

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
BENCH- I**

IA No. 1898 of 2024

IN

CP(IB) No. 530 of 2020

Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016

IA No. 1898 of 2024

In the Application of

Ashdan Properties Private Limited

...Applicant

Versus

Dr. Mamta Binani & Committee of

Creditors of Rolta India Limited

...Respondents

In the matter of

Union Bank of India

...Financial Creditor

Versus

Rolta India Limited

...Corporate Debtor

Order Delivered on : 07.05.2024

Coram:

Hon'ble Member (Judicial) : SH. Justice Virendrasingh G. Bisht (Retd.)

Hon'ble Member (Technical) : SH. Prabhat Kumar

Appearances:

For the Applicant : Mr. Mustafa Doctor, Senior Counsel, Mr.
Dhaval Vussonji, Ms. Sonam Mhatre, Mr.

Darshit Thakkar, Mr. Jash Gandhi,
Advocates

For the Respondent No.1/

Resolution Professional : Mr. Sandeep Bajaj, Ms. Aakanksha Nehra,
Mr. Aashish Darne, Ms. Gunjan Nayyar,
Advocates

For the CoC : Mr. Janak Dwarkadas, Senior Counsel,
Ms. Neha Bhosale, Ms. Laveena Tejwani,
Advocates

For the Intervenor/Yash
Shares & Stock Private

Limited : Mr. Vikram Nankani, Senior Counsel,
Mr. Ameya Gokhale, Mr. Rishabh Jaisani,
Mr. Manas Kotak, Mr. Ritwik Guha,
Advocates

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application bearing **IA No. 1898/2024** is filed by Ashdan Properties Private Limited (“**Applicant**”) in the Corporate Insolvency Resolution Process (“**CIRP**”) of Rolta India Limited (“**Corporate Debtor**”) under the provisions of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) seeking the following reliefs :

- a) To direct Respondent No. 1 and the Members of the CoC i.e. the Respondent No. 2 to withdraw the opportunity provided by email dated 19.04.2024 (“**Annexure A**”) to all the PRAs to submit the enhanced financial offers, after the successful

- closure of the Negotiation round with H1;
- b) To direct Respondent No. 1 and the Members of the CoC i.e. the Respondent No. 2 to not consider or act upon any enhanced financial offer received by any of the 8 PRAs in response to the email dated 19.04.2024 (Annexure A);
 - c) To direct Respondent No. 1 and the Members of the CoC i.e. the Respondent No. 2 to conduct negotiations by strictly adhering to Clause 48 of the Process note dated 10.01.2024 (Annexure B) where the CoC can negotiate only with H1 and follow the Post Closure of Negotiation Process detailed therein under Clause 51-53;
 - d) During the pendency and final disposal and adjudication of the present Application this Tribunal be pleased to stay the operation and effect of the email dated 19.04.2024 (“**Annexure A**”).

Brief Facts

2.1 The Applicant is the H1 bidder in the CIRP of the Corporate Debtor. The Respondent No. 1 is the Resolution Professional (“**RP**”) appointed by the Respondent No. 2 i.e. Committee of Creditors (“**CoC**”) of the Corporate Debtor. The Applicant is filing the present Application being aggrieved by the email dated 19.04.2024 inviting enhanced financial offers in the CIRP of the Corporate Debtor after the closure of the Negotiation Process and the submission of the final Resolution Plans.

2.2 The CIRP of the Corporate Debtor was initiated by this Tribunal vide Order dated 19.01.2023. The Respondent No. 1 was thereafter appointed as the RP at the 1st CoC meeting held on 17.02.2023. Subsequently, on 13.10.2023, the RP published Form G inviting Resolution Plans which stated 28.10.2023 as the last date for the submission of Resolution Plans.

2.3 The CoC decided to carry out negotiations in terms of a Process Note dated 10.01.2024 which formed an integral part of the Request for Resolution Plan (“**RFRP**”).

