Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT - I, MUMBAI BENCH

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IA No. 1361/MB/2020

in

CP (IB) No. 2045/MB/2018

(Application under Section 60(5) of I&B Code, 2016)

Bank of India
SARM Branch, 3rd Floor, Sadhana Rayon House, D.N. Road, Fort, Mumbai – 400 001

… Applicant

Versus

1. Vijendra Kumar Jain, Resolution Professional of Shree Vindhya Paper Mills Limited, 1507-B, one BKC, Bandra-Kurla Complex, Bandra (East), Mumbai – 400 051.
2. Shree Vindhya Paper Mills Limited, (presently undergoing CIR Process), Bapat Chowk,

Amravati, Maharashtra - 444 601.

3. Stressed Assets Stabilization Fund, 5th Floor, IDBI Tower, WTC Complex, Cuffe Parade, Mumbai – 400 005.

… *Respondents*

In the matter of:

Stressed Assets Stabilization Fund
… Financial Creditor
Versus
Shree Vindhya Paper Mills Limited
… Corporate Debtor

Order Dated: 18.12.2020

Coram:
Hon'ble Member (Judicial), Janab Mohammed Ajmal
Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearance:

For the Applicant	:	Mr Ranbir Singh with Mr Nahush Shah, Advocates i/b Nahush Shah Legal
For the Respondents	:	Ms Shikha Bura with Mr Naman Gadhia i/b TAPLEGAL (For R1) None for R2 & R3

ORDER

Per: V. Nallasenapathy, Member (Technical)

1. This is an Application filed by the Applicant against the Respondents seeking the following reliefs:
   a. *that this Tribunal be pleased to pass appropriate orders directing Respondent No. 1 and / or Respondent No. 3 to serve a copy of the papers and proceedings in the Misc Application No. 1048 of 2020, on the Applicant;*
   b. *that this Tribunal be pleased to pass appropriate orders directing Respondent No. 1 to provide to the Applicant and produce on record the relevant documents, details, explanations, reasons, calculation, methodology and particulars including calculation sheet with respect to the claims of the Applicant and Respondent No. 3 (the financial creditors), admitted by Respondent No. 1;*
   c. *that this Tribunal be pleased to pass appropriate orders directing Respondent No. 1 to provide to the Applicant and produce on record the relevant documents, details, explanation, reasons, calculation, methodology and particulars with respect to the constitution of the CoC and the determination of the voting share/s therein;*
   d. *that this Tribunal be pleased to pass appropriate orders and directions rectifying the admitted claims of the Financial Creditors of the Corporate Debtor;*

e. that this Tribunal be pleased to pass appropriate orders and directions rectifying the voting rights and the shares of the representatives of the Applicant and Respondent No. 3 in the CoC of the Corporate Debtor;

f. that this Hon'ble Tribunal, in view of the fact that the Resolution Plan is not approved by appropriate majority, be pleased to reject Misc. Application No. 1048 of 2020 and/or reject the Resolution Plan dated 1st February 2020;

g. that this Tribunal be pleased to direct Respondent No. 1 to file an appropriate Application under Section 50 of the Code;

h. that this Tribunal be pleased to pass such further and/or other reliefs as this Hon'ble Tribunal may deem fit and proper.

2. The Applicant submits that the Resolution Professional (RP/ R1) erroneously determined the claims of the Financial Creditors thereby affecting the voting rights of the Financial Creditors. The Applicant also assails the Resolution Plan approved by the Committee of Creditors (CoC).

3. The Applicant submits that R3 initially filed a claim for Rs. 225,20,09,720/- on 03/07/2019, thereafter on 23/08/2019 the claim of R3 appears to have been revised to Rs. 488,28,28,728/-, for which there is no explanation or justification and the same appears to have been done to

show a larger share for R3 in the CoC. Finally, the RP admitted the claim for Rs. 497,55,16,780/-.

4. The Applicant further submitted that R3 in the Company Petition claimed only Rs. 195,05,25,359/-, the details of which are as below:

Nature of Debt/Claim	Amount (Rs.)
Principal Dues	14,07,20,213/-
Normal Interest Dues	29,03,92,505/-
Further Interest Dues	96,89,68,025/-
Liquidated Damages Dues	55,04,44,616/-
Total Dues	195,05,25,359/-

5. It is submitted that in the month of July 2020, the Applicant requested R1 to provide the claim working sheet of admission of claim of R3, admitted by R1. R1 on 13/07/2020, replied to R3 stating that the Applicant may directly approach R3 to obtain the details of the claim.

6. The Applicant submits that the principal debt owed by the Corporate Debtor to the assignor of R3 was Rs.14,07,20,213/- and the principal debt owed to the Applicant was Rs. 8,68,11,000/-. It is further submitted that R3's claim was admitted for Rs. 497,55,16,780/-, whereas the claim of Applicant was admitted for Rs. 120,26,76,000/- (Approximately). Hence the Applicant submits that the claim of R3 is *ex facie* unsustainable and ought not to have been

admitted by R1. It is further submitted that R1 has not verified the claim in terms of Regulation 13 of Regulations.

