**(2020) 02 NCLT CK 0165**

**In the National Company Law Appellate Tribunal**

**Case No :** (IB) No. 934(PB) Of 2018, Company Application No. 849(PB) Of 2020, 2688, 2866 Of 2019

Paramjit Singh Saini And Ors. — APPELLANT

Vs

Puma Realtors Pvt. Ltd. — RESPONDENT

**Date of Decision :** 13-02-2020

**Acts Referred:**

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 36A
Insolvency And Bankruptcy Code, 2016 — Section 30(2), 30(4), 31

**Citation :** (2020) 02 NCLT CK 0165

**Hon'ble Judges :** B.S.V. Prakash Kumar, J;Santanu Kumar Mohapatra, Member (Technical)

**Bench :** Division Bench

**Advocate :** Manish Kaushik, Mishal J., Samir Sagar, Atul Sharma, Vikram Babbar, Shashank K. Lai, Anand Shankar Jha, Arpit Gupta, Harsh Gattani, Abhishek Kumar, Saurabh Kalia, Rahul Ahuja, Kanvi Nagpal, Navpreet Singh Ahluwalia, Deepak Chawla, Adhish Sharma, Neeraj Malik, Abhinav Goyal, P. Nagesh, Harshal Kumar, Zehra Khan, Mohit Prasad, Anurag Bhatt, Lokesh Pathak, Pawan Kumar Garg, Mishal Johari, Bilal Ali, Sarthak Ahuja

**Final Decision :** Dismissed

# Judgement

C.A. No. 627(PB)/2020

On the application filed by Larsen and Tourbo Limited seeking direction against the RP to pass a reasoned order regarding verification of outstanding claims of the Applicant to the tune of Rs. 12,95,88,891/- on the ground that when this Applicant made this claim against the Corporate Debtor before the RP on 18.12.2018, the RP has only allowed part claim of Rs. 6,14,83,363/- without mentioning as to why the remaining claim of the applicant is not admissible by keeping the remaining balance under verification, this Applicant is in dark as to whether its balance part of claim has been allowed or rejected. When this point has been put to the RP counsel, he says that he has already informed to the

 

Applicant the reasons for rejection of the portion of the claim not admitted by him, whereas he has not filed any proof in writing reflecting the reasons for rejection of the part of the claim of the Applicant herein.

In view thereof, we are of the view that it is the bounden duty of the RP to give reasons when claim has been rejected, for there being no proof reflecting the RP has given reasons for rejection of the part of the claim of the Applicant herein, the RP is hereby directed either to admit the claim or to give reasons as to why the balance part of the claim of the Applicant is not admissible within three days hereof.

Accordingly, this application is hereby allowed and disposed of in the aforesaid terms.

C.A. No. 193(PB)/2020

It is an application filed by a Company namely M/s. Singla Builders and Promoters Limited stating that it is interested to file Resolution Plan for consideration by Committee of Creditors of the Corporate Debtor. Therefore, sought direction against the RP to provide RFRP (Request for Resolution Plan) documents or any other information/document required for preparation of the Resolution Plan and also a direction against the RP to accept Resolution Plan submitted by the Applicant for consideration of CoC. Before coming into the merit of this application, it is necessary to see the historical facts of this case. It is an admitted fact, that the invitation of Expression of Interest published by the RP on 28.05.2019 mentions the last date for submission of Expression of Interest is by 06.06.2019. Based on such invitation, the RP received nine Expressions of Interests from various persons including Consortium of One City Infrastructure Private Limited and APM Infrastructure Private Limited-H/ 1 and Joint Venture of Eight Capital India Recovery Fund Limited and Ambit Flowers Asset Construction Private Limited-H/2. On verification of those Expressions of Interest, since three Expressions of Interests were met with the eligibility criteria, they were asked to file Resolution Plan. Out of those three, only two persons namely Consortium of One City Infrastructure Private Limited and APM Infrastructure Private Limited-H/1 and Joint Venture of Eight Capital India Recovery Fund Limited and Ambit Flowers Asset Construction Private Limited-H/2 submitted their Resolution Plan. But as to this Applicant M/s. Singla Builders and Promoters Limited having not met with the eligibility criteria, it could not file any Resolution Plan before the RP, Out of the two Resolution Plans which came before the RP, they were placed before the CoC for consideration. Since Consortium of One City Infrastructure Private Limited and APM Infrastructure Private Limited-H/1 being considered as the plan for voting, the CoC put up the said plan for voting wherein it was approved by the CoC with 100% of the voting share, the same has been filed before this Bench for approval.

