

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

**Item No.-106**

IA- 3592/2020

In

IB-761(ND)/2018

**IN THE MATTER OF:**

Ms. Sony Pictures Networks India Pvt. Ltd.

**Vs.**

M/s. Ortel Communication Ltd.

**....OPERATIONAL CREDITOR**

**..RESPONDENT**

**SECTION**

U/s 9 IBC Code 2016

**Order delivered on 18.11.2020**

**CORAM:**

**CH. MOHD. SHARIEF TARIQ**

**MEMBER (JUDICIAL)**

**SHRI NARENDER KUMAR BHOLA**

**MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant/OC

: Mr. Abhijeet Sinha, Advocate

For the Respondent/CD

:

For the Intervener

: Mr. Nipun Gautam, for Karnatka Bank

Mr. Ramji Srinivasan, Sr. Advocate for Hathway

**ORDER**

**IA-3592/2020 filed in IB-761/ND/2018 :**

The Representative of Applicant along with the Counsel is present.  
Counsel for Respondent -1 is present. Counsel for Respondent-2 is present.

The Prayer made in the Application is to reject the Resolution Plan approved with 69% voting share by the COC on 23<sup>rd</sup> August, 2019 on the ground that the claim filed by the Applicant was reduced by the Resolution Professional to the extent of Rs.4.07 Crores. The amount reduced is pertaining to Bank Guarantee given by the Applicant in favour of R-2 on behalf of the CD. On the other hand, R-2 has filed its claim including an amount of Rs 4.07 Crores relating to Bank Guarantee given by the Applicant in favour of R-2 on behalf of the CD.

*Contd.*

It is submitted by the Counsel for the Applicant that if the amount would have been included in the claim of the Applicant then the Voting Share i.e. 3.58 % would have increased and the Resolution Plan could not have been approved with the requisite Voting Share i.e., 66%, as the Applicant is dissenting FC. It is further prayed in the Application that the Resolution Professional be directed to place on record the details of all the claims admitted by him.

During the course of hearing, we have noted that the Applicant had filed the claim on 6<sup>th</sup> December, 2018 and the Resolution Professional has rejected the claim of Rs4.07 crores, as at that point of time the amount was not settled in favour of R-2. The claim under the Bank Guarantee was settled by the Applicant in favour of R-2 on 29<sup>th</sup> October, 2019 whereas the Resolution Plan has been approved by the COC on 23<sup>rd</sup> August, 2019 with 69% of the Voting Share as stated above.

The COC approved the Resolution Plan with 69% of the Voting Share as per the then existing voting share on the basis of the claims admitted. Therefore, in the circumstances, the proceedings of the COC are in accordance with law and as per the Voting percentage of the claims admitted by the R.P. The same cannot be ignored/*setaside* for the simple reason that the Applicant has settled the amount of Bank Guarantee to the tune of Rs 4.07 Crores in favour of Respondent-2 on 29<sup>th</sup> October, 2019 that too after the approval of the Resolution Plan.

As per the provisions of Section 140 of the Contract Act, if a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

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Therefore, the claim of the Applicant shall include Rs.4.07 crores and the claim amount of R-2 in whose favour the Bank Guarantee amount was settled by the Applicant is to be reduced to that extent. In other words, R-2 has to relinquish the claim to the extent of Rs.4.07 crores in favour of the Applicant.

The Counsel appearing for R-2 (CISCO) submitted that at the time of filing Form 'C' with the Resolution Professional, the break up shows that Rs.4.07 is pertaining to Bank Guarantee given by the Applicant and to that extent R-2 is ready to relinquish the claim in favour of the Applicant with all the benefits accrued thereto. Accordingly, the Resolution Professional is directed to set right the claims of the Applicant and R-2 (CISCO) and file an affidavit of compliance in IA-576/2019.

With the observation made above, the Application stands **disposed of**.

- Sd -

(NARENDER KUMAR BHOLA)  
MEMBER (TECHNICAL)

- Sd -

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

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Surjit (Court-III)

18.11.2020

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