

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
CUTTACK BENCH  
CUTTACK**

**I.A. NO. / 2020  
T.P. NO. 203/CTB / 2019  
In  
CP(IB)/1411/MB/2018**

In the matter of:

An application under section 7 of the Insolvency and Bankruptcy Code, 2016;

And

In the matter of:

An application under Rule 11 of the National Company Law Tribunal Rules, 2016;

And

In the matter of:

**JM Financial Asset Reconstruction Co. Ltd.**

**..... Financial Creditor**

**Versus**

**Salasar Steel and Power Private Limited**, having its registered office at 1<sup>st</sup> floor, Bhatia Complex, Opp. Rajkumar College, G E Road, Raipur, Chattisgarh.

**..... Corporate Debtor**

**And**

In the Matter of:

**Shree Rupandham Steel Private Limited** a company incorporated under the Companies Act 1956 having its Registered Office at 11 Shristi Garden, Telibandha, Rapur, Pin 492 001, Chattisgarh.

**.... Applicant**

**vs**

1. **Sri. Rajesh Jhunjunwala**, Resolution Professional of Salasar Steel and Power Private Limited having his office at A51, Aasgut CHS, Azad Road, H B Gawde Marg, Stanburg Estate, Juhu Koliwada, Mumbai City, Maharashtra 400 049.

2. Committee of Creditors of Salasar Steel and Power Private Limited through Rajesh Jhunjunwala, Resolution Professional of Salasar Steel and Power Private Limited having his office at A51, Aasgut CHS, Azad Road, H B Gawde Marg, Stanburg Estate, Juhu Koliwada, Mumbai City, Maharashtra 400 049.

**.... Respondents**

**Coram: Shri Jinan K.R., Hon'ble Member (Judicial)**

**Counsels Present:**

- |  |   |                            |
|--|---|----------------------------|
| 1. Mr. Ratnanko Banerjee, Sr. Advocate | ] | <b>For applicants</b>      |
| 2. Ms. Aparajita Rao, Advocate         | ] |                            |
| 1. Mr. S.K. Singhi, Advocate           | ] |                            |
| 2. Mr. Ankur Singhi, Advocate          | ] | <b>For Respondent No.1</b> |
| 3. Mr. Jishnu Chowdhury, Advocate      | ] |                            |
| 1. Mr. Joy Saha, Sr. Advocate          | ] |                            |
| 2. Mr. Avishek Guha, Advocate          | ] | <b>For COC, Respondent</b> |
| 3. Mr. Somnath Roy, Advocate           | ] | <b>No. 2</b>               |

**Date of hearing: 19.06.2020**

**Order delivered on: 19.06.2020**

**ORDER**

**Per Jinan K.R. Member (Judicial)**

1. On an application filed by JM Financial Asset Reconstruction Co. Ltd, under section 7 of the Insolvency and Bankruptcy Code, 2016, corporate debtor (CD) / Salasar Steel and Power Private Limited, was ordered to undergo CIRP vide order dated 27.09.2019. In response to the publication calling for Expression of Interest (EOI), the applicant M/s. Shree Rupandham Steel Private Limited herein has submitted its interest along with EMD of Rs. 15.00 lakhs to the resolution professional (RP). Pursuant to an advertisement dated 04.12.2019, the applicant submitted its EOI by electronic mail on 18.12.2019. The applicant was approved as one of the prospective resolution applicants. Vide publication dated 07.01.2020, the RP included the applicant in the provisional list of eligible prospective Resolution Applicants. Although the applicant was informed regularly

regarding the extension of timelines, No extension beyond March 18, 2020 has been uploaded on the IBBI site even today. Due to the spread of COVID 19, the applicant was under an impression that the CIRP of the Corporate Debtor was suspended. However, On May 11, 2020 the applicant send an email to the RP that due to oversight the applicant could not act upon the same and further they were under the impression that due to Covid the CIRP of Salasar has been postponed and re-confirmed its participation and undertook to submit the Resolution Plan before the last date and a reminder was sent on 14.05.2020. However, the RP by mail dated 15.5.2020 informed that the CoC had rejected the request dated 11.05.2020. A copy of the letter is extracted below:

*From: lp.r.sspl@in.pwc.com.*

*Dated: 15 May, 2020*

*To: Sanwal Tibrewal*

*Dear Sir,*

*In regard to Corporate Insolvency Resolution Process (CIRP) of Salasar Steel and Power Company Limited (Corporate Debtor) we are in receipt of your mail dated 11th May, 2020 wherein you have requested for your participation in submission of resolution plan for Corporate Debtor and submitted your covering letter - confirmation for EOI.*

