

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

CA No.43 of 2017 in  
CP.No.01/IBC/HDB/2017  
U/s 60 (5) (C) IBC, 2016 (IBC)  
R/w 14 & 34 NCLT Rules, 2016

**In the matter of**

Edelweiss Asset Reconstruction Company Limited  
Acting in its capacity as trustee of EARC Trust SC 23  
Edelweiss House, Off CST Road,  
Kalina, Mumbai 400 098

.....Applicant / Financial Creditor

Versus

1. Ms. Mamta Binani  
(Reg. No. IBBI/IPA-02/2016-17/01)  
Interim Resolution Professional  
Synergies-Dooray Automative Limited  
(under Insolvency Resolution Process)  
Room No. 6, 4<sup>th</sup> Floor, Commerce House,  
2A, Ganesh Chandra Avenue,  
Kolkata 700 013, West Bengal

**CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL**

2. Synergies-Dooray Automative Limited  
(under Insolvency Resolution Process)  
through Mrs. Mamta Binani,  
Interim Resolution Professional  
6-3-855/10A, Sampathji Appts,  
Saadat Manzil, Ameerpet,  
Hyderabad — 500038

.....Respondents

Date of order: 02.08.2017

**CORAM**

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

**Parties present**

Counsel for the Petitioner:

Shri S. Niranjan Reddy, Senior  
Advocate with Ms Jyoti Singh,  
Ms. Rubaina Khatoon, and Shri  
P. Mohith, Reddy, Advocates



Counsel for R.No.1: Shri Krishnendu Datta along with  
Shri Nitish Bandary, Advocate on  
behalf of Shri P. Vikram, Advocate

Counsel for R. No.2 Shri A.D. Gupta, Advocate

Per: Rajeswara Rao Vittanala, Member (J)

### ORDER

1. The present application bearing CA No. 43 of 2017 in CP (IB) No. 01/IBC/HDB/2017 has been filed by Edelweiss Asset Reconstruction Company Limited (EARCL for short), one of the secured Creditors of Synergies-Dooray Automative Limited (Corporate Debtor U/s 60 (5) (C) IBC, 2016) (IBC) R/w 14 & 34 of NCLT Rules, 2016), by inter alia seeking direction to direct the IRP to (a) cancel and/ or defer the first meeting of committee of creditors scheduled to take place on February 22, 2017 at 2.00 p.m. at Hotel Park Inn by Raddisson, 1 & 2, Ring Road, Vikram Vihar, Lajpat Nagar-4, Near Moolchand Metro Station, New Delhi 110 024; (b) to direct the IRP to consider the objections and submissions of the Applicant in its e-mail of February 20, 2017 and to (c) re-constitute the committee of creditors in accordance with law before calling for the First meeting of committee of creditors etc.

2. Brief contents, as contended in the application and are relevant to decide the application, are as follows:

- 1) The Applicant is the Asset Reconstruction Company incorporated and constituted under the Companies Act, 1956 and having its registered office at Edelweiss House, Off CST Road, Kalina, Mumbai, Maharashtra 400 098. The Applicant is one of the largest secured financial creditor of Synergies-Dooray Automative Limited (**Corporate Debtor**) of the financial debt by virtue of Assignment Agreement dated January 6, 2014 executed with Exim Bank, one of the original lenders of the



Corporate Debtor. The total amount claimed by the Applicant against the Corporate Debtor as on January 23, 2017 (i.e. the date of submission of proof of claim (revised claim submitted on February 20, 2017) before the Respondent No.1/ the Interim Resolution Professional (IRP) is Rs.88,20,28,260.97 (Rupees Eighty Eight Crores Twenty Lakhs Twenty Eight Thousand Two Hundred and Sixty and ninety seven paise only).

- 2) The present Application is filed by the Applicant seeking certain reliefs from this Hon'ble Tribunal in order to protect its claim and voting right in the committee of creditors as despite being one of the largest financial creditors of the Corporate Debtor, its voting right in the committee of creditors is under a threat as a result of incorrect admission of claims and constitution of invalid committee of creditors by the IRP as reflected in the Initial Information Memorandum (**Initial IM**) prepared by the IRP pursuant to regulation 36 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate persons) Regulations, 2016 (**CIRP Regulations**). By virtue of the collation of claims against the Corporate Debtor being incorrect, it follows that the constitution of the Committee of Creditors by the IRP under the Initial IM is invalid.
- 3) The IRP has to start a transparent insolvency resolution process. However, the IRP failed to consider that assignment agreements which were entered into as late as November 24, 2016 by which the existing debt of the Corporate Debtor was suspiciously changed hands from a related party of the Corporate Debtor being Synergies Casting Limited (**SCL**) to a third-party Non-Banking Financial Company being Millennium Finance Limited (**MFL**) and the same is invalid as it was entered into with the *mala fide* ulterior motive of reducing the voting rights of the Applicant in the meeting of Committee of Creditors (**CoC**) of the Corporate Debtor. If the percentage of



reduction in total voting share happened only to the Applicant, then there could be an iota of doubt / some amount of merit in its allegation as to mala fide ulterior motive. Whereas, the percentage of reduction happened proportionately to other creditors as well. Therefore, we are not inclined to accept the Applicant's strong allegation, especially with out any proof of evidence to support its strong allegation.

