

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

IA No.90/CTB/2019
in
TP No.116/CTB/2019
[earlier CP (IB) No.389/KB/2018]

In the matter of:
Insolvency and Bankruptcy Code, 2016;

-And-

In the matter of:
An application under Section 42 of the Insolvency and Bankruptcy Code, 2016;

-And-

In the matter of:

C.G. Power and Industrial Solutions Limited (formerly Crompton Greaves Limited), a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at CG House, 6th floor, Dr Annie Besant Road, Worli, Mumbai-400 030;

... Operational Creditor

-Versus -

Powercon Projects & Associates Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at House No.3, Gymkhana Palm Heights Residency, Near Sum Hospital, Bharatpur, Bhubaneswar, Orissa-751 003.

... Corporate Debtor

IA No. 90/CTB/2019

In the matter of:

State Bank of India, Stressed Assets Management Branch, OSCARD, Bank Building Pt. Jawaharlal Nehru Marg, Bhubaneswar, 751001;

... Appellant/Financial Creditor

-Versus-

Chaitanya Kumar Ray (Liquidator of Powercon Projects & Associates Limited) residing at: MIG-26, Manorama Estate, Rasulgarh, Bhubaneswar, Odisha-751010.

... Respondent/Liquidator

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IA No. 90/CTB/2019 in TP

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State Bank of India v. Chaitanya Kumar Ray

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For the Applicant : Mr. Ramesh Chandra Praharaj,
Advocate
For the Respondent/Liquidator : Mr. Saroj Kr. Prusty, Advocate
Mr. Chaitanya Kumar Ray,
Liquidator in person

Order reserved on: 27.09.2021

Order pronounced on: 22.12.2021

ORDER

Per: Rajasekhar V.K. Member (Judicial)

1. The Appellant herein is the Secured Financial Creditor. The Appellant has filed this application against the order dated 25.06.2019 passed by the Liquidator accepting the claim of Concept Management Consulting Limited. It is stated that the cause of action arose on 14.08.2019 when the Liquidator, on the request of the appellant forwarded the list of stakeholders indicating the acceptance of the claim filed by the Financial Creditors and other stakeholders.
2. The Appellant has stated that the present appeal is filed within the period of limitation under section 42 of IBC 2016 as the appellant received the communication dated 14.08.2019 from the Liquidator. The appeal is being filed within the period of fourteen days from the receipt of decision of the Liquidator dated 25.06.2019 accepting the claim of Concept Management Consulting Limited as a Financial Creditor, the Appellant claims.

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3. CG Power & Industrial Solutions Limited (Operational Creditor) filed an application under Section 9 of IBC, 2016 for initiation of CIRP against the Corporate Debtor, i.e., Powercon Projects & Associates Limited. The application of the Operational Creditor was admitted by the NCLT Kolkata Bench *vide* order dated 10.07.2018, and Mr. Anand Chandra Swain was appointed as the Interim Resolution Professional (IRP).
4. In pursuance of the said order of 10.07.2018, the IRP made a public announcement stating *inter-alia* about the claim from the other creditors and stakeholders. Accordingly, the appellant made a claim before the said IRP which was accepted. It is stated that Concept Management Consulting Limited has also made a claim before the IRP during the CIRP. But the same was allegedly rejected as they could not produce the loan documents substantiating their claim. Resultantly, there was only one Financial Creditor i.e., the appellant-State Bank of India. Upon accepting the claim, the IRP constituted the Committee of Creditors and convened the meeting.
5. During the said meeting the CoC passed a resolution to the effect that there is no possibility of continuance of resolution process reason being a winding up petition was already moved by SBI before the Hon'ble High Court of Orissa, Cuttack. Thereafter, the IRP did not convene any meeting of the CoC and filed its final progress report explaining the reason that no purpose would be served by calling the meeting of CoC because there were no fixed assets brought to the notice of IRP either by the CoC or by the Operational Creditor.
6. The RP prayed before the NCLT Kolkata Bench, for passing an order of liquidation. It has further been submitted in the application that during the hearing on 08.01.2019 before the NCLT Kolkata Bench, Concept Management Consulting Limited appeared and prayed for extending the period of CIRP beyond 180 days. This prayer was rejected, and the

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liquidation of the corporate debtor was ordered on 08.01.2019, with Mr Kailash Kumar Rathi appointed as the Liquidator.

