

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI COURT – VI

ITEM NO. 701

IA/196/2022; IA/5457/2021 & IA/5227/2021

In IB-2924/ND/2019

IN THE MATTER OF:

Mr. Naveen Sachdeva (M/s. Jay Packaging)

V/s.

M/s. Magppie International Ltd.

**Order under Section 30(6) and Section 31 of the Insolvency and
Bankruptcy Code, 2016.**

Order delivered on 06.07.2023

CORAM:

SHRI. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

IA/196/2022; IA/5457/2021 & IA/5227/2021 stand disposed off.

Sd/-

**(Rahul Bhatnagar)
Member (Technical)**

Sd/-

**(P.S.N Prasad)
Member (Judicial)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI
I.A. 5457/2021, I.A. 196/2022 & I.A. 5227/2021**

IN

Company Petition No. (IB) – 2924/(ND) /2019

*Under Section 30(6) and Section 31 of the Insolvency and Bankruptcy
Code, 2016*

In the matter of:

Mr. Naveen Sachdeva (M/s. Jay Packaging)

...Applicant

VERSUS

M/s. Magppie International Limited

...Corporate Debtor/ Respondent

And in the matter of:

I.A. 5457/2021

M/s. Tata Financial Services Limited.

...Applicant

VERSUS

Mr. Vivek Raheja

(Resolution Professional of Magppie International Limited)

... Respondent

And in the matter of:

I.A. 196/2022

M/s. Yes Bank Limited

...Applicant

VERSUS

Mr. Vivek Raheja

(Resolution Professional of Magppie International Limited)

... Respondent

And in the matter of:

I.A. 5227/2021

Mr. Vivek Raheja

(Resolution Professional of Magppie International Limited)

...Applicant

Order delivered on: 06.07.2023

CORAM:

SHRI. P.S.N. PRASAD, MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

ORDER

PER-P.S.N PRASAD, MEMBER (JUDICIAL) &
RAHUL BHATNAGAR, MEMBER(TECHNICAL)

I.A 5457/2021


1. This is an application filed by the Applicant M/s. Tata Financial Services Limited u/s 31 of the IBC, 2016 seeking the following reliefs:

- a. Allow the present application seeking rejection of the resolution plan approved by the committee of creditors which discriminates within the same class of financial creditors and;
- b. Direct Resolution Applicant to provide a Resolution Plan which provides equitable distribution amongst same class of creditors and;
- c. Pass any other relief which this Tribunal may deem fit and proper under the facts and circumstances of the case and in the interest of justice.

2. The brief facts as averred by the Applicant for filing the present Application are as follows:



- i. That on 06.08.2021, the Worldfa Exports Private Limited (Resolution Applicant) submitted revised Resolution Plan. In the Resolution Plan in point 5.2.4., the Resolution Applicant provided that amount proposed to the Secured financial creditors having second charge holder of Corporate Debtor are proposed to be paid nil amount. The said plan was approved with 77.45% votes.
- ii. That the approved resolution plan submitted by Worldfa Exports Private Limited (Resolution Applicant) is selective and loaded solely in favour of Punjab National Bank (PNB) having the majority voting rights (75.31%) in CoC, which clearly shows a tacit understanding with the Resolution Applicant, as the Resolution Applicant has amended its Resolution Plan thrice to accommodate PNB and get its approval on the said plan.
- iii. That the Applicant had its charge registered on the goods though those goods may not be available therefore non availability of goods shall not discriminate between the




same class of Financial creditors and the entire amount shall not go to PNB.

- iv. That Punjab National Bank had voting share of 75.31% and hence meets the criteria of 66% votes as provided in the Code. Thus, all other CoC member rejecting or abstaining from voting made no difference to the plan as PNB voted in its favour. Further, it may be noted that in the Resolution plan entire amount was proposed to be paid to PNB. In such circumstances it was obvious that PNB voting in favour of the said Resolution Plan, however, the other, creditors in same class have not been given any share.


3. The Respondent/RP has filed its reply stating as follows:

- i. That the Resolution Plan is not in teeth with any provision of IBC and even the distribution Plan therein is as per settled legal principles.
- ii. That as per Section 30(4) of the IBC, 2016, the manner of distribution proposed in a resolution plan may take into account the value of the security interest of a secured



creditor. In the present case, members of the CoC had resolved that the distribution of the Resolution Plan's amount should be based upon the value of the security interests of the secured creditors.

