

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-COURT-V**

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of the National Company Law Tribunal Rules, 2016

I.A No. 5572 of 2023

IN

CP (IB) No. 310 of 2022

Filed by

Abhijit Realtor & Infraventures Pvt. Ltd.

And

Entertainment Network (India) Ltd. ... Applicants/PRA

Versus

1. Mr. Rohit Mehra

(Resolution Professional of

Reliance Broadcast Networks Ltd.)

...Respondent No.1/RP

2. Committee of Creditor

(Reliance Broadcast Network Ltd.)

... Respondent No.2/COC

IN THE MATTER BETWEEN

IDBI Trusteeship Services Ltd.

.....Financial Creditor

Versus

Reliance Broadcast Network Ltd.

.....Corporate Debtor

Order Dated: 06.05.2024

Coram:

MADHU SINHA

Member (Technical)

REETA KOHLI

Member (Judicial)

Appearance:

For the Applicant: Adv. Rakesh Kumar, Adv Preeti Kashyap, Adv Ankit Sharma, Adv Varun Pandit, Adv Rishabh Arora, Adv Yash Dhawan (VC)

For the Respondent No. 1: Sr. Adv. Mustafa Doctor a/w Adv. Nishant Sogani a/w Adv. Saurabh Bachhawat a/w Adv. Shrishti Agnihotri i/b Chandliok & Mahajan (PH)

For the Respondent No. 2: Adv.Divij Kumar a/w Mr. Varun Tandon (VC)

ORDER

The above IA 5572 of 2023 was filed by the Applicants (**Abhijit Realtor & Infraventures Pvt. Ltd. and Entertainment Network (India) Ltd.**), praying the following reliefs:

- i) *This Hon'ble Tribunal be pleased to allow this application.*
- ii) *This Hon'ble Tribunal be pleased to set aside the alleged decision of the Respondent No. 2 in its meeting held to approve the resolution plan in its entirety, including the decision of Respondent No. 2 allegedly approving the resolution plan of another resolution applicant and allegedly declaring the Applicant as the unsuccessful resolution applicant.*
- iii) *This Hon'ble Tribunal be pleased to pass an order directing Respondent No. 1 to re-commence the entire process for approving resolution plan in the CIRP of the Corporate Debtor*

- iv) *Pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to pass an order restraining the Respondents from undertaking any further steps and actions in respect of the conclusion of CIRP of the Corporate Debtor.*
- v) *Pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to stay the effect, operation and implementation of the alleged decision of Respondent No. 2 in approving the resolution plan of another resolution applicant and rejection of the resolution plan of the applicants*
- vi) *Pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to pass an order directing the Respondents to disclose on oath:*
 - i) *minutes of all meetings of the COC of the Corporate Debtor in which the resolution plan of the Applicants is discussed.*
 - ii) *all steps taken, including the bids received by Respondent No. 1 pursuant to the Process Note issued purportedly under Regulation 39(IA) of the Regulations.*
- vii) *For ad interim and interim reliefs in terms of prayer _to_ above*
- viii) *For costs*
- ix) *For such other and further reliefs as the Hon'ble tribunal deems fit in the facts and circumstances of this case.*

BRIEF FACTS

1. By an order dated 24th February 2023 ("**Admission Order**"), passed by this Hon'ble Adjudicating Authority, CIRP was initiated against the Corporate Debtor under the provisions of the Code and the Respondent

No. 1/RP was appointed as the Interim Resolution Professional (**IRP**) of the Corporate Debtor. Thereafter, IRP constituted the CoC, in accordance with Section 18(c) read with Section 21 of the Code. The IRP was later confirmed as the Resolution Professional by the CoC.

2. Subsequently, Respondent No. 1/RP issued invitations for Expressions of Interest (**EoI**) on 14th April 2023, pursuant to which the Applicants/PRAAs individually submitted their Expression of Interest (**EOI**) on 20th May 2023 and 31st May 2023 respectively.
3. The present Application is filed by Abhijit Realtors & Infraventures Pvt. Ltd. ("**Applicant No. 1**") and Entertainment Network (India) Ltd. ("**Applicant No. 2**") the unsuccessful resolution applicants, against Mr. Rohit Mehra ("**RP**" / "**Respondent No.1**") and against the Committee of Creditors ("**CoC**" / "**Respondent No.2**").
4. It is submitted that vide email dated 10th June 2023, the Respondent No. 1/RP informed the Applicants that their names are included in both the provisional and final lists of Prospective Resolution Applicants (PRAs). Thereafter, on 12th June 2023 the Respondent No. 1 requested the Applicants to give their details so that the access of VDR can be provided. However, the Applicants found that VDR does not contain many details of Corporate Debtor and further discovered that there are significant gaps in the Virtual Data Room (**VDR**), particularly concerning crucial information regarding the trademarks owned by the Corporate Debtor.
5. On 15th June 2023, the Respondent No. 1/RP provided information Memorandum to the Applicants and also published the request for resolution plan (RFRP). Subsequently, the Respondent No. 1 vide email dated 25th June 2023 provided the Applicants the final list of PRAs which contains the names of the Applicants. Thereafter, the Applicants

vide email dated 08th September 2023 submitted their respective Resolution Plan individually to the Respondent No. 1.

