29th May, 2020

The National Stock Exchange of India Ltd.,
Exchange Plaza, Bandra kurla Complex,
Bandra (East),
Mumbai-400 051.

The BSE Limited.,
Phiroze Jeejeebhoy Towers,
17th Floor, Dalal Street,
Mumbai-400 001.

Dear Sir,

Re : Disclosure under Regulation 30 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015.

Pursuant to regulation 30 of SEBI (LODR) Regulations 2015 we inform you that the National Company Law Appellate Tribunal (NCLAT) in its order dated 29th May 2020 has upheld the decision of the National Company Law Tribunal, Hyderabad Bench ordering Liquidation of the Company as a going concern and also vacated its interim order dated 06.09.2019.

The above said NCLAT order was in the matter of Company Appeal (AT)(Insolvency) Nos. 918-919 of 2019 on the pending appeal against NCLT order IA No. 544/2018 dated 26th July 2019 ordering the liquidation of the Company as a going concern.

The NCLAT order is attached for your information.

Thanking you,

Yours Truly,
For IVRCL Limited

SUTANU SINHA
IP Regn. No. IBBI/IPA-003/IP-N00020/2017-18/10167

Sutanu Sinha
Liquidator of IVRCL Limited
IP Registration No. IBBI/IPA-002/IP-N00020/2017-18/10167
Email ID – sutanusinha@bdo.in, liquidatorivrcl@bdo.in

IVRCL Office:
'MIHIR', H. No. 8-2-350/5/A/24/1B, Panchavati Colony,
Road No. 2, Banjara Hills, Hyderabad -500 034, Telangana, India

IBBI Registered Office:
Floor 4, Duckback House 41,
Shakespeare Sarani,
Kolkata - 700017, West Bengal, India

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI
Company Appeal (AT) (Ins) No.918-919 of 2019

IN THE MSTTER OF:

First Global Finance Pvt Ltd. ....Appellant/Intervener

Vs.

1.IVRCL Limited

2.State Bank of India ...Respondents /Corporate Debtors

Present:

For Appellant : Mr. S.C. Das, Advocate for appellant.

For Respondent: Mr. E Sudhir Reddy, Mr. Jaideep Singh, Mr. Kartik Dabas, Advocates for IA/Dy No.15317. Mr. Nirav Shah, Mr. Shashank Agarwal, Mr. Satendra K Rai, Mr. S. Sinha, Advocates for R1. Mr Rajiv Kapur, Mr Akshit Kapur, Advocates for R2.

JUDGEMENT

(29th May, 2020)

DR ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. The Appellant has filed the Appeal against the Arbitrary rejection of the Resolution Plan submitted by the Appellant company along with others which has arisen out of impugned order passed by NCLT Hyderabad Bench vide its order dated 26th July, 2019 and order of corrigendum dated 31.07.2019. Apparently, the reason for the dismissal of the Resolution Plan by the Committee of creditors were on account of

Expression of Interest (EOI) deviation, and nonfulfillment of other eligibility criteria.

2. This is case of an application filed by State Bank of India under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor- IVRCL and the same were admitted for Corporate Insolvency Resolution Process on 23rd February, 2018 with the appointment of Interim Resolution Professional/confirmed as Resolution Professional by the Committee of Creditors.

3. Thereafter, a public announcement for inviting Expression of Interest (EOI) to submit the Resolution Plan for the Corporate Debtor from the potential Resolution Applicants was issued on May 9th, 2018 with the last date of submission of EOI on May 24th, 2018. Further, the Resolution Professional by way of a public announcement had extended the last date for submission of EOI to June 4th, 2018 on May 28th, 2018. Resolution Professional had issued Evaluation Matrix and Bid process memorandum with last date of submission of Resolution Plan by July, 11, 2018 on June 11, 2018.

4. It is submitted by the Appellant that pursuant to the First EOI, there were total 7 prospective Resolution Applicants who had submitted their Expression of Interest (EOI) However, 2 Resolution Applicants did not submit any formal application for submission of their Resolution plan, Therefore The Resolution Professional had considered the remaining 5

(five) Resolution Applicants, out of which One Resolution Applicant was First Global Finance Private Limited along with others as group of person. However, none of the qualified Resolution Applicants submitted their Resolution Plans before the last day of the submission of the Resolution plan. Hence, the members of the CoC had agreed for the issuance of 2nd process of EOI. Thereafter, the Resolution Professional issued a second invitation for EOI to submit Resolution Plan for the Corporate Debtor on August 14th 2018. Second EOI specified that the qualified Resolution Applicants during the First EOI process were entitled to submit their Resolution Plan in the Second EOI process. The Resolution Professional states that no Resolution Plan was submitted by First Global Finance Pvt. Ltd. independently; However, they intended to submit a Resolution Plan in the Second EOI process. Therefore, a Resolution Plan was submitted by First Global Finance Private Limited , Mr. Shanker Sharma, Ms. Devina Mehra along with Phoenix ARC Private Limited ("Original Consortium"). First Global Finance Private Limited, Mr. Shanker Sharma , Ms. Devina Mehra are collectively referred to as ('First Global") and Phoenix ARC Private Limited is referred to as ("Phoenix").

