the decision to declare him as willful defaulter in Hon'ble High Court of Telangana, and obtained interim suspension of this categorization from the High Court of Telangana, therefore as on date of submission of plan this disqualification is not applicable to him. Learned counsel further contended that in the e-mail sent by Resolution Professional to the Applicant containing a link to the SEBI debarred list and an attached Excel sheet from BSE India' s website, only Unique Client Code (UCC) of the Corporate Debtor was disabled and applicant's name does not find place in the said list. Since applicant's name is not there in the debarred list of SEBI, it does not affect Applicant's trading access to stock exchanges. In view of the above facts, this disqualification cannot be ascribed to him.

- 7) Learned counsel for the respondents admit that applicant has obtained interim suspension of his categorization as willful defaulter from the High Court of Telangana, however, he further submitted that it is temporary, and the final verdict from the High Court is still pending. Learned counsel further contended that since applicant's name is not there in the debarred list of SEBI, he may not be covered under Section 29 A(f) but since corporate debtor's name is there in the debarred list and he being a connected party to the CD, he will be disqualified under Section 29 A(j) being a connected party to the corporate debtor.
- 8) While stating the above-mentioned facts, the respondents also submitted that there are currently 16 eligible potential resolution applicants (PRAs) for the Corporate Debtor. The original deadline for submitting the resolution plan was May 9, 2024. However, following directions from the Hon'ble Bench on May 1, 2024, the Resolution Professional sought instructions from the Committee of Creditors (CoC). The majority of the CoC, via email dated May 2, 2024, conveyed that since the extension of the deadline for plan submission is scheduled to be discussed in the upcoming CoC meeting on May 3, 2024, and no resolution plan has been received so far, the last date for plan submission may be extended by one month. During this extended period, no agenda for voting on resolution plans will be placed before the CoC.
- 9) We have carefully perused **Section 29A(j)** which says that;
- “a person shall not be eligible to submit a Resolution Plan if such person has a connected person not eligible under Clauses (a) to (i)”. Further explanation is

given that what is the meaning of “connected person” for the purpose of this section which is reproduced as under:

Explanation 5 [I]. — For the purposes of this clause, the expression "connected person" means— (i) any person who is the promoter or in the management or control of the resolution applicant; or (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii): 6 [Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Thus, from the explanation as above, we find that the same speaks about connected person to the resolution applicant and not to the corporate debtor. The Resolution applicant herein, being an ex-director of the corporate debtor, we are of the view that contention of the respondent that the applicant is disqualified to submit resolution plan as CD is debarred by SEBI and that the applicant is a connected party to the CD is not maintainable. Further, we should always bear in mind that legislature while passing the Bill, has given some special relaxation under Section 29(A) to MSME promoters so that they are allowed to participate in the resolution process of corporate debtor.

- 10) Therefore, in the above backdrop, we hereby hold that the impugned decision made by the Committee of Creditors in the 18th Meeting held on 07.03.2024 disqualifying the Applicant, needs our interference.

The point is accordingly decided.

11) In view of the above, we allow IA 897/ 2024 and set aside the decision taken by the 2nd Respondent in the 18th Committee of Creditors meeting dated 07.03.2024 to the extent of Agenda No.8 and declare that the Applicant is eligible to submit a Resolution Plan and consequently, permit the Applicant to participate as a Resolution Applicant.

12) The prayers as sought in IA no 898/2024 are consequential to the prayers sought in IA no 897/2024, hence this application is also allowed.

In terms of our above findings , IA 897/ 2024 and IA 898/ 2024 are allowed and disposed of however without costs.

SD/-

Charan Singh
Member (Technical)

SD/-

Dr.Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Sridher/Pavani