NATIONAL COMPANY LAW TRIBUNAL
BENCH-II, HYDERABAD

IA No. 244 of 2021
In
CP (IB) No. 184/HDB/7/2019

Application under Section 60 (5) of the IBC, 2016 R/w Regulation 36A of IBBI Regulations, 2016, Read with Rule 11 of NCLT Rules, 2016

In the matter of

State Bank of India versus M/s Meenakshi Energy Limited

Filed by:

Consortium of Prudent ARC Ltd
& M/s Vizag Minerals & Logistics Private Limited ...Applicant

VERSUS

Mr. Ravi Sankar Devarakonda
Resolution Professional of Meenakshi Energy Limited
The Skyview 10, 18th Floor, Zone-A
Survey No. 83/1, Raidurgam
Hyderabad – 500032 ... Respondent

Date of order 24.06.2021

Coram:

Shri Madan B. Gosavi, Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Member (Technical)

Appearance: (Via Video conference)

Shri Joy Saha, Senior Advocate assisted by Ms. Rubina Khatoon, Advocate for Applicant
Shri Ramji Srinivas, Advocate for Committee of Creditors
Shri T.G. Rajesh Kumar, Advocate for Resolution Professional

PER: BENCH

1. This Application is filed under Section 60 (5) of Insolvency & Bankruptcy Code, 2016 (herein after referred to as Code) by prospective Resolution Applicant seeking directions not to allow the Resolution Professional to accept any plan after the closure of due date of CIRP i.e. 08.03.2021.

2. **Consortium of Prudent ARC Ltd and M/s Vizag Minerals & Logistics Private Limited** as joint bidders were declared as prospective resolution applicant on 23.03.2020 in response to Form-G published by the Resolution Professional on 21.01.2020.

3. Meanwhile owing to covid induced lockdown, the first extension of CIRP by 90 days was granted with effect from 12.08.2020. 270 days of CIRP period came to end on 10.11.2020. This Tribunal further passed orders of second extension of CIRP period by 60 days on **08.01.2021** with direction to Resolution Professional to complete the process within 330 days **failing which liquidation proceedings to begin**. Aggrieved by the said order, the Resolution Professional preferred an appeal vide CA (AT)(CH)(Insolvency) No. 15 of 2021 before Hon'ble NCLAT. Hon'ble NCLAT dismissed the appeal on the grounds of being premature and otiose and directed this Adjudicating Authority to dispose of on merits IA 120/2021, which is filed seeking extension of 60 days.

3. When the Resolution Professional failed to receive any satisfactory resolution plan, a revised Form-G was re-issued on **25.01.2021**, and the last date for submission of resolution plans was consciously fixed as **24.02.2021 (later extended to 01.03.2021)** keeping in view the closure date for CIRP i.e **08.03.2021**. A revised Form-G was re-issued by Resolution Professional on 01.03.2021 and the date of submission of Resolution Plans was fixed as 06.03.2021. The Applicant submitted their resolution plan on 06.03.2021 along with EMD of Rs. 1,00,00,000/- (Rupees One Crore only) as per Request for Resolution Plan dated 29.10.2020. The other resolution plan was submitted by STLL on 05.03.2021.

4. Yet again on **06.03.2021** the Resolution Professional published revised Form-G and the last date slated for submission of Resolution Plans was **08.03.2021**. The last date for submission of resolution plans was subsequently extended for the fourth time to **12.05.2021**.

5. The instant Application is filed objecting to the decision taken by the Resolution Professional as well as the CoC for extending the last date for submission of the plans first to 08.03.2021 and then to 12.05.2021 (which was beyond 330 days) thereby keeping the CIRP open ended, even after receipt of two resolution plans which satisfied the requirement of competitive bidding and having opened negotiations with Resolution Applicants, there was no occasion for the Resolution Professional and the CoC to extend the same when both the resolution plans were received within the last date i.e. 08.03.2021. They claim that the CIRP was unilaterally extended by the CoC to allow the Vendanta Resolution Plan to come into fray in the name of maximization of value of the Corporate Debtor instead of making all endeavour to close the CIRP process by 08.03.2021. To support their contention, the Applicant relied on the order of Hon'ble NCLAT, Delhi in **"Pioneer Rubchem Pvt Ltd Appellant vs Vivek Rajeha Resolution Professional, Trading Engineers (International) Limited and Anr,** in Company Appeal (AT) (Insolvency) No. 706/2020 and the relevant para is reproduced below:-

"Section 12 of IBC, 2016 provides for a time line of 180 days for completion of CIRP and even if we consider extended period, it is another 90 days and hence within 270 days the CIRP should be completed.

"4 Although it is directory that CIRP can be completed up to a period of 330 days or so which is largely to consider the time frame of judicial process. Hence, practically all attempt be made to complete the CIRP within 270 days.

