BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

MA 1872/2019 & MA 2140/2019 in
CP No.2054/IBC/NCLT/MB/MAH/2018

MA 2141/2019 in
CP No. 1830/IBC/NCLT/MB/MAH/2018

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

(A)<u>In Application 1872/2019</u>

Noble Resources International Pte. Ltd.
……Applicant

V.

1. Mr. Rajiv Chakraborty
   Resolution Professional of Uttam Galva Metallics Ltd.
2. Committee of Creditors
3. (a) Investment Opportunites IV Pte Ltd.
   (b) Synergy Metals and Mining Fund LLP
   (c) Art Special Solutions Finance (India) Ltd.

…..Respondents

In the matter of

State Bank of India
….Financial Creditor

v.

Uttam Galva Metallics Limited
….Corporate Debtor

(B)<u>In Application 2140/2019</u>

Investment Opportunities IV Pte. Ltd. & Ors.

……Applicants

V.

Mr. Rajiv Chakraborty & Ors.
…..Respondents

In the matter of

State Bank of India
….Financial Creditor

v.

Uttam Galva Metallics Limited
….Corporate Debtor

(C)In Application 2141/2019

Investment Opportunities IV Pte. Ltd. & Ors.

.....Applicants

V.

Mr. Rajiv Chakraborty & Ors.

.....Respondents

In the matter of

State Bank of India

....Financial Creditor

v.

Uttam Value Steels Limited

....Corporate Debtor

Date of hearing: 12.06.2019
Date of Pronouncement: 01.08.2019

Coram :
Hon'ble M.K. Shrawat, Member (J)

For the Applicant :
Sr. Advocate Shiraz Rustomjee, Shivani Garg, Nishi Bhankharia i/b Trilegal, for Noble Resources International Pte. Ltd.
Sr. Adv. Gaurav Joshi, Aakanksha Saxena, Janaki Gadre, Aman Kacheria i/b Rashmikant & Partners, for SSG Group, the unsuccessful Resolution Applicants.

Per: M. K. Shrawat, Member (J)

ORDER

1. The Corporate Insolvency Resolution Process of Uttam Galva Metallics Limited (the Corporate Debtor) began on 11.07.2018, pursuant to admission of Section 7 application (CP 2054/I&BP/NCLT/MB/2018) filed by a Financial Creditor State Bank of India. Mr. Rajiv Chakraborty was appointed as the Interim Resolution Professional (IRP).
2. The present Miscellaneous Application has been preferred under section 60(5) of I&BC by the operational creditor of the Corporate Debtor (Applicant), having an admitted debt of ₹171,04,65,643, seeking order of this Tribunal to clarify whether the copy of minutes of CoC meetings are to be shared with the unsuccessful Resolution

Applicants, pursuant to order dated 21.05.2019 passed by this Tribunal wherein the parties were directed to complete the pleadings.

3. The Applicant has filed a Miscellaneous Application No. 1770 of 2019 challenging the Resolution Plan submitted by consortium comprising of Carval Investors and Nithia Capital Resources Advisors LLP (collectively, Carval) and approved by Committee of Creditors (CoC).
4. It is stated that pursuant to order dated 21.05.2019 passed by this Bench directing the parties to complete the pleadings on or before 05.06.2019, Respondent No. 3 (the unsuccessful Resolution Applicants) demanded for copies of pleadings filed by the Applicant.
5. The Applicant states that Miscellaneous Application No. 1770 of 2019 contains a detailed summary of the minutes of the meetings of the CoC, proposed pay-out in the resolution plans submitted by Respondent No. 3 and Carval. This information is subject to confidentiality restrictions and since the order refers to exchange of pleadings, the Applicants herein is seeking clarification in relation to service of the Application.
6. The Ld. Sr. Counsel Mr. Gaurav Joshi appearing for the unsuccessful Resolution Applicant is opposing the resolution plan approved by the CoC filed before this Bench in Miscellaneous Applications No. 1802 of 2019 in Uttam Galva Mettalics Ltd. The resolution plan for the two Corporate Debtors has not been heard by this Bench, owing to the pendency of applications regarding objections against the resolution plan.
7. It was directed to the concerned parties to complete the pleadings before the hearing of applications regarding objection to the resolution plan. The unsuccessful resolution applicant states that its resolution plan has not been shortlisted to be put up before the CoC wrongly and CoC's decision to approve the resolution plan of Carval is wrong in law. So in order to establish his case, the unsuccessful Resolution Applicant vehemently argued that it be provided with the copy of minutes of CoC meetings in which Carval's plan was approved.

