
(2021) 04 NCLT CK 0028

In the National Company Law Tribunal

Case No : Interlocutory Appeal No. 973/IB/2020 Company Petition No. 540/IB Of 2018

S. Boomadevi

APPELLANT

Vs

S. Rajendran And Ors.

RESPONDENT

Date of Decision : 20-04-2021

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 21, 30, 31

Citation : (2021) 04 NCLT CK 0028

Hon'ble Judges : R. Varadharajan, J;Anil Kumar B, Member (Technical)

Bench : Division Bench

Advocate : Pawan Jhabakh, R.V. Yajura Devi

Final Decision : Allowed

Judgement

1. Before going into the merits of this Application certain facts are required to be stated.

(i) Based on an Application filed under Section 7 of Insolvency and Bankruptcy Code, 2016 by a Financial Creditor as against the Corporate Debtor M/s. PRC International Hotels Private Limited in CP/540/IB/2018 the said Application stood admitted and CIRP was initiated on and from 24.07.2018.

(ii) During the CIRP of the Corporate Debtor, Resolution of the Insolvency took place in as much as a Resolution Plan was approved by the CoC on 24.06.2019 and thereafter the same was submitted before this Tribunal in terms of Section 30 read with Section 31 of the IBC 2016. The said Resolution Plan in MA/651/2019 was approved by this Tribunal vide Order dated 27.08.2019. Consequently the CIRP initiated in relation to the Corporate Debtor ceased to have any effect and the affairs of the Corporate Debtor, namely, M/s. PRC International Hotels Private Limited, was taken over by the 2nd Respondent M/s. Sai Baba Business Solutions Private Limited, being the successful resolution Applicant.

(iii) During the pendency of the CIRP, it is averred that a claim was submitted by the Applicant in Form-'C' on 24.10.2018 for an amount of Rs.1,44,05,791/- in the capacity as a Financial Creditor. As against the claim made, the Resolution Professional being the 1st Respondent herein admitted a claim to the extent of Rs.87,21,124/- which was also communicated to the Applicant along with the information that the Resolution Plan has been approved by the CoC by the 1st Respondent and that the Resolution Plan provided for a settlement of 15% of the admitted claim of the Applicant which had been provided and that payment shall be made within 30 days of the approval of the Resolution Plan by the Adjudicating Authority. It was also communicated that under the circumstances a sum of Rs.13,08,169/- was likely to be paid to the Applicant in light of the approval of the Resolution Plan.

(iv) Subsequent to the approval of the Resolution Plan, on 27.08.2019 a communication was received by way of Letter No.SR/MC/PRC/124/2019-20 dated 06.12.2019 filed by the Applicant that the CoC in its 9th Meeting held on 24.06.2019 had decided to meet out the additional litigation costs from the resolution plan amount itself and the amount payable to related party Financial Creditors proposed in the approved resolution plan would be subject to such additional litigation costs incurred by RP and Monitoring Committee taking into consideration the resolution passed by the CoC about litigations post approval of the resolution plan of NCLT had been handled in respect of the CIRP proceedings and that the cost of the legal proceedings ought to be met from the amount payable to the related parties as decided by the CoC.

2. Thus, the fulcrum of the Application centers around the challenge to the said Resolution as passed by the CoC to meet the expenditure in relation to the additional litigation costs out of the amounts payable to the related party, the Applicant being one of them, however, not being provided in the Resolution Plan. In the circumstances, the Applicant seeks for the disbursal of the amount of Rs.13,08,169/- along with the interest at the rate of 12% per annum as provided under the Resolution Plan in view of the Orders of this Tribunal and based upon the circular issued by the IBBI in this regard in relation to fee and other expenses incurred for Corporate Insolvency Resolution Process vide Circular bearing No.IBBI/IP/013/2018 dated 12.06.2018.

3. A counter statement to the Application has been filed by the 1st Respondent wherein it is brought to the notice of this Tribunal that the Applicant also happened to be a shareholder of the Corporate Debtor, of which, Insolvency stood resolved by virtue of the approval of the resolution plan and that the 1st Respondent was able to identify a suitable resolution plan after almost one year since the commencement of the CIRP and that the 9th CoC Meeting dated 24.06.2019 in their commercial wisdom had approved the Resolution Plan, however, with necessary directions, if any deem fit in relation to litigation costs. Further in this connection, it is averred that the CoC took note of the pending Application before this Tribunal as well as various other litigations which are likely

to come up and as the resolution plan amount could not be increased further by the Resolution Applicant, the CoC in its wisdom decided to earmark the portion of the amounts allocated to the related party unsecured Financial Creditors to meet the contingency litigation costs.

