

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**IA No.716/2020 & 2/2021  
in  
CP (IB) No.174/Chd/CHD/2018  
(admitted)**

**In the matter of:**

Small Industries Development Bank of India (SIDBI)  
....Petitioner-Financial Creditor

Versus

International Mega Food Park Limited ....Respondent-Corporate Debtor

And in the matter of:-

**IA No.716/2020 Under Rule 11 of the NCLT Rules, 2016**

Mr. Sumat Gupta, Resolution Professional  
of M/s International Mega Food Park Limited ...Applicant  
Vs.

Ajay Yadav and Lata Yadav ....Respondents

And in the matter of:-

**IA No.2/2021 Under Section 60(5) of the IBC read with  
Rule 11 of the NCLT Rules, 2016**

Pioneer Facor IT Infradevelopers Private Ltd. ...Applicant  
Vs.

1. Mr. Sumat Kumar Gupta, Resolution Professional  
of International Mega Food Park Ltd.
2. Committee of Creditors
3. Ajay Yadav and Lata Yadav ....Respondents

**Order delivered on: 30.05.2022**

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

**Present through video-conferencing:**

For the Applicant in : 1. Dr. Rajansh Thukral, Advocate  
IA No.716/2020 2. Dr. Surekha Thukral, Advocate  
& Respondent No.1 in  
IA No.2/2021

For the Respondents : Mr. Sanju Kumar, Advocate  
IA No.716/2020 &  
Respondent No.3 in  
IA No.2/2021

For the Applicant in : 1. Mr. Anand Chhibbar, Senior Advocate  
IA No.2/2021 2. Mr. Vaibhav Sahni, Advocate

For the Respondent No.2 : None  
in IA No.2/2021

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

**ORDER**

**1. IA No.716/2020**

This is an application filed under Rule 11 of the NCLT Rules, 2016.

In the present application, **Mr. Sumat Gupta, Resolution Professional of M/s International Mega Food Park Limited** is the applicant, and **M/s Ajay Yadav and Lata Yadav** are the respondents.

2. In the present application, the applicant prays (1) Direct the respondent to deposit the performance guarantee immediately and in case of his failure, to forfeit the deposit of Rs.10 lakhs given as EMD as well as partial Performance Security of Rs.1.00 Crore. (2) Direct that in case the respondent agrees to take over the corporate debtor as per the resolution plan already approved by CoC, he may be asked to match the resolution bid of Rs.75.50 crores. (3) direct that in case of failure of the respondent/resolution applicant

to comply with the condition of the Performance Guarantee, to permit the withdrawal of IA 615 & 616/2020 regarding approval of resolution plan and further to direct the CoC to negotiate with the H-2 bidder to explore the possibility of resolution in a time-bound manner. (4) to pass such other or further orders as may be deemed fit in the facts and circumstances of the case. (5) to direct the respondent to deposit the performance security immediately with this Hon'ble Bench in accordance with the terms and conditions of the resolution plan which was due to be deposited within 15 days of the date of approval of CoC i.e. on or before 21.03.2020, failing which his right to file reply may be struck off. (6) to pass such further or other orders as may be deemed fit in the facts and circumstances of the case.

3. As mentioned in the application, the CIRP was admitted by this Adjudicating Authority by order dated 28.02.2019 in CP (IB) No.174/Chd/CHD/2018. In the course of the said proceedings, the Committee of creditors declared the respondent as H-1 bidder and approved the resolution plan submitted by him in the 23<sup>rd</sup> meeting of CoC held on 25.02.2020.

4. That as per the terms of the approved resolution plan, the respondent was under obligation to deposit Performance security equal to 10% of the bid amount within 15 days of the date of approval of the resolution plan by CoC i.e. on or before 21.03.2020 in the following manner:

- (a) Rs1.00 crore as cash deposit by way of demand draft in favour of corporate debtor within 15 days from the date of approval of the resolution plan by CoC; and

(b) Pledge of properties equivalent to Rs.14.00 Crores (Rs. Fourteen Crores) as performance security in 15 days from the date of approval of the resolution plan by CoC.

5. In compliance, the respondent deposited Rs.1.00 Crore as FDR on 19.03.2020. However, the balance performance security is yet to be deposited by the Resolution Applicant.

