

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

Item 48

**CA No. 321/19, 694/22, 695/22
1444/22, 1447/22
In
CP(IB) No. 223/Chd/Hry/2018
(Admitted)**

**Under Section 9, 60(5) & 66, 43, 45(2) & 49 IBC 2016,
R 154 NCLT Rules, 2016**

In the matter of:-

Shri Amit Kansal

...Petitioner/ Operational Creditor

Vs.

RP Basmati Rice Ltd.

...Respondent/ Corporate Debtor

Present: Mr. Pulkit Goyal with Mr. Harsh Garg, Advocates for the applicant bank in IA Nos. 1444/2022 and 1447/2022.
Mr. Harshvardhan Ranga, proxy counsel for Mr. Jai Vir Yadav, Senior Advocate for respondent no. 1 in IA Nos. 694/2022 and 695/2022.
Ms. Mandeep Kaur, proxy counsel for Mr. Arun Bansal, Advocate for respondent no. 2 in IA Nos. 1444/2022 and 1447/2022.
Mr. Rakshit Gupta, Advocate for the Resolution Professional.
Mr. Deepankur Sharma, Advocate for respondent no. 3 in IA Nos. 694/22 and 695/2022.
Mr. Ajit Kumar, Ex Resolution Professional in person.
Mr. Krishan Kant, Advocate for Oriental Insurance Company Limited.
Mr. Satpal Singh, Dy. Manager, Oriental Insurance Company Limited.
Ms, Swati Saluja, Advocate for the IRP, Mr. Harvinder Singh.
Mr. Harvinder Singh, IRP in person.
Mr. Chand Ji Tiku, Cost Accountant (Stock Auditor) in person.

CA No. 321/2019

The compliance affidavit filed vide Diary No. 00724/8 dated 24.04.2023 and the response by the RP vide Diary No. 00724/4 dated 24.04.2023 are taken on record. It was pointed out to the learned counsel for RP that reply filed by him is a very routine response without addressing the various issues relating to the balance sheet

preparation, valuation and huge discrepancies in stock as pointed out in the amicus report.

We regret that the CoC is not represented today despite the gravity of the matter before us. The members of the CoC are directed to comply with our specific directions in subsequent paragraphs regarding clarification on specific issues, failing which the concerned Authorities of the CoC at the General Manager Level are directed to be present on the next date of hearing.

We also record with regret that the RP has not shared the email ID of the statutory auditor, Mr. Vinay Goyal with the amicus curiae to enable him to share his report. Now the RP, who is having a copy of the amicus's report, is directed to share the same with Mr. Vinay Goyal, Statutory Auditor, Mr. Vinay Goyal, is directed to file his reply within three weeks with a copy in advance to the respondents and to be present in person before this Tribunal on the next date of hearing. Sh. Vinay Goyal is also directed file before this Bench the audit trail that he has maintained in accordance to Section 128(5) of the Companies Act 2013 and as per the provisions of the Standard of Auditor (SA-230) within two weeks with a copy to the Resolution Professional and Forensic Auditor.

None appeared on behalf of the Transaction Auditor, Mr. S.P. Chopra. he is directed to comply with our last order to explain certain observations in his report and to be present before this Bench on the next date of hearing to explain certain observations in his report.

Sh. Chand Ji Tiku, who is present in person is directed to file reply to the issues pertaining to Stock Audit Report filed by him within four weeks. His personal attendance on the next date of hearing is dispensed with.

Learned counsels for the Insurance Company and the IRP are directed to file their replies in compliance with our last order within four weeks.

Despite our last order, no response to the issues raised in the report of the amicus has been filed by any of the concerned parties. The Suspended Director/Resolution Professional/Transaction Auditor, CoC members/IRP (hereinafter referred as "Concerned Parties") are now directed to file their response within four weeks of this order with a copy to the respondents and further response thereto be filed by the latter within two weeks of the receipt of the responses. The concerned parties are at liberty to file their responses to any of the observations pertaining to them in the amicus's report but will specifically respond to the following observations mentioned below their name. Where more than one name is mentioned, each of the parties have to file their separate responses within four weeks of this order.

CoC members (Lending Banks):

- Officials of State Bank of India carried out monthly inspection of stocks regularly and the inspection reports till the month of June 2016 clearly state that stock position was satisfactory and quality was good. There was no slow moving/ obsolete stock. There was no indication of any actual or likely deterioration of Shit, sooks on 51.36 2016 Suspended drector say that there was value loss in the stocks on 31.03.2016

- State Bank of India enhanced the credit facilities of the company from Rs. 164.98 crore to Rs. 184.48 crore on 10.03.2016. Punjab National Bank also sanctioned adhoc facility of Rs. 3.00 crore on 29.03.2016. This indicates that at that time the position of stocks and securities was satisfactory.
- Various consortium meeting of banks took place between 23.02.2016 to 06.09.2016 and the director of the company Mr R P Singhal was personally present in all these meetings. He never spoke anything in any meeting about deterioration of quality of stocks or loss in value, as nothing is recorded in minutes about it.
- State Bank of India has vide its mail of 23.01.2023 informed the amicus curiae g that they never received any information from the corporate debtor about deterioration in stocks quality or loss in value.
- The learned Banks are directed to place on record the relevant minutes of meeting and orders issued by the lending Banks along with the affidavit of the responsible officer.

The lending banks are directed to place on record the relevant minutes of the meetings and orders issued by the lending banks in this case along with an affidavit of the responsible officer.

Suspended Director/Resolution Professional /Transaction Auditor:

- The suspended director of the corporate debtor has stated that no stocks were destroyed and that there was deterioration in the quality of inventory due to seepage and moisture causing loss of lustre and broken rice and that they reduced the NRV (Net Realisable Value) by Rs 100 crore on 31.03.2016 to pare

the price at realisable value or cost whichever is less. The suspended director has not submitted any computation sheet in this regard.

