

SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI- HON'BLE MEMBER (J)
CORAM: SHRI. CHARANSINGH - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 17.07.2023, At 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1048/2023 in CP (IB)No.06/7/HDB/2019
NAME OF THE COMPANY	Speck Systems Ltd
NAME OF THE PETITIONER(S)	IDBI Bank Ltd
NAME OF THE RESPONDENT(S)	Speck Systems Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1048/2023

This application is allowed, vide separate orders.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA No.1048 of 2023 in
CP(IB) No.6/7/HDB/2019
Under Section 60(5) of IBC, 2016

In the matter of:

IDBI Bank Limited

.... Financial Creditor

Vs.

M/s. Speck Systems Ltd.

.... Corporate Debtor

Between:

Mr. K.C.M. Kumar,
Promoter & Director-Suspended of MSME Entity,
Representing the Ex-Management of
M/s. Speck Systems Ltd.,
R/o. B122 AFOCHS,
2nd Cross Sainikpuri,
Secunderabad – 500 094.

.... Applicant

And

Mr. Raghu Babu Gunturu,
Resolution Professional of M/s.Speck Systems Ltd,
1st Floor, Golden Heights,
Plot No.9, Opp: Raheja IT Mindspace,
HUDA Techno Enclave, Madhapur,
Hyderabad – 500 081.

.... Respondent

Date of order: 17.07.2023

CORAM:

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)

Hon'ble Sri Charan Singh, Member (Technical)

Counsels present:

For the Applicant : Mr. Naresh Kumar Sangam, Advocate
For the Respondent : Mr. Amir Bavani, Advocate
Heard on : 13.07.2023

**[PER: BENCH]
ORDER**

1. This application is filed by the Applicant against the Respondent who is the Resolution Professional (RP) of the Corporate Debtor (CD) M/s. Speck Systems Ltd, seeking to direct the Respondent to keep in abeyance the CoC voting results on the Resolution Plan till the Resolution Plan of the Applicant is placed before the CoC; and to set aside the email dated 28.06.2023 of the RP, wherein the Applicant was denied the opportunity to submit the Resolution Plan as MSME Promoter of the CD; and to direct the Respondent to allow the Applicant to submit the Resolution Plan and thereafter place it before the CoC for its consideration; and such other orders which are necessary under the circumstances of the case.
2. The facts as per the application are briefly, as follows:
 - a. After the CD was taken into Corporate Insolvency Resolution Process (CIRP) by virtue of the Order of this Tribunal dated 02.09.2021, an Interim Resolution Professional (IRP) was appointed and who was

subsequently confirmed as Resolution Professional (RP) invited Resolution Plans and the CoC members were appraised about three Resolution Plans that were submitted by the Prospective Resolution Applicants (PRAs). Consequently, the CoC approved the Resolution Plan submitted by M/s. Pasura Crop Care Pvt. Ltd. An IA No.641 of 2022 was filed by the RP for approval of the Resolution Plan. By Order dated 03.01.2023 in IA No.641 of 2022, this Tribunal remanded the Resolution Plan back to the CoC for further consideration. After the Resolution Applicant had duly amended the plan, the said Resolution Plan is still under consideration before the CoC. An extension application was filed by the Respondent, and the CIRP period stands extended till 05.07.2023.

- b. The Applicant is the Promoter & Director of the CD and representing the ex-management of the CD. He runs an MSME unit, by virtue of which, he is eligible to submit the Plan. The Applicant vide an email dated 24.06.2023 requested the RP to grant him an opportunity to table a Resolution Plan before the CoC, but the same was rejected by the RP. If the Applicant is not permitted to submit the Resolution Plan, he will be prejudiced and the interest of the stakeholders as well as the CD would be affected. Hence, this application.

3. The Respondent/RP filed Counter admitting to the extent of the rejection of request of the Applicant to submit the Resolution Plan. It is further contended that the Resolution Plan is already before the CoC and is in final stage of voting. The Applicant approached the Respondent belatedly. Hence, this application is liable to be dismissed.
4. Heard both the Counsel. The contention of the Counsel for the Applicant with regard to the delay in seeking the permission is that, he has already submitted a Resolution Plan along with another Resolution Applicant jointly and that the said Resolution Applicant has backed from the said Resolution Plan and hence, the delay.
5. There is no denial of the fact that the Applicant is the Promoter of MSME and that he has to be given preference in submitting a Resolution Plan.
6. The Principal Bench of the Hon'ble NCLAT in CP CA(AT)(INS) No. 203 of 2019, dated 04/07/2019, observed as under vide Paras 20 to 22:

