

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

**MA/872/2019
IN
IBA/92/2019**

*Under Section 60(5)(c) r/w Sections 25(1),
25(2)(c) and 28(1)(a) of the IBC, 2016*

In the matter of M/s. Sai Regency Power Corporation Private Limited

**M/s. Sai Regency Power Corporation Private Limited
(Represented by its Resolution Professional, Mr. G. Ramachandran)
---Applicant**

V/s

**Committee of Creditors of M/s. Sai Regency Power Corporation
Private Limited
---Respondent**

Order delivered on: 21.08.2019

Coram:

**B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the Applicant: *Mr. Vinod Kumar & Mr. Srinivasan, Advocates,
Mr. G. Ramachandran, Resolution Professional*
For the IOB : Mr. S. Ramachandran, Chief Manager - IOB.

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in the Open Court on 21.08.2019:

It is an MA filed by the Resolution Professional u/s.60(5)(c) r/w.25(1), 25(2)(c) and 28(1)(a) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows:

“Issue a clarification that approved Interim Finance and any costs related to Interim Finance, since it forms part of the insolvency resolution process cost, has to be shared between all the members of the Committee of Creditors, in the proportion of their voting rights”.

2. In support of the relief sought, this Resolution Professional has filed a resolution approved by the CoC with requisite majority in its 6th CoC meeting held on 02.08.2019 vide Agenda B2 which is as follows:

“Agenda B2 – To approve interim finance - In furtherance to the discussion in Agenda A6, The RP requested the members of the CoC to vote on the following resolution through e-voting facility as per the instructions provided - RESOLVED THAT pursuant to the provisions of the Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made thereunder, the members of the CoC hereby approve interim finance as defined under section 5(15) of the Insolvency and Bankruptcy Code, 2016, amounting to 35,25,80,379 for the non-fund based requirement towards GAIL and ONGC.

FURTHER RESOLVED that Mr.G.Ramachandran, RP, be and is hereby authorized to do all such acts and deeds as may be required for giving effect to the above said resolution. G.Ramachandran, R/o. F-10, Syndicate Residency, No.3,

Dr.Thomas First Street, Off South Boag Road, T.Nagar, Chennai – 600 017 Email: RP.regency@ibcpprofessionalsolutions.com ”.

3. Now the grievance placed by the Resolution Professional is, the Financial Creditor namely M/s.Edelweiss Asset Reconstruction Company Limited and Axis Bank are reluctant to release the Letter of Comfort to the lead bank M/s.Punjab National Bank which is willing to disburse the interim finance since this Resolution has been passed with an approval of 75% voting share of the CoC.
4. It is obvious that all the members of the CoC are bound by the resolution approved by the CoC with requisite majority as mentioned under the code. That being so, all the members of the CoC including M/s.Edelweiss Asset Reconstruction Company Limited and Axis Bank shall release the Letter of Comfort in favour of the lead bank M/s.Punjab National Bank within 24 hours from hereof or on or before by 5.00 p.m. on 22.08.2019. The reason for passing this order even without waiting for the appearance of the Financial Creditors, who are not inclined to release the Letter of Comfort is in the event if this interim finance is not released, the Corporate Debtor will not be in a position to participate in the Tender for fuel for the Power Plant for which the last date is 23.08.2019.
5. The Resolution Professional having further stated that, to participate in the Tender, the Corporate Debtor is required to pay Security Deposit of ₹16,61,77,689 to ONGC through the Bank Guarantee, we are constrained to

pass this order on the mentioning made by the Resolution Professional. Another reason for passing this order on mentioning is, since the CoC has decided and approved the same for approving interim finance on proportionate basis, it has to be presumed that all the CoC members are aware of the Resolution passed by the CoC on 02.08.2019 for granting interim finance of ₹35,25,80,379.

6. In view of the same, this application is hereby **allowed** with a direction to the CoC members including M/s.Edelweiss Asset Reconstruction Company Limited and Axis Bank to release the Letter of Comfort within 24 hours from hereof or else by 5.00 p.m. on or before 22.08.2019.

7. It is a going concern running with 100 employees, in case this interim finance has not been released, the Corporate Debtor will come to a grinding halt, therefore, this application is fit for the reliefs sought, therefore, we held that this application is fit for granting the reliefs as sought by the Resolution Professional.

8. Accordingly, this MA/872/2019 is hereby **allowed**.

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(S. VIJAYARAGHAVAN)
MEMBER (Technical)

sd

(B. S.V. PRAKASH KUMAR)
MEMBER (Judicial)

sr