

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA(IBC)/1046(CHE)/2021 in IBA/1180/2019

*{filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016
R/W regulation 39(4) of the Insolvency and Bankruptcy Board of India
(Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*

In the matter of ***M/s. Alkas Spinning Mills Private Limited***

M. Suresh Kumar,

Resolution Professional,

M/s. Alkas Spinning Mills Private Limited,

Reg. No.-IBBI/IPA-001/IP-P00110/2017-2018/10217

... Applicant / Resolution Professional

Along with

IA(IBC)/58(CHE)/2022 in IBA/1180/2019

A. Anand,

S/o. Late R. Arumugam,

A/2, 1st Floor, Sai Sangirth Apartment,

29, Police Commissioner Rod,

Egmore – 600 008.

... Applicant,

-VS-

1. M.Suresh Kumar,
Resolution Professional,
M/s. Alkas Spinning Mills Private Limited,
SPP & CO, Chartered Accounts,
No.27/9, Nivedh Vikas,
Pankaja Mill Road, Puliyakulam,
Coimbatore – 641 048.

... Respondent / Resolution Professional

2. Union Bank of Inida,
Represented by General Manager,
139, Prakasam Road, Mannadi Police Colony,
George Town, Chennai – 600 001.

... Respondent / Financial Creditor

Along with
IA(IBC)/866(CHE)/2021 in IBA/1180/2019

A. Anand,
S/o. Late R. Arumugam,
A/2, 1st Floor, Sai Sangirth Apartment,
29, Police Commissioner Rod,
Egmore – 600 008.

... Applicant,

-VS-

1. M.Suresh Kumar,
Resolution Professional,
M/s. Alkas Spinning Mills Private Limited,
SPP & CO, Chartered Accounts,
No.27/9, Nivedh Vikas,
Pankaja Mill Road, Puliyakulam,
Coimbatore – 641 048.

... Respondent / Resolution Professional

Along with
MA(IBC)/111(CHE)/2021 in IBA/1180/2019

TPN Transports,
Owned by
K. Palaniappan,
Having office at 11, SIDCO Industrial Estate, Paramathi Road,
Namakkal – 637 001

... Applicant

-VS-

1. M.Suresh Kumar,
Resolution Professional,
M/s. Alkas Spinning Mills Private Limited,
SPP & CO, Chartered Accounts,
No.27/9, Nivedh Vikas,
Pankaja Mill Road, Puliyakulam,
Coimbatore – 641 048.

... Respondent / Resolution Professional



2. KSV Cotton Mills Private Limited,
Represented by Prasad Pillai,
K.S.V. Garden, Karur Road,
Gujiliamparai, Dindigul,
Tamil Nadu 624 703

... Respondent / Resolution Applicant

Along with

Ivn. P./15(CHE)/2021 in IBA/1180/2019

A. Anand,
S/o. Late R. Arumugam,
A/2, 1st Floor, Sai Sangirth Apartment,
29, Police Commissioner Rod,
Egmore – 600 008.

... Applicant,

-vs-

1. M.Suresh Kumar,
Resolution Professional,
M/s. Alkas Spinning Mills Private Limited,
SPP & CO, Chartered Accounts,
No.27/9, Nivedh Vikas,
Pankaja Mill Road, Puliyakulam,
Coimbatore – 641 048.

... Respondent / Resolution Professional

PARTIES

For Suspended Board of Directors: T.K. Bhaskar, Advocate

*For Resolution Professional : E. Om Prakash, Senior Advocate
V. Manivannan, Advocate
M. Suresh Kumar, RP*

For Resolution Applicant :V.V. Shivakumar, Advocate

For CoC :Varun Srinivasan, Advocate

Order Pronounced on 2nd November 2022

CORAM :

**JUSTICE (RETD.) RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

COMMON ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

IA(IBC)/1046(CHE)/2021 is an Application filed by the Resolution Professional in respect of the Corporate Debtor, viz., M/s. Alkas Spinning Mills Private Limited under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 R/W Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking approval of the Resolution Plan submitted by the successful Resolution Applicant viz., KSV Cotton Mills Private Limited.

