

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.-204
CA No.254/2019
in
CP/IB/22/ND/ 2018

IN THE MATTER OF:

Oriental Bank of Commerce

Vs.

M/s. Shekhar Resorts Ltd. & Ors.

....**FINANCIAL CREDITOR**

....**CORPORATE DEBTOR**

SECTION

U/s 7 IBC code 2016

Order delivered on 03.07.2020

CORAM:

CH. MOHD. SHARIEF TARIQ

MEMBER (JUDICIAL)

PRESENT:

For the Applicant/FC

: Dr. U.K Chaudhary Sr. Advocate, Mr. G.P Madaan for
Resolution Applicant, Mr. S.K Aggarwal Representatives of the
Resolution Applicant in Person

For the Respondent/CD

:

For the SBI

: Mr. Khushal Mohal, Advocate

ORDER

CA-254 of 2019/-

Counsel for Resolution Professional is present. Counsel for the State Bank of India is present. It is submitted by the Counsel for Resolution Professional that the bank guarantees in question were invoked and the State Bank of India has filed the claim before the Resolution Professional. The Resolution Professional has already admitted the claim of the State Bank of India in relation the Corporate Debtor Viz., Shekhar Resorts Ltd. The COC has already approved the Resolution Plan whereby 100% of the claim will be paid to State Bank of India. The Resolution Plan is before the Adjudicating Authority for consideration.

As per the submissions of the counsel for the RP the margin money in the forms of fixed deposits lying with the State Bank of India to the tune of Rs. 2,69,46,600 plus interest is stated to be part and parcel of the asset of the Corporate Debtor and needs to be released in the favour of the CD for meeting the expenses of CIRP.

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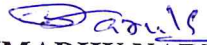
The counsel for State Bank of India submitted that the bank guarantees have not been invoked but the counsel for the Resolution Professional had rebutted this argument stating that the letter issued on 29th March 2019 makes the things clear and State Bank of India is aware that the bank guarantee share already been invoked. The Counsel for State Bank of India in this submission referred to Section 52 of the Code stating that his client must have some protection as Financial Creditor who is holding this money as security. But in this case on hand the COC has approved the Resolution Plan, so there is no question of exercising the option by State of State Bank of India under Section 52 of the Code as suggested.

In case the argument of the counsel for the State Bank of India are assumed as correct i.e., the Bank guarantees have not been invoked, then the State Bank of India on 6th of February 2019 could not have filed the claim before the Resolution Professional which includes the amount involved in the bank guarantees.

In the circumstances, the interest of State Bank of India has already been taken care of by the COC while approving the Resolution Plan as 100% claim of the State Bank of India has been admitted and proposed to be paid by the Resolution Applicant as per the Resolution Plan. Therefore, the arguments of the Counsel for the State Bank of India have no force, the submissions are rejected.

The application of the Resolution Professional is allowed. The SBI is directed to make the payment of Rs. 2,69,46,600/- along with further interest within a period of 10 days to the CD from the date of passing of this order and to file an affidavit of compliance with the Registry. A *dasti* of this order will be provided by the court officer with his/her signature to the counsel for the SBI for compliance.

Accordingly, the CA stands **disposed off**.


(MADHU NARULA)
COURT MASTER

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CA No. 254 of 2019
in

CP/IO/22/ND/2018

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.-204

CA -441/2019

in

CP/IB/22/ND/ 2018

IN THE MATTER OF:

Oriental Bank of Commerce

Vs.

M/s. Shekhar Resorts Ltd. & Ors.

....FINANCIAL CREDITOR

....CORPORATE DEBTOR

SECTION

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CORAM:

CH. MOHD. SHARIEF TARIQ

MEMBER (JUDICIAL)

SMT SUMITA PURKAYASTHA

MEMBER (TECHNICAL)

PRESENT:

For the Applicant/FC :

For the Respondent/CD :

For the Intervener/RP :

: Mr. Krishnandu Dutta, Mr. Abhishek Anand, Mr. Mohak Sharma
for RP, Mr. Vikram Kumar RP in Person

ORDER

CA -441 of 2019

The Counsel for the Resolution Professional is present. The Counsel for the Resolution Applicant is present. Counsel for the suspended Board of Directors is present. During the course of hearing, some deficiencies have been pointed out by the counsel for the suspended Board of Directors in the Resolution Plan including the financial resources of the Resolution Applicant, performance security and renewal of bank guarantee. The counsel for the Resolution Professional has submitted that he will file an affidavit along with necessary documents e.g. the renewal of letter/information relating to financial resources, bank guarantee and will also verify about the performance security being part of 'H'. He will file the affidavit within weeks' time from today and will provide a copy to the counsel for

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the suspended Board of Directors, who will file the response within next week to the same. Resolution Professional, Resolution Applicant, the counsel for the suspended Board of Directors will file the response in the form of affidavits/short notes on submission as directed. Heard and order **reserved**.



(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)

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CA- 441/2019
in
CP/16/22/NO/2018

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.-204

I.A - 2127/2020

in

CP/IB/22/ND/ 2018

IN THE MATTER OF:

Oriental Bank of Commerce

Vs.

M/s. Shekhar Resorts Ltd. & Ors.

....FINANCIAL CREDITOR

....CORPORATE DEBTOR

SECTION

U/s 7 IBC code 2016

Order delivered on 03.07.2020

CORAM:

CH. MOHD. SHARIEF TARIQ

MEMBER (JUDICIAL)

SMT SUMITA PURKAYASTHA

MEMBER (TECHNICAL)

PRESENT:

For the Applicant/FC :

For the Respondent/CD :

: Mr. Sighna Kumar, Mr. Sanjeev Kumar Singh, Advocates, Mr. Virender Ganda Sr. Advocate, Mr. Rakesh Kumar, Mr. Vishwendra Verma, Mr. Vishal Ganda, Ms. Preeti Kashyap for Ex Management of CD

For the Intervener :

ORDER

I.A. 2127 of 2020

The Counsel for the Resolution Professional is present. The Counsel for the Electricity Department is present. Heard both the sides.

The Counsel for the Resolution Professional submitted that due to Covid-19 the hotel business of the Corporate Debtor is running in trouble and the sanctioned load is not consumed by the Corporate Debtor and there requires reduction of the sanctioned load so that the assets of the Corporate Debtor may not get burden any more. It is also submitted by the counsel for the Resolution Professional that provisions of Section 238 of the Code override any other law contrary to the


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provisions of the Code. Therefore, the Statutory requirements under Section 17 (2) (e), of the Code could be waived of.

However, the counsel for the Electricity Department has opposed and stated that the statutory requirement cannot be waived off. At this juncture there may not be any need to go into the merits of the issue raised for the reasons that in this case the CoC has already approved the Resolution Plan and if in near future the Resolution Applicant will get the hotel business revived he would require the initial sanctioned load and at that time he will have to make payments as prescribed by law. The pre-CIRP claim of the Electricity Department has already been admitted by the CoC which forms part of the Resolution Plan. Therefore, the requirement of giving bank guarantee for pre-CIRP claim stands waived of.

In these circumstances the application is allowed, the electricity department is directed to reduce the load as prayed for by the Applicant in the application which will be subject to the condition that at the time of restoration of the initial sanctioned load the Resolution Applicant shall make the necessary compliances with the Statutory provisions including the payments, as prescribed.

Accordingly, the CA stands **disposed of**.



(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)

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IA- 2127/2020
in
CP/IB/22/NO/2018