The National Company Law Tribunal, Bench at Hyderabad in the matter of K. Sashidhar versus Kamineni Steel & Power India Private Limited, vide its order dated Nov. 27, 2017, has approved the resolution plan which was approved by only 66.67 percent of the committee of creditors in value. As per Section 30(4) of the Insolvency and Bankruptcy Code, 2016, a resolution plan can be approved by the Committee of Creditors by not less than 75 percent of the total voting share.

Factual Matrix

Vide an order of the Hyderabad NCLT, dated Feb. 10, 2017, a corporate insolvency resolution process under the code was initiated under Section 10 of the code and an interim resolution professional was appointed thereto, who was directed to constitute a Committee of Creditors. Pursuant to constitution of the CoC, comprising of eight financial creditors, a total of nine meetings of the CoC were held. The insolvency resolution process could not get completed in the mandatory period of 180 days, and an extension of 90 days was therefore granted by the Hyderabad NCLT.

At the ninth meeting of the CoC held on Oct. 27, 2017, a resolution plan was presented by the resolution professional which was approved by the members of the CoC having 55.73 percent voting power. One of the members, Indian Overseas Bank having voting power of 15.15 percent rejected the resolution plan. Further, the members of the CoC having voting power of 29.12 percent expressed that they remained open, awaiting the principle approval from their respective sanctioning authorities.

As on Oct. 30, 2017, the percentage of consenting member of CoC for approval of the resolution plan was 66.67 percent, the percentage of dissenting members of the CoC was 26.97 percent, and the percentage of the neutral members, who remained open until seeking principle approval from their respective sanction authorities was 6.36 percent.

Various resolution plans were submitted from time to time as per the advice and discussions by the financial creditors at various meetings of the CoC. In spite of which, no concrete resolution plan had emerged from the financial creditors. On the other hand, the resolution plan proposed under sustainable debt option did not intend any haircut on the principle debt to the banks. In the light of the same, the resolution professional submitted that he had followed all extant provisions of the Code in respect of the resolution process in question and therefore, the resolution plan was in accordance with law and that it may be approved by the Hyderabad NCLT.
Findings Of The Hyderabad NCLT

The Hyderabad NCLT observed that the main preamble of the Code is the resolution of a corporate debtor rather than the liquidation, and that in the instant case, the stringent stand of the three dissenting members of the CoC clearly showed that they did not exhibit positive approach in revival of the corporate debtor and were mostly interested in the liquidation of the corporate debtor.

It was further observed that the salient features of the Code are resolution of corporates in a time bound manner, maximisation of value of assets, to promote entrepreneurship, availability of credit, balance of interest of stakeholders, etc. and when the decisions are taken in a time bound manner, there is a greater chance that the corporate debtor can be saved as a going concern and the productive resources of such corporate debtor, including the labour and capital, can be put to best use.

Upon analysing the provisions of the Code, the Hyderabad NCLT further observed that Section 30(4) states that the committee of creditors may approve the resolution plan by a vote of not less than 75 percent of voting shares of the financial creditors and, Section 31 of the Code states that "if the adjudicating authority is satisfied". Therefore, the Hyderabad NCLT took a considered view that even though the committee of creditors may approve a resolution plan with not less than 75 percent of the voting share, a discretion is given to the NCLT to approve the resolution plan. Therefore, the Hyderabad NCLT further observed that a paramount duty is cast upon the adjudicating authority, while approving a resolution plan to exercise judicious mind in facts and circumstances to specific case, to consider the spirit of the Code and to grant due consideration for the socioeconomic benefit/cause, etc., and therefore, the prescribed percentage of 75 percent need not be strictly interpreted.

In the light of the factual matrix of the case, the Hyderabad NCLT on being satisfied that the resolution professional had followed all the extant provisions of the Code in respect of the resolution process and that the resolution plan contained all mandatory clauses, held that there were no grounds for rejection of the resolution plan, and accepted the same even though it was not approved by 75 percent of the prescribed majority of the members of the CoC.

Interestingly, before parting with the order, the Hyderabad NCLT expressed its views for appropriate guidelines/instructions in insolvency process that the three dissenting banks, namely, the Indian Overseas Bank, Central Bank of India and Bank of Maharashtra, in resolving the bad loans or non-performing assets deserved to be carefully scrutinised by the banking sector regulator. Therefore it further directed the registry to forward a copy of the said order to the Governor of Reserve Bank of India, Mumbai.

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