5. It is stated by the Appellant that subsequently the Resolution Professional issued a Bid Process Memorandum and Evaluation Matrix to submit the Resolution Plan for the Corporate Debtor on September 4th

2018 (“Process Memorandum”) inviting the Resolution Plan from the person who submitted Expression of Interest in response to the EOI. It is further stated by the Appellant that the Original Consortium submitted a Resolution Plan on October 4th, 2018. and First Global submitted its updated Resolution Plan on November 5th, 2018 along with Phoenix ARC as financial sponsor for the said Resolution Plan. Thereafter, the CoC was informed that Phoenix did not want to be categorized as a Resolution Applicant along with Global. In order to include a fresh Resolution Applicant or make any deviations in the EOI, the CoC was required to approve the deviation in the EOI and restart the EOI process.

6. It is further submitted by the Appellant in the 14th CoC meeting held on 12th November 2018, the CoC had rejected the deviations of certain terms and condition of the EOI and the Process Memorandum in relation to the Resolution Plan received from First Global. Thereafter, on November 16th, 2018 First Global submitted a revised Resolution Plan along with Mr. Ravindra Deol, Mr. Shanker Sharma and Ms. Devina Mehra as Resolution Applicants (“Reconstituted Consortium”)

7. It is Further submitted by the Appellant that the CoC had rejected the Resolution Plan submitted by Original/ Reconstituted Consortium due to the following reasons:

    a) Deviation to the EOI was rejected by the CoC, therefore reconstituting the Original Consortium by the Reconstituted

Consortium as Resolution Applicants is in violation of the EOI and the provision of I&B code;

b) Original Consortium had not placed the Earnest Money Deposit (EMD) along with submitting the Resolution Plan an October 4, 2018 as required by the Bid process Memorandum;

c) Original Consortium was not in compliance of the minimum qualification criteria as defined in the EOI published on August 14th ,2018; and

d) Resolution Plan submitted by Reconstituted Consortium was not commercially acceptable by the CoC and despite various requests made by the members of CoC to improve the commercial and technical aspects of the Resolution Plan; Reconstituted Consortium was unable to do so.

8. It is further stated by the Appellant that the 270 days for the completion of the CIRP period was initially ended on November 20th, 2018. Thereafter, The Applicant applied for exclusion of the period and the CIRP Period was extended for 7 days viz., the CIRP ended on November 27th 2018 ("CIRP End Date").

9. It is further stated by Appellant that due to the reason mentioned hereinabove and in absence of any Resolution Applicant meeting the criteria of the EOI and the Bid Process Memorandum documents, no valid Resolution Plan was accepted by the CoC.

10. Appellant also submits that the Resolution Plan submitted on 04.10.2018 and as amended from time on the basis of discussions with the CoC had been rejected on the following grounds;

    A. Non-compliance with the minimum qualification criteria as defined in the EOI dated 14.08.2018.

    B. Non-submission of the EMD along with the submission of the Resolution Plan application dated 04.10.2018 as required by the Bid Process Memorandum.

    C. Constitution of the Resolution Applicants as per the Resolution Plans being different from the constitution of the Resolution Applicant as per the EOI submitted earlier.

11. It is further submitted by the Appellant that pursuant to the submission of the First Resolution Plan and the Second Resolution Plan, by the Resolution Applicant, vide email dated 30.10.2018, it was submitted by the Resolution Applicant on behalf of the consortium that: -

    a) As per the last audited financial statements duly certified by the Chartered Accountant, the turnover for the consortium was Rs. 2081.63 Crores. Thus, the Business Capacity Eligibility Criteria was also duly fulfilled.

    b) As certified by the Charted Accountant, the net worth of the Consortium was Rs. 463.83 Crores and the total Assets Under

Management (AUM) was Rs. 6788.00 Cores. Thus, the net worth Eligibility Criteria was also duly fulfilled.

c) Resolution Applicant further stated in the e-mail. that the Consortium has already submitted the details pertaining to compliance with section 29 A of the Code.

12. The Applicant again put forth the suggestion to consider the Applicant along with its holding Company, First Global Stock broking Pvt. Ltd., and Mr. Shanker Sharma and Ms. Devina Mehra as the consortium members.

