

NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-107
IB-814/ND/2019
IA/2392/ND/2020

IN THE MATTER OF:

M/s. Om Logistics Ltd
Vs
M/s. NTL Electronics India Ltd.

....Applicant

....Respondent

SECTION

U/s 9 IBC code 2016

Order delivered on 15.07.2020

CORAM:

SHRI ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)

SHRI K.K. VOHRA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Ishwar Mohapatra and Adv. Amit Jain
For the Respondent : Adv. Kajal Bhatia, Adv. Manmohan malik and Ms. Pooja Bahry
for RP

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

IA-2392/2020: -

1. The present application is filed under Section 60(5) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016 for seeking direction to Resolution Professional to accept Resolution Plan.
2. We have heard the Ld. Counsel for petitioner/applicant as well as RP and perused the averments made in the application. This application is being filed by the Applicant, who is interested to file



Resolution Plan for consideration by the committee of creditor of the Corporate Debtor

3. We have heard the Ld. Counsel for both the parties. Ld. Counsel for applicant has raised all the facts mentioned in this application.
4. M/s Om Logistics Ltd. has filed application under Section 9 of the IBC, 2016 to initiate CIRP against Corporate Debtor and this petition was admitted vide Order dated 27th August 2019 passed in IB-814/ND/2019 and thereafter, Ms. Pooja Bahry, Resolution Professional invited Expression of Interest (Form-G) and after submission of the documents, M/s CMI Limited was declared as Prospective Resolution Plan by Resolution Professional vide letter/email dated 29.02.2020.
5. He further submitted that M/s CMI Limited is public limited company listed on the BSE and NSE and has banking relationship with substantial fund and non fund based exposure of close from HDFC Bank and Canara Bank & Six other banks/NBFCs. He further submitted that after Novel Corona, there is complete lockdown in India and entire business of the company comes to complete standstill and under these circumstances any expansion or acquisition attempt by any mid-sized company is not being perceived positively by bankers. Also being a listed company, having prime responsibility of minority shareholders, it is felt by stakeholders that CMI shall now first focus on bringing its existing business on track rather than investing in an acquisition.
6. He further submitted that Prospective Resolution Plan, M/s Orkus Private Limited, is a private limited company registered under the Companies Act, 1956/2013 with is owned by Mr. Amit Jain & his family with turnover and shareholding as under: -

List of Shareholders	i) M/s Himani Metals LLP (Mr. Amit Jain and his wife Mrs. Himani Jain are the two partners) – 90% ii) Mr. Amit Jain 10%



Last three years turnover	i) FY 2017-18 – Rs. 50,36,99,949/- ii) FY 2018-19 – Rs. 53,29,91,012/- iii) FY 2019-20 – Rs. 47,34,78,172/-
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7. He further submitted that M/s Orkus Pvt. Ltd. is exclusively in the line of lighting products, especially LED lamps and battens, with an all India Distribution network. The relationship between Corporate Debtor and Orkus Pvt. Ltd. is that:

8. Beginning December 2019 Orkus has been getting its products manufactured at factory of NTL Electronics India Limited/Corporate Debtor at Roorkee on job work basis and has been responsible for the NTL factory functioning in the last more than six months and the details of transaction is as under”

Commercial value of transactions between Orkus and NTL/Corporate Debtor	Dec-19 – Rs. 14,76,114/-
	Jan-20 – Rs. 16,89,176/-
	Feb-20 – Rs. 31,50,526/-
	Mar-20 – Rs. 8,69,660/-
	May-20 – Rs. 21,62,079/-
	Jun-20 – Rs. 12,61,396/-
	Total – Rs. 1,06,08,951/-

9. Moreover, as the corporate debtor has been supplying as an OEM to M/s Orkus Pvt. Ltd. it is highly likely that Orkus as a Resolution Applicant would not only meet the plan framework but also turnaround the business, ensuring continued employment of the staff as it was earlier.

10. He further submitted that M/s Orkus Pvt. Ltd. is also a MSME and managed by same promoter Mr. Amit Jain, who is also Managing Director and shareholder of M/s CMI LIMITED, which was short listed



as Prospective Resolution Applicant. Copy of the MSME Certificate is enclosed and marked as Annexure-A-2

11. He further submitted that the CMI LIMITED has made a request through mail dated 15.06.2020 to Resolution Professional for approval to submit the Resolution Plan through M/s Orkus Private Limited but Resolution Professional through her reply mail dated 15.06.2020 rejected the request and insisted M/s CMI LIMITED to put the resolution plan. Copy of the mail of CMI Limited and reply of Resolution Professional is enclosed and marked as Annexure-A-3.
12. That by allowing M/s Orkus Pvt. Ltd. to submit the resolution plan instead of M/s CMI LIMITED, not only the corporate debtor would transition into strong hand, ensure more competition, and timely completion of the process. It would also address the concern of other stakeholders and minority shareholders of CMI LIMITED could be addressed.
13. He further submitted that the Applicant/ Mr. Amit Jain, Managing Director of CMI Ltd. is a serial Corporate turnaround entrepreneur and has undertaken following acquisitions:
 - a) 2005/2005- He acquired the promoter shareholding of CMI Limited from the Choudhari and Navani families at a time when the factory operations of CMI had come to a complete halt. He rebuilt the business from a scratch and revived relationship with Indian Railways, infrastructure majors like Larsen and Toubro and Pallon Ji Mistry, Power majors like BHEL and special cable consumers like ISRO and Oil Refineries.
 - b) 2016- He acquired another unit General Cables India Ltd from a US MNC with factory operations in Baddi, which were lying closed at that time. Since then the operations at Baddi have been revived and out of Baddi almost Rs. 25 crores of monthly manufacturing sale is being generated with potential to go up to Rs. 80-90 crores per month at full capacity.
 - c) 2018- He acquired 100 per cent shareholding in Orkus Pvt. Ltd. at time when the brand and its sale was in free fall on account of poor