6. It is submitted that On 12th October, 2023 Respondent No. 1/RP addressed an email to the Applicants, intimating that in accordance with the RFRP read with Regulation 39(1A) (b) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**Regulations**"), Respondent No.2/ COC had decided to undertake negotiations with the Resolution Applicants on the financial proposal in their respective Resolution Plans by way on an online challenge process to be held on 18th October 2023. Further on 17th October 2023, the Respondent No.1/ RP addressed an email to the Applicants intimating that the date of the challenge process is rescheduled to 27th October 2023 and calling upon the Applicants to submit an undertaking for participation in the said challenge process on or before 26th October 2023. In the said Process Note, the reserve price for participating in the challenge process was fixed at Rs. 240 crores, and in addition, the incremental amount for putting a bid was in multiples of Rs. 10 crores. After realizing that the bid price was kept very high, the Applicants made enquiry with the Respondent No.1/RP and it was learnt that no Resolution Applicant had given a resolution plan of this amount and it was the Respondent No.2/COC who had decided the minimum floor price of the challenge process.
7. Additionally, the Applicants find themselves constrained by industry regulations governing private FM radio operators, overseen by the Ministry of Information and Broadcasting (MIB), wherein such regulations impose limits on market share and station ownership, directly impacting the feasibility of individual bidding strategies of the Applicants. As a result, Applicant No. 1 and 2 realized it couldn't viably retain all 58 radio stations owned by the Corporate Debtor, Therefore, the Applicant Nos. 1 and 2 decided to give the resolution plan in consortium and accordingly intimated the same to Respondent No.

1/RP and vide email dated on 26th October 2023 informed the Respondent no. 1/RP that they want to participate in the challenge process. Consequently, the Respondent No. 1 vide email dated 27th October 2023 provided information to the Applicants for participating in the challenge process of the CIRP of the Corporate Debtor.

8. Amidst these dynamics, the challenge process was commenced on 27th October 2023, wherein the highest bid received in Round 1 was of Rs.241 crores. However, after becoming aware of the discrepancies in bid increments, the Applicants submitted their objections to the RP/Respondent No.1 in response the Respondent no. 1/RP vide email dated 27th October 2023 informed the Applicants that the bidding has been done as per the challenge process note and requested the Applicants to bid for the next round within timelines. Left with no other options the Applicants vide email dated 27th October 2023 submitted their bid for Round 2 for Rs.242 crores. However, the Respondent no 1/ Resolution professional, on the basis of the last bid submitted by the Applicants, in terms of the process note, the Applicants were deemed to have exited the challenge process, since as per clause 7 of the process note, the improved bid in each round has to be in Multiple of Rs. 10 crores and in the event a Resolution Applicant is unable to match or exceed the Threshold Bid Amount for the respective round, they will have an option to put forward their best bid (which may be lower than the Threshold Bid amount for that particular round, but higher than their previous bid submission) and exit the Challenge Process. Accordingly, the Respondent no 1 /RP called upon the Applicants to submit the draft of revised resolution plan as per the highest financial bid submitted by the Applicants in round 2.
9. Pursuant to the above, the Respondent no 1 /RP vide email dated 01stNovember 2023 invited the Applicants for negotiations with the Respondent No. 2 to be conducted on 02nd November 2023 wherein the Applicant submitted its revised offer of Rs.248 crores. Thereafter, on

04th November 2023 the applicants submitted their Resolution plan in consortium.

10. Despite these efforts, Respondent No. 2/COC purportedly favoured another Resolution Applicant and rejected the Applicants' consortium bid. Furthermore, the Applicants discovered that two additional documents were uploaded to the VDR during the challenge process which could significantly impact the Corporate Debtor's asset valuation and, consequently, the bidding dynamics of the Applicants. Therefore, this Application.

SUBMISSIONS OF RESPONDENT NO.1/RP

11. It is submitted that any and all contentions/ averments/ submissions made against the Respondent No. 1/RP in the said Application are denied in their entirety.
12. It is submitted that after following the due challenge process the Plan of the SRA was approved.
13. The Process Note containing the rules of the Challenge Process mechanism was circulated to all the PRAs on 12th October 2023. The challenge process was originally decided to be held on 18th October 2023 however at the request of various RAs including Applicant No.2, the date for conducting challenge process was extended to 27th October 2023. The Challenge Process was conducted on 27th October 2023.
14. It is the case of the Respondent No.1/RP that the present application lacks maintainability, as it is filed at highly belated stage since the after the approval of the resolution plan by the COC in its commercial wisdom. Further the Respondent No. 2/COC approved the resolution

plan submitted by Sapphire Media Limited (“**Successful Resolution Applicant**”/ “**SRA**”/ “**Respondent No. 2**”) by a vote of 88.97% by the CoC. Pursuant to which an Interlocutory Application bearing no. IA 5391 of 2023 (“Plan Approval Application”), has been filed by the Respondent No.1/RP for approval of the Resolution Plan by this Adjudicating Authority which is pending adjudication. The adjudicating authority can either accept or reject the approval application of the Resolution plan solely on compliance with Section 31 of the Code.

