

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

COURT – IV

10.

**IA-3351(MB)2024 IN
C.P. (IB)/1057(MB)2021**

CORAM:

MS. ANU JAGMOHAN SINGH
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **03.07.2024**

NAME OF THE PARTIES: Sterling Enamelled Wires Private Limited
Vs.
Nik -San Engineering Company Limited

SECTION: 9, 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

ORDER

IA-3351(MB)2024

1. Mr. Gandhar Raikar a/w Mr. Kunal P Vaishnav, Ld. Counsel for the Applicant present. Mr. Prakhar Tandon i/b Adv. Agam H Maloo, Ld. Counsel for the Respondent present.
2. This is an application filed by the Applicant on 21.06.2024 u/s. 60(5)(a) r/w 30 & 31 of the I & B Code, 2016 r/w Rule 11 of NCLT Rules, 2016 seeking following reliefs:
 - a) *“Recall the order dated December 6, 2023 passed by this Hon’ble Tribunal in IA No.5507/MB/2023 directing the IRP to consider the bid of Aesthetic Stampings & Laminations Ltd;*
 - b) *Restore IA No.4903/2023 and approve the Resolution Plan submitted by the Applicant herein and direct the IRP to act in terms of the LOI dated September 26, 2023;*
 - c) *In the alternative, direct the IRP to give fair opportunity to the Applicant to match the bid of Aesthetic Stampings & Laminations Ltd.;*
 - d) *Pending the hearing and final disposal of this Application, the Hon’ble Tribunal be pleased to this Hon’ble Tribunal be pleased restrain IRP to implement the resolution plan of the Aesthetic Stampings & Laminations Ltd and taking any steps in furtherance of the CIRP process.*

e) *Pass any such other and further orders that this Hon'ble Tribunal deems fit and proper in the facts of the present case.*

f) *For Costs.*”

3. Vide order dated 06.12.2023 in IA-4997/2023 this Bench had directed to include the Applicant therein as member of the CoC. The Resolution plan filed in IA-4903/2023 was remanded back to the CoC for reconsideration in view of direction contained in IA-4997/2023. As the plan was remanded back, the Bench also disposed of IA-5507/2023 by directing that the CoC consider the proposal of the Applicant therein on merit and take a decision as per law.
4. In view of the above orders, the CoC was reconstituted and conducted the 15th CoC meeting on 26.02.2024 for e-voting of the resolution plan. The Resolution Plan submitted by the Aesthetic Stampings & laminations Ltd. was approved by the CoC and the Resolution Plan submitted by the Applicant, for which LOI was already issued by the erstwhile CoC (before reconstitution), was rejected by the reconstituted CoC. The Applicant is hereby challenging the rejection order of the CoC Therefore, the present IA has been filed for recalling orders of the Bench dated 06.12.2023.
5. Ld. Counsel for the RP submits that as per the directions of this Bench vide order dated 06.12.2023 passed in IA-4997/2023 and IA No.5507/MB/2023, the CoC was reconstituted. After reconstitution, the CoC considered all the plans afresh and has taken a decision with 100% voting approving the plan of Aesthetic Stampings & laminations Ltd. and rejecting the plan of the Applicant. The Applicant has no right to question the commercial wisdom of the CoC in approving the plan. Hence, there is no valid ground for recalling those orders. The RP has complied the orders of the Bench. In view of the above, IA may be rejected.
6. Heard Ld. Counsel for both the parties and perused the records.
7. On 06.12.2023, this Bench passed an order directing that the Applicant Unsecured Financial Creditor be included as a member of the CoC. In the said order no directions were given to the RP to consider the bid of any PRA

(as claimed by the Applicant in this IA in prayer clause 'a'). The said order gained finality as no appeal was filed against it. After reconstitution, the CoC in their commercial wisdom have approved the resolution plan of Aesthetic Stampings & laminations Ltd. and rejected the plan of the Applicant. The law is well settled that the Adjudicating Authority cannot interfere in the commercial wisdom of the CoC. Therefore, this Bench is not inclined to interfere into the decision of the CoC in approving the plan. The prayers sought for by the Applicant therefore cannot be granted. Accordingly, IA-3351(MB)2024 is devoid on merits and **dismissed**.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)