

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

IA (IB) No.11/CB/2021

In

TP No.30/CTB/2019

(CP (IB) No.1323/KB/2018

In the Matter of:

Application under Section 60 (5) of Insolvency and Bankruptcy Code 2016.

And

In the matter of:

Bank of India

Financial Creditor

Versus

In the matter of:

Maa Durga Rice Processing & Esports Pvt Ltd.

Corporate Debtor

And

In the Matter of:

Bank of India, Asset Recovery Branch, Kolkata 5BTM Sarani Kolkata 700 001.

... **Applicant**

Versus

1.Kamalesh Kumar Singhania, Resolution Professional of Maa Durga Rice Processing & Exports Private Ltd., Bajarang Kunj, Room No.412 and 413.2B Grant Lan, 4th floor, Kolkata 700012.

2.SREI Equipment Finance Limited, Vishwakarma, 86C, Topsia Road, Kolkata 700046.

... **Respondents**

Order reserved on: 30.11.2021

Order pronounced on: 22.12.2021

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Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For the Petitioner: Mr. Rahul Auddy, Advocate
For the 1st Respondent: Ms. Pranay Agarwal,
For the 2nd Respondent: Mr. Rishav Banerjee,
Mr. Rajarshi Banerjee. Advocates.

ORDER

Per P. Mohan Raj, Member (Judicial)

1. The grievance of the petitioner is the enhancement of voting right of the second respondent in COC from 17.05% to 46.60%, it impacts upon the reduction in voting right of the petitioner in COC from 82.95% to 53.40%, it all happened because of 1st respondent who reconstituted the voting right pattern in 16th COC on 27.11.2020. Hence the petitioner filed this interlocutory application praying to declare the reconstitution of COC done by 1st respondent on 27.11.2020 is void and in consequence restore the voting right pattern existed as on the date of 15th COC meeting.

2. From the averments of the petition, it appears that there were 16 COC meetings held ranging the period from 30.09.2019 to 27.11.2020. In all the meetings the voting rights of parties were fluctuating. In the 3rd COC meeting the voting right of the 2nd respondent was marginally higher than the petitioner there after upto 15th

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COC the voting right of the petitioner is much higher than the second respondent and almost retains more than 82% voting rights, the same was reduced in the 16 COC meeting. It all happened because of delay in submitting the required documents by the second respondent to the satisfaction of the 1st respondent.

3. The petitioner compliant and challenge the reconstitution of the COC by the 1st respondent dated 27.11.2020 on the following grounds:

- (I) It is done belatedly,
- (ii) It is arbitrary,
- (iii) It is in violation of Regulation 12 of CIRP Regulation,
- (iv) Wrongly admitted claim of exorbitant penal interest at 36%,
- (v) Ignored that the 2nd respondent is only an unsecured creditor,
- (vi) Failed to obtain the leave of an Adjudicating Authority,
- (vii) It is illegal,
- (viii) It is suspicious and malafide.

4. Now we see whether the petitioner has substantiated the above grounds to succeed in his attempt.

5. The CIRP process commences from the order dated 04.09.2019. In pursuant to the same Paper publications in both English and vernacular newspapers were effected on 07.09.2019 granting time till 18.09.2021 to submit claims. The petitioner and Maa Durga Thermal Power Co. had submitted their claims. The second respondent submitted his claim on 24.09.2019. The second respondent submitted the claims with 1st respondent after the expiry of last date

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mentioned in the public announcement but before the expiry of ninetieth day of the insolvency commencement date, the same is permissible under Regulation. Regulation 12(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016. permits the receipt of claims up to ninety days from the date of commencement insolvency process. Thus, there is no delay in submission of claims by second respondent.

6. The second respondent submitted claim for Rs.40,71,03,361/-. The 1st respondent initially admitted the second respondent's claim only to the extent of Rs.5,50,59,135/- on the basis of records submitted by the second respondent and records available with the corporate debtor. The applicant and second respondent submitted their revised claim with the 1st respondent on 1st week of September by the applicant and on 23.11.2020 by the second respondent, both the revised claims were received by the 1st respondent. The 1st respondent accepted certain claims of second respondent after the receipt of certain documents required by him to satisfy himself before admitting the claims. After accepting the materials produced by the second respondent the first respondent revises the admitted claim amounts of second respondent to the extent of Rs.23,36,98,127.85/- such an exercise is permissible under Regulation 14 (2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,2016. Thus, there is no delay in submission of claims by the second respondent.