- 4) In pursuance to reference before **BIFR** in the year 2005, it was declared as a Sick Industrial Company on February 14, 2007 by the BIFR U/s 3 (1) (o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (**SICA**) (now repealed) and was enjoying the protection of a moratorium granted under SICA until the repeal of the SICA on December 1, 2016. Accordingly, the main Company petition bearing CP (IB) No. 01/HDB/2017 is filed by the Corporate Debtor.
- 5) In pursuant to admission and appointment of IRP by the Tribunal, a public announcement of initiation of CIRP and call for submissions of claims under section 15 of the IBC read with regulation 6 of CIRP Regulations was made by the IRP on January 28, 2017 in Deccan Chronicle. Accordingly, the Applicant submitted its proof of claim dated February 6, 2017 in the format provided in form C of CIRP Regulations along with the supporting documents electronically vide its email dated February 7, 2017 in accordance with regulation 8 of the CIRP Regulations to IRP. However, the Applicant subsequently revised its claim amounting to Rs.88,20,28,260.97 and requested the IRP to revise the amount claimed in accordance with Regulation 14 (2) of the CIRP Regulations.
- 6) The Applicant states that in pursuant to receipt of proof of claim from the Applicant on February 7, 2017, the IRP by her email dated February 11, 2017 sought detailed calculation sheet of the claimed amount and justification



/ documentation for the applied interest rate. Accordingly, by email dated February 13, 2017, the Applicant forwarded Form 8 filed by the Applicant with Registrar of Companies (**ROC**) creating charge and also requested IRP to issue communications to the concerned persons from the Applicant as mentioned in the said email.

- 7) Thereafter, on February 14, 2017, the IRP sent an email to the Applicant seeking an undertaking as per section 29 (2) of the IBC in order to enable her to share the Initial Information Memorandum prepared by the IRP as per Regulation 36 of the CIRP Regulations. Accordingly, an undertaking was submitted by the Applicant by email dated February 15, 2017. Upon receipt of the aforesaid undertaking, the IRP by her email dated February 15, 2017 sent notice along with agenda and initial information memorandum (as an annexure 2 to the agenda) for first meeting of CoC scheduled on February 22, 2017 at 2.00 p.m. at Hotel Park Inn by Raddisson, 1 & 2, Ring Road, Vikram Vihar, Lajpat Nagar-4, Near Moolchand Metro Station, New Delhi 110 024 along with the following agenda:-



Item No.	Particulars
List of matters to be discussed / noted	
1.	The Interim Resolution Professional to take the Chair.
2.	To ascertain the quorum of the Meeting.
3.	To take note of the List of Creditors prepared by the Interim Resolution Professional.
4.	To take note of the Initial Information Memorandum submitted by the Interim Resolution Professional containing matters referred to in Regulation 36 (1) (a) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (attached as Annexure -1 hereto) and matters incidental thereto.

List of Issues to be voted upon after discussions	
5.	To take note and approve the remuneration and expenses on or by the Interim Resolution Professional including that on professional advisors which shall constitute Corporate Insolvency Resolution Process costs, till the date of the meeting.
6.	To appoint a Resolution Professional and to fix the remuneration and expenses which shall constitute Corporate Insolvency Resolution Process costs. Interim Resolution Professional being eligible offers herself for the appointment as such Insolvency Professional.
7.	To appoint and fix the fees of professional advisor (s), which shall constitute Corporate Insolvency Resolution Process costs.
8.	To fix a limit upto which the Insolvency Professional, without the permission of the Committee, is entitled to initiate a debit transaction with the financial institutions maintaining accounts of the Corporate Debtor.
9.	To take note and approve the possession, control and custody of the assets of Corporate Debtor and necessary delegation of authority to Synergies Casting Limited (SCL) under an existing lease agreement.
Any other matter with the permission of the Chair	



Hereto annexed and marked as **Exhibits '3' and '4'** are copies of the notice along with agenda for meeting of the CoC and information memorandum prepared by IRP respectively.