6. The applicant filed an application for approval of the resolution plan on 23.03.2022/26/06/2020 (IA No.615/2020 and 616/2020 in CP (IB) No.174/Chd/CHD/2018) by email/online in anticipation that the respondent shall stand by his commitment of furnishing balance performance security in the shape of mortgage of immovable property worth Rs.14.00 Crores. Subsequently, in the 24th meeting of CoC, the Committee approved the proposal of the Resolution Applicant to offer third party property as performance security and approved the same subject to certain safeguards and the Resolution Applicant agreed to the same. In the subsequent meeting, the Resolution Applicant had an opportunity to comply with the commitments regarding the guarantee but chose not to do the same. The detailed timelines along with evidence attached to the application indicates despite several e-mails between the parties involved, Resolution Applicant failed to provide the performance security in accordance with the terms of the resolution plan. The copies of the minutes of the CoC in respect of three meetings, i.e. 24th (held on 07.07.2020), 25th (held on 24.09.2020 & adjourned to 29.09.2020 due to absence of RA) and 26th meeting (held on 12.10.2020 adjourned to 21.10.2020) to persuade Resolution Applicant to fulfil his commitment are attached as Annexure A-2, A-3 and A-4 respectively of the application. It is

further stated that the H-2 Bidder i.e. M/s Pioneer Facor IT Infra Developers Private Limited (PHK) Consortium, has been trying to establish contact with the applicant and other members of CoC through telephone and e-mails and expressed his interest in taking over the corporate debtor i.e. International Mega Food Park Limited and has sent an offer of Rs.75.50 Crores as revised rate.

7. The respondents by their reply filed by Diary No.01652/4 dated 11.08.2021 have attempted to explain the reasons for their lack of compliance. It is stated that on 19.03.2020, an FDR of Rupees One Crore has been submitted by the respondent and pursuant to the CoC's consent for the acceptance of the third-party property, the title deeds of two pieces of land have already been submitted to the Resolution Professional for consideration as security. In this reply, the respondents have also made several allegations regarding the appointment of a lawyer for an evaluation of the title deeds submitted.

8. Subsequently, the applicant has filed written submission by Diary No.01652/5 dated 14.02.2022 and has highlighted the following issues in the 3 title search reports attached with their additional affidavit (page 31 to 64):-

*"a. Page 31 is the title search report of title deed no.6294 dated 09.02.1995 (Page 34) registered in the name of Sun Star Overseas reports at page 40 The said property can be taken as security by way of equitable mortgage by deposit of title deed". Remarks at the bottom of page 40 Lien Mark in favour of Bank be obtained before disbursement of any loan."*

*b. Page 41 is the title search report of title deed no.6297 dated 09.02.1995 (Page 44) registered in the name of Sun Star Overseas reports at page 49 "The said property can be taken as security by way of equitable mortgage by deposit of title deed". Remarks at the bottom of page 49Lien Mark in favour of Bank be obtained before disbursement of any loan"*

*c. Page 53 is the title search report of title deed no.6294 dated 09.02.1995 (Page 61) registered in the name of Sun Star Overseas reports at page 61 "The said property can be taken as security by way of equitable mortgage by deposit of title deed". Remarks at the bottom of page 61 "Lien Mark in favour of Bank be obtained before disbursement of any loan."*

*d. That original documents are never submitted to RP/ UBI."*

9. It is also stated that Mr. Raju Chopra, an Advocate empanelled with SBI, UBI and SIDBI, to give a legal opinion has opined that the property is "landlocked" and "not independent & non-demarcated", and the title is not "marketable" for purpose of enforcement of performance security (Page 66 of Additional Affidavit). It is, thus, conclusively stated that the third-party property offered by Resolution Applicant is not to the satisfaction of CoC/ RP and, hence, cannot be accepted as performance security. Resolution Applicant deserves to be directed to give cash security. The applicant further alleges that the Resolution Applicant has not complied with the terms of email dated 11.07.2020 (Page 34) despite the following accommodations granted:

- a. Documents of 29A compliance of third party not submitted.
- b. Personal guarantee of third party not submitted.
- C. Original documents of title of the property not submitted.
- d. The property offered is landlocked both by valuer as well as Sh. Raju Chopra, Advocate
- e. Valuation is less than Rs.14 Crores.
- f. Period for payment of Rs.75 cr. is only three months and till now he lingered on the time to about two years since the date of approval of plan by CoC.
- g. H-2 is before this Hon'ble Bench with a better offer of Rs.75.50 crores.
- h. The RA is duty bound to satisfy the CoC regarding the title and valuation of property offered as performance security, 29A compliance

of third party, personal guarantee execution of third party and it is the prerogative of the CoC to accept the same.

10. The applicant has also placed reliance on the decision of the Hon'ble NCLAT in ***Company Appeal (AT) (Ins.) No. 503 of 2021 in the matter of Bank of Maharashtra Vs. Videocon Industries Ltd. Decided on 05.01.2022*** held in para 45 to state that *"The CoC is not functus -officio on the approval of the Resolution plan"*.

