

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

(IB)-1232(ND)/2018

CORAM:

PRESENT: DR. V.K. SUBBURAJ
HON'BLE MEMBER(T)

MS. INA MALHOTRA
HON'BLE MEMBER (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 23.04.2019.

NAME OF THE COMPANY: Parishashodan V/s. M/s. Educomp Raffels higher Education Ltd.

SECTION OF THE COMPANIES ACT: U/s. 7 of IBC

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
--------------	-------------	--------------------	-----------------------	------------------

Present:

Ms. Priyadarshi Gopal, Mr. Varun Srivastava, Mr. Pankaj Jain (For Operational Creditor) (Employee), Advocates for the Petitioner.

Pritha Srikumar, Iyer, Mr. Amit Kumar Singh, Advocates for the Respondent, Mr. Rakesh Kumar Gupta, Advocate for IRP.

ORDER

CA 477/2019 has been filed by the Financial Creditor under Section 12A of the IBC praying for termination of the CIR process. All parties are before this Bench, namely, the RP, the Financial Creditor, the Corporate Debtor as well as three Operational Creditors, who are the Company's employees of the Corporate Debtor and have filed their claim with the IRP through their counsel.

The meeting of the COC in this case is yet to be convened. There is only one Financial Creditor constituting the COC i.e. the petitioner. On a settlement arrived at with the Corporate Debtor, they, as the COC have taken the decision to terminate the CIR process and have filed the said application.

The three Operational Creditors, being employees, who do not have any voting rights in the COC, are aggrieved by the fact that the COC/Financial Creditor has prayed for termination under Section 12A read with Section 11 of the NCLT Rules. Ld. counsel appearing for them submits that as per the decision of the Hon'ble Apex Court, in the matter of Swiss Ribbons Pvt. Ltd. & Anrs., WP (Civil) 99/2018, the proceeding being in rem, all interested parties must be consulted before any individual is allowed to settle its claim with the Corporate

[Dilshad]

✓

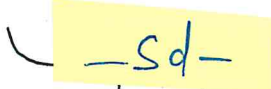
Debtor. He therefore insists that the rights of the Operational Creditors, i.e. the employees in this case have to be protected and the CIR process cannot be terminated. He has also pointed out that as no meeting of the COC has been convened, no resolution u/s 12A of the Code has been passed.


There is no dispute with the fact that once the COC has been constituted, being a proceeding in rem, the supervisory body which is to oversee the resolution process must be consulted. In the peculiar facts of the case, the supervisory body i.e. COC herein comprises of only Financial Creditor i.e. the applicant who has entered into a settlement with the Corporate Debtor, and a decision has been taken by the COC to terminate the CIR process. As the Operational Creditors do not have any voting right, even if the meeting is convened, it would be an empty formality.

Ld. counsel appearing for the Operational Creditors further submits that there could be other Financial Creditors who are yet to file their claims. The point for our consideration is that as on the date of filing the present application there is only one Financial Creditor and in view of the settlement arrived at, we are of the view that prayer made in the present application merits consideration.

Since the COC, comprising of a single Financial Creditor has taken a decision to terminate the CIR process and the operational creditors have no say in the proceedings, the decision of the only Financial Creditor to terminate the CIR process has to be given due consideration. The prayer of the Financial Creditor and Corporate Debtor is therefore accepted. The CIR process is being permitted to be terminated. The Corporate Debtor is released from the rigours of the moratorium and is permitted to operate through his own board.

The three Operational Creditor would be at liberty to invoke the provisions of the Code for redressal of their grievances. Ld. counsel for the RP submits that his expenses and cost involved have been duly reimbursed.


(Dr. V.K. Subburaj)
Member (T)


(Ina Malhotra)
Member (J)