NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

PRESENT: HON'BLE SHRI BIKKI RAVEENDRA BABU – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 26.07.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 232/2018 in CP(IB) No. 248/7/HDB/2018
NAME OF THE COMPANY	Golden Jubilee Hotels Private Limited
NAME OF THE PETITIONER(S)	Bank Of Baroda
NAME OF THE RESPONDENT(S)	Golden Jubilee Hotels Private Limited
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Adv Sulata Saha (For Varalakshmi Tadepalli)	Counsel for Financial Creditor (Bank of Baroda)	Sulata@indialegaladvocates.com Ph- 8763348732	Sulata Saha 26/7/2018

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Y SURYANARAYANA	Adv	9849866556	[signature]

V. Venkat Rami Reddy / Advocate 9000655656 [signature]
B. Marpal Reddy
Applicant in 264/2018

Avinash Desai / Advocates 9665566347 [signature]
Akhila Palem
(for CEC and NCC)

IA 232/2018 in

CP (IB) No.248/07/HDB/2018

ORDER

Learned counsel Ms.Sulata Saha representing Ms.Varalakshmi Tadepalli present for Financial Creditor (Bank of Baroda). Learned counsel Mr.Y.Suryanarayana present for Respondent. Learned counsel Mr. V.Venkata Rami Reddy present for Applicant in IA 264/2018. Learned counsel Mr.Avinash Desai and Ms.Akhila palem present for CEC and NCC.

Order pronounced in open court.

Application is disposed of.

Vide separate order.

MEMBER JUDICIAL

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No.232 of 2018

In

CP(IB) No.248/7/HDB/2017

In the matter of

1. Consolidated Engineering Company
   Through its Managing Partner, Mr.Rajeev Shamlal,
   Having its head office at:
   K-Block Chaudhary Building,
   Cannaught Circus,
   New Delhi 110 001

... Applicant No.1

2. NCC Limited
   Represented by its Company Secretary & EVP Legal
   Mr.M.V.Srinivasa Murthy
   Having its registered office at:
   NCC House, Madhapur,
   Hyderabad, Telangana – 500 081, India

...Applicant No.2

Vs

Golden Jubilee Hotels Private Limited
Represented by the Resolution Professional,
Mr.Subodh Kumar Agarwal
IBBI/IPA-001/IP-P00087/2017-18/10183
Having its registered office at:
Survey No.64, Beside Shilpakala VedikaShilparamam,
Madhapur,
Hyderabad – 500 081
Telangana, India

... Respondent/ Corporate Debtor

Date of Order: 26.07.2018

CORAM:-

Hon'ble Shri BikkiRaveendraBabu, Member Judicial

Parties/ Counsels Present

1. Learned counsel Mr.Avinash Desai present for Applicant.
2. Learned counsel Mr.Y.Suryanarayana present for RP.
3. Learned counsel Mr.P.Vikram for Mr.Yogesh Kumar present for Ex-Management.

Per: Shri BikkiRaveendraBabu, Member Judicial

ORDER

1. Consolidated Engineering Company (CEC) and NCC Limited filed this Application U/s 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking the following directions:
   a. To direct the RP to give notice of the meetings of the COC to the Applicants.
   b. To Direct the RP to provide minutes of all meetings of the COC to the Applicants.
   c. To direct the RP to permit the applicants to participate in the meetings of the COC.

2. Golden Jubilee Hotels Private Limited (Corporate Debtor) is undergoing Corporate Insolvency Resolution Process in CP(IB) No.248/7/HDB/2017.

3. During the Corporate Insolvency Resolution Process, CEC filed Form – B as Operational Creditor claiming an amount of Rs.20,02,07,912/- against the Corporate Debtor before the Resolution Professional by email dated 13.03.2018 and by hand on 14.03.2018 within the prescribed time.
4. The Resolution Professional admitted the claim of the CEC to the extent of Rs.10,52,37,168/- and disallowed the claim of CEC to the extent of Rs.8,15,20,088/- and taken Rs.1,34,50,656 as contingent liabilities.
5. NCC, as Operational Creditor, filed Form – B claiming an amount of Rs.51,75,95,253/- against the Corporate Debtor before the RP through email and courier on 14.03.2018 within the prescribed time.
6. The Resolution Professional did not admit the claim amount in full and did not give any reasons for rejecting a part of the claim of the Applicant No.2 i.e. NCC though it is supported by the Arbitral Award dated 17.11.2017.
7. The Applicant No.1 (CEC), by its letter, dated 11.05.2018, requested the Resolution Professional to allow it to attend the COC meeting.
8. The Resolution Professional unfairly denied the opportunity to the Applicants to participate in the meetings of the COC.
9. It is stated that there is lack of transparency in conducting the COC meetings and there is lack of correspondence or communication from the Resolution Professional.

