

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

I.A. No. 331 of 2022 in
CP (IB) No.682/07/HDB/2018

In the matter of

M/S MANTENA LABORATORIES LIMITED

Between:

Bank of Maharashtra,
Zonal Office,
4-3-448 to 460 & 465 to 468,
First Floor, Vinoothana Pittie's Majesty,
Gopalbagh, Near Bank Street, Koti,
Hyderabad – 500 001.

...Applicant

Vs.

Mr. Kambhammettu Sri Vamsi,
Resolution Professional of
M/s. Mantena Laboratories Ltd,
A85m DX4, Level 2, Road No.11,
Film Nagar, Jubilee Hills,
Hyderabad – 500 033.

...Respondent No.1

Committee of Creditors of
M/s. Mantena Laboratories Ltd,
6-3-005, 1st Floor, Avatar Sadan,
Plot No.44, New Bowenpally,
Hyderabad – 500 011.

...Respondent No.2

Date of Order : 06.02.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels on record:

For the Applicant : Mr. Dishit Bhattacharjee, Advocate
For the Respondent : Mr. V.S.R. Avadhani, Advocate
Order reserved on : 09.01.2024

Per : Sanjay Puri, Member (Technical)

ORDER

1. This application is filed by the Bank of Maharashtra, one of the Financial Creditors of the Corporate Debtor (CD) M/s. Mantena Laboratories Limited, being aggrieved by the 10th CoC¹ meeting held on 24.03.2022, wherein the Applicant did not receive the distribution pattern of the amounts to be received by each Financial Creditor as per the Resolution Plan.

Brief facts of the Application:

2. The CD was admitted into CIRP² by this Tribunal vide Orders³ dated 06.08.2021 and the Respondent No.1 was appointed as Resolution Professional (**RP**) of the CD. It is further stated that the Applicant had filed proof of claims in Form C on 21.08.2021 with Respondent No.1, who admitted the same in its entirety. The Applicant also claims ownership of 12.54% of the total voting share among admitted financial creditors.
3. The Applicant is aggrieved by the lack of information regarding the distribution pattern of amounts to be received by each Financial Creditor as per the Resolution Plan. Furthermore, the

¹ Committee of Creditors

² Corporate Insolvency Resolution Process

³ In CP(IB) No. 682/7/HDB/2018

Applicant claims that the minutes of the 10th CoC meeting held on 24.03.2022 were not shared. During this meeting, the distribution pattern was neither discussed in detail, voted upon, nor decided, adding to the Applicant's grievances.

4. It is stated that during the 9th CoC meeting, the RP informed that the distribution of resolution proceeds among secured financial creditors would occur in accordance with section 30(4) of the IBC. The distributions were intended to follow the order of priority among creditors as outlined in subsection (1) of section 53 of the code, taking into consideration the priority and value of the security interest of secured creditors. The distribution among secured creditors was to be determined based on ranking and the value of the security of each secured creditor. Subsequently, the 9th CoC meeting was temporarily adjourned, and no substantial deliberation took place on the aforementioned matter. The RP did not provide any distribution table, compelling the Applicant to assume their share based on their own interpretation.
5. In this context, the Applicant emphasizes that their charge extends to both current assets and fixed assets, including Plant and Machinery, Land, and Building. As a secured creditor, the Applicant is entitled to information regarding the distribution amounts among secured creditors as per the Resolution Plans, including the percentage each lender is set to receive. Notably, crucial details concerning the distribution pattern were neither communicated nor subjected to deliberation or discussion with the Applicant.

