

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**Item No. 305**  
**(IB)-1671(ND)2019**  
**New IA-383/2024**

**IN THE MATTER OF:**

**M/s. Northern ARC Capital Ltd. ... Applicant/Petitioner**

**Versus**

**M/s. Five Core Electronics Ltd. ... Respondent**

**Under Section: 7 of IBC, 2016**

**Order delivered on 30.01.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ**  
**HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH**  
**HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Alok Dhir Varsha Banerjee, Adv. Mahima Ahuja

**For the Respondent** :

**For the RP** : Adv. Anirudh Bhattacharya, Adv. Amarnath, Adv. Chirag Bhati

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORDER**

**IA-383/2024:- The prayer made in the captioned application reads thus:**

*“a. The instant Application be allowed;*

*b. Direct the Respondent No. 1 to invite and provide necessary details to the Applicant herein as regards the Swiss Challenge Process which is required to be carried on in the case of Five Core Electronics Limited in terms of order dated 15.01.2024 of this Hon'ble Tribunal;*

*c. Direct Respondent No. 1 and Respondent No. 2 to consider the Resolution Plan dated 10.04.2023 as submitted by the Applicant on merits;*

*d. Stay the convening of any meeting of the Committee of Creditors for carrying on the Swiss Challenge Process without participation of the Applicant herein;*

*e. Pass an ex parte ad interim order in terms of Prayer (d) above;”*

As it is apparent from the prayer clause, the emphasis in the application is that the Applicant should be provided the details regarding the Swiss Challenge process. which was required to be carried qua the Five Core Electronics Ltd. in terms of order dated 15.01.2024 passed by this Tribunal. Mr. Bhattacharya, Ld. Counsel appearing for the RP, submitted that the Swiss Challenge process stood already completed on 25.01.2024 and one of the plans has been approved by CoC for which the bidding is already over.

Confronted with such situation, the Ld. Counsel appearing for the Applicant submitted that only bidding part of process is over and it is not so that one of the plans has been approved, thus there would be no difficulty for considering the plan of the Applicant also, which is proposing more value than the others, that is in excess by 10%. From the submissions put forth by Mr. Dheer, it appears that at this stage the Applicant want to participate in the bidding process. We find that in terms of order dated 12.04.2023, we had nixed such pleas of Applicant. The order reads thus:

#### **ORDER**

**IA-1978/2023:** Indubitably, the last date for submission of the Resolution Plan was 06.01.2023 and the Applicant herein had not submitted any plan within the prescribed time limit. The salient contention espoused on behalf of the Applicant is that the decision as to whether a plan can be considered after the cut-off date or not is to be taken by the CoC and it is not for RP to nix the plan without producing the same before the CoC. We have perused the Clause 1.5 & 1.17 of RFRP referred to by the Ld. Counsel for the Applicant. The clauses are guiding in nature reserving discretion to CoC to exercise its commercial wisdom and does not give any such right to the Applicant which is enforceable in the eyes of the law. The Applicant cannot expect this Adjudicating Authority to direct CoC to exercise its commercial wisdom in particular manner. Besides it is also brought to our notice by Mr. Amarnath, Ld. Counsel appearing for the RP that the Applicant has already withdrawn the security money deposited by him as pre-condition for consideration of the plan. In the wake, we are not inclined to issue any direction to CoC to consider the plan of the Applicant and the application accordingly **rejected**.

**With this, the present IA stands dismissed.**

In view of the aforementioned order passed by this Tribunal it is not open for us to issue any direction either to CoC or to RP to allow the Applicant to participate in the bidding process. **The application is found devoid of merit hence it is rejected.**

**Sd/-  
(SUBRATA KUMAR DASH)  
MEMBER (T)**

**Sd/-  
(ASHOK KUMAR BHARDWAJ)  
MEMBER (J)**