

SL.No.2

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 05.07.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/315/2023 IA (IBC)/316/2023 in Company Petition IB/206/2021
NAME OF THE COMPANY	YKM Entertainment & Hotels Pvt Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	YKM Entertainment & Hotels Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/315/2023 and 316/2023

These applications are dismissed, vide separate orders.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA No.315 & 316 of 2023 in
CP(IB) No.206/7/HDB/2021
Under Section 60(5) of IBC, 2016

IN THE MATTER OF M/S. YKM ENTERTAINMENT AND HOTELS PVT. LTD.

Between:

Dr. Yarlagadda Krishna Mohan,
S/o. Srinivasa Rao,
R/o. 6-3-661/A/3,
Flat No.3, Bhavana Towers,
Kapadia Lane, Somajiguda,
Hyderabad – 500 082.

.... Applicant

Vs.

1. Mr. Dantu Indu Sekhar,
Resolution Professional,
29-1401/6/1, Plot No.253,
Road No.2, West Deen Dayal Nagar,
Ramakrishnapuram, Neredmet,
Hyderabad – 500 056.
2. Committee of Creditors,
D.No.5-9-76, 2nd Floor,
Prabhat Towers, Opp: SBI, Amaravathi LHO,
Chapel Road, Gunfoundry,
Hyderabad – 500 001.
3. State Bank of India,
Stressed Assets Management Branch,
D.No.5-9-76, 2nd Floor,
Prabhat Towers, Opp: SBI, Amaravathi LHO,
Chapel Road, Gunfoundry,
Hyderabad – 500 001.

Also at:

Stressed Assets Resolution Group,
21st Floor, Maker Tower E, Cuffe Parade,
Mumbai - 05

.... Respondents

Date of order: 05.07.2023

CORAM:

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)

Hon'ble Sri Charan Singh, Member (Technical)

Counsels present:

For the Applicant : Ms. Shreya Devaki, Advocate

For the Respondents : Ms. Mummaneni Vazra Laxmi, Advocate
: Mr. G.P. Yash Vardhan, Advocate

Heard on : 28.06.2023

**[PER: BENCH]
ORDER**

1. Both the applications are taken up for passing a common order, since they are based on the same set of facts and the reliefs sought for are in respect of same facts, one being interim and the other being final. IA 316 of 2023 is filed seeking stay of proceedings in IA 192 of 2023 in CP No.206 of 2021 during the adjudication of IA 315 of 2023 which is filed for declaration that the process for approval of Resolution Plan as conducted by Respondent No.1 is not in accordance with the Insolvency and Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and consequently, set aside the minutes of the CoC in the 12th CoC

meeting dated 01.02.2023 to the extent of approval of Resolution Plan.

2. The facts of the application briefly, are as follows:
 - a. The Corporate Debtor (CD) was involved in building of a 5-Star Hotel at Tirupati and had entered into an Operations and Management Agreement with Reputed Group Intercontinental Hotels Group under the brand name Holiday Inn.
 - b. The CD entered into a Term Loan Agreement dated 30.08.2011 with a consortium of banks led by State Bank of India. Subsequently, overall credit facilities were revised to Rs.1,13,70,00,000/- with Rs.111 Crores as fund based and Rs.2.70 Crores as non-fund based. Overall credit facilities were further revised to Rs.1,38,70,00,000/-and a term loan agreement was executed on 27.10.2015.
 - c. There was a delay of 21 months in total, on the part of the consortium of lenders, in releasing the sanctioned amounts, causing delay in the Project, due to which the CD consequently incurred losses. An additional Rs.40 Crores was required to complete the project and pursuant to the same, a corrective action plan was formulated by the consortium of lenders to fund an

amount of Rs.34 Crores. But, it could not be implemented by the bank, due to which, in January 2017 the account of the CD was classified as a Non-Performing Asset (NPA).

- d. In 2021-2022, through the properties which were held as collateral, the Financial Creditor (FC) has appropriated approximately Rs.37 Crores as against the outstanding dues through sale of the properties of the guarantors which include that of the Applicant.
- e. The CD was taken into Corporate Insolvency Resolution Process (CIRP) by virtue of the Order of this Tribunal dated 05.01.2022. Resolution Plans were received in the process of the 8th CoC meeting held on 01.11.2022. The following events took place after the 8th CoC meeting:

S.No.	Date	Description
1.	03.12.2022	Respondent No.1 conducted the 9 th CoC meeting.
2.	08.12.2022	Respondent No.1 conducted the 10 th CoC meeting.
3.	09.12.2022	The Applicant extended an OTS of Rs.80,00,00,000/- to the Financial Creditor and offered to pay an upfront amount of Rs.1,00,00,000/- as against the total OTS amount.
4.	09.12.2022	The Applicant, through M/s. Southern Tropical Foods Pvt. Ltd., deposited an amount of Rs.1,00,00,000/- into the no-lien account of the Financial Creditor.

