

**THE NATIONAL COMPANY LAW TRIBUNAL  
COURT V, NEW DELHI**

**I.A No. 4619/2021**

**IN**

**Company Petition No. (IB) – 2728/ND/2019**

*Under Section 60(5) of the Insolvency and Bankruptcy Code,  
2016 read with Rule 11 of NCLT Rules, 2016.*

**IN THE MATTER OF:**

**OM LOGISTICS LIMITED**

**...OPERATIONAL CREDITOR**

**VERSUS**

**SERVEL INDIA PRIVATE LIMITED**

**...CORPORATE DEBTOR**

**AND IN THE MATTER OF-**

**GIRIRAJ PRASAD**

A-15, MEERA BAGH  
PASCHIM VIHAR, SUNDER VIHAR,  
WEST DELHI, DELHI- 110087

**.... APPLICANT NO. 1**

**KAMLA GUPTA**

HOUSE NO. C-231,  
HARI NAGAR, CLOCK TOWER,  
MAYAPURI, DELHI-110054

**.... APPLICANT NO. 2**

**VERSUS**

**REETESH KUMAR AGARWAL**

RESOLUTION PROFESSIONAL,  
SERVEL INDIA PRIVATE LIMITED,  
UNIT NO. 531, 5<sup>TH</sup> FLOOR,  
S.G. SHOPPING MALL, D.C. CHOWK,  
ROHINI SECTOR-9, DELHI-110085  
Email: carkagarwal@gmail.com

**.... RESPONDENT NO. 1**

**COMMITTEE OF CREDITORS**

THROUGH RESOLUTION PROFESSIONAL  
UNIT NO. 531, 5<sup>TH</sup>FLOOR,  
S.G. SHOPPING MALL, D.C. CHOWK,  
ROHINI SECTOR-9, DELHI-110085  
Email: carkagarwal@gmail.com

**.... RESPONDENT NO. 2**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Applicants:** Mr. Deep Bisht, Adv.

**For the Respondent:** Mr. Prabhakar Kumar, Adv.

**ORDER**

**PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

1. This Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 along with Rule 11 of the National Company Law Tribunal Rules, 2016 by the Applicants, Mr. Giriraj Prasad and Mrs. Kamla Gupta, Resolution Applicants, praying for rejection of Resolution Plan approved by the Committee of Creditors and filed before the Adjudicating Authority in I.A. No. 2810 of 2021 by the Respondent No. 1 and directions to Respondents to consider the Revised Resolution Plan of the Applicants.
2. The Applicants in the present application has prayed for the following reliefs: -
  - a) *Allow the present application by directing the Respondents to consider the revised resolution plan of the Applicants.*
  - b) *Declare the resolution plan approved by CoC as null and void.*
  - c) *Direct the reconstitution of CoC for considering the revised plan of the Applicants.*
  - d) *Exclude the time period from 04.06.2021 (date of approval of resolution plan by CoC) till filing of Resolution Plan for approval in the Hon'ble Tribunal from the period of Corporate Insolvency Resolution Process; and*
  - e) *Pass such order and/or directions as may be deemed fit and proper in the wake of circumstances of the present case.*

**3. Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows: -**

- (a) The Corporate Insolvency Resolution Process was initiated against Serval India Private Limited (Corporate Debtor) by this Tribunal vide order dated 08.06.2020, and Respondent No. 1 was appointed as the Resolution Professional in this matter.
- (b) Pursuant to Form G published by Respondent No. 1, the Applicants, in joint capacity, submitted their Resolution Plan via email dated 20.02.2021. By the extended date for submission of the Resolution Plan, i.e., 19.03.2021, Respondent No. 1 had received only two Resolution Plans, one from Ms. Pooja Marbles and the other from the Applicants, Mr. Giriraj Prasad Gupta & Mrs. Kamla Gupta jointly.
- (c) In the 8th Meeting of the CoC held on 08.04.2021, both the Resolution Applicants were advised to revise their plans by way of addendum within 4 days. Further, in the 9th and 10th CoC Meetings, after discussions, CoC members sought some more clarifications and amendments in the Resolution Plan submitted earlier. Subsequently, the Applicants submitted their proposed amendments by way of addendum on 21.05.2021. The Resolution Applicants were again asked to revise their Resolution Plan in the 11th CoC meeting held on 27.05.2021, within 3 days, latest by 01.06.2021.
- (d) The Respondent No. 1 belatedly raised 50 queries regarding the Resolution Plan on the last date, i.e., 01.06.2021. Thus, the Applicants sought an extension of 15 days vide email dated 02.06.2021 in order to resolve all the queries raised by Respondent No. 1 in its email dated 01.06.2021. However, the same was rejected by the Respondents via email dated 03.06.2021.
- (e) The Respondent No. 1, vide an email dated 04.06.2021 at 11:54 A.M., shared the link for the 12th meeting of the CoC, which was scheduled for the same day, i.e., 04.06.2021 at 03:30 PM. Due to this short notice, the Applicants could not attend the CoC meeting. The Applicants asserted that the act of Respondent No. 1 informing about

