IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

IA(IB) No. /CTB/2020
In
T.P. No. 203/CTB/2019
Arising out of
CP(IB) No. 1411/MB/2018

IN THE MATTER OF:

An application u/s. 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

And

IN THE MATTER OF:

An application u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016;

And

IN THE MATTER OF:

JM FINANCIAL ASSET RECONSTRUCTION COMPANY LIMITED;

...Financial Creditor

-Versus-

SALASAR STEEL AND POWER LTD.;

...Corporate Debtor

And

IN THE MATTER OF:

RAIGARH ISPAT AND POWER PVT. LTD., Regd. Office: Krishna Complex, Shop No. 39 & 40, Second Floor, Chaitnya Nagar, Dhimrapur Road, Raigarh, Chattisgarh – 496001, Through Authorised Representative Mr. Kamal Kishore Agarwal, Director, Email – raigarhispat@rediffmail.com;

...Applicant

-Versus-

RAJESH JHUNJHUNWALA, Resolution Professional for Salasar Steel and Power Ltd., IP Registration Number: IBBI/IPA-001/IP-P00647/2017-18/11102, Regd. Address: A-51, Aashit Chs, Azad Road, H. B. Gawde Marg, Stanburg Estate, Juhu Koliwada, Mumbai, Maharashtra – 400049, Email – cirp.sspl@gmail.com / ip.r.sspl@pwc.com .

... Respondent

Counsels appeared:

1. Mr. Saswat K. Acharya, Advocate] For the Applicant

1. Mr. Jishnu Chowdhury, Advocate] For the RP
2. Mr. Ankur Singhi, Advocate]

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

Date of hearing : 1st July, 2020.

Order pronounced on: 1st July, 2020.

O R D E R

Per Shri Jinan K.R., Hon'ble Member (Judicial)

1. RAIGARH ISPAT AND POWER PVT. LTD a proposed resolution applicant filed this unnumbered application u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016 (In short, 'I & B Code') read with Rule 11 of the NCLT Rules, 2016 being I.A.(IB) No. .... /CTB/2020 in T.P. No. 203/CTB/2019 (arising out of CP(IB) No. 1411/MB/2018, transferred from Mumbai Bench) challenging the rejection of the resolution plan of the applicant by the CoC declaring that the applicant is not eligible u/s. 29A of the 'I & B Code. The Corporate Debtor, SALASAR STEEL AND POWER LTD., is undergoing Corporate Insolvency Resolution Process (In short, 'CIRP') vide order dated 27/09/2019 passed by this Adjudicating Authority, Cuttack Bench.

2. The urgency set out in the application has been found satisfactory. As lockdown was declared due to pandemic COVID-19, the normal operation of NCLT, Cuttack Bench is yet to be resumed; the unnumbered application was listed on today for hearing through video conferencing (VC) by giving advance notice from the Registry to the applicant as well as to the respondent directing him to submit his written notes of defence, if any.

3. Brief facts:

4. The Applicant submitted a Resolution Plan prepared in accordance with the Code and the regulations to the RP. During consideration of the Resolution Plan, the RP alleged there were loan defaults in another company, namely "ISL" wherein a Director of Applicant, is a Director there also. The RP asked for clarification on status of defaults. It was clarified immediately. Then RP intimated that Banks have declared ISL as wilful defaulters & to obtain clarification from all Banks within just 3 working days. The Applicant was denied further time. Then it was categorically clarified with available documents that all defaults of Banks prior to 31.3.2018 by ISL have been taken over by an asset reconstruction company "EARCL", which is also a member of the CoC & all Banks have assigned their loans to EARCL by executing assignment deeds. ISL's Management has also changed due to which aforesaid Director was made Addl. Director of ISL on 10.4.2018 for the first time & his name is also not there in wilful defaulter list. Even the concerned Indian Overseas Bank has confirmed on 22.6.2020 there is no outstanding loan due from ISL & are taking steps for removing ISL from Wilful defaulter list. Thus ISL is not wilful defaulter when the default itself doesn't exist. But RP didn't place the Plan before CoC & also denied opportunity to Applicant & held it ineligible u/s. 29A, without giving reasons to explanation provided by Applicant, just a few minutes before declaration of 2 Successful RAs for Negotiation, out of total 3 RAs. Hence, present application,