- 8) The Applicant has objected to the proposed delegation of authority to SCL for the reasons that SCL is both a related party as well as a secured creditor of the Corporate Debtor as is also recorded in the Initial Information Memorandum. Therefore, the agenda for the

proposed meeting of the CoC is far reaching especially in view of the fact that the Initial IM submitted by IRP has *prima facie* defects and cannot be relied upon for the purpose of deciding the voting rights of the members of the CoC for agendas listed at item No. 9 of list B of the said notice dated February 15, 2017 for the CoC meeting on February 22, 2017. Further, the agenda No. 9 which pertains to approval on the possession, control and custody of the assets of Corporate Debtor and necessary delegation of authority to Synergies Casting Limited (SCL) under purported existing lease agreement, when the order dated November 21, 2013 of the BIFR in Case No. 135 of 2005, explicitly recorded that the lease agreement between the Corporate Debtor and SCL had expired on March 31, 2013 and no extension of an expired lease agreement can take place. This was reiterated by the BIFR in its subsequent order dated December 11, 2013.

- 9) It is contended that assignment of debt by SCL to MFL on November 24, 2016 (that too inadequately stamped), immediately prior to the reference of the Corporate Debtor before the BIFR abated pursuant to the coming into effect of the Sick Industrial Companies (Repeal) Act on December 1, 2016 is questionable and suspicious.
- 10) It is contended that Constitution of Committee of Creditors itself is invalid. The Applicant states that under the IBC a related party of a corporate debtor is not entitled to any participation or voting rights in meetings of the Committee of Creditors of a corporate debtor and SCL - being a group company of the Corporate Debtor is a related party for the purposes of the IBC. Accordingly, SCL cannot in any manner howsoever be part of the Committee of Creditors of the Corporate Debtor, and/or have any right of participation or voting in the meetings of the Committee of Creditors of the Corporate Debtor. However, the Notice fails to adequately clarify that SCL



does not form part of the Committee of Creditors .Further, the debts assigned by SCL to MFL by the Assignment Agreements would also be not be considered for the voting in the Committee of Creditors for the reasons elaborated in paragraph 15 above.

- 11) The Applicant states that the Agenda of the proposed meeting of committee of creditors would have far reaching effect which is prejudicial to the interest of the financial creditors including the Applicant, the Corporate Debtor and the interests of its stakeholders who are entitled to receive proceeds as part of any resolution plan/ liquidation of the Corporate Debtor.
- 12) It is alleged that assignment of debt by SCL to MFL vide the Assignment Agreements raises serious questions on the intentions of the Corporate Debtor as well as its related party SCL.
- 13) The applicant has expressed apprehension that IRP chosen by Corporate Debtor or may not act bonafidely especially with regard to its interests.
- 14) The applicant has further filed additional affidavit by inter-alia contending as follows:
- 15) The applicant has given detailed agenda wise objections to first meeting of COC. The first meeting was attended by Ms. Nivedita Shetty, on behalf of the Applicant (**Authorised Representative of the Applicant**), who raised her concerns agenda wise. However, despite the receipt of the aforesaid objections of the Applicant and without taking cognizance of concerns raised by the Authorized Representative of the Applicant in the meeting, the Respondent No.1 proceeded with the said First meeting of CoC and approved all the agenda(s) of the meeting. The minutes of the First Meeting CoC (**Minutes**) were received by the Applicant vide Respondent No.1's email dated February 24, 2017. However, it is noticed that some of comments of its





Authorized Representative were not included. And its grievances were not attended by IRP.

3. The application was opposed by the Respondent No.1 (Resolution Professional) by filing a reply dated 4<sup>th</sup> March, 2017. The following are her main contentions:

- 1) The Application has become infructuous since with respect to the first prayer, a meeting of Committee of Creditors was already held on 22.02.2017 in accordance with the directions passed by the Tribunal.
- 2) That with respect to the second prayer, that before conducting the scheduled meeting, the applicant was given a detailed reply dated 21.02.2017. The above factual matrix was duly noted and deliberated at the meeting of the Committee of Creditors held on 22.02.2017. The said fact is clearly recorded at Item No.03 pertaining to taking note of list of creditors prepared by the Interim Resolution Professional.
- 3) It is strongly the allegation that there is any dereliction of duty on her part with regard to fiduciary responsibility cast upon her by virtue of IBC, 2016 and thus asserted that she has not only complied with the spirit of the Code but also complied with the mandatory conditions/stipulations mentioned therein.
- 4) That the order dated 23.01.2017 passed by this Hon'ble Tribunal was received by IRP on 25.01.2017, which was the date of the commencement of the Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP' for the sake of brevity). That as per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as 'the IBBI Regulations'), she was duty bound to make a public announcement within 3 days of her appointment in the form mentioned therein. Accordingly, IRP duly caused the Public Announcement to be advertised in leading



Newspapers having sufficient circulation in Vishakhapatnam and in Hyderabad, in the English edition and in vernacular language in the Telugu editions. Accordingly, she has invited the public at large to submit a proof of their claims, on or before 08.02.2017.