15. Further, in the present case, the Applicants have failed to demonstrate any instances of non-compliance with the Approved Resolution Plan as per Section 30(2), therefore, raising of contention by the Applicant at such a belated stage cannot be entertained. Hence the application is a frivolous attempt by the applicant to derail the CIRP process.
16. It is submitted by the Respondent No. 1/RP that it has duly conducted the CIRP Process as it has duly examined and verified all the EOIs and supporting documents received by it from the 22 PRAs and only after examining the documents and satisfying itself that the PRAs meet the eligibility criteria set out in the IEOI (approved by the CoC under Section 25(2)(h) of the Code), the RP issued a provisional list of 19 PRAs which included the SRA.
17. Based on the materials on record submitted by the SRA along with its EOI, the Respondent No.1/RP came to the conclusion that the SRA meets the eligibility criteria at the ‘**group level**’ as per the requirements of the IEOI. Notably, the supporting documents submitted by the SRA pertaining to its eligibility are duly certified by a chartered accountant.
18. In response to the contention of the Applicant that the SRA does not meets the eligibility criteria, It is submitted that the Applicant in order

to compute the eligibility of the SRA, has appointed one “*Sachin Agarwal & Associates, Chartered Accountants*” and has provided a CA certificate which has claimed that it has examined the “financial and public data of the group companies of Sapphire Media Limited as maintained with the ROC” and has certified the net worth (as on 31 March 2022) and average turnover (for FY 2019-2020, 2020-2021 and 2021-22) of 12 companies of the SRA as listed out in the certificate. However, the same cannot be accepted as, neither the Applicant, nor their CA have full details of the entire group of the SRA or the net worth and turnover details of the group. Therefore, the Application is filed on the basis of information culled out by the Applicant/ their Chartered Account from ROC of only 12 companies of the SRA is false and baseless.

19. Further, with regard to the contention of the Applicants to provide the details of bids received by the Respondent No. 1/RP in the bidding process and to show confidential documents/ resolution plans/ net worth certificates etc. of other RAs. It is submitted that the minutes of the CoC and the details of the resolution plans are confidential in nature. The confidential details relating to the CIRP cannot be provided to the Applicants. No RA has a right to insist that it be shown confidential documents/ resolution plans/ net worth certificates etc. of other RAs for their examination. The examination of such documents/ plans etc. is within the sole domain of the RP, the CoC and thereafter this Hon’ble NCLT.
20. It is further submitted that Regulation 36A (11) of the CIRP Regulations prescribes the time period within which any objection to the inclusion or exclusion of a PRA in the provisional list can be made. Provisions of 36A (11) of the CIRP Regulations are reproduced hereunder:

*“Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) maybe made with supporting **documents within five days** from the date of issue of the provisional list.”*

Thus, it is important to note that the Preamble of the Code stresses on a time bound resolution and hence the CIRP of a corporate debtor is a time bound process. Therefore, the legislature and the regulator have set out specific timelines within which the process should be completed, including timelines within which PRAs can raise objections with respect to inclusion or exclusion of a PRA in the provisional list of PRAs basis the eligibility criteria.

21. It is submitted that despite having sufficient time during the process, the Applicants never raised any objection to the eligibility of the SRA nor at the time when the names of the Applicants were included in the provisional list of PRAs but only raised the objection once they have availed all the opportunities offered to them by the RP and CoC through the challenge process to submit their best bid in the resolution plan. Therefore, the objection raised by the Applicants after the approval of the Resolution Plan of SRA by the CoC in their commercial wisdom, is only to derail the time bound process of CIRP.
22. It is submitted that from the date of issuance of the Provisional List of PRAs which was issued **on 10th June 2023 after which more than 6 months had elapsed**, when vide an email dated 16th December 2023, the Applicant raised its first objection regarding the eligibility of the PRAs. In the meanwhile, the entire process for invitation, assessment, negotiation and approval of the resolution plans was completed by the Respondent No.1/RP and Respondent No.2/ CoC but no objection was raised by the Applicants. Moreover, the Applicants made sure that they have availed all the opportunities provided in the negotiation process

wherein they have submitted their bid first for 242 crores and then for 248 crores. Therefore, showing their *malafide intention*.

