

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**M.A. 548/2017
C.P. NO.1A/I&BP/NCLT/MAH/2017**

Under Section 60(5) and 10 of IBC, 2016

Western India Erectors LLP Applicant

In the matter of

U. B. Engineering Ltd. Corporate Debtor

Order delivered on 5.12.2017

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Applicant: Mr. Shyam Kapadia, Advocate, i/b Abhishek Adke

For the Respondent: Mr. Rathina Maravarman, Advocate, Mr. Ashish Pyasi, a/w Umang Thakar, i/b Dhir & Dhir Associates

For the Intervener: Mr. Sanjeev Maheshwari.

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

M.A. No.548 of 2017 in CP 1A/I&BP/NCLT/MUM/2017

It's an application moved by Western India Erectors LLP through its partners under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 to quash the resolution passed by CoC in its meeting dated 10.10.2017 and to direct the COC to reconsider the resolution plan submitted by this applicant and other reliefs.

2. On the Resolution Professional having given publication for submission of resolution plan, the applicant herein submitted a resolution plan on 6.9.2017 in terms of Section 30 (2) of Insolvency & Bankruptcy Code, r/w Regulations 37 & 38 of IBBI Regulations, 2016.

When this plan was placed before COC in the meeting dated 30.8.2017, the CoC was of the view that the resolution applicant might present revised resolution plan with the RP. Accordingly, when the applicant submitted revised resolution plan with RP on 18.9.2017, it came before CoC on 14.9.2017. In the said meeting, the COC decided to take this Revised Resolution plan to their higher authorities for further consideration, thereafter, in the following COC meeting held on 10.10.2017, it has unilaterally and arbitrarily rejected the plan without even considering the revised resolution plan in the light of the provisions of IBC.

3. This applicant further submits, by looking at the report of the Joint Committee of Insolvency & Bankruptcy Code, the intent and purpose of the IBC appears to be to provide an effective framework for timely resolution of Insolvency and Bankruptcy, it is also apparent in the report that liquidation of the company shall be exercised as a last resort and the resolution of the Corporate Debtor shall be the priority and primary objective. But on the contra, the COC has not gone into the interest of all the stakeholders including management, workers, employees, Operational Creditor. The applicant further submits that this company has 760 employees/workmen, who are the bread winners of their respective family thereby almost 2000 people are associated with the Corporate Debtor for the purpose of their livelihood, therefore, any unilateral or arbitrary decision to reject a resolution plan and proceed for liquidation of the Corporate Debtor would lead to grave prejudice of unemployment to the above people. The applicant has gone ahead saying that since the COC is a creature of the statute under Section 21 of Insolvency & Bankruptcy Code, 2016, it is significant for the COC to observe and follow the principles of natural justice, but whereas the COC has contravened the principles of natural justice by not considering the aspects of the viable resolution plan which is in the interest of all the stakeholders.

4. The applicant further submits that the COC shall effort to bring back the bank guarantees to the extent of ₹49 crores to the Financial

Institutions which they have failed to do. It says that the alleged liquidation value of the Corporate Debtor is ₹106.02 crores, in case the above guarantees are encashed by the third parties for the Financial Creditors, the Financial Creditor/COC will sustain additional loss of ₹49 crores.

5. It is also submitted that liquidation value on the face of it cannot be considered as the benchmark for the resolution plan, had the same being the intent, IBC would itself have envisaged that the resolution plan should not be lower than the liquidation plan. On this logic, the applicant prays that mere rejection of plan on the basis of liquidation value is legally untenable is violative of not only natural justice but also the basic idea of this Code.

6. This applicant has propounded another argument saying that the value of plant and machineries has been allegedly provided by the RP as ₹36.99crores however, the RP/Valuers failed to consider that this aging machinery would not fetch more than ₹ 10crores.

7. Since this applicant has even come forward to make upfront payment of around ₹41crores to the Corporate Debtor Company, the COC has unreasonably rejected the resolution plan without considering vital aspect that implementation of the said plan would not have any financial losses to the Financial Creditors/COC.

8. In view of the averments aforesaid, this Resolution applicant sought for the reliefs above mentioned.

9. As against this application, the Resolution professional has already filed another Miscellaneous Application No.528/2017 stating that the Resolution Plan filed by this applicant has not been approved by more than 75% of voting share of the Financial Creditors and it has been rejected by the Committee of Creditors. Since the CoC has not approved the resolution plan even after taking extension of 90 days to 180 days period already given, the Resolution professional has filed MA 528/2017

reporting the status of Completion of the CIRP period and the resolution plan taken on record and rejection of the same by the COC.