Submissions made by the Ld. Counsel on behalf of the Applicant

3.1 The Applicant submits that the Process Note provides a right to the CoC i.e. the Respondent No. 2 in terms of Clause 48 thereof to further negotiate with the Resolution Applicant whose Resolution Plan offers the Highest NPV. The said Clause 48 provides that conclusion of the Negotiation Process shall be construed as Closure of Negotiation Process. The relevant extract of Clause 48 of the Process Note reads as follows-

“The steps mentioned in Round 3 above shall be repeated for subsequent rounds until the Highest NPV of amount proposed to be paid to all creditors remains unchanged for 3 (three) consecutive rounds (Highest NPV). The CoC reserves its rights to further negotiate with the Resolution Applicant whose Resolution Offers the said Highest NPV. Conclusion of the Negotiation Process shall be construed as "Closure of Negotiation Process".”

3.2 The Applicant states that the bidding process was held on 23.01.2024 and 24.01.2024 which went for thirty - three (33) rounds. The Applicant states that vide email dated 24.01.2024, the Respondent No. 1 informed that highest bid (HI) for the final round is Rs. 7,57,88,00,000/- (Rupees Seven Hundred and Fifty Seven Crore Eighty Eight Lakh Only) which was the bid of the Applicant. The Respondent No. 1 called for revised bid while also indicating that the highest bid has remained unchanged in the last two (2) rounds.

3.3 The Respondent No. 1, vide another email dated 24.01.2024, confirmed that the revised bid submitted by the Applicant is the highest Net Present Value and informed that the Applicant shall be

informed about the date for further negotiation with the CoC. The Respondent No. 1 thereafter vide email dated 25.01.2024 invited the Applicant to meet the CoC on 30.01.2024. However, the CoC meeting was rescheduled to 01.02.2024.

3.4 On 01.02.2024, the CoC decided to adjourn the meeting with all the Resolution Applicants and decided to hold the meeting after 12.02.2024.

3.5 The Applicant submits that in the meantime, on 28.01.2024, Patanjali Ayurved Limited made a request vide email to be considered as an eligible Prospective Resolution Applicant. On 29.01.2024, the CoC rejected the request on account of the statutory bar under the CIRP Regulations.

3.6 The refusal of the CoC led to Patanjali Ayurved Limited moving an Application bearing IA No. 345/2024 before this Tribunal. This Tribunal vide Order dated 01.02.2024 directed the Resolution Professional to place the proposal and documents received from Patanjali Ayurved Limited after the expiry of the EOI submission date before the CoC for their consideration. The CoC, by majority, decided to consider the proposal of Patanjali Ayurved Limited. And vide Order dated 12.02.2024, this Tribunal permitted the CoC to consider the Resolution Plan of Patanjali Ayurved Limited in the CIRP of the Corporate Debtor.

3.7 Consequently, several other entities sought to participate in the CIRP of the Corporate Debtor vide emails to the Resolution Professional and by moving applications before this Tribunal. This Tribunal vide Order dated 21.02.2024 directed the CoC to place the proposals of other such entities who were never part of the Final List of PRAs before the CoC for their consideration.

3.8 The Applicant herein, aggrieved by the Orders of this Tribunal dated 12.02.2024 and 21.02.2024 preferred Company Appeal Nos. 459/2024 and 464/2024 before the Hon'ble National Company Law Appellate Tribunal ("NCLAT"), New Delhi.

3.9 The Applicant submits that during the pendency of these Appeals before the Hon'ble NCLAT, the Resolution Professional invited the Applicant to the CoC meeting held on 06.03.2024 and asked the Applicant whether they were willing to increase their bid. The Applicant, on the same day, vide an email enhanced their Total Plan Amount to Rs. 830 crores. (NPV). Thereafter, vide email dated 06.03.2024, the Applicant further revised the Total Plan Amount to Rs. 851 crores (NPV).

3.10 On 07.03.2024, the Applicant provided the Resolution Professional and the CoC with the following timeline options with respect to its offer –

“Total Plan amount of Rs. 851 crores (NPV value). Payable as: Rs. 400 crores as Upfront and balance 451 crores with 10% p.a. interest within 6 months. We shall endeavour to pay the deferred amount as soon as possible.

Total Plan amount of Rs. 830 crores (NPV value). Payable as: Rs. 400 crores as Upfront and balance 430 crores with 10% p.a. interest within 3 months. We shall endeavour to pay the deferred amount as soon as possible.”