10. According to the Applicants, their claim amount is about 69% of the total Operational debt.
11. It is stated in the Application that Section 24 (3) of IBC only provides for minimum requirement for giving notice of the COC to the Operational Creditors but it does not prescribe that notice of meetings to others is barred.
12. It is also stated in the Application that 'aggregate dues is not less than ten percent of the debt' means 10% of the operational debt but not total debt. The reason given by the Applicants is that IBC classifies the debt into two categories i.e. Financial debt and Operational debt and therefore, the word 'debt' used in Sec. 24(3) shall be interpreted as Operational Debt in respect of Operational Creditors but not total debt.
13. It is also contended by the learned counsel appearing for the applicants that 'aggregate dues' means the total claims made by the Operational Creditors but not the amounts admitted by the Resolution Professional.
14. It is also contended by the learned counsel appearing for the applicants that Resolution Professional has no right to adjudicate upon the claims and he has to only verify the claims and maintain the list of Creditors.
15. It is contended by the learned counsel appearing for the Applicants that it is for the liquidator to finally adjudicate upon the claims of the Operational Creditors or for that matter any other claims.
16. In the rejoinder, the Applicant gave the particulars of the financial debt, operational debt and percentage of the operational debt, total debt

as on 21.06.2018 and 09.07.2018 in the following table:-

	21st June 2018	9th July 2018
Financial debt	9,74,26,13,910/-	9,74,26,13,910/-
Operational debt	1,14,04,61,824/-	1,14,13,29,824
Total	10,88,30,75,734	10,88,39,43,734/-
% of operational debt qua total debt	10.48%	10.49%

17. In the rejoinder, the applicant also referred to the Report of the Joint Committee on the Insolvency and Bankruptcy Code, 2015. The relevant extracts of the Report are as follows:-

"The Committee after due deliberations are of the view that, if not voting rights, operational creditors at least should have presence in the committee of creditors to present their views/concerns on important issues considered at the meetings so that their views/concerns are taken into account by the committee of creditors while finalizing the resolution plan."

18. The Resolution Professional filed list of details of the claims received from the Operational Creditors and to what extent they had allowed and the total debt. It is as follows:-

List of Operational Creditors & Status as on 09/07/2018

Sl. No	**Name**	**Claim form**	**Claims Received**	**Claims Allowed**

Bn

1	Ahuja Furnishres Pvt Ltd	B	2,983,025	1,225,980
2	Equinox Solutions Limited	B	3,532,000	1,508,668
3	Blue Star Limited	B	9,900,000	9,892,182
4	STG Heating PVT Ltd	B	10,736,018	5,287,781
5	Mistubishi Elevator India Private Limited	B	3,321,907	1,829,210
6	Bombay Electrical & Supplies	B	2,834,886	1,375,384
7	Ariam Doors Controls	B	876,590	470,081
8	CEC (Consolidated Engineering Company)	B	200,207,912	105,237,168
9	EIH Associated Hotels Limited	B	303,698	198,691
10	EIH Limited	B	128,098,876	-
11	OHPL	B	3,023,265	3,023,265
12	Mukesh Manufacturing Company	B	3,413,687	2,566,878
13	Anusha Technovision Pvt Ltd	B	449,440	449,440
14	NCC	B	517,595,253	302,032,469
15	Sarvodhaya Enterprises	B	16,359,229	9,250,490
16	KSR Brothers	B	5,038,987	2,903,612
17	OCS Group (as per TB Absothern facility Management)	B	1,172,446	598,187
18	Mercury Car Rentals Pvt Ltd	B	15,902,361	11,198,701
19	Silver Lighting & EXIM (India) Pvt LTd	B	402,997	211,554
20	Olympia Pools	B	53,412	-
21	SANN Systems	B	5,258,568	2,378,902
22	Shardul Amarchand Mangaldas & Co	B	43,105,124	-
23	SCG contracts India Pvt LTd	B	47,556,533	12,211,484
24	S & T interiors and contracting services	B	12,030,761	-

	pvt ltd			
25	Pictursue Art & Framing	B	2,000,000	1,072,405
26	Tricolite Electrical Industries Limited	B	2,354,270	1,030,943
	Total(I)		**1,038,511,244**	**475,953,476**

