IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 101
(IB)-1367(PB)/2018

IN THE MATTER OF:

ICICI Bank Ltd ... Petitioner

Vs.

C&C Construction Ltd ... Respondent

In the matter of IA-2164/2021

GURJEET SINGH JOHAR
11, Club Drive, Ghitorni,
NewDelhi-110030 ...Applicant

Vs.

1. **C& C CONSTRUCTIONS LTD.**
Through Mr. Navneet Kumar Gupta
Resolution Professional
Flat No.312, Jawahar CGHS Plot No. 9
Sec 5, Dwarka South West Delhi-110075

2. **COMMITTEE OF CREDITORS**
Through State Bank of India
Stressed Assets Management Branch-I
6th Floor, Mohan Singh Place,
New Delhi-110001. ....Respondents

In the matter of IA-114/2022

C&C Constructions Limited
Through RP Shri. Navneet Kumar Gupta
206-207, World Mark 2, hospitality District,
Aerocity, New Delhi-110037
....Corporate Debtor/Applicant

Vs.

1. **Deputy Commissioner of Income Tax- TDS Circle**
Shri Virendra Kumar Singh, IRS
Income Tax Department
6th Floor, Vanijya Nikunj, HSIIDC, Building, Udyog Vihar, Phase-V, Near Shankar Chowk, N.H.8, Guargaon- 122001.

2. **Deputy Director Income Tax, Investigation,**
DDIT/ADIT (INV), 1, Lucknow
Shri Pankaj Sachan

Income Tax Department
Aaykar Bhawan, 5, Ashok Marg , Lucknow
Uttar Pradesh- 226001.

3. **Income Tax officer (Tech) (TDS)-2 Chandigharh**
Shri Ramesh Kumar Sachdeva
Officer of the Commissioner of Income Tax
(TDS)-2 Chandigarh Aaykar Bhawan,
2nd Floor Sector-2, Panchkula.

4. **Dispute Resolution Panel-I**
CIT (DRP-1), Delhi (Sec)
Income Tax Department
Civic Centre, Minto Road, New Delhi-110002.

5. **The Commissioner of Income Tax (Appeal) Delhi2**
& Commissioner of Income Tax (Appeal) Delhi 26
Aaykar Bhawan, Laxmi Nagar District Centre, New Delhi-92

6. **The Commissioner of Income Tax**
Shri Ananjay kumar Tiwary
DCIT Central Circle-19
Room No. 267, 2nd Floor, Income Tax Building,
E-2, Ara Centre, Jhandewalan Extension,
New Delhi-110055. ...Respondents

In the matter of IA-2235/2021

C&C Constructions Ltd.
Through Navneet Kumar Gupta
Resolution Professional
(Reg. No. IBBI/IPA-001/IP-P00001/2016-2017/10009)
Flat No-312, Jawahar CGHS, Plot No.-9,
Sector-5, Dwarka, Dwarka Sec-6,
South West Delhi, Delhi-110075 ...Applicant

Vs.

Committee of Creditors
Through State Bank of India
Having its Regional Office at:
Stressed Assets Management Branch-1,
6th Floor, Mohan Singh Place,
Baba Kharak Singh Marg, Cannaught Place,
New Delhi-110001 ...Respondent

Order delivered on 23.03.2022

CORAM:
JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH KUMAR SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant in IA-2164/2021	:	Mr. Ramji Srinivasan, Mr. Swapnil Gupta, Mr. Apporv Agarwal, Mr. Manav Goyal and Mr. Abhishek Kumar Jaiswal, Advs. For the Promoters
For Respondent	:	Mr. PBA Srinivsan, Mr. Parth Tandon
For the RP	:	Mr. Vivek Sibal, Sr. Adv. and Mr. Pulkit Deora, Advocates.

ORDER

IA-2164/2021:

1. ICICI Bank initiated Section 7 proceedings against the Corporate Debtor. The RP has been appointed and despite several attempts by the RP, no concrete proposal has come from any Resolution Applicant. In the course of these attempts, it appears that the promoter has also given his proposal on several occasions at least to the extent of 10-15 times. The last of this proposal was given on 27.05.2021. It is stated to be a Proposal under Section 12A of the IBC which is primarily objected by the Resolution Professional that in terms of Section 29A of the IBC, no proposal can be made by the promoter. At best it can be a proposal for settlement with the Financial Creditor's which can be considered, if it is feasible to them.