13. It is further stated that as an alternative and seeing that the CoC was unrelenting, the Applicant in the same CoC meeting of 06.11.2018 even offered to bring in another person as a consortium member in place of phoenix ARC / First Global Stock broking Pvt. Ltd. With a stupendous net worth (in excess of Rs.450 crores) whose credentials could be taken into account for the purpose of deciding upon the eligibility, The Applicant had been in constant discussion with the said individual, who was their business associate and who had expressed his readiness and willingness to join the consortium, if required. None of this was considered by the CoC.

14. That as regard the non-submission of the EMD along with the submission of the Resolution Plan dated 04.10.2018 as required by the

Bid Process Memorandum is concerned, it is submitted that while the discussions were taking place with the Resolution Professional in respect of the submissions of the Resolution Plan, the Resolution Applicant (RA), which was the only shortlisted and qualified RA on behalf of the consortium had put in a specific request through emails for waiver of the EMD of Rs. 5 Crores. In an Email written to the Applicant on 03.10.2018, the Resolution Professional accordingly asked the Applicant to make a specific request to that effect along with the Resolution Plan, so that the same could be placed before the CoC. Accordingly, at the time of submission of the 1st Resolution Plan, through the email sent to the Resolution Professional on 04.10.2018, the Applicant on behalf of the Consortium requested for waiver of the condition regarding the deposit of Rs. 5 crores in the form of EMD on the ground that the Consortium was of the view that it should be asked to part with any money only if their plan was approved by the CoC. However, the said request was not acceded to by the CoC and the Applicant was directed by the CoC to deposit the EMD of Rs. 5 Crores. Accordingly, the Resolution Applicant undertook to deposit the EMD of Rs.5 crore on or before 05.11.2018, vide its email dated 26.10.2018. The applicant then deposited the amount of Rs.2 Crores on 31.10.2018 in the designated account, and further requested that 3-4 days to transmit the outstanding EMD of Rs.3 crores. On 01.11.2018, the Resolution Professional

thereafter, sent an email to the Applicant informing that the residual EMD should be deposited on or before 05.11.2018 and the Resolution Plan should also be submitted by 05.11.2018. Complying with the directions of the CoC, the Applicant thus deposited the balance EMD of Rs.3 Crores in the designated account on 05.11.2018. After the compliance with the direction of the CoC had been made into, no discussions whatsoever took place between the Applicant and the Resolution Professional/CoC between 05.11.2018 and 20.11.2018. The Applicant was thus appalled to discover that in the email dated 21.11.2018 sent by the Resolution Professional to the Applicant, one of the grounds that had been cited by the Resolution Professional for rejection of the resolution plan was that EMD had not been deposited.

15. It is further stated that on 01.11.2019, the Resolution Professional also sent an email to the Applicant stating that the CoC on 31.10.2018 in its meeting inter alia permitted the Applicant to deposit the balance EMD of Rs. 3 crores by 05.11.2018. That before the submission of the 3rd Resolution Plan, the payment of the balance EMD (Rs.3 crores) was also duly made by the Applicant. It is further stated that, the Email dated 01.11.2018 by the Resolution Professional for extension of the timelines for submission of the balance EMD tantamount to waiver and acceptance on the part of the Resolution Professional and the CoC in case the

balance EMD is submitted prior to the expiry of such revised timelines and such ground for rejection of the Resolution Plan submitted by the Applicant at a later date, is a mere afterthought.

16. It is further submitted by the Appellant that as regard Constitution of the Resolution Applicants as per the Resolution Plans being different from the Constitution of the Resolution Applicants as per the EOI submitted earlier, it is submitted that the Resolution Applicant has not mentioned different constitution of the consortium in the EOI and the Resolution Plan submitted. All the constituents of the consortium continue to remain associated with consortium members, Phoenix, ARC merely requested that it intended to be described as a 'financial sponsor' instead of a "Resolution Applicant", though it had no objection to continue being a part of the consortium and even signed the Resolution Plan submitted on 05.11.2018. However, at the end of the CIRP, the CoC started objecting to it even though no objection whatsoever was raised between 04.10.2018 (date of submission of the 1st Resolution Plan) and the last week of October, 2018. Though, it was clear from the outset that Phoenix ARC wanted its description to be that of a 'financial sponsor', it is stated that, in the CoC meeting held on 06.11.2018, once it was insisted upon by the CoC that in the event Phoenix ARC would not be considered while deciding the eligibility , the Applicant put forth the

suggestion of including its own holding Company in the consortium, whose turnover was about Rs.27.41 crores while Phoenix ARC would continue to be associated as a 'financial advisor'. However, this was not found to be acceptable by the CoC leading to the Applicant advancing the proposal to include an individual business associate in the consortium whose net worth was about Rs.450 Cr. – Rs. 500Cr., which proposal was also not found in favour with the CoC and instead the Resolution Plan submitted by the Resolution Applicant was mechanically rejected.