2. CORPORATE INSOLVENCY RESOLUTION PROCESS OF M/S. ALKAS SPINNING MILLS PRIVATE LIMITED

- 2.1. In an Application filed under Section '9' of the IBC, 2016, by the Operational Creditor, the CIRP in respect of the Corporate Debtor was ordered by this Tribunal vide order dated 05.05.2020 and one Mr. Kannan Sambasivam was appointed as the IRP. The IRP has caused paper publication on 09.05.2020 in accordance with under Section 15 of IBC, 2016 r/w Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in Indian Express (English Edition) and Daily Thanthi (Tamil Edition).
- 2.2. In response to the same, it is seen that the IRP has received claim from the Operational Creditor and from

one Financial Creditor viz., Union Bank of India. It was submitted that based on the claim submitted by the Union Bank of India for a sum of Rs.9,64,06,229.70/- the CoC was constituted with the Union Bank of India being the sole Financial Creditor. The Form G inviting Expression of Interest (EoI) was published by the RP on **16.03.2021** and as per Form G, the last date of receipt of EoI was fixed as **01.04.2021**. A copy of the Form G is placed at Page No. 102 of the Application.

2.3. It was submitted that on **19.04.2021**, i.e after the expiry of a period of 18 days from the last date of receipt of EoI, the RP has received an e-mail from the prospective Resolution Applicant viz., KSV Cotton Mills Private Limited intimating their intention to submit an EoI in respect of the Corporate Debtor, to which the RP has replied on 07.05.2021 about the details and the formalities in respect of documents to be submitted for the EoI.

2.4. Subsequently, it was submitted that the detailed "Expression of Interest" along with necessary "non-disclosure agreement" was given to the Resolution Applicant on 18.05.2021. In the meanwhile, it was submitted that due to Covid-19 lockdown from the period of April 2021 to June 2021, the Applicant called for a CoC meeting and the same was held on 23.06.2021 wherein the Applicant had informed the CoC that he had received one "Expression of Interest" after the last date from the prospective Resolution Applicant on 18.05.2021 and in the said meeting the CoC had

resolved the final request for the Resolution Plan and the valuation matrix shall be circulated to the prospective Resolution Applicant as per the Regulation 36(b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

2.5. It is seen that the 6th CoC was held on 06.07.2021 wherein the RP informed the CoC in respect of the request for the Resolution Plan and the related documents were shared with the prospective Resolution Applicant. Pursuant thereto, the prospective Resolution Applicant submitted the Resolution Plan dated 05.07.2021 along with the prescribed EMD amount.

2.6. It was submitted that the COC had discussed in detail about the feasibility of the Plan, consideration of the fair value of the business and revival of the spinning industry in Tamil Nadu and suggested the RP to renegotiate with the Resolution Applicant for meeting their offer price and to place the revised / improved Resolution Plan before the CoC for their approval.

2.7. Further it was also submitted by the RP before the CoC that the Prospective Resolution Applicant had submitted an additional request along with the Resolution Plan stating their interest to take the Unit of the Corporate Debtor on a temporary lease from the date of approval of the resolution plan by the CoC as they need to carry out the refurbishment work to make the Unit fully functional.

- 2.8. In response to the same, it was submitted that the said request made by the Resolution Applicant would be considered by the CoC in its next meeting. In the meeting held on 13.07.2021, wherein the revised plan dated 08.07.2021 was received from the Resolution Applicant and was placed before the CoC for its consideration.
- 2.9. At that point of time, it was also submitted by the RP before the CoC that he had received a new EoI from one Mr. K. Palaniappan (Promoter of TPN Transports and Thenpandian Textiles Private Limited) on 09.07.2021 and the same was also informed to the CoC through an e-mail dated 10.07.2021.
- 2.10. However, it was submitted that the CoC in the said 7th meeting after detailed discussion on the CIRP timelines unanimously resolved to reject the belatedly submitted "expression of interest" by Mr. K. Palaniappan since the Resolution Plan submitted by the KSV Cotton Mills Private Limited was already under consideration before the CoC and it was in the final stage for approval.
- 2.11. In relation to the Resolution Plan submitted by the KSV Cotton Mills Private Limited, the CoC had stated that they require two weeks time for internal review for approval with respect to the revised Resolution Plan and it was unanimously decided to adjourn the said meeting for the period of two weeks. Hence, the 7th meeting was adjourned and rescheduled on 27.07.2021. In the

adjourned 7th meeting of the CoC held on 27.07.2021, it was decided to take up the Resolution Plan for voting in the next CoC meeting since the members of the CoC required additional time to evaluate and decide upon the Resolution Plan.