the CoC meeting only 3 hours prior to the scheduled time is in contravention of Regulation 19 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Regulation 19 of the CIRP Regulations, 2016 provides that a meeting of the CoC shall be called by giving not less than five days' notice in writing to every participant. However, the CoC may reduce the notice period from five days to a period of not less than twenty-four hours, as it deems fit.

- (f) Consequently, the Applicants was denied the opportunity to submit a Revised Resolution Plan, as approximately 50 queries were raised on 01.06.2021, which was the last day for submission of the Revised Plan. It is practically impossible to resolve such queries in such a short span. Respondent No. 1 and 2 considered the unrevised Resolution Plan of the Applicants and rejected it in the 12th CoC meeting held on 04.06.2021 due to non-compliance with the terms of the RFRP, even though the Applicant's Revised Plan was better and improved in all parameters than the one approved by the CoC.
- (g) The Applicants was neither provided an opportunity to attend the 12th CoC Meeting where the Resolution Plan was approved in absence of Applicants nor CoC considered grievances of the Applicants.
- (h) Applicants contended that after several negotiations, they have improved the Resolution Plan from INR 15 Cr. to INR 23.45 Cr. maximizing the value of assets of the Corporate Debtor. Despite this, the Revised Plan was not even placed for voting before the CoC members. As the Prospective Resolution Applicants, they deserve an opportunity to submit a Revised Resolution Plan, which should be rejected on its merits instead of through biased elimination.
- (i) Applicants asserted that the Respondents have clearly violated the settled principle of 'asset value maximization' as envisaged under the Code. Respondent No. 2 has acted arbitrarily by not providing an opportunity to the Applicants to submit their Revised Resolution Plan, which would have taken care of maximizing the assets of the Corporate Debtor and balancing the claims of all the stakeholders of the Corporate Debtor.

**4. Contentions asserted by the Learned Counsel appearing on behalf of the Respondent No. 1, Resolution Professional in reply to the present Application.**

- (a) The Respondent No. 1 alleged that the Applicants have concealed the material facts which are relevant in the present case. The Applicants have sought repeated extensions for submission of their Resolution Plan.
- (b) The Applicants sought its first extension on 14.04.2021, requesting an additional 3 days to submit its Revised Plan. Subsequently, on 17.04.2021, they requested another extension via email, which was granted until 20.04.2021. Upon accepting these requests, Respondent No. 1 extended the timeline for submission of the Resolution Plan until 22.04.2021, as per their email dated 18.04.2021.
- (c) Furthermore, on 21.04.2021, the Applicants sought a third extension until 30.04.2021 for submitting the Revised Resolution Plan. However, no plan was submitted by that date, and an additional 10-day extension was requested by the Applicants vide email on 01.05.2021.
- (d) In its 10th meeting on 18.05.2021, the CoC advised the Resolution Applicants to enhance the value of their plan and submit it by 21.05.2021. In response, the Applicants submitted an addendum to the Resolution Plan on 21.05.2021. The Revised Resolution Plan was subsequently discussed in the 11th CoC meeting on 27.05.2021, where the Applicants assured the members that revised proposals would be submitted within 3 days.
- (e) Respondent No. 1 granted a final extension to the Applicants, extending the deadline for their fifth time, to 01.06.2021. However, the Applicants did not submit their Revised Plan by the deadline. Instead, they requested a further extension of 15 days to submit their revised proposal.
- (f) Respondent No. 1 informed that as the CIRP period is about to expire, therefore, further extension of time to submit the Resolution Plan

could not be granted. Despite this, Respondent No. 1 placed the Applicants' extension request before the CoC members in the 12th CoC meeting on 04.06.2021. Respondent No. 1 provided complete factual matrix to the CoC members. In their commercial wisdom, the CoC rejected the Applicants' request and instructed Respondent No. 1 to put the last submitted resolution plan of the Applicants to the voting alongside another plan. In the same meeting, the CoC rejected the Resolution Plan submitted by the Applicants.