17. It is submitted by the Respondent that Application is hit by delay and latches. The order for initiation of liquidation proceeding was passed by the Adjudicating Authority vide order dated July 26th 2019, and July 31st 2019. The adjudicating Authority had further directed the Respondent to conduct the **liquidation as a going concern.**

18. It is also submitted by the Respondent that the present Application has been filed with mala fide intent. The Appellant has failed to provide any documents in support of its Application. Respondent further submits that the present Application has been filed merely on the basis of conjectures and surmises and the contents of the same are bald and unsubstantiated.

19. Further it submitted by the Respondent that it is imperative to refer to the Judgement of the Hon'ble Supreme Court in the matter of Swiss Ribbon Pvt. Ltd. V. Union of India & ors being Writ Petition (Civil) No. 99 of 2019 wherein the Hon'ble Supreme Court has clearly held that the "primary focus of the legislation is to ensure revival and continuation of the Corporate Debtor **by protecting the corporate debtor from its own management** and from a corporate death by Respondent."

20. The said observation of the Hon'ble Supreme Court has further been relied on by this Appellate Tribunal in the judgement of Jindal Steel and Power Limited V. Arun kumar jagatramka being Company Appeal (AT) No.221 of 2018 had observed that

> "The aforesaid judgement makes it clear that **even during the period of liquidation for the purpose of section 230 to 232 of the Companies Act, the 'Corporate Debtor' is to be saved from its own management.** Meaning thereby the Promoters, who are ineligible under Section 29A, are not entitled to file application for Compromise and Arrangement in their favour under Section 230 to 232 of the Companies Act.

21. It is further submitted by the Respondent that looking at the relief sought by the Appellant, it is seeking direction from this Appellate Tribunal to direct the Respondent to file the application under section 230 of the

Companies Act,2013 to place on record the scheme of arrangement from the Appellant. As such, the Appellant is trying to obtain an order this Appellate Tribunal by circumventing the provision of the Insolvency and Bankruptcy Code, 2016 ("**code")**, more particularly proviso to the section 35 of the code and the law settled by this Appellate Tribunal in the Judgement of Jindal Steel and Power Limited (supra).

22. It is submitted by the Respondent Bank that it has granted credit facilities to IVRCL Limited and as on 22.10.2017, an amount of Rs. 604,15,36,434/- is due and payable by IVCRL Limited and in pursuance of it, an application under section 7 of the I&B Code was initiated.

23. State Bank of India has submitted on behalf of the Committee of Creditors through its affidavit dated 04.12.2019 that the Resolution Plan submitted by the Reconstituted Consortium was not commercially acceptable to the CoC and in spite of repeated request by the CoC to the "Reconstituted Consortium" to improve the commercial and technical aspect of the Resolution Plan, Reconstituted Consortium did not do so. The decision of the CoC is well informed and well thought of the business and commercial decision taken considering all the options available to it in the interest of all the stakeholders and also keeping in view the spirit of the I&B Code, 2016. He has also confirmed that the majority decision of the CoC has been taken on prudent business and

commercial proposition and accordingly, the Adjudicating Authority has passed the requisite order. He has cited Hon'ble Supreme Court Judgment in the case of K.Sashidhar Vs. Indian Overseas Bank and Ors. reported in 2019 SCC Online SC 257 and Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. Civil Appeal No.8766-67/2019, to support the commercial wisdom of CoC. Finally, he has also submitted that the present appeal is misconceived in law and facts and the Application needs to be dismissed.

24. We have gone through the submission of the Appellant, SBI and Respondent it is observed that the Appellant has strictly not complied with the terms and conditions of Expression of Interest (EOI) dated 14.08.2018 and non-submission of EMD along with submission of Resolution plan dated 4.10.2018 as required by the Bid Process Memorandum. They have also deviated on other parameters. And hence CoC after deliberation has rejected the plan and accordingly the Resolution Professional has communicated to the Resolution Applicant. Since, liquidation proceedings as a going concern is already on from July 2019 and there is always scope for Resolution Applicants to opt for Arrangements under Section 230-232 of the Companies Act, 2013, if they are eligible in accordance with provisions of Insolvency and Bankruptcy Code, 2016 along with relevant Rules. Hence there is no

merit in the case to consider the relief of setting aside the impugned order of NCLT, Hyderabad Bench. We uphold the order of NCLT Hyderabad Bench and with the passing of this order, the order dated 06.09.2019 stands vacated. No order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

[Dr. Ashok Kumar Mishra]
Member (Technical)

RK

New Delhi