

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

IA 1905/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

M/s P S Buildcon

.... Applicant

V/s

i. Gajesh Jain

ii. Committee of Creditors

... 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) : Ranjeev Carvalho a/w. Adv. Nevil
Chopra i/b. PSJ Legal

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

ORDER

Per: Anuradha Sanjay Bhatia, Member (Technical)

1. This is an application, being IA No. 1905/MB-V/2021, filed by **M/s P S Buildcon** through **Mr. Pralhad Harinarayan Sharma**, the Applicant, under Section **60 (5)** of IBC, 2016 (hereinafter “**the Code**”) r/w Rule 11 of NCLT, 2016, seeking following reliefs:
 - 1.1 *The Approved Resolution Plan submitted by Mrs. Asha Sanap be stayed and the Committee of Creditors (hereinafter referred to as “CoC”) be reconstituted based on the outcome of the application filed by various stakeholder including the Resolution Professional (hereinafter referred to as “RP”) being IA 136 of 2021, IA 149 of 2021, IA 346 of 2021, IA 1288 of 2021 and IA 1150 of 2021;*
 - 1.2 *The Resolution Plan of Mrs. Asha Sanap which has been approved by the CoC be sent back for reconsideration to CoC; and*
 - 1.3 *The CoC be directed to submit their considered reasoning for selecting the approved Resolution Plan which is in violation of the Code, doe not maximize the value and is unfair and unjust to other class of creditors.*

SUBMISSIONS OF THE APPLICANT:

2. The brief submissions on behalf of the Applicant is as under:
 - 2.1 The Applicant is an Operational Creditor, engaged in the business of carrying out construction work. Vide order dated 24.06.2020, Corporate Insolvency Resolution Process (hereinafter referred to as

“**CIRP**”) was initiated against the Corporate Debtor i.e. E & G Global Estates Limited and Mr. Gajesh 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.

- 2.2 Pursuant to the provisions of the Code and regulations thereunder, a public announcement was made by the RP. The Applicant in his capacity of an Operational Creditor, had submitted his claim of Rs.93,43,944/- in the form and manner prescribed under the Code, to the RP along with all supporting documents/information. After scrutiny, the RP accepted Applicant’s entire claim amount aggregating to Rs.93,43,944/-.
- 2.3 The CoC approved the Resolution Plan submitted by Mrs. Asha Sanap. As per the Plan, the Operational Creditors would get 1.87% of their respective claim amount.
- 2.4 The Applicant is aggrieved by the terms of the Resolution Plan which offers Rs.1,74,732/- against the total claim of Rs.93,43,944/ to the Applicant.
- 2.5 The Applicant submitted that, it appears that the approved Resolution Plan was a sham created by the suspended promoters of the Corporate Debtor, in order to retain indirect control over the project and the company and cause wrongful loss to all the creditors, Operational Creditors including employees, Government dues etc.
- 2.6 It was argued/stated in the IA that the Corporate Debtor ought to have been put in liquidation. The Operational Creditors would have

received much more under Section 53 of the Code, as compared to what is being offered under the Resolution Plan, approved by the CoC.

- 2.7 The Applicant further submits that even though the CoC has absolute powers to decide and accept the Resolution Plan, these powers are required to be exercised with due care and responsibility within the overall objective of the Code, which is maximization of the value of the Corporate Debtor.
- 2.8 The CoC has failed to exercise its commercial wisdom, regarding the viability and feasibility of the approved Resolution Plan.

Reply of the RP

3. The RP has filed its written submission/note stating that the Applicant along with all Operational Creditors will receive 1.87% of their respective claim amount in the Resolution Plan which is more than the liquidation value and the Applicant has also been treated at par with the other Operational Creditors. Hence, the present application deserves to be rejected.

Findings/ Observations:

4. Heard the learned counsel for the Applicant and perused the records.
 - 4.1 The Applicant has filed the present Application aggrieved by the amount payable to the Applicant under approved Resolution Plan. It is observed by the Bench that the Resolution Plan was approved by 79.60% voting by the CoC.

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- 4.2 The Code envisages an important role by members of the CoC. The Committee of Creditors (CoC) holds a crucial power, which is the ability to consider and approve a resolution plan for a distressed company under the provisions of Section 30 and Section 31 of the Code. The Hon'ble Supreme Court have upheld consistently the commercial wisdom of the CoC in determining the future course of action for the Corporate Debtor. Hence, this Bench of the considered view that the once the CoC has approved a Resolution Plan with requisite majority, the Adjudicating Authority should not interfere with the commercial wisdom of the CoC.
- 4.3 The Hon'ble Supreme Court, dealt with the important question of Judicial Review of Commercial decisions taken by the Committee of Creditors in *K. Sashidhar v. Indian Overseas Bank (2019)*, **2019 SCC Online SC 257**, wherein, it was held that the decision of the "CoC's Commercial Wisdom is non-justiciable" and that neither the NCLT nor the NCLAT has the authority to reverse it. The amendment to Section 30(4) of the IBC, which was introduced by the IBC (Second Amendment) Act in 2018, reiterated the factors that the CoC must consider while evaluating a Resolution Plan and does not grant the Tribunals to sit in judgement over the Commercial Wisdom of the CoC.
- 4.4 Further, the Hon'ble Supreme Court, in the case of *Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta & Ors (2019)*, **2019 SCC Online SC 1478**, discussed the relevancy of the Commercial Wisdom of the CoC. The Hon'ble Apex Court specifically ruled that the NCLT must limit its *judicial review to the parameters outlined in Section 30 (2) of IBC, while the NCLAT must adhere to the guidelines set*

forth in Section 32 in conjunction with Section 61(3) of the IBC. Additionally, the Hon'ble Supreme Court stated that the NCLT and NCLAT must not interfere with a commercial decision made by the majority of the CoC.

5. 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. The Resolution Plan cannot be rejected by the Adjudicating Authority simply on the objection of an Operational Creditor that he is 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
6. Hence, application being IA No. 1905/MB-V/2021, filed by **M/s P S Buildcon** through **Mr. Pralhad Harinarayan Sharma**, the Applicant, is hereby **dismissed**.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)