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**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 05.10.2018 AT 10.30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.346,347 /2018 CP(IB) No.173/10/HDB/2017
NAME OF THE COMPANY	Sri Vinayaka Paper & Boards Ltd
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	10 of IBC

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Sama Sandeep Reddy	Adv.	9603477328	

**Counsel for Respondent(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

In I.A. 347/2018. D. Navendran Naik Advocate 9849387366)  
Vikram C. Puttapaga Advocate 9160876539 Vikram

ORDER

IA No. 346&347/2018, are listed for orders.

Orders passed vide separate order.

IA No. 396/2018, is taken up for hearing. Heard both sides.

RP is present in person.

List it for orders on 12.10.2018.

  
Member(Judl)

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

IA No. 346 of 2018

In CP (IB) No. 173/10/HDB/2017

U/s 60 (5) of IBC, 2016

In the matter of :

Smart Login Solutions Private Limited  
Plot No. 301, Jyothi Blooms  
Union Bank of India Colony  
Road No.3 Banjara Hills  
Hyderabad-34.

...Applicant

VERSUS

Mr. G. Madhusudhana Rao  
(Resolution Professional for Sri Vinayaka  
Paper & Boards Private Limited)  
7-1285, Flat No. 103  
Sri Sai Swarupa Sampada Apts  
Balkampet, Hyderabad – 500038

...Respondent  
Corporate Debtor

Ananya Rai Paper and Allied Products Pvt Ltd  
Villa No 2 SA, Palm Meadows  
Avenue No.4, Kompally  
Hyderabad 14

...Resolution  
Applicant

**Date of order: 05.10.2018**

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties/counsels present:

For the Applicant : Shri G. Bhaskar, Advocate

For the Respondent Shri G. Madhusudhan Rao, Advocate

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on: 30.08.2018, 10.09.2018, 18.09.2018, 26.09.2018

**ORDER**

1. The Applicant is Smart Login Solutions Private Limited. The Application is filed under Section 60 (5) of Insolvency & Bankruptcy Code seeking directions to Resolution professional to provide opportunity to the Applicant to enable to put forward its contentions before passing any orders
2. Brief averments made in the Application are:-
  - (1) This Tribunal vide orders passed in CP (IB) No. 173/10/HDB/2017 admitted the Petition filed under Section 10 of I&B Code, 2016 by the Corporate Debtor on 22.09.2017 and at the first instance appointed Shri R. Ramakrishna Gupta as Interim Resolution Professional.
  - (2) It is averred pursuant to taking over as IRP, public announcement was made on 27.09.2017 inviting the claims against the Corporate Debtor.
  - (3) It is averred that Resolution Professional treated the Applicant as one of the Financial Creditors as per the list of financial creditors admitted as on 22.05.2018.
  - (4) The Applicant further avers that it is one of the members of the Committee of Creditors in pursuant to Section 21, but the Applicant / Financial Creditor was not given notice though the Applicant is entitled to participate the CoC meetings.

- (5) It is also alleged that without including the Applicant as member of CoC, the CoC has appointed one Shri G, Madhusudan Rao as Resolution Professional, which is illegal and against the law.
  - (6) It is the case of the Applicant that it should be given an opportunity to place its contentions before the CoC before appointing the Resolution Professional and for re-assessing the Resolution Plan.
3. A counter is filed by the Resolution Professional.
- (1) The Resolution Professional has denied all the allegations made by the Applicant. It is contended that the Resolution Plan submitted by M/s Ananya Rai Paper & Allied Products Private Limited was approved by the Tribunal vide its order dated 06.08.2018.
  - (2) It is the case of Resolution Professional that the Applicant submitted Form C dated 30.09.2017 for Rs.63,00,000/- without an Affidavit and revised its claim by sending Form B dated 05.10.2017 (proof of claim by operational Creditors) with a notarized Affidavit, which proves to show that the Applicant is an Operational Creditor.
  - (3) It is the case of Resolution Professional that the claim submitted by the Applicant for Rs.63,00,000/- was not considered on the ground *"that the claims received from persons other than the banks referred at Sl.No.6 to 58, which includes Applicant (at Serial No.58)***

