

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

**IA (IB) No. 175/CTB/2019  
Connected with  
TP No. 42/CTB/2019  
Arising out of  
CP (IB) No. 251/KB/2017**

**CORAM: 1. Ms. Sucharitha R. (J)  
2. Shri Satya Ranjan Prasad (T)**

**In the matter of:  
INSOLVENCY AND BANKRUPTCY CODE, 2016.**

**In the matter of:  
An application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 and under Rule 11 of the National Company Law Tribunal Rules, 2016.**

-And-

**In the Matter of:  
Rural Electrification Corporation, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at Core – 4, SCOPE Complex, 7, Lodhi Road, New Delhi – 110 003.**

... .. **Financial Creditor**

-Versus-

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**Ferro Alloys Corporation Limited**, a company incorporated under the provisions of Companies Act, 1956 having its Registered Office at D.P. Nagar, Village P.O. Randia, District – Bhadrak, Odisha – 756 335.

... .. Corporate Debtor

-And-

**In the Matter of:**

1. **Rai Bahadur Shree Ram & Company Pvt. Ltd**, having its Registered Office Situated at Shree Ram Bhawan, Tumsar, Dist. – Bhandara, Maharashtra – 441 912;
2. **Ram Kishan Saraf**, resident of 191 – A, Ekta Marg, Western Avenue, Sainik Farms, New Delhi – 110 062.

... .. Applicants

-Versus-

1. **Mr. Bhuvan Madan**, Resolution Professional of M/s Ferro Alloys Corporation Ltd.;
2. **Committee of Creditors of Ferro Alloys Corporation Ltd.**
3. **REC Ltd.;**
4. **Sterlite Power Transmission Ltd.**, having its Registered Office Situated at 4<sup>th</sup> Floor, Godrej Millennium, 9 Koregaon Road, Pune, Maharashtra – 411 001.;
5. **Ferro Alloys Corporation Ltd.**

... .. Respondents

Sd.

Sd.

**Counsels on record:**

1. Mr. D. Basu Adv.] For the REC Ltd.

1. Mr. Saurav Panda, Adv. ]
2. Ms. Charu Bansal, Adv. ] For the Resolution Professional.
3. Mr. Raj Mohanty, Adv. ]

1. Mr. Prasenjeet Mohapatra, Adv.]
2. Jr. Standing Counsel, GST ] For the CA No. 162 & IA No.176 of 2019

1. Mr. A.N. Das ]
2. Mr. N. Sarkar ] For Intervenor in CA (IB) No. 160/CTB/2019.
3. Mr. Aamir Khan ]

1. Mr. K.C. Satapathy ] For Financial Creditor, BOI.

1. Mr. Jishnu Saha, Sr. Adv. ]
2. Mr. Rajarshi Dutta, Adv. ]
3. Mr. N.S. Aulwalia, Adv. ]
4. Mr. Saswat Acharya, Adv. ] For the erstwhile Promoters.
5. Mr. Adhish Sharma, Adv. ]
6. Mr. A. Mohanty, Adv. ]
7. Mr. A.K. Dey, Adv. ]

1. Mr. Lalatendu Mohanty ] For the CA No. 92/CTB/2019.

1. Mr. Diwakar Maheshwari, Adv. ]
2. Mr. Amit Patnaik, Adv. ] For the Sterlite Power.
3. Ms. Pratiksha Mishra, Adv. ]

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**Date of Pronouncement of Order: 30<sup>th</sup> day of January, 2020**

**ORDER**

**Per Ms. Sucharitha R., Member (J):**

1. This application has been filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules by Rai Bahadur Shree Ram and Company Pvt. Ltd. and Anr. one of the shareholders of the Corporate Debtor. The applicant submits that on 07<sup>th</sup> November, 2019 the settlement proposal was submitted to REC Ltd., 3<sup>rd</sup> respondent herein and Financial Creditor with 91 % voting share in Committee of Creditors, under Section 12 A of the Insolvency and Bankruptcy, Code, 2016. Respondent No. 3 herein being a majority Financial Creditor holding 91 % of the voting rights. By E-mail dated 11.11.2019, the 3<sup>rd</sup> respondent sought certain clarifications on the settlement proposals which was also given by the applicant by E-mail dated 12.11.2019. The applicant was of the view that the settlement proposals shall be taken up at the 31<sup>st</sup> Committee of Creditors Meeting to be held on 12.11.2019. However, the representatives of the applicant were never being invited, without going through the settlement proposal,

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the 3<sup>rd</sup> respondent has rejected the settlement proposals of the applicant. The proposal submitted by the applicant is far superior to that of the approved Resolution Plan. Hence, it is logically appropriate that settlement proposal ought to be accepted. Therefore, the applicant seeks direction “to direct Committee of Creditors to reconsider settlement proposal” and “to rejected the approval to the Resolution Plan of STPL, Respondent No. 4”.

