

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

IA 2081/MB-V/2021

In

CP (IB) No. 2995/MB/2019

Under Section 60(5) of IBC, 2016
r/w Rule 11 of the NCLT Rules, 2016

- i. Mr. Vidyadhar Vasant Pawanaskar**
ii. Mr. Vijay Dattatraya Kulkarni

.... Applicants

V/s

Mr. Ganesh L. Jain & Anr.

... Respondents

In the matter of:

Small Industries Development Bank of India

...Financial Creditor

V/s

E & G Global Estates Limited

...Corporate Debtor

Order Dated: 11.08.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

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

Appearances (via videoconferencing):

For the Applicant (s) : Mr. Shyam Kapadia, Advocate.

For the Respondent (RP) : Mr. Ayush Rajani, PCA.

ORDER

Per: Anuradha Sanjay Bhatia, Member (Technical)

1. This is an application, being IA No. 2081/MB-V/2021, filed by **Mr. Vidyadhar Vasant Pawanaskar & Mr. Vijay Dattatraya Kulkarni**, the Applicants, under Section **60 (5)** of IBC, 2016 (hereinafter “**the Code**”) r/w Rule 11 of NCLT, 2016, seeking following reliefs:
 - 1.1 *To stay the Approved Resolution Plan submitted by Mrs. Asha Sanap;*
 - 1.2 *To pass an order of reconstituting the Committee of Creditors (hereinafter referred to as “**CoC**”) based on the outcome of the present application and other applications filed by various stakeholders including the Resolution Professional hereinafter referred to as “**RP**”) being IA 136 of 2021, IA 149 OF 2021, IA 107 OF 2021, IA 346 OF 2021, IA 1288 OF 2021 and IA 1150 of 2021;*
 - 1.3 *To pass an order directing the Respondent No. 2 to reconsider afresh both the Resolution Plans received from both the Resolution Applicants and submit their considered reasoning for selecting the Resolution Plan which is interest of all the creditors; and*
 - 1.4 *To direct the Respondent No.1/ RP to reconsider the claim made by the Applicants and admit the same.*

SUBMISSIONS OF THE APPLICANT:

2. The brief submissions on behalf of the Applicant is as under:
 - 2.1 Vide order dated 24.06.2020, Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) was initiated against the Corporate Debtor and Mr. Ganesh Labhchand Jain was appointed as the Interim Resolution Professional, who was subsequently appointed as the Resolution Professional (hereinafter referred to as

“**RP**”) by the CoC, with respect to ongoing CIRP of the Corporate Debtor.

- 2.2 Applicants are the Employees of the Corporate Debtor and are Operational Creditors to the Corporate Debtor. The amount claimed by Applicant No.1 is Rs.25,92,534/-. The Resolution Professional after verifying the claim of Applicant No. 1 admitted Rs.23,27,337/- . The amount claimed by the Applicant No.2 is Rs.7,68,988/- and the amount admitted by the Resolution Professional is Rs.6,99,080/- . The Resolution Professional is Respondent No. 1 in the present IA. The Respondent No. 2 is the CoC, comprising of Financial Creditor, Small Industries Development Bank of India (“**SIDBI**”) and the Home buyers.
- 2.3 The CoC members during the 8th CoC meeting held on 20.04.2021 whilst the e-voting window closed on 30.05.2021, voted in favour of the Resolution Plan proposed by Mrs. Asha Shivaji Sanap with 79.60% votes. The plan envisages pay-out of Rs.1.5 lakh towards Employees Claim.
- 2.4 An amount of Rs.1.5 lakh have been allocated towards the total admitted claim amount of Rs.53,83,841/- under the head “Employees Claim”. Hence, the Applicant No. 1 would be receiving amount of Rs.64,700 against its admitted claim amount of Rs.23,27,337/- and Applicant No. 2 would be receiving Rs.19,434/- against its admitted claim amount of Rs.6,99,080/-. Aggrieved by the meagre amount being proposed by the Resolution Applicant in the Resolution Plan, the Applicants have moved this present IA.

