

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No. 1592/2023
In
CP (IB) No. 627/Chd/Hry/2019
(admitted)**

**Under Section 60(5) read
with Rule 11 of the IBC, 2016**

In the matter of:

Anurag Verma

....Petitioner-Operational Creditor

Versus

Fairwealth Housing Private Limited

....Respondent-Corporate Debtor

And in the matter of:-

IA No. 1592/2023

Anurag Verma, Resolution Professional

Having its registered office at: C-35,
Ground Floor, Vivek Vihar, Phase-I
New Delhi- 110095

...Applicant

Order delivered on: 30.08.2023

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

Present through video-conferencing:

For the Applicant

:

Mr. Gautam Singhal, Advocate
Mr. Deepankur Sharma, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No. 1592/2023

The present application has been filed by the Resolution Professional under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Regulation 36A read with Rule 11 of NCLT Rules, 2016.

2. It is prayed by the applicant to grant the permission to publish fresh Form G with the revised eligibility criteria for invitation of expression of interest from the prospective Resolution Applicant

3. It is submitted by the applicant that the corporate insolvency resolution process was commenced by this tribunal by order dated 01.06.2022. This Adjudicating Authority had appointed Mr. Khushwinder Singhal as IRP and subsequently by order dated 05.09.2022, Mr. Gautam Singhal was appointed as RP. In the fourth meeting held on 20.09.2022, the draft Form G along with eligibility criteria for the submission of EOI was duly approved by the COC members. The said Form G was published on 30.09.2022, in the newspapers and five PRAs submitted their EOI. As no resolution plan was received, the Form G published on 02.02.2023 with the Revised Modified Criteria as approved by the COC in its seventh meeting held on 25.01.2023. After the publication of revise Form g, 8 PRAs submitted their EOI, but the applicant did not receive any resolution plan till the last date for the submission of the resolution plans (even after extending the timelines). The applicant had discussion with various stakeholders and it is appraised by the applicant that if the criteria for submission of the Resolution Plan is relaxed, then there will be a possibility of getting a viable resolution plan. In the 10th meeting of COC held on 07.06.2023, the revised form G with modified Eligibility criteria was approved with 100% voting.

4. The draft Form G with the revised eligibility criteria is reproduced here below:

S.No.	Parameters	Eligibility
1.	Refund Earnest Money Deposit (Non-interest bearing) <ul style="list-style-type: none"> ● Along with EOI ● Along with Resolution Plan 	By way of demand draft in the name of Corporate Debtor Rs. 1,00,000 Rs. 9,00,000
2.	Tangible Net Worth	Rs. 3,50,00,000 (Three Crore and Fifty Lakh) in case of individual bidder/ and in case of consortium/ group of bidder Rs. 10,00,00,000 (Ten Crores) of consortium/ group This Criteria of EMD and Net Worth is not applicable in case of submission of Expression of Interest by duly Registered Association of Allottees of Fairwealth Housing Private Limited (Allottees those are part of Association should consist of majority of Members of Committee of Creditors as class of Creditors)

5. Reliance is placed on the order of Honourable NCLT, New Delhi, Bench-IV in the case of ***M/s Gagan Ferrotech Ltd Vs. M/s Manju J Homes India Ltd in IA No. 5359/ND/021 in CP (IB) No. 1058/ND/2018 dated 23.11.2021***, in which the permission was granted to the Resolution Professional to modify and publish revised from-G as the corporator was engaged in construction of residential/commercial projects and the claims of various allottees were filed. Reliance is also placed on the judgment of Honourable NCLT, Hyderabad Bench in case of ***State bank of India Vs. Minakshi energy Ltd. in IA(IBC)/ 700/2022 in CP (IB) No. 184/7/HDB/2019***

dated 25.07.2022, wherein the Process of bidding was restarted by publishing the Form-G and other necessary documents.

6. We have heard the learned counsel for the applicant and have carefully perused the record available.

7. In this connection, we refer to various decisions of the Hon'ble Supreme Court where in the word modification has been interpreted as under:

"a. S.K. Gupta v. K.P. Jain, : (1979) 3 SCC - 'Modification' includes change in or substitution of the original sponsor of the scheme by another one.

b. Kesavananda Bharati v. State of Kerala : (1973) 4 SCC - Modification in Article 370(1)(d) must be given the widest meaning in the context of a constitution and in that sense it includes an amendment and it cannot be limited to such modifications as do not make any radical transformation.

c. K.P. Jain v. S.K. Gupta, ILR (1976) 2 Del 291-The word 'modification' means a small adjustment, a minor or slight change, a qualification or limitation, the act or action of changing something without fundamentally altering it.

d. Forward Construction Co. v. Prabhat Mandal, (1986) 1 SCC 100 (SCC p. 117, para 33) - The meaning of the expression "change" came up for consideration, wherein after noticing its dictionary meaning, it was observed:

"The word 'change' ... is 'to make or become different, to transform or convert. If the user was to be completely or substantially changed only then the prior modification of the development plan was necessary."

e. Puranlal Lakhanpal v. President of India, : AIR 1961 SC 1519 : (1962) 1 SCR 688

It was stated: (SCR p. 693). - (The word 'modification' means 'the action of making changes in an object without altering its essential nature or character..."

8. We refer to our decision in the case of **UCO Bank and Ors. vs. SR Industries Limited and Ors. : MANU/NC/2019/2023**, where in we have held:

“we find merit in the argument that the word 'modification' under Regulation 36A(4A) of the CIRP Regulations, 2016 refers to minor changes and does not include the issuance of fresh invitation of Expression of Interest. Further, CoC, in its 20th meeting dated 29.11.2022, concluded in its commercial wisdom that the amount offered by the prospective Resolution Applicant in the Resolution Plan is very low, and in order to maximize the value of the corporate debtor published EOI in fresh Form G dated 05.12.2022. It is also noted that CoC has given sufficient opportunity to the applicant by inviting him to the 23rd and 24th CoC meetings dated 12.01.2023 and 19.01.2023 to improve upon the Resolution Plan. Pursuant to the meetings, the applicant has failed to improve upon the Resolution Plan against the objective of the Code.”

9. In the present case, the modifications as outlined in para 4 above are not minor modifications, but are quite substantial and change the nature of Form G. Keeping in view the ratios of the aforementioned judicial decisions, we are of the view that in the present case, the prayer is for re-publishing of Form G. As per the provisions of Regulation 36A(4A), the invitation for expression of interest, which has already been issued can be modified only once. However, the said provisions will not be applicable to the present case dealing with the fresh publication of Form G. The Resolution Professional is, therefore, to publish fresh Form G with the revised eligibility criteria for invitation of expression of interest from the prospective Resolution Applicant. The same may be done within 15 days of this order.

10. In the result, IA No. 1592/2023 is allowed and disposed of accordingly

-sd-

(Subrata Kumar Dash)
Member (Technical)

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(Harnam Singh Thakur)
Member (Judicial)

August 30, 2023