

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
SPECIAL BENCH COURT No. II**

*** **

IA No. 1033 of 2020

in

[CP (IB) No. 1799/(MB)/2018]

In the matter of an Application under Section 60(5)(c) of The Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016.

**1. Mr. Anil N. Surwade,
Room No. 2, Shyam Kunj Nivas,
Mohili Village, L.N. Marg,
Sakinaka, Mumbai-400 072.**

**2. Mr. Anil Dhingra,
M-392, Tarapore Towers,
Oshiwara, Andheri (West),
Mumbai - 400 053.**

**3. Mr. Subhash Mali,
A/901, Oberoi Park View,
Next to Thakur Cinema,
Thakur Village, Kandivali,
Mumbai-400 101.**

... Applicants.

V/s

**Mr. Prashant Jain,
(Registration No. IBBI/IPA-001/IP-P01368/2018-19/1213)
A-501, Shanti Heights, Plot No. 2,3,9B/10,
Sector 11, Koparkharine, Thane,
Navi Mumbai-400 709.**

... Resolution Professional

In the matter of:

Edelweiss Asset Reconstruction Co. Ltd

... **Financial Creditor**

Versus

Sejal Glass Limited.

... **Corporate Debtor**

Date of Order: 28.09.2020

CORAM:

Hon'ble Janab Mohammed Ajmal, Member (Judicial)

Hon'ble Ravikumar Duraisamy, Member (Technical)

Appearance:

For the Applicant: Mr. Darryl Pereira, Advocate

For the Respondent: Ms. Rubina Khan, Advocate

Per: Hon'ble Janab Mohammed Ajmal, Member (Judicial)

ORDER

This is an Application by some of the employees of the Corporate Debtor seeking their intervention in the Application for approval of the Resolution Plan (MA No. 3690 of 2019) and direction to the Resolution Professional to serve a copy of the Resolution Plan on them, so that they could put in their views thereon.

2. The Applicants respectively were the Assistant Manager Marketing; Business Head; and Vice President Corporate HR and Administration of the Corporate Debtor. Edelweiss Asset and Reconstruction Company

brought in an Application under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) against the Corporate Debtor seeking to initiate Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. This Tribunal by an Order dated 13.02.2019 admitted the Petition and appointed Mr Rajendra Kumar Girdhar as Interim Resolution Professional (IRP). The IRP issued Public Announcement in February 2019 under section 13 of the Code. The Applicants and other employees of the Company submitted their claims in Form “D” before the IRP. The IRP confirmed all the claims and admitted the amount claimed by Applicant No. 1 to the tune of Rs. 3,29,263/- (Rupees Three Lakhs Twenty-nine Thousand Two Hundred Sixty-three only); the amount claimed by Applicant No. 2 to the tune of Rs. 18,76,973/- (Rupees Eighteen Lakhs Seventy-six Thousand Nine Hundred Seventy-three only) and Rs. 5,35,742/- (Rupees Five Lakhs Thirty-five Thousand Seven Hundred Forty-two only) claimed by Applicant No. 3 against the claim of Rs. 6,53,891/- (Rupees Six Lakhs Fifty-three Thousand Eight Hundred Ninety-one only).

3. Subsequently the present Respondent Mr. Prashant Jain was appointed as Resolution Professional (RP) as per order dated 23.04.2019. The RP regularly conducted the meeting of the Committee of Creditors (CoC), but did not give any notice to the Applicants in relation thereto. He also did not favourably respond to the entreaties of the Applicants to admit their presence in the meetings of CoC so as to have their views/concerns

on important issues relating to the affairs of the Corporate Debtor. Their views could have been taken into account. Those could have considerable bearing on a successful Resolution plan. The Applicants who were the erstwhile employees were aware of its operations and their views on its Resolution could be of paramount importance. Meanwhile, the Applicants came to know that MA No. 3690 of 2019 has been preferred by the Resolution Professional seeking approval of the Resolution Plan by this Authority. The Applicants sent repeated communications to the Resolution Professional for sharing the copy of the Resolution Plan so that they could provide various views for a successful and value-added Resolution of the Corporate Debtor, but in vain.