5. Heard both sides. Perused the records, defence note and the copy of minutes forwarded to us at the time of hearing.

6. Ld. Counsel for the applicant Mr. Saswat K. Acharya, submits that the ineligibility u/s 29A was taken by the RP and not the CoC and that RP has no power to reject or approve the resolution plan other than to place it before the CoC for their consideration. He also submits that two plans were submitted to the RP one was within time and second was about one and half hour later since there was a mistake crept in regarding uploading attachments. According to him revised Resolution Plan was submitted on 17/06/2020 at 11.38 AM by email (Cut off time was 12 noon) but immediately noticing the wrong attachment attached sent the correct attachment by email by 1-1/2 hour later on the very same day i.e. 17/06/2020 at about 1.25 PM and that plan was not placed before the CoC by the RP and hence the RP contravened the provisions of the Code and regulations. He further attempted to convince us that at the time of consideration of the applicant plan by the RP the Ind Synergy Ltd. (ISL) wherein one of the Directors of the Applicant Company is also a Director of that company, was not a wilful defaulter. According to him, since 2014 onwards the debt of ISL has been assigned to Edelweiss Asset Reconstruction Company Ltd. (Edelweiss) and deed of assignment has been executed. Hence, no default stands at present and to stress the said submission he relied upon an email copy not placed before us. He submitted that the Bank replied to its letter informing that ISL at present is not a wilful defaulter/defaulter and that Bank has removed that declaration.

7. Ld.Counsel Mr. Jishnu Chowdhury, submitted that the RP has not contravened any of the provisions of the Code or regulations, but submitted that all the plans received by him in time were placed before the CoC and CoC has deliberated the issue regarding the disqualification of the applicant under section 29A in the meeting held on 18/06/2020 and rejected their application being satisfied that the applicant is ineligible under section 29A(b) as well as 29A(j). He further submitted that the applicant's attempt is to disrupt the CIRP of the Corporate Debtor, as earlier also an application was preferred wherein this Hon'ble Tribunal was pleased to provide an opportunity to another applicant to submit a resolution plan, which was ultimately not submitted. This application again would derail the CIRP process. To stress his submission he referred to the copy of email dated 18.06.20202 and the copy of minutes dated 18.06.2020. The copy of the email is reproduced here under for a better understanding:

Annexure-21

Welcome to rediffmail: Inbox

rediffmail Mailbox of raigarhispat

Subject: Re: Salasar Steel and Power Limited – Revised Resolution Plan- 2

From: Salasar Steel And Power Limited(under CIRP),cirp.sspl@gmail.com. on Thu, 18 Jun 2020 13:53:14

To: raigarhispat@rediffmail.com.

Cc:<dpatelasso@gmail.com>,<ip.r.sspl@in.pwc.com>,“Ankur Singhi”<ankur.singhi@sksinghiandco.com>

Dear Sir,

We have received your revised resolution plan, vide appended mail, in the matter of CIRP process of Salasar Steel and Power Limited.

However, we regret to inform that your company is disqualified under Sec 29A clause (b) read with clause (j) of Insolvency and Bankruptcy Code, 2016 and as such you are not eligible to submit a resolution plan.

The disqualification is in terms of clause (b) read with clause (j) of Sec 29A which reads as follows:-

A person shall not be eligible to submit a resolution plan, if such person, or any other, acting jointly or in concert with such person –

(b) is a willful defaulter in accordance with guidelines of Reserve Bank of India issued under the Banking Regulation Act, 1949.

(j) has a connected person not eligible under clauses (a) to (i) of the Act.

During the searches performed on each of the identified companies/individuals of resolution applicant and its related/connected parties on various proprietary databases and information as available in the public domain to identify any discrepancy on the eligibility criteria by any of the connected parties, it has been identified that:-

A willful loan default of INR 84.29 crore and INR 12.42 crore was identified for Ind Synergy Limited in which Mr. Shrawan Kumar Agarwal is a Director. Ind Synergy Limited has been reported by Indian Overseas Bank for a default of INR 84.29 crore for the calendar year 2018 and 2019 and quarter ending 31st March, 2020. Mr. Shrawan Kumar Agarwal is also a Director in the resolution applicant company.

