

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

**Interlocutory Application No.5261/ND/2023
IN
Company Petition No. (IB)-2695/ND/2019**

IN THE MATTER OF:

M/S. TECH 4 LOGIC PRIVATE LIMITED

... APPLICANT

VERSUS

MR. PRADEEP KUMAR LAKHANI
RESOLUTION PROFESSIONAL OF
M/S. DION GLOBAL SOLUTIONS LIMITED

... RESPONDENT NO.1

AXIS BANK LIMITED
MEMBER OF COMMITTEE OF CREDITORS

... RESPONDENT NO.2

J.C. FLOWERS ASSET RECONSTRUCTION PRIVATE LIMITED
MEMBER OF COMMITTEE OF CREDITORS

... RESPONDENT NO.3

AND IN THE MATTER OF:

MYKIND VACATIONS PRIVATE LIMITED

... OPERATIONAL CREDITOR

VERSUS

DION FLOBAL SOLUTIONS LIMITED

... CORPORATE DEBTOR

For the Applicant : Mr. Arvind Nayar, Sr. Adv. Mr. Prateek Kumar, Ms. Raveena Rai, Ms. Moha Paranjpe, Adv.

For the RP : Mr. Kinshuk Chatterjee, Adv. Mr. Pradeep Lakhani,
RP in person

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**SH. ATUL CHATURVEDI,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on:18.04.2024

ORDER

PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The instant application is being filed on behalf of M/s. Tech 4 Logic Private Limited ('Applicant') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 inter alia, seeking the following relief(s):-
 - a) Direct the RP and CoC to grant necessary access and provide required information to the Applicant at the earliest to enable the Applicant to prepare and submit a resolution plan;
 - b) Direct the RP and CoC to accept the submission of Applicant's resolution plan and duly consider the same;
 - c) Direct the RP and CoC to grant at least 30 days to the Applicant for submitting the resolution plan from the date of the order;
 - d) Pass orders for keeping the IA No. 3230/2023 filed by the Respondent No. 1 for approval of the resolution plan in abeyance till the final decision is taken by the CoC on the resolution plan of the Applicant; and

- e) Pass orders as may be necessary in the interest of justice, equity and good conscience, in favour of the Applicant and against Respondent No.1, Respondent No. 2, and Respondent No. 3.

AVERMENTS OF THE APPLICANT

2. Briefly stated the facts of the present case, as averred by the applicant are that this Hon'ble Adjudicating Authority vide order dated 18.08.2020 had ordered Corporate Insolvency Resolution Process against M/s. Dion Global Solutions Limited ('Corporate Debtor') and Mr. Pradeep Kumar Lakhani ('Respondent No.1') was appointed as Interim Resolution Professional who was later confirmed as Resolution Professional . It was submitted that pursuant to the Public Announcement, the Committee of Creditors of the Corporate Debtor was formed comprising M/s. Axis Bank Limited ('Respondent No.2') and J.C. Flowers Asset Reconstruction Private Limited ('Respondent No.3').
3. The Applicant further submitted that the Applicant got to know through publicly available information that the Corporate Debtor is undergoing insolvency resolution process The Applicant with the intent of submitting a resolution plan for the resolution of the Corporate Debtor wrote an email dated 28 September, 2023 to the RP i.e., Respondent No.1 inter alia seeking an accommodation from the RP and the CoC for submission of a resolution plan for the Corporate Debtor. In response to the Applicant's e-mail dated 28.09.2023, the Respondent No.1 vide email dated 29 September 2023, had refused to share the documents and information for formulating the resolution plan with the Applicant in view of the current stage of the CIRP of the Corporate Debtor.

4. Further, the applicant submitted that the Hon'ble Supreme Court of India in the matter of **Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17,** had inter alia observed that the maximization of value of the assets of a corporate debtor, so that they are efficiently run as going concerns is one of the objectives of the Insolvency and Bankruptcy Code, 2016. The Applicant intends to propose a better and upfront commercial offer in the resolution plan for the stakeholders.

REPLY FILED BY MR. PRADEEP KUMAR LAKHANI, RESOLUTION PROFESSIONAL OF THE CORPORATE DEBTOR ('REPOUDENT No. 1')

5. The Respondent No.1 had filed the reply and submitted that the present application is not maintainable since the Resolution Plan submitted by M/s. Indus IntelliRisk and Intellisense Services Private Limited ('Successful Resolution Applicant') was deliberated and approved by the Committee of Creditors on 26.05.2021 by following the procedure as laid down in the Code, 2016 and the regulations made thereunder. Further, the Respondent No.1 had filed an interlocutory application bearing No. I.A/3678/2021 before this Adjudicating Authority on 24.06.2021 seeking approval of the Resolution Plan as submitted by the Successful Resolution Applicant and approved by the Committee of Creditors.

6. The Respondent No.1 further submitted that the Applicant had not responded to the Invitation of Expression of Interest in Form-G and slept over the entire duration of the Corporate Insolvency Resolution Process of the Corporate Debtor and is now seeking to make a bid at a belated stage when the SRA's plan is pending approval before this Hon'ble Adjudicating Authority.

