



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

MA-933/2019 in MA-23/2019
in
CP(IB)-197/MB/2018

Under Section 60(5) of the IBC, 2016

In the matter of
Chentamara K. Paruicuttu Nair & Ors.
...Applicants
v/s.

Amit Gupta ...Respondent/
Resolution Professional

In the matter of
Amit Gupta ...Applicant/
Resolution Professional

In the matter of
ICICI Bank ...Financial Creditor

v/s.

Unimark Remedies Ltd.
...Corporate Debtor

Order Pronounced on: **17.04.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant: Ms. Karishma Mungekar i/b Ekta Tripathi, Advocates.



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For the Respondent: Ms. Pooja Mahajan a/w Ms. Mahima Singh, Ms. Arveena Sharma & Mr. Jineshkumar Gandhi i/b Arihant Associates, Advocates. Mr. Amit Gupta, RP present in person.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

This is an Application filed by a group comprising of 8-existing and 4-ex-Employees of the Corporate Debtor seeking rejection/non-approval of the Resolution Plan of the Successful Resolution Applicant, filed by the RP vide MA-23/2019 as the Applicants herein are not treated fairly in the Resolution Plan submitted by the Resolution Applicant, which was subsequently approved by the CoC.

Brief Facts of the Case:

1. The CIRP of the Corporate Debtor viz. Unimark Remedies Ltd. was commenced vide an admission order dated 03.04.2018 of Court-I of this Bench in CP(IB)-197/MB/2018 filed by ICICI Bank; a Financial Creditor. Mr. Amit Gupta was appointed as IRP of the Corporate Debtor. As per the regulations, the IRP called for the claims of the creditors and upon receipt of claims, CoC was constituted. Thereafter, Information Memorandum was prepared and then called for Expression of Interests from the public. Thereafter the prospective resolution applications were presented in the CoC for approval of the resolution plan. The CoC has approved the Resolution Plan submitted by the consortium of the Asset Reconstruction (I) Ltd., Intas Pharmaceuticals and Shamrock Pharmachemi Pvt. Ltd.



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2. The Applicants submit that there are 305 existing employees having total claim of Rs.7,87,77,018/- and 928 ex-employees having total claim of Rs.3,17,44,615/-. The Applicants further submit that in the CoC approved Resolution Plan, the Clause 3.3.2 (ii) & (iii) pertaining to the Workmen and Employees of the Corporate Debtor are against the principle of natural justice and has resulted in complete miscarriage of justice for the existing and ex-employees of the Corporate Debtor. The main part of the Clause 3.3 is reproduced below:

“3.3.2 The Liquidation value of the Corporate Debtor is not known to the Resolution Applicant Consortium. The Resolution Applicant Consortium has been intimated by the Resolution Professional that as there are no workmen on the rolls of the Corporate Debtor as on ICD and there is no claim from workmen for the period of 24 months preceding the ICD, and accordingly no amount is due and payable to the workmen. The Resolution Applicants have assumed that except for the dues/wages of the workmen of the Corporate Debtor for the period of 24 months preceding the ICD, if any, the liquidation value of the other dues of workmen and employees is Nil. However, the Resolution Applicant Consortium proposes to pay Rs.5,00,00,000/- (Rupees Five Crores) towards full and final settlement/discharge of the liabilities pertaining to the Workmen and Employees dues in full and final settlement, which shall be allocated in the following order of priority;

- i. First, towards full discharge of the wages/dues of the workmen of the Corporate Debtor for the period of 24 months preceding the ICD, if any;*
- ii. Second, towards full/proportionate discharge of the liability of the Corporate Debtor for gratuity and leave encashment accrued till the Transfer Date of the employees which have resigned from/discontinued with the Corporate Debtor;*
- iii. Third, towards full/proportionate discharge of the liability of the Corporate Debtor, for the outstanding amounts of the wages and salaries of (a) the continuing workmen, if any; and (b) continuing employees of the Corporate Debtor (which have not resigned from/discontinued their employment with the Corporate Debtor) where each of the total dues of such employees are up to Rs.10,00,000/- (Rupees ten lakh only). In the event, any of the continuing employees of the Corporate Debtor have total dues more than Rs.10,00,000/-*



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(Rupees ten lakh only) each, such employees shall not be paid anything and all liabilities of the Corporate Debtor towards such employees' claims shall stand waived and extinguished.

3.3.3 *In the event, the amount payable to workmen and employee, as contemplated above, is lower than Rs.5,00,00,000/- Rupees Five Crores), the excess amount out of this allocated amount shall be added the Financial Creditors' Cash Payment under this Resolution Plan."*

3. The Applicants submit that Resolution Plan is discriminatory against the existing employees as also the ex-employees. They are aggrieved by the decision of the CoC approving the Resolution Plan which is not considered the entitlement of the employees. They submit that the employees are entitled for all their salaries, gratuity and leave encashment.
4. The Applicants (existing employees) further submit that they have no difficulty if each of their claims have been reduced from more than Rs.10,00,000/- to up to Rs.10,00,000/-.
5. The Respondent/RP in its reply submits that the Resolution Plan has been approved by the CoC in its commercial wisdom and complies with the mandatory requirements of the Code read with the CIRP Regulations. The Plan was approved by 72.25% voting shares of the CoC. The Respondent further submits that the contentions of the Applicants alleging discrimination and violation of principles of natural justice are completely misconceived and legally untenable. The Applicants further submits that the approval or rejection of any resolution plan and evaluation of its feasibility and viability are matters within the commercial wisdom of the CoC and neither the RP nor this Adjudicating Authority has any power to question the commercial wisdom of the CoC. In the Form H accompanying