2. In the various minutes of the meetings of the Committee of Creditors (CoC) the issue was considered in the light of the Resolution Plan/the proposal given by the promoter but in vain. The relevant CoC meeting that

are relevant falls on 16.03.2021 & 05.04.2021. Several issues were discussed on 16.03.2021, however, that becomes a bit academic in view of agenda item No. 5 and 5A in the last meeting convened on 05.04.2021. For better clarity the agenda items 5 and 5A, of the CoC meeting held on 05.04.2021 is set out for considering the present issue:

ITEM NO. 5

CONSIDERING THE RESOLUTION PLAN SUBMITTED BY THE RESOLUTION APPLICANT, M/S RPP INFRA PROJECTS LIMITED ("RESOLUTION APPLICANT", AND SUCH PLAN, "RESOLUTION PLAN"), COULD NOT GARNER THE REQUISITE VOTES FOR APPROVAL AS PRESCRIBED UNDER SECTION 30(4) OF THE CODE, THE COC IS NOW REQUESTED TO CONSIDER THE WAY FORWARD INCLUDING INITIATION OF PROCESS FOR LIQUIDATION OF THE CORPORATE DEBTOR IN ACCORDANCE WITH SECTION 33(1)(A) OF THE CODE IN VIEW OF EXPIRY OF OVER 330 DAYS IN THE PROCESS, MULTIPLE EXTENSIONS ALREADY GRANTED BY HON'BLE NCLT ON THE GROUND THAT RESOLUTION PLAN IS UNDER CONSIDERATION BY THE COC AND LIKELIHOOD OF ANOTHER EXTENSION NOT FORTHCOMING

The RP Team reminded the members of the COC that pursuant to closure of voting by the members of the COC on the Resolution Plan on March 26, 2021, the Resolution Plan did not garner the requisite votes as prescribed under the Code and hence was not approved by the COC of the Corporate Debtor. The results of voting on the resolution plan as circulated vide email dated March 26, 2021 is also annexed with the present minutes as Annexure 3 for ease of reference to the members.

Further, the RP Team stated that as noted in Agenda 5 above, the CIRP period, including extensions, was coming to an end on April 17, 2021. Accordingly, in view of the rejection of the Resolution Plan by the members of the COC, the CIRP period expiring and the multiple extensions previously sought for extension of the CIRP period and utilized, the RP Team requested the members of the COC to discuss the way forward.

At this juncture, the representative of DBS Bank (DBS) stated that in accordance with the email circulated by him to the RP and the members of the COC on April 5, 2021, before moving forward with upcoming agenda of this meeting, as laid out in notice, the members of the COC should consider taking up for discussion the proposal of the promoters of the Corporate Debtor under Section 12A of the Code (12A Proposal").

Mr. GS Johar, the director (with suspended powers) of the Corporate Debtor also stated that the 12A Proposal had been discussed at a joint-lenders meeting ("JLM") convened earlier and requested that the matter be included for discussion within the COC. In view of the email from the representative of DBS, DBS's request at this meeting to discuss the 12A Proposal and the request from Mr. GS Johar, the RP in consultation with the legal counsel mentioned that the discussion in relation to the 12A Proposal may be taken up as an agenda item at this meeting, subject to 33% (thirty-three percent) of the members of the COC concurring to such agenda being discussed, in accordance with Regulation 18 of the CIRP Regulations which allows a meeting to be convened at the request of members of the COC having 33% (thirty-three percent) voting share. Also, RP clarified, this permission to allow discussion in context of agenda of section 12A is only to discuss" and limited to "discussion only" and should not be construed/ understood/perceived as any permission being granted by chair for any other purpose in context of section 12A.