6. Moreover, it is pointed out that, the second Prospective Resolution Applicant (PRA) Mr. Shiv Charan, is allegedly involved in the ongoing legal proceedings related to Sri Krishna Jewellers Pvt Ltd and its group, and a fraud case is currently under investigation by the Enforcement Directorate. This situation raises concerns about the eligibility of Resolution Applicant Mr. Shiv Charan and Others, under section 29A of the Code. Importantly, this unresolved issue was not addressed during the CoC meetings.
7. In addition, it is submitted that, one of the Resolution Applicants Mr. MRV Prasada Raju, has been declared a wilful defaulter by the Applicant Bank. This designation renders Mr. MRV Prasada Raju ineligible to be a Resolution Applicant under Section 29A of the Code. However, Mr. MRV Prasada Raju has contested the wilful defaulter declaration before the Hon'ble High Court through WP No.30877/2021, and the matter is currently pending. The Applicant Bank is actively contesting the Writ Petition and has also filed a vacate Stay petition in the same proceeding. Consequently, the issue is sub-judice and awaiting resolution by the Hon'ble High Court.
8. It is submitted that, the distribution of the Resolution amount of the CD in the Resolution Plan should adhere to Section 30(4) of the IBC, r/w 53(1) of the IBC. This provision envisages that the Financial Creditors placed similarly are to be treated equally. This principle is stated to have been reinforced by the Hon'ble Supreme Court in the case of *India Resurgence Arc Private Limited vs. M/s. Amit Metaliks Limited and Anr in Civil Appeal No.1700/2021*, while upholding the findings of Committee of

Creditors of Essar Steel India Limited through authorized signatory vs. Satish Kumar Gupta and Ors (2020) 8 SCC 531.

Therefore, it is claimed that the financial creditors in this case must be treated equally, based on their voting share, and discrimination between first and second charge holders is impermissible.

9. Furthermore, it is submitted that, given the Applicant's voting share of 12.54%, the distribution of the amount as approved in the 9th CoC meeting is discriminatory against the Applicant. This discrepancy is in violation of the fundamental principle of the IBC, and thus, the Resolution Plan cannot be finalized on such grounds. The Applicant bank remains uninformed about the specific amount allocated to its share, and adhering to arbitrary procedures by the Resolution Professional is not acceptable.

Additionally, it is submitted that if the Resolution Plan deviates from the principle of equality and fails to treat secured financial creditors equally, court intervention becomes necessary, even within the wisdom of the CoC. Such a deviation would go against the spirit of the IBC, as emphasized in the case of *India Resurgence Arc Private Limited vs. M/s. Amit Metaliks Limited And Anr.*, Civil Appeal No. 1700/2021. In addition, the case of *IDBI vs. Mamta Binani, Deccan Chronicle Holdings Limited* in CA (AT)(Ins) No.553 of 2019, has been cited where Hon'ble NCLAT is stated to have held that there cannot be any discrimination amongst equally placed creditors. Therefore, the distribution pattern for amounts among the creditors, as currently proposed, is not legally tenable, it is asserted.

10. In light of the above facts and circumstances, the Applicant prayed this Tribunal to:
- a. stay all further proceedings with regards to the voting for the Resolution Plans as per 9th CoC meeting dated 09.03.2022, pending further orders in the present Application.
 - b. direct the Respondents to provide 12.54% of the amount to be paid to the Applicant (in accordance to its voting shares ratio), as against the decision of the CoC in the 9th CoC meeting dated 09.03.2022.
 - c. direct the Respondents to consider the objections raised by Applicant Bank in the 10th CoC dated 24.03.2022 and provide the distribution table which will determine each banks share.

Counter:

11. In response, the RP has presented the argument that the Applicant, namely Bank of Maharashtra, holds a second charge on the fixed assets of the CD and a first charge on the current assets. Other creditors fall into two categories: some have a first charge on the fixed assets and a second charge on the current assets, while there is also a third category of unsecured creditors. According to the RP, these three categories collectively constitute the CoC, and together, they are considered as Financial Creditors.
12. It is asserted that, the issue of distribution of assets was brought before the CoC and duly recorded in the minutes of the 9th CoC meeting⁴ held on 09.03.2022. The distribution plan outlined that among secured creditors, distribution would be based on ranking and the value of security held by each secured creditor.

⁴ Pg 84-202 of the Application (minutes of 1st to 9th CoC meetings).