"5. In the present case already two Resolution Plans have been received and hence the aspect of competitive bidding is complied with, if we permit the present Appellant, it will open a floodgate for such applications & will derail CIRP and purpose of IBC, not only in this case but in other cases also. The Appeal is devoid of any merit".

6. The Applicant submits that the CoC has no power to extend the overall time of 330 days to complete the CIRP when this Adjudicating Authority is vested with the said jurisdiction and it is improper on the part of Resolution Professional/ CoC to

unilaterally extend the time to accept additional plan for consideration of Vedanta Resolution Plan after completion of the overall limit of 330 days. To buttress their case, the Applicant relied on the judgement of Hon'ble Supreme Court in **"Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta & ORs**, reported in (2020) 8 SCC 531, where in it held that ***discretion of extending the time beyond 330 days is permissible only when it can demonstrate to the Adjudicating Authority that a short time was required to complete the process.***

7. The Applicant raised objections vide their letter dated 30.04.2021 for accepting additional resolution plans after the deadline. The judgement of the Hon'ble Supreme Court in the matter of **Kalpraj Dharamshi & Anr Verus Kotak Investment Advisors Ltd** referred to by the Resolution Professional in his reply letter dated 13.05.2021 is inapt in the instant case as the resolution plan of Kalpraj was accepted by the CoC, albeit before the expiry of 330 days.

8.. The other objection raised by the Applicant is that the plan submitted by the them was already disclosed to CoC and the contents known to all stakeholders that too beyond the deadline stipulated in Form-G dated 25.01.2021. In this regard, the Applicant placed reliance on the order passed by Hon'ble NCLAT, Delhi in the matter of **Kotak Investment Advisors Ltd V. Mr. Kishna Chamadia (Company Appeal (AT) (Insolvency) No. 344-345/2020** wherein it was held as follows:-

"Indeed the CoC was fully authorised to either accept or reject the Resolution Plan or negotiate with the Resolution Applicants in the exercise of its power under commercial wisdom. But in the exercise of commercial wisdom, CoC was not authorised to approve the arbitrary and illegal conduct of Corporate Insolvency Resolution Process, which has been done in this case".

7. The Applicant further submits that 'speed' being the gist for the working of 'Bankruptcy Code' to achieve a time bound resolution, the decision of the Resolution Professional in

accepting additional plan of Vedanta Limited and the CoC considering the same long after the completion of overall time limit of 330 days is illegal, malafide and contrary to the Code and is liable to be set aside.

8. Per contra the Resolution Professional/Respondent herein contends that the CoC should be arrayed as proper and necessary party to this Application owing to the fact that the decision to allow the consideration of the Vedanta Resolution Plan was taken by the CoC. The Resolution Professional is duty bound under Section 25(2)(i) of the Code to place all resolution plans before the CoC after examining and confirming the resolution plans are compliant under Section 30(2) and 30(3) of the Code and it is for the CoC to either accept or reject the same. The decision to extend the timeline for submission of the resolution plan was not a unilateral decision by Resolution Professional but pursuant to a resolution passed in the CoC meeting held on 20.04.2021. The Learned Senior Counsel for Resolution Professional relied on paras 75 & 76 of the Judgement of Hon'ble Supreme Court in the case of ***Arcelor Mittal India Private Limited vs Satish Kumar Gupta & Ors*** wherein it held that there is no vested right in the Applicant to have its Resolution Plan approved. The right to challenge the present Application is premature as no decision vis-à-vis its approval is taken by the CoC. This proposition of law was also reiterated by the Hon'ble Supreme Court in the matter of ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors, wherein it held that no vested right inheres in any resolution Applicant to have its resolution plan considered by the CoC.***

9. The Resolution Professional submits that the decision of the CoC to extend the timeline beyond 08.03.2021 was subject to the outcome of 330-390 days' extension application.

10. Vedanta Limited was in the list of PRAs since December 2020 and submitted its EoI on 27.02.2020 and found place in the final list of PRAs issued by Resolution Professional on

08.03.2020 and 03.02.2021. Vedanta Limited filed its EoI within the stipulated time as per Regulation 36(A)(6) of the CIRP Regulations. Though Vedanta Limited indicated its inability to file the Resolution Plan prior to 08.03.2021 and filed it on 16.04.2021, the CoC in its commercial wisdom decided to consider the Vedanta Resolution Plan as no plan was approved by the CoC as on 16.04.2021.