3.11 The applicant submits that the CoC on 10.03.2024 filed an Affidavit in Reply during the hearing of the Appeals and the minutes of the CoC meeting dated 07.03.2024 are annexed to the said Affidavit in Reply, which record that the CoC had passed a resolution stating that the CoC shall now only consider and renegotiate with the

original 8 PRAs whose names were reflected in the Final List of PRAs dated 07.11.2023. The Hon'ble NCLAT vide Order dated 18.03.2024 allowed the Appeals and set aside the Orders dated 12.02.2024 and 21.02.2024 passed by this Tribunal after taking into the submission of CoC in this regard.

3.12 Subsequently, the CoC invited the Applicant to join the CoC meeting held on 21.03.2024 to discuss the Resolution Plan submitted by the Applicant on 08.01.2024, to further negotiate the offer of Rs. 851 crores and to initiate Post Closure actionable as per the Process Note.

3.13 The Applicant submits that vide email dated 21.03.2024, pursuant to Clause 48 and 53 of the Process Note, the Resolution Professional requested the Applicant to submit the signed Resolution Plan by 27.03.2024. The Applicant submitted its signed Resolution Plan accordingly.

3.14 The Resolution Professional vide email dated 30.03.2024 listed out observations of the CoC with respect to the submitted Resolution Plan and called upon the Applicant to incorporate the changes in the Resolution Plan. Accordingly, the Applicant submitted the revised Resolution Plan on 02.04.2024. The Applicant submits that vide email dated 03.04.2024 and 04.04.2024, the Resolution Professional listed out further observations of the CoC and sought these observations to be incorporated in the Resolution Plan by 05.04.2024. The Applicant vide email dated 05.04.2024 apprised the Resolution Professional that the majority of the observations made were commercial and that the Resolution Plan was compliant with the Code as well as the RFRP. The Resolution Professional vide email dated 08.04.2024 requested the final Resolution Plan to be submitted by 09.04.2024. The Applicant informed the Resolution Professional that the observations of the CoC were already

incorporated in the Resolution Plan and requested a meeting with the CoC to seek further clarifications. Pursuant to the CoC meeting held on 10.04.2024, the Applicant submitted the compliant Resolution Plan on 15.04.2024.

3.15 On submission of the Resolution Plan, the Applicant was invited to the CoC meeting held on 15.04.2024, wherein the CoC raised their concerns with respect to upfront payment of the whole Resolution Amount and removal of the clause pertaining to “Further Outstanding Contribution Amount”. The Applicant submitted its Resolution Plan notifying its decisions on the concerns raised by the CoC on 16.04.2024.

3.16 The Applicant submits that vide email dated 16.04.2024, the Resolution Professional requested the Applicant to make further changes with respect to timing of payment of the entire Resolution Amount to be made within 3 months and complete removal of the clauses pertaining to “Further Outstanding Contribution Amount”, i.e. keeping aside Rs. 15,00,00,000/- for contingencies till 31.01.2027 in its Resolution Plan. The Applicant in due compliance submitted its Resolution Plan on 16.04.2024.

3.17 In the meantime, one of the Resolution Applicants who formed part of the Final List of PRAs made an unsolicited offer to the CoC, after the closure of the bidding process in terms of Clause 48 of the Process Note. The Applicant submits that the offer was marginally higher than the final financial offer of the Applicant. Thereafter, vide email dated 18.04.2024, the Applicant was again invited to the CoC meeting with the intention to close the Negotiation round. The Applicant submits that in the meeting, the CoC suggested the Applicant to marginally increase its financial offer, to which the Applicant immediately agreed and submitted the revised Resolution Plan with the enhanced financial offer of Rs. 852 crores along with

effectively higher interest. The relevant financial offer is reproduced below –

- Upfront Payment
A minimum of Rs. 400,00,00,000/- (Rupees Four Hundred Crore Only) within thirty (30) days from the NCLT Approval Date; and
- Tranche Payment
Rs. 452,00,00,000/- (Rupees Four Hundred Fifty Two Crore Only) within three (3) months from the NCLT Approval Date in one or more instalments at eight (8) percent interest per annum for the period commencing from the NCL T Approval Date till the actual date of payment on a reducing balance method.

