IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

MA/512/2019 & MA/527/2019
In
CP/714/IB/2018

Under Section 31 and section 60(5) of the IBC, 2016

In the matter of M/s. Dexin Medi Solutions Private Limited

Mr. Vasudevan Navneeth, RP
For M/s. Dexin Medi Solutions Private Limited

---Applicant

V/s

M/s. Dexin Medi Solutions Private Limited

--- Corporate Debtor

And

MA/527/2019

M/s. Arabella Onco Care Private Limited

---Applicant

Vs

Mr. Vasudevan Navneeth, RP
For M/s. Dexin Medi Solutions Private Limited

UCO Bank

---Respondents

Order delivered on: 07.06.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For MA/512/2019:-

For the Applicant : *Shri. Vasudevan Navneeth, RP*
Shri. K.C Sudarshan, Advocate

For the Resolution Applicant : *Shri. C. Ramasubramaniam, PCS*

For MA/527/2019:-

For the Applicant : *Shri. Arvindh Pandian, Sr. Advocate*
For M/s.P. Selvaraj, S.Karthik & Durga V. Bhatt

For Respondent-1 : *Shri. Vasudevan Navneeth, RP*
Shri. K.C Sudarshan, Advocate

COMMONORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in the Open Court on: 07.06.2019

It is a common order passed on MA 512/2019 filed by the Resolution Professional (RP) for approval of the Resolution Plan and on MA 527/2019 moved by the unsuccessful Resolution Applicant seeking a direction against the RP to place its revised Resolution Plan dated 07.05.2019 before R2 (CoC) to go through the viability, feasibility and financial matrix of the resolution plan taking into consideration revised financial matrix and to decide the same in accordance with law.

2. As to the Resolution Plan approved by the CoC on 29.05.2019, the Resolution Professional says that in the evaluation matrix, the successful bidder namely M/s. Linux Laboratories Private Limited has attained 86 marks, whereas the Resolution Applicant (M/s. Arabella Onco Care Private Limited), whose plan has been **rejected** by the CoC, has attained only 49 marks.

3. Regarding the plan given by the successful Resolution Applicant, the RP says it has come out to pay ₹9.52Crores to all the stake holders whereas the unsuccessful Resolution Applicant namely M/s. Arabella Onco Care Private Limited, has come forward to pay ₹9.95 Crores.

4. While considering these two plans for approval, the CoC has approved the Resolution Plan because the successful Resolution Applicant has assured payment to the stakeholders within fifteen days, to clear statutory dues within 96 hours after the approval of the Plan by simultaneously showing proof of source of funds. The Resolution Applicant tendered documents showing Fixed Deposit of ₹6Crores at the time of the approval of resolution plan by CoC, now it has stepped up its Fixed Deposits to ₹8Crores. Apart from this, the successful Resolution Applicant has also filed sanction letter from HDFC Bank to finance ₹10Crores for infusing funds into the Corporate Debtor towards working capital. The total money that this Resolution Applicant proposed to invest in this company is around ₹18Crores, out of which, ₹9.52 Crores to pay to various stake holders

within 15 days and remaining money to be invested as working capital.

5. As against this plan, as to unsuccessful bidder i.e. Resolution Plan of M/s. Arabella Onco Care Private Limited, initially it gave a plan for ₹5.5Crores on 27.03.2019, thereafter on 03.04.2019, it filed revised plan valuing ₹7.81Crores and again on 29.04.2019 revised its plan for ₹9.95Crores.

6. This unsuccessful Resolution Applicant did not stop there, by looking at the resolution plan given by the successful bidder proposing to pay money to stake holders within fifteen days, this unsuccessful Resolution Applicant has again come out with another plan on 07.05.2019 stating that it would pay to the stake holders within 90 days.

7. But the difference between the successful resolution plan and this plan not approved by the CoC is, this unsuccessful bidder has not placed any material along with plan reflecting source of funds.

9. As to successful Resolution Applicant company, it was incorporated eleven years before, today it has turnover of around

₹100Crores whereas this unsuccessful bidder was floated in the month of Nov'18 with ₹1Lac capital. Moreover, this unsuccessful bidder has not placed any material showing that this company has been doing business and having turnover matching to the turnover of the successful bidder. In fact, the only support that it has been canvassed by this unsuccessful bidder is that this successful bidder floated by group of concerns having good turnover.