*In this regard, we would like to inform you that vide our mail dated 12th March, 2020, we have specifically requested you to submit the signed copy of "Covering letter for EOI - I.e. confirmation for participating in process" by 16th March 2020 to confirm your participation in the CIR process. Thereafter we did not receive your confirmation till the stipulated date and as per the process prescribed by the Insolvency and Bankruptcy Code, 2016 the final list of Prospective Resolution Applicants was prepared on March 24, 2020 and further process was duly conducted by Resolution Professional.*

*However, your request dated 11th May, 2020 was discussed with the CoC members thereafter CoC members considering the lockdown due to COVID-19 which is significantly affecting the on-going business of Corporate Debtor, and keeping in view the core-objective of code I.e. value maximisation and time bound resolution of Corporate Debtor, have declined your request to participate in the process at this advanced stage of CIR process.*

*In case of any further extension/change in direction from CoC members the undersigned may reach out to you. Till then hope you understand the explanation mentioned herein and trust that it serves your concern.*

*For and on behalf of*

*Rajesh Jhunjunwala, RP.*

2. Challenging the legality of the said letter rejecting the request for the participation in submission of resolution plan for Corporate Debtor, the applicant who was approved as the prospective resolution applicant filed this application for issuing direction to the RP to receive the Resolution Plan of the applicant for enabling it to compete the bidding process in the CIRP of the corporate Debtor within such time as fixed by this Hon'ble Adjudicating Authority (AA).

3. This application via email was in receipt of the registry on 23.05.2020, the registry, due to some misunderstanding in holding the charge of Cuttack Bench by me not forwarded the mail to me for listing the case for hearing. Upon receipt of a complaint from the advocate on record, dated 15.06.2020, the mail was forwarded to me, and upon curing the defect and being satisfied that the urgency for an early hearing before lifting of lockdown through video conference being satisfactorily explained, this application was listed for hearing on today by giving notice to applicant and to the respondents and calling for written defence from them.

4. Heard both sides. Perused the application, documents and written notes of defence submitted by the respondents.

5. It is submitted by the Ld.Sr.Counsel Mr. Ratnanko Banerjee, that Expression of Interest (EOI) was firstly issued on 04th December 2019 fixing the last date of submission on 19th December, 2019 and it was extended to 28th December, 2019. Based on the said publication the applicant submitted EOI and on 7th January, 2020 circulated list of prospective resolution applicants and date for submitting Resolution Plan document was on 10.01.2020 and final list of Resolution applicants was circulated on 15.01.2020. In the meanwhile the RP on 02.03.2020, published fresh Form G calling for EOI, for the reason of change in Evaluation Matrix as decided by CoC and the last date of submission of EOI was fixed on 17.03.2020 and provisional list of prospective resolution applicants issued on 18.03.2020. According to him though the applicant was informed regularly regarding the extension of timelines, the applicant has not received any information from the RP prior to March 4, 2020 and on IBBI site no extension beyond March 18, 2020 has been uploaded

on the IBBI site even today. He further would submits that due to spread of COVID 19, the applicant was under an impression that the CIRP of the Corporate Debtor was suspended as confirmed by the Notification dated 29.03.2020 and suo-moto order of the Hon'ble National Company Law Tribunal dated 30.03.2020 and that due to disruption of work the applicant also overlooked the email sent by the RP on 12th March,2020, and sent an email on May 11, 2020 to the RP explaining the reason for the delay and re-confirmed its interest in participation and undertook to submit the Resolution Plan before the last date and a reminder was sent on 14.05.2020, but the RP rejected the application arbitrarily and against the objective of the Code and upon the said submission the Ld.Sr.Counsel pressed for allowing this application in the better interest of getting maximization of value of the assets of the CD.