“20. The Committee of Creditors is to consider the feasibility, viability and such other requirements as has been specified by the Board. If it proposes maximization of the assets and is found to be feasible, viable and fulfil all other requirements as specified by the Board, the company being MSME, it is not necessary for the Committee of Creditors to follow all the

procedures under the Corporate Insolvency Resolution Process. For example, if case is settled before the constitution of the Committee of Creditors or in terms of Section 12A on the basis of offer given by Promoter, in such case, all other procedure for calling of application of Resolution Applicant, etc. are not followed. If the promoter satisfies all the creditors and is in a position to keep the Corporate Debtor as a going concern, it is always open to Committee of Creditors to accept the terms of settlement and approve it by 90% of the voting shares. The same principle can be followed in the case of MSME.

21. The Parliament with specific intention amended the provisions of the I&B Code by allowing the Promoters of MSME to file Resolution Plan. The intention of the legislature shows that the Promoters of MSME should be encouraged to pay back the amount with the satisfaction of the Committee of Creditors to regain the control of the Corporate Debtor and entrepreneurship by filing Resolution Plan which is viable, feasible and fulfils other criteria as laid down by the Insolvency and Bankruptcy Board of India.

22. Therefore, we hold that in exceptional circumstances, if the Corporate Debtor is MSME, it is not necessary for the Promoters to compete with other Resolution Applicants to regain the control of the Corporate Debtor.”

7. The appellant therein, however, stated that he will provide Net Worth Certificate at the time of submission of Resolution Plan. Considering the said fact, the applicant was also permitted to submit the Net Worth Certificate to the Resolution Professional. After having said so, in the paragraph that followed ie. Para No. 32 of the judgment, the NCLAT observed that *“In any event, it is unequivocal that the Corporate Debtor is an MSME and as held by this*

Tribunal that it is not necessary for the Promoters to compete with other Resolution Applicants to regain the control of the Corporate Debtor”.

8. The object of the Code, which is maximization of the Value of the Assets of Corporate Debtor, is also taken into consideration by the NCLAT and it observed that in order to give an opportunity to regain the control of the Corporate Debtor, the Management/Promoters/Erstwhile Directors of the Corporate Debtor being an MSME, need not compete with other Resolution Applicants.
9. The ratio laid down in the above judgment, would explain the rationale behind permitting MSMEs to submit resolution plan.
10. Reliance was also placed in *Swiss Ribbons Pvt. Ltd. and Another Vs. Union of India and Others*, 2019 SCC Online SC 73, rendered by the Hon’ble Apex Court, wherein, it was made clear that I&B Code envisages maximization of value of assets of the Corporate Debtor so that they are efficiently run as going concerns and in turn will promote entrepreneurship. It was observed that the liquidation

can be ordered as a last resort if there is no Resolution Plan and the Resolution Plans submitted are not fulfilling the criteria laid down therein.

11. The Counsel also relies on the judgement of the *Hon'ble NCLAT, New Delhi in Company Appeal (AT) (Insolvency) No.160 of 2021 & IA No.1117 of 2021* wherein, keeping in mind the intention of the legislature, the Hon'ble NCLAT held that;

“there is no harm in giving an opportunity to the MSME in accordance with the provisions of the Code for keeping the promotion of entrepreneurship alive.”

12. In the said case, the Hon'ble NCLAT has observed that;

“The Adjudicating Authority has only provided an opportunity to the MSME and has given the liberty to the CoC to negotiate with existing Resolution Applicant and MSME unit also and accept the one which is commercially viable and technically feasible.”

13. Considering the facts and circumstances of this case, we are also inclined to give an opportunity to the Applicant who is MSME to submit his Resolution Plan. But however, the same would be placed by the Resolution Professional before the CoC and the same shall be dealt with in accordance with Law.

14. Hence, in the result, the Application is allowed and the Applicant is permitted to submit his Resolution Plan to the RP within 20 days

from the date of this Order and the RP shall collate the said Resolution Plan and place before the CoC and the CoC shall negotiate with the existing Resolution Applicants including the Applicant herein and decide on the Resolution Plans, considering the commercial viability and technical feasibility of the Plan. The CoC voting shall be stopped till consideration of the Resolution Plan submitted by the Applicant. The CoC voting shall be done in respect of the Plan that would be accepted after considering the Resolution Plan submitted by the Applicant. The application is accordingly allowed and disposed of.

Sd/-

**(CHARAN SINGH)
MEMBER (TECHNICAL)**

Sd/-

**(JUSTICE TELAPROLU RAJANI)
MEMBER (JUDICIAL)**

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