11. In the written arguments filed on behalf of the respondents by Diary No.01652/6 dated 14.02.2022, the facts already stated in the reply have been reiterated and several allegations have been made regarding the conduct of lawyers who have given their opinions and also that of the Resolution Professional. Reliance has also been placed on the decision of the Hon'ble High Court of Madras decided on 08.11.1994 in ***C. Rajagopal Vs. State Bank of Travancore' reported in (1995) 1 MLJ 175 MANU/TN/0591/1994***, to state that *"even deposit of copy of title deed with intent to create mortgage is sufficient for the purposes of Section 58(f) of Transfer of Property Act' 1882 (paragraphs 3, 5 and 9 of the said judgment are relevant)."*

12. We have gone through the arguments along with their submissions filed by both parties and have perused the records carefully.

13. The above narrations clearly establish many defaults on the part of the respondent. It is noted that though the CIRP started on 28.02.2019, precious time has been lost mainly due to the fact that the respondent has not been able to deposit the performance guarantee in time despite several accommodations made by the CoC.

14. It is also noted that the H-2 Bidder i.e. M/s Pioneer Facor IT Infra Developers Private Limited (PHK) Consortium has come with a resolution bid of Rs.75.50 Crores. Records indicate that the H-2 Bidder was rejected by the CoC at the time of the original finalization of the resolution plan because his bid offer was only Rs.74 Crores less than the H-1 Bidder. The Applicant-Resolution Professional has prayed for a direction to the respondent not only to pay the performance guarantee but also to match the revised bid of Rs.75.50 Crores now offered by the H-2 Bidder. This Bench, however, feels that this is against the basic tenets of law of contract and performance of a contract. The respondent must pay as per the original bid of Rs.75 Crores, failing which the original bid fails. Thus, there is no requirement for him to match the revised bid of H-2 Bidder as the original bid is now closed.

15. The respondent is, however, directed to deposit the performance guarantee within a period of one month from the date of this order and the same should be to the satisfaction of the CoC. In the event of the failure of the respondent to comply with the conditions of the performance guarantee, the CoC is directed to first negotiate with the H-2 Bidder to explore the possibility of the resolution in a time-bound manner. We also permit the applicant-Resolution Professional to withdraw the IA No.615/2020 and 616/2020 regarding the approval of the resolution plan if the respondent fails to comply with the conditions of the performance guarantee. The failure on the part of the Resolution Applicant to comply with its own commitments regarding the performance guarantee will be considered a serious set back to the CIRP proceedings and a strong message need to go to such defaulters. This Bench, therefore, directs in the event of the failure to deposit the performance

guarantee by the respondent, the deposit of Rs.10 Lakhs as well as the partial performance security of Rs.1.00 Crore furnished earlier should be forfeited. Consequently, IA No.716/2020 is partly allowed and accordingly stands disposed of.

**2. IA No.2/2021**

This is an application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016. In the present application, **Pioneer Facor IT Infradevelopers Private Limited (PHK consortium)** is the applicant and **Mr. Sumat Kumar Gupta, Resolution Professional, Committee of Creditors, Ajay Yadav and Lata Yadav** are the respondents.

2. In the present application, the applicant prays (a) pass appropriate orders/directions rejecting the resolution plan submitted by respondent No.3, i.e. the purported H-1 bidder; (b) direct the CoC to consider the approval of resolution plan submitted by the present applicant, with or without amendments, if any, and (c) pass any order/order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.

3. This application is closely linked with the IA No.716/2020 in the sense that the present applicant was the H-2 Bidder in the CIRP of the Corporate Debtor i.e. International Mega Food Park Limited. In the present application, the applicant has made several allegations regarding the way CIRP proceedings was conducted and the respondent No.3 - Ajay Yadav and Lata Yadav were declared H-1 Bidder over and above the offer given by the applicant.

4. The reply has been filed by Respondent No.1 by Diary No.00001/2 dated 28.01.2021 and Respondent No.3 by Diary No.00001/4 dated 11.08.2021

5. We have heard the learned counsels for the applicant, respondent No.1 and respondent No.3 and have perused the records carefully.

6. This Bench has already directed in the order of IA No.716/2020 that the present offer given by the applicant-H2 Bidder should be considered by the CoC in case there is a failure on the part of respondent No.3-Ajay Yadav and Lata Yadav (H-1 Bidder) to furnish the performance security within the extended time limit allowed to them by this Bench. It is again reiterated that the CIRP is strictly a time-bound process and any action causing delay will only further devalue the assets of the corporate debtor. In view of the order in IA No.716/2020, the present IA No.2/2021 is rendered infructuous with the above observation and accordingly, IA No.2/2021 stands disposed of.

Sd/-  
(Subrata Kumar Dash)  
Member (Technical)

Sd/-  
(Harnam Singh Thakur)  
Member (Judicial)

May 30, 2022

AV