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the Plan Approval Application, the RP has certified that the Resolution Plan complies with the mandatory requirements of the Code and the CIRP Regulations. The Respondent further submits that once the Resolution Plan has been found to be compliant with the minimum requirements of Section 30(2)(b) of the Code, the manner of distribution of the overall amount which has been allocated under the Resolution Plan is the concern of the CoC and not that of the RP or this Adjudicating Authority.

6. The Respondent has cited various judgments highlighting limitations of the Adjudicating Authority in the Resolution Plan once is approved by the majority of CoC members. Few of the citations mentioned by the Respondent are given below:

i. In *Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others*, 2019 SCC Online SC 1478 (“Essar”), the Hon’ble Supreme Court has held that –

“Thus, it is clear that the Limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, in so far as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, in so far as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra). (Emphasis Supplied).

ii. In the case of *Pratap Technocrats (P) Ltd. & Ors. V. Monitoring Committee of Reliance Infratel Limited & Anr.*, Civil Appeal No. 676 of 2021 (“Pratap Technocrats”), the Hon’ble Apex Court has held as follows –

“These decisions have laid down that the jurisdiction of the Adjudicating Authority and the Appellate Authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its



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commercial wisdom. Nor is there a residual equity-based jurisdiction in the Adjudicating Authority or the Appellate Authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of the IBC and the Regulations under the enactment.

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Hence, once the requirements of the IBC have been fulfilled, the Adjudicating Authority and the Appellate Authority are duty bound to abide by the discipline of the statutory provisions. It needs no emphasis that neither the Adjudicating Authority nor the Appellate Authority have an unchartered jurisdiction in equity. The jurisdiction arises within and as a product of a statutory framework." (Emphasis Supplied).

7. The Respondent concluded that the Application filed by the Applicants is legally untenable, baseless and devoid of any merit. Therefore, the same should be dismissed and Application for the Resolution Plan should be allowed.
8. The successful Resolution Applicant has filed written submission dated 15.06.2021 clarifying that the threshold limit of ₹10 lakhs is provided in the Resolution Plan in order to ensure that the vulnerable employees drawing fewer salaries are safeguarded. Further, in any event majority of the employees drawing salary over and above ₹10 lakhs belong to the Promoter Group and / or KMP of the Corporate Debtor.

Findings:

8. This case was first heard in Court-1 as the main Company Petition was heard and admitted into CIRP by Court-1 and the matter was running there since 2018. Thereafter, it was transferred to Court-3. After a short while, it is again transferred from Court-3 to this Court (Court-4). The



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order in this application was reserved on 10.11.2022 and thereafter was de-
reserved consequent to change in the constitution of the Bench. This Bench
heard the Ld. Counsel for the Applicant as well as Resolution Professional
in this matter.

9. We have perused the list enclosed with the Application and find that there are 15 existing employees and one ex-employee are having outstanding of ₹10 lakhs and more. The Corporate Debtor owes a sum of ₹3,46,54,979/- (Salary of ₹2,09,99,972/-, Gratuity ₹1,14,79,626/-, and Leave Encashment of ₹21,75,381/-).
10. We note that Hon'ble Supreme Court in the case of Jet Airways has held that amount of gratuity fund due to the employees does not belongs to the Corporate Debtor and should be paid 100%. In the present case a sum of ₹11479626/- is payable to the employees falling under the category of employees having dues of 10 lakhs and more and if present condition is allowed in the resolution plan the same shall be in contravention of the law laid down by the Hon'ble Supreme Court in the case of Jet Airways. We feel that the contention of the SRA in so far as it related to gratuity dues cannot be accepted even in case of promoter group and /or KMP of the Corporate Debtor. However, we find the classification reasonable in so far as other employment dues of promoter group and /or KMP of the Corporate Debtor pertains as promoter group and /or KMP of the Corporate Debtor falls under related parties and have least priority.
11. In view of the foregoing discussion we hold as under: -
 - a. gratuity dues of all employees shall be paid in full in accordance with decision of Hon'ble Supreme Court in Jet Airways;



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- b. other employment dues of promoter group and /or KMP of the Corporate Debtor i.e. Salary & Leave Encashment or any other benefit other than PF/Gratuity may be differently considered, as provided in the plan;
- c. other employment dues of employees other than stated at (b) above shall be considered in the manner as applicable to employees having dues less than ₹10 lakhs and the same shall be dealt with in accordance with section 53 of the Code considering that the employees are classified as Operational Creditors; are eligible for priority only to the extent of workmen dues for the period 24 months preceding the CIRP date; and the claim of secured creditors is being proposed to be satisfied significantly lower than their claims.

12. This Application is disposed of accordingly as **partly allowed**.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)