- iii. That the value of security interest of the Applicant was determined as 'Nil' since the assets hypothecated with the Applicant were not available nor identifiable in spite of all efforts by the RP.
- iv. That in such circumstances no amount can be paid to the Applicant since in the absence of any hypothecated assets, the liquidation value also ought to be ascertained as Nil. Therefore, even as per mechanism under Section 53(1), no amount could be paid to the Applicant.
- v. That in Applicant's FORM-C "Total Amount of Claim in Equipment Finance" is stated to be Rs. 93,65,823/- whereas the applicant submits under the heading "Details of How and When Debt Incurred" that the Financial Creditor sanctioned an Equipment Finance Facility for Rs. 3,37,50,477/-. That it is apprehended that the Applicant



was aware that hypothecated assets were sold and proceeds were adjusted against the total outstanding amount.

I.A-196/2022


1. This is an Application filed by the Applicant M/s. Yes Bank Limited u/s 31 of the IBC, 2016 seeking the following reliefs:

- d. Allow the present application seeking rejection of the resolution plan approved by the committee of creditors which discriminates within the same class of financial creditors and;
- e. Direct Resolution Applicant to provide a Resolution Plan which provides equitable distribution amongst same class of creditors and;
- f. Pass any other relief which this Tribunal may deem fit and proper under the facts and circumstances of the case and in the interest of justice.

2. The brief facts as averred by the Applicant for filing the present Application are as follows:




- i. That the Applicant (Yes Bank Limited) is one of the Financial Creditors to the Corporate Debtor. Total Claim of 2,91,76,595.00/- (Rupees Two Crores Ninety-One Lakhs Seventy-Six Thousand Five Hundred Ninety-Five Only) of the Applicant was admitted. The Applicant had a voting share of 2.37% in the Committee of Creditors. The Resolution Plan is contrary to settled law, and discriminates between the same class of secured creditors, the Resolution Plan is liable to be rejected.
- ii. That the Applicant is aggrieved by the fact that the Resolution Applicant has proposed in Para 5.2.4 of the Resolution Plan that the entire amount of Rs. 29 Crore meant for the secured financial 3 creditors shall be paid to the first charge holder only i.e. Punjab National Bank.
- iii. That on 06.08.2021, the Worldfa Exports Private Limited (Resolution Applicant) submitted revised Resolution Plan. In the Resolution Plan in point 5.2.4., the Resolution Applicant provided that amount proposed to the Secured financial creditors having second charge holder of



Corporate Debtor are proposed to be paid nil amount. The said plan was approved with 77.45% votes.

- iv. That after several rounds of further deliberations, the Resolution Applicant submitted another Resolution Plan to make the total payment of Rs. 29 Crores. The Applicant objected to the revised plan on the ground that in the earlier plan the Resolution Applicant had allocated the amount payable to the Financial Creditors proportionately to the secured financial creditors. However, in the revised plan, the entire proceedings of the Resolution Plan were proposed to be paid to the first charge holder only.
- v. That the Resolution Plan only caters to the interests of one secured financial creditor i.e. Punjab National Bank and the entire Resolution amount is proposed to be paid to them and if only the interest of one secured financial creditor (having voting share of 75.31%) was to be considered, there was no need to constitute a Committee of Creditors. From a perusal of minutes of CoC Meetings, it would be clear that the entire Resolution Process was



hijacked by the largest secured financial creditor, leaving absolutely nothing for others.

3. The Respondent/RP has filed its reply stating as follows:

- i. That as per Section 30(4) of the IBC, 2016, the manner of distribution proposed in a resolution plan may take into account the value of the security interest of a secured creditor. In the present case, members of the CoC had resolved that the distribution of the Resolution Plan's amount should be based upon the value of the security interests of the secured creditors.
- ii. That the Applicant is a sub-servient/secondary charge holder and cannot be placed at an equal footing with the first charge holder.
- iii. That no amount can be paid to the Applicant since in the absence of any hypothecated assets, the liquidation value also ought to be ascertained as Nil. Therefore, even as per mechanism under Section 53(1), no amount could be paid to the Applicant.


I.A. 5227/2021



1. This is an application filed by the Resolution Professional under Section 30 (6) r/w Section 31 and Section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “Code”) seeking approval of the Resolution Plan under Section 31 of the Code read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in respect of the Corporate Debtor M/s. Magppie International Limited. The Resolution Plan was approved by the CoC in its 15th meeting with 77.45% votes.
2. Section 31 of the Insolvency and Bankruptcy Code, deals with the approval or rejection of a resolution plan by the Adjudicating Authority. Approval of the resolution Plan is accorded under the provisions of Section 31(1) of the Code.