- 5) In pursuant to said Public Announcement, she has proceeded with appointment of two registered valuers to determine the liquidation value of the Corporate Debtor in terms of Regulation 27 of the IBBI Regulations. Accordingly, claims were received from Financial Creditors under Regulations 8 and 12 of the IBBI Regulations 2016. Accordingly, IRP substantiation of the their claims under Regulation 10 so that the said claims can be verified and adjudicated in accordance with Regulation 13(1).
- 6) That till the expiry of the last date of submission of claims (i.e. by 08.02.2017), she had received claims from four Financial Creditors, namely (i) the Applicant herein, (ii) Alchemist Asset Reconstruction Company Ltd., (iii) Millennium Finance Ltd. and (iv) Synergies Casting Ltd. Accordingly, a list of creditors in terms of Regulation 13(2) was prepared on 14.02.2017 and was intimated to the Tribunal on 15.02.2017. The Public Notice is dated 08.02.2017. That subsequent to the preparation of list of creditors, a Committee of Creditors was constituted by her on 15.02.2017 and a report to that effect was also filed before this Tribunal on 17.02.2017 in accordance with Regulation 17(1) of IBBI Regulations 2016. As per Regulation 17(2), first meeting of the Committee of Creditors should be convened within 7 days of filing of report certifying constitution of Committee of Creditors. Since the report was filed on 15.02.2017, a meeting had to be convened meeting on or before 22.02.2017.
- 7) It is stated that Information Memorandum was prepared in accordance with Regulation 36 and it consists the following:



- a) Assets and Liabilities as on 25.01.2017;
  - b) Audited Financial Statement(s) of the Corporate Debtor for the financial year ended 31.03.2015 and 31.03.2016;
  - c) Provisional Financial Statement for the current financial year made up to 12.12.2016 i.e. the date of filing of application for the initiation of CIRP.
  - d) List of Creditors;
  - e) Particulars of debt due from or to the Corporate Debtor with respect to related parties;
  - f) Details of Guarantees;
  - g) List of members of Corporate Debtor;
  - h) Details of material litigation and ongoing investigation or proceedings;
  - i) Details of workers and employees of the Corporate Debtor.
- 8) However, the Applicant has filed its Revised Claim on 20.02.2017 rectifying certain errors in the claim originally submitted by them and accordingly, certain documents/ information/clarification have been sought from the Applicant to substantiate its revised claim. In the meeting held on 22.02.2017, it has been agreed that the Register of Claims and the inter-se voting right would automatically stand revised on the basis of admission or rejection or modification of the revised claim so submitted.
- 9) It is stated that the Applicant was duly informed that the Information Memorandum was based on the financial information provided in the Audited Financial Statements of the Corporate Debtor and that the list of Financial Creditors was finalized post examination of all the



relevant records and documents furnished by the respective Financial Creditors and such clarifications as sought from each of the Financial Creditors.

- 10) That with respect to the objections / allegations regarding the transaction between Synergies Castings Ltd. and Millennium Finance Ltd., the Applicant was duly informed that she was not going into contentious issues of law and fact and that the claims are verified on the basis of relevant records, documents and other proof of claims placed on record. And it was also informed the Applicant that IRP could not go behind the documents and prima facie there was no evidence or reason to doubt the validity or otherwise of the said assignment and/or the motive behind such assignment. It was further informed that Millennium Finance Ltd. was an NBFC, who was currently holding a financial debt against the Corporate Debtor and was having a valid claim, which had been verified and accepted on the basis of documentary evidence on record. \

- 11) It is contended that Regulation 28 of the IBBI Regulations 2016, permit transfer / assignment of debt due to creditors even during the pendency of the Insolvency Resolution Process. So the contention made contrary by the applicant is not tenable. The Master Restructuring Agreement dated 06.03.2007, wherein the original Banks (which also includes the Assignor of the Applicant herein) had specifically inter-se confirmed the status of their



outstanding dues which confirmed that the Assignor of the Applicant held only 8.65% of the secured debts relating to the Corporate Debtor.

- 12) With respect to taking note and approving the possession, control and custody of the assets of the Corporate Debtor and necessary delegation of authority of Synergies Castings Ltd. under an existing Lease Agreement, the Applicant herein was informed that the operations of the Corporate Debtor were managed under the said Lease Agreement since 2005 and also during the pendency of the reference of the Corporate Debtor before the BIFR and even prior to the filing of the reference by the Corporate Debtor, the lease in favour of the Synergies Castings Ltd. was duly agreed between the Financial Creditors of the Corporate Debtor in the CDR.

- 13) It is contended that a plain reading of the provisions of Section 60(5)(c) of the IBC will establish beyond doubt that said Section empowers this Hon'ble Tribunal to determine question of priorities or question of law or facts arising out of or in relation to the insolvency resolution of the Corporate Debtor. Question of priorities or question of law or facts as amenable to the jurisdiction of this Tribunal can be only in terms of the existing debts or liabilities of a Corporate Debtor. The aspect of inter-se transfer between the Financial Creditors of the Corporate Debtor by no stretch of imagination can fall within the purview of the jurisdiction of this Tribunal. Therefore, the Tribunal cannot exercise any jurisdiction to adjudicate on the aspect of validity of the Assignment Agreement between SCL and Millennium Finance Ltd. ('MFL'), provisions of Rule 14 and 34 of the National Company



Law Tribunal Rules, 2016 pertaining to procedure for filing of application, if any, is inapplicable to the facts and circumstances of the present case.

