IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-II

IA. No. 2324/2023
In
CP(IB)No. 2808/MB/C-II/2018

Application filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

Filed by

1. **Mr. Akshay R. Padliya**
2. **Ms. Shabnam A. Padliya**
3. **Vaibhav J. Padliya**
4. **Mr. Vipul R Padliya**

...Applicants

Versus

Mr. Anuj Bajpai
(Resolution Professional)

...Respondent

In the matter of

Dena Bank

...Financial Creditor

Versus

Panache Aluminium Extrusions Private Limited

...Corporate Debtor

Order delivered on: - 21.12.2023

Coram:

Anil Raj Chellan	**Kuldip Kumar Kareer**
Member (Technical)	**Member (Judicial)**

Appearances -

For the Applicant: Adv. Nausher Kohli a/w CA Ankit Pitti.

For the Respondent (RP): Adv. Rahul Gaikwad.

ORDER

Per Anil Raj Chellan, Member Technical

1. The present Interlocutory Application has been filed by the erstwhile/suspended directors of Panache Aluminium Extrusions Private Limited ('the Corporate Debtor') seeking an order to: (a) reject the Resolution Plan submitted by the consortium of Mr. Arun Duggar and Mr. Vinod Kothari ('Resolution Applicant') and approved by the Committee of Creditors ('CoC');

   (b) allow the Applicants to submit their Resolution Plan, and;

   (c) pass an order declaring the lease granted in favour of the Resolution Applicant with respect to the plant and building of the Corporate Debtor as illegal, null and, void and the Resolution Applicant to be directed to hand over the possession of the same to the Resolution Professional, the Respondent.

Facts of the case:

2. On an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code'), a Corporate Insolvency Resolution Process ('CIRP') was initiated against the Corporate Debtor vide order of this Tribunal dated 31.12.2019 and appointed the Respondent as its Interim

Resolution Professional ('IRP'). Subsequently, the members of the CoC confirmed appointment of the Respondent as the Resolution Professional ('RP').

3. The Respondent issued Expression of Interest ('EOI'), Information Memorandum and request for Resolution Plans from prospective Resolution applicants. In response to the above, the Respondent in the second/third rounds received two Resolution Plans which after various amendments and modifications were put to vote. Finally, CoC at its meeting held on 30.3.2021 approved the Resolution Plan submitted by Resolution Applicants by 99.88% of votes and was declared as Successful Resolution Applicant.

4. The Respondents, sometime in May, 2021 filed an application bearing IA No. 1045/2021 before this Tribunal to seek the approval of the Resolution Plan submitted by the Resolution Applicants.

5. In the above background, the Applicants have filed the present application.

Contentions of the Applicants

6. The approval of the Resolution Plan submitted by the Resolution Applicant is objected by the Applicants on the grounds that:

(a) No copy of the Resolution Plan was served upon the Applicants during the consideration of the Resolution Plan by the CoC and the copy of the Resolution Plan was served upon the Applicants after the voting by CoC. The Applicants contended that non-supply of copy of Resolution Plan is against the position of law settled by the Hon'ble Supreme Court in Vijaya Kumar Jain v. Standard Chartered Bank; Civil Appeal no. 8430/2018.

(b) The Resolution Applicant has not disclosed the source of funds under the Resolution Plan and has not produced any evidence to substantiate his ability to raise the Resolution amount.

(c) The CoC had not deliberated on the feasibility and viability of the Resolution Plans and not recorded their reasons. As such CoC has not complied with the provisions of the Code.

(d) The Resolution Plan submitted by the Resolution Applicant suffers from several defects such as the Resolution Applicants have had business relations with the Corporate Debtor before CIRP and an operational creditor.

(e) The Respondent illegally and in collusion with the Resolution Applicant given on lease the manufacturing unit of the Corporate Debtor for a monthly rent of Rs 7.5 lakhs alongwith security deposit of Rs 75 lakhs. The Applicants contended that the Resolution Applicants should not have been given the manufacturing unit on lease pending approval of the Resolution Plan submitted by them. The Applicants have also challenged the terms of lease.

(f) The Applicants contended that the Respondent conducted the CIRP of the Corporate Debtor in an irregular manner and has deliberately failed to maintain the Corporate Debtor as a going concern.

7. Based on the above grounds, the Applicants contended that the Resolution Plan submitted by the Resolution Applicants suffers from grave irregularity and illegality and is against the provisions of the Code and applicable Regulations.

8. The Applicants submitted that the Corporate Debtor, is a registered MSME and the Applicants being the erstwhile promoters and directors of

the Corporate Debtor are interested in revival of the Corporate Debtor and intend to submit their own Resolution Plan. The Applicants expressed their willingness to submit a Resolution Plan with higher resolution amount (Rs 191628970/-) with an upfront sum of Rs 4.6 crores within 30 days of approval of their Resolution Plan.