3.18 The Applicant submits that at the end of the CoC meeting, the Resolution Professional specifically inquired whether the negotiation round shall be considered as closed and each of the CoC members individually assented to the same thereby formally concluding the negotiation round as per the Process Note.

3.19 The Applicant submits that the Resolution Professional vide its email dated 19.04.2024 arbitrarily extended an opportunity to all the Resolution Applicants to submit an enhanced financial offer for the CIRP of the Corporate Debtor by 22.04.2024. The Applicant vide email dated 21.04.2024 objected to the conduct of the Resolution Professional and called upon the Respondents to adhere to the Process Note.

3.20 In pursuance of the Negotiation Process and in furtherance to its revised proposal submitted vide its email dated 18.04.2024, the Applicant by its email dated 22.02.2024 further revised its proposal

in respect of the Tranche Payment by offering an upfront payment of the same within 30 days of the NCLT Approval date (thereby agreeing to make the entire payment of Rs. 852 Crores upfront i.e. within 30 days from the NCL T Approval Date). Moreover, in order to demonstrate its bona fides, despite its objection to the arbitrary conduct and contravention of the Process Note by Respondent Nos. 1 and 2 as set out in the email dated 19.04.2024, the Applicant under protest submitted its enhanced financial proposal incorporating the same in its Resolution Plan by its email dated 22.02.2024. The Applicant further clarified that such enhanced financial proposal as incorporated in the Resolution Plan is to be considered only subject to orders passed by this Tribunal.

3.21 The Applicant submits that as evident from Clause 4 and 5 of the Process Note, the very purpose of publishing the Process Note is to ensure transparency and lay down the terms and conditions of the negotiation process. As such, since the Negotiation Process is mandatorily required to be conducted as per the terms and conditions of the Process Note, any deviation from the published terms and conditions would be void and cannot be acted upon. Further such deviation threatens to vitiate the entire resolution process and will ultimately be detrimental to the interest of all stakeholders including the members of the CoC.

3.22 The Applicant submits that The Central Vigilance Commission has by its circular No. 01/01/10 directed that there should not be post tender negotiations as post tender negotiations could often be a source of corruption. If at all negotiations are warranted under exceptional circumstances, the post tender negotiations are not to be held except with H1 bidder, if required. As good governance and in public interest, the members of the CoC are bound by the circular No. 01/01/10 issued by The Central Vigilance Commission.

3.23 Without prejudice the Applicant submits that email dated 19.04.2024 and invitation of enhanced financial offer would lead to delay and harm the primary objective of the Code to complete the CIRP of the Corporate Debtor within a strict timeline which has already caused huge losses to the Respondent No.2. The Applicant submits such an invitation of financial offers would become an endless exercise and would adversely affect the concept of maximisation of the value inherent in the Code in a time bound manner.

Findings

4. Heard learned Counsel and perused the material available on record.
5. The issue before us is this – **Whether the Resolution Professional and the CoC were acting within their power when they invited enhanced financial offers from the Prospective Resolution Applicants after having undertaken negotiations with the H1 bidder. i.e. the Applicant herein ?**
6. The Applicant states that as per the Process Note issued by the Resolution Professional, the CoC was to initiate negotiation process with the bidder with the highest NPV and post negotiations, a closure of the process was envisaged that would then lead to the CoC voting on the Resolution Plans.
7. It is the Applicant's case that since they emerged as the bidder with the highest NPV, i.e. H1, and they participated in the negotiation process with the CoC which was brought to a close on 18.04.2024, the only next step then is for the CoC to vote on the Resolution Plan. The conduct of the CoC and the Resolution Professional in inviting enhanced bids from all the Resolution Applicants after concluding negotiations with the Applicant is ultra vires the RFRP and the Process Note. The Counsel for the Applicant relied on Clause 48 of the Process

Note to state that the conclusion of negotiations with H1 would lead to a conclusion of the negotiation process as a whole and would not entitle the CoC or the Resolution Professional to reconsider the Resolution Plan offers.

