

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

(IB)- 001 (ND)/2018

In the matter of:

Hot Zings Pvt. Ltd.

..... Operational Creditor

Versus

Alfren Ltd., New Delhi

..... Corporate Debtor

PART I (For Preliminary Rounds)

PETITIONER – HOT ZINGS

RESPONDENT – ALFREN LIMITED

1. KingJet Ltd. (“**Kingjet**”) is a public limited company which holds 4 subsidiaries. As of April 2016, the annual turnover of the company was Rs 10 Billion. The registered office of the firm is in Delhi, India. Kingjet is also one of the largest exporters of the crude oil in many foreign countries. The shares of Kingjet are listed on Bombay Stock Exchange and on National Stock Exchange. It has raised an amount of Rs. 500 Crore divided into 5,00,00,000 fully paid up equity shares of Rs. 100/- each.
2. Alfren Ltd. (“**Alfren**”) is the third largest manufacturer of Automobiles in Asia. The registered office of the company is in Delhi. Alfren Ltd. has a very good reputation for manufacturing cars for the largely populated middle class of the country. The company has three manufacturing plants in Bangalore, Kanpur, and Hyderabad. All manufacturing plants have a combined production capacity of 1,940,000 vehicles annually. Each plant is spread over at least 500 Acres. Out of 5 directors of the company, 4 also happen to be the directors of Kingjet Ltd. Since its inception, the company has faced many issues with its labor force. The Apex Court of the country in the year 2015 fined the company for manufacturing defected engines which emitted a high amount of lead. Since, then the company has taken significant steps to strengthen accountability, enhance transparency and build efficient cars.
3. Apart from Alfren, Kingjet has three more subsidiaries namely; Burrens Pvt. Ltd., Starwood Petroleum Ltd. and Intercontinental Shipping Ltd. Burrens Ltd. is a major player in the ‘Taxi’ Industry. The industry is famous for providing the service through a famous mobile application. The company is also famous for its reliability and cheap prices all over the country. The company was established in 2010 and has taken the financial assistance of Rs. 500 Cr. from Pramod Bank. The bank has a charge over the substantial number of cars of the company. Apart from this, Lenden Bank has given a loan of Rs. 150 Crore for working capital assistance.

4. Starwood Petroleum is a Mumbai based company. The core business of this company is petrochemical, refining, and gas- related operations. It is ranked 15th among the top 100 Global Energy Companies in 2016. Starwood Petroleum, in 2012, announced India's 2nd biggest gas discovery. Intercontinental Shipping Ltd. is set up in Mauritius which has an established fleet of 400 container vessels with an intake capacity of circa 2 million TEU. The global sailing schedules cover 128 routes, calling at 300 ports, allowing it to deliver the cargo almost all around the globe.
5. The shares of Alfren are also listed on Bombay Stock Exchange and National Stock Exchange. Alfren, on 1st April 2016, issued 750,000 debentures of worth Rs. 100 each at 15% interest annually. PESA Ltd., a construction company is the biggest debenture holder of the company. The maturity dates of these debentures are on 31st January 2019. The authorized capital of the company is Rs. 80,000,000 divided into 1,600,000 equity shares of Rs. 50/- each. The issued capital of the company is Rs. 50,000,000/- divided into 1,000,000 equity shares of worth Rs 50 each. Although, Alfren till date has only called Rs. 30 per share.
6. Alfren has a corporate office in Mumbai near Nariman Point. The company also has many high worth plant and machinery. Seeing the high increase in demand in the NCR region the company wanted to set up another plant near Gurgaon for which the company took a loan from Pramod Bank of Rs. 271 Crores. Pramod Bank has a very good relationship with the company and has generously provided huge unsecured loans to the company in the past. Apart from the plants the company also has 17 safe warehouses all around the country. These warehouses help the company to regulate the demand and supply of various cars and its parts so that they can provide adequate service to their customers. The spaces in warehouses are also given on rent to other automobile companies which make it a self-sufficient profit-making venture.
7. In September 2017, the company found it difficult to meet the demand in the market due to frequent strikes of its labor. After a substantial number of laborers left, the company was compelled to substantially increase the wages of all laborers. In October 2017, the new government took over and within a span of 3 months the government made rules to increase the import duty on the automobile products imported from China. Alfren used to import automobile products from China-based Company, Nanjing Automobile Ltd. These products were essential for manufacturing the company's bestselling cars. Hence, the company took a loan from Lenden Bank of Rs. 150 Crore to meet the expenses incurred in import duty and other requirements. The company soon, after analyzing the market conditions thought of establishing a plant to produce those automobile parts within the country which would decrease the production cost. The sale of such products was only limited to Alfren.
8. Alfren took a loan of Rs. 200 Crores from a consortium of banks including Pramod Bank, Lenden Bank and Bank of Borrowers. The consortium of banks took charge of the plants and machinery of Alfren situated in Bengaluru.
9. Burrens Ltd. and Starwood Petroleum Pvt. Ltd. were already suffering from a high amount of non-performing assets ("NPA"). RBI, on the recommendation of its Internal Advisory Committee, released a list of accounts that have borrowed more than 400 Cr. and have not paid at least 60% of it. The list released included names of Burrens and Starwood Petroleum. As per the newly released notification,