4. It is further contended that the Managing Director of the Corporate Debtor who is managing the funds and its affairs has been making various Inter Corporate Deposits (ICDs) to related parties and companies wherein he and his family members are personally involved. If investigated most of these ICDs can be turned to the benefit of the Corporate Debtor. The Managing Director also diverted funds meant for salaries and statutory dues. The Managing Director also did not resort to proper corporate governance and violated statutory guidelines. The negligible amount payable to the employees is a very small amount compared to the total amount of the Resolution Plan. During the insolvency proceedings, RP has never cared to call for any meeting with the employees seeking their concerns as to their claims. It is thus

necessary for this Authority to direct recovery of the ICDs, unsecured loans and other largesse showered upon the family members and family companies owned by them. Therefore, it is imperative that the Applicants are heard in the MA No. 3690 of 2019 pending for approval of the Resolution Plan. That would enable the Authority to make a comprehensive assessment of the Resolution Plan which ultimately would benefit the Corporate Debtor. The Applicants accordingly made the following prayers.

- a. That the Applicants be allowed to intervene in MA No. 3690 of 2019 in relation to the Resolution Plan and provide their views/concerns accordingly.
 - b. That the Resolution Professional Mr. Prashant Jain be directed to provide copy of MA No. 3690 of 2019 along with all Annexures including Resolution Plan to enable the Applicants to provide their views/concerns on the same.
 - c. For such other Orders / Directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case.
5. In support of their contention, the Applicants placed reliance on the decisions of the Apex Court in *Swiss Ribbons Private Limited v. Union of India: (2019) 4 SCC 17* and *Vijay Kumar Jain v. Standard Chartered Bank (Civil Appeal No. 8430 of 2018 decided on 31.01.2019)*.
6. The Respondent (Resolution Professional) objected the Application though a formal counter to this Application was not filed. It is contended by him that the prayer made in the Application cannot be entertained.

He submitted that the referred decisions are not relevant to the present Application nor the Applicants can benefit therefrom.

7. We find that admittedly the Applicants have been the employees of the Corporate Debtor. They have not been the Members of the Board of Directors of the Company. Their involvement in the Insolvency Resolution Process of the Corporate Debtor is thus limited to the satisfaction of their claims with regard to the entitlement from the Corporate Debtor. They certainly cannot have any role in the Insolvency Resolution Process nor can they have any involvement in the meeting or deliberation of the CoC. The Hon'ble Apex Court in *Vijay Kumar Jain* (supra) referring to various other judgments of the Hon'ble Court, provisions of the Code and Rules made thereunder *inter alia* held that the erstwhile Board of Directors of the Corporate Debtor have a right in each and every meeting held by the CoC and also have a right to discuss along with the Members of the CoC, all Resolution Plans that are presented to the CoC. Contrary to what is submitted by the Applicants, para no. 64 of *Swiss Ribbons* (supra) does not relate to the entitlement of the employees in the Corporate Insolvency Resolution Process. The Hon'ble Court only observed that the Resolution Applicant has no vested right for consideration or approval of its Resolution Plan. In relation to this observation the Hon'ble Court relied upon the observations in the case of *ArcelorMittal India Private Limited v. Satish Kumar Gupta (Civil Appeal Nos. 9402-9405/2018 decided on 04.10.2018)*. Therefore, the above

referred citations cannot be made applicable to the plea advanced by the Applicants. The Application is not otherwise maintainable in view of the discussion and the law indicated above. The Applicants would not be entitled to any relief and the Application is liable to be rejected. Hence ordered.

ORDER

The Application be and the same is rejected on contest. There would however be no order as to costs.

Sd/-
Mohammed Ajmal
Member Judicial

Sd/-
Ravikumar Duraisamy
Member Technical

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