1	Infinity Interiors Private Limited	F	48,739,050	10,555,430
2	Jayanth K Furnishers	F	5,765,758	-
3	Suryansh Buildtech & Infra	F	14,540,133	4,022,446
4	Wits Interior Pvt Limited	F	9,915,773	7,005,987
5	Leviathan Systems Private Limited	F	847,836	585,885
6	Jaypeem Granites Pvt Ltd	F	20,822,296	-
7	Sri Sai Leela Electrical works	F	1,127,628	1,028,810
8	Eviaon SPA & Saloon	F	168,106	168,106
	Total (II)		**101,926,580**	**23,366,664**

1	Navya	D	24,000	23,247
2	Azaz Ali	D	868,000	743,452
	Total(III)		**892,000**	**766,699**

Total 36 Parties

Grand Total	**1,141,329,824**	**500,086,839**

List showing the % of Total admitted claims of Operational Creditors to the total admitted debt as on 09/07/2018

Description	**NCC**	**CEC**	**Total**
Claims submitted to RP	517,595,253	200,207,912	717,803,165
Claims Admitted by RP	302,032,469	105,237,168	407,269,637

Summary of Claims

Description	**Financial Creditor**	**Oper. Creditor**	**Total**
Total claims submitted by creditors	9,498,286,441	1,141,329,824	10,639,616,266
Admitted till date	9,498,286,441	500,086,839	9,998,373,280

% of Total admitted claims of Operational Creditors to the total admitted debt as on 09/07/2018	5.00%

19. It is contended by the learned counsel appearing for the Resolution Professional that 10% of the debt means the total debt but not the operational debt.
20. It is also contended by the learned counsel appearing for the Resolution Professional that aggregate dues means the claims to the extent admitted by the RP but not the total amounts of the claims filed by the Operational Creditors.
21. In order to decide the controversies in this Application, it is necessary to refer to Section 24 of the IB Code and Regulations 13 and 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Section 24

Meeting of Committee of Creditors

1) The members of the Committee of Creditors may meet in person or by such electronic means as may be specified.
2) All meetings of the Committee of Creditors shall be conducted by the Resolution Professional.
3) The Resolution Professional shall give notice of each meeting of the Committee of Creditors to –
    a) Members of Committee of Creditors;
    b) Members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;
    c) Operational Creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt.
4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of Committee of Creditors, but shall not have any right to vote in such meetings:

Provided that the absence of any such direct or, partner or representative of Operational Creditors, as the case may be, shall not invalidate proceedings of such meeting.

5) Any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the Resolution Professional to represent such creditor in a meeting of the committee of creditors:

Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.
7) The Resolution Professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.
8) The meetings of the Committee of Creditors shall be conducted in such manner as may be specified.

Verification of claims.

13. (1) The Interim Resolution Professional or the Resolution Professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

(2) The list of creditors shall be-

a. Available for inspection by the person who submitted proofs of claim;
b. Available for inspection by members, partners, directors and guarantors of the corporate debtor;
c. Displayed on the website, if any, of the corporate debtor;
d. Filed with the Adjudicating Authority; and

e. Presented at the first meeting of the committee.

Determination of amount of claim.

14. (1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the Interim Resolution Professional or the Resolution Professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

(2) The Interim Resolution Professional or the Resolution Professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

22. Regulation 24(3) enjoins upon the Resolution Professional to give notice of meetings of COC to the members COC, to the members of the suspended Board of Directors or Partners of the Corporate persons, as the case may be, to the Operational Creditors or their representatives if the amount of their aggregate dues is not less than 10% of the debt.
23. The main controversy is, what is the meaning of 'debt' referred to in Sec 24(3)(c) of the Code.
24. Debt is defined in Section 3(11) of the Code, which reads as under :-

"Debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

25. Therefore, the word 'debt' wherever used in the Code always includes financial debt and operational debt unless it is specifically stated whether it is a financial debt or operational debt.
26. If the Legislature intended to fix the minimum 10% of the 'operational debt', it would have mentioned as 10% of the 'operational debt' instead of 10% of the 'debt'.
27. The argument of the learned counsel appearing for the applicants since there are two classes of debts namely, financial debt and operational debt and as the minimum limit is prescribed to the operational creditors for claiming a notice of the meetings of the COC the debt must be taken as operational debt do not merit acceptance.
28. A reading of the Section 24(3) clearly goes to show that only the members of the COC and the members of the suspended Board of Directors are entitled for a notice.
29. In this context it is necessary to refer to the relevant extract in the report of Joint Committee on the Insolvency and the Bankruptcy Code.

