

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.305

IA/348(AHM)2024 in CP(IB)/236(AHM)2021

Order under Section 60(5) of IBC,2016 r/w Rule 11 of NCLT Rule,2016

IN THE MATTER OF:

Shree Yash Stainless Private Limited

.....Applicant

Vs

Mr.Udayraj Patwardhan RP of Nami Steel Private Limited &
Anr.

.....Respondent

Order delivered on: 15/05/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of the order.

The order is pronounced in the open court, vide separate sheet.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)
IA NO.348 of 2024
IN
CP (IB) 236/NCLT/AHM/2021**

In the matter of

Shree Yash Stainless Private Limited

.... Applicant

Versus

Mr. Udayraj Patwardhan,
RP of Nami Steels Private Limited and Anr.

.... Respondents

Order pronounced on 15.05.2024

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

Shree Yash Stainless Private Limited
Through its authorised signatory
Mr. Jayantilal Pukhraj Sanghvi
Having registered office at, 14/1,
Meher Behram Building,
7th Khetwadi Lane,
Mumbai 400 004.

.... Applicant

Versus

- 1. Mr. Udayraj Patwardhan,**
Resolution Professional of Nami Steels Private Limited
Having address at,
Naman Midtown, B Wing,
1106, 11th Floor, B/h Kamgar Kala Kendra,
Senapati Bapat Marg,
Elphinstone West, Mumbai - 400 013.
- 2. Committee of Creditors of Nami Steels Private Limited**
through, Omkara Assets Reconstruction Pvt Ltd
No.9, M.P. Nagar First Street,
Kongu Nagar Extension, Coimbatore,
Tirpur, Tamil Nadu, India, 641 607

...Respondents

Present:

For the Applicant : Mr. Nilesh Udernani, Adv.
For the Respondent : Ms. Natasha Shah, Adv for R-2
RP in person : Mr. Udayraj Patwardhan
For the RP : Mr. Vishal Dave, Adv. a/w Mr. Nipun
Singhvi, Adv. & Mr. Mayur Jugtawat, Adv.

JUDGEMENT

1. CIRP was initiated under Section 7 of the Insolvency and Bankruptcy Code on application filed by one of its Financial Creditors i.e. Saraswat Co-operative Bank Limited bearing no. CP (IB) 236 of 2021, in which applicant filed resolution plan on 28.10.2022.
2. This application is filed under Sec 60(5) of IBC 2016 seeking refund of EMD and participation (in bid) deposit by the RP. His resolution plan was rejected. On cancellation of the Resolution process, the same was refunded on 30.06.2023. However on 19.06.2023, the RP published a new form G, pursuant to which he submitted its expression of interest vide email dated 07.07.2023 along with a participation deposit of Rs 1 lakh. The RP directed the applicant that as per RFRP an amount of Rs 50 lakhs was to be deposited which was complied by him on 05.09.2023 in addition to the Rs 1 lakh at the time of expression of interest. The RFRP (page 129) states that the EMD submitted shall be returned/refunded to the remaining unsuccessful Resolution Applicants in accordance with the terms provided in the RFRP.
3. The RP communicated on 05.12.2023 by email to the applicant that the modified Resolution Plan submitted by the applicant was placed before the 12th meeting of COC held on 02.12.2023 and the plan was not considered of the applicant and liquidation process was approved. The applicant raised concerns vide his email dated 16.12.2023

that he was disappointed on the rejection of a substantially revised/modified Resolution Plan for the Corporate Debtor and the debt was assigned to M/s Omkara Assets Reconstruction Pvt Ltd., a new member of COC. The applicant had pointed out various irregularities after admission of the Corporate Debtor into CIRP on 16.08.2022 and dragged the process till 05.12.2023 at the cost of the applicant and other Resolution Applicants. He also sought refund of EMI and the participating deposit from the RP and COC, however he had not responded and refunded the amount.

4. He states that this is illegal and unlawful of withholding the amount and inspite of no provision in Sub regulation (4) of Regulation 36B of the IBBI 2016 that the request for Resolution Plans shall not require any non-refundable deposit for submission of or along with resolution plan, demand and non-refund of deposits made is illegal and unlawful. The applicant has prayed for directions to the RP to refund the Earnest Money Deposit (EMD) of Rs 50 lakhs along with Refundable Process Participation Deposit (Refundable PPD) along with interest.
5. The applicant has quoted two judgments in this regard on return of EMD namely:
 - i. Bright Steel Processors Vs Lohaa Ispat Limited by NCLT Mumbai in MA 1064 of 2018 in CPIB 724/MB/2017; and
 - ii. Jayaram Chowdhary V Venkata Sivakumar, Liquidator of M/s Jeypore Sugar Co Limited by

NCLT, Chennai bench in IA 829/2020 in CP
1307/IB/2018.

6. The respondent has in its reply while denying the allegations, has stated that there are prevailing disputes that have arisen between the parties hereto are absolutely independent transactions and in order to pressurize the respondents herein, apart from other misconducts have withheld the amount of Rs 51 lakhs which is refundable as per the clauses of the RFRP as per settled principles of law. The respondent has also stated that they had done the processing of resolution plans strictly in terms of the guidelines of IBC 2016.
7. There seems to be certain other business conducting or contract agreement between the RP and the applicant which are beyond the scope of this application which merely seeks refund of the EMD and Participation Deposits of Rs 51 lakhs deposited as part of Resolution Plan submitted. There are certain parallel criminal or other proceedings initiated which are not to be considered by this Tribunal which were not brought to us in any stage and this application is restricted to refund of the amount due which are not concerned with the reason why the amount was deposited which is the Resolution Plan which was rejected and the liquidation of Corporate Debtor was recommended by COC which was approved by this Tribunal on 23.04.2024.
8. We have perused the judgments given by the applicant in support of his prayers. The process of inviting Resolution

Plans, RFRP and EOI submitted are also seen. The applicant had not stepped back from his submitting the EMD and Participatory deposit as per requirement till his plan was rejected.

9. In view of the above submissions and documents, the Liquidator who is now appointed is liable to refund the amount.
10. Hence, we pass the following order:

ORDER

- I. IA No. 348 of 2024 in CP(IB) No.236 of 2021 is allowed.
- II. The Liquidator to immediately refund the EMD and Participatory deposit amount of Rs 51 lakhs with interest at 12% from due date of refund to the applicant.
- III. Also the frivolous and non-maintainable contention of the erstwhile RP is viewed seriously and he is directed to deposit a penalty of Rs.1 lakh to the Prime Ministers relief fund within 15 days of this order with copy of compliance to the liquidator.

-sd-
DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-sd-
CHITRA HANKARE
MEMBER (JUDICIAL)