

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

(IB)-104(PB)/2017

IN THE MATTER OF:

Bank of India

.... Applicant

Vs.

Tirupati Infraprojects Pvt. Ltd.

.... Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016

Order delivered on 19.12.2017

Coram:

CHIEF JUSTICE (Retd.) M.M.KUMAR

Hon'ble President

Ms. Deepa Krishan

Hon'ble Member (T)

For the Applicant :

For the Rockland Hotels :

Mr. Krishnendu Datta, Mr. Shagun Trisal,
Ms. Prachi Johri, Advocates

For the Resolution Professional:

Mr. Anil Kohli, R.P.
Mr. Sanjay Bhatt, Ms. Juhi Bhambhani,
Advocates

ORDER

C.A. No. 454(PB)/2017

This petition is filed by a resolution applicant with a prayer for issuance of various directions to the Resolution Professional. The prayer made is to take back the alleged rejection of the resolution plan submitted by the petitioner and declare that the resolution plans proposed by the petitioner and that of Padam International Hotels Pvt. Ltd. as revised be taken on record for consideration by the Committee of Creditors in its meeting to be held. A declaration has also been sought to reject the resolution plan of Pari Estates Pvt. Ltd. jointly with Phoenix ARC as they cannot be considered as resolution applicant any further. Other prayers have also been made.



It is pertinent to mention that the resolution professional floated the 'expression of interest' by inviting application with Resolution plan in respect of Tirupati Infraprojects Pvt. Ltd. According to the first expression of interest, the worth of any resolution applicant was required to be Rs. 100 crores and a deposit of Rs. 20 crores was required to be made. However, the Resolution Profession later floated another expression and abandoned the criteria as laid down in the first expression of interest. As a result, the company which have worth Rs. One lakh or above and were incorporated only less than a year back started applying with the Resolution Plan. The applicant, Rockland Hotels Ltd. have come up with the grievance that such criteria would not warrant approval in view of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 as published in the Gazette of India on 23.11.2017 and the amendment of the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017 dated 07.11.2017. On the aforesaid basis, it has been argued that the Committee of Creditors is under legal obligations to have complete antecedents of Resolution applicant in order to assess their capability of implementing the proposals made in the Resolution Plan.

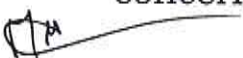
Our attention has been drawn to the amendment made by Ordinance in Section 25(2)(h), which provides that the resolution professional has to invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors. While doing so, he has to take into



consideration to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan/plans.

Reference has also been made to the added provision of Section 29A by the Ordinance, which provides that a person would not be eligible to submit a resolution plan, who is a promoter or in the management or control of such person, if he is an undischarged insolvent, identified as a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 etc. etc. Likewise, IBBI Regulations have also been altered.

When the matter came up for consideration, Mr. Bhatt, learned Counsel for the Resolution Professional has made a categorical statement that two expression of interest floated earlier would not be acted upon and in view of the changed situation created by issuance of Ordinance as well as the Notification issued by IBBI, steps would be taken by the Resolution Professional to lay down a criteria in accordance with the aforesaid two legislative instruments with the approval of the committee of creditors. We also commend that to develop the best practices by the Resolution Professional, it should be followed as a principle that criteria is laid down with the approval of committee of creditors before inviting the expression of interest. It would be consistent with the jurisprudence and principles of Article 14 of the Constitution of India as has been repeatedly laid down in various judgments concerning the tenders. For the aforesaid view, we draw support



from the observations made by Hon'ble the Supreme Court in the case of *M/s. Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation & Ors. (2000) 5 SCC 287*. In that case one of the conditions of eligibility was deleted after the expiry of the time limit for submission of tenders but before opening thereof. The deletion of a condition rendered the successful tenderer eligible who was otherwise ineligible because of the condition which was deleted. Upholding the view of the High Court setting aside award of tender, Hon'ble Supreme Court observed as under:

"10. There have been several decisions rendered by this Court on the question of tender process, the award of contract have evolved several principles in regard to the same. Ultimately what prevails with the courts in these matters is that while public interest is paramount there should be no arbitrariness in the matter of award of contract and all participants in the tender process should be treated alike. We may sum up the legal position thus:

(i) The Government is free to enter into any contract with citizens but the court may interfere where it acts arbitrarily or contrary to public interest;

(ii) The Government cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situate.

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(iii) It is open to the Government to reject even the highest bid at a tender where such rejection is not arbitrary or unreasonable or such rejection is in public interest for valid and good reasons.

11. Broadly stated, the courts would not interfere with the matter of administrative action or changes made therein, unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide”.

It is thus evident that rules of the games cannot be written after the game has started or is over. It would be negation of Article 14 of the Constitution. Therefore, our Resolution Professional must develop best practices in the CIRP setting up highest standards.

As a sequel to the above discussion and in view of the statement made by Mr. Bhatt, learned Counsel for the Resolution Professional, we dispose of the application with the observation that main criteria in accordance with the Ordinance and Notification mentioned aforesaid shall be laid down and the needful shall be done expeditiously in order to avoid further delay as the value of the assets sometime keep on decreasing and the time is limited at the disposal of the Resolution Professional as well as the Committee of Creditors. In this case, the period of six months would come to end on 29th December, 2017. Keeping in view the aforesaid, we extend the period also to 60 days more.

It is needless to mention that the petitioner/applicant would be entitled to participate in accordance with the new criteria and law, which is to be finalised by the Committee of Creditors with the assistance of the Resolution Professional.

The amount, which has been deposited by the petitioner shall be refunded to him and all others within three days.

Application stands disposed of.

Sd/-
(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT

Sd/-
(DEEPA KRISHAN)
MEMBER(TECHNICAL)

19.12.2017
V. Sethi