10. It is pertinent to mention that mere words will not work out in commercial transactions. Any prudent businessman or banker will see what is the proof placed before the CoC for approval of the Resolution Plan.

11. From one side, the successful bidder has placed material showing cash to pay it immediately, whereas this unsuccessful bidder has not placed any proof reflecting cash is available with the Company except saying that group of concerns floated this company having good turnover.

12. What this unsuccessful bidder all through says is that its plan is for ₹9.95Crores, whereas the successful bidder plan is only

for ₹9.52Crores, therefore its plan should have been approved, not the plan of the successful bidder plan.

13. But in the evaluation matrix, the marks successful bidder attained are almost double to the marks of the unsuccessful bidder plan. The criterion that has been taken into consideration for approval by the CoC, it appears to us, is that the successful bidder has placed proof showing cash is available to pay it immediately – statutory liabilities within 96 hours; Operational Creditor dues within five days and dues to the Financial Creditors within 15 days. As against this, unsuccessful bidder says it would pay to the Operational Creditors within 150 days from the date of approval of this plan by NCLT and Government dues in part within five days and remaining balance within 45 days.

14. The Resolution Professional has mentioned that Regulation 38 of CIRP Regulations says that the Operational Creditor liquidation value has to be paid before paying the Financial Creditor dues, therefore, since this unsuccessful bidder mentioned that it would pay the Operational Creditors within 150 days, i.e., after

paying Financial Creditors, is not tenable under the law prescribed by the code.

15. Moreover, CoC is the competent body under the Code to determine which plan is beneficial to the Corporate Debtor and to the CoC.

16. On examining the plan approved by the CoC, we are of the considered view that CoC has fairly dealt with the Resolution Plans placed before it and has followed the procedure laid under the Code in evaluating the plans and approving the Resolution Plan.

17. As to the separate MA filed by the unsuccessful bidder seeking direction against the CoC to consider its revised plan even after the CoC approved the Resolution Plan by the CoC on the sole ground saying that the value in its Resolution Plan to be paid to the stake holders is more than the value of the resolution plan filed by the successful bidder, it is pertinent to look into the feasibility and viability of the Plan, rather getting swayed by the value given without material showing fund is ready to put in. It is not only the value of the resolution plan that is to be taken into consideration at

the time of approving, it is in fact to be seen whether such Resolution Applicant has the capacity to make payments as mentioned in the Resolution Plan.

18. In respect to this unsuccessful bidder Plan is concerned, it's a plan not supported by any material reflecting it has cash or security supported to make payments to the stake holders or to invest working capital into the company, whereby this Bench hereby partly allowed the MA filed by the RP by approving the resolution plan approved by the CoC without passing any relief to waive off various dues that are payable by the Corporate Debtor in accordance with law, however we make it clear that it is left open to the Corporate Debtor to pursue its remedies in accordance with law.

19. As to MA 527/2019 moved by the unsuccessful bidder, it is hereby held that CoC has every right to decide which plan is feasible and viable and approve the same, accordingly the CoC decided and approved the plan basing on feasibility and viability whereupon we have not found any infraction of the procedure laid for approval of the plan by CoC. Moreover the Honourable Supreme Court in

Arcelormittal India Private Limited vs Satish Kumar Gupta & Ors. ((2019) 2 SCC 1) and Swiss Ribbons Pvt. Limited v. Union of India (2019 SCC *OnLine* SC *73)* already held that Resolution Applicant has no vested right for consideration or approval of its resolution plan.

20. In view of the reasons aforementioned, this Bench hereby dismissed MA 527/2019 with a direction to the RP to return to the unsuccessful Resolution Applicant, if any performance guarantee or any other material given by it at the time of submitting the Resolution Plan.

21. Accordingly MA 512/2019 is hereby **disposed of,** whereas MA 527/2019 is hereby **dismissed.**

-SD-	-SD-
(S. VIJAYARAGHAVAN)	**(B. S.V. PRAKASH KUMAR)**
MEMBER (Technical)	**MEMBER (Judicial)**

SR/TJS