5.	12.12.2022	The Financial Creditor received the OTS proposal submitted by the Applicant.
6.	14.12.2022	Respondent No.1 conducted the 11 th CoC meeting.
7.	03.01.2023	This Hon'ble Tribunal passed an order extending the CIRP period for 45 days w.e.f. 20.12.2022.
8.	07.01.2023	An email was issued by the Financial Creditor wherein OTS proposal of the Applicant was arbitrarily rejected, without assigning any reasons whatsoever.
9.	13.01.2023	Respondent No.1 received the relative voting sheet for approval of Resolution Plan.
10.	14.01.2023	Letter of Intent was issued to the successful resolution applicant, which was in turn accepted.
11.	23.01.2023	Respondent No.1 filed IA 192 of 2023 for approval of Resolution Plan before this Hon'ble Tribunal.
12.	27.01.2023	A notice for the 12 th CoC meeting was issued by the Respondent No.1 through which the Applicant was informed about the Resolution Plan.
13.	30.01.2023	IA 192 of 2023 filed by Respondent No.1 for approval of Resolution Plan was listed before this Hon'ble Tribunal.
14.	01.02.2023	Respondent No.1 conducted the 12 th CoC meeting.
15.	07.02.2023	The Financial Creditor issued a letter to the Applicant expressing their inability to consider the offer of Rs.90 Crores.

- f. The process for obtaining approval of the Resolution Plan by the CoC is not in compliance with the procedure established under the Code and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

g. Regulation 26 of the Regulations has not been complied with by the Respondent. The Applicant, as a suspended director, is entitled to participate in meetings of the CoC and be privy to the proceedings in the CoC, including discussions pertaining to evaluation of resolution plans and approval of Resolution Plans.

h. Non-compliance is described succinctly hereunder:

Regulations/Section	Procedure under the Regulation/Code	Whether followed by Respondent
Regulation 26 (Voting through electronic means).	The Resolution Professional shall circulate a copy of the record made under sub-regulation (4) to all participants by electronic means within twenty-four hours of the conclusion of the voting.	Not followed.
Regulation 21(3) (Contents of the notice for meeting).	The notice of a meeting shall contain the agenda for the meeting along with: <ul style="list-style-type: none"> i. a list of the matters to be discussed at the meeting; ii. a list of the issues to be voted upon at the meeting; and iii. copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting. 	Not followed.
Section 25(2)(i) (Duties of the Resolution Professional).	To present all resolution plans at the meeting of the Committee of Creditors.	Not followed.

- i. The minutes of the 9th and 10th CoC meetings indicate that Respondent No.1 had requested the CoC to conduct the evaluation of the submitted Resolution Plans as per the evaluation matrix approved by the CoC in the 3rd CoC meeting and to estimate the liquidation cost and the value of the liquid assets.
- j. During the 11th CoC meeting conducted on 14.12.2022, the CoC requested a period of 30 days for consideration and evaluation of the submitted Resolution Plans. In view of the same, it was resolved that Respondent No.1 could file the necessary application before the NCLT, seeking extension.
- k. Subsequently, through the agenda for the 12th CoC meeting that was circulated to the Applicant, the Applicant became aware that the CoC had approved the Resolution Plan submitted by M/s. Square Four Housing & Development Private Limited and Respondent No.1 filed an IA No.192 of 2023, seeking for approval of the Resolution Plan and that the entire process of the evaluation of the Resolution Plan and the approval accorded by CoC was not conducted as per the manner prescribed under the Code.
- l. The actions of Respondent No.1 and the CoC has adversely affected the interests of the Applicant, Respondent No.1 failed to abide by

the procedure under Regulation 26. Hence, this application seeking for the above mentioned reliefs.

