

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

ITEM No. 203
(IB)-694(PB)/2018

IN THE MATTER OF:

L & T Finance Ltd.

.... Applicant/petitioner

v.

Zillion Infraprojects Pvt. Ltd.

.... Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016 (CIRP)

Order delivered on 28.08.2019

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR
HON'BLE PRESIDENT

SH. S.K MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the Respondent No. 11 : Mr. H.L Tiku, Sr. Adv. With Ms. Yashmeet Kaur, Adv.
For the RP : Mr. Vinod Chaurasia, Mr. Harish Taneja, Adv

ORDER

CA-1128(PB)/2019

This is an application filed by the Resolution Professional with a prayer to set aside the decision of CoC dated 15.05.2019 in its fourth meeting. According to agenda item No. 3 many claims were collated by the Resolution Professional but three of them have not received the approval of the claim i.e Capri Global Capital Limited, Capital First Limited & Phoenix ARC Pvt. Ltd.

2. Notice of the application was issued to the non-applicant-respondent which included all the CoC members as well as the aforesaid three finance companies. Affidavit of service has been filed





and no one has put in appearance on behalf of CoC. However, Mr. Tiku Ld. Senior Counsel has put in appearance on behalf of respondent No. 11- Capri Global Capital Limited, Mr. Shashwat, Ld. Counsel has put in appearance on behalf of Phoenix ARC Pvt. Ltd. and Ms. Anupriya, Ld. Counsel has put in appearance on behalf of Capital First Limited. They have all supported the cause of the Resolution Professional. There is virtually no opposition to the application and in view of the Section 21(1) of Insolvency & Bankruptcy Code, 2016 the Interim Resolution Professional has been assigned the role of collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor. However, after the constitution of Committee of Creditors the claim collated by the Interim Resolution Professional have been rejected on the ground that the aforesaid three companies have advanced loan to the corporate debtor in the teeth of prohibition contained in the Working Capital Consortium Agreement dated 26.12.2012. According to the Article III(1) clause h there is a stipulation that the corporate debtor was not to avail any credit facility funded or unfunded or accommodation from any other bank or financial institution without the prior permission in writing of the lead bank nor it was permitted to open any current account in any

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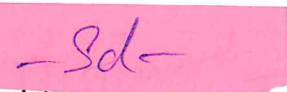
other bank. On aforesaid ground the claim collated by the IRP have been rejected by the CoC.

3. Resolution Professional has collected the claims based on relevant Loan Agreement and records of the corporate debtor.

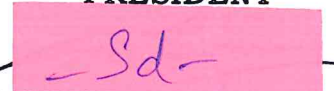
4. In the case of CA (AT) (Ins. 516/2019), NCLAT has held that “CoC is not empowered to decide the issue as to whether a claim in whole or ~~part~~ is to be admitted or not”.

5. Firstly, there is no provision in the Insolvency & Bankruptcy Code, 2016 entitling the CoC to reject the claim admitted/collated by the IRP/RP. If there was any objection based on the Working Capital Consortium Agreement then the CoC could have preferred an appeal before Adjudicating Authority but could not have entered into a review of the opinion express by the IRP/RP who is considered to be an independent ~~umpire~~ umpire. Accordingly, we set aside the minutes of the 4th meeting dated 15.05.2019 under agenda item No. 3 to the extent of rejection of the claim of Capri Global Capital Limited, Phoenix ARC Pvt. Ltd. & Capital First Limited.

6. CA-1128(PB)/2019 stands disposed of.



(M.M. KUMAR)
PRESIDENT



(S.K. MOHAPATRA)
MEMBER (TECHNICAL)