

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 202 of 2018

(Arising out of Order dated 7th May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in CA (IB) No. 397/KB/2017 in C.P(IB) No. 397/KB/2017)

IN THE MATTER OF:

Shri Ram Residency Private Limited

...Appellant

Vs.

**Kuldeep Verma,
designated as Resolution Professional,
Jalan Intercontinental Private Limited & Ors.**

...Respondents

Present: For Appellant: - Mr. Sudipto Sarkar, Senior Advocate and Mr. A.K. Ganguly, Senior Advocate assisted by Mr. D.N. Sharma, Mr. Abhijit Sinha, Mr. Arindam Gupta, Mr. Anup Kumar, Mr. Indranil Ghosh, Mr. Kunal Singh and Mr. Palzer Moktan, Advocates.

For Respondents:- Mr. Sumant Batra, Mr. Saurabh Kalia, Mr. Sanjay Bhatt, Ms. Srishti Kapoor, Mr. Rahul Ahuja and Mr. Nilay Sen Gupta, Advocates for R-1.

Mr. Ramji Srinivasan, Senior Advocate with Mr. Vikram Trivedi, Ms. Suchitra Valjee, Ms. Aishwarya Nabh, Mr. Bharat Sangal, Mr. R.R. Kumar, Mr. Naveen Hegde and Ms. Babita Kushwala, Advocates for Respondent No.2.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Appellant, the successful 'Resolution Applicant' has challenged the order dated 7th May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in CA (IB) No.

397/KB/2017 in C.P(IB) No. 397/KB/2017, whereby and whereunder the Adjudicating Authority directed the 'Resolution Professional' to receive modified offer **“to be submitted by the 8th Respondent- ‘Ritudhan Suppliers Private Limited’”** on or before 9th May, 2018 in a sealed cover before 5 P.M. The Adjudicating Authority while accepted that the Appellant is the successful Resolution Applicant (H-1) has also allowed the Appellant to file revised offer to the 'Resolution Professional', within the same period with directions as quoted below:

“(1) The RP is directed to receive modified offer to be submitted by the applicant in this application on or before 09/05/2018 in a sealed cover (i.e., before 5 P.M. on 09/05/2018).

(2) H-1 Resolution Applicant can also submit revised offer, if they wish, and submit the modified or revised offer to the RP on or before 09/05/2018 in a sealed cover (i.e., before 5 P.M. on 09/05/2018)

(3) The RP is directed to consider both modified offer, if any, submitted by the H-1 as well as H-2 applicants and place those offers before the COC for its consideration.

(4) The COC is directed to consider both Resolution Applicants revised offers and have the choice of approving the best among them, if it meets all the

requirements under the provisions of the Code and Regulations.

*(5) The RP is directed to file final report/Resolution Plan, if any, on or before 25/05/2018 and list the case for further consideration on **04/06/2018**.”*

2. The Adjudicating Authority has noticed the fact that the Appellant has been declared to be the most successful Resolution Applicant (rank of H-1), which has also been approved by the ‘Committee of Creditors’ by majority voting share, but because of prayer made by the 8th Respondent, without any reason, issued the aforesaid directions.

3. The facts and purported reason given by the Adjudicating Authority is as follows:

“CA(IB) No. 405/KB/2018 filed by Resolution Applicant, who is ranked as H-2, praying for stay of rank of H-1 applicant in the meeting held on 26/04/2018 and to give an opportunity to the applicant herein to revise its bid. The Ld. Resolution Professional (RP) submits that on 23/04/2018 a Modified Information Memorandum had been published and Resolution Applicants were given opportunity to revise their offer and the applicant herein

submitted a revised offer on 26/04/2018 and that offer is also less than the offer of H-1 Resolution Applicant and therefore there is no merits in the contention of the applicant.

We heard the Ld. Counsel appearing for the applicant, Ld. Sr. Counsel for the RP as well as Ld. Sr. Counsel for H-1 applicant. It seems that one of the prayer on the side of the applicant is for revision of the offer and reconsideration of the revised offer by the RP before approval of the Resolution Plan by the Committee of Creditors (COC). In consideration of the said prayer on the side of the Resolution Applicant in the C.A., we are inclined to issue directions to have a reconsideration of modified offer, if any, submitted by the Resolution Applicant in the application. At this juncture Ld. Counsel appearing for the H-1 applicant strongly objected issuing such a directions to the RP. According to him such a direction, if issued, it would prejudice to the H-1 Resolution Applicant and that the entire process is to be disrupted. The above objection seems to have no legal force at all because RP not at all concluded the Corporate

Insolvency Resolution Process (CIRP) and the COC did not finalised, which is the best resolution plan to be taken into consideration for its approval. Only ranking of Resolution Applicant based on the highest offer and other requirement to be meted out as per the information memorandum is finalised. So in the interest of all stake holders and in order to arriving for maximisation of value of assets of the corporate debtor allowing the H-2 Resolution Applicant to modify its offer and give an opportunity in participating in the bidding process to be finalised by the COC is just and proper in the nature of this case. In the said circumstances it appears to us that directions to the Resolution Professional is to be issued in order to avoid further interruption in the CIRP.”