In light of the above, the RP proceeded to request a voice-vote of the members of the COC on whether discussion about section 12A Proposal was to be discussed as an agenda at this meeting Accordingly, the members of the COC recorded a voice-vote, and by 90.58% votes in the affirmative, the COC decided to take up discussion on the 12A Proposal as an agenda item as part of the meeting, and the discussion on the same is recorded as agenda item 5A.

ITEM NO. 5A

TO DISCUSS THE STATUS OF 12A PROPOSAL IN ACCORDANCE WITH THE REQUEST OF DBS AND PROMOTERS REPRESENTED BY MRG S JOHAR.

In accordance with the discussion under agenda item 5 and pursuant to the results of the voice-voting, the RP Team requested the members of the COC to take up the discussion on the 12A Proposal.

The representative of ICICI Bank ("ICICI"), being the applicant bank, initiated the discussion and apprised the members of the COC that a JLM was convened by State Bank of India (SBI), being the lead bank, where the 12A Proposal was discussed. Pursuant to discussions at the JLM, the lenders had certain specific observations on the 12A Proposal which have been duly flagged for Mr. GS Johar's attention-and-action at the JLM. At this juncture, Mr. GS Johar assured the members of the COC that he is working to resolve the observations and will be taking all necessary actions to address the concerns of the lenders at the earliest.

Further, it was clarified by the RP that since the Resolution Plan had not been approved by the COC, the discussions in relation to other agenda items for this meeting would continue. The members of the COC took

note of the same and discussion on this agenda item was accordingly concluded."

3. Going through the content of the discussion of the CoC as above, it appears that one Mr. G.S. Johar, had given a proposal and was considered by the JLM and he had agreed to clarify certain issues and remove the doubts raised by the stakeholders in the Joint Lender Meeting (JLM). If the proposal of promoter is in the stage of clarification, the question of voting on the proposal by CoC does not arise. Therefore, we asked a pointed question to the Ld. Counsel for the CoC, as to whether they are still inclined or interested in discussing this proposal in the JLM and if it is concluded that the proposal is viable, then it can be placed before the CoC for consideration and voting in terms of Regulation 30A of the CIRP Regulations, for its logical conclusion.

4. On this query, the Ld. Counsel PB Shrinivsan, appearing for the CoC, submits that if the promoter or Mr. G S Johar comes with fresh proposal after addressing the issues/observations raised in the JLM earlier, then they would consider the same. In the first instance, it was pleaded that the proposal of the promoter should be presented to the JLM through the lead Bank namely State Bank of India and the JLM will consider the same within 5 days of receipt of such proposal. In case a decision is taken to proceed further in the matter, they will request the RP to place it before the CoC for consideration and voting.

5. Accepting this contention of Sh. PB Shrinivisan Ld. Counsel for the CoC, we hereby, direct the Applicant namely Mr. G.S. Johar, to submit his proposal within 3 days of receipt of Order to the Lead Bank namely the State Bank of India. State Bank of India will place it immediately before the JLM to deliberate upon the proposal, which will be done within a period of 5 days of the first meeting of the JLM. The JLM will interact with the promoter/or the person who has submitted the proposal under consideration, and arrive at a definite conclusion as to whetherthe proposal under consideration requires to be accepted or rejected. If acceptable it has to be placed before the CoC for its consideration.

6. If the JLM decides to accept the proposal and place it before the CoC, the CoC will duly inform the RP in writing, with a request to hold meetings of the CoC, for discussion and voting, on the proposal to be considered in terms of Section 12A of the IBC and Regulation 30A of the CIRP Regulations.

7. The RP after the receipt of the letter from the CoC will convene the meeting of CoC within a period of 3 days to consider the proposal. The CoC shall thereupon deliberate the proposal, on the date of meeting for acceptance or rejection of the proposal.

8. In case the JLM, does not accept the proposal the said decision shall be conveyed to the RP in writing. This will enable the RP to proceed further as per the CoC's resolution in terms of IBC which has already been passed.

9. Based on the CoC decision, consequential proceedings can be taken in terms of the IBC, 2016.

IA-114/2022 & IA-2235/2021:

List on 25.04.2022 for physical hearing

Sd

(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd

(AVINASH KUMAR SRIVASTAVA)
MEMBER (TECHNICAL)

Ginni - 23.03.2022