11. The Resolution Professional submits that fair and equal opportunity was provided to all PRAs for revising/improvising their Resolution Plans. Even at the instance of Applicant, several extensions were granted until 27.06.2021 to submit revised resolution plan. In this regard, the Resolution Professional relied on Hon'ble Supreme Court judgement in the matter of ***Kalpraj Dharamshi & Anr vs Kotak Investment Advisors Limited & Anr, wherein it held that paramount importance be given to the decision of CoC.*** He further submits that the extension of timeline for submission of Resolution Plans was done only with the approval of CoC in accordance with Regulation 36(B)(6) of CIRP Regulations.

12. He submits that the Applicant failed to demonstrate how the deliberation of their resolution plan will put the Applicant at a disadvantage if the Vedanta Resolution Plan is considered. The Resolution Professional further submits that all resolution plans including that of the Applicant were discussed within the auspices of the CoC and the same were not disclosed to any other PRA.

12. In response to the Applicant's contentions that CIRP period of the Corporate Debtor came to an end on 08.03.2021 and that the Resolution Professional ought to have completed the same by the said date, the Resolution Professional to buttress his stand, has relied on the law laid down by the Hon'ble Supreme Court in the matter of ***Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta & Ors (2020) 8 SCC 531, wherein it held that 330 day period prescribed under Section12 of the Code is <u>not mandatory</u> and vests with the***

Applicant the right to seek further extension beyond 330 days in exceptional circumstances and submits that his application seeking extension beyond 330 days is in accordance with law and pending adjudication

13. We heard the Senior Counsel appearing for the Applicant, Senior Counsel appearing for the Resolution Professional and Senior Counsel appearing for Vedanta Limited. The issue before us for consideration are :

(i) Whether the CoC can extend the timelines for RFRP while two Resolution Plans submitted before the CoC as per the earlier timelines are for consideration before them.

(ii) Whether the CoC is empowered to keep on extending timelines beyond 330 days in the guise of maximization of value.

14. To arrive at a definite and conclusive answer, we refer to IBC, 2016 and CIRP Regulations.

Section 30 (1) laid down that a resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.

Whereas Regulation 36A (5) speaks of the methodology of submission of EoI by the Prospective Resolution Applicants. **The Prospective Resolution Applicants who meet the requirements of the invitation for expression of interest, shall submit expression of interest within the "time specified" in the invitation under clause (b) of sub-regulation (3)**.

Regulation 36A (6) also very clearly mentions that ***the EoIs received after the time specified in the invitation under Clause (b) of sub-regulation (3) shall be rejected.***

15. Regulation 36B deals with Request for Resolution Plans and Regulation 36B(2) details each step in the process and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines and Regulation 36B(6) deals with extension of timelines for submission of resolution plans with the approval of the committee. Regulation 36B(7) empowers the resolution professional to re-issue request for resolution plan with the approval of the committee, if the resolution plans received in response to an earlier request are not satisfactory, subject to the condition that the request is made to all prospective resolution applicants in the final list.

16. Regulation 36A and Regulation 36B(2) clearly speaks that timelines specified are mandatory. In the instant case, the 330 days period completed on 08.03.2021. The Applicant claimed that two resolution plans were placed before the CoC for consideration as per the timelines specified in RFRP and before the timeline expired, the Resolution Professional has further extended the time at the request of another Resolution Applicant viz Vedanta Limited, who is qualified as prospective Resolution Applicant in final list of EoI. The two Resolution Plans pending before the committee were deliberated at length and the contents known to all the CoC members. The CoC in its commercial wisdom has requested the Resolution Professional to extend the RFRP timelines beyond 330 days with a view to give an opportunity to Vedanta Limited to submit their Resolution Plan in the name of value maximization of Corporate Debtor, albeit opportunity was given to the other two resolution applicants to revise their proposal. As this being status, we are of the view that CoC and Resolution Professional have taken the process into their own hands even though they cannot extend timelines beyond 330 days unilaterally without the approval of the Adjudicating Authority. This action of Resolution Professional is contrary to the letter and spirit of the Code and its Regulations.

17. The moot point to be decided whether the CoC is correct in extending the RFRP timelines when two Resolution Plans are already before them for consideration and negotiation were held with these two resolution applicants, just to accommodate another Resolution Applicant who had qualified in the EoI. In our view, the CoC and the Resolution Professional has categorically violated the timelines in the name of value maximization, thereby kept on extending the process beyond 330 days and CoC in its wisdom has stepped into the shoes of the Adjudicating Authority and extended the period without any rhyme or reason. The CoC has no business to extend RFRP beyond 330 days without the specific approval of the Adjudicating Authority. We strongly express our reservations on the decision of CoC as well as RP in this regard and accordingly direct the Resolution Professional/CoC to consider the two plans received prior to last extension of RFRP timeline i.e. received before 330 days period to complete the CIRP.

18. With the above direction, the IA is allowed and stands disposed of.

(Veera Brahma Rao Arekapudi)
Member (Technical)

(Madan B. Gosavi)
Member (Judicial)

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