REJOINDER FILED BY THE APPLICANT

7. The Applicant had filed the Rejoinder and re-affirmed the averments made in the Application. Further, the Applicant submitted that the CIRP of the Corporate Debtor has been ongoing since 2019 and has exceeded prescribed timelines under the Code on account of several extensions and exclusions sought by the Respondent. The Applicant submitted that this Hon'ble Adjudicating Authority possess the authority to return the Resolution Plan to the CoC for reconsideration.

ANALYSIS AND FINDING

8. This Adjudicating Authority has carefully heard the arguments advanced by Learned Counsels for the parties and minutely perused the averments made in the application, reply, rejoinder and written submissions filed by the parties.
9. Coming to the factual matrix of the present case, the Corporate Insolvency Resolution Process of the Corporate Debtor was initiated vide this Adjudicating Authority's order dated 18.08.2020 in C.P.(IB)No.2695/2019, an application under Section 9 of the Code, 2016 filed by M/s. Mykind Vacations Private Limited ('Operational Creditor') and Mr. Pradeep Kumar Lakhani ('applicant') was appointed as the Interim Resolution Professional of the Corporate Debtor and later confirmed as the Resolution Professional of the Corporate Debtor in the 1st CoC Meeting held on 23.09.2020. Consequently, the Invitation for Expression of Interest in Form -G was published on two occasions i.e., (i) 01.11.2020 and (ii) 26.11.2020. The Form G issued on second occasion was issued in Jansatta (Hindi Edition) and Financial Express (English Edition) on 26.11.2020, wherein the last date for receipt of

the EoI was 11.12.2020 and last date of submission of Resolution Plan was 25.11.2021. Pursuant to the Form-G, the Respondent No.1 had received Three (3) Expression of Interests and the Resolution Plan dated 25.01.2021 ("Resolution Plan") submitted by M/s Indus intelliRisk & IntelliSense Services Private Limited ("Successful Resolution Applicant") along with an affidavit confirming their eligibility under Section 29A of the Code was received by the Respondent No.1 and was put before the members of the CoC for due consideration and deliberation. The CoC during the 09th CoC meeting held on 26.04.2021 (e-voting concluded on 08.05.2021) after lengthy discussions and deliberations had approved the Resolution Plan submitted by the Successful Resolution Applicant with 100% voting in favor. Resultantly, the Respondent No.1 had filed an interlocutory application bearing No. I.A/3678/2021 before this Adjudicating Authority on 24.06.2021 seeking approval of the Resolution Plan as submitted by the Successful Resolution Applicant and the same is pending before this Adjudicating Authority for adjudication.

10. Further, it is an admitted fact that applicant had not submitted its Expression of Interest in the Corporate Insolvency Resolution Process of the Corporate Debtor and was not the part of the Corporate Insolvency Resolution Process of the Corporate Debtor. The Applicant with the intent of submitting a resolution plan for the resolution of the Corporate Debtor, after the Resolution Plan submitted by the Successful Resolution Applicant was approved by the CoC, had wrote an email dated 28 September 2023 to the Respondent No.1 seeking accommodation from the RP and the CoC for submission of a resolution plan for the Corporate Debtor and the said request was rejected by the Respondent No.1 on account of being submitted at a belated stage when the Resolution Plan is pending before this Adjudicating Authority for approval. The extract from the email dated 28 September 2023 sent by the Applicant to the Respondent No.1 is extracted herein below:-

“ To

Mr. Pardeep Kumar Lakhani
Resolution Professional of
Dion Global Solutions Limited

Dear Sir,

This is in reference to the corporate insolvency resolution process ("CIRP") of Dion Global Solutions Limited ("Corporate Debtor").

I, the undersigned Varun Kumar Singh CEO Of Tech 4 Logic Private Limited, am interested to participate in the CIRP of the Corporate Debtor as a resolution applicant. I belong to the software related industry since more than 15 years. I started the Job in IT sector in 2008. After that we started the Tech 4 Logic in 2015. The thought at that point was to create programming applications to help the developing budgetary administration's dispersion business and deal with the I.T. foundation. Organization's dynamic focus on innovation, the I. T. group, has from that point forward increased solid space ability and aptitudes in particular regions and innovation areas. Today, Tech4Logic group with skills and costly involvement in item advancement, programming testing, foundation the board, R&D, venture the board and data security.Tech4Logic is to deliver class innovation goals to organizations in a broad scope of areas. At Tech4Logic, we are quick to receive the most recent and accepted procedures from the business in conveying arrangements that genuinely work for organizations. We can assist our customer in making business-basic applications prepared for the cloud. We can help in creating and executing a cloud movement procedure that improves requests for the cloud stage of our customer.

From the perusal of the information available on the public domain I understand that the resolution plan for the Corporate Debtor is pending approval from the National Company Law Tribunal, New Delhi Bench.