***does not carry any interest and are not supported by any loan agreement”.***

- (4) The Resolution Professional would further contend that audited financial statements of the Company as on 31.03.2017 was not received by the Company from the Auditors. Further Resolution Professional contends that since he did not treat the Applicant as Financial Creditor, no notice was issued to the Applicant for 1<sup>st</sup> CoC meeting.
- (5) The Resolution Professional would further contend that Audited Financial Statements of the Corporate Debtor for the years 2015-16 & 2016-17, show that no interest expenditure has been provided on any of the unsecured financial creditors and that all the unsecured financial creditors are related parties. Further, the Company has not accepted any public deposits as per the Audit Report.
- (6) It is also contended that Resolution Professional has not received any supporting documents evidencing the Time Value of Money which is essential as per Section 5 (8) of IBC, 2016. Thus, both IRP and RP has not treated the Applicant as Financial Creditor.
- (7) It is the case of Resolution Professional that the Applicant has not submitted proof of financial contract or debt with the Corporate Debtor despite issuing several emails for providing the same.
- (8) The Resolution Professional further submits, it was unanimously decided by the CoC to appoint the current Resolution Professional. He further avers that Applicant's share of Rs.63,00,000/- as against

the total CoC members admitted claim is Rs.268,30,97,954/- attributes to only 0.23%.

(9) The Resolution Professional further brought to the notice of the Tribunal that the approved Resolution Plan provides 31.12% to the secured Financial creditors while all other creditors except Government will get 50% of their dues and that the Liquidation value due to the creditors (other than secured creditors) under Section 53 of IBC is NIL. Further Resolution Professional also stated that implementation of Resolution Plan would be beneficial to the employees, workers government by way of taxes, Resolution Applicant and Secured/unsecured creditors.


(10) Hence, it is prayed that the present Application may be dismissed.

4. I have heard the counsels appearing for the Applicant and the Resolution Professional.
5. The Applicant prayed in the Application to direct Resolution Professional and CoC to provide an opportunity to the Applicant being Financial Creditor to express its views and suggestions before passing any order.
6. The case of Applicant that it had submitted the claim before the Resolution Professional for a sum of Rs. 63,00,000/-. It is the case of Applicant that it was treated as Financial Creditor as per the list dated 22.05.2018. The contention of the Applicant that it is a part of CoC but it was not included as a member of CoC even though it is a Financial Creditor.

7. The contention of the Resolution Professional, at the first instance, Applicant filed claim in Form-C dated 30.09.2017 for Rs. 63,00,000/- but it was not accompanied by an Affidavit. Thereafter, Applicant submitted revised claim in Form-B dated 05.10.2017 which deals with proof of claims by Operational Creditors.
8. The contention of Resolution Professional, claim of Applicant for Rs.63,00,000/- was not considered on the ground that the claim of Applicant did not carry interest and there was no supporting loan Agreement. It is also the case of Resolution Professional that in the audited Balance Sheet for the years 2015-16 and 2016-17 of the Corporate Applicant no provision is made for interest expenditure on any unsecured loans and that all unsecured Financial Creditor are related parties. So, the contention of the Resolution Professional, Applicant does not fall under the definition of Financial Creditor as there is no document to show money was advanced for Time Value. Thus, Applicant was not treated as Financial Creditor.
9. Applicant has not filed any document along with Application except contenting it shall be treated as Financial Creditor. On the other hand, the Resolution Professional filed copies of claim Form submitted by the Applicant. At the first instance Applicant submitted claim in Form-C dated 30.09.2017. In this Form 'C', Applicant claimed that he is entitled for a sum of Rs. 63 lakhs. Subsequently, Applicant filed revised claim in Form-B dated 05.10.2017. This is in respect of claim by

operational Creditors. So, Applicant presented claim in Form-B admitting it is an operational creditor.

