

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
28-06-2023 AT 10:30 AM

**IA (IBC) 1410, 1344/2022 & IVN.P (IBC) 7/2022 in 1344/2022 in
Company Petition IB/241/2021**
u/s. 9 of IBC 2016

IN THE MATTER OF:

Afita Construction Pvt Ltd

...Operational Creditor

VS

Neoaska Pharma Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

IA No. 1410/2022:

1. **IA No. 1410/2022** is filed by Operational Creditor i.e. M/s Afita Construction Private Limited seeking directions to the Resolution Professional to allow the Applicant to submit the Resolution Plan and to direct the Resolution Professional to accept the same and place before the COC for approval and further to condone the delay in submitting the Resolution Plan.
2. The Applicant being an Operational Creditor of Corporate Debtor, was invited to attend the 5th CoC meeting on 17.09.2022 wherein the Resolution Plan submitted by Madhya Pradesh Waste Management Private Limited (MPWMPL) was put before the COC for

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evaluation and negotiation. The Applicant after gaining knowledge about the details of the Resolution Plan of the SRA, was not satisfied with the resolution plan submitted by the SRA as the Plan was covering only 4% of the Operational Creditor's claim. As such the Applicant feels that it can give a better resolution plan than the one approved by the COC and if the delay in filing its plan is condoned.

3. In this backdrop, the Applicant herein having felt that it could offer a better resolution plan than the one that was already approved by the COC, had approached this Tribunal seeking for a direction to the Resolution Professional to accept the plan that the Applicant intend to submit and to place the same before the COC for its approval, by condoning the delay in submitting the resolution plan.

4. Having heard the Ld. Counsels for both sides, we have no hesitation to hold that this Application is *per-se* not maintainable, firstly for the reason that the COC has already approved the Resolution Plan which he received pursuant to publication of Form-G. Nextly, the procedure under the Code mandates submission of Resolution Plan pursuant to Form-G only.

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5. The Applicant having gained knowledge of the contour of the plan by virtue of it being present in the 5th CoC meeting, wherein the resolution plan of one of the PRAs has been approved, filed this Application.

6. Permitting the Applicant herein to submit the resolution plan post approval of the resolution plan of one of the PRAs by the COC is a process unknown to IBC and besides impermissible under law. The Application is thoroughly misconceived and liable to be dismissed. Accordingly, this IA is dismissed. No costs.

Inv.P 07/2022 in IA 1344/2022: Orders pronounced. At the outset, it is to be stated that the case on hand being one, when the Applicant had not submitted its proposal pursuant to the Form-G. In fact the resolution plan submitted by the SRA has been voted by the COC on 10.11.2022.

In this backdrop, the Applicant herein having felt that it could offer a better resolution plan than the one that was already approved by the COC, had approached this Tribunal seeking for a direction to the Resolution Professional to accept the plan that the Applicant intend to submit and to place the same before the COC for its approval, by condoning the delay in submitting the resolution plan.

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The IBC has not provided any role to a third party including the unsuccessful resolution applicant to intervene in an application filed under Section 31 of the Code seeking approval of the resolution plan by the Adjudicating Authority. Section 31 of the IBC is as under:-

31. Approval of resolution plan. - (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, 2 [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

1 [Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

Therefore, the Applicant has no locus standi to intervene in IA 1344/2022 and the application is liable to be dismissed. Accordingly Inv.P 7/2022 in IA No. 1344/2022 is dismissed. No costs.

IA No. 1344/2022

Orders pronounced, recorded vide separate sheets. In the result, the IA is allowed and resolution plan is approved as per the terms mentioned in the order.

SD/-

MEMBER (T)
Binnu

SD/-

MEMBER (J)