

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT II**

IA 2900 of 2021

In

CP (IB) 2987/MB/C-II/2018

Under Section 60(5) of the
Insolvency and Bankruptcy Code,
2016, r/w Rule 11 of the National
Company Law Tribunal Rules, 2016.

In the Application of

Mr. Basab Paul & Anr.

**...Applicant/Resolution
Applicants**

v/s

Gaurav Ashok Adukia & Anr.

In the matter of

**Edelweiss Asset Reconstruction
Co. Ltd.**

...Financial Creditor

Versus

**Octaga Green Power and Sugar
Company Limited.**

...Corporate Debtor

Order Delivered on :- 26.08.2022

Coram:

Justice P.N. Deshmukh (Retd.) : Member (Judicial)

Shyam Babu Gautam : Member (Technical)

Appearance:

For the Applicant : Mr. Gaurav Joshi, Senior Advocate

For Resolution Professional : Mr. Dhiraj Mhetre, Advocate

For the CoC – SBI : Mr. Rishi Thakur, Advocate

ORDER

Per: Shyam Babu Gautam, Member Technical

1. The present Application has been filed by the Applicants for challenging the rejection of the Resolution Plan in its 20th Committee of Creditors (CoC) meeting dated 12.11.2021 as modified on 23.01.2021 along with addendum dated 10.02.2021, 23.08.2021 and 30.09.2021 submitted by the Applicants as a consortium of individuals, by the Respondents i.e. the Committee of Creditors consisting of Edelweiss Asset Reconstruction Company Limited having voting share of 52.40% and State Bank of India having voting share of 47.60% of the Corporate Debtor.
2. The said plan was rejected for mere want of statutory requirements of approval by 66% of member of CoC. The Resolution Plan was rejected by the State Bank of India despite of approving the Plan by Edelweiss Asset Reconstruction Company Limited. No reason was

assigned for the rejection of the Resolution Plan. The said rejection was without any application of mind.

3. The Applicant further states that the Plan was for payment of Rs. 21,00,00,000/- which is far in excess of the Liquidation value i.e. Rs. 18,00,00,000/- as per the oral submissions of the Resolution Professional. The Applicants herein have also paid a Bank Guarantee towards EMD with the Plan. The Applicant has time and again made efforts to improve the Resolution Plan.
4. The Respondent State Bank of India has opposed the said Application on the grounds that the Resolution Applicant herein has no vested right to have the Resolution Plan to be approved from the members of the CoC. The Applicants were given multiple opportunities to clarify certain queries that determined into the commercial decision. The queries were not satisfactorily clarified by the Applicants. The clarifications sought included on the source of funds, past conduct of the Resolution Applicant, inflated land value etc.
5. The Applicants failed to demonstrate the implementation of the Plan and had various gaps and issues.
6. Further, the Edelweiss Asset Reconstruction Co. Ltd. have denied to give any comments as it has voted in favour of the Resolution Plan. However, since the Plan did not meet the statutory requirement under section 30 (4) of the

Insolvency and Bankruptcy Code, 2016, the Respondents have undertaken the course of liquidation.

7. Looking at the Application and averments, it is observed that the members of the CoC after many deliberations rejected the Plan. The Plan was put to vote and one of the members of the CoC i.e. State Bank of India having 47.60% have voted against the Plan and hence the Plan has not met the statutory requirement under the Code. The COC in its 20th CoC meeting had recommended for the liquidation of the Corporate Debtor Company and also filed an Application under section 33 of the Code which is pending for adjudication.
8. However, the prime objective of the Code is to rescue the Corporate Debtor in distress and to provide revival of the Corporate Debtor. Every attempt has to be first made to revive the concern and make it a going concern and liquidation being the last resort. Further it is seen that the Corporate Debtor is a going concern and there are 125 workmen and employees whose livelihood would be affected in the event of liquidation.
9. Further in catena of judgements as passed by Hon'ble Supreme Court of India whereby it has been repeatedly cautioned as liquidation of the Corporate Debtor Company should be a last resort.
10. In view of the above, the CoC is hereby directed to fairly, reasonably and in accordance with the provisions of the

Code, duly re-examine/ reconsider the Applicants Plan within four weeks and thereafter the RP is hereby directed to update the status of the same.

11. In view of the above, prayers a, c, e in **IA 2900 of 2021** are **hereby allowed.**

Sd/-

**SHYAM BABU GAUTAM
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE P.N. DESHMUKH
MEMBER (JUDICIAL)**