3. COUNTERS filed in both the IAs also being the same, the facts mentioned in Counter filed in IA 315 of 2023 can be mentioned.
 - a. The averments in the application are denied and the application is contented as not maintainable. It is contended that the application is filed only to derail the approval of the Resolution Plan. Regarding the facts, it is submitted that, the SBI has filed a Company Petition under Section 7 of the Insolvency and Bankruptcy Code 2016, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the CD and the same was admitted by Order dated 05.01.2022, subsequent to which, the Resolution Professional (RP) made public announcement and constituted the Committee of Creditors (CoC) and conducted various meetings for discussing about the Resolution Plans that were received in response to the publication inviting the Expression of Interest (EoI).
 - b. In the 3rd CoC meeting, the CoC approved parameters for Evaluation Matrix and also Request For Resolution Plan (RFRP) with 100% voting.

- c. In the 4th meeting of the CoC, the RP informed the CoC that, due diligence audit as per Section 29A of the Code has been conducted and that only 3 PRAs are eligible. He also informed the CoC that the 2 Resolution Plans received from M/s. Sankalp Recreation Private Limited and Mr. Bhumireddy Gari Mohan Reddy are under scrutiny.
- d. In the 5th CoC meeting held on 20.07.2022, brief summary of the said Resolution Plans were placed before the CoC and the PRAs have presented the salient features of the Resolution Plan to the CoC. After due deliberations, the CoC advised the PRAs to revise the Resolution Plan by improving the amount offered under the Resolution Plan on or before 27.07.2022.
- e. In the 6th CoC meeting dated 19.08.2022, the RP informed the CoC that 2 revised Resolution Plans were received from the PRAs and brief summary of the said Resolution Plans were placed before the CoC. After due deliberations, the CoC observed that the Resolution Plans have only slightly improved and the CoC considered that the assets of the CD has more potential value than the amount offered under the Resolution Plans. Therefore, in order to maximize the value of assets of the CD, the CoC decided to annul the current CIRP and to restart the same by inviting fresh EoI. Accordingly, the

CoC requested the RP to work out the timelines. The CoC in the said meeting has passed a Resolution with 100% vote approving for annulment of the CIRP process.

- f. In the 7th meeting of the CoC, the RP informed that Form-G was published and that in response, 28 PRAs sought for EoI, out of which 14 PRAs have submitted EoI. Further, 3 PRAs were declared ineligible due to non-compliance of eligibility criteria. 11 PRAs were shortlisted.
- g. In the 8th CoC meeting held on 01.11.2022, the PRAs were advised to improve the proposals.
- h. In the 9th CoC meeting held on 03.12.2022, RP informed that the Resolution Plan of M/s. Square Four Housing & Development Pvt. Ltd. has got highest score of 83.93 in the evaluation matrix followed by M/s. Terminus Hotels and Resorts Pvt Ltd which got 75.20 score.
- i. In the 10th CoC meeting held on 08.12.2022, the RP informed the CoC that one of the PRAs Mr. Bhumireddy Gari Mohan Reddy requested to withdraw from the Resolution Plan process.

- j. Later, the RP informed the CoC that the Resolution Plans are proposed for voting. It has been decided to open the voting within 48 hours of circulation of this meeting minutes i.e. from 11.12.2022 10.00 AM to 05.00 PM on 15.12.2022.
- k. In the 11th CoC meeting held on 14.12.2022, the CoC requested the RP to extend the voting, to file necessary application before this Tribunal and the Tribunal granted time.
- l. CoC in its 12th meeting, voted in favour of the Resolution Plan submitted by M/s. Suare Four Housing and Infrastructure Development Pvt. Ltd (SRA) and the RP issued LoI on 14.01.2023 and also received unconditional acceptance from the SRA. The RP also informed the CoC that the SRA also submitted the Performance Bank Guarantee on 19.01.2023 for 15% of their Bid amount as per RFRP terms. An application was also filed for approval of the Resolution Plan.
- m. In reply to the Counter para-wise, it is stated that the Bank extends loan facilities based on Technical and Economic Feasibility and viability of the project. The Corrective Action Plan stipulated certain terms and conditions which the CD failed to honour due to which it did not fructify. The CD was also offered One Time

Settlement (OTS) which was not fulfilled and the same has been cancelled.