ORDER

1. We have heard the submissions of all the parties in I.A. 5457/2021, I.A. 196/2022 and I.A. 5227/2021. I.A. 5457/2021 and I.A. 196/2022 have been filed praying for




rejection of Resolution Plan. I.A. 5227/2021 has been filed for approval of resolution plan as approved by CoC.

2. Section 31 of the Insolvency and Bankruptcy Code, deals with the approval or rejection of a resolution plan by the Adjudicating Authority. Approval of the resolution Plan is accorded under the provisions of Section 31(1) of the Code.
3. Sub-section 2 of Section 30 casts a duty on the Resolution Professional to examine the Resolution Plan received by him and to confirm that such Resolution Plan provides for the payment of insolvency resolution process costs, provides for the payment of the debts of the operational creditors and financial creditors in such manner as specified, provides for the management of the affairs of the corporate debtor after approval of the Resolution Plan, the implementation and supervision of the Resolution Plan and that the Resolution Plan does not contravene any of the provisions of the law, and that the Resolution Plan conforms to such other requirements as may be specified by the Board.



4. The Resolution Professional has filed compliance certificate in Form H and *inter alia*, has confirmed that he has examined and verified the Resolution Plan approved by the CoC, in the light of the requirements of the Code and Regulations and that it is compliant to the relevant provisions of the Code and Regulations.
5. In terms of Section 31(1) of the Code, the Adjudicating Authority has also to examine whether the requirements of sub-section (2) of Section 30 have been complied with or not.
6. On examining the Plan, it reflects that the Plan only caters to the demands of one Secured Creditor, namely, Punjab National Bank who holds 75.31% of the total voting share of the CoC. The Resolution Plan was amended multiple times by the Resolution Applicant to the extent that the distribution of the plan amount was altered to provide entire plan amount to secured creditors holding first charge over the assets of the Corporate Debtor. The Resolution Applicant has proposed in Para 5.2.4 of the Resolution Plan that the entire amount of Rs. 29 Crore meant for the secured financial creditors shall be



paid to the first charge holder only i.e. Punjab National Bank. The Resolution Plan has been approved by 77.45% votes. Therefore, the decision of the CoC approving the Resolution Plan cannot be said to be representative of the collective will of the CoC.

7. The CoC, exercising its commercial wisdom, can decide the manner in which the plan amount will be distributed keeping in mind the waterfall mechanism laid down u/s 53 of the Code. However, in the present matter, the CoC is dominated by one Secured Creditor and therefore, it does not appear to be justified that the entire plan amount should go to that very Creditor. Further, the Approval of this Resolution Plan has been contested by two Secured Creditors namely, Yes Bank Limited and Tata Financial Services Ltd., on the ground that the plan differentiates between similarly placed class of Creditors, i.e., Secured Creditors. In the reply to the objection raised by Tata Financial Services Ltd., the Resolution Professional has stated that the assets on which Tata Financial Services Ltd. holds first charge are not traceable.



The Resolution Professional has also alleged that Tata Financial Services Ltd. has sold the assets hypothecated to it. However, there is no concrete document on record to establish the same. In the reply to the objection raised by Yes Bank Ltd., the Resolution Professional has stated that Yes Bank holds subservient charge and hence, cannot be said to be similarly situated. In our view, even though the assets of Tata Financial Services Ltd. are not traceable, it does not alter the fact that Tata Financial Services Ltd. holds first charge over such assets and as such is similarly situated as other Secured Creditors holding first charge. The website of MCA also shows charges registered in the name of both the objectors.

8. Clause 5.2.4 of the Resolution Plan, provides that the secured financial creditors having second charge holder of corporate debtor are proposed to be paid nil amount without stipulating Liquidation Value contrary to the mandate of Section 30 of the Code read with Regulation 38 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2019.



9. In view of the above facts, we direct the CoC to reconsider the distribution of amount proposed in the Plan. The CoC may apply its commercial wisdom while looking into the matter to meet the ultimate object of the IB Code, 2016.
10. I.A. 5457/2021, I.A. 196/2022 and I.A. 5227/2021 are disposed off accordingly.

Let the copy of the order be served to the parties.

Sd/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-

(P.S.N. PRASAD)
MEMBER (JUDICIAL)