23. Further it is the case of the Applicants they are relying upon a certificate of chartered accountant dated 11th January 2024. However, the objections were already raised by the Applicants firstly on 16th December 2023 and secondly on 9th January 2024 before this adjudicating authority during the hearing of the objection application (IA 5572 of 2023). This implies that at both the instances the Applicants had no basis to object to the eligibility of the SRA and once the objections were raised, the supporting documents were conveniently arranged by the Applicants from its CA to support its contentions. However, the same is made with false and incomplete information taken from the ROC and computing the net worth of the SRA by including only 12 group companies of the SRA. Therefore, based on the aforementioned points, it is clear that the applicants raised their objections at a significantly delayed stage, especially after the plan had already been approved by the COC, who exercised their commercial wisdom. Furthermore, the presentation of the irrelevant document by the Applicants' CA holds no significance in this context. Therefore, the present Application **must be dismissed**.

SUBMISSION OF RESPONDENT NO. 2/COC

24. The Respondent No.2/CoC denies the contention of the Applicants in toto submitting that letter dated 12th October 2023 was addressed by the Respondent no. 1/RP to all the Proposed Resolution Applicants ("**PRAs**"), whereby the PRAs were apprised that the Committee of Creditors ("**CoC**") of the Corporate Debtor has decided to undertake negotiations with the PRAs on the financial proposal by way of an online challenge Process on 18th October 2023, the rules of which are provided in Annexure I to the aforesaid letter.

25. Further on 17th October 2023, the Respondent No. 1/Resolution Professional apprised the Resolution Applicants that the challenge process is re-scheduled to 27th October 2023. It is opposite to state herein that the challenge process was extended at the request of the Applicants. It is pertinent to mention that between 12th October 2023 till 27th October 2023, that is the commencement of the Challenge Process no clarification on the Challenge process was sought by the Applicants. Clause 1 of Annexure I made it clear that the Request for Resolution Plan dated 15th June 2023 ("**RFRP**") empowers the CoC to negotiate (if required) the terms of such resolution Plan with the relevant Resolution Applicant including but not limited to determining the mechanism of such negotiations and **also request the Resolution Applicants to re-submit their revised proposals on basis of discussions and negotiations.**
26. Further Clause 2 makes it clear that the Challenge Process is an integral part of the overall negotiation undertaken by the CoC with the Resolution Applicants, with the sole aim to maximise the value of the Corporate Debtor. It was further made clear that the Challenge Process supplements the RFRP and Clause 33 sets forth the eligibility criteria to participate, as per which only **the Resolution Applicants who have submitted an undertaking in the format provided in Annexure II,** can participate in the challenge process. Attention of this Hon'ble Tribunal is drawn to the following two essential undertakings from which the Applicants are now trying to wriggle out of.
- a) *The Resolution Applicant has read and understood the terms, conditions and rules specified for Challenge Process as specified in the Challenge Process Note and have no objections to the same.*
- b) *The Resolution Applicant unconditionally and irrevocably accepts the challenge Process Rules.*

The relevant extract of the undertaking by the Eligible Resolution Applicant for the challenge process is as under –

- (a) we have read and understood the terms, conditions and rules specified for Challenge Process as specified in the Challenge Process Note ("Challenge Process Rules") and have no objection to the same;
- (b) we understand that the Challenge Process Rules are part and parcel of the RFRP and non-adherence to the same shall amount to non-compliance of the RFRP;
- (c) we unconditionally and irrevocably accept the Challenge Process Rules;

27. Clause 5 details the manner in which the financial bids are to be submitted in the Challenge Process. To summarise the process, the PRAs were provided with 30 minutes for bidding in each round. The PRAs are to submit their password protected bids/ commercial offers on a pre-formatted form to the Resolution Professional from the email id of their Authorised Representative and for each round the subject of the e-mail should provide the Round No. 1 of the Financial Proposal. **The value submitted by the highest bidder of each round will be disclosed at the end of each round during the meeting to all the participating Resolution Applicants** express their inability to improve their commercial bids. However, after any round the CoC may declare that one more round shall be conducted or that the process be ended with immediate effect.

28. Clause 6 clearly explained that the CoC has set a base price of Rs.240,00,00,000/- for payment to the financial and operational creditors, with the base price of Rs. 2,35,00,00,000/- as the pay out to the secured financial creditors.

29. Clause 7, titled as 'Increment' entailed that

"At the end of each round, the bid with the highest value will be the "Threshold Bid Amount" for the next round. The Resolution Applicant must match or exceed the Threshold Bid amount for the respective round in order to continue

participating in the Challenge Process. Resolution Applicant will have to improve their bid in each round in Multiple of Rs. 10 crores.”

