

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Arguments through web-based video conferencing platform)**

**IA No. 546/2020
in
CP (IB) No.105/Chd/Hry/2019
(Admitted)**

In the matter of:

Mrs. Kusum Chadha & Anr.Petitioner-Financial Creditors

Versus

C & C towers Limited ...Respondent-Corporate Debtor

And in the matter of:-

IA No. 546/2020

Under Section 60(5)(c) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016.

Gaurav Khurana
Resolution Professional
C&C Towers Limited
having its registered office at
KPMG Restructuring Services LLP
8th Floor, Tower B, DLF Building No. 10,
DLF Cyber City, Phase II,
Gurugram-122002Applicant

Vs.

Aanchal Sood & Ajay Sood & ors.
having its registered office at
B-3, Dua Complex,
Kartar Shah Nagar,
Model Town, Panipat,
Haryana ...Respondents

Order delivered on: 18.01.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Applicant
in IA No 546/2020 None

For the Respondent
in IA No 546/2020 : Ms. Pridhi Singhla, proxy for
Mr. Nahush Jain

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA Nos. 546/2022

The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by Gaurav Khurana, Resolution Professional, C&C Towers Limited (hereinafter referred to as 'RP') against Ms. Anchal Sood and Mr. Ajay sood (hereinafter referred as 'Respondents') praying for appropriate directions to members of Committee of Creditors (hereinafter referred to as 'CoC') of the Corporate Debtor to contribute their respective binding share of the interim finance by way of corpus funding for meeting the Insolvency Resolution Process cost of the Corporate Debtor.

2. The brief facts of the case are that:-

2.1 The Corporate Insolvency Resolution Process was initiated in respect of C&C Towers Limited under Section 7 of the I&B Code vide order dated 10.10.2019 of this Adjudicating Authority (Annexure A-1). The first meeting of the CoC was held on 07.11.2019 wherein Applicant was unanimously appointed as the Resolution Professional and he discovered that the cash in hand/bank balance of the Corporate Debtor was INR 3,853/-. There was no cash accruals from the operations of the Corporate Debtor. Out of seven bank accounts, four bank accounts of the Corporate Debtor were

either closed or dormant. The financial resources were required by the Resolution Professional to discharge his statutory duties and functions, including to keep the enterprise of the Corporate Debtor as a going concern, manage its affairs, preserve and protect the value of assets of the Corporate Debtor, pay the fees of advisors and other service providers required to be appointed.

2.2 In the second meeting of CoC held on 14.01.2020, the Applicant proposed to the CoC to consider raising Interim Finance of Rs. 80 lakhs is required to meet the cost of CIRP. The members of the CoC agreed to put to vote a resolution approving Interim Finance of Rs. 65 lakhs by way of funding by the members of the CoC to be contributed by all CoC members in the ratio of their voting share and was approved by CoC with 36.43 voting shares.

2.3 In the third meeting of CoC held on 31.01.2020 the CoC noted that due to reconstitution of CoC, the contribution by members towards interim finance should be recalculated as per revised constituted CoC constituted on 27.01.2020. The new bank account was opened with ICICI Bank for depositing payment toward the approved interim finance. Only one member contributed a sum of Rs. 40,25,258/- towards the Interim Finance. On 22.02.2020 and 04.03.2020 the applicant sent an email to members of CoC requesting to release respective shares. In the fourth meeting on 06.03.2020 the applicant apprised the members of CoC that out of 65 lakhs only amount of Rs. 19,53,326/- still remains to be paid and proposed an agenda for approval to raise additional interim finance of Rs. 47.75 lakhs which was put to e-voting by CoC members from 08.03.2020 to 09.03.2020

and got approved with 69.79% vote share. Thereafter, only partial payments were received.