10. The Resolution Professional has filed minutes of 1<sup>st</sup> CoC dated 20.10.2017. The Applicant's claim is not admitted subject to verification. In other words, the claim of Applicant that it is a Financial Creditor was not recognized for lack of additional information.
11. The Resolution Professional has also relied on e-mail correspondence made with Applicant. It is very clear Applicant submitted Form-B to be filed by the Operational Creditor and Applicant cannot be treated as member of CoC. Applicant having submitted the claim in Form-B cannot find default with Resolution Professional for not treating him as Financial Creditor. It is not open to the Applicant to contend that it should have been recognized as Financial Creditor. The Application is therefore devoid of merits and is liable to be dismissed.
12. Therefore, Application is dismissed.

  
(RATAKONDA MURALI)  
MEMBER (JUDICIAL)

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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

IA No. 347 of 2018

In CP (IB) No. 173/10/HDB/2017

U/s 60 (5) of IBC, 2016

In the matter of:

Shri B. Munirathnam Reddy  
3289, BSK 2<sup>nd</sup> Stage, K.R. Road  
Bangalore

...Applicant

VERSUS

Mr. G. Madhusudhana Rao  
(Resolution Professional for Sri Vinayaka  
Paper & Boards Private Limited)  
7-1285, Flat No. 103  
Sri Sai Swarupa Sampada Apts  
Balkampet, Hyderabad – 500038

...Respondent

Date of order: 05.10.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties/counsels present:

For the Applicant : Shri Narendar Naik, Advocate

For the Respondent: Shri G. Madhusudhan Rao, Resolution  
Professional

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on: 30.08.2018, 10.09.2018, 18.09.2018, 26.09.2018

## **ORDER**

1. The Applicant is Mr B. Munirathnam Reddy. The Application is filed under Section 60 (5) of Insolvency & Bankruptcy Code seeking stay of Corporate Insolvency Resolution Process in respect of Sri Vinayaka Paper and Boards Limited, Corporate Applicant / Corporate Debtor.
2. Brief averments made in the Application are:-
  - (1) This Tribunal vide orders passed in CP (IB) No. 173/10/HDB/2017 admitted the Petition filed under Section 10 of I&B Code, 2016 by the Corporate Debtor on 22.09.2017 and at the first instance appointed Shri R. Ramakrishna Gupta as Interim Resolution Professional.
  - (2) It is averred pursuant to taking over as IRP, public announcement was made on 27.09.2017 inviting the claims against the Corporate Debtor.
  - (3) It is averred on 04.10.2017, Applicant filed his claim as Financial Creditor in Form C for an amount of Rs. 1,65,00,000/-. Owing to defects in Form C, claim submitted by the Applicant, IRP has not considered the Applicant as Financial Creditor and a part of CoC.
  - (4) It is averred in the first meeting of COC held on 02.11.2017, Shri G. Madhusudhana Rao was appointed as Resolution Professional.



- (5) It is further averred since there were discrepancies in Form C, the Applicant filed a revised Form C for an amount of Rs. 3,95,00,000/- along with all supporting documents on 17.01.2018, which was admitted by the Resolution Professional on 12.06.2018 with a delay of six months only to deprive the Applicant his right to be a part of CoC. It is the case of Applicant that Resolution Professional admitted the claim of Applicant as Financial Creditor to the tune of Rs. 1,65,00,000/- but was not included as a member in the CoC.
- (6) It is the case of Applicant that in the meeting of CoC held on 14.06.2018 with the Applicant as member of CoC, approved the Resolution Plan submitted by Ananya Rai Paper and Allied PRoducts Private Limited. It is alleged that when the Resolution Professional admitted the claim of the Applicant as Financial Creditor, he should not have conducted the meeting without the Applicant being a part of the CoC.
- (7) It is the case of the Applicant that the Resolution Professional is required to maintain an updated list of all the claims and that as and when he updates the list, he is required to re-constitute the CoC under Section 25 (2) (e) of IBC.
- (8) Therefore, the Applicant prayed this Tribunal to declare the Applicant as Financial Creditor and to declare the Resolution Plan approved by CoC ,

without inclusion of the Applicant as a member of CoC as illegal and void abinitio.

