



**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**IA No. 1782/2022  
In  
CP (IB) No. 198/Chd/Pb/2021  
(Admitted Matter)**

**Under Section 60(5) of the Insolvency  
and Bankruptcy Code, 2016 read with  
Rule 11 of NCLT Rules**

**In the matter of:**

UCO Bank ...Financial Creditor  
Versus  
SR Industries Limited  
(undergoing Corporate Insolvency Resolution Process)  
...Corporate Debtor

**And in the matter of IA No.1782/2022:**

**Anil Khandelwal**

Son of Ayodhya Prasad Khandelwal  
D-54, Saket, New Delhi- 110 017

Email: [biddingkhandelwal@gmail.com](mailto:biddingkhandelwal@gmail.com)

...Applicant/Resolution Applicant

Versus

**1. Rajender Kumar Jain**

(Resolution Professional of SR Industries Limited)

SCO 818, 1st Floor, NAC Manimajra,  
Chandigarh, 160101

Email: [srindustiescirp@gmail.com](mailto:srindustiescirp@gmail.com)

**2. UCO Bank**

(Member of Committee of Creditors)

SCO 55-57, Bank Square,  
Sector 17 B, Chandigarh

Email: [cha17b@ucobank.co.in](mailto:cha17b@ucobank.co.in)



**3. State Bank of India**

(Member of Committee of Creditor)  
SAM Branch, Sector 8, Chandigarh  
Email: [team1samb.cha@sbi.co.in](mailto:team1samb.cha@sbi.co.in)]

**4. KDA Corporater Advisors LLP**

203, Level-2, F Wing, The Summit,  
Samarth Nagar Hanuman Road,  
Vileparle East, Mumbai  
Maharashtra 400057  
Email: [ankitj@kdg.co.in](mailto:ankitj@kdg.co.in)

.....Respondents

**Order delivered on: 31.03.2023**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present:**

For the applicant : Mr. Aman Kashyap, Advocate  
For the Resolution Professional : Mr. Viren Sharma, Advocate  
For Respondent No. 2 : Mr. Rakesh Gupta Advocate  
Mr. Rakshit Gupta, Advocate

**Per: Subrata Kumar Dash, Member (Technical)**

**ORDER**

The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, by one of the Resolution Applicants i.e., Mr. Anil Khandelwal, against Resolution Professional seeking the following prayers

- a. That Modified / Impugned Form G dated 05.12.2022 be set aside and scrapped, being illegal and bad in the eyes of the law;



- b. That resolution passed by Respondents No. 2,3 and 4 in the meeting of the Committee of Creditors for republication or modification of Form G, as a result of which Impugned Form G dated 05.12.2022 (ANNEXURE 9) is issued, be set aside and scrapped, being illegal and bad in the eyes of the law;
- c. That a direction be issued to the Respondents to consider the available plans in the true spirit, in accordance with the provisions of the RFRP Document and in a time-bound manner, as Hon'ble Tribunal may deem fit;
- d. That ex-parte ad-interim direction be issued against Respondent No. 1 restraining issuance of Provisional List of Prospective Resolution Applicants pursuant to Modified / Impugned Form G dated 05.12.2022.

2. In the present matter, this Adjudicating Authority admitted the corporate debtor for CIRP vide order dated 21.12.2021. Further, it is submitted that the Resolution Plan of the applicant is pending before the members of the Committee of Creditors for its approval or rejection. Meanwhile, the Resolution Professional has published modified Form G dated 05.12.2022, dis-regarding the Regulation 36A (4A) of CIRP Regulations.

3. It is submitted that in view of modified Form G dated 17.06.2022, the applicant submitted his EOI and was found eligible and, accordingly, included in the prospective list of Resolution Applicants. Further, the applicant was invited for the third round of negotiations to be happened in the 16th CoC dated 09.09.2022 through email dated 07.09.2022, the applicant informed the Resolution Professional that the revised order



dated 22.08.2022 of the applicant is final and is not intending to increase the same. Thereafter, the applicant received the email from the Resolution Professional, wherein the proposal of re-publication of Form G on 05.12.2022 had been intimated to the applicant to which the instant applicant is raising objections and seeking setting aside of modified Form G dated 05.12.2022.

4. It is submitted by the applicant that as per Regulation 36A (4A), the Form G cannot be modified more than once. It is pertinent to mention here that the Resolution Profesional issued first Form G on 03.03.2022 and subsequently modified Form G resulting in the issuance of the first modified Form G on 17.06.2022. Regulation 36A (4A) is extracted herein below for reference purposes:

*"Regulation 36A (4A) any modification in the invitation for expression of interest may be made in the manner as initial invitation for expression of interest was made:*

*Provided that such modification shall not be made more than once."*

5. It is averred that the Resolution Professional has shrunk the timelines in modified Form G (date of issue of Form G- 05.12.2022), whereas the last date of receipt of EOI is mentioned as 10.12.2022, beyond and contrary to Regulation 36A (3), which states that the last date for submission of EOI shall not be less than 15 days from the date of issue of invitation in Form G. Further, this will result in the restart of whole Resolution Process. It is observed by the applicant that issuing of modified Form G has been done in order to accommodate a special prospective applicant best known to the members of the CoC. Moreover, the Resolution Plan of the applicant is pending before the team members of Resolution Professional, employees and consultant of the IPE and members of financial creditors and



employees etc., which virtually creates a possibility of leakage of information and creating the possibility of unsolicited bids submitted to the members of the CoC. The same is against the intent of Regulation 36A (4A).