material quality and multiple vendor exposure. In less than two years the operations of the company have established and besides electrical lamps, Fan business under its own brand has been added and doing well in the current season. During this period there has been consistent volume growth and the product quality has improved reflected in reduction in field rejections was warranty claims.

14. He further submitted that the CIRP commencement date for this matter is 27th August 2019 and Hon'ble NCLT vide order dated 18.02.2020 granted 90 days extension starting from 22.02.2020 which expired on 21.05.2020. The last date of submission of resolution plan is 22.06.2020 and applicant will sought extension of the last date of submission of plan which is likely to be extended because of current situation of COVID-19.
15. He further submitted that as per the order of the Hon'ble NCLAT dated 30.03.2020 held that the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016 in all cases where 'Corporate Insolvency Resolution Process' has been initiated and pending before this Appellate Tribunal.
16. He further submitted that in the present situation when entire business of India has comes to a complete stand still because COVID-19, it may be difficult for any of the shortlisted prospective resolution applicant, who can submit the Resolution Plan for revival of the Corporate Debtor and failure to submit the resolution plan by any one of the shortlisted prospective resolution applicant may lead the Corporate Debtor towards liquidation which is not the sole objective of the IBC.
17. On the other hand, Ld. Counsel for RP opposed the prayer.



18. In the light of the submissions raised on behalf of the parties, we have gone through the averments made in the application and we find that vide order dated 18.02.2020 the period of CIRP was extended up to 22.06.2020 w.e.f. 22.02.2020 and we further find that the applicant sought extension of the last date of submission of plan which is likely to be extended because of current situation of COVID-19.
19. We further find that the period of CIRP has come to an end during the period of COVID-19 and we further find that the petitioner has taken a plea that Hon'ble NCLAT vide order dated 30.03.2020 held that the period of lockdown ordered by the Central Government and the State Governments as may be extended either in whole or part of the country where the registered office of the Corporate Debtor may be located shall be excluded for the purpose of counting of the period for Resolution Process under Section 12 of the IBC and we further notice that Hon'ble Supreme Court of India has also vide order dated 23.03.2020 had extended the limitation period for the court or tribunal of account of COVID-19 pandemic.
20. In the light of aforesaid background, we would like to consider the case of the applicant and we have again gone through the averments made in the application filed by the applicant and on careful consideration of the same, we find, admittedly the applicant had not submitted the expression of interest rather one M/s CMI Limited was declared as Prospective Resolution applicant by Resolution Professional vide letter/email dated 29.02.2020 and this application is being filed by Mr. Amit Jain, Managing Director, who along with other promoter group has approx. 44% holding of M/s CMI Limited, who was declared prospective resolution applicant to submit the Resolution and who made a request through mail dated 15.06.2020 to Resolution Professional for approval to submit the Resolution Plan through M/s Orkus Private Limited, in which applicant along with his spouse holds 100 % shareholding, but Resolution Professional through her reply mail dated 15.06.2020



rejected Plan and so present application has been filed on behalf of M/s Orkus Private Limited.

21. Before considering the provision, we would like to refer the relevant provision of Regulation 36A and 36B of (Insolvency Resolution Process For Corporate Persons) Regulations 2016

36A. Invitation for expression of interest.

(1) The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.

(2) The resolution professional shall publish Form G-

(i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the resolution professional, the corporate debtor conducts material business operations;

(ii) on the website, if any, of the corporate debtor;

(iii) on the website, if any, designated by the Board for the purpose; and

(iv) in any other manner as may be decided by the committee.

(3) The Form G in the Schedule shall –



(a) state where the detailed invitation for expression of interest can be downloaded or obtained from, as the case may be; and

(b) provide the last date for submission of expression of interest which shall not be less than fifteen days from the date of issue of detailed invitation.

(4) The detailed invitation referred to in sub-regulation (3) shall-

(a) specify the criteria for prospective resolution applicants, as approved by the committee in accordance with clause (h) of sub-section (2) of section 25;

(b) state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants;

(c) provide such basic information about the corporate debtor as may be required by a prospective resolution applicant for expression of interest; and

(d) not require payment of any fee or any non-refundable deposit for submission of expression of interest.