- (9) Further, the Applicant prayed this Tribunal to include the name of the Applicant as member of CoC and place the resolution plan afresh for the approval of CoC with Applicant as a member of CoC.


3. Counter is filed by the Resolution Professional:-

- (1) Resolution Professional would contend that as per the the minutes of the 1<sup>st</sup> CoC meeting, the IRP has stated that the claims received from persons other than Banks referred at Sl.No.6 to 58 which includes the Applicant at Sl.No.8 do not carry any interest and are not supported by any loan agreement. IRP has also recorded that audited financial statements of the Company as on 31.03.2017 has not been received from the Auditors. Further as per Audited Balance sheets for FY 2015-16 and 2016-17, all unsecured financial secured creditors are related parties and Company has not accepted any Public deposits.
- (2) Resolution Professional further contended that the IRP/RP has not received any documents evidencing the Time Value of Money which is essential as per Section 5(8) of IBC, 2016, as such Applicant is not treated as Financial Creditor.
- (3) Resolution Professional would contend that the Applicant submitted a claim for Rs. 1,65,00,000/- with the IRP on 04.10.2017 and the same is only

reflected in the Books of Account and also in the Application filed by the Corporate Debtor for initiating CIRP. As there were defects in the first claim, the Applicant subsequently submitted the revised claim for Rs. 3,95,00,000/- on 17.01.2018 which includes the share capital amount of Rs. 2,30,00,000/- for which the Applicant is already a shareholder as per MCA/RoC records.

- (4) The Resolution Professional denies the allegations of the Applicant that there was a delay of six months in admitting the claim on 12.06.2018, as there are series of correspondence between the Applicant and the Resolution Professional. Further the Resolution Professional also contended that the Applicant has not provided the email id or his contact number in Form C which is mandatory.
- (5) It is the case of Resolution Professional that even otherwise the Applicant's claim is only Rs.1,65,00,000/- as against the total CoC admitted claim of Rs. 268,30,97,954/-, which constitutes only 0.61% . The Resolution Plan submitted by M/s Ananya Rai Paper and Allied Products Private Limited was approved with 100% voting.
- (6) The Resolution Professional further brought to the notice of the Tribunal that the approved Resolution Plan provides 31.12% to the secured Financial creditors while all other creditors except Government will get 50% of their dues and that

the Liquidation value due to the creditors (other than secured creditors) under Section 53 of IBC is NIL. Further Resolution Professional also stated that implementation of Resolution Plan would be beneficial to the employees, workers government by way of taxes, Resolution Applicant and Secured/unsecured creditors.