13. Subsequently, it is stated that the Applicant raised objections⁵ to the distribution pattern on 23.03.2022, which were replied⁶ to by the RP on 24.03.2022. In response to these objections, a 10th CoC meeting was convened, during which the distribution pattern was once again thoroughly discussed. The Applicant was requested to provide further clarification on its objections; however, it objected without providing any detailed reasoning.
14. The minutes of the 10th CoC meeting were reportedly shared with the Applicant on 01.12.2022. The delay in sharing these minutes is stated to be due to the stay granted by the Hon'ble Supreme Court by its order dated 25.03.2022, in Civil Appeal No.2550 of 2022 filed by the suspended management. Subsequent to the dismissal of the aforementioned appeal by order dated 28.11.2022, the RP promptly shared the minutes of the meeting on 01.12.2022.
15. Providing further details on the distribution plan, it is clarified that, the CoC in making its decision, considered both the availability and the value of the current as well as the fixed assets. Given the absence of any value in the current assets of the CD, the Resolution Plan's consideration predominantly consisted of the value attributed to the fixed assets. As the Applicant held the first charge solely on the current assets, its priority in the distribution plan was determined accordingly, ensuring there was no discrimination. It is emphasized that the Applicant's assertions of non-compliance with the distribution pattern, lack supporting documentary evidence.

⁵ Pg 18 to 19 of the Application.

⁶ Pg 15 – 17 of the Application

16. Addressing the Applicant's concerns regarding the eligibility of Prospective Resolution Applicants, it is highlighted that M/s. Mazars Business Advisors Pvt Ltd, appointed by the CoC, examined the eligibility of the PRAs. Based on their report, Mr. Shiv Charan was deemed eligible as a 'Resolution Applicant'.
17. It is contended that the Applicant has interpreted Section 30(4) of the Code differently and has failed to grasp the principles outlined by the Hon'ble Supreme Court in the cited cases. According to the Respondent, Section 30(4) of the Code explicitly requires the Committee of Creditors (CoC) to consider the order of priority among creditors, as specified in Section 53 of the Code, including the priority and security interest of a secured creditor when examining a Resolution Plan. Additionally, the CoC is mandated to assess the feasibility and viability of the plan before making a decision.
18. The Respondent emphasizes that the CoC, in its meetings, deliberated and discussed the objections raised by the Applicant and was assured that, the distribution would be carried out in accordance with the provisions of the Code.
19. Furthermore, the Respondent cites the Hon'ble Supreme Court's decision in ICICI Bank vs. SIDCO Leathers Ltd. &Ors, (2006) 10 SCC 452, which is stated to have established a distinction between first charge holders and second charge holders. The Respondent contends that Section 529 of the Companies Act, analogous to Section 53 of the Code, does not override the inter se priority of creditors, and Section 30 of the Code also considers the inter priority of creditors. As such, the distribution falls

within the jurisdiction of the CoC and its commercial wisdom, and the Tribunal should not interfere. The Respondent categorically denies that the distribution of the amount adopted in the 9th CoC meeting is discriminatory against the Applicant and in violation of the foundational principles of the IBC.

20. The Respondent has claimed that the 9th and 10th CoC meetings were conducted in strict compliance with the provisions of the Code. During these meetings, a Successful Resolution Plan⁷ was approved by the CoC, and the RP subsequently filed the appropriate application before the Tribunal seeking approval of the Resolution Plan. In light of these developments, the Respondent contends that the prayers sought by the Applicant have become infructuous, and the present application should be dismissed on this ground alone.

Decision:

21. The central question raised by the Applicant is whether it is entitled to same percentage of the distribution proceeds of the Resolution Plan as its voting right as a financial creditor. To answer this question, first we need to see how the CoC is constituted under IBC. Under section 21(2) of IBC,

21(2) *“the committee of creditors shall comprise all financial creditors”*

The terms ‘financial creditor’ and their ‘voting share’ have been defined in section 5 (7) and 5(28) respectively, to

5 (7) *“financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been assigned or transferred to;*

⁷ Pg 20-78 of the Application.

5(28) "voting share" means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor;

22. From the above it is apparent that the Applicant's inclusion in the Committee of Creditors (CoC) was based on its status as a financial creditor, with its voting share contingent upon the proportion of debt owed to it relative to the total financial debt owed by the Corporate Debtor (CD). Coming to the role a financial creditor has to play, as member of the CoC, the provisions of section 30(4) are relevant;

*30(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, **[the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor]**⁸ and such other requirements as may be specified by the Board: (emphasis supplied)*

The Applicant's role in the CoC with certain voting share is thus limited to part of the process that approves the plan.