7. Thereafter, Mr. Rathi expressed his unwillingness to continue as Liquidator. Accordingly, he was discharged and, in his place, Mr. Chaitanya Kumar Ray, the present respondent, was appointed as Liquidator as per order dated 23.01.2019.
8. On being appointed as Liquidator, Mr. Chaitanya Kumar Ray made public announcement on 20.02.2019 as per Regulation 12 of the Insolvency and Bankruptcy Code (Liquidation Process) Regulations, 2016 seeking the attention of the stakeholders of Powercon Projects and Associates Limited to file their claims along with proof on or before 21.03.2019 with the Liquidator.
9. Upon the aforesaid public notice given by the Liquidator *vide* his notice published on 20.02.2019, the appellant (Secured Financial Creditor i.e., SBI) has filed the claim on 18.03.2019 which was received by the Liquidator on 19.03.2019 along with documentary evidences supporting the claim.
10. Meanwhile, on request of the appellant, the Liquidator (Respondent) forwarded the list of stakeholders on 14.08.2019 along with the claims admitted and rejected, which was addressed to the Director of Concept Management Consulting Limited dated 25.06.2019. On perusal of the said letter dated 25.06.2019 it was *inter alia* observed by the Appellant that while admitting the claim of the appellant, the claim of Concept Management Consulting Limited has also been accepted to the tune of ₹7,90,82,485/- as a Financial Creditor (Unsecured). It is alleged that a sole document has been relied upon by the Liquidator, *i.e.*, last audited Financial Report (Audited Balance Sheet) for the financial year 2011-12 of Concept Management Consulting Limited and on perusal of the said Audited Balance Sheet for

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the year 2011-12, it is revealed that save and except the appellant herein, the others are unsecured creditors. The name of Concept Management Consulting Limited is reflected therein, but no debt is owed by Powercon Projects and Associates Limited to Concept Management Consulting Limited.

11. The Respondent has submitted that this appeal is not maintainable as the scope of section 42 of IBC, 2016 does not entitle any creditor to raise an objection to the decision of the Liquidator in admitting or rejecting the claim of any other creditor. A creditor is only entitled to appeal under section 42 of IBC 2016 against the decision of the Liquidator about its own claim only.
12. Further, the respondent has given reference to an email dated 02.08.2018 of the erstwhile IRP which indicates that the claims of the Respondent were on hold but not rejected for want of certain documents. The Respondent also submits that submissions of Appellant are misleading as it has averred that the CoC passed a resolution that there is no possibility of continuance of resolution process, by reason of a winding up petition was already moved by the SBI before the Hon'ble High Court of Orissa, Cuttack, whereas the correct fact is that until today this petition is not even admitted by the Hon'ble High Court.
13. Further, the Liquidator submits that the Appellant has wrongly stated that the Liquidator has relied only on the Financial Statement of the Corporate Debtor for the year 2011-12, whereas the Balance Sheet of the Corporate Debtor has clearly listed unsecured loans from CPPL to the tune of ₹3,94,57,782/- for the year 2011-12 and ₹29,25,594/- in the year 2010-11. The Respondent has produced Loan and Share Pledge agreement dated 08.12.2010 between them and the Corporate Debtor, Statement of Account showing fund transferred from the account of the Respondent No.2 to the

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account of the Corporate Debtor, Debt Acknowledgement Agreement between Respondent No. 2 and the Corporate Debtor.

14. It is further noted that the order of the NCLT, Kolkata Bench dated 08.01.2019 grants the Respondent right to claim the dues before the liquidator. Para 17 of the Order states – *“I.d. Counsel for the Financial Creditor, whose claim is rejected submits that the IRP rejected its claim wrongly and made a request to extend the period of CIRP beyond 180 days for enabling the Financial Creditor to bring in resolution applicant. Admittedly IRP has rejected the claim of the Financial Creditor. It has filed CA (IB) No.1183/KB/2018 challenging the order of rejection. Since CIRP was expired on 05.01.2019, no purpose would be served in admitting this application. Moreover, the Committee of Creditors has decided not to proceed with the resolution. The IRP has recommended liquidation. Therefore, the application requires no consideration. It is liable to be dismissed subject to their right to claim it again before the Liquidator who is to be appointed in the case in hand.*

15. Heard the learned counsel on both sides.

16. The Liquidator has clearly stated that the claim has been admitted on the basis of documentary evidence and due verification with the balance sheets of the Corporate Debtor for the year 2010-11. This is uncontroverted. In these circumstances, we do not find any merit in the contention of the Appellant that the admission of the claim of Concept Management Consulting Ltd is not warranted.

17. In the facts and circumstances of the case and the documents and details available on record, this Adjudicating Authority is not inclined to review the decision of the Liquidator in admitting the claim of Concept Management Consulting Limited.

18. We do not wish to go into the question as to whether the decision of the Liquidator to admit the claim of a creditor can be questioned by another

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creditor in appeal proceedings under section 42 of the Code. In any case, if it was not under section 42 of the Code, then the decision could still have been challenged under section 60(5) of the Code. Therefore, this objection is of little significance in deciding the present Appeal.

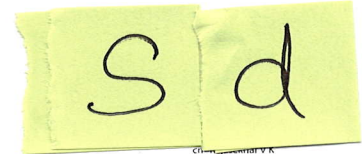
19. Accordingly, IA No.90/CB/2019 in TP No.116/CTB/2019 [earlier CP (IB) No. 389/KB/2018] stands **DISMISSED**.

20. The Registry is hereby directed to communicate this Order to both the parties and the learned counsel on record.

21. Let the certified copy of the Order be issued upon compliance with the requisite formalities.



Satya Ranjan Prasad
Member (Technical)



Rajasekhar V.K.
Member (Judicial)

Signed this 20th day of December, 2021

Ravijeet_P.S.