- (7) Hence, it is prayed that the present Application may be dismissed.
4. I have heard the counsels appearing for the Applicant and the Resolution Professional.
  5. The Counsel for Applicant contended that Applicant ought to have been included in the CoC as one of the members. Counsel for Applicant relied on Form 'C' dated 04.10.2017 and 17.10.2018 filed before the Resolution Professional. Further, Counsel relied on the letter from Resolution Professional dated 12.06.2018. It is the case of Applicant that on 04.10.2017, the Applicant filed claim for Rs. 1,65,00,000/-. It is also the case of Counsel for Applicant that a revised Form-C was submitted as there were some discrepancies.
  6. The case of the Applicant that Resolution Professional at a highly belated stage admitted the claim to the extent of Rs. 1,65,00,000/- on 12.06.2018 and that Applicant ought to have been included in the CoC by virtue of Provisions of Section 21(2) of IBC,2016. Whereas Resolution Professional deliberately had not included the Applicant in the CoC and the Resolution Plan was approved on 14.06.2018.
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7. The Contention of the Learned Counsel for Applicant that Applicant is not a related party and therefore he is not barred to become a member of CoC. The contention of the Learned Counsel for Applicant that Resolution Plan approved by CoC is illegal and void as Applicant was not included as member of CoC even though order was passed on 12.06.2018 admitting Applicant as Financial Creditor and also prayed consequential reliefs as detailed in the Application.
8. The Resolution Professional is present in person. The Resolution Professional contended that Applicant is a related party. He has relied on the minutes of 1<sup>st</sup> CoC meeting held on 20.10.2017. The Applicant Shri.B.Munirathnam Reddy is shown at SI.No.8 in the list of Other Financial Creditors. The Minutes of CoC goes to show that the claim put forward by the Applicant and thus did not carry any interest and not supported by any loan agreement, so the claims are under scrutiny and Applicants whose claims are kept pending for verification.
9. The case of Resolution Professional that as seen from the Balance Sheet, there is no provision for payment of interest for loans. So the contention of the Resolution Professional that Applicant cannot be treated as Financial Creditor as on date there is no time value of money as required under Section 5(8) of the Code. It is true, Financial debt is described in Section 5(8) of the Code, Which read as follows:-

**5(8) " Financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-**

**a) Money borrowed against the payment of interest; .....**

10. The Resolution Professional filed copies of promissory note submitted by the Applicant. In these promissory notes shown at page Nos.54-58 in the Counter Affidavit, there is no reference for payment of interest.
11. The Applicant first submitted Form-C on 04.10.2017 for Rs. 1,65,00,000/-. Again he has submitted Form- C on 17.01.2018 for Rs. 3,95,00,000/-. The case of RP that in the 2<sup>nd</sup> claim Form dated 17.01.2018, Applicant has included share capital amount of Rs.2,30,00,000/-. The case of Resolution Professional that Applicant was already a shareholder as per MCA records. There was a lot of correspondence between Applicant and Resolution Professional. The correspondence through email is filed by the Resolution Professional.
12. The Resolution Professional did not recognize Applicant as Financial Creditor on the ground that claim made by the Applicant does not carry interest and therefore, it is not time value of money and the promissory note disclosed that there is no question of charging of interest and as per Audited Financial Statements all Financial Creditors are related parties. The Resolution Professional has given reasons, why Applicant was not included in the

CoC. There is no error committed by the Resolution Professional in not including Applicant in CoC.

13. The Counsel for Applicant mainly relied on letter dated 12.06.2018 which is shown in page no. 25 of the Applicant. So far Applicant is concerned; he is recognized as unsecured creditor not as Financial Creditor.
14. Further the contention of the Resolution Professional that the Applicant has approached the Tribunal at the eleventh hour when the Resolution Plan was already approved by the Tribunal on 06.08.2018.
15. The Main contention of the Resolution Professional that the Applicant is not included in the Committee of Creditors is that the claim does not carry any interest and hence there is no time value of the money. It is correct to say that key ingredient of the financial debt is that it must be disbursed against consideration for the time value of money.
16. I have seen the Promissory notes which are annexed to the Counter at Page no.54 to58. It is clear from the Promissory notes that debt does not carry any interest portion and the essential ingredient of Section 5 (8) of the IBC, 2016 "Time Value of Money" is absent. Further, the Counsel for Applicant is not able to show from the material on record that the debt has been disbursed against the consideration for the Time value of the Money.

17. From the discussion it can be seen that the Applicant does not come within the definition of Financial Creditor as stipulated under Section 5(7) of the IBC, Code 2016 and hence he cannot be treated as Financial Creditor. He can only be treated as unsecured creditor neither Financial nor Operational Creditor.
18. If the Applicant does not come under the ambit of Financial Creditor, the question of related party does not arise. It is not open to the Applicant to contend that it should have been recognized as Financial Creditor. The Applicants deserves to be dismissed.
19. Therefore, Application is dismissed.

  
**(RATAKONDA MURALI)**

**MEMBER (JUDICIAL)**

9/10/18 ✓