30. The Applicant at paragraph 5(s) at Page 20 of the Application has alleged that the declaration of Rs. 241 crores as the highest bid is not in accordance with the Process Note. As per the Applicant, the aforesaid bid is irregular as the Applicant treats the Rs. 241 crores bid to be an increment, which as per the Applicant was to be done in multiple of Rs. 10 crores.
31. It is submitted that the aforesaid understanding of the Applicant is flawed and completely contrary to the terms of the Process Note. A conjoint reading of Clause 6 and 7 of the Process Note makes it clear that the base price is Rs. 240 crores, thus meaning that bids below the said figure will not be accepted. Clause 7 details the requirement to participate in the next round. It states that the Threshold bid amount for the next round shall be the bid with the highest amount and for the Resolution Applicants to participate in the next round, they will have either to match the threshold bid amount or exceed the same.
32. In the first round the highest bid was for Rs. 241 crores. Thus meaning, in order for the Resolution Applicants to participate in the next round they would have to either match the threshold or exceed its previous bid by an increment of Rs. 10 crores, i.e. Rs. 250 crores. Keeping the aforesaid in mind, the Resolution Professional, vide email dated 27th October 2023 clarified to the Applicants that the bidding has been done as per the Challenge document and in case they wished to participate further, they were required to submit their bids within the defined timelines.
33. In order for the Applicants to further participate, they were required to either match the Threshold Bid Amount of Rs. 241 Crores or exceed its previous bid by an increment of Rs. 10 crores, i.e. Rs. 251 crores. Despite the Challenge Process being self-explanatory and

unambiguous, the Applicants submitted a bid of Rs. 242 crores, which was not in terms of Clause 7 of the Process Note.

34. Clause 7 further provides that in the event a Resolution Applicant is unable to match or exceed the Threshold Bid Amount for the respective round, they will have an option to put forward their best bid (which may be lower than the Threshold Bid amount for that particular round, but higher than their previous bid submission) and exit the Challenge Process. The bid so submitted will be considered the final bid.
35. It is further submitted that Clause 12(a) details the Post Challenge Process actions, whereby upon completion of the challenge process, each Resolution Applicant is required to submit a draft of its Resolution Plan to incorporate the highest bid amount submitted by such Resolution Applicant in the Challenge Process within a period of 24hrs from conclusion of the Challenge Process. No change in the Financial Proposal post the Challenge Process is permitted, unless asked by the CoC, in terms of Clause 12(d). **Further Clause 12(c) makes it clear that no right is created in favour of H1 bidder and the CoC reserves its right to approve any resolution plan which it deems appropriate, irrespective of any financial proposal received.**

(c) Post the Challenge Process, the financial proposal provided in the Challenge Process will be used for scoring the Resolution Plans based on the evaluation matrix. It may be noted that the results of the Challenge Process will provide deeper insight into the value offered by the Resolution Applicants and may guide the CoC's consideration of the plan. However, no right is being created in favour of bidder which emerges H1 in the Challenge Process. The CoC reserves its right to approve any resolution plan which it deems appropriate irrespective of any final financial proposal received.

Clause **12(d)** allows the CoC in its right to conduct another Challenge Process or bilateral negotiations with the Resolution Applicants post the Challenge Process. The said Clause further clarifies that Process

Note shall in no manner limit the right of the CoC to negotiate, evaluate and consider the Resolution Plans in its commercial wisdom.

(d) The CoC reserves its right to conduct another Challenge Process or bilateral negotiations with the Resolution Applicants post the Challenge Process. Nothing in this Note shall deem to limit the right of the CoC to negotiate, evaluate and consider the Resolution Plans in its commercial wisdom.

36. It is submitted that the Applicants did not bid in terms of Clause 7 in the second round and exited the process. Further, it is also an admitted position that the Resolution Applicants were called upon to submit the draft of the revised Resolution Plan. Thereafter, admittedly, **the Applicants were called for discussions with Respondent No. 2 on 02nd November 2023**, wherein the Applicants after thorough reconsideration and with knowledge of all the information (including documents uploaded at VDR during the Challenge Process), **gave a revised offer of Rs. 248 crores on 04th November 2023**. It is pertinent to mention that despite giving an opportunity to Applicants to increase their bid, the Applicants decided to submit the final bid of Rs. 248 crores only. Be that as it may, the Applicants had themselves conveyed their satisfaction with the opportunities provided to them to improve their financial proposal, **as is evident from the 12th Minutes of Meeting dated 06.11.2023**.
37. It is further submitted that the resolution plan of SRA was approved by CoC on the basis of numerous factors and not just financial numbers. Despite their low offer of Rs. 248 crores, the COC still considered the Resolution Plan of the Applicants. The Applicants' Resolution Plan had issues pertaining to gratuity clause, force majeure clause etc., which were also considered by the CoC as is evident from the CoC Meeting dated 08.11.2023 and 10.11.2023. Clause 2.4.2 of the RFRP which states that COC is under no obligation to approve any particular plan. The relevant clause is reproduced hereunder: -

*"It is abundantly clear that notwithstanding anything in this RFRP, the **CoC is under no obligation to any of the Resolution Applicants or any other person to approve a Resolution Plan which has scored the highest** as per the Evaluation Matrix and any Resolution Plan shall be approved **solely on the basis of the CoC's commercial wisdom.**"*

38. Further the contention of the Applicant that they had No knowledge of highest bid amount is false and baseless as it is their own case that they were satisfied with the negotiation process and it is during this they were given chance which they availed and improved upon their offer. This contention is itself baseless as entire bidding process is confidential in nature and the bids of each applicant are in their own financial capacity and commercial wisdom.
39. It is further submitted that fair and proper opportunity was provided to the Applicants to improve their financial proposals. In any event there was no requirement for disclosure of bids of other Resolution Applicants, as is evident from Clause 2.3.8 of RFRP, relevant portion of which is reproduced hereunder:

.....Provided however that the Resolution Professional or the CoC shall not be bound to disclose the commercials or scores of any Resolution Applicant or disclose the methodology adopted in arriving at such scores. It is further clarified that the Resolution Applicant shall not have the right to request clarifications on the scoring made as per Evaluation Matrix or seek information as regards the methodology adopted for scoring of its Resolution Plan."