4. It is not in dispute that after initiation of ‘Corporate Insolvency Resolution Process’ in respect to ‘Jalan Intercontinental Hotels (P) Ltd.’, the ‘Information Memorandum’ was initially prepared by the ‘Resolution Professional’ on 17th December, 2017. A second ‘revised Information Memorandum’ was published on 2nd February, 2018. Both the Appellant and the 8th Respondent submitted a ‘Resolution Plan’ on 14th February,

2018. However, they were directed by the 'Resolution Professional' to submit a revised 'Resolution Plan' which were submitted by both the Appellant and the 8th Respondent on 9th March, 2018. Thereafter, the 'Committee of Creditors' in its meeting held on 5th April, 2018 after negotiation with both the 'Resolution Applicants' asked the Appellant and the 8th Respondent to submit another revised (final) 'Resolution Plan' by 14th April, 2018.

5. In view of the decision of the 'Committee of Creditors', the 'Resolution Plans' were second time revised and third time both the Appellant and the 8th Respondent submitted 'Resolution Plan' (second time revised plan) on 14th April, 2018.

6. Subsequently, a 'third modified Information Memorandum' was issued by the 'Resolution Professional' without any instructions from the 'Committee of Creditors', even after final decision of the 'Committee of Creditors' on 5th April, 2018. In the said Information Memorandum, the claim of one 'IHCL' and another 'Emfar' were taken into consideration based on data record.

7. On 25th April, 2018, third time revised plan (Rs. 105.30 Cr.) was sought to be submitted by the 8th Respondent but not accepted by the 'Committee of Creditors'. In any case, even the said revised plan was lower than the 'Resolution Plan' of the Appellant who had offered Rs. 111.11 Crores.

8. In the meeting held on 25th April, 2018, the 'Committee of Creditors' declared the Appellant's plan as the best, viable and feasible on the basis of upfront payment and scoring matrix. Therefore, on 26th April, 2018, the 'Committee of Creditors' declared the Appellant's ('Shri Ram Residency Pvt. Ltd.') plan as successful offered plan (of Rs. 111.11 Crores) in comparison to the plan submitted by the 8th Respondent ('Ritudhan Suppliers Pvt. Ltd.') who offered plan of Rs. 103.50 Crores. The scoring matrix was prepared after taking into consideration qualitative and quantitative parameters for 'Sh. Ram Residency Pvt. Ltd.' (Appellant) which is 75.50 and 'Ritudhan Suppliers Pvt. Ltd.' (8th Respondent) which is 68.90. The 'Committee of Creditors' also rejected the so-called proposal with the revised plan submitted by the 8th Respondent on 25th April, 2018 as it was also below the offer given by 'Sh. Ram Residency Pvt. Ltd.' (Appellant) as the fourth revised plan offered by the 8th Respondent was for Rs. 105.30 Crores.

9. E-voting of the 'Committee of Creditors' took place on 28th and 29th April, 2018 declaring 'Sh. Ram Residency Pvt. Ltd.' (Appellant) as successful viable 'Resolution Applicant' (H-1 Bidder) by 98.05% voting shares, whereas 8th respondent whose 'Resolution Plan' was next to Appellant got 0% vote. In fact, 77.58% of the 'Committee of Creditors' directly voted against the 'Resolution Plan' of the 8th Respondent.

10. On 30th April, 2018, the 'Resolution Professional' declared and intimated the 8th Respondent that 'Sh. Ram Residency Pvt. Ltd.'