- (g) The Applicants actions appear to be mala-fide as they sought extensions on six occasions, with Respondent No. 1 granting extensions on five occasions. It is on record that the last date of the CIRP was 22.06.2021. Additionally, the Applicants delayed filing the present application by 4 months. The Applicants claim that the delay was due to queries raised by Respondent No. 1 is contradicted by their email dated 02.06.2021, suggesting the delay was allegedly due to Covid-19.
- (h) Respondent No. 1 contends that the Applicants was duly informed about the 12th CoC meeting scheduled on 04.06.2021. The Applicants was informed of the CoC meeting on 03.06.2021 via email. Furthermore, in their email dated 05.06.2021, the Applicants informed that the applicants were unable to attend the CoC meeting due to some technical errors.
- (i) In the present application, the Applicants have proposed a revised amount of Rs. 23.45 Cr, which is lower than the final proposal of Successful Resolution Applicants i.e., Rs. 24.56 Cr plus CIRP Expenses (Actual Resolution Value was Rs. 22.37 Cr). Therefore, considering that the revised proposal of the Applicants is lower than that of the Successful Resolution Applicants, the present Application warrants dismissal.

### ***Analysis and Findings***

5. We have heard the Learned Counsels for the Applicants and the Respondents, and further perused the averments made in the Application

and written submissions presented by the Parties. The Applicants has filed this Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking directions against the Respondents for consideration of their Revised Resolution Plan.

6. The Applicants has submitted their Resolution Plan on 20.02.2021 pursuant to FORM G issued by the Respondent No. 1. Thereafter, in 8<sup>th</sup> CoC meeting the CoC members asked the Resolution Applicants to revise their Resolution Plans by way of addendum. Consequently, the Applicants sought extensions for submitting their revised proposals from Respondent No. 1 on multiple occasions i.e., 14.04.2021, 17.04.2021, 21.04.2021, 01.05.2021, 30.05.2021. Respondent no. 1 granted these extensions five times at the request of Applicants.
7. The contention of the Applicants that they were not given sufficient opportunities to revise their Resolution Plan does not appear to be correct statement, due to the fact that at the request of Applicants the opportunity was already given five times to them by extending the timelines and the final request of extension was also placed by the Respondent No. 1 before the CoC members, which was further rejected due to reasons mentioned in the minutes of the meeting. It is important to note that the CIRP is a time-bound process, and unlimited time cannot be granted to Resolution Applicants for submitting their Resolution Plans. The relevant extract of minutes of 12<sup>th</sup> CoC meeting held on 04.06.2021 is reproduced below:

***“i. To discuss and consider, if the CoC think fit, on the request received from the resolution applicant Giriraj Prasad and Kamla Gupta for seeking extension of 15 days for submission of resolution plan duly amended as per advice of CoC IN 11TH meeting.***

*During the meeting, the RP shared the mail sent to Giriraj Prasad Gupta and Kamla Gupta, the details of communication held with respect to extension requested for submission of plan and to carry out further reassessment and evaluation for submission of revised.*

*plan. RP further informed the meeting that the CIRP period is of very short time considering the exclusion granted of lockdown period from 19th April, 2021 to 5th June, 2021, saying of 16 days only, which is not the sufficient time.*

*On deliberate discussion, Mr. Abhay Kumar Singh from Canara Bank proposed not to consider the further extension as the CIRP has limited time and running short to conclude as the Hon'ble NCLT has granted extension for 16 days only. He advised that on behalf of Canara Bank is of view that no further extension be granted and RP should go for final call.*

*He then asked Mr. Abhishek to comment upon and on proposal of Mr. Abhay Kumar Singh, Mr. Abhishek Hindunia, the Manager, NCLT division of Canara Bank seconded stating that the CIRP period is running with very short time and considering the time available, it is not feasible to grant further extension to Giriraj Prasad Gupta and Kamla Gupta. He added that RA has no intension to improve therein so it would be better to move with the revised Resolution Plan, that the RP has received yet.”*