10. The point to be considered here is that any person can file a resolution plan and on such presentation of the plan before COC, it is at liberty either to approve the resolution plan or reject the same, by looking at Section 30 (4) of the Code, in case the plan presented before the COC is to be approved, it has to be approved with super majority, i.e. 75% of the voting share of the Financial Creditors, here in this case, this plan was in fact of rejected with more than 75% voting share of the Financial Creditors. Since the right to approve or reject the resolution plan is within the domain of the Committee of Creditors, this Adjudicating Authority indeed has not been given any power to ask as to why resolution plan has been rejected. It will come before the Adjudicating Authority to take the approval of this Authority only when the resolution plan has been approved by the Committee of Creditors as mentioned under sub-section 4 of Section 30 of the Code. For approval of this resolution plan by the Committee, the criteria is first the RP shall get satisfied that plan submitted to him is in compliance of Section 30 (2) of the Code, if in compliance, it will go to the CoC for approval, here no criteria has been envisaged how a plan is to be approved, it has been completely left to the discretion of CoC whether to approve or not, perhaps for that reason alone, an Appellate Authority has been given Jurisdiction to examine it if the plan is approved by the CoC and placed before it by the RP as envisaged under section 30 (6) of the Code, beyond which no jurisdiction has been given to this Authority as to why plan has been rejected, it is more like appellate jurisdiction to examine the approved plan with super majority when it is placed by the RP. We should not get lost sight of the fact that this Authority is put to restriction to examine as to whether the plan has met the requirements as referred to in section 30 (2) of the Code or not, if yes it, shall be allowed, if no, it may even reject the plan. So it is limited to see as to all provisions included in section 30 (2) have been met or not, whereas no such restrictions upon the CoC for approval or rejection of the plan u/s 30 (4) of the Code. It is rightly done, because it is a business decision of the CoC, how to go about is upto them. Since no procedural

science has been given for approval of the plan, rejection or approval plan cannot be called as in violation of law. It goes without saying that as long as authorities work within the ambit and discretion given by a statute, Statute prevails over, otherwise shorn of uniformity and consistency.

11. The Adjudicating Authority being the Authority created by this Code, every time an issue has come for adjudication, it has to look into the Code as to whether subject matter jurisdiction has been conferred upon this Authority, if so, to what extent the jurisdiction has been endowed upon this Authority, because this Code has specified areas where this Authority can exercise its jurisdiction.

12. In respect to the Resolution Plan, the jurisdiction has been given to this Authority under Section 31 either to approve or reject the plan in the light of Section 30 of the Code. No jurisdiction has been conferred upon this Bench to exercise its jurisdiction unless a plan approved by the COC with 75% of vote shares is placed before this Authority under Section 31 of the Code. If no jurisdiction has been given to examine the plan not approved by the COC with 75% of vote shares as contemplated under Section 30 of the Code, this Authority cannot exercise its jurisdiction either by invoking Section 60 (5) of the Code or any other section of law under the Code.

13. It is imperative to mention the implications of Section 60, so that, it will be clear as to whether this Bench can interfere with a plan not approved by the Committee of Creditors by invoking section 60 (5) of the Code. Section 60 speaks of territorial jurisdiction and overall subject matter jurisdiction and jurisdictional overriding effect on other laws wherever they are inconsistent with the Code, under section 60 (5), file an application by or against the corporate debtor, for any by or against the corporate debtor and when any ambiguity over priorities or on any question of fact or law as against any other law in respect to insolvency resolution or liquidation proceedings under this Code, it is an overarching provision to deal with anomaly or incongruity arising out of the three situations given in this subsection, but not to truncate the

provisions and procedures laid down under this Code. Assuming section 60 (5) has power to nudge into the Code, it may operate to the extent of gray areas not dealt with the Code. But as to insolvency resolution, this Code is very particular about super majority, domain of CoC and limited jurisdiction of this Adjudicating authority. Another noticeable aspect is, though section 61 is very much there to appeal over the orders of this Authority, the appellate jurisdiction has been given under section 32 of the Code as envisaged under section 61 (3) of the Code, which is nothing but review of section 30 (2) of the Code. When the law is so strict in demarcation of jurisdiction, can anybody do something indirectly which is not permitted to do directly, hence forth, for any reason this applicant has no locus to question the decision of the CoC and this Authority has no jurisdiction to go into the plan rejected by CoC.

14. This Resolution Applicant cannot be called as aggrieved to file an application if his plan is rejected because the resolution applicant rights are not being curtailed by the rejection of the plan. Indeed this resolution applicant has no other right except a right to submit his plan. Here, the plan has been submitted and it has been considered by the COC therefore, it could not even be said that his right of submission of plan has been deprived by any of the acts of the Committee of Creditors. May be, for that reason only, either of COC or of resolution professional has not been asked under the Code to take approval of the Adjudicating Authority when plan has been rejected. RP has to take the approval of the Adjudicating Authority only when plan approved with 75% voting share of the committee of creditors.

15. Therefore, if a plan is rejected, the applicant will not be considered as an aggrieved person on the ground his plan has been rejected unreasonably, May be, a situation would arise to invoke jurisdiction under section 60 (5) of the Code, if RP refused to take the plan to place before CoC, despite it is in compliance of section 30 (2) of the Code, here it is not the case. It is not the case of the resolution applicant that Committee of Creditors has taken a decision infringing the rights of it, as to other stakeholders, what locus this applicant has to

question the decision of the CoC. It is out and out a business decision taken by the Corporate Debtors within their domain therefore; this Bench has not found any merit in the application filed by this Resolution Applicant.

16. In view of the reasons given above, the reliefs sought by the applicant for re-consideration of the resolution plan by the applicant are hereby dismissed as misconceived.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)