6. It is submitted that during the CoC meeting dated 10.08.2022, the applicant had already submitted his request to the CoC that he shall be interested in the challenge mechanism, as mentioned on internal page No. 34 of the RFRP document, which is reproduced hereinbelow:

*“Step IV: Negotiations by COC with Resolution Applicant(s) having the [Top 31 (Three) Highest Evaluated Compliant Resolution Plan or as maybe decided by COC. The CoC may negotiate by using Swiss Challenge Method, wherein one plan is considered as Base Plan and all bidders are asked to bid considering the base plan. In case any bidder is making bid higher than base plan, the applicant for base plan is provided chance to match the higher bid and the best bid is allowed as successful.”*

7. The Resolution Professional-respondent No. 1 has filed reply vide Diary No. 03147/01 dated 24.01.2023, wherein it is stated that as per the terms of the request for Resolution Plan (RFRP dated 02.04.2022), the CoC may reject the Resolution Applicant or Resolution Plan at any stage without assigning any reason and the CoC is not bound to select a Resolution Applicant as a Successful Resolution Applicant. The relevant extract is reproduced hereinbelow:

*“The issue of this document does not imply that the members of the CoC are bound to select a Resolution Applicant (s) as a Successful Resolution Applicant(s) in respect of its Resolution Plan and the members of COC reserve the right to reject at any stage all or any of the*



*Resolution Applicant (s) or Resolution Plans without assigning any reason whatsoever"*

8. It is submitted by the respondent that the applicant has informed the respondent vide email dated 07.09.2022 that they do not wish to improve their offer any further. The respondent invited the applicant vide emails dated 13.09.2022 & 17.09.2022 to improve the Resolution Plan to maximize the value of the corporate debtor. However, the applicant failed to respond and did not join the 16th CoC meeting dated 19.09.2022. Therefore, CoC, in the 20th CoC meeting dated 29.11.2022, concluded in its commercial wisdom that the amount offered by prospective Resolution Applicants in the Resolution Plan is very low and it is not as per the expectations of the competent authority. It was advised by the members that fresh Form G be published in order to maximize the value of the corporate debtor. Hence, the respondent-Resolution Professional published invitation for Expression of Interest in fresh Form G dated 05.12.2022. The last date of submission of EOI was stipulated as 10.12.2022, and pursuant to the publication, the respondent has received 8 (eight) EOI; therefore, there exists every likelihood for successful resolution of the corporate debtor.

9. It is averred that the respondent apprised the applicant through email dated 05.12.2022 that the EMD can either be refunded or can be retained in case the applicant wants to submit a revised Resolution Plan and participate in the process. Since the applicant failed to improve its Resolution Plan as requested by the CoC and also sought a refund of the EMD if declared an unsuccessful bidder vide email dated 26.11.2022, it can be inferred that the applicant is no longer interested in the Resolution Process. Therefore, in the interest of justice, the respondent had invited



the applicant to the 23rd and 24th meetings of the CoC dated 12.01.2023 and 19.01.2023, respectively. However the applicant failed to improve the Resolution Plan, and the sole objective of filing the present application is to delay and derail the CIRP in the matter of the corporate debtor.

10. It is submitted by the Resolution Professional that the applicant has no locus standi in view of the judgment dated 08.06.2020 in the matter of **IMR Metallurgical Resources AG v. Ferro Alloys Corporation Limited & Ors** in Company Appeal (AT)(INS) No. 272 of 2020 and in the matter of **"Kalinga Allied Industries Ltd. v. Hindustan Coils Limited** - Company Appeal (AT)(Ins.) No. 518 of 2020, wherein it has been held that the Resolution Applicant has no vested right that his Resolution Plan must be considered.

11. It is further submitted that the relief for consideration of the Resolution Plan is within the commercial decision of the CoC. In this context, the respondent-Resolution Professional has relied on the decision of the Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steel India Limited Through Authorised Signatory V. Satish Kumar Gupta and Others**, 2019 SCC Online SC 1478 and **K. Sashidhar v Indian Overseas Bank & Ors**, Civil Appeal No. 10673 of 2018

12. Further, in the decision of the Hon'ble Supreme Court **in Kalpraj Dharamshi & Anr. v. Kotak Investment Advisors Ltd. & Anr.**, Civil Appeal Nos.2943-2944 of 2020, the CoC in its commercial wisdom has approved the resolution for fresh issue Form G in the matter of the Corporate Debtor with the requisite majority as the resolution plan submitted by the Applicant was much below the expected value and found to be non-satisfactory.