7. The Applicant submits that on the above basis, the claims were wrongly and erroneously verified and admitted by R1. Hence the constitution of CoC itself is wrong. The Applicant further submits that their voting right was initially 8.37% and ultimately wrongly determined as 6.57%, while that of R3 was 27.40%. The Applicant comparing the principal amount of loan advanced in the case of R3 and in the case of the Applicant, submits that there is a huge difference in the voting share of Applicant and R3.

8. The Applicant submits that their claim was admitted for Rs. 119,38,71,000/-.

9. In view of the above grievances, now the Applicant is seeking the reliefs (supra) from this Tribunal.

10. The R1 in his Reply submitted that originally, R3 submitted a claim of Rs. 225,20,09,720/- and subsequently filed the revised claim of Rs. 497,55,16,718/- which was verified by R1 and was accepted. The R1 further submitted that all the financial creditors (FCs) including the Applicant submitted their revised claim and R1 accepted the revised claims of all the FCs, the details of which were placed in the 3rd CoC meeting. R1 submits that the question of only revising and accepting the claim of R3 is ambiguous and there is no

specific reason given by the applicant as to why the claim of R3 should not be accepted by R1.

11. After hearing the counsel for the Applicant and the counsel for the Respondent(s) the following are the observations of this Bench:

    a. Company Petition for CIRP was admitted on 07.06.2019.

    b. RP constituted CoC and the 1st CoC meeting was held on 09/07/2019.

    c. Even though R3 initially filed claim for Rs. 195,05,25,359/-, R3 filed enhanced claim for Rs. 488,28,28,728/- which has been admitted by R1. All the financial creditors including the Applicant herein submitted their revised claims and R1 accepted the revised claims of all the financial creditors and the status of final revised claims was placed in the 3rd CoC meeting held on 16.09.2019. Subsequently, 4th, 5th and 6th CoC meetings were held on 31/10/2019, 20/11/2019 & 22/01/2020 respectively.

    d. The Applicant attended all the CoC meetings. One Mr. Vivek Sinha, Chief Manager of the Applicant participated in the 6th CoC meeting held on 22/01/2020 and voted in favour of the Resolution Plan.

    e. The Resolution Plan has passed muster of the CoC with 93.06% of voting share, wherein the Applicant having 6.57% voting share also voted in favour of the

Resolution Plan and the voting on the Resolution Plan ended on 07/02/2020.

f. After 25 days of approval of the Resolution Plan by CoC, the Applicant requested RP to conduct another CoC meeting which is totally unwarranted.

g. After lapse of five months from the approval of the Resolution Plan by the CoC the Applicant filed this Application. If the Applicant was aggrieved with the decision of RP in revising the voting share of CoC members, which happened on 16/09/2019, it should have approached the Tribunal at that time and not after the approval of the Resolution Plan and that too after voting in favour of Plan.

h. It is to be noted that the CoC was initially constituted on 03.07.2019 and the constitution of CoC was revised after the admission of the revised claims by the Financial Creditors as early as on 16/09/2019 when the 3rd CoC meeting was held, wherein the composition of CoC was discussed.

i. Admittedly, this Application was filed on 28/08/2020. Now, after a period of 11 months from the reconstitution of CoC, this Applicant is making a claim that constitution of CoC itself is wrong. It is to be noted that the CIR Process is at the fag end wherein this Adjudicating Authority has to consider the approval of Resolution Plan under Section 30 of the I&B Code.

j. RP has clarified that the liquidated damages were awarded to the financial creditors, who were the first charge holders, in terms of Loan Agreement. We have also referred to the loan agreement which provides for liquidated damages. However, we are not going into the issue of whether the action of the RP in including the liquidated damages in the claim is in order or not. Even if the liquidated damages are excluded from the claims admitted its effect on the voting percentage of members of CoC would be negligible.

k. We feel that the Applicant cannot raise the issue of wrong constitution of CoC at the fag end of CIRP and that too after participating in all the CoC meetings and on top of that after voting in favour of the Resolution Plan in the CoC meeting.

l. It is rather strange and incomprehensible that the Applicant after voting in favour of the Resolution Plan turns around and seeks for dismissal of the Resolution Plan. The Applicant is thus estopped from questioning the resolution plan.

12. Accordingly, this Application is dismissed. No costs.

Sd/-	Sd/-
V. Nallasenapathy	Mohammed Ajmal
Member (Technical)	Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL
COURT No. – I, MUMBAI BENCH

*** *** ***

IA No. 1361/2020
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CP(IB) No. 2045/2018

Stressed Assets Stabilization Fund
V/s.
Shree Vindhya Paper Mills Ltd.

*** *** ***

Dated 18th December, 2020

ORDER

The matter is taken up on VC. Counsel for the Applicant is present. No representation for the Respondent. Orders pronounced vide separate orders. The Application is rejected.

Sd/-	**Sd/-**
V. NALLASENAPATHY	**MOHAMMED AJMAL**
Member (Technical)	**Member (Judicial)**