- n. It is further submitted that the Applicant is the suspended director of the CD and does not have any right to vote on any of the agenda items in the meeting of the CoC. It is not the case of the Applicant that he was not allowed to participate in any of the CoC meetings. He was part of the discussions in all the CoC meetings including those meetings where, Resolution Plans submitted by other PRAs were discussed and deliberated. Therefore, the Applicant had complete knowledge and information of the fundamentals and financials of the Resolution Plan submitted by the PRAs. Having participated in the meeting of the CoC, the Applicant has never made any request or demanded for the Resolution Plan. He alleges for the first time that the Resolution Plan has not been submitted.
- o. The Applicant is ineligible under Section 29A(a) of the Code, to submit a Resolution Plan and has been declared as a wilful defaulter and his name was included in the wilful defaulter list.
- p. During the CIRP of the CD, the Applicant has submitted OTS to the SBI, but the same was rejected.

- q. The application having been filed only to derail the process, is liable to be dismissed.
4. Heard both the Counsel and perused the written submissions filed by both sides. The same would be discussed at the relevant places of the Order.
5. The grievance of the Applicant is that, Regulation 26 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has not been complied with. Except harping on the violation of Regulation 26, he does not express any grievance with regard to the plan. The Applicant, as a suspended Director of the CD, is entitled to participate in the CoC meetings. But, Respondent No.1 filed IA No.192 of 2023 without following the procedural laid down by the Code. Respondent No.1 is required to announce the decision, make a written record of the decision and provide the same to every participant within 24 hours of the conclusion of the e-voting.
6. The contention is that Regulation 26 prescribes the same and it is violated. For the purpose of ready reference, Regulation 26 is extracted hereunder:

“Regulation 26: Voting through electronic means.

(1) The Resolution Professional shall provide each member of the committee the means to exercise its vote by either electronic

means or through electronic voting system in accordance with the provisions of this Regulation.

(2) Omitted.

(3) At the end of the voting period, the voting portal shall forthwith be blocked.

(4) At the conclusion of a vote held under this Regulation, the Resolution Professional shall announce and make a written record of the summary of the decision taken on a relevant agenda item along with the names of the members of the committee who voted for or against the decision, or abstained from voting.

(5) The Resolution Professional shall circulate a copy of the record made under sub-regulation (4) to all participants by electronic means within twenty four hours of the conclusion of the voting.”

7. Under Clause (4), the RP is required to make a written record of the summary of the decision taken on a relevant agenda item along with the names of the members of the company who voted for or against the decision or absent for voting.
8. It can be seen that the revised plan provided for extra amount which in any manner does not prejudice the Applicant who is a suspended Director of the CD. Absolutely, no prejudice is pleaded, except harping on the technicality of noncompliance of Regulation 26.

9. The Counsel relied on certain judgements. In the case of *Vijay Kumar Jain Vs. Standard Chartered Bank (2019) 20 SCC 455 (Para 20)* it was held that;

“though the erstwhile Board of Directors are not Members of CoC, they have a right to participate in each and every meeting held by the CoC, and also have a right to discuss along with members of the CoC all Resolution Plans that are presented at such meetings Under Section 25(2)(i).”

10. His contention is that such opportunity was not provided to the Applicant.

11. He also contends that Regulation 21 of IBBI Regulations, 2016 is also not complied with which is as under:

“Regulation 21: Contents of the notice for meeting:

(3) The notice of a meeting shall contain the agenda for the meeting along with:

(i) a list of the matters to be discussed at the meeting.

(ii) A list of the issues to be voted upon at the meeting; and

(iii) copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting.”

12. He relies on the same judgement wherein it was held that;

“the resolution plans are “matters to be discussed” at such meetings and the erstwhile Board of Directors are participants who will discuss the issues. Therefore, copies of the Resolution Plans are to be provided to the suspended Directors of the CD.”

13. It is an admitted fact that 5 PRAs submitted the Resolution Plans before the 10th CoC meeting. The grievance is that, the copies of the said Resolution Plans were not provided by Respondent No.1 to the Applicant along with the Notice dated 06.12.2022.
14. The grave prejudice that is stated as would be caused is that, the Directors' liability as Personal Guarantors persists against the Creditors and an approved Resolution Plan can only lead to a revision of amount or exposure for the entire amount. He relies upon the judgement in the case of *Lalit Kukmar Jain Vs. Union of India (2021) 9 SCC 321 (Para 130)*.
15. It is also an admitted fact that the Applicant is also a Personal Guarantor of the CD. In answer to the contentions raised by the Applicant, the Counsel for the Respondent contends that in the 8th CoC meeting held on 01.11.2022, the RP appraised the CoC members briefly on the details of the Plans received and advised the PRAs to submit their revised plans. The Applicant was very much present in the said meeting and participated in the discussions. The same is evident from the Minutes of the 8th CoC meeting which is filed as Annexure 1 to the IA 315/2023 at Page No.20-25.