Contentions of the Respondent

9. The Respondent denied the allegations made by the Applicants and stated that the Applicants had been filing Interlocutory Applications repeatedly to somehow intervene and delay the resolution of the Corporate debtor. Three such IAs (IA No 1358/2022, IA No. 1482/2022 and IA No. 1719/2022) were filed with the same objections, but subsequently withdrawn after filing the present IA.

10. The Respondent contended that the Applicants were attending the CoC meetings and were fully aware of the terms of the Resolution Plan. The Applicants were also been provided with a copy of the Resolution Plan.

11. The Respondent contended that the CoC approved the Resolution Plan after considering the viability and feasibility of the Resolution Plan which forms a part of the commercial wisdom exercised by the CoC.

12. The manufacturing unit of the Corporate Debtor was given on lease to the Resolution Applicants through a transparent process and with the approval of the CoC. The above action was with the intent of keeping the Corporate Debtor as a going concern and to cover the CIRP costs by generating additional amounts over and above the resolution amounts specified in the Resolution Plan.

13. The Respondent submitted that the CIRP process was conducted in a

proper manner and in accordance with the Code and no new plan can be considered at this stage.

14. In the circumstances, the Respondent sought dismissal of the present petition and approval of the Resolution Plan submitted by the Resolution Applicants.

Analysis and Decision

15. We have heard the learned Counsels for the parties and perused the records and decisions relied by them.

16. The Applicants contended that no copy of the Resolution Plan was supplied to the Applicants during the consideration of the same by the CoC. On the other hand, the Respondent contended that a copy of the Resolution Plan had been given to the Applicants. It is observed that the third round of advertisement inviting Expression of Interest was published by the Applicant on 12.1.2021 and the last date for submission of plans was on 1.3.2021. The Respondent received two eligible Resolution Applicants and the same was discussed on 14th CoC meeting held on 15.3.2021, 15th meeting held on 25.3.2021 and finally approved the Resolution Plan submitted by Resolution Applicant on 30.3.2021. As per the email correspondence produced by the Applicants (Exhibit C to the petition), the Applicants received relevant portion of the Resolution Plan, page no's 48-53 on 22.3.2021 and complete set of the Resolution on 31.3.2021. Thus it is clear that the Applicants were given relevant portion of the Resolution Plan to enable the Applicants to participate and contribute in the discussions during the CoC meeting at the time of its approval. We therefore, hold that sufficient information with respect to the Resolution Plan as held in the decision (Civil Appeal No. 8430/2018) of

the Hon'ble Supreme Court in the case of Vijay Kumar Jain v. Standard Chartered Bank and Ors has been provided.

17. The Applicants also objected to the Resolution Plan on the grounds that the Resolution Applicant has not disclosed the source of funds, not produced any evidence to substantiate his financial capability and CoC has not recorded on the feasibility and viability of the Resolution Plan. It is observed that those aspects form part of the commercial wisdom being exercised by the CoC and there is no plausible reason to question the decision of the CoC has been brought out by the Applicants. While the Applicants stated that the Resolution Plan submitted by the Resolution Applicant suffers from several defects, the incidents pointed out by the Applicants are neither shown to be in violation of the Code/Regulations or materially impacting the commercial decision of the CoC. We are, therefore, not inclined to appreciate the same.

18. As regards the contentions and allegations regarding the leasing out of manufacturing unit of the Corporate Debtor, it is observed that the Resolution Applicants were selected through a public advertisement and that rent of Rs 7.5 lakhs per month alongwith security deposit of Rs 75 lakhs appear to have been obtained. The above transaction is evidently with the approval of CoC and in the process earned additional amount for the benefit of the creditors. Needless to add here that the lease out consequently helped the Corporate Debtor to remain as going concern and thereby preserve the economic value of the Corporate Debtor. We do not see any objection for an operational creditor who had transactions with the Corporate Debtor prior to the CIRP to compete in the race for acquiring the Corporate Debtor as provided under the Code. There is not even an allegation that the Resolution Applicant is ineligible u/s 29A of

the Code. Thus we have no hesitation to form an opinion that the Resolution Applicant does not suffer any disqualification as per the provisions of the Code/Regulations.

19. No irregularity on objection has been brought to our notice to reject the Resolution Plan submitted by the Resolution Applicants. Though the Applicants have stated that the Corporate Debtor is an MSME and they are eligible to submit a Resolution Plan in respect of the Corporate Debtor, it is observed that no Resolution Plan by the Applicants appears to have been filed by the Applicants. A proposal to submit a Resolution Plan, even if it is on better terms, cannot be entertained at a belated stage, i.e., after approval of the Resolution Plan by the CoC.

20. Considering the above, we do not consider any merit in the objections raised by the Applicants to the Resolution Plan submitted by the Resolution Applicant and hence, the IA deserves to be dismissed.

21. In the result, **IA No. 2324/2023 is dismissed**.

Sd/-	**Sd/-**
ANIL RAJ CHELLAN	**KULDIP KUMAR KAREER**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**