- 14) With regard to issue of related party, it is stated that related party has been defined under Section 5(24) of the IBC by a plain reading of the provisions of Section 5(24), it is evident that MFL does not fall into any of the conditions that may trigger the applicability of Section 5(24) so as to establish a related party relationship between SCL and MFL. SCL, (Respondent No.4) in the instant case, had assigned its debts to MFL on 24.11.2016, which is even prior to coming into force of the SICA Repeal Act, which came in force on 01.12.2016. In the said background, it is evident that SCL as a part of its commercial decision assigned its dues to MFL and MFL also as a part of its business decision as a Non Banking Financing Company (NBFC) acquired the debts from SCL. Pursuant to the assignment of dues of SCL in favour of MFL, the charge of MFL on the assets of the Corporate Debtor has been duly registered and the same forms a part of the application as filed with Tribunal. So the Contention of applicant MFL can fall within the definition of related party qua the Corporate Debtor is not all tenable and liable to be rejected. Both EARC and MFL are Financial Creditors of the Corporate Debtor who have taken over the loans of the Corporate Debtor from the original lenders.
- 15) EARC, in the instant case took over the debts of EXIM Bank through an Assignment Deed dated 06.01.2014. By the time, EARC had taken over the debts from EXIM Bank, an order dated 29.05.2012 passed by the BIFR was already in force, which categorically provided that the dues of EXIM Bank are to be settled at 26.66% of its principal outstanding. On this basis, EXIM Bank (who is the predecessor in interest of EARC) would be entitled to receive only an amount of Rs. 4.89 Crores if the



outstanding as per the MRA dated 06.03.2007 is taken as the principal amount. In fact, the principal amount due to EXIM Bank is much less than the amounts as mentioned in the MRA. The said order of the BIFR though under challenge before the Appellate Authority in Appeal No. 137 of 2012, no stay order was existing on the date of the assignment, despite the said EARC acquired the debts from EXIM Bank without either any intimation or permission to BIFR or the AAIFR. Thus, it is evident that EARC in the present case acquired the debts during the pendency of the reference of the Corporate Debtor with the BIFR and existence of an order of the BIFR for settlement of the dues of EXIM Bank, on the premise of its commercial wisdom without either intimating the BIFR or the Corporate Debtor. The Corporate Debtor was not aware about the acquisition of the debts of EXIM Bank by EARC and the acquisition cost for the said debt. In the instant case, the Corporate Debtor had the following Lenders:-

IDBI,  
 ICICI Bank  
 EXIM Bank of India  
 State Bank of India  
 Indian Overseas Bank  
 Andhra Bank  
 JP Morgan Chase (Assignee of HSBC)  
 IDBI Bank

The existence of the above mentioned Lenders was always in the knowledge of EXIM Bank i.e. the original lender of the Corporate Debtor from whom EARC has taken over the debts through assignment. It is noteworthy that the Corporate Debtor and all its lenders vide a Master Restructuring Agreement ('MRA') dated 06.03.2007, agreed to the following exposure of the Secured Lenders of the Corporate Debtor:-



Lenders	Outstanding (Rs. in Crores)	Percentage
IDBI	65.66	30.93%
ICICI	66.30	31.23%
EXIM Bank of India	18.36	8.65%
State Bank of India	25.28	11.91%
Indian Overseas Bank	9.89	4.66%
Andhra Bank	8.35	3.93%
JP Morgan Chase (HSBC Share)	9.52	4.48%
IDBI Bank	8.91	4.21%
Total secured loans	212.27	100%

Clause 3.1 of the MRA provided for Borrower's acknowledgment and confirmation of existing loans and Clause 3.2 provided for admission by the secured lenders as to the existing loans.

That on the date of filing of the CIRP process, the Corporate Debtor had the following financial creditors:

Name of the Financial Lender	Amount outstanding (Rs. in Crores)	Percentage
Alchemist Asset Reconstruction Company (Assignee of JP Morgan Chase)	122.02	30.51%
EARC (Assignee of EXIM Bank)	35.93	8.99%
Synergies Castings Ltd. (Assignee of Andhra Bank & Indian Overseas Bank)	26.07	6.52%
Millennium Finance Ltd. (Assignee of Debt of SCL, which SCL had originally acquired from ARCIL, IDBI and SBI)	215.83	53.98%
TOTAL	399.85	100%

The above stated details of the Financial Creditors as on 25.01.2017, has been reworked by the IRP on the basis of the claims in Form 'C' filed by the respective Financial Creditors, in response to the Public Notice dated 27.01.2017 and 28.01.2017 issued by the Interim Resolution Professional and the IRP as on 14.02.2017 has determined the outstanding liability of the Corporate Debtor towards its Financial Creditors in the following manner:-