In the backdrop of these facts, it is evident that this Applicant has not met with the eligibility criteria within the time prescribed for receiving Expression of

 

Interest. In the meanwhile, the Resolution Plan was approved by the CoC on the meeting held on 05.09.2019. Subsequent thereto the application under Section 31 of the IBC, 2016 was filed by the RP before this Bench on 01.10.2019 for approval of the Resolution Plan. Now this Applicant has filed this application on 03.01.2020 before this Bench after lapse of three months stating that it has entered into a consortium agreement with a public company having good credibility for submission of the Resolution Plan of the Corporate Debtor therefore, it is interested to submit new Resolution Plan. It is not the case of this Applicant that it met the criteria within the stipulated time stated under Regulation 36A of the CIRP Regulations. It is also pertinent to mention here that the Regulatory Authority i.e. IBBI after having seen people filing applications even after approval of the Resolution Plan, it has come out with the timeline as to within how much time Expression of Interest is to be given, within how much time Expression of Interest is to be considered by the RP and thereafter within how much time the Resolution Plan is to be filed, after having timelines come into existence the same being reiterated by Hon'ble Supreme Court stating that timelines given under the IBC are to be allowed, this Applicant at this belated stage more so after expiry of six months time for receipt of Expression of Interest, cannot file an application saying that it must be given an opportunity to file its Resolution Plan and to file that Resolution Plan also it has sought information that to provide RFRP (Request for Resolution Plan) documents or any other information/document required for preparation of the Resolution Plan from the RP. Meaning thereby, this Applicant wants to repeat the entire process just for the sake of its Resolution Plan being considered by the RP and the CoC which is against the spirit and object of the Code because this Resolution Plan approval has to be done within the timelines as specified under the Code. It is not the case of this Applicant that its Resolution Plan has been rejected by the RP in violation of the procedure laid down under the Code. Interestingly, the plan has been approved unanimously with 100 % voting share of CoC which is much above the statutory requirement of 66 % in terms of Section 30(4) of the Code. The right of approval of a plan lies within the domain of CoC. Now some of the homebuyers filed an application supporting this Resolution Plan. Apart from this, Applicant has also filed a comparative chart showing that if its Resolution Plan has been considered, it will maximize the value of the Corporate Debtor. It cannot become a sole criteria to consider of the Resolution Plan. It is one of the component to be considered provided more than one claim has been placed before the CoC then the CoC will consider the Resolution Plan that maximize the value of the Corporate Debtor. It is not that the Plan that comes after four months with added value is to be treated as a plan for maximization the value of the Corporate Debtor, because if this Bench considers such plan after four months, tomorrow if somebody else comes with more value than instead of considering this plan that plan has to be considered. This Bench is bound by the procedure as set out under the Code, once it is in compliance of the procedure this Bench has jurisdiction to see as to whether the plan placed before this Bench is in confirmation with Section 30(2) of the IBC or not.

 

Therefore, we are of the view that there is no merit in this application and hence we hereby dismiss this application as misconceived.

While concluding this order, this Applicant has mentioned that this Bench has not yet approved the Resolution Plan placed by the CoC. It is a fact on record that plan has not yet been approved by this Bench, whereas the CoC has approved the plan on 05.09.2019 i.e. almost four months before. It is also pertinent to mention here that this Company Petition was admitted on 17.10.2018 and the extended period of CIRP has already expired on 18.10.2019. As on today around 450 days have lapsed from the date of admission of the petition.

C.A. No. 590(PB)/2020

We must necessarily mention that this Applicant on 16.01.2020 filed another application before this Bench subsequent to filing the application i.e. C.A. No. 193(PB)/2020 stating that consortium partner who initially agreed to stand along with this Applicant as on the date of filing C.A. No. 193(PB)/2020 i.e. namely Sturdy Industries Limited expressed its inability to continue as Consortium Partner for the Resolution Plan of the Corporate Debtor. Now this Applicant has sought to replace that Consortium Partner with another Company namely Everlook Tradex Private Limited. However, after dismissal of this Company Application No. 193(PB)/2020, this Applicant in its wisdom sought for withdrawal of the application i.e. C.A. No. 590(PB)/2020 subsequently filed for replacement of its Consortium Partner. Accordingly, the same is hereby dismissed as withdrawn.

C.A. No. 1173(PB)/2020

Notice of the application.

Learned counsel for the RP accepts notice, this Bench hereby directs the RP to file reply before next date of hearing. List the matter for hearing on 05.03.2020.