

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

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI.RAJEEV BHARDWAJ- HON'BLE MEMBER (J)

CORAM: SHRI.SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 04.01.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1924/2023 in Company Petition IB/16/2023
NAME OF THE COMPANY	XL Energy Limited
NAME OF THE PETITIONER(S)	Invent Assets Securitization and Reconstruction Pvt Ltd
NAME OF THE RESPONDENT(S)	XL Energy Limited
UNDER SECTION	7 of IBC

Order

IA (IBC)/1924/2023

Orders pronounced, recorded vide sheets. In the result, this application is not maintainable.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

IA 1924 of 2023

in

CP (IB) No. 16/7/HDB/2023

U/s. 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016

In the matter of Invest Assets Securitization and Reconstruction Pvt. Ltd. Vs. XL Energy Limited & Ors.

Between:

DHANADEEP CONSULTANTS PVT. LTD.

... APPLICANT

VERSUS

1. XL ENERGY LIMITED.

(Through the Resolution Professional)

2. COMMITTEE OF CREDITORS

(In the CIRP of XL Energy Ltd.)

(Through the Resolution Professional)

... RESPONDENTS

Date of Order: 04.01.2024

Coram:

Hon'ble Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Hon'ble Sri Sanjay Puri, Hon'ble Member (Technical)

Parties / Counsels Present:

For the Applicant : M/s Kumar Anurag Singh and Zain A. Khan

For the Respondent No.1 : M/s Amir Bavani and Anirban Aly Mandal

PER: RAJEEV BHARDWAJ, MEMBER (JUDICIAL)

ORDER

I This Application has been filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016 with the following prayers:

- a) Direct the Respondent/Resolution Professional and CoC of the Corporate Debt or to accept the bid / resolution plan in proper format and/or;
- b) Direct the Resolution Professional to call CoC meeting for consideration of Resolution Plan submitted by the Applicant'
- c) Condone the delay (if any) in submission of the Resolution Plan by the Applicant in proper format and/or;
- d) Pass any further order(s) in the interest of justice.

II. Applicant's case -

1. The Company Petition CP(IB) No. 16/7/HDB/2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 was filed by the Financial Creditor, namely, Invent Assets Securitization and Reconstruction Pvt. Ltd. against the Corporate Debtor, namely, XL Energy Limited. This Authority vide order dated 27.03.2023 admitted the Corporate Debtor into Corporate Insolvency Resolution Process ('CIRP'). As a consequence, a public announcement was made by the Respondent i.e.

the Resolution Professional of the Corporate Debtor (hereinafter referred to as **Respondent/Resolution Professional/RP**) on 01.04.2023. (A copy of public announcement annexed and marked as **Annexure A-2**)

2. Thereafter, Form- G inviting Expression of Interest was published by the Resolution Professional on 08.09.2023, fixing 22.09.2023 as the last date for submission of Expression of Interest. On 22.09.2023, the Applicant submitted its response through a hand-delivered package to the Resolution Professional. The submission included all pertinent documents and annexures, accompanied by a demand draft of Rs. 5,00,000/- Rupees Five Lakhs Only] as Earnest Money Deposit (**EMD**).
3. On 30.09.2023, a final list of Prospective Resolution Applicants (**PRAs**) was issued by the Resolution Professional (as per **Annexure A-4**). In this list of Prospective Resolution Applicants, the name of the Applicant was reflected at serial No. 8. After the issuance of the final list of PRAs, the Resolution Professional granted access to the Data Room only on 27.10.2023. It was at this point that the Applicant became aware of the Request for Resolution Plan (**RFRP**). As per schedule, though the data room was to be shared on 30.09.2023, but the same was shared with the Applicant via email on 27.10.2023 i.e. after a delay of almost 30 days and Applicant came to know that the last date for submission of Resolution Plan was 31.10.2023.