40. The CoC reserved its right to conduct various rounds of negotiations with the PRAs in the interest of value maximisation as is evident from Clause 2.3.11 of the RFRP which is reproduced for ease of reference of this Hon'ble Tribunal:

"Further, notwithstanding anything stated herein, there shall be no restriction on the right of the Committee of Creditors to conduct various rounds of negotiations with the Prospective Resolution Applicants in the interest of value maximization."

41. It is submitted that with regards to the contention of the applicant that two additional documents were uploaded in the VDR during the challenge process. It is not that the applicant has been prejudiced all the resolution applicant were provided the same information and that too at the same time. The Applicants had adequate time, like all other Resolution Applicants to peruse the said documents uploaded on VDR and having availed such opportunity, the Applicants submitted their final plan.
42. It is submitted that the present application seeks a judicial scrutiny on the commercial wisdom of CoC, which is not permitted as per law. The limited grounds for such interference have been set out in Section 31 read with Section 30 of IBC. No grounds, in terms of Section 30 of IBC have been put forth by the Applicants, which would attract scrutiny by this Hon'ble Tribunal.
43. It is further submitted that, the Respondent No.2/COC has followed the Challenge Process in its entirety and with utmost transparency. Not only the Successful Resolution Applicant, but the Applicants have also been given the same opportunities to revise their Resolution Plan, as is evident from the Minutes of Meetings on 02nd November 2023, when the Applicants were called out to participate in the negotiations process to improve their bid, no objection was raised and an informed decision was taken by the Applicants. In fact, the Applicants submitted its revised Resolution Plan on 04th November 2023 and increased their bid amount from Rs. 242 crores to Rs. 248 crores, which rather shows that the Applicants had exercised their own wisdom in increasing the bid amount without any protest or demur.

44. Furthermore, the Applicants by way of the present Application under Reply has indirectly challenged the Resolution Plan of the Successful Resolution Applicant without having made such Successful Resolution Applicant party to the present application, which is impermissible in the eyes of law. Be that as it may, Clause 14 (i) and Clause 14 (g) categorically states that the proceedings of the Challenge Process are confidential in nature and in case of any dispute in relation to the conduct of the Challenge Process, the decision of the CoC shall be final and binding on all the parties.

FINDING:

45. We have heard the Ld. Counsels for the Applicants, the Ld. Counsel representing the Resolution Professional and also the Ld. Counsel for the COC and perused the documents with their able assistance.
46. The issue raised by the Applicants pertaining to the present Application is that on 12th October, 2023 the Respondent No. 1/RP addressed an email to the Applicants, intimating that Respondent No.2/ COC had decided to undertake negotiations with the Resolution Applicants on the financial proposal in their respective Resolution Plans by way of an online challenge process to be held on 18th October 2023 which was rescheduled to 27th October 2023. In the Process Note of the said challenge process, the reserve price for participating in the challenge process was fixed at Rs. 240 Crores, and in addition, the incremental amount for putting a bid was in multiples of Rs. 10 Crores. However, as per the contention of the Applicants the declaration of Rs. 241 crores as the highest bid is not in accordance with the Process Note. As per the Applicants, the aforesaid bid is irregular as Rs. 241 crores bid has to be an increment in multiples of Rs. 10 crores from the Reserve Price of Rs. 240 Crores.

47. After considering the merits of the case it is observed by this Bench that further on 17th October 2023, the Respondent No.1/ RP addressed an email to the Applicants intimating that the date of the challenge process is rescheduled to 27th October 2023 and the Applicants were called upon to submit an undertaking for participation in the said challenge process on or before 26th October 2023. The Applicants has submitted its undertaking wherein the Applicants have read and understood the terms, conditions and rules specified for Challenge Process as specified in the Challenge Process Note and have stated that they have no objections to the same. With respect to the same undertaking the Resolution Applicants unconditionally and irrevocably accepted the challenge Process Rules. The relevant extract of the undertaking by the Eligible Resolution Applicants for the challenge process is as under –

- (a) we have read and understood the terms, conditions and rules specified for Challenge Process as specified in the Challenge Process Note ("**Challenge Process Rules**") and have no objection to the same;
- (b) we understand that the Challenge Process Rules are part and parcel of the RFRP and non-adherence to the same shall amount to non-compliance of the RFRP;
- (c) we unconditionally and irrevocably accept the Challenge Process Rules;

