

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 167
IA/329(AHM)2021 in CP(IB) 497 of 2019

Order under Section 60(5) r.w Rule 11 of NCLT, 2016

IN THE MATTER OF:

Alpha Alternative Holdings Pvt Ltd & Anr
V/s
Union Bank of India & Ors

.....Applicant

.....Respondent

Order delivered on ..12/07/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

SK

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

**I.A. No.329 of 2021
in
CP (IB) No.497/7/NCLT/AHM/2019**

*[An application filed under **Section 60(5)** of the Insolvency and
Bankruptcy Code, 2016]*

In the matter of:

1. M/s. Alpha Alternative Holdings Pvt. Ltd.
34th Floor, Sunshine Tower,
Senapati Bapat Marg,
Near Kamgar Krida Maidan,
Dadar (West), Mumbai – 400013.

2. M/s. Algebra Endeavour Pvt. Ltd.
34th Floor, Sunshine Tower,
Senapati Bapat Marg,
Near Kamgar Krida Maidan,
Dadar (West), Mumbai – 400013.

... Applicants

Versus

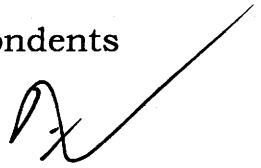
1. M/s. Union Bank of India,
239, Ground Floor,
Vidhan Bhavan Marg, Nariman Point,
Mumbai – 400021.

2. M/s. Punjab National Bank,
Laco House,
Sir Phirozshah Mehta Road,
Fort, Mumbai – 400001.

3. M/s. State Bank of India,
Corporate Centre, Stat Bank Bhawan,
Madam Cama Road, Mumbai – 400021.

4. **Mr. Rajkumar Poddar,**
Resolution Professional of:
M/s. Vadraj Energy (Gujarat) Ltd.
1201/02, "D" Block,
Ashok Tower, Dr. S.S. Rao Road,
Parel, Mumbai – 400012.

... Respondents



Date of Hearing: 05.07.2021

Date of Pronouncement: 12.07.2021

**Coram: Madan B. Gosavi, Member (Judicial)
Virendra Kumar Gupta, Member (Technical)**

Appearances:

Learned Sr. Counsel Mr. Navin Pahwa for the Applicant/RP.

Learned Counsel Mr. Pratik Thakkar for Respondent no.1 to 3.

Learned PCS Mr. Devrajan Raman for the Resolution Professional.

ORDER

**[Per: Madan B. Gosavi, Member (Judicial)]
(Through Video Conferencing)**

1. This application has been filed by M/s. Alpha Alternative Holding Private Limited, Resolution Applicant of the Corporate Debtor, M/s. Vadraj Energy (Gujarat) Limited, filed under Section 60(5) of the Insolvency and Bankruptcy Code, read with Rule 11 of the NCLT Rules, 2016.
2. We have gone through the pleadings and materials available on record. We heard the Learned Senior Counsel, Mr. Navin Pahwa, for the applicant, Learned Counsel for the CoC and Learned RP in person.
3. It is not in dispute that the Resolution Plan submitted by the applicant has been rejected by the CoC in its meeting dated 09.04.2021. The CoC in Para (i), (j), (k) and (l) of affidavit in reply to this application contended that the Resolution Plan has been rejected because the RP could not evaluate the assets of the Corporate Debtor as they being in the custody of the official liquidator and RP has no access thereto. It has also been rejected on the ground that the Resolution Plan was submitted by the entity other than the applicant who has submitted EOI.
4. The RP in his reply contended that the Resolution Plan has been rejected on the ground that it does not comply with the terms of EOI/RP/RFRD. The RP does not state anything whether he could evaluate the assets of the Corporate Debtor or not.
5. It is also un disputed that the RP, by an email dated 12.04.2021 informed the applicant that CoC considered the Resolution Plan submitted by the applicant including

the addendum thereto and decided not to accept deviation/ modification/ alteration of any term of RF/RP (XI, page 130).

6. Although, the RP did not disclose reasons for rejection of plan by the CoC in the letter referred above, the CoC has come out with reasons affidavit in reply to this application stating that they rejected the plan for two reasons:
 - a. It is submitted by an entity other than the applicant.
 - b. The RP did not get valuation of all assets of the Corporate Debtor.
7. As far as CoC's first objection against the approval of the plan that it has been submitted by the entity other than applicant is concerned, the Learned Sr. Counsel Mr. Navin Pahwa for the Applicant brought to our notice an email dated 21.02.2021 (Annex. IX, Page 197), whereby, the applicant had informed the RP that the plan would be submitted by the consortium. So on this ground alone, the resolution plan ought not to have been rejected thereby pushing the Corporate Debtor in to Liquidation.
8. As far as the second ground, on which plan got rejected; the RP during the hearing fairly submitted that the things as stand today, he has been allowed to access the assets of the Corporate Debtor in the custody of Official Liquidator and they have been evaluated. So, under these changed circumstances, the RP and the CoC ought to have called the applicant for further negotiations to increase the plan value. In spite of that, the CoC rejected the plan and requested this authority to pass order of liquidation.
9. In our considered opinion, the CoC ought to have allowed the applicant to resubmit his offer, if any.
10. However, we are faced with one hurdle that since the CoC rejected the plan whether we can direct the CoC to reconsider it by allowing the applicant to have negotiations on plan value? We hold that the plan has not been rejected by the CoC on the findings that it is not commercially viable. Resolution plan has been rejected on the technical ground as noted above. In case of Committee of Creditors of *CoC of Essar Steel India Limited Vs. Satish Kr Gupta &Ors. ... Citation : (2019) 111 Taxmann.com 234 (SC)* (Supreme Court). The Apex Court had demarcated the boundary of jurisdiction of this authority in case of such eventualities.

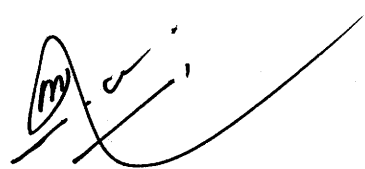
“Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximize the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the adjudicating authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.”

In view of the above and the facts on record, we pass following order:

ORDER

1. In view of the facts of this case, and the Law laid down by the Hon'ble Supreme Court as noted above, we allow this application, we direct the RP and the CoC to call the applicant and allow him to re-submit the resolution plan and may consider the same whether the plan is commercially viable and take an appropriate decision thereon.
2. The CoC has also passed resolution for liquidation of the Corporate Debtor, which, in our view, is not in consonance with the object of the I.B. Code, 2016, as liquidation is last resort and is not a perfect mode when there appears to be possibility of resolution. The applicant has also categorically stated that they are ready to modify their proposal if the situation so demands.
3. The activities to be completed within a month from the date of receipt of this order.
4. The application is allowed and stands dispose of.


(Virendra Kumar Gupta)
Member (Technical)


(Madan B. Gosavi)
Member (Judicial)