

Committee of creditors can allow submission of resolution plans through the challenge process

A 2 (two) member bench of the Hon'ble National Company Law Appellate Tribunal, Chennai ("NCLAT") in the matter of *Consortium of Prudent ARC Ltd. vs. Mr. Ravi Shankar Devarakonda & Ors*¹ has applied the ratio in the judgment of *Vistra ITCL (India) Ltd. Vs. Torrent Investments Private Limited*² to hold that the committee of creditors of Meenakshi Energy Limited ("CoC") in its commercial wisdom can allow resolution applicants to submit revised resolution plans through the challenge process.

Brief Facts

- 1) Mr. Ravi Shankar Devarakonda, the resolution professional of Meenakshi Energy Limited ("RP") had published a fresh Form G (invitation for submitting expression of interest in the corporate insolvency resolution process of Meenakshi Energy Limited). On August 29, 2022 resolution plans were submitted by Vedanta Ltd. ("Vedanta"), Jindal Power Ltd. ("Jindal") and Consortium of Prudent ARC and Vizag Minerals Pvt. Ltd ("Consortium") (collectively "RAs").
- 2) On October 28, 2022, after 2 (two) rounds of discussions and negotiations with RAs on improvement of plan value and other terms of the resolution plans, the RP received revised signed plans from each of the RAs. Thereafter, on December 27, 2022 Vedanta issued an addendum to its revised resolution plan. The CoC in the 43rd meeting, by a majority of 99.18%, resolved to undertake challenge process for value maximization and the RP was directed to run the challenge process. The decision of the CoC to undertake the challenge process was supported by clauses under the request for resolution plans ("RFRP").
- 3) On January 3, 2023, the Consortium and Jindal sent emails requesting the RP to reschedule the challenge process which was to commence on January 3, 2023. Jindal had requested an extension of one day and the Consortium had requested an extension of 1 (one) week. The RP after getting approval of the CoC and in order to ensure maximum participation of the RAs rescheduled the challenge process to January 4, 2023.
- 4) Jindal and Vedanta submitted their revised bids, however the Consortium opted to sit out of the challenge process. As per Clause 2 of the challenge process note and the email dated January 1, 2023, the CoC would consider the last submitted resolution plan of the participant who did not take part in the challenge process. As the Consortium did not participate in the challenge process, the CoC considered the last resolution plan submitted on October 28, 2022 and did not approve the same.

¹ (2023) SCC OnLine NCLAT 287

² (2023) SCC OnLine NCLAT 110

- 5) The voting window commenced on January 6, 2023 and remained open up to January 16, 2023. After the voting lines closed, the CoC had approved the resolution plan of Vedanta by majority of 94.96%.
- 6) The Consortium being aggrieved by the challenge process run by the RP and the CoC, filed IA No. 37 of 2023 before the NCLT, Hyderabad ("**Application**"), whereby it contested that the challenge process was in contravention of Regulation 39(1A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**"). The Application was heard and dismissed by the NCLT Hyderabad vide order dated January 23, 2023 ("**Impugned Order**").
- 7) Being aggrieved by the Impugned Order, Appellant preferred an appeal before the NCLAT.

Issues

The following issue was considered by the NCLAT:

- 1) Whether Regulation 39(1A) of the CIRP Regulations is mandatory in nature?
- 2) Whether the RP can permit modification of resolution plan more than once either by way of revision or by way of challenge mechanism?

Findings and Rationale

The NCLAT dismissed the appeal filed by the Consortium by holding as follows:

- 1) The NCLAT noted that despite being afforded the opportunity to participate in the challenge process, the Consortium did not submit its revised bid. It was due to this that the CoC considered the resolution plan dated October 28, 2022 submitted by the Consortium. This was in accordance with Clause 2 of the challenge process note as well as the email dated January 1, 2023 which clearly mention that for those who do not participate in the challenge process, '*the CoC will consider their last submitted Resolution Plan*'.
- 2) The NCLAT also observed that the decision of the CoC to conduct the challenge process was supported by the clauses as provided under the RFRP. The NCLAT also observed that the CoC in its commercial wisdom approved the resolution plan of Vedanta by a majority of 94.96%.
- 3) The NCLAT was satisfied by the reasoning of the NCLT and did not find any error in the dismissal of the Application.
- 4) The NCLAT applied the ratio in the judgment of *Vistra ITCL (India) Ltd. Vs. Torrent Investments Private Limited* to hold that the CoC in its commercial wisdom can allow resolution applicants to submit revised plans through challenge process.

Hence, in view of the same the NCLAT observed that there was no violation of Regulation 39(1A) of the CIRP Regulations.

JSA Comment

The NCLAT has upheld that the committee of creditors for value maximization of the corporate debtor can in its commercial wisdom negotiate with the resolution applicants. The NCLAT has also upheld that Regulation 39(1A) of the CIRP Regulations ought not be read as a fetter on the powers of the committee of creditors to negotiate with the resolution applicants. However, the only caveat to this is that the same ought to be done before expiry of the corporate insolvency resolution process period of the corporate debtor. The judgment has helped in clarifying the lacunae in the jurisprudence with respect to Regulation 39(1A) of the CIRP Regulations.

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