2. The respondent has filed its reply stating therein that the proposals was submitted by the applicant under Section 12 A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30 A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
3. The question of law is withdrawal application under Section 7 ought to be filed by the applicant bank i.e. 3<sup>rd</sup> respondent herein through the Resolution Professional who is a first respondent herein, if it is being approved by 90 % of the shareholding of the Committee of Creditors. In this case, the Committee of Creditors has rejected the proposal, after due consideration, and the majority shareholder who is a 3<sup>rd</sup> respondent herein has not accepted the settlement proposals offered by the applicant. Further, respondent states that this application is filed only to stall the

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successful Resolution Plan to go forward. The respondent further submits that this IA No. 175/CTB/2019 has been filed by the erstwhile promoters/shareholders only to thwart the proceeding of the Resolution Plan as a last attempt to prevent smooth sailing and culmination of the Corporate Insolvency Resolution Process.

4. We have heard both the parties and gone through the documents filed in support of the case. The settlement proposals submitted by the applicant and the Resolution Plan submitted by the Resolution Applicants cannot be taken on the same platform and considered. There are two different way of looking at the problem, the settlement proposal submitted by the applicant is only a revival plan of a sick industry. Whereas the Resolution Plan is a comprehensive Resolution Plan for the welfare of the all creditors and stakeholder of Corporate Debtor, vis-à-vis development of the economy of the country. Hence, the concession given by the Financial Creditors and other Creditors and to make the Resolution Plan more viable are decided on various other evaluation matrix. The same cannot be done in the question of a promoter who is desperately trying to hold on to the sinking ship. The Corporate Debtor is not per se entitled to any waiver of interests. It is purely the prerogative of the creditor to accept or reject the settlement proposal. This Court cannot

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interfere with the same and cannot give any directions to the Committee of Creditors/Financial Creditor to accept the settlement proposal. The only way this Adjudicating Authority ought to be satisfied is that there is no collision or fraudulent transactions between the Resolution Professional, Committee of Creditors and the Resolution Applicants/Successful Resolution Applicant. There is no allegations of fraudulent transactions nor violation of any of the Rules and Regulations, none of the parties have alleged, any non-compliance of the Regulations of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is clearly the prerogative of the Committee of Creditors, and its commercial wisdom to either accept the settlement proposals or reject the same. If *prima facie*, there is no collision or fraudulent then this Adjudicating Authority cannot sit on evaluation of the betterment of the settlement proposals in comparison with the Resolution Plan. It is further pointed out during oral argument that the proposal for settlement was given due consideration and rejected after application of mind. Hence, this is only an attempt to divert the attention, delay the proceeding and not a genuine proposal to settle the dues to the Financial Creditor. The Corporate Insolvency Resolution Process commenced on 06<sup>th</sup> July, 2017 and since then the same was fought before various Courts and finally the Resolution Plan was approved by the Committee of Creditors on 14<sup>th</sup> November, 2019.

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5. The Corporate Debtor had submitted two settlement proposals, prior and during Corporate Insolvency Resolution Process. The 3<sup>rd</sup> respondent has brought to the notice of this Adjudicating Authority that one-time settlement proposals were submitted vide Offer Letter dated 07.09.2016. Thereafter, another one-time Settlement Proposal was submitted vide Offer Letter dated 04.04.2018. The applicant herein as a promoter offered sum of Rs. 5,30,000,000/- (Rupees Five Hundred and Thirty Crores) on 04.04.2018 towards full and final settlement of the outstanding dues of REC Ltd. i.e. 3<sup>rd</sup> respondent herein. The Board of Directors of the 3<sup>rd</sup> respondent i.e. REC Ltd. in its 442 Meeting held on 28.05.2018 approved the OTS offer. However, the applicant failed to honour the same. Hence, in spite of opportunities, the applicant was unable to meet its financial commitments. When the applicant has failed to honour its commitment, in other words UNABLE to do so, there is no other option but to go ahead with Corporate Insolvency Resolution Process. Furthermore, the 3<sup>rd</sup> respondent has also stated that the proposal submitted by the applicant herein on 07<sup>th</sup> November, 2019 is not a full and final settlement but rather a reconstructing proposal ought to be complied with the provisions of RBI Circular dated 07.06.2019. The substantial provision of debt has to be evaluated/rated by the Independent

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Credit Rating Agency with RP 4 rating. Applicant proposal is not backed by any credit rating.

6. Hence, we concluded that approval of Resolution Plan of SPTL 4<sup>th</sup> respondent has been allowed in IA No. 157/CTB/2019 by this Adjudicating Authority. There is no inconsistency, the Rules and Regulations have been followed. The relief of the applicant to direct the Committee of Creditors to reconsider the settlement proposal is rejected. The Committee of Creditors/REC Ltd. has considered the settlement proposal, after due deliberation has rejected the same. Hence, there is no scope under law, nor under principle of natural justice to give any such direction by the Adjudicating Authority.

7. In view of the same, this IA (IB) No. 175/CTB/2019 is **DISMISSED.**

  
**Shri Satya Ranjan Prasad**  
**Member (T)**

  
**MS. Sucharitha K.**  
**Member(J)**

*Signed on this, the 30<sup>th</sup> day of January, 2020*

***Santosh\_P.S.***