2.4 In the fifth meeting held on 26.05.2020, Rs. 54,25,092/- remained undisbursed by members of CoC. The applicant proposed an agenda for approving raising of additional interim finance of Rs.33.98 lakhs for which e-voting was held from 29.05.2020 to 31.05.2020, only 17.49% vote share was gathered. In the 6th meeting held on 18.06.2020, the applicant proposed raising additional interim finance of Rs.36.59 lakhs which was put to e-voting from 20.06.2020 to 22.06.2020 and 60.70% vote share was gathered. The applicant utilized the funds pressing payments, arrangements etc. for the smooth conduct of CIRP.

2.5 By email dated 18.07.2020 applicant highlighted the issue to the members to contribute their respective share. However, respondents failed to contribute the share. The aggregate amount as on 10.08.2020 to be disbursed by respondent No.1 to 364 is as under:-

S R. No.	CoC Member	Amount Due
1	Real Estate Allottees	Rs.7,03,721
2	Deposit Holders (Investors)	Rs.9,69,921
	Total	Rs.16,73,642

3. The reply was filed vide diary No.00845/4 dated 02.08.2022 by Respondent No.46 wherein it is stated that firstly, the said amount of Rs. 1,12,75,000 raised by RP as Interim finance is unrealistic and exorbitant as he has failed to give details and breakup for which the purported interim finance is required.

Secondly, in spite of being aware of the weak financial health of corporate debtor, RP continues to engage services of professionals/advisors at an apparently inflated rate for the corporate debtor and high and disproportionate fees are being paid to various third parties. IP is obliged under section 208(2)(a) of the Insolvency and Bankruptcy Code, 2016 to take reasonable care and diligence while performing his duties, including incurring expenses. Banks have approved the resolution for raising Interim Finance amounting to Rs. 65 lakhs by way of funding in 2nd CoC and after that by Rs. 47.75 lakhs. The CoC members have failed to consider the opinion of numerous homebuyers on the point of raising interim finance as authorised representative of allottees/homebuyers. As per the provisions of Insolvency and Bankruptcy Code the authorised representative who acts/votes on behalf of financial creditors must file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith and to ensure that the appropriate voting instructions of the financial creditor whom he represents is correctly recorded by the resolution professional. Thus, Resolution Professional be put to strict proof to place on record that the authorised representative has acted in accordance with the prior voting instructions received from such homebuyers/financial creditors if any.

4. We have pursued the records available and heard the learned counsel for Petitioner as well as Respondent No. 46. We note from the Minutes of the second meeting of CoC, held on 14. 01.2020, that the Committee of Creditors including the Banks and Financial Institutions were represented as follows:-

Sr. No.	Name of the Financial Creditor(s)	Represented by	Mode of Presence
1.	Edelweiss Assets Reconstruction Company	Mr. Purushottam Agarwal	Video Conferencing

	Limited		
2.	Edelweiss Assets Reconstruction Company Limited	Ms. Ruchi Shah	Video Conferencing
3.	Punjab & Sind Bank	Mr. Arun Patil	In person

And, in the same CoC meeting, voting was carried out on the item 'Approval to raise Interim Finance for CIRP, the result being as under:-

Voting Item	Voting Item	Voting % required	Assenting Voting % achieved	Decision	Annexure
3.	Approval to raise Interim Finance for CIRP	66%	96.43%	Passed	Annexure 3

Subsequently, in the fourth meeting of CoC held on 06.03.2020 the Committee of Creditors including the Banks and Financial Institutions and Authorized Representative (AR) of Allottees & Deposit Holders were represented as follows:-

1. Banks and Financial Institutions

Sr. No.	Name of the Financial Creditor(s)	Represented by	Mode of Presence
1.	Edelweiss Assets Reconstruction Company Limited	Ms. Ruchi Shah	Video Conferencing
2.	Punjab & Sind Bank	Mr. Arun Patil	In person

2. Authorized Representative (AR) of Allottees & Deposit Holders

Sr. No.	Name of the Financial Creditor(s)	Represented by	Mode of Presence
1.	Mr. Yogesh Gupta	Allotees & Deposit Holders (Investors)	In person

We also note that in the said meeting, the CoC was reconstituted as below :