4. On 31.10.2023, the Applicant herein made its bid/ offer to the RP for an amount of Rs. 5 Crores (as per **Annexure A-8**). It is claimed that the same was not in the requisite format of Resolution Plan as required under the RFRP. This discrepancy arose due to the Applicant gaining access to the data room only on 27.10.2023, providing a mere three to four days for the Applicant to assess, mitigate, consult, and formulate the optimal Resolution Plan. Additionally, this constrained timeline posed challenges in engaging professionals to prepare the required Resolution Plan.
5. On 31.10.2023, the Applicant herein issued a formal letter addressed to the RP, requesting him to take into consideration the bid/offer (as per **Annexure A-7**). Thereafter on 16.11.2023, the Applicant received an email from the Respondent requesting for account details for refund of the EMD (**Annexure A-9**).
6. The Applicant has reasons to believe that its bid has not been placed before the CoC for consideration. The same is evident from the email dated 30.10.2023 addressed by the Resolution Professional to the Applicant, wherein it has been stated that 'some' of the CoC members are not agreeable for extension of time in accordance with Regulation 36(B) of the IBBI(CIRP) Regulations, 2016. It is claimed that when the Applicant via email dated 30.10.2023 sought an extension for the submission of its Resolution Plan (**Annexure A-10**), the Resolution Professional, should have presented the Applicant's request in the form of an agenda during the CoC meeting and facilitated the CoC in

exercising a vote on the extension request, thereby documenting the actual, true, and correct records.

7. However, the reply provided by the Resolution Professional, as indicated in the email dated 30.10.2023 (**Annexure A-11**), lacks supporting records, suggesting that the Applicant was not afforded adequate opportunity resulting in failure in adherence to the principles of natural justice.
8. The request of the Applicant to give its bid in a proper format ought to have been placed before the Committee of Creditors of the Corporate Debtor is further evident from a perusal of Regulation 36(B) of the CIRP Regulations which reproduced herein below:

"36B. Request for Resolution Plans:

(1) The resolution professional shall issue the information memorandum, evaluation matrix and a request for resolution plans, within five days of the date of issue of the provisional list under sub regulation (10) of regulation 36A.

.....

(6) The resolution professional may with the approval of the committee extend the timeline for submission of resolution Plans.

9. It is further averred that the Corporate Debtor (CD) stands non-operational and holds no assets. Considering this, the bid/offering proposed by the Applicant and communicated to the Resolution Professional significantly exceeds CD's liquidation value. The specific details of bids from other Resolution Applicants remain undisclosed to

the Applicant and there exists a reasonable assumption that the Applicant has submitted the highest bid/offer, showing a genuine effort to maximize the value of CD.

10. The Applicant averred that being a bonafide Resolution Applicant, within the limited time available undertook diligent efforts to present a bid that, despite its format shortcomings, signifies a genuine commitment of the Applicant and in these circumstances, it should be afforded an opportunity to rectify the format discrepancies and place its bid/offer before the Committee of Creditors (CoC) for a more comprehensive evaluation of the Applicant's potential contribution to the resolution of the Corporate Debtor.

III. Respondents' case-

1. The Answering Respondent/ Resolution Professional has contended and contested the averments made in the application.
2. In accordance with the invitation for Expression of Interest (EoI) published by the Respondent, the Applicant submitted EoI on 22.09.2023 and provided email address i.e., pandeyravi1976@gmail.com for correspondence, which happens to be of One Mr. Ravi Pandey, the Director of the Applicant, who has also verified the instant Application in his Official Capacity.
3. On 06.10.2023, the Resolution Professional had duly sent an email attaching the final list of PRAs as well as link to access the Virtual

Data Room (**VDR**) to the Applicant on the above-mentioned email address. Therefore, it is crystal clear that the Applicant had access to VDR on 06.10.2023, like all other PRAs and had ample time to submit its Resolution Plan in the prescribed format and within the stipulated timelines. (A copy of Applicant’s EoI dated 22.09.2023 and the email of Respondent dated 06.10.2023 is annexed and marked as **Annexure R-1**)

4. On 01.11.2023, the Resolution Professional received an email dated 01.11.2023 (*Annexure A-7 Page 107 of the Application*) from the representatives of the Applicant enclosing its “bid letter/ Offer” (*Annexure A-8 Page 110 of the Application*) for the Corporate Debtor which is nothing but a one-page letter addressed to the Respondent. Irrespective of this,
5. On 07.11.2023, the Committee of Creditors (CoC) deliberated upon the Applicant’s submission during its 8th CoC meeting. After the Resolution Professional apprised CoC of email dated 01.11.2023 of the Applicant, the CoC took cognizance of the fact that the one-page offer submitted by the Applicant was not only non-compliant to the format prescribed in the RFRP but also conditional and without the stipulated Bid Bond of Rs. 10,00,000/-. Thereby, in exercise of its commercial wisdom, the CoC unanimously decided to reject the offer of the Applicant and refund its EMD of Rs.5,00,000/-. It is reiterated that offer/ plan of the Applicant was deliberated upon by the CoC and

thereafter it was duly rejected. (A copy of the minutes of meeting is annexed and marked as **Annexure R-2**)