8. Per Contra, it is the Respondent's case that it is well within their rights to renegotiate with all the Resolution Applicants as the aim of the CoC is to maximise the value for the lenders of the Corporate Debtor.
9. The Counsel for the Respondents relied on the certain Clauses of the Process Note during the course of arguments as reproduced below-

“Clause 15

This document and the contents hereof are without prejudice to the rights of the CoC and the Resolution Professional contained under law or equity or the RFRP. Resolution Professional and the CoC shall have full authority and discretion to conduct and regulate the negotiations as per the commercial wisdom of CoC in light of the overall aim and objective outlined in this Process Note for Negotiation. Each Resolution Applicant is presumed to have agreed and acknowledge that it does not have any right, vested or otherwise, in the resolution process of the Corporate Debtor and/or under any clauses/terms of this Process Note for Negotiation against the CoC and/or the Resolution Professional.

Clause 18

Each Resolution Applicant acknowledge and agree that its participation in the Negotiation Process does not confer any right or any privilege on the Resolution Applicant for exclusive consideration of its proposal/resolution plan.

Clause 20

In case any Resolution Applicant fails to adhere to any of the timelines set out in the steps above, the CoC shall have the discretion to proceed in the process

without considering the Revised Financial Proposal of the Resolution Applicant (if submitted after the timeline specified).

Clause 48

*The steps mentioned in Round 3 above shall be repeated for subsequent rounds until the **Highest NPV** of amount proposed to be paid to all creditors remains unchanged for 3 (three) consecutive rounds (**Highest NPV**). The CoC reserves its rights to further negotiate with the Resolution Applicant whose Resolution Offers the said Highest NPV. Conclusion of the Negotiation Process shall be construed as "**Closure of Negotiation Process**".*

10. The Counsel for the Respondent emphasised that Clause 48 of the Process Note cannot be interpreted to mean that further negotiations shall be undertaken only with H1 bidder. The Counsel further submitted that Clause 15 of the Process Note clearly states that the CoC and the Resolution Professional have full authority to and discretion to conduct and regulate the negotiations as per the commercial wisdom of the CoC and that each Resolution Applicant is presumed to have agreed and acknowledge that it does not have any right, vested or otherwise, in the resolution process of the Corporate Debtor and/or under any clauses/terms of this Process Note for Negotiation against the CoC and/or the Resolution Professional.
11. The Counsel for the Respondent also relied on Clause 2.10 of the RFRP as reproduced below-

“The CoC reserves the right to negotiate any of the terms of the Resolution Plan with one or more Resolution Applicant(s) to maximise the value for all the stakeholders, subject to the terms of Regulation 39(1A) for modification of the Resolution Plans or use of challenge mechanism for improving the plan. The timelines and

the process for the negotiation shall be determined and/or communicated, if necessary, at a later date.”

12. The Counsel for the Resolution Professional in addition to the above contentions submitted that Clause 18 of the Process Note clearly states that the participation of a Resolution Applicant does not confer any right or any privilege on the Resolution Applicant for exclusive consideration of its proposal/resolution plan. The Counsel for the Resolution Professional also pointed out that all the Prospective Resolution Applicants have submitted an undertaking as reproduced below-

“We understand and acknowledge that the Resolution Professional and/or the CoC have further right to renegotiate the terms of this Resolution Plan and the decision of the Resolution Professional on behalf of the CoC and/or the CoC in selection of the Successful Resolution Applicant and the Resolution Plan, shall be final and binding on us.”

13. In response to the Applicant’s contention that the invitation of financial offers would become an endless exercise, the Counsel for the Respondents submitted that the Resolution Applicants had been given a last & final opportunity to submit their enhanced financial offers, signifying that the Resolution Professional and the CoC were endeavouring to conclude the process as per the timeline laid down in the Code, which would expire on 08.05.2024 in the present case.
14. The Counsel for the Respondents also submitted that despite the Applicant’s protest against the invitation for enhanced financial offers, the Applicant still submitted an enhanced financial offer on 22.04.2024.