Miscellaneous Application No. 2141/2019 in CP 1830/2018 and Miscellaneous Application No. 2140/2019 in CP 2054/2018

8. These applications are filed on 12.06.2019 by Investment Opportunities IV Pte. Ltd. & Ors. (SSG Group, the unsuccessful Resolution Applicants) in the matters of CIRP of Uttam Value Steels

Ltd. And Uttam Galva Metallics Ltd. (the Corporate Debtors) seeking inspection of records and proceedings filed in CP 2054 of 2018 (i.e. Uttam Galva Metallics Ltd.).

9. It is submitted by the Applicants that they have filed one MA 1802/2019 against the RP and the CoC, seeking to challenge the CIRP undertaken by the RP and the CoC and for objecting the approval of Resolution plan pending before this Tribunal. This application is filed pursuant to an order dated 21.05.2019 (*supra*), wherein the parties were directed to complete the proceedings in the pending miscellaneous applications. The Applicant's grievance is that the RP refused to provide the pleadings to the Applicants.

10. The major contention of the Ld. counsel for unsuccessful Resolution Applicant is that neither the I&B Code nor the Regulations thereto mention that the minutes of the CoC meetings are confidential and cannot be shared with the concerned parties. The minutes of the CoC meetings are already filed before this Bench and are now a part of record of a court of law. Therefore, the same are public documents and should be accessible to the general public. Hence, it is submitted that the denial to share the minutes of CoC meetings is wrong in law. The minutes contain the reasoning given by CoC to approve the resolution plan of Carval which is lesser in value that what SSG group (the unsuccessful Resolution Applicant) was offering.

11. Mr. Gaurav Joshi further argued that it is only the RP that is bound to ensure the confidentiality of the information in relation to CIRP, under clause 21 of the First Schedule under Regulation 7(2)(h) of the Insolvency Professional Regulations, 2016. This regulation does not bind the operational creditor herein to share its pleadings with the unsuccessful resolution applicant.

12. It is further argued that since an application under section 31 of the I&B Code for approval of the resolution plan has already been filed by the RP, there is no restriction on sharing the copy of minutes of CoC meetings with the concerned parties.

13. The RP, in response to the contentions of Mr. Joshi argued that Regulation 7(2)(h) of the Insolvency Professional Regulations, 2016 read with First Schedule thereto binds the RP to maintain confidentiality of the information relating to the CIRP or the liquidation process. The minutes of CoC meetings contain such

important figures as liquidation value and fair market value of the Corporate Debtor, and the reasons for approval of resolution plan of Carval by CoC. Hence, it is apprehended by the RP that disclosure of such information might prejudice the fair running of CIRP. Hence, the RP is objecting to share the CoC minutes.

14. On going through the submissions made by the parties and the relevant provisions of the I&B Code, it is understood that the unsuccessful Resolution Applicant has already filed an application for objecting Carval's resolution plan. SSG group is aggrieved that the due process has not been followed for conducting the CIRP and in rejecting its resolution plan. The application of SSG Group is on record and I assume that the unsuccessful Resolution Applicant's objections to the resolution plan are well placed before me in that Application. Further, by demanding the minutes of CoC meetings in the garb of completion of pleadings is nothing but an attempt to polish its case for objecting Carval's Resolution Plan.

15. Regulation 35(2) of the IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016 is crystal clear in terms of maintaining confidentiality of Liquidation value and Fair market value of the Corporate Debtor. It provides that:

> "*After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29*".

16. The Resolution professional has provided to the resolution applicants all relevant information in the Information memorandum for filing their resolution plans and CIRP cannot be further stalled by acceding to such request of the unsuccessful Resolution Applicant for serving them with copy of minutes of CoC meetings. The request of the Unsuccessful Resolution Applicant in **MA No. 2140 of 2019 and 2141 of 2019 is hereby rejected.**

17. It is further clarified that the Operational Creditor herein (the Applicant) need not serve it's Miscellaneous Application No. 1770/2019 to the unsuccessful Resolution Applicant i.e. SSG Group.

The objections of the Applicant herein and the SSG group respectively to the Resolution Plan shall be heard separately.

18. Miscellaneous Application No. 1872 of 2019, MA 2140/2019 in CP 2054/2018 & Ma 2141/2019 in CP 1830/2018 is disposed off in above terms. Ordered accordingly.

Sd/-

Dated : 01.08.2019 **M. K. SHRAWAT**
MEMBER (JUDICIAL)

js