2.12. In the meantime, the RP had informed the CoC that the CIRP timeline is about to come to an end and necessary Application was required to be made before the Adjudicating Authority seeking exclusion of lockdown period to validate the decision of the CoC with respect to the Resolution Plan. Hence, the Resolution was passed in the said CoC meeting to seek 90 days extension of the CIRP with the exclusion of lockdown period.

2.13. In the interregnum, both the CoC members and the RP had several rounds of negotiations with the Resolution Applicant for improvement in the Plan value.

2.14. Finally, the Resolution Plan was received by the RP on 07.09.2021 from the Resolution Applicant and in the 8th CoC meeting which was held on 27.09.2021, the said Resolution Plan was placed for consideration before the CoC. In the said meeting it was submitted that the CoC evaluated the Resolution Plan submitted by the Resolution Applicant and had unanimously passed a Resolution approving the Resolution Plan submitted by the Resolution Applicant, as per Section 30 (4) of the IBC, 2016.



- 2.15. Further the CoC had also passed a Resolution to the effect that the factory premises of the Corporate Debtor along with the Textile Machineries to be provided on a "short term lease" as per the terms stipulated by the CoC to the successful Resolution Applicant for taking the Unit on a "temporary lease" from the date of approval of the Plan by the CoC as they need to carry out the refurbishment work to make the Unit fully functional.
- 2.16. In the meantime, the RP has moved IA/820/2021 for extension of CIRP period and the same was allowed by this Tribunal vide order dated 05.10.2021 whereby the CIRP period in respect of the Corporate Debtor was extended up to 21.01.2022.
- 2.17. Under the said circumstances, IA(IBC)/1046(CHE)/2021 is moved by the RP seeking approval of the Resolution Plan.

3. OBJECTIONS TO THE RESOLUTION PLAN

The following Applications are filed by the Suspended Directors of the Corporate Debtor;

- (i) IA/866(CHE)/2021;
- (ii) IA/58(CHE)/2022; and
- (iii) Ivn.P/15(CHE)/2021;
- (iv) MA(IBC)/111(CHE)/2021;

- 3.2. In relation to **MA/111(CHE)/2021**, it is being filed by TPN Transports, who had belatedly submitted the Resolution Plan which came to be rejected by the CoC

and aggrieved by the said rejection, they had moved the present Application. However, when the matter was taken up for hearing, Learned Counsel for the Applicant sought to withdraw the present Application and to that effect a memo had also been filed. Taking on record the memo filed by the Applicant, MA/111(CHE)/2022 stands **dismissed as withdrawn.**

3.3. In relation to **IA/866(CHE)/2021**, it is an Application filed by one Mr. A. Anand, who is the Suspended Director of the Corporate Debtor under Section 60 (5) of the IBC, 2016 seeking relief as follows:-

- a. *Set aside the 6th CoC meeting held on 06.07.2021 with respect to resolution 6 & 7 and consequently call for fresh CoC meeting permitting the Applicant to be present during the said CoC meeting.*
- b. *Directing the Respondent to permit the Applicant to participate in all CoC meetings.*
- c. *Direct the Respondent to provide copies of the resolution plan submitted by the resolution applicant to the Applicant.*

3.4. In relation to **IA/58(CHE)/2022**, it is an Application again moved by Mr. A. Anand, Suspended Director of the Corporate Debtor under Section 60 (5) of the IBC, 2016 seeking relief as follows:-

- a. *Direct the 1st Respondent to place the Resolution Plan dated 12.12.2021 submitted by the Applicant along with the condone the delay application before the 2nd Respondent and consequently direct the 2nd Respondent to considering the same on merits.*

- b. *Pass any such further orders in favour of the Applicant as may be deemed necessary in the best interest of justice and equity.*

3.5. In addition to the above, suspended Director of the Corporate Debtor has also moved an **Ivn.P/15(CHE)/2021** seeking to intervene in IA/1046(CHE)/2021 which is filed for approval of the Resolution Plan.