15. The Counsel for the Intervenor, i.e. Yash Shares & Stocks Private Limited, a Prospective Resolution Applicant, appeared and supported the contention of the Counsel for the CoC. The Counsel of the Intervenor further pointed out certain Clauses of the Process Note during the course of arguments as reproduced below-

"Clause 5

For the purposes of this Process Note for Negotiation, "Negotiation Process" means the process being conducted to maximize the value of the assets of Rolta India and to ensure transparency in negotiation with the Resolution Applicants as per terms and conditions of Process Note for Negotiation as set out herein. The competing Resolution Applicant(s) will be given an opportunity to improve their commercial through the Negotiation Process as per the terms and conditions of this Process Note for Negotiation.

Clause 10

It is made abundantly clear that evaluation and voting process shall be conducted as per the provisions of the Code and the CIRP Regulations and the CoC and its members are under no obligation to any of the Resolution Applicants or any other person to approve a resolution plan which might have scored the highest as per the evaluation criteria and resolution plans shall be voted upon by CoC for approval solely on the basis of the CoC's commercial wisdom and taking into account the feasibility and viability of each of the resolution plans."

16. The Counsel for the Intervenor also pointed out that in the Order dated 18.03.2024 passed by the Hon'ble NCLAT in the Company Appeals 464/2024 and 459/2024, the minutes of the CoC meeting held on 07.03.2024 have been recorded which state that the CoC has decided to consider and renegotiate only with the existing 8 Resolution Applicants, whose names were reflected in the Final List of Prospective Resolution Applicants dated 07.11.2023 and conclude the CIRP at the earliest within the available timelines.

17. The Learned counsels for both sides have placed reliance on the Hon'ble NCLAT's decision in the matter of *Vistra ITCL (India) Ltd. vs. Torrent Investments Pvt. Ltd. and Ors. [Company Appeal (AT)(Insolvency) no. 132, 133, 134 of 2023]* to support their contentions.
18. This decision was rendered on an issue whether after completion of Challenge Mechanism, the CoC can still negotiate with the Resolution Applicants to maximise the value of the Corporate Debtor. The Hon'ble NCLAT held that Regulation 39(1A) does not prohibit CoC from negotiating with Resolution Applicants or asking Resolution applicants to further increase the Plan value and finally concluded at Para 60 that even after completion of Challenge Mechanism under Regulation 39(1A)(b), the CoC retain its jurisdiction to negotiate with one or other Resolution Applicants, or to annul the Resolution Process and embark on to re-issue RFRP. Regulation 39(1A) cannot be read as a fetter on the powers of the CoC to discuss and deliberate and take further steps of negotiations with the Resolution Applicants, which Resolutions are received after completion of Challenge Mechanism.
19. Thus, a perusal of the decision mentioned above clearly provides that the commercial wisdom of the CoC has to be given paramount importance and that the CoC is well within their rights in trying to improve the Resolution Plan for the CIRP of the Corporate Debtor, if it is empowered to do so in terms of RFRP.
20. We find that the Clauses as reproduced above reserve the rights of the CoC and the Resolution Professional to regulate and conduct the negotiation process in the matter they deem fit in order to maximise the value for the lenders of the Corporate Debtor.
21. Clause 10 of the RFRP clearly states that the CoC is under no obligation to approve a Resolution Plan even it has scored the highest

as per the evaluation criteria. Hence, we find no merit in the Applicant's insistence that their Resolution Plan must be voted upon exclusively since they are the highest bidder and have undergone the negotiation process with the CoC. It is for the CoC to decide whether they want to approve a Resolution Plan or renegotiate with all the Resolution Applicants in order to obtain an enhanced offer for the CIRP of the Corporate Debtor.

22. Accordingly, we have no hesitation to hold that CoC was well within its rights under the RFRP and Process Note thereunder to call for revised offers from all the Resolution Applicants. It is pertinent to note that the CoC's constant bid to maximize the value of Corporate Debtor has yielded results in so far as the bid amount, despite final round of negotiation having concluded, was further enhanced by the applicant itself.

23. Accordingly, IA No. 1898/2024 is dismissed and disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

/SP/

Sd/-

Justice V.G. Bisht
Member (Judicial)