16. The RP conducted the 9th CoC meeting on 03.12.2022 and appraised the CoC about the 6 Resolution Plans received and their compliances with the provision of IBC, 2016 and CIRP Regulations. The Applicant was very much present in the said meeting also, which is evident from the Minutes of the 9th CoC meeting.

17. In the 10th CoC meeting, RP discussed about the evaluation matrix and requested the members to evaluate the Resolution Plans received based on the evaluation matrix which is as follows:

S.No.	Name of the Resolution Applicant	Plan Value in Crores	Score	Rank
1.	M/s. Square Four Housing & Infrastructure Development Pvt Ltd.	81.65	83.93	H1
2.	M/s. Terminus Hotels and Resorts Limited	82.80	75.20	H2
3.	M/s. GVPR Engineers Limited	73.62	70.67	H3
4.	M/s. Consortium of Green rich Projects Ltd & M/s. Sanghavi Cylinders Pvt. Ltd.	70.75	55.95	H4
5.	Bhumireedy Gari Mohan Reddy	36.09	33.76	H5
6.	M/s. Sankalp Recreation Private Limited	45.00	32.78	H6

18. The RP kept for voting, all the plans received in the 10th CoC meeting on 08.12.2022 and informed that the voting window will be opened after 48 hours from the time of circulating the minutes i.e. from 11.12.2022 and closes on 15.12.2022.

19. The Representative of the Applicant Mr. V. Kanthi was present and participated in the discussions which is evident from the Minutes of the 10th CoC meeting.
20. It is contended that the Applicant was present in all the meetings and was well aware of the Plans.
21. With regard to the contention that the voting sheet is not circulated to the participants, it is submitted that Section 24 of IBC, 2016 provides for the meeting of the CoC and Sub-Section (4) of Section 24 states as follows:
- “Sub-Section (4) of Section 24:*
- 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 director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.”*
22. It is contended that the suspended directors are only participants and do not have any voting rights and they cannot decide on the agenda items of the meeting. The RP very well shared the Minutes of the Meeting to all the participants.
23. A perusal of the Minutes of the Meetings mentioned by the Counsel appearing for the RP would show that the Applicant had been very much present, either personally or through his representative and

the deliberations of the agenda items took place in his presence. The OTS proposal was not accepted by the Bank and the same was communicated to the Applicant by letter dated 07.02.2023 by the Asst. General Manager of the Bank. The failure was due to the Applicant being not able to honour the terms of compromise despite extension of time.

24. In the 10th CoC meeting for which, the Representative of the Applicant was present, the list of the issues to be voted at the meeting were also mentioned.
25. In the 12th CoC meeting, where the Applicant was very much present. It was informed by the RP that an IA is filed for approval of the Resolution Plan.
26. Hence from the above, it is evident that the Applicant was present in almost all the meetings and he was put on proper notice about each of the meetings. The contention that the Resolution Plan is not circulated to him does not find any basis, since the minutes of all the CoC meetings would reflect that the members present have deliberated on each of the agenda items including the Resolution Plan. There is absolutely no demur raised by the applicant in any of the CoC meetings. The averment that he came to know through the notice of the 12th CoC meeting, about the agenda items, would itself

imply if not prove, that notices were being served along with agenda items, which is one of the grievances raised in the application. The fact that there were deliberations on the agenda items would show that the concerned papers were circulated to all the members present at the meetings, including the applicant. In fact the approval of the resolution plan was done in the 12th CoC meeting, regarding which a notice along with agenda is given to the applicant. If there was any objection on the plan or any of the contentions raised in this application, he ought to have very well raised them in the meeting itself. Having accepted all the resolutions passed in his presence, he is estopped from questioning them later.

27. Hence, on the mere technicality that he was not formally supplied with the copy of the Resolution Plan and when absolutely no grievance is expressed, the application cannot be allowed at this stage of the CIRP. Hence, the applications are dismissed.

Sd/-
(CHARAN SINGH)
MEMBER (TECHNICAL)

Sd/-
(JUSTICE TELAPROLU RAJANI)
MEMBER (JUDICIAL)