3.6. The main contention in IA/866(CHE)/2021 is that the Applicant being the suspended Managing Director of the Corporate Debtor had a right to participate in the CoC meeting when the Resolution Plan is put up for discussion. However, it was submitted that the RP had called upon the Suspended Director and informed him that he should not be present at the time of agenda of Resolution Plan was taken up for discussion. In support of his contention, Learned Counsel for the Applicant relied upon the Judgment of the Supreme Court in the matter of **Vijay Kumar Jain –vs- Standard Chartered Bank and others** reported in (2019) 20 SCC455 at para 16;

“This statutory scheme, therefore, makes it clear that though the erstwhile Board of Directors are not members of the Committee of Creditors, yet, they have a right to participate in each and every meeting held by the Committee of Creditors, and also have a right to discuss along with members of the Committee of Creditors all resolution plans that are presented at such meetings under Section 25(2)(i)”

- 3.7. Further, it was also submitted that the Applicant is the guarantor of the loan availed by the Corporate Debtor and the Corporate Debtor is also an MSME and the Applicant ought to have been permitted to participate in the CoC meeting.
- 3.8. Furthermore, it was submitted that the Applicant vide his e-mail dated 07.07.2021 requested the RP to provide the Resolution Plan and he had also submitted "non-disclosure agreement" to the RP. However, the RP had replied vide e-mail dated 07.07.2021 stating that the Resolution Plan is confidential one and will not be shared with any other party other than the CoC. Hence, it was submitted that the act of the RP was not allowing the Suspended Director of the Corporate Debtor to participate in the CoC meeting and also by not providing a copy of the Resolution Plan had caused irreparable loss and great prejudice and hence the Suspended Director of the Corporate Debtor had sought to set aside the 6th CoC meeting held on 06.07.2021.
- 3.9. In relation to **IA/58(CHE)/2022**, it is seen that the Suspended Director of the Corporate Debtor had also submitted a Resolution Plan to the RP by way of an e-mail dated 12.12.2021. In response to the same, the RP vide letter dated 22.12.2021 had replied as follows:-
- "We are in receipt of your above referred Resolution Plan mail and the hard copy subsequently. In this connection, I place on record the following facts.*
- *In the 8th CoC meeting held on 27th Sep 2021 the Resolution Plan submitted by M/s. KSV*

Cotton Mills Private Limited has been approved with 100% voting.

- *The said CoC approved Resolution Plan is filed before Hon'ble NCLT Chennai Bench vide case No. IA/1046/2021 and the same is under adjudication.*
- *In the meantime, you also have filed an interim application objecting this plan before the Hon'ble Adjudicating Authority.*
- *The said plan and your intervention petitions were taken up for hearing on 13th Dec 2021. In the said hearing, Hon'ble Adjudicating authority passed certain interim orders including taking the factory premises possession back from the Lessee, maintaining status-quo etc.*

3.10. Aggrieved by the said rejection made by the RP, the Promoter / Suspended Director of the Corporate Debtor had filed the present **IA/58(CHE)/2022** to place the Resolution Plan before the CoC and to consider the same on merits.

3.11. In relation to **Ivn.P/15(CHE)/2021** is concerned, the Suspended Director of the Corporate Debtor, in addition to the grounds raised above in the Application has stated that the Corporate Debtor is an MSME engaged in the business of Spinning Mills, as such great prejudice would be caused if the impugned Resolution Plan submitted by the prospective Resolution Applicant viz., KSV Cotton Mills Private Limited is approved by this Adjudicating Authority and has sought to intervene in IA/1046(CHE)/2021.