23. So far as the distribution of the resolution proceeds is concerned, it is to be done by CoC after taking into account the order of priority amongst creditors including the priority and

⁸ Inserted w.e.f. 16.08.2019

value of the security interest of a secured creditor, as mentioned in section 30(4). It is thus up to the CoC to decide with 66% majority about the payment to different classes or sub-classes of creditors under the Resolution Plan. Insertion of the highlighted portion in the sub-section (4) of section 30 of IBC, through the amendment of 2019 make this very clear. Hon'ble Supreme Court in **Essar Steel**⁹ has also recognised that:

*“it is the commercial wisdom of the Committee of Creditors that is free to determine what amounts be paid to different classes and sub-classes of creditors in accordance with the provisions of the Code and the Regulations made thereunder”*¹⁰

and that

*“the Committee of Creditors does not act in any fiduciary capacity to any group of creditors, On the contrary, it is to take a business decision based upon ground realities by a majority, which then binds all stakeholders, including dissentient creditors”*¹¹

24. A bare perusal of the language used by the Legislature in the amended Section 30(4), suggests that there is no mandate on the CoC to distribute payments to creditors based on the value of security held by them. It requires that the CoC may take into account the order of priority amongst creditors as laid down in sub-section (1) of Section 53 of the IB Code, including priority and value of security interest of secured creditors, while approving the Resolution Plan. The argument that the

⁹ Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531

¹⁰ *Supra* page 628

¹¹ *Supra* page 641

distribution of resolution proceeds be only in the ratio of the financial debt owed by a particular financial creditor is therefore flawed. The Applicant is seeking to conflate between the distinct provisions for the constitution of CoC and its voting share on one hand and the distribution under the Resolution Plan on the other.

25. An identical issue had cropped up in the matter of **India Resurgence ARC Private Limited**¹², wherein it was similarly contended by the Appellant that the CoC could not have approved the Resolution Plan which failed to consider value of security interest of the creditors while deciding the manner of distribution to each creditor, and Hon'ble Supreme Court, held that

“it needs hardly any elaboration that financial proposal in the Resolution Plan forms the core of the business decision of Committee of Creditors. Once it is found that all the mandatory requirements have been duly complied with and take care of, the process of judicial review cannot be stretched to carry out quantitative analysis qua a particular creditor or any stakeholder, who may carry his own dissatisfaction. In other words, in the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal.”

¹² India Resurgence ARC (P) Ltd. v. Amit Metaliks Ltd., (2021) 19 SCC 672 [2021 SCC OnLine SC 409]

26. From the above discussion it is clear that what amount is to be paid to different classes or subclasses of creditors in accordance with the provisions of the IBC and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors. In this context, it is to be emphasized that a dissenting secured creditor, such as the Applicant in the present case, cannot dictate the amount to be allocated to it based solely on the value of the security interest.
27. In the present case the Applicant held first charge only over the current assets, value of which was reduced to nil. It could not have sought parity with the other secured creditors who had first charge over the fixed assets and where the Resolution Plan majorly comprised of the value placed on the fixed assets. The priority in which the resolution proceeds were to be distributed to the secured creditors was to be determined by the CoC in its commercial wisdom. Therefore, as observed by Hon'ble Supreme Court, *"there is no scope for the adjudicating authority or the appellate authority to proceed on any equitable perception or to assess the resolution plan on the basis of quantitative analysis"*¹³.
28. With these observations, the prayers of the Applicant are dealt with as below:
- (a) As the 9th CoC meeting has already been held and the Resolution Plan approved by CoC with more than the requisite voting share, this prayer has become infructuous.

¹³ Resurgence ARC (P) Ltd. v. Amit Metaliks Ltd., (Supra) Page 683

- (b) No directions are being given to the CoC for the reasons discussed in the preceding paras.
- (c) The minutes of 10th CoC meeting have already been provided by the RP to the Applicant. Since the Resolution Plan is still to be approved by this Authority, any determination about share of each of the financial creditor for distribution out of the resolution proceeds is premature.

The Application is therefore dismissed.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

Rohit