"The Committee after due deliberations are of the view that, if not voting rights, operational creditors at least should have presence in the committee of creditors to present their views/concerns on important issues considered at the meetings so that their views/concerns are taken into account by the committee of creditors while finalizing the resolution plan."

30. The Committee thought that the Operational Creditors also should participate in the meeting of the COC although they have no voting right, but the Committee after due deliberations fixed minimum percentage of aggregate dues of the debt.
31. Therefore, the Legislature thought it fit that only Operational Creditors, if their aggregate dues is not less than 10% of the debt, are allowed to participate in the deliberations before COC.
32. Therefore, the word debt used in Sec 24(3)(c) refers to the total debt but not the operational debt only.
33. Next controversy is aggregate dues which means the total claim amount of the operational creditors or the admitted claim amount by RP.
34. In this context, it is contended by the learned counsel appearing for the Applicant that the Resolution Professional has no right to determine the claims.
35. If we refer to Regulations 13 and 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, it clearly gives authority to the Resolution Professional to verify the claims, then maintain a list of creditors showing the amount claimed by them and showing the amount admitted by them.
36. The Regulation 14 also enables the Resolution Professional/ IRP to determine the amount of claim.
37. In view of the Regulations 13 and 14, it can only be said that the Resolution Professional is

entitled to verify the claims and prepare a list of claims showing the amount admitted.

38. The contention of the learned counsel for the Applicant that Regulations 13 and 14 are against the provisions of the Code and therefore they need not be given effect to do not merit acceptance.
39. Even Section 18(1)(b) of the Code says that IRP is entitled to receive and collate all the claims submitted by the Creditors to him, pursuant to the public announcement made under sections13 and 15.
40. More over, the Code also authorises the IRP to constitute a COC and to decide who are the members that constitute the COC.
41. In order to exercise such power, it is necessary for the IRP to collect the claims and determine them.
42. However, if any grievance is there against determination of the claim by the IRP or RP, the claimants are entitled to approach this authority u/s. 60(5) of the Code.
43. Therefore, the argument of the learned counsel appearing for the applicants that the IRP or RP has no authority to determine the claims did not merit acceptance.
44. The word 'aggregate dues' used in Sec. 24(3)(c) of the Code certainly refers the claim amounts that are admitted by the Resolution Professional but not the amount as claimed filed by the operational creditors.
45. If the interpretation as put forward by the learned counsel appearing for the applicant is taken into consideration and accepted, there is a

possibility of the operational creditors filing a claim without any proof which is more than 10% of the total debt and they may try to participate in the meeting of the COC which goes against the intention of the Legislature.

46. The intention of the Legislature is to give participation to the operational creditors only if their aggregate dues out of the total debt is 10% or more than 10%.
47. In fact, the word aggregate dues is not defined in the code but considering the context and the intention of the Legislature, the word aggregate dues refer to in Sec 24(3)(c) shall only mean the claim amounts of the Operational Creditors as admitted by the IRP/RP.
48. Learned counsel appearing for the applicant relied upon the decision of the Hon'ble National Company Law Appellate Tribunal in I.A.No.594 of 2018 in Company Appeal(AT)(Insolvency) No.188 of 2018 in Rajputana Properties Pvt Ltd. V/s Ultra Tech Cement Ltd & Ors.
49. In that judgement the Hon'ble NCLAT clearly held that the Operational Creditors, if the amounts of their aggregate due is not less than 10% of the debt, are entitled to take part of the meeting of the CoC. In that judgement, the Hon'ble NCLAT discussed about the participation of the Resolution Applicants in the meeting of the COC while accepting or rejecting the Resolution Plans.
50. There is no dispute about the said proposition of law.
51. Basing upon Sec. 24(3)(c), the operational creditors whose aggregate dues is not less than

10% are entitled to take part in the COC meeting without voting rights.

52. In the case on hand, the aggregate dues of the Operational Creditors are less than 10% of the total debt.
53. Therefore, the applicants are not entitled for the notice of the meeting of the COC.
54. The applicants are also not entitled to participate in the meetings of the COC.
55. However, RP can give a copy of the minutes of the meetings of the COC to the Operational creditors/ Applicants after the minutes are finalised.
56. The Application is disposed of with a finding that the Applicants are not entitled for notice of the meeting of the COC and for participation in the meetings of the COC. However, the applicants are entitled for a copy of the minutes of the COC after the minutes are finalised.

26.7.18

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL