

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

I.A. No. 1994/KB/2023
In
CP(IB) No. 149/KB/2019

*An Application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule
11 of the National Company Law Tribunal Rules, 2016*

In the matter of:

Indian Bank

.....Financial Creditor

-versus-

City Mall DevelopersPvt. Ltd.

.....Corporate Debtor

And

In the matter of

PRA India Private Limited

..... Applicant

-versus-

- 1. Kannan Tiruvengadam[Resolution Professional]**
- 2. Indian Bank**
- 3. GSRTradefin Private Limited**
- 4. Gopal Sponge And Power Private Limited**

..... Respondents

Date of pronouncing the order: 30.04.2024

Coram:

Rohit Kapoor : **Member (Judicial)**
Balraj Joshi : **Member (Technical)**

Appearances (via video conferencing/ physical):

Mr. Santosh Kumar Ray, Adv.] For Indian bank

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Ms. Rituparna Sanyal ,Adv.]
Ms. Swastika Sengupta, Adv.]
Mr.Abhrajit Mitra,Sr.Adv.]Forthe Applicant in I.A. 1994/KB/2023
Mr. Rachit Lakhmani, Adv.]
Mr. Siddhanth Makkar, Adv.]
Mr.Mainak Bose, Adv.] For the Resolution Professional
Ms.A.Rao,Adv.]
Mr.ShaunakMitra,Adv.] For GSRTradefinPvt. Ltd.
Ms. Sutapa Mitra, Adv.]

ORDER

Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. The interlocutory application being I.A. No. 1994/KB/2023 has been filed by the Applicant under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) seeking the following reliefs:
 - a) *The Resolution Professional and COC of the Corporate Debtor be directed to accept the submission of resolution plan from the Applicant and duly consider, examine and act upon the same in accordance with law;*
 - b) *The Respondents be restrained from giving any effect or further effect to and/or acting upon the resolution plan submitted by the Respondent no. 4.;*
 - c) *Pass such other and/or further order and/or grant such other and/or further reliefs as deem fit and proper by this Adjudicating Authority.*

Brief Facts:

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3. The Corporate Insolvency Resolution Process ("CIRP") was initiated against the Corporate Debtor, vide Order dated 08.03.2022 passed by the Adjudicating Authority. Mr. Sajjan Kumar Dokania was appointed as Interim Resolution Professional (IRP) vide the said Order and subsequently, the Respondent herein was appointed as the Resolution Professional (RP).
4. Subsequent to the appointment of the Respondent as RP, invitation for Expression of Interest (EOI) in Form G was published on 12.07.2022 in the newspapers being *Business Standard* (English), *Aajkal* (Bengali) and *Navabharat* (Hindi)(Chhattisgarh). Further, the Form G was also put up on the Corporate Debtor's website and intimation was also sent to the Insolvency and Bankruptcy Board of India (IBBI). The last date for submission of EOI was 27.07.2022.
5. In response to the same, four Prospective Resolution Applicants submitted EOI. Subsequently, a final list of eligible resolution applicants was communicated to the CoC on 21.08.2022.
- 7.1 Thereafter, in the 9th CoC Meeting held on 01.11.2022, it was decided that the resolution plan submitted by Gopal Sponge be put up for voting. The voting was concluded on 18.11.2022 and the resolution plan was passed by 77.53% and the Indian Bank abstained from voting. As such the CoC has already approved the Resolution Plan submitted by Respondent No. 4 w.e.f. 18.11.2022. Further, I.A (IBC) 1524/KB/2022 has filed with the Adjudicating Authority for the approval of the resolution plan which is pending adjudication.

Submission of the Applicant:

6. The case of the Applicant herein is that it had requested the RP vide letter¹ dated 14th November 2023 to allow for the submission of its resolution plan to take over the Corporate Debtor as a going concern. In reply the RP had refused to cooperate with the Applicant vide email² dated 22nd November 2023.

¹Annexure "A"

²Annexure "B"

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7. According to the Applicant, the Form G was not published in any newspaper in circulation in Raipur Region wherein most of the operations of the Corporate Debtor have been carried out. As such, Regulation 36A of IBBI (Resolution Process for Corporate Persons) Regulation, 2016 has not been followed by the RP. Due to the said acts of the RP, the Applicant herein has been unjustly denied the opportunity of submitting its resolution plan.
8. The Applicant also submits that it is offering to take over the Corporate Debtor for a greater sum of Rs. 36,00,00,000/- as compared to Rs. 29,75,00,000/- which is being offered under the Resolution Plan approved by the CoC.
9. In support of its claims, the Applicant has relied upon the decision of Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of ***Binani Cement Limited vs, Bank of Baroda & Anr.***³ whereby the objective of value maximization was upheld by approving the revised offer of Ultratech which was submitted at a belated stage.
10. The Applicant has further relied on the decision of this Adjudicating Authority *vide* its order dated 23.04.2018 in ***Punjab National Bank v. Bhushan Power & Steel Ltd.***⁴ directed that the resolution plan of Liberty House Group shall not be rejected simply on the ground of delay and accordingly, the same was directed to be placed before the committee of creditors. Reliance on this was also placed by the Ld. National Company Law Tribunal (NCLT), Mumbai Bench in ***Andhra Bank v. Oracle Home Textile Limited***⁵ whereby the resolution plan submitted belatedly was directed to be considered in the larger interest of the stakeholders.

