

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 29 of 2019

(Arising out of Order dated 17th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in (IB)-22(PB)/2018)

IN THE MATTER OF:

Capri Global Capital Limited

...Appellant

Vs.

**Value Infracon India Pvt. Ltd.
(Through its Resolution Professional
Mr. Sanjay Kumar Singh) & Anr.**

...Respondents

Present: For Appellant: - Mr. Alok Dhir, Ms. Varsha Banerjee, Mr. Milan Singh Negi, Ms. Juhi Bhambhani and Mr. Kunal Godhwani, Advocates.

**For Respondents:- Mr. Sanjay Kumar Singh, R.P in person.
Mr. Mohd. Azeem, Advocate for RP.**

Mr. Sanjeev Manchanda, Advocate for Madows Vista (Home Buyers).

Mr. Vikas Tiwari and Mr. Neeraj Kr. Gupta, Advocates for R-2.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Appellant- 'Capri Global Capital Limited' one of the 'Financial Creditor' has challenged the order dated 17th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, which reads as follows:

“O R D E R**CA-1131(PB)/2018**

We have heard the arguments on the application CA-1131(PB)/2018 and expect the RP to act in accordance with the agreement dated 19.09.2014 and allocate the voting share to the CoC accordingly. The order is necessitated because other two petitions under section 7 of IBC namely C.P. No. (IB)-770(PB)/2018 & (IB)- 771(PB)/2018 against the other two corporate debtors (sister concern) namely Value Infrabuild India Pvt. Ltd. and Value Infratech India Pvt. Ltd. have also been filed. They have mortgaged 469 and 385 units of their respective property with the Capri Global Capital Limited whereas the corporate debtor in the present case has mortgaged only 30 units of its property. The RP could not have allocated voting share to the Capri Global Capital Limited by taking total loan amount of all the three corporate debtors whereas only one of them is involved in the present proceedings. The CoC would tilt in favour of Capri Global as against the voting share of Home Buyers' if the whole loan amount of three companies is clubbed. We expect the RP to act fairly and dispassionately which is found wanted in the present case because he was aware after the filing of the present application that the aforesaid two matters are pending

consideration before the NCLT as he has given consent to act as IRP even in those two matters. Reply be filed by any other contender. List for further consideration on 15.01.2019.”

2. The grievance of the Appellant is that the ‘Resolution Professional’ has reallocated voting share to the Appellant in the ‘Committee of Creditors’ by considering only the amount disbursed to the Corporate Debtor (and not the amount disbursed to other Co-borrowers) as against the total loan amount which is due and payable by the Corporate Debtor in terms of the Agreement between the parties.

3. The case of the Appellant is that loan Agreement dated 17th September, 2014 was reached and signed whereby a sum of Rs.37.50 Crores was sanctioned to the ‘Corporate Debtor’, ‘Value Infratech India Pvt. Ltd.’ and ‘Value Infrabuild India Pvt. Ltd.’ against which the ‘Corporate Debtor’ as well as ‘Value Infratech India Pvt. Ltd.’ and ‘Value Infrabuild India Pvt. Ltd.’ are jointly and severally liable.

4. The Appellant is aggrieved by the Impugned Order in terms of which the entire claim of Rs. 76,75,46,530/- of the Appellant as initially accepted (upto to the 5th ‘Committee of Creditors’) has been reduced to Rs. 1,86,00,000/- (before the 6th ‘Committee of Creditors’), thereby resulting in reduction of the voting share of the Appellant from 51.55% to 2.35%.

5. Learned counsel for the Appellant submitted that the loan agreement dated 17th September, 2014 having executed between the Appellant, 'Value Infrabuild India Pvt. Ltd.', 'Value Infracon India Private Limited'-(Corporate Debtor) and 'Value Infratech India Pvt. Ltd.' wherein all the 3 entities were Co-borrowers. In terms of Clause 2.4 of the Loan Agreement, 'Value Infracon India Private Limited'- (Corporate Debtor) is jointly and also severally liable to repay all the outstanding dues of the Appellant herein. In terms of the loan agreement dated 17th September, 2014, the Co-borrowers gave a request for disbursal in the name of the 3 Co-borrowers without affecting their joint and several obligations to pay the entire dues.

6. Admittedly, 'Value Infracon India Pvt. Ltd.'- ('Corporate Debtor') defaulted in repayment of outstanding dues of the Appellant, the Appellant has issued notice under Section 13(2) of the 'SARFAESI Act, 2002' on 25th February, 2017. The liability of the Appellant qua the 'Corporate Debtor' admittedly cannot be jointly calculated with two other entities namely— 'Value Infratech India Pvt. Ltd.' and 'Value Infrabuild India Pvt. Ltd.', they not being the 'Corporate Debtor' in the present case.