Thereafter, the Respondent no 1 /RP vide email dated 01st November 2023 invited the Applicants for negotiations with the Respondent No. 2/CoC to be conducted on 02nd November 2023 wherein the Applicants submitted its revised offer of Rs. 248 crores. This shows that the Applicants were given ample opportunities to submit their Resolution Plan and bid according to the challenge process. The Applicants further availed the opportunities and submitted their Bid/Resolution Plan accordingly. Therefore, the contention raised by the Applicant after approval of the Resolution Plan by the CoC is highly belated and to derail the process of CIRP. This Bench further observes Regulation 36A (11) of the CIRP Regulations of the IBC prescribes the

time period within which any objection to the inclusion or exclusion of a PRA in the provisional list can be made. The Provisional List was issued by the RP on 10th June 2023, wherein the Applicants were also part of the same. The relevant extract of the Provisions of 36A (11) of the CIRP Regulations are reproduced hereunder:

*“Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) maybe made with supporting **documents within five days** from the date of issue of the provisional list.”*

Despite having sufficient time during the process, the Applicant **never raised any objection to the eligibility of the SRA** nor at the time when the names of the Applicants were included in the provisional list of PRAs. The date of issuance of the Provisional List of PRAs was **on 10th June 2023, according to which more than 6 months had elapsed** when by an email dated 16th December 2023, the Applicant raised its first objection regarding the eligibility of the PRAs. Therefore, the contention of the Applicant at such a highly belated stage cannot be entertained.

48. The bench after perusing the clause 7 reproduced in the contentions of the parties, observes that the Applicants did not bid in terms of Clause 7 in the second round of the challenge process and the Applicants were deemed to have exited the challenge process as per clause 7 of the process note. Thereafter, **the Applicants were called for negotiation with Respondent No. 2/CoC on 02nd November 2023**, wherein the Applicants after thorough reconsideration and with knowledge of all the information (including documents uploaded at VDR during the Challenge Process), **gave a revised offer of Rs. 248 crores on 04th November 2023**. Pursuant to which the Resolution Applicants were called upon to submit the draft of Resolution Plan with their highest bid. It is pertinent to mention that having been given

an opportunity to Applicants to increase their bid, they availed the opportunity and the Applicants decided to submit the final bid of Rs.248 crores only. Be that as it may, the Applicants had themselves conveyed their satisfaction with the opportunities provided to them to improve their financial proposal, **as is evident from the 12th Minutes of Meeting dated 06th November 2023.**

~~representative of the Consortium to confirm if they were satisfied with the opportunities provided to them to improve their financial proposal. Representative of Consortium clarified that they agreed to the overall process conducted by the CoC to negotiate with the Resolution Applicants. CoC took note of the same and requested representatives of RA were asked to leave the meeting.~~

Thus, the present Application which seeks rejection of the Resolution Plan submitted by the SRA on frivolous grounds cannot be allowed.

49. This bench further considered the Clause 12(a) of the challenge Process which details the Post Challenge Process actions, whereby upon completion of the challenge process, each Resolution Applicant is required to submit a draft of its Resolution Plan to incorporate the highest bid amount submitted by such Resolution Applicant in the Challenge Process within a period of 24hrs from conclusion of the Challenge Process. No change in the Financial Proposal post the Challenge Process is permitted, unless asked by the CoC, in terms of Clause 12(d). **Further Clause 12(c) makes it clear that no right is created in favour of H-1 bidder and the CoC reserves its right to approve any resolution plan which it deems appropriate, irrespective of any financial proposal received.**

(c) Post the Challenge Process, the financial proposal provided in the Challenge Process will be used for scoring the Resolution Plans based on the evaluation matrix. It may be noted that the results of the Challenge Process will provide deeper insight into the value offered by the Resolution Applicants and may guide the CoC's consideration of the plan. However, no right is being created in favour of bidder which emerges H1 in the Challenge Process. The CoC reserves its right to approve any resolution plan which it deems appropriate irrespective of any final financial proposal received.

and Clause **12(d)** allows the **CoC in its** right to conduct another Challenge Process or bilateral negotiations with the Resolution Applicants post the Challenge Process. The said Clause further clarifies that Process Note shall in no manner limit the right of the CoC to negotiate, evaluate and consider the Resolution Plans in its commercial wisdom.

(d) The CoC reserves its right to conduct another Challenge Process or bilateral negotiations with the Resolution Applicants post the Challenge Process. Nothing in this Note shall deem to limit the right of the CoC to negotiate, evaluate and consider the Resolution Plans in its commercial wisdom.

50. It is observed that the resolution plan of SRA was approved by CoC on the basis of numerous factors and not just financial numbers. Despite their low offer of Rs. 248 crores, the COC still considered the Resolution Plan of the Applicants on its commercial wisdom. Additionally, on appreciation of Clause 2.4.2 of the RFRP which states that COC is under no obligation to approve any particular plan. The relevant clause is reproduced hereunder: -

*"It is abundantly clear that notwithstanding anything in this RFRP, the **CoC is under no obligation to any of the Resolution Applicants or any other person to approve a Resolution Plan which has scored the highest as per the Evaluation Matrix and any Resolution Plan shall be approved solely on the basis of the CoC's commercial wisdom.**"*

In light of the aforesaid, it is evident that due process has been followed and the Resolution Plan of the Applicants have been rejected on merits by the COC, after due consideration and after exercising its commercial wisdom.