6. The letter submitted by the Applicant does not even provide for the Performance Bank Guarantee and there is a clear violation of Regulation 36B 4(A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**). The respondent has also relied upon the decision of the Hon'ble Supreme Court in *Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Ltd. (C.A. No. 3224 of 2020)* that a conditional Resolution Plan cannot be approved.
7. The Respondent has also referred to Clause 1.6.1 of the RFRP which explicitly reads, "Notwithstanding anything contained in this RERP, the CoC reserves the right to accept or reject any Resolution Plan(s), if the Resolution Plan(s) are not in compliance with this RFRP and/ or the provisions of the 1B Code or CIRP Regulations or not in the expected lines of the CoC and also to annul the Resolution Plan Submission Process and reject all Resolution Plans, at any time, without any liability or any obligation for such acceptance, rejection or annulment and without assigning any reasons thereof." Therefore, by submitting its one-page letter to the Respondent on 01.11.2023 under the pathetically feeble garb of a Resolution Plan.
8. The Applicant was provided with a fair and equal opportunity to participate in the CIRP, as evidenced by the factual matrix and the

supporting documents. Despite the same, it is submitted that an offer made by the Applicant is in contravention to the RFRP and the Insolvency and Bankruptcy Code, 2016 (Code/IBC). It is claimed that the so-called offer of the Applicant exceeds the Liquidation Value of the Corporate Debtor and the Applicant has submitted the highest bid/offer which holds no relevance. The bid amount as such is only one of the parameters that the CoC evaluates whilst deciding upon a Resolution Plan.

9. On this threshold alone, this instant Application deserves to be outrightly dismissed. Moreover, this Tribunal has itself exemplified the fate of such misconceived Applications vide its order dated 27.06.2023 in *M/s. Gurupreeth Galvanizing Private Limited v. Artham Someswara Rao & Ors. (inv.P.No.23 of 2023 in IA.No 542 of 2023 in CP(IB)No.39/10/HDB/2022)*. The relevant extract of the order is replicated herein below for the sake of brevity:

“10. It is also the settled law that the commercial wisdom of the Committee of Creditors in voting or rejecting the resolution plans cannot be ordinarily interfered with by this Tribunal. The so-called grounds pleaded by the Applicant, if require can be taken note of by this Tribunal. at the time of considering the prayer of the Resolution Professional for approval of the Resolution Plan voted by the Committee of Creditors. The Code had not provided any role whatsoever for taking part in the decision-making process of the Committee of Creditors. The Prospective Resolution Applicant cannot be allowed to participate in the decision-making process by the Committee of Creditors. Thus, the Application is thoroughly misconceived besides the Applicant has no locus standi, to seek intervention.”
[Emphasis Supplied]

- IV. We have heard the both the Counsels for Applicant and Respondent No. 1 perused the record.
- V. In pursuance to the EoI, the applicant was also one of the PRAs and the dispute arose about giving access to the Virtual Data Room by the Respondent No.1. In this context, the time schedule prescribed in Clause 1.3.7 of RFRP is relevant, which says:

S. No	Event Description	Date
1.	Release of Advertise	9 th September, 2023
2.	Last date to submit the Expression of Interest	22 nd September, 2023
3.	Release of RFRP	30 th September, 2023
4.	Access to the Data Room and Information Memorandum	30 th September, 2023
5.	Last date for submission of queries	10 th October, 2023
6.	Resolution Plan Conference (shall be held if deemed necessary by the RP)	If required, will be communicated.
7.	Last date for submission of Resolution Plan	31 st October, 2023
8.	Declaration of the successful Resolution Applicant and issuance of the Letter of Intent (LoI) by the RP or CoC	To be announced
9.	Receipt of performance Bank Guarantee (PBG) and acceptance of LoI from the Successful Resolution Applicant.	Within 7 days of issuance of LoI
10.	Submission of final application to Hon'ble NCLT for approval	Expected by 10 th December, 2023.
11.	Approval of Hon'ble NCLT regarding the Resolution Plan of Successful Resolution Applicant	As per NCLT Order

