NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT-III

I.A. NO. 1148 OF 2022

IN

C.P./IB/2677/MB/2018

Filed by

AJR Infra and Tolling Limited

Formerly known as Gammon Infrastructure Projects Limited **...Applicant**

Vs.

1. Committee of Creditor of Rajahmundry Godavari bridge Limited through Canara Bank (Lead Bank)
2. Resolution Professional of Rajahmundry Godavari Bridge Limited C/o Grant Thornton India. **....Respondents**

In the matter of

Union Bank of India**.** **...Financial Creditor**

Versus

Rajahmundry Godavari Bridge Limited

...Corporate Debtor

Reserved for order on: 27.07.2022

Order Pronounced on: 10.08.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

For the Applicant: Mr. Durgaprasad Poojari, Advocate

For the Resolution Professional: Mr. Pulkit Sharma, Advocate along with Resolution Professional in person Mr. Sanjay Mishra.

Per: *Shri H.V. Subba Rao, Member (Judicial)*

ORDER

1. This Interlocutory Application is filed by the AJR Infra and Tolling Limited, Applicant against Committee of Creditor and Resolution Professional of Rajahmundray Godavari Bridge Limited praying the following reliefs:
   a. *Pass an order directing the Respondent No.1 Committee of Creditors to consider the proposal dated 24.02.2022 proposed under Section 12A of the Code by the Applicant and pass reasoned orders on the same; and*
   b. *Pass an order staying consideration of any other resolution plan till the proposal dated 24.02.2022 proposed under Section 12A of the Code by the Applicant is considered by the Committee of Creditors and dealt with by a reasoned order passed by the Committee of Creditors; and*
   c. *Pass an ad-interim order in terms of prayer (a) and (b); and*
   d. *Pass an interim order in terms of prayer (a) and (b); or*
   e. *Pass any such order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. Brief submissions of the Applicant are as follows:
   i. The Applicant herein submitted a revised proposal dated 24.02.2022 with an offer to pay INR 435 Crores. It is apposite to mention that the Applicant has proposed to pay the entire amount within 90 days of their proposal being accepted. It is further submitted that the Applicant has deposited an amount INR 10 Crores to show their bonafide.
   ii. The applicant mentioned that the proposal is tendered along with the support letter from a reputed and financially strong investor, Veritas (India) Limited to the lead bank for reviving the Corporate Debtor.

iii. It is humbly submitted that the Code mandates that any proposal u/s 12 A of the Code is to be considered by the Committee of Creditors and if rejected, such rejection is amenable to judicial review under Section 60(5) of the Code. Since no reasons for such rejection have been provided, it is not possible for this Hon'ble Tribunal to exercise such jurisdiction meaningfully, nor is the Applicant given a meaningful opportunity of challenge. The controversy in this case is clearly covered by the judgments of the Hon'ble Supreme Court referred to in the body of the application.

iv. The Applicant was time to time always willing to revive the Corporate Debtor to the satisfaction of the Creditors. However, unfortunately, the Covid-19 Pandem adversely affected the labor intensive infrastructure market the Applicant though always willing to revive the Corporate Debtor, initially faced constraints in mobilizing investment.

v. Thus, indisputably, the law mandates that the Committee of Creditors ought to have considered the proposal of the Applicant u/s 12A of the Code for settlement/withdrawal of the Corporate Insolvency Resolution Process. Hence this application.

