

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI**

MA 1253/2018 in
CP (IB) 1329/I&BP/2017

Under section 60(5)(c) of the IBC, 2016

Mr Sunil Gopichand Teckchandani &
Ors.

... Applicants

Vs

Metallica Industries Limited through
Jitender Kumar Jain,
Interim Resolution Professional Respondent

In the matter of

State Bank of India

... Financial Creditor

v/s.

Metallica Industries Ltd.

... Corporate Debtor

Order delivered on 29.10.2018

Coram: Hon'ble Shri V. P. Singh, Member (Judicial)
Hon'ble Mr Ravikumar Duraisamy, Member (Technical)

For the Applicant: Adv. Amin Arsiwala
a/w Adv. Raghav Shekhar
i/b The Law Point for Applicant

For the Respondent Mr. Jitender Kumar Jain –
Resolution Professional
Rohit Gupta i/b Girin Pandit

Per V. P. Singh, Member (Judicial)

ORDER

1. The Miscellaneous Application No.1253 of 2018 is filed by the Applicants under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 on behalf of the individuals who have purchased units in a "Kamla Industrial Park" which is an industrial area which is located at Kandivali (W). The Applicants purchased these units from a Company bearing name "Metallica Industries Ltd." from now on referred to as the "Corporate Debtor". The Corporate Insolvency Resolution Process has been initiated against the Corporate Debtor upon an Application filed by State Bank of India under Section 7 of the I&B Code, 2016 and Mr Saket Jain had been appointed as the Interim Resolution Professional to conduct the corporate insolvency resolution process of the Corporate Debtor. The Applicants have filed this present Application against the actions of the Respondent Resolution Professional, whereby he is deliberately preventing the Applicants and other Unit Purchasers from participating in the Corporate Insolvency Resolution Process. Applicant has sought relief to stay the corporate insolvency resolution process of the Corporate Debtor pending the admission of the claims of the Applicants and other Unit Purchasers of the said development project. Applicants had further sought declaration that the constitution of Committee of Creditors of the Corporate Debtor is illegal, unlawful and contrary to the provisions of I&B Code, 2016.

2. The Respondent, appearing along with the Advocate, made a request that time be given for filing objections. The Ld. Counsel appearing on behalf of the Applicants requested that corporate insolvency resolution process be stayed.

We have heard the parties. This is to be clarified that in the case of Arcelormittal India Pvt. Ltd. v/s. Satish Kumar Gupta & Ors. in Civil Appeal No.9402-9405 of 2018, the Hon'ble Supreme Court has specifically laid down the law that:

What is important to note is that the committee of creditors shall not approve a resolution plan where the resolution applicant is ineligible under section 29 A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available. Once approved by the committee of creditors, the resolution plan is to be submitted to the adjudicating authority under section 31 of the code. It is at this stage that a judicial mind is applied by the adjudicating authority to the resolution plan so submitted, who then, after being satisfied that the plan meets (or does not meet) the requirements mentioned in section 30, may either approve or reject such plan.-----

“Section 60(5) when it speaks of the NCLT having jurisdiction to entertain or dispose off any application or proceeding by or against the Corporate Debtor or Corporate person, does not invest the NCLT with the jurisdiction to

interfere at the Applicant's behest at a stage before the quasi-judicial determination made by the Adjudicating Authority. In non-obstante clause in Section 60(5) is designed for a different purpose; to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against the Corporate Debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose off of such applications or proceedings."

6. By law laid down by the Hon'ble Supreme Court in the Arcelormittal case, it is clear that before approval of the Resolution Plan by the CoC, **no Application can be entertained by the Adjudicating Authority.**

7. In MA 1253 of 2018 Applicant has sought relief of staying the process of CIRP and further sought declaration that constitution of CoC is unlawful is not permissible. The Application can be entertained by the Adjudicating Authority u/s.60(5) of I&B Code, 2016 only after the approval or disapproval of the Resolution Plan by the CoC. Therefore, it is clear that relief sought by the Applicants is not permissible in law at this stage since the Resolution Plan is not yet approved. Therefore, the Application moved at this stage u/s.60(5) of the I&B Code, 2016 is pre-mature hence liable to be rejected as not maintainable.

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MA 1253/2018 IN CP(IB)-1329/2017

8. This Miscellaneous Application 1253 of 2018 is disposed off accordingly. The Registry is hereby directed to communicate this order to the parties, within seven days from the date order is made available.

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)