

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT-I)
CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH,
NATIONAL COMPANY LAW TRIBUNAL, HELD ON **09.08.2021 at 10.30 A.M**
THROUGH VIDEO CONFERENCING

**PRESENT: SMT. R.SUCHARITHA, MEMBER (JUDICIAL)
SHRI. ANIL KUMAR B, MEMBER (TECHNICAL)**

IA/MA/IBA/TCP/TCA/CP/CA No : IA/967/IB/2020 IN IBA/1045/2019 & IBA/1169/2019
NAME OF PETITIONER : B Parameshwara Udpa (RP) M/S Of Easun Reyrolle Ltd
NAME OF RESPONDENT : DBS Bank Ltd & 2 Others
SECTION : Sec 60(5) RW Sec 25(2)(c) Of IBC 2016

ORDER

The Petitioner is represented by the Ld. Counsel Mr. B. Dhanaraj and the Respondent is represented by the Ld. Counsel Mr. Varun Srinivasan through video conferencing mode.

Ld. Counsel for the Petitioner submits that after filing IA/967/IB/2020, 2nd and 3rd Respondent have already paid the CIRP cost and payment is pending from the 1st Respondent.

Ld. Counsel for the 1st Respondent states that the 1st Respondent had filed reply stating that DBS Bank India Limited is not a financial creditor. They are representing CoC only on behalf of the DBS Bank Limited, Singapore and that they are only an authorized representative. Hence, the cost ought to be paid out only by the DBS Bank Ltd, Singapore. Therefore, DBS Bank India Ltd., is not part of the CoC. They are only conducting the CoC meeting in the representative capacity.

Clause 10 of the RBI Guidelines specifies about the ECB by entities under restructuring/ECB facility for refinancing stress assets of the RBI Guidelines enumerated is as follows:

10.1 Any entity which is under a restructuring scheme/corporate insolvency resolution process can raise ECB only if specifically permitted under the resolution plan.

10.2 "Eligible Corporate borrowers who have availed loans domestically for capital expenditure in manufacturing sector and which have been classified as SMA-2 or NP can avail ECB for repayment of these loans under any one time settlement with lenders. Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders, provided, the resultant external commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework. Foreign branches/overseas subsidiaries of Indian banks are not eligible to lend for the above purposes. The applicable MAMP will have to be strictly complied with under all circumstances.

Therefore, Ld. Counsel for the 1st Respondent is unable to bear the meeting of cost of the CIRP. Therefore, the Counsel for the 1st Respondent wants his Application is to be dismissed on the ground the 1st Respondent is not the CoC Member, hence, he cannot make the payment towards CIRP Cost on the said ground. If at all the payment is due, it ought to be paid by DBS Bank Ltd., Singapore being a foreign financial institution/bank, they are bound by the RBI Guidelines. They are unable to make the payment towards the CIRP cost and need not to pay the cost out of the Resolution Plan.

Till the orders passed in the IA/967/IB/2020, the 1st Respondent cannot participate in the CoC until further orders.

The 1st Respondent is debarred from participation in the CoC Meeting.

Heard submissions of both the parties on IA/967/2021.

Order is **reserved**.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

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(R. SUCHARITHA)
MEMBER (JUDICIAL)