7. The issue pertaining to admission of Rs.5,50,59,135.00/- was opposed by the second respondent and became subject matter in the 8 and 10 COC. In the 10

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COC the applicant expressed his view that the said dispute is not matter for discussion in COC and the issue should be settled between the 1st and 2nd respondents. Thus the 1st respondent exercised his power in admitting the claim of second respondent known to the applicant. The applicant stated in the petition when he asked the first respondent to permit him to inspect the documents given by the second respondent the first respondent refused to comply his request. In the scenario the applicant alleged that the act of first respondent is arbitrary. The 1st respondent has to maintain confidentiality, as independent person he cannot share the materials collected from one claimant with another claimant. The 1st respondent cannot delegate his power of scrutiny of claims submitted by the creditors along with supporting documents to another creditor, hence refuse to permit the applicant to peruse the documents submitted by second respondent will not amount to arbitrary act of the first respondent.

8. In respect of admission of 36% penal interest is concern, the first respondent explained that he has no authority or right to reduce the interest rates or other charges that was agreed upon by the corporate debtor and claimants by agreements. He said he can only collate and verify the claims and admit the claim either in full or in part. When there is legally enforceable agreement between the parties, the interim resolution professional cannot interpret the same and tinker the contents of agreement. Hence the objection raised by the petitioner side is not conceded.

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9. The applicant stated that the 1st respondent failed to get the consent of the Adjudicating authority before accepting the claim of the second respondent after the expiry of ninety days. There is no delay in submitting the claims by the second respondent, but delay occurred beyond ninety days only in admitting the claim after scrutiny of documents. It is pertinent to mention that the petitioner also submitted his revised claim after the expiry of ninety days in the 1st week of September 2019 the same was admitted by the 1st respondent at the time the petitioner not thought of permission of Adjudicating Authority now he raised such plea, however he has not quoted under what provision of law such a consent of Adjudicating Authority is required, further Regulation 14(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,2016 clearly says that the Interim resolution profession shall revise the amount of claims when he comes cross additional information warranting such revision.

10. The petitioner stated that the act of the first respondent is suspicious and with malafide but under what circumstances it is suspicious and malafide is not narrated. From the records it appears that the second respondent submitted his claim for a sum of Rs.40,71,03,361.00/-within the stipulated time. The first respondent initially admitted only to the extent of Rs.5,50,59,135.00/-and called the second respondent to produce certain evidence and clarification for substantiating the rest of the claim as provided under Regulation10, of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate

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Persons) Regulations,2016. The clarification called by the first respondent from the second respondent and documents produced by the second respondent was under the verification of the first respondent were all known to the petitioner, these facts were recorded in 8th,10thand14th COC meetings. Thu, everything was done by first respondent with the knowledge of the petitioner. It is patent that only because of voting right of the petitioner is substantially reduced in COC he termed the act of the first respondent is suspicious and malafide, the same cannot be accepted.

11. The petitioner stated that second respondent is unsecured creditor instead the petitioner is secured creditor and nationalised bank. The second respondent denies this fact and stated that the second respondent is secured and financial creditor. Section 21(2) of IBC 2016 speaks about the formation of COC with all Financial creditors of corporate debtors, it does not speak about secured and unsecured creditor and it does not provide any special status to nationalised Bank hence the expectation of the petitioner being Nationalised Bank needs special status or placed in higher pedestal is not acceptable.

12. The petitioner described the act of first respondent reconstituting the COC on 27.11.2020 is belated, arbitrary, illegal, without any proper verification, not in systematic manner, whimsical, unauthorised, violation of Code, not in good spirit, malafide, ill logic, and tainted, but miserably failed to establish any one of the contentions as alleged, hence the petition is liable to be dismissed.

In fine this petition is DISMISSED.

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13. The Registry is directed to send the copy of the order to the parties' concern forthwith.

14. Certified copy of the order be issued on payment of fee if applied for, upon compliance of all requisite formalities.

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Satya Ranjan Prasad
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed on this 22nd day of December, 2021.