In order for me to participate, I request you to share with me the Information Memorandum, Evaluation Matrix, Request for Resolution Plan, access to virtual data room for conducting the due diligence of the Corporate Debtor and apprise me of any other eligibility criteria to participate in the CIRP.

From the limited information available with me, at the onset I am assessing to offer an amount of Rs. 8 Crores to the stakeholders under the resolution plan. Additionally, the following benefits may be passed on to the stakeholders:

- All existing liquid assets (Cash, Bank, Fixed Deposits, Trade receivables, loans and advances, investments etc.) as on the date of approval of resolution plan to have a pass through to the existing financial creditors at their disposal.

- *Benefits from avoidance transactions, if any will be for the benefit of the existing financial creditors who are not related party of the Corporate Debtor.*
- *5% equity of the Corporate Debtor to the existing financial creditors who are not related party of the Corporate Debtor.*

The above amount proposed may be subjected to further upward revision based on the availability of the documents requested from you. I intent to propose a better and upfront payment offer in the resolution plan for the insolvency resolution of the Corporate Debtor. I am looking forward to take the above discussion forward with you and the committee of creditors.”

[Extract of email dated 28 September 2023 sent by the Applicant to the Respondent No.1]

11. The Hon'ble NCLAT, Chennai in **Mohammed Enterprises (Tanzania) Ltd. Successful Resolution Applicant Vs. Alok Kailash Saxena RP Associate Décor Ltd. [Company Appeal (AT) (CH) (Ins.) No. 165 of 2021; order dated 19.09.2022]** had observed as follows:-

“38. The Adjudicating Authority is not authorised to pass any orders which would circumvent and attempt to frustrate the resolution plan pending before it for consideration under Section 31 of the Code. The bitter truth remains that the Respondents No. 5 to 7 are completely standing outside of the CIRP and once evinced their EoI and backed out from participating in resolution process and now after completion of the CIR period their application cannot be considered. In this regard, this Tribunal in **Kalinga Allied Industries Pvt. Ltd. Vs. Hindustan Coils Ltd. (2021) SCC Online NCLAT 51 para 15** held as under:

“15. In pursuant to the expression of interest issued by RP on 24.08.2018 the Appellant submitted a Resolution Plan. After several rounds of deliberation by the COC revised Resolution Plan was submitted by the Appellant on 19.12.2018. The same was approved on 28.12.2018 by the COC in the 13th meeting by requisite majority. Thereafter, the RP filed an Application under Section 30 (6) of the I&B Code for approval of Resolution Plan in

the month of January, 2019 and sometime in the month of February, 2020 the Respondent No. 1 filed an Application seeking direction for consideration of its Resolution Plan. **Admittedly the Respondent No. 1 has not submitted any Resolution Plan pursuant to the expression of interest issued by the RP. Thus, the Respondent No. 1 is not part of CIRP.** The Respondent No. 1 has filed Application directly before the Adjudicating Authority. The Adjudicating Authority in the guise of maximization of the value of assets of the Corporate Debtor directed that the Respondent No. 1's Application and Resolution Plan be put up before the COC for consideration. There is no provision in the code or regulation which provides that while exercising the power under Section 31 of the I&B Code the Adjudicating Authority can direct the COC to consider the Resolution Plan of such person who has not been part of CIRP. Otherwise also if such procedure is adopted then the CIRP will be frustrated. Once the Resolution Plan has been opened and fundamentals and financials of the Plan and offer made therein were disclosed to all the participants including RP. Then anyone can enhance its offer before the Adjudicating Authority in the guise of maximization of realisation. Therefore, no further fresh bid or offer could have been accepted or considered as held by this Appellate Tribunal in the case of Kotak Investment Advisors Ltd. (Supra) (See Para 23)"

12. The Applicant had placed reliance on the Hon'ble Supreme Court of India' Judgement in the matter of Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17, to highlight that the maximization of the assets of a corporate debtor as one of the objectives of the Insolvency and Bankruptcy Code, 2016. This Adjudicating Authority had carefully gone through the Judgement relied upon and is of the view that the facts of the relied Judgement are different from the facts of the present case. Accordingly, the Judgement relied by the applicant is not helpful.

13. Considering the facts and circumstances as enumerated above, this Adjudicating Authority is of the considered view that there is no such provision in the Insolvency and Bankruptcy Code, 2016 or Regulations made thereunder, which vests the Adjudicating Authority the power to direct the Committee of Creditors to consider the Resolution Plan of such person i.e., applicant herein, who has not been part of CIRP of the Corporate Debtor. Otherwise, also if such procedure is adopted then the CIRP will be frustrated. Admittedly, in the present case the Applicant was not part of CIRP of the Corporate Debtor and had expressed their willingness to submit the Resolution Plan when the Resolution Plan in respect of the Corporate Debtor was unanimously approved by the Committee of Creditors and pending before this Adjudicating Authority for approval.
14. Resultantly, in view of the aforesaid discussion, the instant application i.e., **I.A/5261/2023 being devoid of merits stands dismissed.**

Sd/-

(ATUL CHATURVEDI)

MEMBER (T)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (J)