Sr. No.	Financial Creditor(s)	Count	Claimed Amount (In Crores)	Provisionally Admitted Amount (In Crores)	Voting Share (%)
1.	Creditors in Class	666	156.45	141.26	30.21%
1.1	Allottes	138	42.09	32.61	6.97%
1.2	Deposit Holders (Investors)	528	114.36	108.65	23.24%
2	Banks/Financial Institutions	2	326.74	326.34	69.79%
2.1	Edelweiss Asset Reconstruction Company Limited	1	282.16	282.16	60.34%
2.2	Punjab & Sind Bank	1	44.58	44.18	9.45%
	Total	668	483.19	467.60	100%

Further, in the said meeting, the Chairperson apprised the CoC that till 04th March 2020, INR 45,48,976 had been received as interim finance. Interim finance of INR 19,53,326 was yet to be received from Punjab & Sind Bank (PSB), certain allottees

& deposit holders (Investors). Summary of the interim finance received was as follows:

Class of Creditors	Interim Finance Due	Interim Finance received	Pending Interim Finance
Edelweiss ARC	40,25,258	40,25,258	–
Punjab & Sind Bank	6,35,974	–	6,35,974
Allottees	4,14,479	439	4,14,040
Deposit Holders (Investors)	14,24,290	5,23,279	9,03,312
Total	65,00,000	45,48,976	19,53,326

Further, the Chairperson requested **PSB** to pay their share of the dues and also requested the AR to approach the class of creditors for payment of pending dues. **PSB** confirmed that they will pay their share of the interim finance by the end of week next.

It is also noted that the CoC discussed the Agenda to approve the Additional Interim Finance of INR 47.75 lacs for CIRP Period.

The Chairperson apprised the members of CoC that CoC had approved the interim finance of IN 65 lacs out of which ~INR 45.48 lacs have been received till 04th March 2020.

The approval of additional interim finance of INR 47.75 lacs was required to carry out the CIR Process, which would include following:

- Resolution Professional & Support services Fees

- RP legal Advisor cost, Transaction auditor cost, Registered valuers fees, Data room charges or any other expert fees which CoC may decide to appoint during the process.
- Expenses to conduct CoC meeting which would include but not limited to E-Voting, Video recording, CoC venue, Authorized representative fees as per CIRP regulations, video/audio conferencing charges etc.
- Corporate Debtor's employee salaries, statutory audit fees, fees of any statutory/mandatory compliance etc.

After discussion on the requirement of additional interim finance of INR 47.75 lacs, the agenda item was unanimously decided to be put for e-voting. In the 4th meeting of CoC this agenda item on additional Interim Finance was approved with a 69.79% majority.

5. It is seen from the records that the corpus was created and unanimously approved in the meetings of the CoC. The said corpus was created to keep the Corporate Debtor Company as a going concern, to protect and preserve the assets and to meet the costs and expenses incurred in the CIRP. The respondents are members of the reconstituted CoC as mentioned in the minutes of the fourth meeting of the CoC held on 06.03.2020. Further the installments of corpus had been approved and created by the requisite majority of the same reconstituted CoC members. It is seen that there are pending contributions from the Respondents towards the said approved corpus. Keeping in view the urgent need for the funds and in absence of any alternate source of funds for running of the Consolidated CIRP of the Corporate Debtor Company and to keep the Corporate Debtor Company as a going concern, this Bench hereby directs the Respondents to make payments towards their respective share of pending contributions to the corpus as approved by

the CoC within 30 days of this order to enable the Applicant to operate the business of the Corporate Debtor as a going concern and to preserve and protect the assets during the CIRP and meet the costs and expenses incurred during the CIRP of the Corporate Debtor.

6. In the result, the IA No. 546/2020 is disposed of accordingly.

-sd-18.01.2023

(Subrata Kumar Dash)
Member (Technical)

January 18, 2023

SM/TB

-sd-18.01.2023

(Harnam Singh Thakur)
Member (Judicial)