

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P. No.(IB)292 (MB)/2017
MA 170/2018, 166/2018, 334/2018
MA 473/2018, IA 334/2018, IA 420/2018
INVP 21/2018, MA 174/2018, MA 377/2017,
MA 425/2017, MA 501/2017, MA 565/2017,
MA 602/2017, MA 549/2017, MA 837/2018

CORAM:

SHRI B. S. V. PRAKASH KUMAR
MEMBER (J)
SHRI RAVIKUMAR DURAISAMY
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 12.09.2018

NAME OF THE PARTIES: Edelweiss Asset Reconstruction Company Ltd

Vs

Bharati Defence & Infrastructure Ltd

Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

1. **MA 170, 166, 334, 473/2018, IA 334/2018, IA 420/2018, INVP 21/2018, MA 174/2018, MA 377/2017, MA 425/2017, MA 501/2017, MA 565/2017, MA 602/2017, MA 549/2017, MA 837/2018 in C.P.(IB)-292(MB)/2017**

On looking at the Resolution Plan approved by the COC, prima facie it appears that there are many unilateral decisions in the Resolution Plan reflecting proposal for allotment of shares to the Operational Creditors including Government without compliance of the due procedure and without being put the decision approved by the CoC to any of them, specially Government of India.

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It is understandable that CoC may accept any plan, provided it is in accordance with law, but whereas when a decision is taken in respect to other persons who has not participated in that decision, minimum duty cast upon is to find out as to whether they agree for such proposal or not. May be it is true that CoC is conferred with powers to take decision with requisite approval in respect to the claims of the Operational Creditors as well, but it does not mean that such decisions are flashed over others without looking at as to whether such allotments will be accepted by those creditors. For Ex. in respect to allotment of shares to Government, a specific procedure is set out under the Companies Act but whereas this Resolution professional has not seen as to whether such plan would be in compliance of law and whether Government would accept such proposal after approval of this plan. Today even there is no intimation to the Government saying that 10% shares would be allotted to the Government after reduction of share capital as envisaged under Section 66 of the Companies Act, 2013.

That apart, today by virtue of this plan not a single pie is coming into the company, except contemplating money coming up after 3 years, 10 years and 15 years.

In the backdrop of these facts, since other Resolution Applicant, namely ARCS Ship Build Services (P) Ltd which has come out in its earlier plan to make upfront payment of Rs.200 crores and now ready even to revive upfront payment to substantial extent, alongwith details in respect to source of funds it would be prudent to give an opportunity to such Resolution Applicant to place his revised plan on or before 21.9.2018.

Likewise, another person namely Ricky Nathaniel, whose plan was rejected by CoC in the meeting on 27.2.2018 on the ground that clause seeking discharge of the liabilities of promoters, Guarantors and subsidiary companies of Corporate Debtor, has come forward to file revised plan with an

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upfront payment of Rs.2,600 crores, if at all they want to show bonafides, they have to file their plan showing source of funds certified by the Bankers which is situated in India, on or before 21.9.2018.

If any other prospective Resolution Applicant intends to file an application in addition to the two applicants already appearing before this Bench, we hereby direct them to file their plans on or before 21.9.2018, making it clear that there will not be any extension of time mentioned in this order, i.e. on or before 21.9.2018.

Since the workers having complained that their wages have not been paid for the month of August, 2018, the Resolution Professional is hereby directed to pay salaries to the workers as well as employees within three working days hereof.

On **MA 837/2018**, the Resolution Professional having said that since the applicant has not filed Form B as specified under IBC(CIRP) Regulations, we are of the view that the application filed by this claimant is premature application whereby this application is dismissed with liberty to the applicant to present claim application within one week hereof and the Resolution Professional is also directed to consider the same in accordance with law.

In this scenario, the resolution plan already approved by the CoC has not yet been decided.

List this matter for hearing on 25.9.2018.

SD/-

RAVIKUMAR DURAISAMY
Member (Technical)

SD/-

B.S.V. PRAKASH KUMAR
Member (Judicial)