7. The 'Corporate Debtor'- ('Value Infracon India Pvt. Ltd.') facing separately triggered application under Section 7, the Appellant cannot claim the dues which is payable by other Co-borrowers, the other

'Corporate Debtor' in the 'Resolution Process' against the present 'Corporate Debtor'.

8. In this connection, one may notice the term loan facility for Rs. 37,50,00,000/- which were disbursed by the Appellant. On receipt of such loan by 'Value Infrabuild India Pvt. Ltd.', 'Value Infracon India Pvt. Ltd.' and 'Value Infratech India Pvt. Ltd.', they intimated the Appellant by letter dated 19th September, 2014 that the amount of Rs. 37,20,00,000/- be paid by High Value Cheque/ Pay Order/ Account Transfer separately against each name, as extracted hereunder:

19th September, 2014

To,
Capri Global Capital Limited.
 1-B, Court Chambers,
 35, Sir Vithaldas Thackersey Marg,
 New Marine Lines,
 Mumbai - 400 020

Kind Attention: Mr. Ashok Agrawal

Dear Sir,

Re: Term Loan Facility for Rs. 37,50,00,000/- (Rupees Thirty Seven Crores Fifty Lakhs only) ("Facility")

- This is with reference to the above mentioned Facility, granted to us vide Loan Agreement dated 17th September 2014 ("Loan Agreement").

Please note that we wish to drawdown the Facility to the tune of Rs. 37,20,00,000/- (Rupees Thirty Seven Crores Twenty Lakhs only) under the abovementioned Loan Agreement.

Request you to kindly disburse an amount of Rs. 37,20,00,000/- (Rupees Thirty Seven Crores Twenty Lakhs only) by High Value Cheque / Pay Order / Account Transfer to the below mentioned accounts:

Sr.	Beneficiary Name	Amount	Beneficiary Account
1	Value Infrabuild India Pvt. Ltd.	29,55,00,000 /-	Account No.: 914020029452628 Bank Name: Axis Bank Branch: New Marine Lines, Mumbai Address: Ground Floor, Harchandrai House, 81, Queen's Rd, Marine Lines, Mumbai - 400 002 IFSC Code: UTIB0000233
2	Value Infracon India Pvt. Ltd.	1,00,00,000 /-	Account No.: 912020005962978 Bank Name: Axis Bank Branch: New Marine Lines, Mumbai Address: Ground Floor, Harchandrai House, 81, Queen's Rd, Marine Lines, Mumbai - 400 002 IFSC Code: UTIB0000233
3	Value Infratech India Pvt. Ltd.	6,65,00,000/-	Account No.: 912020063975800 Bank Name: Axis Bank Branch: New Marine Lines, Mumbai Address: Ground Floor, Harchandrai House, 81, Queen's Rd, Marine Lines, Mumbai - 400 002 IFSC Code: UTIB0000233
Total		37,20,00,000 /-	

Thanking you,
 For,
Value Infrabuild India Pvt. Ltd. **Value Infracon India Pvt. Ltd.** **Value Infratech India Pvt. Ltd.**
 For Value Infrabuild India Pvt. Ltd. For VALUE INFRACON INDIA PVT. LTD. For Value Infratech India Pvt. Ltd.

Mr. Rajeev Bhalia Mr. Sagor Mehta Mrs. Reeva Gujral
 Director Director Director

Value Infracon India Pvt. Ltd. Value Infratech India Pvt. Ltd.

Corporate Office: H-198, Sector-63, Noida-201301, (I.P.), India. Phone: +91-120-4630463, Fax: +91-120-4630400, E-mail: info@valueinfra.com
 Registered Office: 715, Narsing House, 21 K.G. Marg, Connaught Place, New Delhi-110001, India. Phone: +91-11-20730360, Fax: +91-11-41531210. Website: www.valueinfra.com

9. The amount having been separately disbursed as per request of three different entities who signed jointly, it is clear that individual entities like 'Value Infrabuild India Pvt. Ltd.' received a sum of Rs. 29,55,00,000/-; 'Value Infracon India Pvt. Ltd.' received a sum of Rs. 1,00,00,000/- and 'Value Infratech India Pvt. Ltd.' received a sum of Rs. 6,65,00,000/- in their respective Bank Accounts. Having received such amounts separately, the Appellant cannot claim all the payments from the 'Corporate Debtor' pursuant to the Loan Agreement dated 17th September, 2014 whereinafter 19th September, 2014 letter was issued as extracted above.

10. In view of the fact that the three entities were provided amounts separately in their respective Bank Accounts, the Adjudicating Authority rightly held that the Appellant as a 'Financial Creditor' can claim its voting shares based on the amount actually disbursed in favour of 'Value Infracon India Pvt. Ltd.'- ('Corporate Debtor').

11. We find no merit in this appeal. It is accordingly dismissed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member(Judicial)

NEW DELHI
14th May, 2019
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