As per Sec 29A clause (b) read with clause (j) a Resolution Applicant is not eligible if the Resolution Applicant or any of its connected parties are a Willful Defaulter as per the RBI Guidelines. Therefore, basis the information available online, the Resolution Applicant is not eligible to submit Resolution Plan for Salasar Steel and Power Limited under the provisions of Sec 29A of the Code.

The explanations provided by you has been considered but the same does not remove the disqualification.

Therefore, we regret to inform that your resolution plan cannot be considered in the aforesaid matter.

Thanks & Best Regards,

Rajesh Jhunjhunwala

Ph: 99305617776

IP Registration No. IBBI/IPA-001/IP-P00647/2017-2018/11102

Regd. Email: jhunjhunwala.rajesh@gmail.com

Registered Address: A51, Aashit Chs. Azad Road, H B Gawde Marg, Stanburg Estate, Juhu Koliwada, Mumbai City, Maharashtra 400049

From: raigarhiaispat@rediffmail.com [mailto: rajgarhiaispat@rediffmail.com]

Sent: 17 June 2020 11:39

To: ip.r.sspl@in.pwc.com; cirp.sspl@gmail.com

C.c: dpatelasso@gmail.com

Subject: Salasar Steel and Power Limited – Revised Resolution Plan -2

Dear Sir,

Please find enclosed herewith revised resolution plan-2 of Salasar Steel and Power Limited in searchable PDFs with final as well as red marked together with reply to check list pointwise.

We hope you will find the above in order.

Thanking you,

Yours faithfully,

For and on behalf of Raigarh Ispat and Power Private Limited

(CIN U27102CT2004PTC016965)

(Kamal Kishor Agarwal)

Director

DIN 00907039

Address of Authorised Signatory: Krishna Complex, Shop No. 39 & 40, Chaitnya Nagar
Dhimrapur Road Raigarh (CG) 496001

8. Countering to the said submission on the side of the RP the ld. Counsel for the applicant referred a judgment of Hon'ble Supreme Court in Arcelor Mittal (2019) 2 SCC 1, Para 80 where in it was held that RP isn't empowered to take any decision, but to place the Plans before CoC to approve it. Also relied upon Rural Electrification Corp. vs. Ferro Alloys Corp., CP(IB)251/KB/2017, order 8.3.2018, an order of this AA wherein it was observed that rejection or approval of a resolution plan is the right of the CoC and Resolution Professional cannot reject any plan without a decision of committee of creditors. The above said proposition held in the Arcelor Mittal case or the observation of this AA in Rural Electrification case not at all help the applicant herein, since, the RP has submitted that he has placed the resolution plan of the applicant and as deliberated by the CoC in regards the disqualification of the applicant as per section 29A, and thereafter he issued the mail rejecting the plan submitted by the applicant. A reading of the above referred mail issued by the RP and the copy of minutes produced before us prima facie satisfied that RP placed the documents submitted by the applicant and the Plan before the CoC and from the available document as on 18.06.2020, the applicant was found ineligible as one of the directors of the applicant who is also a director of ISL was in the list of defaulter, fall under section 29-A (b) of the Code. Even according to the applicant he was unable to place all the documents relating to disqualification as the bank has not given proof proving that the bank has removed the *Ind Synergy Ltd.* (ISL) from the RBI defaulters list and an email dated 22.06.2020, issued by Indian Overseas Bank, placed before us at the time of hearing that the bank has removed the said company from the list of defaulters. So as on 18.6.2020 the applicant was a defaulter as per the list. In view of the above said circumstances we do not find any merit in the application. However, we are not go into merit of the decision if any taken by the CoC in regards the disqualification of the applicant u/s.29-A. It is left open for determination if any challenge in that regards raised by the applicant at the time of filing any application by the RP for approval of the resolution plan under the consideration of CoC.

In view of the matter this application is liable to be dismissed with the above said observation.

Unnumbered IA(IB) No. /CTB/2020 in TP No. 203/CTB/2019 arising out of CP(IB) No 1411/MB/2018 is dismissed. No order as to cost.

The Registry is directed to send e-mail copies of the order forthwith to all the parties.

(Jinan K.R.)
Member (J)
In charge of Cuttack Bench

Signed on this, the 1st day of July, 2020.

hb.