Name of the Financial Lender	Amount outstanding (Rs. in Crores)	Percentage
Alchemist Asset Reconstruction Company (Assignee of JP Morgan Chase)	122.07	16.47%
EARC (Assignee of EXIM Bank)	65.01	8.77%
Synergies Castings Ltd. (Assignee of Andhra Bank & Indian Overseas Bank)	63.87	8.61%
Millennium Finance Ltd. (Assignee of Debt of SCL, which SCL had originally acquired from ARCIL, IDBI and SBI)	490.39	66.15%
TOTAL	741.33	100%

16) EXIM Bank / EARC is the sole party defeating the rehabilitation of the Corporate Debtor. The present case is a clear case of one minority creditor attempting to steal a march over all the other creditors of a Corporate Debtor. The facts and circumstances of the instant case which establish beyond doubt the fact that in the instant case EXIM Bank and now EARC are the sole parties which despite being the minority creditor of the Corporate Debtor has stalled the entire process of rehabilitation of the Corporate Debtor. The creditors of the Corporate Debtor, in the instant case, can be broadly categorized under the following heads:-

- (i) Secured Creditors as defined under Section 2(1)(zd) of the SARFAESI Act;
- (ii) Secured Creditors as categorized under the Companies Act;
- (iii) Financial and Operational Creditors under the IBC.

In all the above stated categories of the creditors, EXIM Bank / EARC falls within the category of the minority creditor, despite the same, EARC has till date stalled the entire process of revival of the creditor much against the



settled proposition of law that a minority secured creditor cannot either stall or interject the process of revival.

IBC also envisages resolution process of a Corporate Debtor, wherein the majority of the Financial Creditors are sanguine for the revival of the Corporate Debtor. After stalling the entire process of rehabilitation of the Corporate Debtor under SICA, EARC as on date is again malafidely attempting to stall the resolution process as envisaged under the IBC contrary to the object and purpose of the IBC.

17. CDR EG in its meeting dated 10.10.2003 had approved the Restructuring Program for the revival of the Corporate Debtor. As the CDR could not be fully implemented in view of the fact that the Lenders failed to release the working capital as envisaged in the CDR Package, the operations of the Corporate Debtor could not be scaled up and restructuring could not take place. In the said background, while exploring revival options, it was suggested by the Lenders that a Special Purpose Vehicle (SPV) in the form of SCL should be created and the assets of the Corporate Debtor should be leased out to the SPV. The CDR EG vide its letter dated 10.09.2005 approved to the leasing of the manufacturing facilities of the Company, pursuant to which, an Agreement of Licence dated 03.11.2005 was entered into between the Company and SCL. The said License Agreement had to commence from 01.05.2005 for a period of four years.



18. It is stated that the Corporate Debtor on 01.04.2005 filed its reference with the BIFR, which was registered as BIFR Case No. 135 of 2005. The BIFR vide its order dated 14.02.2007 declared the Corporate Debtor as a Sick Industrial Company and appointed IDBI as the Operating Agency. It is relevant to state that at the time of

declaration of the Corporate Debtor as a Sick Industrial Company, EXIM Bank from whom debts have been acquired by EARC had specifically stated no objection before the BIFR.

In view of the fact that the reference of the Corporate Debtor was pending with the BIFR, the Corporate Debtor had filed an Application being MA No. 136 of 2012 with the BIFR on 29.03.2012 seeking permission to continue with the arrangement of lease till the sanction of the scheme. The BIFR vide its order dated 29.05.2012 permitted the Corporate Debtor to continue with the lease till sanction of the scheme or till 31.03.2013, whichever was earlier. However, as the scheme could not be sanctioned by the BIFR in view of the non-cooperative and adamant approach of EXIM Bank (now EARC), the Corporate Debtor filed MA No. 171 of 2013 with the BIFR seeking extension of the lease arrangement which was otherwise to expire on 31.03.2013 and this application was kept pending on the file of the BIFR on the date of coming into force of the SICA Repeal Act i.e. 01.12.2016. Thus, no final order was passed in the application of the Corporate Debtor and the lease in favour of SCL continued to subsist w.e.f. October, 2005. Further, in terms of the provisions of IBC 2016 there is no restraint on any Corporate Debtor to lease out its facilities. The trigger point for initiation of CIRP is only default based i.e. amongst others; the Corporate Debtor is also eligible to initiate the process in the event of any default towards any of its financial or operational creditor for an amount of Rs.1.00 Lac and above. Hence, any reference to the Lease arrangement, by EARC is nothing short of an attempt to mislead this Hon'ble Tribunal and completely de-rail the entire resolution process, which is being supported by super majority financial creditors.