**6.** Ld.Sr.Counsel Mr. Joy Saha, for the CoC attempted to submit that there is no irregularity or illegality in rejecting the request for belated submission of resolution plan even if the applicant was provisionally found eligible for submission of resolution plan. According to him the applicant have full knowledge of the date of final submission of the Resolution Plan and if they really want to submit the Plan they should have filled up the application and re-send it which they have not done as they were waiting to submit a Resolution Plan after knowing that the H1 bidder approved by the CoC and their bid amount may be known to the applicant. He also submitted that first time when the EOI was published 11 people participated, second time 10 people and out of 10 ultimately only two people submitted their Resolution Plan. Looking at the trend which shows that the COVID 19 situation's impact on the purchase and sale, the CoC were afraid of losing the participants and decided to go ahead to finalize the bidding process. Highlighting Regulation 36-A (6) and Regulation 36-B (5) he submits that rejection of EOI not submitted with in the time specified is proper and legal and that if a revision of the Resolution Plan is allowed, under Regulation 36-B (5) the whole process has to be re-started and therefore the application deserve an order of dismissal. To stress his said argument he cited a judgment of ICICI Bank vs. Office Building reported in MANU/NC/4307/2019 paras 12 & 13.

7. Ld.Counsel Mr. Mr. Jishnu Chowdhury, for RP submits that the first process in respect of CIRP was canceled since the CoC feels that the evaluation matrix is not proper and the new process was started by issuing fresh publication calling for fresh Form G, but the applicant has not participated despite reminding the applicant on 12th March 2020. They should have submitted the Plan on 17th May, 2020 which they didn't. According to him as on today CoC evaluated the Plans and identified H1 & H2 negotiates with them on yesterday (18.06.2020) and CoC meeting have identified H1 bidder. He would submit that the applicant who is watching and knowing the process waited to see what is going on. The process starts on 2nd March, 2020 and everything completes fast because of COVID 19 situation and that CoC is afraid of people backing up. He argued and submitted that the application is liable to be dismissed.

8. Ld. Sr. Counsel for the applicant in reply countering the submissions on the side of the respondents submits that Regulation 36-A (11) requires publication both provisional list as well as final list. The applicant was not informed as to publication of the final list of prospective resolution applicants after the second publication calling for EOI. Non publication of final list as per Regulation 36-A (11) is therefore irregular. He also submits that Regulation 36-B (5) does not apply at all in this case because a fresh start for approving Resolution Applicant does not arise for consideration in the case in hand because admittedly, the applicant is an approved Resolution Applicant. He also would submit that the rejection of request for submission of resolution plan from the applicant side was not under Regulation 36-A (6) but for the reason of delayed submission of form of confirmation in participating the CIRP. He further would submit that the committee of creditors decision to decline the request is against the value maximization. According to him the judgment cited by the Ld.Sr. Counsel for the CoC not applicable in the instant case, and cited this Bench judgment in VSP Udyog Vs. Amit Metalliks passed on 29th May 2020 in CP(IB)No.1221/KB/2019.

9. In the light of the above said submissions and contentions on the side of the applicant, the short question for consideration is whether the rejection of request for submission of

resolution plan within the extended time specified by the RP in the publication is legal and proper?

10. The applicant seems to have engaged in similar business that of the business of the CD. Admittedly, the applicant herein was found eligible for inclusion in the final list of prospective resolution applicants. It appears that the applicant name was not included in the final list published by the RP on 26.03.2020 for want of confirmation from the side of the applicant. That confirmation was tendered by the applicant along with a request to permit it to submit the resolution plan within the time specified by the RP. The last date of submission of the resolution plan was on 17.05.2020. The belated request was submitted to the RP by the applicant through an email dated 11.05.2020. The said letter copied below for a better understanding of the interest of the applicant in competing with the other bidders. It read as follows:-From:

*Sanwal Tibrewal,*

*Sent: 11 May 2020,*

*To: Vedika Chadha*

*Mam,*

*Sub: Confirmation on EOI for Salasar Steel & Power*

*Please refer to the trailing email wherein we were supposed to send the reconfirmation of the EOI. Due to oversight we could not act upon the same and further we were under the impression that due to Covid the CIRP of Salasar has been postponed. We understand that the Resolution Plan is to be submitted by 27th and we are prepared to submit the same if allowed. Needless to say that EMD is already deposited with you.*

*Please allow us the opportunity to participate in the CIRP process of Salasar. We are enclosing our confirmation herein.*

*Regards*

*For and on behalf of Shree Rupandham Steel Pvt. Ltd.*

*Sanwar Tibrewal.*

This request was neither considered by the RP nor he sent any reply. The applicant repeated the demand vide email dated 14.05.2020. The reminder email is extracted below:

*Reminder dated 14th May, 2020*

*Mam,*

*We await your confirmation as today is 14th and we do not have much time till 17th. Further more you will appreciate that Hon'ble Adjudicating Authority has time and again held that Prospective Resolution Applicants to participate be allowed in the CIRP process of corporate debtors even in case there is some delay to ensure maximisation of the recoveries of the Corporate Debtor.*

*We await your confirmation.*

*Sanwal Tibrewal, Advocate for Shree Rupandhan Steel.*

On receipt of this email, it seems the RP placed the email dated 11th May,2020 before the CoC and the decision of CoC was communicated to the applicant on 15.05.2020, which is extracted above. For convenience I am not quoting it again. It is certain that before the expiry of the date of submission of the resolution plan the applicant approached the RP and showed its readiness to submit it in time and also submitted belated confirmation in participating the CIRP. It is significant to note here that an EMD of Rs.15 lakh is with the RP till this date. Although the request was declined no decision to refund the EMD so far. It appears to me that collecting EMD is not mandated as per Regulation 36-B (4). It provides that "the request for resolution plan shall not require any non-refundable deposit for submission of resolution plan". At the time of the request for submission of the resolution plan by the applicant the CoC had not identified H1 bidder. The period for submission of the resolution plan also has not expired. That was allegedly done on 18.06.2020 i.e after the service of notice of this application to the RP and CoC on 28.05.2020 and service of this registry's notice to them on 16th June,2020.

**11.** The foregoing discussion lead to a conclusion that rejection of request for submission of a prospective resolution applicant before the expiry of the date of submission of the resolution plan only for the reason of delayed submission of confirmation of its participation is bad and not in confirmation with the reason highlighted by the CoC in the letter of rejection dated 15.05.2020.

**12.** Truly there is undue delay in confirming the applicants interest in participating in the CIRP. It has come out in evidence that the email dated 4.03.2020 and 12.03.2020 was not responded by the applicant. But it raised valuable reasons. Even the CoC fears in getting the prospective resolution applicants due to COVID-19 pandemic and disruption of work. This fear is equity applicable to the applicant. The applicant thought due to declaration of lock down, the CIRP may be suspended. But later it was alerted and approached the RP before the expiry of the last date of submission of the resolution plan. In the said circumstances, the submissions on the side of the respondents that the applicant approached before the AA at a belated time knowing the resolution bid amount by having access to the data room of the CD is devoid of any merit. It approached this Tribunal on 23.05.2020. We are all battling with the COVID-19. In this peculiar circumstance it appears to me that the reason for rejection is contrary to the objective of the Code. The rejection of a request for submission of a resolution plan within the extended time specified by the RP in the publication is therefore found not legal and proper.

**13.** The citation referred to by the Ld.Sr.Counsel is not at all applicable to the case in hand because the entire facts in the said case are dissimilar to the facts in the instant case. On the other hand in the judgment cited by the Ld.Sr.Counsel for the applicant I observed that “Even if there is no valid explanation for the undue delay on the side of the applicant to respond to the publication calling for EOI, in the interest of justice and to give an opportunity to compete with other prospective applicants, it is fair and just to consider this application”. Here in this case the delay in submitting the confirmation letter was explained. However that explanation was found not acceptable to the CoC and it is why the applicant was forced to approach the AA. It appears to me that the CoC if it's best estimation, the request would have been allowed. It would not cause any prejudice to the CoC. Admittedly out of 11 applicants who gave EOI, only two prospective resolution applicants reached upto the final stage. If this applicant request was considered, then there would have been three prospective applicants. Allowing its request would have enriched value maximization and not declining the request.

**14.** In view of the above said discussions at length I am of the considered view that this application is to be allowed permitting the applicant in participating the bidding process by submitting the resolution plan. Allowing the application no way prejudicially affects in completing the CIRP, keeping the timeline.

In the above facts and circumstances, the application is allowed upon the following orders:

i). The applicant is directed to submits the resolution plan to the RP on or before 23.06.2020 at or before 4 pm on 23.06.2020;

ii). The RP is directed to place the resolution plan if it confirms the conditions referred to sub section 2 of section 30 of the Code.

iii). The CoC is at liberty to consider its feasibility and viability and such other requirements as may be deliberated by the CoC with the applicant.

iv). **The IA is disposed of accordingly.**

The registry is directed to send email copy to the parties forthwith.

**(Jinan K.R.)**  
**Member (Judicial)**

Signed on this, the 19th day of June, 2020.