(Appellant) has been declared as successful 'Resolution Applicant'. The Appellant was also intimated on the same date. The 'Resolution Professional' also informed the 8th Respondent that the Appellant's plan has been declared as H-1 and the 8th Respondent's as H-2. Only thereafter, the 8th Respondent moved before the Adjudicating Authority for allowing it another opportunity to revise the plan on the ground that the Information Memorandum has been changed on 23rd April, 2018. However, 8th Respondent concealed and not disclosed that revised bid had been submitted by 8th Respondent on 25th April, 2018, i.e. after the final 'revised Information Memorandum' dated 23rd April 2018, which is also lower than the 'Resolution Plan' of the Appellant. It was also not disclosed that subsequent revised plan submitted by the 8th Respondent was also rejected by the 'Committee of Creditors'

11. However, without recording any reason, the Adjudicating Authority, by impugned order dated 7th May, 2018 again allowed the parties to file revised plan, which will amount to 5th 'Resolution Plans'.

12. Learned counsel appearing on behalf of the Appellant has brought to our notice the proceeding of the 8th Meeting of the 'Committee of Creditors' of 'Jalan Intercontinental Hotels (P) Ltd.' held on 26th April, 2018 (Annexure A). In the said proceedings, the stand taken by both the Appellant and the 8th Respondent has been recorded. The key points discussed and deliberated by the 'Committee of Creditors' with the Appellant- 'Sh. Ram Residency Pvt. Ltd.' ('SRPL') has been recorded

wherein the Appellant agreed to continue with 'IHCL' till full payment to 'IHCL' is made as also agreed with regard to 'Emfar'. Thereby the third modified Information Memorandum dated 23rd April, 2018 with regard to 'IHCL' and 'Emfar' were discussed and taken care by the Appellant.

13. In the said proceedings, the key points discussed with 8th Respondent- 'Ritudhan Suppliers Pvt. Ltd.' ('RSPL') has also been recorded. The 'RSPL' also agreed to continue with 'IHCL' till full payment to 'IHCL' is made. The claim admission for 'IHCL' and 'Emfar' and also estimated increase of CIRP costs by Rs. 30 lakhs were also accepted by both the Appellant and the 8th Respondent. Thereby, we find that the third modified Information Memorandum prepared by the 'Resolution Professional' on 23rd April, 2018 were taken care in the 'Resolution Plans' submitted by both the Appellant and the 8th Respondent accepting the claims of 'IHCL' and 'Emfar'.

14. As per Section 30(2), the 'Resolution Professional' is required to examine each 'Resolution Plan' to find out whether the same confirm with the provisions as laid down under sub-section (2). It is only thereafter the 'Resolution Professional' is required to present to the 'Committee of Creditors' for its approval under Section 30(3) of such 'Resolution Plans' which confirms the conditions referred to in sub-section (2).

15. The 'Committee of Creditors' thereafter may approve a 'Resolution Plan' by voting shares in terms of Section 30(4). Therefore, once the 'Resolution Plans' are clear and placed before the 'Committee of

Creditors’, the ‘Resolution Professional’ has no power to issue another revised Information Memorandum till the reason for such ‘revised Information Memorandum’ is brought to the notice of the ‘Committee of Creditors’ and the ‘Committee of Creditors’ allows the ‘Resolution Professional’ to prepare a revised Information Memorandum. In the light of the aforesaid provisions, it was not open to the ‘Resolution Professional’ to prepare the third Information Memorandum though it was open to him to bring the fact to the notice of the ‘Committee of Creditors’. However, for such reason, we are not going to declare the third Information Memorandum as bad, as the facts were brought to the notice of the ‘Resolution Applicants’, including the Appellant and the 8th Respondent regarding dues of ‘IHCL’ and ‘Emfar’ which was the reason for preparation of third modified Information Memorandum.

16. It is true that the Adjudicating Authority has jurisdiction to call for further ‘Resolution Plan’ but such order can be passed for the reasons to be recorded and not arbitrary without any reason.

17. In the present case all procedures having followed and in absence of any infirmity, we hold that the Adjudicating Authority had no jurisdiction to give another opportunity to the 8th respondent or even to the Appellant.

18. In view of the discussion as made above, the impugned order dated 7th May, 2018 cannot be upheld and we accordingly set aside the

impugned order. The 'Resolution Plan' of the Appellant having been approved by the 'Committee of Creditors' with 98.05% voting shares and it having been found viable and feasible and as it meets the requirements as referred to in sub-section (2) of Section 30, we direct the Adjudicating Authority to approve the 'Resolution Plan' submitted by the Appellant, as approved by the 'Committee of Creditors' and pass appropriate order. For such order no further hearing is required to be given except the information to the parties as the matter has been finally decided by this Appellate Tribunal.

19. The appeal is allowed with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice Bansi Lal Bhat)
Member (Judicial)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI

24th July, 2018

AR