

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 211
CP-148/ND/2021
IA-43/2022

IN THE MATTER OF:

Union of India, Ministry of Corporate Affairs ... Applicant/Petitioner
Through Regional director (Northern
Region)

Versus

Argl Ltd. & Ors.

...

Respondent

Under Section: 224(5) of Comp. Act.

Order delivered on 13.05.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Haripriya Padmanabhan, Sr. Adv.,
Adv. V. Shyamohan, Adv. Eshita Baruah,
Adv. Shivani Vij, Adv. Tissy Annie Thomas

For the Respondent :

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-43/2022: The prayer made in the IA reads thus:-

- a) *“Allow the present Application and pass an order directing the Petitioner to reconsider the order dated 17.09.2021 passed by the Ld. Regional Director (Northern Region) rejecting the Application u/s 13(4) of the Companies Act, 2013, seeking transfer of “National Capital Territory of Delhi” to the “State of Haryana”, in the light of the provisions of the IBC, especially the immunity provided to the Applicant u/s 32A of IBC;*
- b) *Declare that pendency of the Investigation by SFIO into the affairs of ARGL Ltd prior to the CIRP proceedings cannot result in detrimental action or prosecution of the Corporate Debtor as the Resolution Plan of the Applicant stood affirmed by this Hon'ble Tribunal vide its order dated 2.12.2019 passed in Company Petition No. (IB)- 53 (PB)/2017; and”*

The precis grievance raised in the captioned application is that by way of approval of a Resolution Plan by this Tribunal, the management of the corporate debtor could be transferred to the Applicant in the captioned IA, but the application moved by the new management before the Competent Authority i.e. RD (MCA) could be rejected. Para 8 to 10 of the application reads thus:-

8. *“It is pertinent to note that the new management of successful resolution applicant has been faced with extremely debilitating headwinds in the manufacturing sector. The same has been exacerbated by the pandemic. The manufacturing of ring gears and other connected peripherals has been deeply affected by the disruption in the global supply chain cycles. International trade has been majorly affected by the extremely high cost of freight and other transport charges forcing many sectors to shut down. The new management is faced with multiple challenges including sourcing of relevant materials from international suppliers and factories. The shifting of the office to Gurugram must be adjudicated in the context of such overarching economic stress and financial exigencies.*

9. *In spite of the upending of the entire manufacturing sector, it may be noted that, within a short span of time, the Applicant has diligently, succeeded in turning around ARGL Ltd into a profitable company. To further increase the efficiency and for administrative convenience, the Applicant had to take several decisions. This also becomes crucial when viewed in the context of frequent lockdowns and curfews in the light of the continuing waves of the pandemic. The plants and factories are also located closer to Gurugram than Delhi. Consequently, it became more imperative to shift the registered office from “National Capital Territory of Delhi” to the “State of Haryana” For the said purpose, the Applicant complied with all the statutory prerequisites and had filed an application to the Regional Director under Section 13(4) of the Act vide SRN R72640634 dated 28.11.2020 for confirmation of alteration to the situation clause of Memorandum of Association of the Company. The Applicant, by way of abundant caution, also sent a letter dated 20.07.2021 to the SFIO requesting that they be allowed to shift the Registered office of the Company. In its letter, it was pointed out that the*

proposed registered office falls under the jurisdiction of the same SFIO and the jurisdiction of office of RoC, NCT of Delhi & Haryana and the Office of Regional Director (Northern Region) would continue to be the same. A true copy of the letter dated 20.07.2021 sent by the Applicant to the SFIO is annexed herewith and marked as ANNEXURE A-1 [Pg 25 to 26].

10. However, the Ld. Regional Director, Northern Region of the Petitioner, vide order dated 17.09.2021, rejected the application filed by the Applicant under Section 13(4) of the Act. While doing so, it was observed as under:

“2. The directors of the company have stated in one of their affidavits that the company received a notice from SFIO, New Delhi for providing certain detail of the company. Therefore, the matter was taken up with SFIO and SFIO has informed that investigation is pending against the company and data pertained to the company is vital. Moreover, this directorate has already filed a petition U/s 224(5), 241(2) r/w 242 (2) (m) r/w 246 r/w 339 of the Companies Act, 2013 before the Hon'ble NCLT, Delhi Bench against the company and its erstwhile officer in default. Hence the application is hereby rejected. 3. Therefore, due to afore-mentioned reason, pursuant to the Ministry of Corporate Affairs notification no. S.O.4090 (E) dated 19.12.2016 & 27.07.2017 under sub-section (5) of section 13 of the Companies Act, 2013 the instant application filed vide SRN R72640634 in Form INC-23 cannot be considered and is hereby rejected/closed. Accordingly, the application is disposed of with no cost.”