4. DISPOSITIVE REASONING OF THIS TRIBUNAL

- 4.1. We have heard the submissions made by Learned Counsel for the Resolution Professional and the Learned Counsel for the Suspended Director of the Corporate Debtor and also perused the counter and reply filed by both the parties.
- 4.2. From the averments made in the Application it is clear that the Form G was published only on 16.03.2021 and the last date for receipt for expression of interest was 01.04.2021. Last date for issue of provisional list of prospective Resolution Applicants was 08.04.2021, however the same was issued only on 22.06.2021. The last date for issue of objections to provisional list was 13.04.2021.
- 4.3. It is further seen that the Resolution Applicant first approached the RP with email dated **19.04.2021**. At this juncture, it is imperative for us to reproduce Regulation 36 A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 (CIRP Regulations) which govern the process of Invitation for Expression of Interest (Form G).

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).....
- (5).....
- (6) **The expression of interest received after the time specified in the invitation under clause (b) of sub regulation (3) shall be rejected.**

4.4 It is seen from the application, that the expression of interest from the Resolution Applicant herein was received only on 19.04.2021 which is much beyond the last date mentioned in the Form G which was 01.04.2021. It is also seen from the record that two more persons have evinced interest post the receipt of the said date, however, the RP rejected their offer since they were received after the last date/approval of the plan etc.

4.5. It is seen that the RP has clearly not maintained the sanctity of the CIRP Regulations more particularly Regulation 36 A (6), which very clearly lays down that "**The expression of**

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

4.6. The provisions of IBC, 2016 provides equal opportunity to all the Resolution Applicants and there cannot be any selective opening of windows for certain Resolution Applicants to participate in the Resolution Process of the Corporate Debtor, post expiry of last date. In the instant case, there has been a material irregularity in exercising the powers by Resolution Professional during the Corporate Insolvency Resolution Process.

4.7. Reliance is placed on the judgment by Hon'ble NCLAT in the matter of **Kotak Investment Advisors Ltd. V/s Mr. Krishna Chamadia and other, Company Appeal (AT) (Insolvency) No. 344 – 345 of 2020**. Para 57 of the said judgment is reproduced below :-

In the circumstances as stated above, we are of the considered opinion that the Resolution Professional committed a grave error in accepting the Resolution Plan of the Resolution Applicant Kalpraj Dharmshi & Rekha Jhunhunwala after the expiry of the deadline for submission of the Bid/Resolution Plan without notifying/publishing the extension of the timeline for submission of EOI, as per provision of the I&B Code and Regulations thereof.

4.8. It may not be out of place to mention here that post the judgment in the said Appeal, Regulation 36 A(6) was introduced in the CIRP Regulations.

4.9. As such we are of the considered view that there was a serious lapse in conduct of the entire CIRP process more particularly governing the process post issue of Form G.

There is clear violation of CIRP Regulation more particularly Regulation 36 A (6).

4.10. Hence, in view of the same, we dispose of all the above Applications, with directions as follows;

- (a) The RP to call for a CoC meeting within a period of 5 days from the date of this order and to proceed with the CIRP from the publication stage of 'Form - G' for inviting Expression of Interest afresh as per CIRP Regulations.
- (b) The RP is directed to complete the Resolution Process within a period of 45 days from the date of this order.
- (c) By taking into consideration the Judgment of the Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steel India Limited -Vs- Satish Kumar Gupta and Others;** (2020) 8 SCC 531, the CIRP period in respect of the Corporate Debtor is extended for a period of 45 days from the date of this order.
- (d) The *Registry* of this Tribunal is directed to forward a copy of this order to IBBI for its information and records.

5. Since the IA seeking approval of the Resolution Plan is set aside with the above said directions, all the IA's challenging the Resolution Plan viz. IA(IBC)/1046(CHE)/2021; IA/866(CHE)/2021; IA/58(CHE)/2022; Ivn.P/15(CHE)/2021; and MA(IBC)/111(CHE)/2021 stands **disposed of.**

— Sd —

SAMEER KAKAR
MEMBER (TECHNICAL)

— Sd —

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Raymond