19. It is stated presently only lease rentals are the only source of revenue for the Corporate Debtor and cancellation of lease arrangement would have sounded a death knell for the Corporate Debtor as it would have completely choked the only source of its revenue. In this regard, it is also submitted that the Plant and Machinery installed by the Corporate Debtor was also leased to SCL, which was further substantially improved by SCL and huge amounts of investments were made by SCL to keep up with the technology so as to not render the entire Plant and Machinery as scrap. Therefore, any suggestion for discontinuing the lease would have disastrous effects as the plant cannot run without the machinery added and installed by SCL.

Therefore, the IRP, in its best wisdom, did not interfere or disturb the existing arrangement, and in turn rightly put up the matter before the creditors of the Company to take a decision in the meeting of committee of creditors. The Committee of Creditors in its meeting dated 22.02.2017 deliberated upon the matter and the super majority of the financial creditors have given approval to the continuance of the above stated arrangement after 20% increase in the lease rentals citing reasons that the leasing of the unit of the Corporate Debtor in favor of SCL is in the larger interest of all concerned and has been carried out as an arrangement with the due consent of the majority of creditors to keep intact the nature of going concern of the Corporate Debtor.

Thus, the alleged objection of EARC on the aspect of leasing which was initially with the due consent of EXIM Bank i.e. the original lender from whom EARC has acquired the debts, is legally untenable and liable to be rejected by this Hon'ble Tribunal.



20. That the present Application filed by the Applicant herein is thus, evidently gross abuse of the process of law and hence not maintainable. The Application deserves outright dismissal and rejection by this Hon'ble Tribunal.
21. Therefore, it is prayed to dismiss the application under reply as devoid of any merit with costs.
4. We have heard Mr. S. Niranjana Reddy, Senior Advocate with Ms. Jyoti Singh, Ms. Rubaina Khatun and Mr. P. Mohith Reddy, Advocates, Mr. A.D. Gupta, Mr. Krishnendu Datta, Mr. P. Vikram, Mr. Nitish Bandary, Advocates for the Respondents. We have carefully considered various lengthy averments made by the parties along with material papers filed in their support.
5. By reading of various averments made by the parties as briefly stated above, the following main points arise for consideration by the Tribunal. .
- (1) Whether the Interim Resolution Professional/RP has followed the procedure prescribed under IBC,2016 and the extant rules framed thereon by following principles of natural justice;
  - (2) Whether assignment of Debt Assignment agreements dated 24th November, 2016 in question by Corporate Debtor being Synergies Casting Limited ( SCL) Respondent No.4 herein to the third Non-Banking Financial Company (NBFC) i.e Millennium Finance Limited (MFL) Respondent No.5 is valid or not ;
  - (3) Whether MFL come under the category of related party as contended by the applicant;
  - (4) What is status of various orders passed by BIFR in Case No. 135 of 2005 and AAIFR as those institutions were abated, while no final orders were passed in the cases



before them, and similarly effect of order of DRT, Visakhapatnam and that of Master Restructuring Agreement dated 6.3.2007 as detailed supra;

- (5) What is the scope of jurisdiction of this Tribunal in entertaining various inter- se disputes among various Financial Creditor qua Corporate Debtor;
  - (6) If so, what is relief, the applicant is entitled for.
6. As detailed supra, the Learned IRP has followed all the extant procedure prescribed for CIRP under the IBC Code, 2016. Accordingly, the first meeting of the CoC was duly held on 22/02/2017. The IRP has also given suitable replies to all issues raised by the Applicant. And the issues raised by the parties were also deliberated at the meeting of the Committee of Creditors held at the above date. As per regulation 13 (2) (d) of IBBI Regulations, 2016, the list of creditors were prepared on 14/02/2017, and it was intimated to the Tribunal on 15/02/2017. Subsequently, a CoC was constituted by the IRP on 15.02.2017, and a report to that extent was filed before this Tribunal in accordance with Regulation 17 (1) of IBBI Regulations, 2016.



The IRP has issued a notice on 15/2/2017 for convening the first meeting of Committee of creditors to transact the business as specified in the agenda mentioned therein. The IRP also prepared an Information Memorandum (IM) consisting of assets and liabilities as on 25.1.2017, audited financial statements of the Corporate Debtor for the financial year ended on 31.3.2016; Provisional Financial statement for the current financial year made up to 12.12.2016, list of creditors etc.

7. It is not in dispute that the Applicant, vide its e-mail dated 17.2.2017 confirmed their attendance for the meeting scheduled to be held on 22.2.2017 in New Delhi. Accordingly, the applicant also attended the first meeting of CoC. The Applicant also filed a revised claim on 20.2.2017, by rectifying

certain errors to its claim to the original claims. In the meeting held on 22.2.2017, it was agreed that the register of claims and inter-se voting rights would automatically stand revised on the basis of admission or rejection or modification of the revised claim so submitted.