3. The Resolution Professional filed detailed reply. The Important Paragraphs of the Reply filed by the Resolution Professional are reproduced hereinbelow:

i. As per data received by the RP from Canara Bank, the Applicant had attempted to enter the fray as a potential resolution applicant by submitting a settlement proposal dated 10.01.2022.

ii. It can be seen from the minutes of the 27th meeting of the CoC dated 20.01.2022 that the representative from Canara Bank informed the other members and the RP about the receipt of a proposal under Section 12A of the IBC from AJR Infra and Tolling Ltd. On 19.01.2022 and shared the details of the structure proposed. Other CoC members took a note of the same and agreed to provide their response at the next CoC meeting.

iii. Thereafter, as per the minutes of the 28th meeting of the CoC dated 02.02.2022, a representative of Canara Bank apprised the other CoC members briefly on the offer dated 10.01.2022 received by AJR Infra. The representative from Bank of Baroda stated that the offer received from AJR Infra is not as per the expectations communicated to their officials during the last discussion. Therefore, Bank of Baroda indicated that it would prefer to discuss the proposal in a Joint Lenders Meeting (“JLM”). Further, the representative from PNB remarked that the said 12A proposal should not be accepted as there is lack of clarity on the source of funds of the Applicant. It is stated that the CoC members decided to discuss the 12A proposal in a separate JLM and communicate the decisions taken in such meeting to the RP. It was clarified by the representatives of Bank of Baroda and Canara Bank that the CIRP shall not be put on hold and should continue as envisaged. It is stated that the RP, as per his mandate, requested the CoC to keep in mind the CIRP timelines while coming to a decision on the 12A proposal, so that there was sufficient room for further actions under per the CIRP period.

iv. Thereafter, it has been noted in the minutes of the 29th meeting of the CoC dated 16.02.2022 that a revised proposal under Section 12A of the IBC had been received from the Applicant on 10.02.2022. As per the information received by the RP from the CoC in the 29th CoC meeting dated 16.02.2022, the 12A proposal of the Applicant was discussed amongst the Lenders in a separate Joint Lenders Meeting and subsequently was not approved by the Lenders.

v. It is stated that in the Applicant's proposal under section 12A was again discussed by the CoC as per the minutes of the 30th Meeting dated 19.02.2022. It was noted by the members of the CoC that the Applicant's 12A proposal dated 10.02.2022, has a gross value of INR 430 Cr. Further, it was noted, the payment terms under the 12A proposal are conditional and have ambiguous clauses. The representative from Canara Bank also informed that despite the lender's advice to the Applicant for deposit of INR 50 Cr in a non-lien account, the Applicant had proposed to deposit only INR 10 Cr in a non-lien account and the balance amount was proposed to be deposited in the non-lien account upon filing of withdrawal application of the CIRP at the Hon'ble NCLT. The Applicant's proposal was such that if the approval is not received within 60 days of such withdrawal application, the INR 50 Cr deposited would be refunded to the Applicant. Hence, given such conditionality and for the aforementioned reasons, the COC members were not supportive of the section 12A proposal from the Applicant. The members of the CoC mentioned in the 30th CoC meeting, and which was recorded in the minutes, that the Applicant/ promoter group does not show confidence to honour their commitments and their motive is to delay the process, as the 12A proposal is filed at such a belated stage. A member of the CoC stated that there was no faith in the Applicant's commitments whether they would be honoured and the Section 12A proposal was conditional with walkaway rights being sought by the Applicant. It was noted in the minutes that the Applicant's Section 12A proposal had already been rejected twice earlier by the lenders. The revised 12A proposal was once again duly discussed among the CoC members and the same had nothing new to offer even on this occasion.

vi. The CoC members deliberated that whether the 12A proposal should be put for e-voting. However, since the same had already been declined in the JLM twice earlier, the CoC members decided to discuss the 12A proposal at the 30th COC meeting itself and conclude on their decision. Post discussion by the CoC member, the RP asked the members of the CoC about the consideration and way forward on the Section 12A proposal. The CoC members finally opined that since the Section 12A proposal had already been discussed threadbare in the JLM and the proposal had been considered at the 30th CoC meeting too, there was no requirement for separate voting on the same. The CoC members requested the RP to inform the Hon'ble NCLT, that the Applicant's plan dated 10.02.2022 was deliberated and rejected unanimously by the CoC members. In light of the fact that separate JLMs were held for discussion on the Section 12A plan presented by the Applicant herein and that the lenders had unanimously rejected their earlier proposal twice, all the members of the CoC at the 30th CoC meeting, rejected the 12A proposal received from AJR Infra on the aforementioned grounds.

