

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT – VI

Item No.1

I.A/5801/2022 IN IB-938/PB/2018

IN THE MATTER OF:

INDIAN OVERSEAS BANK

...FINANCIAL CREDITOR

VERSUS

M/S. RATHI TMT SARIA PVT. LTD.

...CORPORATE DEBTOR

Order under Section 60(5), IBC,2016

Order delivered on 18.07.2023

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

I.A/5801/2022 in IB-938/PB/2018 is dismissed.

SD/-

**(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI**

I.A/5801/2022 IN IB-938/PB/2018

Application under Section 60(5), IBC,2016.

IN THE MATTER OF:

INDIAN OVERSEAS BANK

...FINANCIAL CREDITOR

VERSUS

M/S. RATHI TMT SARIA PVT. LTD.

...CORPORATE DEBTOR

AND IN THE MATTER OF:

INDIAN OVERSEAS BANK

At: Asset Recovery Management Branch Floor, Rachna Building,
Pusa Road Palace, New Delhi-110008

.... Applicant

VERSUS

1. M/S. RATHI TMT SARIA PVT. LTD.

Through Mr. Ajit Kumar Resolution Professional

At: 1A, Sanskriti Apartments, GH-22 Sector-56,
Gurugram 1220011

...Respondent No.1

2. Mr. Kamal Kishore Aggarwal

Proprietor, NIFS Steel

At: Pearl Omaxe, Tower 1 Netaji Subhash Place,
New Delhi-110034

.... Respondent No.2

3. Ms. Prem Lata Yadav

At: P-48, Ashiana Village, Harchandpur,
Bhiwari Ind. Area, Alwar, Rajasthan -301019

.... Respondent No.3

4. Mr. Pradeep Gupta

At: A-116, Phase I, Ashok Vihar,
New Delhi -110052

...Respondent No. 4

Coram:

Shri. Bachu Venkat Balaram Das, Member (Judicial)

Shri. Rahul Bhatnagar, Member (Technical)

Counsel for the Applicant: Mr. Krishan Kumar

Counsel for the Respondents: Ms. Jyoti Prakash Sahu

Order Pronounced on: 18.07.2023

ORDER

PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)

1. The present Application has been filed by the Applicant under Section 60(5) of the IBC, 2016 praying for the following reliefs:

(a) pass an order directing the Ld. RP to convene CoC for deciding the pending issues between the constituent members of SRAs for due implementation of resolution plan or in the alternate to cancel approved resolution plan and call for fresh bids for the value realization of the corporate debtor;

(b) Pass such other and further order(s) as may deem fit in the circumstances of the case.

2. The brief facts as averred by the Applicant for filing the present Application are as follows:

- i. That the Resolution Professional has filed an application being IA No.1159 of 2020 for approval of resolution plan which is already approved by the CoC. The resolution applicant constituting of NIFS Steel through Kamal Kishore Aggarwal, Premlata Yadav and Pradeep Gupta jointly was declared highest

bidder by the CoC on 01.02.2020. On 07.02.2020 the resolution plan was approved by 98.61% voting share.

- ii. That during the CoC meeting held on 06.05.2022, Mr. Kamal Kishore Aggarwal one of the member of consortium applicant expressed his objection to work with consortium and offered further bid of resolution plan for corporate debtor.
- iii. That Mr. Kamal Kishore Aggarwal, one of the members of the Consortiums of the Resolution Applicants informed the CoC Members that he has not paid his share of the Performance Bank Guarantee (PBC) to which the CoC Members replied that the PBG amount has been received from the Consortium and it is not their concern how the constituents of the Consortium have paid the amount. Mr. Kamal Kishore Aggarwal stated his intent to move out of the Consortium and informed the CoC Members and Resolution Professional that he intends to place a higher bid amount of Rs.35 Crore of Resolution Plan for the Corporate Debtor and is ready to pay the entire amount within a 30 days' time period.
- iv. That the resolution plan was approved by the CoC long back on 07.02.2020 and certain disputes have arisen between the

constituent members of resolution applicant which were evident from the proceedings before this Tribunal as well as before CoC meetings. Further, vide letter dated 09.11.2022 Mr. Kamal Kishore Aggarwal (prop. NIFS and Constituent member of resolution applicant) had informed the RP that Mr. Kamal Aggarwal was agreeable to the proposal of entering into New Conversion Agreement with other SRA's but the other two SRAS refused the proposal and stated that they are not interested in running the firm together on conversion. Even the other two SRA's refused to withdraw the IAs filed before this Tribunal, levelling allegations against each other. Under the circumstances, Mr. Kamal Kumar Aggarwal requested RP to convene a CoC meeting for finding amicable solutions to the pending issues.

- v. That it appears that the chances of successful implementation of resolution plan are bleak and it will be in the interest of justice and for value maximization of the assets of the corporate debtor that liberty may be granted to reconvene the CoC meeting for reconsideration of resolution plan in light of the above submission. The conduct of the constituent members of

the resolution applicant raises a doubt about effective implementation of the resolution plan

3. The Respondent No. 2 has filed its reply stating as follows:

- i. That the Respondent No. 2 has time and again shown its bonafide to implement the Resolution Plan. However, looking at the conduct, hidden motive and malafide intentions of Respondent No. 3 & 4, it is highly unlikely that the consortium will be able to implement the plan.
- ii. That since nothing other than unwarranted hindrances is expected from Respondents No. 3 & 4 in the effective implementation of the Resolution Plan, the Answering Respondent had pleaded to detach from the consortium and bid for the Corporate Debtor as a separate entity altogether at a better valuation or in a Swiss Challenge Method to maintain transparency and to achieve maximum realisation of value of the Corporate Debtor.
- iii. That similarly, during the adjudication of I.A. No. 1159 of 2020 filed for approval of Resolution Plan, the Respondents No. 3 & 4 revoked their Power of Attorney given in favour of the

