

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI COURT-III**

IA-5535/2021

In

IB-292(ND)/2021

**IN THE MATTER OF IB-292(ND)/2021:**

**M/s. BALAJI DUROBUILD PRIVATE LIMITED .....Operational Creditor**

**VERSUS**

**M/s. SANDWOODS INFRATECH PROJECTS PRIVATE LIMITED**

**..... Corporate Debtor**

**AND IN THE MATTER OF IA-5535/2021:**

**MR. RAVINDER KUMAR GOEL**

**..... Applicant/IRP**

**VERSUS**

**M/s. REVOLUTION INFOCOM PVT. LTD.**

**..... Respondents**

**Order under Section 60(5) of the IBC, 2016.**

**Order delivered on 23.04.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant : Mr. Sourabh Kalia, Ishwar Mohapatra, Advocates

For the Respondent : Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Supriyo  
Banerjee, Advocates

## ORDER

### PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed by Mr. Ravinder Kumar Goel, Resolution Professional of the Corporate Debtor seeking directions of this Adjudicating Authority to take action against M/s. Revolution Infocom Private Limited, under Section 235A of Insolvency and Bankruptcy Code, 2016 (“**Code**”) for making wilful and false disclosure and concealment of facts in Claim Form-C in an attempt to be considered as a Financial Creditor and be a member of the Committee of Creditors (“**CoC**”) in the Corporate Insolvency Resolution Process initiated against the “M/s. Sandwoods Infratech Projects Private Limited” and is seeking the following relief:-

*“Therefore, in light of the foregoing facts narrated above it is most respectfully prayed that this Hon'ble Tribunal may be pleased to allow this present application and may take action against the Respondent company under Section 235A of the code for making a wilfully false and fraudulent disclosure and suppressing material facts in claim Form-C in an attempt to pass itself off as a financial creditor and enter the committee of creditors.*

*And/Or;*

*Any other order that this Hon'ble Tribunal may be pleased to pass in facts and circumstances of the matter.”*

### **2. Brief Background of the Case: -**

- i. An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 was filed by “M/s. Balaji Durobuild Private Limited”, the Operational Creditor/Applicant, seeking initiation of CIRP against “M/s. Sandwoods Infratech Projects Private Limited”, the Corporate Debtor/ Respondent. This Tribunal vide order dated 25.10.2021 admitted the petition and initiated CIRP and also appointed Mr. Ravindra Kumar Goel as the Interim Resolution Professional (“**IRP**”) who was later confirmed as the Resolution Professional (“**RP**”) by this Tribunal vide Order dated 16.12.2021.
- ii. In response to the Public Announcement made by IRP, the Respondent filed its Claim in Form-C dated 06.11.2021 vide E-mail dated 08.11.2021, claiming itself to be financial creditor and claiming an amount of Rs. 15,74,94,870.74/-.

- iii. The first Meeting of Committee of Creditors ("**CoC**") was held on 24.11.2021, in which meeting the Respondent was invited to participate as Member of CoC on the strength of his claim. In the Minutes of the Meeting dated 24.11.2021, an objection was raised by a Member of CoC that Appellant being 'related party' cannot be part of the CoC.
- iv. On same day, i.e., 24.11.2021, an email was sent by IRP to the Respondent asking clarification, to which no reply was submitted. On next day, i.e., 25.11.2021, IA No.5535/2021 was filed by IRP seeking direction to take action against the Respondent Company under Section 235A of the Code for making wilful and false disclosure and concealment of facts in Claim Form-C.
- v. On 29.11.2021, an email was sent by IRP to the Respondent holding the Respondent as a 'related party' to the Corporate Debtor on the basis of objection raised by Punjab National Bank in the CoC meeting.
- vi. The Resolution Plan was approved by the CoC on 04.05.2022. On 06.05.2022, an IA was filed by the Appellant being IA No.2325/2022 seeking a direction to include the Appellant as CoC Member.
- vii. Both the Interlocutory Applications being IA No. 5535/2021 and IA No. 2325/2022 came for consideration before this Tribunal and vide Order dated 24.08.2022, IA No. 2325/2022 filed by the Respondent was dismissed affirming the communication of the IRP that the Respondent is a 'related party' of the Corporate Debtor.
- viii. This Tribunal vide Order dated 24.08.2022 made an observation in IA-5535/2021 which is reproduced as follows:-

*“Since we have taken a view in IA-2325/2022, that the Resolution Professional was correct in taking into consideration the additional material/information provided by some of the Financial Creditors and thereby re-designating the Applicant from Financial Creditor to Financial Creditor - Related party and further in view of the fact that such information was not disclosed by the Applicant in Form-C, we feel that IA-5535/2021 needs to be heard separately.*

