

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

MA 1565/2018

in

C.P. No. 382/I&BP/NCLT/MAH/2018

Under Section 60(5) and Section 7 of
IBC, 2016

In the matter of

Edleweiss Asset Reconstruction Co. Ltd.

...Petitioner

vs.

RTIL Ltd.

... Respondent

M.A. No. 1565/2018

RTIL Ltd. Employees Association,

... Applicant

Order delivered on 01.01.2019

Coram: Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For Applicant: Mr. Karl Tamboly, Ms. Veena Advani, Advocates.

For RP: Mr. Animesh Bisht, Mr. Harpreet Singh Gupta,
Advocates i/b Cyril Amarchand Mangaldas.

For Creditors: Mr. Prakash Shinde, Mr. Darshit Dave, Ms. M. Swati,
Advocates, i/b MDP & Partners.

For Petitioner: Mr. Rahul Dev, Advocate i/b Argus Partners.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This is an Application filed by an unregistered employees union of RTIL Ltd. seeking the following reliefs:-

- a) The applicants/their representatives be given an opportunity of being heard and to put forth a Resolution Plan for the Corporate Debtor for consideration of the Committee of Creditors, and that no steps be taken towards liquidation of the Corporate debtor without giving an opportunity to the Applicant to present its case;
- b) That this Hon'ble Tribunal be pleased to permit the Applicant to submit a resolution Plan to the Resolution Professional for consideration by the Committee of Creditors;
- c) That this Hon'ble Tribunal be pleased to order and direct the Resolution Professional and the Committee of Creditors to consider the Resolution Plan of the Applicant (on the same being permitted to be submitted);

- d) That the Resolution Professional be directed to conduct the management of the affairs of the Corporate Debtor in a way that utmost efforts are made to maintain the business operations of the Corporate Debtor as a going concern and preventing mis-utilization of the resources of the Corporate Debtor for the benefit of RNT Distributors Pvt. Ltd.;
- e) That pending the hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to pass an order directing the Resolution Professional to provide access to the Applicants to the information and data of the Corporate Debtor in respect of its business for purposes of preparation of the Resolution Plan;
- f) That pending the hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to permit the Applicants to submit a Resolution Plan to the Resolution Professional;
- g) That pending the hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to order and direct the Resolution Professional and the Committee of Creditors to consider the Resolution Plan of the Applicants (if the same is permitted to be submitted).

2. This application was filed on 19.12.2018. The Corporate Insolvency Resolution Process (CIRP) period ends on today i.e. 01.01.2019. Now the Counsel for the applicant submits that they have identified an investor who is interested in submitting the Resolution Plan jointly with this Applicant Association. It is further submitted that the applicant applied for the registration of the association and the same is pending with the concerned authorities, which will take few more days for registration.

3. The Resolution Professional is also present and submits that the Committee of Creditors in the meeting held on 14.12.2018 decided to liquidate this Company in view of the fact that no resolution plan was submitted by anybody even though Expression of Interest was given by 8 persons. It is also reported that the debt of the Corporate Debtor is around 4000 Crores whereas liquidation value is very meagre; the Company is incurring cash losses even though the Plant is functioning with 20% to 30% of its production capacity. The Resolution Professional also submits that due to lack of working capital facilities

the plant could not run at its full capacity. It is further submitted that the basic criteria for submission of Resolution Application is that the Resolution Applicant shall have the net worth of Rs. 50 Crores even to make such a proposal. The Resolution Professional further submitted that an application seeking liquidation of the company is also filed in accordance with the decision of the Committee of Creditors to liquidate the Company.

4. In these circumstances the employees association has come before this Bench with this application praying that they are making an honest attempt to revive this Company. Considering the background and the quality of the products produced by the Corporate Debtor which are sold at a very high premium in the market, this Bench is of the view that an opportunity may be given to the employees association in view of the fact that, if the Company is liquidated, considering the meagre liquidation value, the creditors will be most affected and the workmen will be losing their livelihood and having been convinced that there is seriousness in the efforts made by the workers. The Corporate Debtors technology and other valuable resources will also be wasted if the liquidation is ordered.

5. During the last hearing this bench observed that the association is not registered and the interested investor is not an applicant before this Bench. Considering the net worth requirement for submission of Resolution Plan, the Applicant Association cannot be a Resolution Applicant. Today one Mr. Pankaj Agrawal, Board Member of Silverdale Services Ltd. (subsidiary of S. P. Growth Partners, which has worldwide presence, Unit B, 16/F, JCG Building, 16 Mongkok Road, Kowloon, Hongkong) is present and submits that they have enough financial and technical resources and it will take 4 to 6 weeks to submit a Resolution Plan after the receipt of the Information Memorandum from the Resolution Professional. The Ld. Counsel appearing for one of the CoC member submits that, 4 to 6 weeks is a long time and opposed this application stating that if the Resolution Period is extended, the Corporate Debtor will incur further losses which will be detrimental to their interest. In this regard the abovesaid Mr. Pankaj Agrawal submits that they will try to submit the Resolution Plan at the earliest, after the receipt of Information

Memorandum and after a visit to the site. The Counsel representing another CoC member submits that no other Resolution Applicant be permitted to submit their Resolution Plan since it may further delay the CIRP but the Resolution Professional submits that there is another investor from UK, who evinced keen interest to invest in the Company and would be in the position to come up with a proper plan soon after the Christmas vacation ends.

6. In the matter of "*Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta and Ors.*", the Hon'ble Supreme Court observed that "the 'Corporate Debtor' consists of several employees and workmen whose daily bread is dependent on the outcome of the CIRP. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible".

7. The main objective of the Code is for Resolution of the Corporate Debtor rather than liquidation. If the liquidation is ordered that too when the liquidation value is very meagre, nobody will gain. Considering the primary objective of the Code which prefers Resolution of any Corporate Debtor even at the remotest of possible opportunity, yes, this Bench is certainly inclined to afford an opportunity to the investor identified by the Applicant Association to submit the Resolution Plan even at the cost of excluding the time periods that got wasted in waiting for prospective investors, if at all he is eligible and financially sound in accordance with the real spirit of the Code. Accordingly the investor may file an appropriate application on or before 07.01.2019 with details of its net worth so that further directions will be given in this matter in this regard.

8. It is made very clear that the Resolution Plan has to be submitted only by the Investor and not by the Applicant Association. In order to enable the investor to submit the Resolution Plan (if he otherwise eligible), it is necessary that time period has to be either extended or time period from the date of filing of this application till the date of disposal of this application is to be excluded from the CIRP process. However, under the Code it is not possible to extend the 270

days period and hence this Bench is inclined to exclude the period from the date of filing this Application (19.12.2018) till the disposal of this Application from the CIRP period, so that above said investor or any other investor can submit their resolution plan which would revive the hopes of keeping the aspirations of workers, creditors and above all in the public interest.

9. List this matter on 08.01.2019 for filing appropriate application by the above said investor and the said investor is directed to provide the details of net worth etc. to the Resolution Professional on or before 07.01.2019 so that the Resolution Professional can verify the eligibility of the proposed investor. Further the Resolution Professional is directed to maintain a regular contact with the other UK investor who interacted with him and exchange the necessary details as per the Code if they satisfy the eligibility criteria.

10. List this matter on 08.01.2019 for further consideration.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)