- VI. Thus, the access to the Data Room was to be provided by the Respondent No. 1 by 30.09.2023. The Respondent No. 1 provided such access on 06.10.2023 by sending email at the address which was given by the Applicant in its EoI **Annexure R-1** of the reply. Again, the Respondent No. 1 sent the access to the applicant vide e-mail dated 27.10.2023 on its request, but this is not going to benefit the Applicant because only information was sent without any commitment to extend the timeline of submission of Resolution Plan.
- VII. The Resolution Applicant has right to receive information relating to the activities of the CD to propose a proper Resolution Plan and this is possible if information is provided as per Regulation 36B (1) & (3) which states that the Resolution Professional shall issue the information memorandum, evaluation matrix and the request for resolution plans (RFRP), **within five days of issue of the provisional list to the prospective resolution applicants and allow them minimum of 30 days for submission of resolution plan.** In the instant case the Resolution professional provided RFRP and granted data access of CD to the Applicant on 06.10.2023 i.e., after six days from date of Final list of PRAs and due date for submission Resolution plan is mentioned as 31.10.2023. Providing of access to the data room on 30.09.2023 or 06.01.2023 would not matter as the applicant has given wrong address for communication.

- VIII. The Resolution Applicants were to submit their Resolution Plan in requisite format in compliance of provisions of IBC or CIRP Regulations. In pursuance of **Annexure A-8** of the Application, it is found that the Applicant submitted the Resolution Plan on 31.10.2023 informally and it is not in accordance with the Regulation 38 of CIRP Regulations and further it is not in the requisite format prescribed in RFRP of the Corporate Debtor.
- IX. As per 36B (6) Regulation, the resolution professional may, with the approval of the committee, extend the timeline for submission of resolution plans. In the present case, the Applicant herein vide email dated 30.10.2023 requested the Resolution Professional to extend the date for submission of Resolution Plan by 15 days but this prayer was rejected stating that members of CoC are unwilling to extend the time. On perusal of **Annexure R-2** of the reply, it is found that CoC meeting was conducted on 07.11.2023 after the completion of due date i.e., 31.10.2023, wherein the CoC took cognizance of the plea and offer of the Applicant and the said offer was unanimously rejected in exercise of its commercial wisdom.
- X. In pursuance of **Annexure R-3** of the reply, it is found that on 31.10.2023, the CoC has approved the Resolution Professional to extend time for the submission of the plan till 03.11.2023 and it was granted to the PRAs who have submitted their Bid Bonds of Rs. 10,00,000/- each i.e., Personal Bank Guarantee in accordance to RFRP within the due date. However, the CoC rejected the plea of Applicant

as it failed to submit the bid bond. Thus, in the instant case, it is clearly observed that the CoC, in exercise of their commercial wisdom, had rejected the Resolution Plan submitted by the Applicant and further did not consider the plea of Applicant in resubmission of the Resolution Plan by rectifying the format discrepancies and there is also a settled law that commercial wisdom of the Committee of the Creditors in voting or rejecting the Resolution Plans cannot be ordinarily interfered.

- XI. In *Kalpraj Dharamshi versus Kotak Investment Advisors Limited and others, Civil Appeal Nos. 2943-2944, 3138-3139, 2949-2950 of 2020 and Civil Appeal Nos. 847-848/2021 (D. No. 24125 of 2020), decided on 10.03.2021*, where the actions of the RP in accepting the resolution plans after the expiry of the deadline had the stamp of approval of the CoC was in issue before the Hon'ble Supreme Court and it was held “...that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of ‘commercial wisdom’, NCLAT was not correct in law in interfering with the commercial decision taken by CoC...”. In other words, the Hon'ble Supreme Court found that the decision of the CoC to accept resolution plans submitted beyond the deadline was an exercise of its commercial wisdom. In the present case, the CoC has rejected the prayer to extend the timeline for submission of the resolution plan.
- XII. The commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. A reference in

this respect could be made to the judgments of this Court in the cases of *K. Sashidhar versus Indian Overseas Bank and Ors. (2019) 12 SCC 150, Committee of Creditors of Essar Steel India Limited through Authorised Signatory versus Satish Kumar Gupta and Ors. (2020) 8 SCC 531, Maharashtra Seamless Limited versus Padmanabhan Venkatesh and Ors. (2020) 11 SCC 467 and Jaypee Kensington Boulevard Apartments Welfare Association and Ors. versus NBCC (India) Limited and Ors. (2022) 1 SCC 401.*

XIII. Hence, for the reasons discussed above this application is not maintainable as the prayer of the Applicant to extend the time period for furnishing the resolution plan with the approval of the CoC cannot be questioned as it falls within the ambit of the commercial wisdom of the CoC. Considering the objective of the IBC of value maximization, there is no scope for interference in the decision of the CoC.

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

SC