Analysis and Findings:

11. We have heard the Ld. Counsel of the parties and perused the record.

³2018 SCC NCLAT 521

⁴C.A 152(PB)/2018

⁵2019 SCC Online NCLT 3677

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12. Regulation 36A(2) provides for the publication of Form G and mandates the publication of Form G in one English and One Regional language newspaper with wide circulation at the location of the registered office and principal office of the Corporate Debtor, as well as any other location where in the opinion of the RP, the Corporate Debtor conducts material business operations.
13. It is seen that the Form G was published on 12.07.2022 in the newspapers being *Business Standard* (English), *Aajkal* (Bengali) and *Navabharat* (Hindi)(Chhattisgarh) *i.e* the state wherein the Applicant claims the operations of the Corporate Debtor to be based in . Further, the Form G was also put up on the Corporate Debtor's website and intimation was also sent to the Insolvency and Bankruptcy Board of India (IBBI) on 12.07.2022. As such the requirements set under Regulation 36A(2) have been fulfilled.
14. It is of note that sub-regulation (6) of Regulation 36A provides that any EOI received after the time specified in the Form G i.e the last date of submission – shall be rejected. It is also settled law that regulation 36A(6) is a mandatory provision and the timeline prescribed under Reg. 36A(6) needs to be adhered to.
15. In the instant matter, the last date of submission of EOI as mentioned in the Form G was 27.07.2022. After the said date, the final list of eligible resolution applicant was formed and the same was communicated to the CoC on 21.08.2022. Further, the Resolution Plan of Respondent No. 4 was also approved by the CoC on 18.11.2022.
16. The Applicant herein has come into the picture much too late on 14.11.2023, when he requested the RP to be allowed to submit his resolution plan. The RP has correctly rejected the Applicant's belated request to be allowed to participate in the CIRP and make changes that would cause further delays to the time-bound process. Acceptance of the EOI of the Applicant after the last date of submission would result in violation of Regulation 36A(6) of the CIRP Regulations.

17. It is further pertinent to refer to the order dated 19.12.2022 passed by the Hon'ble NCLAT in the matter of *Kalinga Allied Industries India Pvt. Ltd. Vs. CoC (Bindalsponnge Industries Ltd.)*⁶ wherein the Appellate Authority has held as follows:

“At the cost of repetition, it is crystal clear that any modification or a withdrawal (by SRA or otherwise) after approval by the CoC and submission to the Adjudicating Authority, ‘irrespective of the content’ of the terms envisaged by the Resolution Plan, would only lead to further delay and defeat the very scope and objective of the Code. The existing framework does not provide any scope for effecting any further modifications or withdrawals of the CoC approved Resolution Plan by the SRA or the Creditors. The Adjudicating Authority can interfere only if the Plan is against the provisions of the Code. Once the Plan is submitted to the Adjudicating Authority, it is binding and irrevocable as between the CoC and the SRA in terms of the provisions of the Code. This Tribunal in ‘Steel Strips Wheels Ltd.’ Vs. ‘Shri Avil Menezes Resolution Professional of AMW Autocomponent Ltd. & Ors.’⁸, placing reliance on ‘Ebix Singapore Pvt. Ltd.’ (Supra), observed that any consideration of a belated Plan would breach both the timelines as well as the finality of a Resolution Plan approved by the CoC on an earlier date. The contention of the Learned Counsel for the first Respondent that the Code provides for ‘Maximisation of the Value of Assets’ and therefore a higher value offered is to be considered, is untenable, as in the instant case, the maximum timeline permissible for completion of the said process has lapsed and the CIRP has been ongoing since 11.05.2018 and more than four years have lapsed since then.”(Para 8)

“9. This Order has attained finality and no fresh consideration of any Resolution Plan at this stage can be entertained. It is reiterated that the ‘Maximisation of Value of Assets’ ought to be ‘within the specified timelines’

⁶ (2022) ibclaw.in 1053 NCLAT

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and if it is not a 'timebound process', the entire scope and objective of the Code would fail merely because there is another higher offer made by a third party, the CoC cannot consider another Plan of a third party who did not participate in the CIRP Proceedings. For all the ongoing reasons, this Tribunal is of the earnest view that once Plan is submitted for approval, it is binding between the CoC and the SRA, unless there is any material irregularity or is against the provisions of Section 30(2) of the Code the Adjudicating Authority cannot, in its limited jurisdiction, interfere."(Para 9)

18. In the instant matter the resolution plan has already been approved by the CoC and is pending approval before this Adjudicating Authority. In light of the aforesaid decision in **Kalinga** (supra), it is clear that the resolution plan approved by the CoC which is also pending approval before this Adjudicating Authority cannot be set aside in favour of a new resolution plan by a third party simply because it offers better valuation of assets.
19. In view of the aforesaid facts, circumstances and precedent, we are satisfied that the instant I.A. should be rejected and we accordingly hold so.
20. IA (IB) No.1994/KB/2023 is hereby **rejected** accordingly.
21. The Registry is directed to email copies of the order forthwith to the learned Counsel on record and the Liquidator for information.
22. Certified copies of this order may be issued, if applied for, upon compliance of all requisite formalities.
23. File be consigned to the record.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order dated the 30th day of April 2024