RBI in the year 2019 will make it compulsory for the banks to initiate corporate insolvency process against these accounts. Intercontinental Shipping was also incurring losses from past 3 years and was warned by its creditors time and again to pay its dues.

- 10.** Alfren in December 2017 took a small, well equipped racing track with all its logistics from Fast and Furious Co. Pvt. Ltd. on rent of Rs. 25 Lakhs annually. The objective of the purchase was to test Alfren's new high-end racing cars but entry to other sports automobile was also permitted after a payment of stipulated fees. Alfren entered into a contract with Kingjet which was the only company responsible for supplying the fuel to all the cars of Alfren and cars coming to the track for testing or for racing purposes. Kingjet found it a lucrative way to enter into this line of business. As per the contract, Kingjet paid only Rs. 5 Crores to Alfren for giving an exclusive license to supply for a period of 35 years the actual amount was speculated to be much higher. As soon as the shareholders and creditors came to know about the contract, some of them raised the objection that the actual price of giving such exclusive license must be much higher than the current price of the contract. Although, there was no further action regarding this.
- 11.** Alfren apart from its many assets also has a commercial tower, 'Jet circle' situated in prime location of Dehradun. This place is given on a lofty amount of rent to many small enterprises. As per the rental agreement between the parties, the amount of rent is to be paid monthly; also, onetime security will be given to the property owner by the tenant. This security has to be refunded by the owner when the tenant vacates. As per the contract, any dispute between the tenant and the landlord will first be referred to Arbitration. The minimum rent received from the smallest area of the tower is Rs. 10 Lakhs with an increase of 10% annually. The security amount is equivalent to the rents for two months.
- 12.** The two tenants of Jet Circle include Pramod Bank and Hot Zings Restaurant. However, the possession of these two tenants was taken back on 25th February 2018. Even after getting the possession back, Alfren did not return the security amount to the respective companies. Pramod Bank and Hot Zings expressed their concern about non-payment of the security amount through various emails and letters. They time and again requested the board of directors of Alfren in their various meetings to consider the matter critically; otherwise, the company will have to bear the consequences. The Board of Directors did not pay much attention towards the demand of its creditor.
- 13.** Meanwhile, Government vide notification said that they will discontinue tax exemptions and other benefits given to the oil & gas companies from 1st April 2019. Contending, that this move is aimed at helping nations meet their target of curbing greenhouse gas emissions as a part of 2015 Paris Climate agreement.
- 14.** Alfren on 18th March 2018 made a default on one of its EMI due to Pramod Bank. On 21st March, Hot Zings Pvt. Ltd. filed an application under Insolvency and Bankruptcy Code against Alfren Ltd. After much persuasion of their legal advisors, Alfren on 19th March lodged a caveat in NCLT, Delhi.

PART II (Quarter Finals)

PETITIONER – RESOLUTION PROFESSIONAL

RESPONDENT – COMMITTEE OF CREDITORS

15. NCLT admitted the application and declared the moratorium. After 3 days of admission, an Interim Resolution Professional (IRP) was appointed as proposed by the applicants. The appointed IRP, Mr. Ramesh Singh took over as per IBC and CIRP Regulations. Mr. Ramesh Singh after assessing the viability of the business through various books of accounts and after performing other statutory duties received claims submitted by the creditors and made a list of the various dues. He further constituted the committee of creditors. Apart from statutory obligations, Mr. Ramesh Singh examined the audit reports and other accounting books of the company.

LENDER	CLAIM (IN CRORE)
Pramod Bank	371.50
Lenden Bank	200
Bank of Borrowers	50
Techno Electric Suppliers	2.80
IFBI Bank	17
Hot Zings	0.50
URJAA Suppliers (electricity providers)	1.24
SESMA	10
Showroom Owners (Bonus promised by the company)	15
Nanjing Automobile	1.50
Global Airlines Ltd.	135

16. The first meeting of Committee of Creditors was duly held and Mr. Ramesh Singh was appointed as the resolution professional (RP) by complying all the rules and regulations. After the appointment, Mr. Ramesh Singh appointed two registered valuers for the company. He started with the valuation of the company and its assets.