REPLY OF THE RESOLUTION PROFESSIONAL:

3. The Resolution Professional has filed its reply denying the contentions of the Applicants and submits as under:
 - 3.1 The Learned Counsel for the Resolution Professional stated that the difference between the “amount claimed” by the Applicant No. 1 and that which has been “admitted”, was on account of interest factor of 8% claimed by the Applicant No. 1, for 18 months. This was rejected by the Resolution Professional, as not admissible, as employees are not entitled to any interest on their salary claims.
 - 3.2 The Learned Counsel for the Resolution Professional further stated that, the difference between the “amount claimed” by the Applicant No. 2 and that which has been “admitted”, was on account of interest factor of 8% claimed by the Applicant No. 2 for 15 months which was rejected by the Resolution Professional, as not admissible, as employees are not entitled to any interest on their salary claims.
 - 3.3 The Learned Counsel for the Resolution Professional explained that the total claim from employees received was for Rs.1,22,73,516/-, which is an aggregate of all the employees claims, including that of Applicant No. 1 and 2.
 - 3.4 The claims were verified by the Resolution Professional and after due verification, claims were admitted. However, the Resolution Plan approved by the CoC offered Rs.1.5 lakh on account of employees claims. The Resolution Professional brought to our attention that Mrs. Asha Sanap, the successful Resolution Applicant has suo moto increased the pay out under the head “Employees Claim” to Rs.5

lakh and filed an Additional Affidavit dated 07.03.2022, to that effect.

Findings/ Observations:

4. Heard the learned counsel for the Applicant and perused the records.
 - 4.1 The present Application has been filed by the Applicants seeking stay to the Resolution Plan and to reconstitute the CoC. The Applicants are employees and thus are Operational Creditors of the Corporate Debtor. The employees have submitted their claims to the RP. Two lists of employee's claims were published by the RP. However, the admitted claim amounts in the second list was Rs.53,83,841/- which, according to the case of the Applicants, is significantly low. Aggrieved by the meagre amount being proposed by the Resolution Applicant in the Resolution Plan, the Applicants have filed this present IA.
 - 4.2 It is observed by the Bench that, in the instant case, the Resolution Plan has already been approved by requisite majority of the CoC and pending before the Adjudicating Authority for approval.
 - 4.3 Further, pursuant to the provisions of the Code and the Regulation, the RP received total claim of Rs.1,22,73,516/- from all the employees including Applicant No.1 and 2. The admitted claim of Rs.81,08,281/- was subsequently reduced to Rs.53,83,841/- which comprise of rejection of claim amounting to Rs.28,01,317/- of one of the Employee, Mr. Dipesh Bhadane. The interest claims to the extent of Rs.69,908/- by Applicant No.1 and Rs.2,65,197/- by Applicant No.2 had been rejected by the RP as there is no documentary evidence to support their claim of interest payable by

the Corporate Debtor on outstanding salaries. Hence, we find no merit in the submissions of the Applicants in the present claim. Further, the CoC has already approved the claim of the Applicant under the Resolution Plan.

- 4.4 It is further observed by the Bench that, the Resolution Applicant, Mrs. Asha Sanap, vide its Additional Affidavit dated 07.03.2022 submitted that the Resolution Applicant undertake to pay the Operational Creditors claim (Employees) Rs.5,00,000/- instead of Rs.1,50,000/- against the total admitted claim of Rs.53,83,841/-.
- 4.5 The amount payable to Operational Creditors under the Resolution Plan is as per Section 30 (2) (b) of the Code which is summarised as under:

In accordance with amendment Sec 30(2)(b) of the Code, the payment of debts of operational creditors shall not be less than:

- i) the amount to be paid to Operational Creditors in the event of Liquidation of the Corporate Debtor in accordance with Sec 53 of the Code.*
- ii) the amount to that would have been paid to the Operational Creditors, if the same were to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in Sec 53(1) of the Code, in the event of Liquidation.*

whichever is higher and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section

(1) of section 53 in the event of a liquidation of the corporate debtor. In compliance to the Sec 30(2)(b) of the Code as referred in para (2) above, the liquidation amount is not known to the Resolution Applicant, however in case the amount as mentioned in para (1) fall short of the said amount, the same shall be adjusted from the amount payable to financial creditor on pro rata basis to comply with the said provision in law.

- 4.6 In view of the above discussion, we are of the considered view that the Interlocutory Application filed by the Applicant has no merit and the same liable to be dismissed as the Applicant in the instant Application have no locus to challenge the constitution of CoC. The Resolution Plan cannot be rejected by the Adjudicating Authority simply on the objection of an Operational Creditors being Employees that they are being paid a meagre amount against his admitted claim so long as it does not contravene the provisions of Section 30 (2) (b) of the Code, which is not the case in the instant IA.
- 4.7 Hence, application being **IA No. 2081/MB-V/2021**, filed by **Mr. Vidyadhar Vasant Pawanaskar & Mr. Vijay Dattatraya Kulkarni**, the Applicants, is hereby **dismissed**.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)