Answering Respondent for acting as the consortium lead and executing all necessary documents pertaining to the SRAs for timely approval of the said Resolution Plan. Due to the execution of the Deed of Revocation of General Power of Attorney dated 23.09.2020, the Answering Respondent was constrained from appearing and executing necessary documents for appropriate adjudication of the Resolution Plan by this Adjudicating Authority. Therefore, the said revocation of power of attorney given to the Answering Respondent unequivocally demonstrates that disputes arose between the consortium members on instance of the Respondent No. 3 & 4 and Respondents No. 3 & 4 have initiated the said disputes because of which the Answering Respondent is constrained to opt out of the consortium and propose a better resolution plan for the Corporate Debtor.

- iv. That because of all the rifts, differences, and unwarranted approach of Respondents No. 3 & 4 towards the Answering Respondent and his family members, the relationship between the consortium members has become sour and unworkable.

4. The Respondent No. 3 & 4 have filed their reply stating as follows:

- i. That the present application has been filed with a sole intention to delay the adjudication of IA/ 1159/2020 being the application for approval of resolution plan which is already pending adjudication for more than 2 years.
- ii. That the present application has been filed by the Applicant in ignorance of the email dated 10.05.2022 wherein Respondent No.2 has clarified in detail that the Minutes of Meeting of the 10th Meeting of Committee of Creditors (hereinafter referred to as `CoC') held on 06.05.2022 has incorrectly recorded that Respondent No.2 i.e., Mr. Kamal Kishore Aggarwal has not paid his share of Performance Bank Guarantee and that he has stated his intent to move out of the consortium of the Successful Resolution Applicants and also that he intends to place a higher bid of Rs. 35 Crore for the Corporate Debtor.
- iii. That in the 11th Meeting of CoC held on 04.01.2023, the answering Respondents clarified their intention to implement the Resolution Plan unanimously and in its true letter and spirit before the Applicant.

5. We have heard the submissions made by both the parties. The present Application has been filed by the Applicant seeking directions to the RP of the Corporate Debtor for convening the CoC meeting for deciding the pending issues between the constituent members of SRAs for due implementation of resolution plan or in the alternative to cancel the approved resolution plan and call for fresh bids for the value realization of the corporate debtor. The plan approved by the CoC has been filed for approval vide I.A 1159/2020 and is pending adjudication before this Tribunal. The plan approved by CoC has been submitted by a consortium of Respondent No. 2, 3 & 4. The ground raised by the Applicant for filing the present Application is that there are disputes between the consortium members, in light of which the chances of successful implementation of the Resolution Plan are bleak. However, the Respondent No. 3 & 4 in the reply to the present Application, have expressed their willingness to implement the Resolution Plan. The Respondent No. 2 has in his reply stated that he was willing to implement the plan but looking at the conduct, hidden motive and malafide intentions of Respondent No. 3 & 4, it is highly unlikely that the consortium will be able to implement

the plan. At this juncture we would like to refer to e-mail dated 10.05.2022 by the Respondent No. 2 addressed to the RP of the Corporate Debtor wherein it has been stated as follows:

“Now, as a consortium member of 1/3 share, I am ready to pay my share of the resolution amount as and when it is due and abide by all the terms & conditions of the resolution plan submitted by us.

Regarding my intent to place a higher bid of Rs. 35 Crore (5 Crore more than previous Resolution amount) to be paid within 30 days, I meant to say if other 2 members of consortium are not interested in going ahead with the resolution plan submitted, I alone shall pay the over and above amount of 5 Crores in 30 days' time and rest as specified in the Resolution Plan already submitted.”

From the above e-mail addressed by the Respondent No. 2, it is clear that all the members of the consortium are willing to implement the Resolution Plan. Be that as it may be, the present Application needs to be dismissed per the judgment of the Hon'ble Supreme Court in the matter of *Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd. & Anr. [Civil Appeal No. 3224 of 2020]*, wherein the Hon'ble Supreme Court has categorically held that that a resolution plan approved by the

committee of creditors (“CoC”) cannot be withdrawn or modified by the successful resolution applicant (“RA”). The Hon’ble Supreme Court in the said matter also held as follows:

The negotiations between the Resolution Applicant and the CoC are brought to an end after the CoC’s approval. The only conditionality that remains is the approval of the Adjudicating Authority, which has a limited jurisdiction to confirm or deny the legal validity of the Resolution Plan in terms of Section 30 (2) of the IBC. If the requirements of Section 30(2) are satisfied, the Adjudicating Authority shall confirm the Plan approved by the CoC under Section 31(1) of the IBC, 2016.

A submitted Resolution Plan is binding and irrevocable as between the CoC and the successful Resolution Applicant in terms of the provisions of the IBC and the CIRP Regulations.

- 6.** In light of the above, we are of the view that since the present Application has been filed at a stage when the Resolution Plan has already been submitted before this tribunal for approval and a period of over 2 years has lapsed since the Application for approval of the Plan was filed, the Application is liable to be dismissed. Time is the essence of the Corporate Insolvency Resolution Process. The Corporate Insolvency Resolution Process under the Insolvency

and Bankruptcy Code, 2016 cannot be allowed to lapse into an indefinite delay defeating the very object of the law.

7. I.A 5801/2022 stands dismissed and accordingly disposed off in terms of the above order.

Let a copy of order be served to parties.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER(JUDICIAL)