vii. However, the Applicant again submitted a revised proposal under Section 12A of the IBC on 24.02.2022. This aspect was taken up by the COC members in the 31 meeting of the COC held on the same day, l.e. 24.02.2022. The Applicant had requested permission from the RP and the CoC members to represent on its 12A proposal. It was noted in the minutes of the meeting that that the 12A proposal in its present form had already been rejected and there was nothing further to discuss. It was also noted that rejection of the Applicant's proposal had been already communicated to the Applicant. The Applicant inquired whether it's possible for the CoC to discuss the modification or changes to the 12A proposal at this stage. The CoC members stated that based upon their respective competent authority's decision, they have already voted on rejection of the Applicant's proposal and they cannot discuss on the proposal under section 12A, considering the CIRP timelines and 28.02.2022 being the last date of the CIRP period. The members of CoC concluded that the CIRP is at its end and if any fresh plan is received at such belated stage, then there isn't adequate time available for consideration of such proposal.

viii. It is stated that in the interim the present Applicant had also filed an application before this Hon'ble Tribunal being IA No.436 of 2022 praying for consideration of its revised proposal dated 10.02.2022 under Section 12A of the IBC. This application was listed for the first time before this Hon'ble Tribunal on 25.02.2022. To note that by this time, the Applicant's revised proposal under Section 12A of the

IBC had already been rejected by the CoC as per their decision in a JLM and as noted in the minutes of the 30th CoC meeting. It is stated that this application came to be dismissed by the Hon'ble Tribunal by its order dated 25.03.2022, where it was noted that the Applicant's compromise proposal was already rejected and therefore the said application was infructuous.

ix. It is stated that the Applicant' present Application is identical to its earlier application being IA No.436 of 2022, with the prayer for the CoC to consider its proposal dated 24.02.2022 under Section 12A of the IBC.

FINDINGS

1. After hearing the submissions of both sides and upon perusing the material available on record, this Bench notes that a resolution plan has been approved by the COC on 02.02.2022 and the final voting of the plan was concluded on 25.02.2022. The Applicant submitted a settlement proposal on 10.01.2022 which was turned down in a joint lender's meeting. Thereafter, the petitioner submitted another settlement proposal on 10.02.2022 which was also turned down as the Applicant failed to deposit Rs. 50 Crores as directed by COC in a no lien account which was not complied. The settlement proposal dated 10.02.2022 was turned down after at length discussion and deliberations among the members of the CoC. Thereafter the Applicant appears to have submitted the 3rd proposal on 24.02.2022 after approval of the Resolution Plan. Since the Applicant is dictating terms to the COC by imposing so many terms and conditions to suit their convenience in the settlement plan, the COC in its commercial wisdom turned down the successive compromise proposals given by Applicant as they

do not inspire confidence on the conduct of the Applicant. This adjudicating Authority has no power to give any directions to the COC to consider the compromise proposal submitted by the Applicant as it is the exclusive domain of the COC. Therefore, the very prayer sought by the applicant in the present application itself is impermissible in law and this Bench has no power to give any such direction sought by the Applicant. In addition to the above, it is important to mention here that the above Company Petition was filed on 10.04.2018 and the CIRP order was passed on 27.02.2020. Surprisingly, the Applicant started submitting settlement proposals after taking more than 4 years time which is nothing but an afterthought to stall the resolution process.

2. For the aforesaid reason, there is no merit in the above Application and same is liable to be rejected. Accordingly, the above Application is **rejected.**

Sd/-	Sd/-
ANURADHA SANJAY BHATIA	H. V. SUBBA RAO
Member (Technical)	Member (Judicial)

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