A true copy of the order dated 17.09.2021 sent by the Ld. Regional Director, Northern Region is annexed herewith and marked as ANNEXURE A-2 [Pg 27 to 28].”

On 19.05.2023, Mr. Harish Vaidyanathan Shankar, CGSC his submissions extensively and following order was passed:-

ORDER

IA-43/2022: The main grievance espoused in the captioned IA is against the order dated 17.09.2021 passed by the RD (ND), in terms of which the request made by the Applicant i.e., ARGL Limited for change of address has been nixed.

The salient plea espoused by Mr. Harish Vaidyanathan Shankar, Ld. Standing Counsel for CG/RD is that against the aforementioned order passed by the RD, the present application is not maintainable before this Tribunal as the Company Act, 2013 does not provide for any remedy against such order before this Tribunal.

Indubitably, the Respondent in CP-148/ND/2021 i.e., the Applicant in the present IA-43/2022 was admitted into CIRP, and by virtue of order dated 02.12.2019 in CP (IB) No. 53(PB)/2017 of the Principal Bench, NCLT, the present (new) management had successfully acquired the Respondent

Company namely Argl Ltd. w.e.f. January, 2020. Section 32(A) of the IBC, 2016 gives immunity to the new management as also to the CD from certain liabilities. Probably, the RD while passing the order not allowing the Applicant in the present IA-43/2022 to change its registered office was oblivious to such a factual position. Our ex-facie semblance is that if the new management which plans to resolve the insolvency of a Corporate Debtor, in terms of the provisions of Sections 7, 9 to 31 of the IBC, 2016 is subjected to avoidable procedural complications and is not given the expected facilitation even to the extent of changing the address/registered office of the Company, the object of the Code would be adversely affected.

In the wake, we deem it appropriate to issue notice to the Ministry of Corporate Affairs as well as IBBI. Ld. Counsel for the Applicant undertakes to serve the notice upon the IBBI through its General Manager within one week and file an affidavit of service within 3 days thereafter. Mr. Harish Vaidyanathan Shankar, Ld. Standing Counsel for Union of India accepts notice on behalf of MCA and seeks an opportunity to file a reply to IA, on behalf of the MCA within 2 weeks. Allowed.

Let the RD, who has passed the impugned order, remain present in person on the next date of the hearing physically/virtually.

List on 03.07.2023.

Nevertheless, today Mr. Harish Vaidyanathan Shankar, Ld. Sr. Standing Counsel for Union of India fairly submitted that as there is a recommendation from IBBI, to the effect, on a fresh application being preferred by the Applicant in the IA, the RD (MCA) would consider the same with positive approach.

In the wake, of the statement made by Mr. Harish Vaidyanathan Shankar the Applicant may prefer fresh application before the Competent Authority within one week. In the event the application as indicated above is preferred within the given time, the RD (MCA) would consider the same. In the event, even after the order passed by RD (MCA) any grievance of the Applicant regarding shifting/change of registered address of the company acquired by the Applicant in CIRP subsists, it will be at liberty to revive the present proceedings by moving appropriate application. With the aforementioned observations/directions, the captioned **IA is disposed of. No Cost.**

It is made clear that the question of law as espoused by Mr. Harish Vaidyanathan Shankar during the submissions on 19.05.2023 would remain open and the position taken by the RD (MCA) would be without prejudice to its rights and contentions, in any future/further proceedings either in this matter or any other matter.

CP-148/2021: Ld. Sr. Counsel fairly submitted that since the management of ARGL limited has changed hands in terms of the provisions of IBC, 2016, the Respondent No. 1 would be entitled to benefit of provision of Section 32A of IBC, 2016. The preliminary reply filed on behalf of the Respondent No. 2 is on

record. There is no appearance on behalf of the Respondent Nos. 3 to 8. The matter will proceed ex parte against the said Respondents.

Ld. Counsel for the Respondent No. 2 submitted that she is also appearing for Respondent Nos. 3 to 6 and they are only proforma of party. There is no appearance on behalf of the Respondent Nos. 7 & 8. The proceedings qua them are set ex parte. The preliminary reply filed on behalf of the Respondent No. 2 is not made available to Mr. Harish Vaidyanathan Shankar, Ld. Sr. St. Counsel, Ld. Counsel would ensure that the same is made available to him during the course of the day.

List on 03.07.2024.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)