51. Further the contention of the Applicants that they had No knowledge of highest bid amount, it is submitted that bidding is totally a

confidential process. It is their own case that they were satisfied with the negotiation process having been carried out by CoC where they got a chance to improve their bid from Rs. 241 to 248 Crores. It is during this process they were given chance which they availed and improved upon their offer.

52. Thus a fair and proper opportunity was provided to the Applicants to improve their financial proposals. In any event there was no requirement for disclosure of bids of other Resolution Applicant, as is evident from Clause 2.3.8 of RFRP, relevant portion of which is reproduced hereunder:

*.....Provided however that the Resolution Professional or the **CoC shall not be bound to disclose the commercials or scores of any Resolution Applicant or disclose the methodology adopted in arriving at such scores.** It is further clarified that the Resolution Applicant shall not have the right to request clarifications on the scoring made as per Evaluation Matrix or seek information as regards the methodology adopted for scoring of its Resolution Plan."*

53. The CoC reserved its right to conduct various rounds of negotiations with the PRAs in the interest of value maximisation as is evident from Clause 2.3.11 of the RFRP which is reproduced for ease of reference of this Hon'ble Tribunal:

"Further, notwithstanding anything stated herein, there shall be no restriction on the right of the Committee of Creditors to conduct various rounds of negotiations with the Prospective Resolution Applicants in the interest of value maximization."

Thus it is evident that every opportunity was provided to the Applicants to be participate in the process and improve their bid. Despite having availed all such opportunities, their Plan was rejected by the CoC while exercising their commercial wisdom and in the interest of value maximisation.

54. Further with regards to the contention of the Applicants that two additional documents were uploaded in the VDR, the Applicants have not placed on record any prejudice having being cause to him. All the PRAs were similarly placed. The documents uploaded were to the knowledge of all the PRAs at the same time. The Applicants had adequate time, like all other Resolution Applicants to peruse the said documents uploaded on VDR and having availed such opportunity, the Applicants submitted their final plan.
55. The present Application seeks a judicial scrutiny on the commercial wisdom of CoC, which is not permitted as per law. It is settled law that the commercial wisdom of the CoC is supreme and cannot be interfered with. The limited grounds for such interference have been set out in Section 31 read with Section 30 of IBC. No grounds, in terms of Section 30 of IBC have been put forth by the Applicants, which would entail interference by this Hon'ble Tribunal. It further deserves to be emphasized that the Applicants have challenged the decision of the CoC on unfounded, unreasonable and baseless grounds. No malafide is alleged against the decision of COC. In view of the **law laid down by Hon'ble NCLAT in Company Appeal (AT) No. 513 & 753 & IA 1666 of 2023** reaffirming the Commercial wisdom of CoC has held as under:-

"The Adjudicating Authority must work within the framework of IBC which broadly aims at timely resolution of the Corporate Debtor for realising the maximum value while respecting the commercial wisdom of the CoC. The supremacy of commercial wisdom of the CoC has been reaffirmed time and again by the Hon 'ble Supreme Court".

56. Further, the Respondent No.2/COC has followed the Challenge Process in its entirety and with utmost transparency. Not only the Successful Resolution Applicant, but the Applicants have also been given the same opportunities to revise their Resolution Plan, as is

evident from the Minutes of Meetings. The issue was raised by them on 2nd November 2023, when the Applicants were called out to participate in the negotiations process to improve their bid, no objection was raised and an informed decision was taken by the Applicants. In fact, the Applicants submitted its revised Resolution Plan on 04th November 2023 and increased their bid amount from Rs. 242 crores to Rs. 248 crores, which rather shows that the Applicants had exercised their own wisdom in increasing the bid amount without any protest or demur. This being the case, the Applicants at this stage cannot be allowed to either question the wisdom of the CoC or the transparency with which the process was conducted.

57. Furthermore, the Applicants by way of the present Application has indirectly challenged the Resolution Plan of the Successful Resolution Applicant without having made such Successful Resolution Applicant party to the present application, which is impermissible in the eyes of law. Be that as it may, Clause 14 (i) and Clause 14 (g) categorically state that the proceedings of the Challenge Process are confidential in nature and in case of any dispute in relation to the conduct of the Challenge Process, the decision of the CoC shall be final and binding on all the parties. It is pertinent to take note that the Applicants never raised any objection with respect to the challenge process before the COC which they have every right to therefore at this belated stage the contentions do not merit any consideration.

58. In view of the aforesaid submissions, the IA 5572 and 2023 is **dismissed**.

SD/-

MADHU SINHA
Member (Technical)

/Aakansha/

SD/-

REETA KOHLI
Member (Judicial)