The issue has been considered by this Tribunal on 22.02.2017, and permitted to conduct the proposed meeting of the Committee of Creditors to be held on 22.02.2017 by granting liberty to the applicant to participate in the meeting and raise its objections/grievances. Accordingly, the Petitioner availed the said meeting by raising some other objections just before 10 minutes of the scheduled time and those objections are stated to be similar to the objections raised by the Applicant.

8. So far as the issue relating to allegation of related party, it is to be mentioned here that the applicant like that of MFL got subsequently assigned debt of original lenders. The litigation started by the applicant right from initiation of case before BIFR and EXIM Bank, its original assignee, which is one of seven Creditors of Corporate Debtor. As rightly pointed out by the Learned Resolution professional, MFL cannot be termed as related party and the applicant has no locus standi to question various rights obtained by MFL from SCL by Assign Agreement Deeds in question. The applicant is making everything a serious issues right from stage of BIFR till date. We have examined the legality of Assignment deeds in question in detail in the subsequent CA No. 57 of 2017, wherein we have passed a detailed order by rejecting all the contentions of the applicant. Since initiation of CIRP proceedings only the applicant amongst various financial creditors raised various issues, viz, incorrect admission of claims, constitution of invalid CoC, initial IM, malafide ulterior motive of reducing the voting right of the applicant which is questionable and suspicious, apprehensions etc. All the other concerns of the Applicant are dealt with above suitably. Therefore, we are of the prima facie opinion that the applicant's



action throughout the entire CIRP proceedings which is not acceptable considering the preamble of the Code. After perusing various records, the Bench is of the opinion that there is no relationship between SCL and MFL. The Applicant's submission that the agenda of the meeting of CoC would have far reaching effect which is prejudicial to the interest of the Financial Creditors including the Applicant is factually not correct, since none of the other financial creditors objected to the agenda and it is only the Applicant objected to it. With regard to the intentions of the Corporate Debtor as well as its related party SCL, we would like to add that the proceedings before the Adjudicating Authority under the IBC is summary proceedings. Therefore, mensrea cannot be raised before the Adjudicating Authority under the IBC proceedings.

9. The history of case shows that there are several proceedings have taken place by various agreements especially Master Restructuring Scheme 2007, Lease Agreement, debts percentage of various Creditors etc as detailed supra, and various proceedings/decisions were taken by BIFR, while the case was pending before it. However, BIFR proceedings have finally been concluded by passing final orders due to the reasons stated above. So, it is necessary to examine status of various orders and agreements made by the parties as both the parties are relying on the orders passed by the BIFR on several issues. It is not in dispute that parties are also parties in those proceedings and have raised their contentions before competent BIFR as was existing then. It is not in dispute that Master Restructuring Agreement 2007 was duly signed by all the parties including the Assignee (EXIM Bank) of the applicant and thus all parties bound by all covenants among themselves. The applicant cannot claim any special privilege in comparison to other similarly situated Financial Creditors. It is settled position of law that Assignee cannot get more rights than what its original Assignor has. Admittedly, the EXIM Bank was a party to all concerned proceedings for resolving dispute in question as stated supra. We have carefully examined various





orders passed by the BIFR especially touching upon material allegations made by the applicant herein and are satisfied that all interim orders having a material bearing on the issue and also other relevant documents like MRA 2007 etc are valid and thus declared as such and are binding on the parties. The issue cannot be adjudicated in isolation ignoring all developments taken place. At the same time, it is to point out here, that in normal parlance, whatever, interim order(s) passed in a case would merge in the final orders. However, this principle would not be applicable in the present case for the reasons stated supra.

10. The Adjudicating Authority, ie NCLT in the instant case, cannot go into roving enquiry especially in the case where several issues have been settled by BIFR and executing several agreements as detailed supra.
11. In the light of aforesaid contentions and findings, We are satisfied that the Learned IRP has acted strictly in accordance with law by duly following the extant procedure prescribed under IBC,2016, and IBBI Regulations, 2016 and also followed Principles of Natural Justice.
12. In view of the above facts and circumstances of the case, we are of the considered view that the CA No. 43 of 2017 in CP (IB) No. 1/HDB./2017 is liable to be dismissed. Therefore, we dismissed the same with no order to costs. .



*Sd/-*  
RAVIKUMAR DURAISAMY  
Member (T)

*Sd/-*  
RAJESWARA RAO VITTANALA  
Member (J)

**CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL**

*V. Annapoorna*  
**V. ANNAPOORNA**  
Asst. DIRECTOR  
NCLT, HYDERABAD.

प्रमाणित प्रति  
**CERTIFIED TRUE COPY**  
केस संख्या  
CASE NUMBER... *C.A. No. 43 of 2017 IN CP No.*  
निर्णय का तारीख *01/08/2017*  
DATE OF JUDGEMENT... *2-8-2017*  
प्रति लेखर किया गया तारीख  
COPY MADE READY ON... *2-8-2017*