- Suspended directors have not provided any documentary or other proof of deterioration of rice quality. It will be appreciated that such loss of stocks due to moisture or seepage etc., as claimed by suspended directors does not take place overnight or over a couple of days. Such situation may arise only over a long period. The contention of the suspended director to suddenly reduce the value of stocks by Rs. 100 crore as of 31.03.2016 is questionable.
- In the Balance sheet of 31.03.2016, the stock value has been directly shown as Rs 208 crore without giving any explanation about any value loss etc. It is pertinent to note that the value of stocks as of 25.03.2016 (as per stock statement) was Rs.310.71 crore. As per stock audit report dated 29.03.2016, value of stock was Rs. 308.00 crore. Directors of corporate debtor reduced the value of stocks to Rs. 208 crore on 31.03.2016 without any narration in the balance sheet. Reduction in stock value by approx 32 percent within a couple of days by the directors of the corporate debtor raises a suspicion.
- In the Balance sheet of 31.03.2017, the opening stock as of 01.04.2016 is shown as Rs 208.18 crore and it is mentioned that value loss of Rs. 100.02 crore was an exceptional item in 2016. The exceptional item in Balance sheet of 31.03.2016 was zero. The statement given in the balance sheet of 31.03.2017 in this regard is misleading.
- Value of stocks at reduced prices is shown as of 31.03.2016/01.04.2016 as Rs. 208.18 crore. Purchase of paddy and packing material during 2016-17 was for

Rs. 48.43 crore. Stocks at the end on 31.03.2017 were left for Rs. 0.80 crore. Thus, the cost of goods sold during 2016-17 works out as Rs. 255.81 crore (208.18 cr plus 48.43 cr minus 0.80 cr). Total sales during 2016-17 were for summary of Amicus Curiae's Report on RP Basmati Rice Ltd.

- By reducing the value of stocks in the books and then by selling the stocks at prices lower than purchase price, the directors of the corporate debtor have booked heavy losses for Rs. 135.97 crore in 2015-16 and loss for Rs. 108.30 crore in 2016-17 . This has adversely impacted interest of the stakeholders.
- Reduction in stock' value in the balance sheet as of 31.03.16. 100.02
- Sale of stocks at price less than purchase price (2016-17) 85.73
- Sale to non-existent/ fake parties as per transaction audit 81.59
- Other fraudulent transactions as per Transaction Audit 8.61
- Total amount of fraud 275.95

The suspended director(s) are directed to place on record all documents to support or rebut the above observations along with their affidavit.

Interim Resolution Professional:

- COC had instructed Interim Resolution Professional to get transaction audit conducted for three years ie from 01.04.2015. But the Interim Resolution Professional appointed Transaction auditor for two years only ie from 01.04.2016 in lieu of 01.04.2015. No reason is explained in the minutes for such non-compliance. While getting the appointment of transaction auditor ratified by COC, the Resolution Professional also did not disclose to COC the aforesaid non-compliance of COC instructions.

Resolution Professional/ Statutory Auditor:

- The balance sheets of 31.03.2016 and 31.03.2017 bears date of its finalisation as 03.09.2016 and 02.09.2017 respectively, while the Resolution professional informed the COC that the balance sheet was prepared during CIRP i.e in the year 2019. It is also pertinent to note that Balance sheets of 31.03.2016 and 31.03.2017 were uploaded on the official MCA portal on 11.04.2022, paying substantial late fee. It may not be ruled out that the Balance sheet of 31.03.2016 and 31.03.2017 were finalised in the year 2019 as of back date.
- The Resolution Professional/ Statutory Auditor is directed to file their reply on affidavit in respect of the above

Resolution Professional/Suspended Director/ Insurance Company/ Statutory Auditor:

- Stocks were adequately insured and policy was valid from 21.05.2015 to 20.05.2016. But insurance claim was not lodged for the damages. As is clear that the loss in stocks' value was booked by the directors of corporate debtor on a much later date but as of back date of 31.03.2016, lodging of insurance claim in back date might not have been acceptable to insurance company.

The learned RP is directed to email a copy of this order to the concerned parties who are not present before this Bench today and file a said email along with an affidavit within two weeks.

List the matter on 05.07.2023.

IA No. 694/2022

Reply filed on behalf of respondent no. 3 vide diary No. 01408/3 dated 17.03.2023 is taken on record. The other respondents are directed to file reply within

two weeks with a copy in advance to the counsel opposite. Rejoinder thereto, if any, be filed within three weeks thereafter with a copy in advance to the counsel opposite.

List the matter on 05.07.2023.

IA No. 695/2022

Learned counsel for the parties are directed to comply with our order dated 02.03.2023 within four weeks. List the matter on 05.07.2023.

IA No. 1444/2022

Reply filed on behalf of respondent no. 2 vide Diary No. 2511/2 dated 11.04.2023 is taken on record. Learned counsel for respondent no. 1 is given one last opportunity to file reply. Let the same be filed within three weeks with a copy in advance to the counsel opposite. Rejoinder thereto, if any, be filed within three weeks thereafter with a copy in advance to the counsel opposite. List the matter on 05.07.2023.

IA No. 1447/2022

It is stated by learned counsel for the applicant that on instructions, he may be permitted to withdraw the present application. Keeping in view the statement made by learned counsel for the applicant, IA No. 1447/2022 is dismissed as withdrawn.

-sd-

(Subrata Kumar Dash)
Member (Technical)

May 18, 2023

SM

-sd-

(Harnam Singh Thakur)
Member (Judicial)