8. The argument raised by the Applicants that they were unable to submit their revised Resolution due to a substantial number of clarifications requested by Respondent No. 1 on the last submission date is not tenable as the Applicants vide email dated 02.06.2021 had requested for further extension of time for submitting their revised Resolution Plan on the pretext of Covid-19 pandemic, not because of their inability to answer those clarifications. This clearly indicates that the queries raised by Respondent No. 1 did not prevent the Applicants from submitting the revised plan. Thus, the contention of the Applicants that Respondent No. 1 sought such queries on the last occasion, i.e., the last date for submission of the Revised Resolution Plan which disables them for submitting their revised plan cannot be relied upon. The relevant extract of the email dated 02.06.2021 is reproduced below:

*“Dear Sir,*

*Please refer to your trailing email. Please note that we tried to reevaluate the Corporate Debtor as suggested by the CoC members in the last meeting. In view of the present Lockdowns imposed by various state governments and also the prevailing circumstances due to the second wave of the pandemic COVID-19, we have not been able to evaluate the assets of the Corporate Debtor and will require time to submit the revised proposal. request you to please give a further time of 15 days to submit the revised proposal. We are genuinely interested to purchase the corporate debtor and would request you to give us time to reevaluate the Corporate Debtor.*



Regards

Giriraj Prasad  
Resolution Applicants”

9. The Applicants further contended that the Respondent No. 1 has not complied with Regulation 19 of the CIRP Regulations 2016 and Section 30(2) of the code, which implies that a meeting of the CoC shall be called by giving not less than five days' notice in writing to every participant or prior as reduced by the CoC. The Applicants alleged that the Respondent No. 1 intimated the Applicants just three hours prior to commencement of the 12<sup>th</sup> CoC meeting but it does not appear to be correct as on perusal of the email dated 03.06.2021, it emerged that the Respondent No. 1 informed the Applicants about the CoC meeting scheduled for 04.06.2021 in due time and it was due to Applicants themselves that they are unable to attend the CoC meeting due to some technical reasons. It is clear that the contentions raised by the Applicants are just imaginary and without any substantial or convincing evidence, thus cannot be relied upon.
10. The Resolution Plan of the Applicants was rejected by the CoC in the 12<sup>th</sup> CoC meeting dated 04.06.2021 after taking into account all the relevant facts and circumstances and making a sound decision based on their commercial expertise. Therefore, we are not inclined to interfere in the commercial decision of the CoC. The Hon'ble Supreme Court in **Ramkrishna Forgings Limited v. Ravindra Loonkar, Resolution Profession of ACIL Limited & Anr., Civil Appeal No.1527 of 2022**, held as follows:

*“30. At this juncture, it also cannot be lost sight of that it is for the FC(s) who constitute the CoC to take a call, one way or the other. Stricto sensu, it is now well-settled that it is well within the CoC's domain as to how to deal with the entire debt of the Corporate Debtor. In this background, if after repeated negotiations, a Resolution Plan is submitted, as was done by the appellant (Resolution Applicants), including the financial component which includes the actual and minimum upfront payments, and has been approved by the CoC with a majority vote of 88.56%, such commercial wisdom was not required to be called into question or casually interfered with. Surprisingly, the discussion in both orders is*

*wanting, except for the difference in the figure of the total outstanding dues and the amount of money which the appellant was to put up initially for taking over the Corporate Debtor, for this Court to understand as to what other reasons, grounded in the Code's provisions, compelled the Adjudicating Authority-NCLT to embark upon the novel path of ordering revaluation by the OL. At the cost of repetition, nobody had moved before the NCLT or raised any objection challenging the Resolution Plan pending approval. Even the NCLAT has only indicated that when "figures of crores" are emerging stage-wise, "then there is no harm to look at the Expert opinion", which the Adjudicating Authority-NCLT in this case has asked for."*

11. In light of the above, we do not find any merit in the prayers made by the Applicants seeking reconsideration of their Resolution Plan and do not warrant any further directions to the Committee of Creditors (CoC). Consequently, the relief sought by the Applicants lacks merit and is therefore dismissed. Accordingly, **IA No. 4619 of 2021 in CP(IB) No. 2728/ND/2019** is hereby **dismissed** and **disposed of**.

Let a copy of this order be served to parties.

**Sd/-**  
**(DR. SANJEEV RANJAN)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**