

Proceedings under The Insolvency and Bankruptcy Code 2016

Proceedings of the Resolution professional
under Insolvency and Bankruptcy Board of India (Insolvency Resolution
process for Corporate persons) Regulations 2016

In the matter of
M/s. Sainath Estates Private Limited (**Corporate Debtor**)

Reconstitution of the Committee of Creditors

The RP, during the first month as IRP, in compliance with the Regulation 17(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations 2016, on September 18, 2019 constituted the Committee of Creditors for the CD with the following financial creditors:

Constitution of the Committee of Creditors		As per Claim Form	Admitted	Vote %
Financial Creditor:		Rs.	Rs.	
1	Bank of India	1,08,78,56,688	1,08,78,56,688	35.20%
2	Syndicate Bank (Now Canara Bank)	97,86,19,012	97,86,19,012	31.66%
3	Punjab National Bank	76,93,93,317	76,93,93,317	24.90%
4	Andhra Bank (Now Union Bank of India)	25,45,81,664	25,45,81,664	8.24%
Operational Creditor				
1	Sarwottam Ispat	2,55,78,001	1,89,93,981	NIL

On receipt of the Order of the Hon'ble Supreme Court in the CIVIL APPEAL NOS. 8512-8527 OF 2019 and connected cases in **ANUJ JAIN INTERIM RESOLUTION PROFESSIONAL FOR JAYPEE INFRATECH LIMITED Versus AXIS BANK LIMITED ETC.**, along with the analysis from the IP Division of the IBBI on 28th Feb. 2020, RP in discharge of his duty has informed the CoC in 11th CoC Meeting held on August 07, 2020 about the current legal update on the IBC process and presented the same to the members of the CoC and informed members that Syndicate Bank claim to the tune of 78,02,38,641 is given as Corporate Guarantee/Mortgagor to M/s Bhagyanagar Hotels private Limited. And in the next Meeting reconstituted CoC voting shares which will be placed before the CoC.

Hon'ble SC in the above judgement held as follows:

"We have not an iota of doubt that for a debt to become 'financial debt' for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursement against the consideration for time value of money.

The requirement of existence of a debt, which is disbursed against the consideration for the time value of money, in our view, remains an essential part even in respect of any of the transactions/dealings stated in sub-clauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein

*47. A conjoint reading of the statutory provisions with the enunciation of this Court in Swiss Ribbons (supra), leaves nothing to doubt that in the scheme of the IBC, what is intended by the expression **'financial creditor' is a person who has direct engagement in the functioning of the corporate debtor; who is involved right from the beginning while assessing the viability of the corporate debtor; who would engage in restructuring of the loan as well as in reorganisation of the corporate debtor's business when there is financial stress. In other words, the financial creditor, by its own direct involvement in a functional existence of corporate debtor, acquires unique position, who could be entrusted with the task of ensuring the sustenance and growth of the corporate debtor, akin to that of a guardian. In the context of insolvency resolution process, this class of stakeholders namely, financial creditors, is entrusted by the legislature with such a role that it would look forward to ensure that the corporate debtor is rejuvenated and gets back to its wheels with reasonable capacity of repaying its debts and to attend on its other obligations. Protection of the rights of all other stakeholders, including other creditors, would obviously be concomitant of such resurgence of the corporate debtor.***

47.1 Keeping the objectives of the Code in view, the position and role of a person having only security interest over the assets of the corporate debtor could easily be contrasted with the role of a financial creditor because the former shall have only the interest of realising the value of its security (there being no other stakes involved and least any stake in the corporate debtor's growth or equitable liquidation) while the latter would, apart from looking at safeguards of its own interests, would also and simultaneously be interested in rejuvenation, revival and growth of the corporate debtor. Thus understood, it is clear that if the former i.e., a person having only security interest over the assets of the corporate debtor is also included as a financial creditor and thereby allowed to have its say in the processes contemplated by Part II of the Code, the growth and revival of the corporate debtor may be

the casualty. Such result would defeat the very objective and purpose of the Code, particularly of the provisions aimed at corporate insolvency resolution."

Similarly in the present case of the CD, Syndicate Bank claimants who are not direct lenders to M/s. Sainath Estates Private Limited (to the extent of CG invocation), were inadvertently admitted in to the CoC as Financial Creditors, treating their claim as Financial Debt, under wrong impression.

The direct lenders to the related party companies M/s. Bhagyanagar hotels Private Limited by invoking the Guarantee given by the CD submitted their claims and their Claim was Considered as "Financial Debt" by the IRP/RP and were admitted as members of the CoC, which goes against the definition of "Financial Creditors" as elucidated by the Hon'ble SC in the above referred Judgement.

From the law laid down by the Hon'ble Supreme Court, the lenders of M/s. Bhagyanagar hotels Private Limited claim to the tune of 78,02,38,641 should not be Considered as Financial debt and accordingly their voting share after excluding the Corporate Guarantee amount is reduced from **31.66% to 8.59%**. Admittedly the guarantees being neither towards any loan, facility or advance to the corporate debtor nor towards protecting any facility or security of the corporate debtor, cannot be classified as a 'financial debt' within the meaning of Section 5(8) of the Code; and hence, such lenders of M/s. Bhagyanagar hotels Private Limited, do not fall in the category of the 'financial creditors' of the corporate debtor M/s. Sainath Estates Private Limited.,.

As per article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court shall be binding on all courts. The RP having come to the know of the Judgement of the Hon'ble Supreme Court in the CIVIL APPEAL NOS. 8512-8527 OF 2019 and connected cases in **ANUJ JAIN INTERIM RESOLUTION PROFESSIONAL FOR JAYPEE INFRATECH LIMITED Versus AXIS BANK LIMITED ETC.**, is necessitated to exclude the guarantee holders to the extent of Rs. 78,02,38,641, who are not direct lenders to the CD, from the Committee of Creditors. Hence their claims are treated as "Other Creditor" on par with operational creditors without voting rights.

In accordance with the ruling of the above cited case of the Hon'ble Supreme court the revised COC along with their voting rights given against each of them is given as under:

Constitution of the Committee of Creditors		Claim Amount	Admitted	Vote %
Financial Creditor:		Rs.	Rs.	
1	Bank of India	1,08,78,56,688	1,08,78,56,688	47.09%
2	Syndicate Bank (Now Canara Bank) #	19,83,80,371	19,83,80,371	8.59%
3	Punjab National Bank	76,93,93,317	76,93,93,317	33.30%
4	Andhra Bank (Now Union Bank of India)	25,45,81,664	25,45,81,664	11.02%
Total		231,02,12,040	231,02,12,040	100%
Operational Creditor				
1	Sarwottam Ispat	2,55,78,001	1,89,93,981	NIL

The claims of the Syndicate Bank (Now Canara Bank) to the tune of Rs. 78,02,38,641 are classified as "Other Creditor".

Sd/=

Dr. K. V. Srinivas,

Resolution Professional for

Sainath Estates Private Limited.,

Place : Hyderabad

Date: 19th August 2020