(5) A prospective resolution applicant, who meet the requirements of the invitation for expression of interest, may submit expression of interest within the time specified in the invitation under clause (b) of sub-regulation (3).

(6) The expression of interest received after the time specified in the invitation under clause (b) of sub-regulation (3) shall be rejected.



(7) An expression of interest shall be unconditional and be accompanied by-

(a) an undertaking by the prospective resolution applicant that it meets the criteria specified by the committee under clause (h) of sub-section (2) of section 25;

(b) relevant records in evidence of meeting the criteria under clause (a);

(c) an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable;

(d) relevant information and records to enable an assessment of ineligibility under clause (c);

(e) an undertaking by the prospective resolution applicant that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process;

(f) an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code; and

(g) an undertaking by the prospective resolution applicant to the effect that it shall maintain confidentiality of the information and shall not use such information to cause



an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.

(8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with-

(a) the provisions of clause (h) of sub-section (2) of section 25;

(b) the applicable provisions of section 29A, and

(c) other requirements, as specified in the invitation for expression of interest.

(9) The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under sub-regulation (8).

(10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.

(11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list.



(12) On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.

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 to –

(a) every prospective resolution applicant in the provisional list; and

(b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list.

(2) The request for resolution plans shall detail each step in the process, and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines.

(3) The request for resolution plans shall allow prospective resolution applicants a minimum of thirty days to submit the resolution plan(s).



(4) The request for resolution plans shall not require any non-refundable deposit for submission of or along with resolution plan.

(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

Explanation I. – For the purposes of this sub-regulation, “performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.

Explanation II. – A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.

(5) Any modification in the request for resolution plan or the evaluation matrix issued under sub-regulation (1),



shall be deemed to be a fresh issue and shall be subject to timeline under sub-regulation (3).

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

(7) The resolution professional may, with the approval of the committee, re-issue request for resolution plans, if the resolution plans received in response to an earlier request are not satisfactory, subject to the condition that the request is made to all prospective resolution applicants in the final list:

Provided that provisions of sub-regulation (3) shall not apply for submission of resolution plans under this sub-regulation.

22. Mere plain reading of the provision shows that old Regulation 36A is substituted by the notification No. IBBI/2018-19/GN/Reg 031 dated 3rd July 2018 w.e.f. 4th July 2018 and as per the amended regulation the details have been provided, how to invite the expression of interest, preparation of provisional list and publication of the final list of the prospective resolution applicant. The time frame has been given in the new amended Regulation 36A, which was not earlier in the old . Mere plain reading of the regulation shows that expression of interest must be received within the time published in the Form G, if it is not received within the time published in the Form G as specified in Regulation 36A (3) (b) then the expression of interest received after the time specified in the notification under Clause (b) of sub regulation (3) shall be rejected as per Regulation 36A (6) of IBBI (Insolvency Professional Agencies)



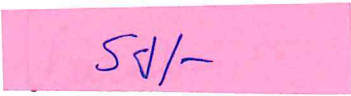
Regulation 2016 and thereafter as per the sub regulation 10 and 12 of Regulation 36A IBBI (Insolvency Professional Agencies) Regulation 2016, firstly a provisional list of eligible prospective resolution applicant will be prepared and thereafter, after considering the objection if any, under Regulation 36A (11), a final list of prospective resolution applicant will be issued and as per Regulation 36B the prospective resolution applicants shall be allowed to submit the resolution plan within minimum 30 days.


23. When we shall consider the case of the applicant in the light of the aforesaid regulation then we find, it is admitted case of the applicant, that the applicants have not filed the expression of interest rather it was submitted by the M/s CMI Limited and they were declared as Prospective Resolution applicant by Resolution Professional vide letter/email dated 29.02.2020 and this application is being filed by Mr. Amit Jain, Managing Director, who along with other promoter group has approx. 44% holding of M/s CMI Limited, who was declared prospective resolution applicant to submit the Resolution and who made a request through mail dated 15.06.2020 to Resolution Professional for approval to submit the Resolution Plan through M/s Orkus Private Limited, in which applicant along with his spouse holds 100 % shareholding but Resolution Professional through her reply mail dated 15.06.2020 rejected Plan and so present application has been filed on behalf of M/s Orkus Private Limited.

24. As per the provision contained in Regulation 36A read with 36B in our considered view only the person, who in response to the publication made in Form G submitted the expression of interest within the time prescribed in the Form G and whose name has been included in the list issued by the resolution professional under regulation 36A (10) and (12) shall file resolution plan under Regulation 36B of IBBI (Insolvency Resolution Process For Corporate Persons) Regulation 2016 .



25. For the reasons discussed above, since the applicant had not submitted their expression of interest and his name is not in list of prospective Resolution applicant, therefore, we are unable to accept the contention of the applicant that the Resolution Professional may be directed to accept the resolution plan submitted by the applicant.
26. Accordingly, it is therefore ordered that the prayer of the applicant to direct the resolution professional to accept the resolution plan is hereby rejected. Hence, the present application is hereby **DISMISSED**.


(K.K. VOHRA)
MEMBER (T)


15.07.2026
(ABNI RANJAN KUMAR SINHA)
MEMBER (J)