- 17.** Soon after that, the RP realized that some of the machinery requires servicing and proper overhauling so that the efficiency could be maintained. He, in a haste called upon some third party mechanics, Rolcon Engineers Pvt. Ltd. who said that some of the parts of machinery are not in working condition and must be changed. Resolution professional without further inquiry got the parts changed and paid Rs. 75 Lakhs to Rolcon Engineers.
- 18.** Techno Electric Suppliers Pvt. Ltd. from whom this machinery was purchased and full payment was yet to be made objected that they were looking after the machinery at regular intervals and were doing the needful repairs. They further stated that there was no immediate requirement for changing these parts especially when the company was under financial stress. According to them, this was mere wastage of money which should be stopped in this situation. Other creditors alleged this action is *ultra vires*
- 19.** Mr. Ramesh Singh prepared the Information Memorandum and invited prospective lenders, investors, etc. to put forward their expression of interest to subscribe to the Information Memorandum. To these, 6 prospective investors came forward.
- 20.** One of the investors was a director of Alfren and of Relio Corporation Ltd., the largest manufacturer of tyre and Rubber Company in Asia. The company has a major interest in automobile industry which is evident through the amount company has invested in purchasing the shares of different automobile companies. Relio Corp. considered this investment as a very profitable venture as the location of the machines of Alfren suited the business model of the investor company.

Part III (Semi-Finals & Finals)

PETITIONER – RESOLUTION APPLICANTS

RESPONDENT – COMMITTEE OF CREDITORS/RP

Resolution Applicants for this COC are as follows:

- 21.** Neetal Info comm. Limited (“NIL”), a subsidiary of Meetal Industries Ltd (‘MIL”), is the only private player with Broadband Wireless Access spectrum in all the 22 telecom circles of India. NIL plans to provide reliable (5th generation) fast internet connectivity, rich communication services, and rich digital services on a Pan India basis. The authorized share capital of the company consists of Rs. 950,00,00,000 (Nine Hundred Fifty Crores Rupees only). NIL also has two mergers with giant telecom company operating in USA and UK. NIL is looking for favorable business expansion in India since past 2 years where it is planning to invest a huge lump sum.
- 22.** Pinnacle Oil Ltd (“POL”) is the Public listed company having total revenue of USD 19.2 billion. It mainly deals in an upstream and downstream petroleum product. POI has three subsidiary companies dealing in logistics, manufacturing, and packaging. In the last financial year, one of the plants of (POL) was destroyed due to failure in machinery which led to the huge incident of fire accident due to which the company faced trouble in its business. POL also has a robust import-export business and various other kinds of business tie-ups with foreign companies.
- 23.** Cabana Ltd. (“CL”) is the conglomerate having its operation across the globe. CL acquires an asset of USD 50 billion. CL has its stock listed in the stock exchange of UK, Singapore, and India. It has approx. 700,000 employees in total. CL deals in Airlines, Chemicals, Electrical distribution, Information Technology, and Hotels. CL is also the recipient of the Best Multidisciplinary Company of India, 2017.
- 24.** Combat Technologies Ltd. (“CTL”) is the USA based thermal plants manufacturing company. Company total asset worth more than USD 60 Billion and this CTL has some big business clients based in Russia and China which add up to 60% of the total business of the company. CTL from past few years was trying to invest in Indian Market, under the Make in India concept CTL also has a Joint venture with MIL. In which majority share are held by CTL.

Part IV (Exclusive for Finals)

PETITIONER – COMMITTEE OF CREDITORS/RP

RESPONDENT – CREDITORS OF ALFREN

25. Finally, the resolution applicants presented the resolution plan in a meeting of the committee of creditors which is duly convened by the resolution professional. The COC being very skeptical about the plans did not consider any plan fit for the revival of the company. However, the resolution professional sent the plan to NCLT for its assent even though the plan was approved only by 66.67% of the COC, explaining that such action is within its powers and in the best interest of the company. Rest of the creditors raised objections against the plan on various grounds.

ISSUES:

1. Whether the combined application filed by Hot Zings Pvt. Ltd is admissible before the Hon'ble Tribunal without exhausting the other remedy?
2. Whether the action undertaken by Mr. Ramesh Singh was beyond the ambit of his prescribed duty?
3. Whether Mr. Ramesh Singh was rightful in denying the access of Information Memorandum to Relio Crop.? Does Relio Corp. can avail any remedy against the RP?
4. Whether the plan passed by 66.67% vote constitutes a valid majority under the ambit of IBC, 2016?

Note:

1. **Participants are free to frame additional issues and sub-issues as per their understanding but no extra time will be provided for arguments in oral rounds.**
2. **Participant while making the Resolution Plan are requested to strictly adhere to the data provided in the Moot problem only.**