13. The respondent-Resolution Professional in terms of 25.01.2023 of this Adjudicating Authority has filed additional affidavit vide Diary No. 03147/2 dated 02/02/2023 clarifying as to how the issuance of fresh Form G will not be termed as modification in terms of Regulation 36A(4A) of the CIRP Regulations, 2016. Pursuant to the above, it is stated by the respondent-Resolution Professional that Regulation 36A (4A) of the CIRP Regulations, 2016 is not applicable in the instant case, as the Committee of Creditors in no manner has modified the Invitation of Expression of Interest. In this regard, reliance has been placed on Section 25(2) (h) of the Code, which provides as under:

*“(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.”*

14. The Id. counsel for the Resolution Professional has contended that the word modification has been interpreted by the Hon'ble Supreme Court as under

- a. **S. K. Gupta v. K.P. Jain, (1979) 3 SCC** - 'Modification' includes change in or substitution of the original sponsor of the scheme by another one.
- b. **Kesavananda Bharati v. State of Kerala, (1973) 4 SCC** - Modification in Article 370(1)(d) must be given the widest meaning in the context of a constitution and in that sense it includes an amendment and it cannot be limited to such modifications as do not make any radical transformation.
- c. **K.P. Jain v. S.K. Gupta, ILR (1976) 2 Del 291**- The word 'modification' means a small adjustment, a minor or slight change, a qualification or limitation, the act or action of changing something without fundamentally altering it.
- d. **Forward Construction Co. v. Prabhat Mandal, (1986) 1 SCC 100** (SCC p.117, para 33) - The meaning of the expression



*"change" came up for consideration, wherein after noticing its dictionary meaning, it was observed:*

*"The word 'change' ... is 'to make or become different, to transform or convert. If the user was to be completely or substantially changed only then the prior modification of the development plan was necessary."*

e. **Puranlal Lakhanpal v. President of India**, AIR 1961 SC 1519: (1962) 1SCR 688

*It was stated: (SCR p. 693). - (The word 'modification' means 'the action of making changes in an object without altering its essential nature or character..."*

15. The Resolution Professional in the above affidavit has stated that the Regulation 36A(4A) deals with the modification of an initial invitation for expression of interest. Thus, an expression of interest which has already been issued can be modified only once. However, the Regulation 36A (4A) does not deal with situation where the COC/ RP are contemplating to issue the Invitation of Expression of Interest afresh. Further Regulation 36A - Invitation of Expression of Interest, per se does not bar fresh issuance of Invitation of Expression of Interest, which may be required in numerous circumstances under the process envisaged under the Code.

16. Further, it is the process of invitation of expression of interest requires the determination of criteria by the committee of creditors under Section 25(2)(h) of IBC, 2016, which should be met by the prospective resolution applicants. The Committee of Creditors may, after evaluation of the response to the Invitation of Expression of Interest/ Resolution Plans received, may like to revisit the criteria determined under Sec 25(2)(h) of the Code. The Committee of Creditors may also consider the fresh invitation of expression of interest, considering the possibility of maximization of value with a larger participation of resolution applicants.



17. Respondent No. 2 has also filed an additional affidavit in terms of the order dated 25.01.2023 of this Adjudicating Authority vide Diary No. 03147/3 dated 22.02.2023, wherein respondent No. 2 has taken a stance similar to Resolution Professional in the aforementioned additional affidavit filed vide Diary No. 03147/2 dated 02/02/2023.

18. We have heard the learned counsel for the applicant and the respondent and carefully perused the record available.

19. After hearing Id. counsels for the parties and perusal of records, we find merit in the argument that the word 'modification' under Regulation 36A (4A) of the CIRP Regulations, 2016 refers to minor changes and does not include the issuance of fresh invitation of Expression of Interest. Further, CoC, in its 20th meeting dated 29.11.2022, concluded in its commercial wisdom that the amount offered by the prospective Resolution Applicant in the Resolution Plan is very low, and in order to maximize the value of the corporate debtor published EOI in fresh Form G dated 05.12.2022. It is also noted that CoC has given sufficient opportunity to the applicant by inviting him to the 23rd and 24th CoC meetings dated 12.01.2023 and 19.01.2023 to improve upon the Resolution Plan. Pursuant to the meetings, the applicant has failed to improve upon the Resolution Plan against the objective of the Code.

20. In view of the authorities i.e., **MR Metallurgical Resources AG v. Ferro Alloys Corporation Limited & Ors and Kalinga Allied Industries Ltd. v. Hindustan Coils Limited ( Supra)** relied upon by the Id. counsel for the respondent, we also note that the applicant has no vested right in getting his plan approved by the CoC and thereby interfering with the commercial wisdom of the CoC. In view of the above, the CoC is directed to publish Form G, inviting EOI from prospective



Resolution Applicants to maximize the value of the corporate debtor within 15 days of this order.

21. In the result, the present application fails and dismissed accordingly.

Sd/-

**(Subrata Kumar Dash)**  
**Member (Technical)**

March 31, 2023

PB/ASH

Sd/-

**(Harnam Singh Thakur)**  
**Member (Judicial)**