4. In the circumstances, a sum of Rs.1,31,72,812/- was allocated to five related parties financial creditors including the Applicant and in that connection it is contended that the CoC was well within their powers in modifying the resolution plan by allocating such a portion of the amounts allocated to related party financial creditors to meet the contingent litigation costs. In the meanwhile, it is also pointed out that prior to the approval of the resolution plan, Applications filed by unsecured financial creditors, namely, the estate of late Mr. Mukanchand Bothra and Mr. Jonathan Muralidarane, in relation to the claim was determined by this Tribunal vide Orders dated 02.07.2019 & 31.07.2019 and in the circumstances since it was directed to consider increase in the resolution plan amount or to treat the said parties at par with the other unsecured financial creditors, the CoC was then called for at the direction of this Tribunal and re-allocated the amounts payable to the unsecured financial creditors, as afterwards they i.e. Applicants therein, came to be classified as unsecured financial creditors, whose claim came to be subsequently admitted.

5. In the circumstances, the CoC did not make any modifications to the Resolution Plan amount or distribution after the order passed by the Tribunal approving the plan on 27.08.2019 and such modifications with regard to the amount allocated to the Applicant along with the other related party financial creditors since the additional litigation costs were treated as contingency costs is to be paid from the allocation made to the related party unsecured creditors and it is contended that the same did not form a part of CIRP Cost as wrongly construed by the Applicant.

6. In the meanwhile, it is also stated by the 1st Respondent that certain Execution Proceedings were also pending before the Hon'ble High Court of Madras and the attachment Order was also obtained on 06.11.2019 by the unsecured financial creditors in relation to related party unsecured financial creditors. In the circumstances, since the resolution plan approved by the Tribunal is binding on all the stakeholders including the Applicant herein under Section 31 of the Code and that the commercial wisdom of the CoC cannot be challenged and further the Applicant itself has approached this Tribunal much after the resolution plan itself has been implemented and the Corporate Debtor has been handed over to the 2nd Respondent and that the Monitoring Committee has been disbanded, this Application deserves to be dismissed.

7. During the course of the submissions made by the Counsels for the parties before this Tribunal, Ld. Counsel for the Applicant brings to the notice of this Tribunal about the Order passed by this Tribunal in MA/651/2019 dated 27.08.2019 while approving the resolution plan. Particular attention of this Tribunal was drawn by the Ld. Counsel for the Applicant to paragraph 9 under the

caption "analysis of resolution plan", and from the same, it is evident that the total Resolution Plan amount for stakeholders provided under the resolution plan is to the extent of Rs.28,55,06,654/- out of which, a sum of Rs.1,31,72,812/- has been earmarked to financial creditors - related party and that the payment, namely, the Resolution Plan amount is payable to the stakeholders and is required to be paid within a period of 30 days from the date of the approval of the resolution plan by the Adjudicating Authority under the resolution plan and after detailed consideration and discussion of the resolution plan submitted before it, this Adjudicating Authority at paragraph no.16 has held as follows:

"16. In view of the above, the "Resolution Plan" annexed with MA/651/2019 filed in CP/540/IB/2018 is hereby approved, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, other stakeholders including statutory authorities involved in the Resolution Plan and the Resolution Applicant".

8. Further, at paragraph 20, it is evident that the resolution plan which has been approved by this Tribunal has been ordered to be effective from the date of passing of the said Order, namely, 27.08.2019, that from the above Order passed by this Tribunal while approving the resolution plan it becomes clear that a sum of Rs.1,31,72,812/- has been earmarked under the resolution plan in relation to financial creditors - related party being 15% of the amount claimed by the related party financial creditors before the Resolution Professional being the 1st Respondent.

9. In the circumstances, as evident from the paragraph 16 of the said Order dated 27.08.2019 in line with Section 31 of the IBC 2016 all the parties are bound by the terms of the said resolution plan, which has been approved by this Tribunal on and from the date of the Order approving the resolution plan, which also includes the CoC as well as the 1st Respondent and the Resolution Applicant.

10. In the said circumstances, we do not find any force in the contention of the 1st Respondent that the CoC has passed a resolution in its 9th CoC Meeting dated 24.06.2019 that additional litigation cost is required to be met out of amounts due and payable to the related party financial creditors like the Applicant herein and that the said expenses are required to be defrayed by the said related party financial creditors out of the amounts due to them. If that were so, the same should have been included in the resolution plan itself, which was placed before the Adjudicating Authority for its approval.

11. There cannot be any open end in relation to the resolution plan and its implementation as sought to be portrayed by the 1st Respondent erstwhile Resolution Professional. If the CoC and RP had not factored the cost in relation to additional litigation and provided for it and having failed to include the same as it should have been included in the resolution plan, the said additional expenditure at a later stage (i.e.,) after approval of the Resolution Plan cannot be mulcted on the related party financial creditors. By virtue of the provisions of IBC, 2016

(i.e.,) Section 21 of IBC, 2016, they are also not part of the CoC and hence could not have raised any objections in relation to the same being disabled from the participation in the CoC Meeting and its deliberations. The 1st Respondent also fairly concedes the additional litigation expenses had not been provided in the Resolution Plan.

12. In light of the above, we are of the considered view that the amount which is payable to the Applicant is required to be paid out of the total resolution plan amount provided for the stakeholders in a sum of Rs.28,55,06,654/- by the 1st Respondent without any demur within a period of 90 days from the date of this Order.

13. In the circumstances, this Application with the above directions stands allowed.