*Therefore, List IA-5535/2021 on 21.09.2022.”*

- ix. The Respondent filed an Appeal before the Hon'ble NCLAT challenging the Order dated 24.08.2022, the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1259 of 2022 vide Order dated 23.11.2022 upheld the order of this Tribunal rejecting IA No.2325/2022 filed by the Respondent and dismissed the Appeal.
  - x. This Tribunal vide Order dated 10.08.2023 approved the Resolution Plan of the Corporate Debtor bearing IA No. 2414/2022.
3. It is the case of the Applicants that the Respondent creditor filed claim Form-C dated 06.11.2021, claiming an amount of Rs 15,74,94,870.74/ as a financial creditor of the corporate debtor without disclosing the fact that he is a related party to the Corporate Debtor.
  4. The Respondent has filed its Reply Affidavit stating that it is not a related party of the Corporate Debtor in as much as the Respondent Company is not a Shareholder of the Corporate Debtor and does not have any representation on its Board of Directors, directly or indirectly. Further, the Shareholders and Directors of the Applicant Company do not have any Shareholding in the Corporate Debtor and have never represented on the Board of Directors of the Corporate Debtor.

### **5. Analysis and Findings**

- i. We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Respondent.
- ii. The main issue is that whether there was any mala fide intention on part of the Respondent in suppressing material fact that the Respondent Company is a related party of the Corporate Debtor.
- iii. Ld. Counsel for the Respondent submits that there was absence of any mala fide intention as the Respondent had filed an appeal against the Order of this Tribunal. It is also submitted that the present application has become infructuous as the Resolution Plan has already been approved by this Tribunal in IA 2414/2022 vide Order dated 10.08.2023. However, on perusal of records, we observe that the present Application has been filed on 25.11.2021, which was prior to the approval of Resolution Plan by the CoC and confirmation by this Tribunal. It cannot be said that the present Application is infructuous on the ground that the Resolution Plan has been approved by this Tribunal as the cause of action still prevails against the Respondent Company.

iv. The Respondent Financial Creditor participated in the 1<sup>st</sup> Meeting of CoC held on 24.11.2021 by misleading the IRP by filing false/misleading claim. It is settled law that the related parties of the corporate debtor do not have right of participation /representation or voting in the meetings of CoC and hence the IRP has to expunge the submissions made by the respondent from the records of the meeting and had to upgrade the voting share of the remaining CoC members after excluding the respondent financial creditor. The IRP also had to file the revised report certifying the revised voting shares of the constituents. Therefore, the Ld. Counsel for the Resolution Professional prays that the act and conduct of the Respondent Company is liable to be punished under Section 235-A of the Code.

For the sake of convenience, Section 235A of the Code is extracted below:-

**“Section 235A: Punishment where no specific penalty or punishment is provided.** *If any person contravenes any of the provisions of this Code or the rules or regulations made thereunder for which no penalty or punishment is provided in this Code, such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees.”*

v. The Hon’ble NCLAT in the case of **Writer Business Services (P.) Ltd. v. Ashutosh Agrawala, Resolution Professional for Cox & Kings Ltd.** reported in (2022) SCC OnLine NCLAT 2234 held that:

*"24. After we have come to the conclusion that Section 235A is a provision for awarding a punishment of fine and the provision is for punishment of an offence. The trial of such offence has to be as per Section 236 on taking cognizance by Special Court by complaint made by the Board or Central Government for punishment of a person.*

*For any offence law prescribe a procedure which broadly requires framing of charges and opportunity to answer the same. In event, it is accepted that power under Section 235A can be exercised by the Adjudicating Authority while passing orders on an IA filed for different reliefs pertaining to CIRP, the person punished with fine may be deprived of his right to answer charge of an offence."*

- vi. It is clear from the observation of the Hon'ble NCLAT in the aforesaid Order that this Adjudicating Authority does not possess powers to impose fine under Section 235A. This miscellaneous provision, which provides for punishment when no specific penalty or punishment is provided, should be read in conjunction with Section 236, which states that offences under this code should be tried by a Special Court established under Chapter XXVIII of the Companies Act, 2013.
- vii. Since, the view taken by this Tribunal in IA 2325/2022 vide Order dated 24.08.2022 that the Respondent Company concealed the fact of being a related party of the Corporate Debtor has been upheld by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1259 of 2022 vide Order dated 23.11.2022, we are of the considered view that the present matter be referred to IBBI for taking appropriate action against the Respondent Company under Chapter VII of IBC, 2016.
- viii. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:
- I. The Application bearing **IA-5535/2021** filed by the Applicants is **disposed of in above terms.**
  - II. The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record and compliance.
- No order as to costs.

**-Sd-**  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**