

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH**

**IA NO. 116/2020, IA NO.136/2020,  
IA NO.161/2020, IA NO.213/2020,  
IA NO.252/2020 & IA NO. 253/2020  
IN Company Petition (IB)No.342/ALD/2018**

**IN THE MATTER OF**

**BANK OF BARODA**

**.....Applicant/Financial Creditor**

**VERSUS**

**M/S BAGHAULI SUGAR & DISTILLERY LIMITED**

**.....Corporate Debtor**

**VERSUS**

**VIVEK RAHEJA  
RESOLUTION PROFESSIONAL OF M/S BHAGAULI SUGAR & DISTILLERY  
LIMITED**

**..... Respondent**

**ORDER DELIVERED ON :11.11.2020**

**CORAM:**

**Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial**

**For the Applicant: Mr. Abhinav Gaur, Adv**

**For the Resolution Professional: Mr. Babita Jain Adv**

**Per se: Mr. Justice (Retd.) Rajesh DayalKhare, Member (Judicial)**

**Order**

1. Since in all the applications i.e IA NO. 116/2020, IA NO.136/2020, IA NO.161/2020, IA NO.213/2020, IA NO.252/2020 & IA NO. 253/2020 in CP NO. (IB) 342/ALD/2020, the prayer made is common i.e to restrain the RP as well as to set aside steps taken by RP to finalize the Resolution applicant or the Resolution plan pursuant to issue of Form-G published on 11.06.2020 and further to quash the reissuance of Form -G dated 13.08.2020 and 06.10.202,therefore, all the applications are taken up and are being decided by the common order.
2. The present IA's has been filed on behalf of the Corporate Debtor through its Suspended Director under Section 60(5) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016. In the present matter the

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CIRP was initiated on the Company Petition filed by Bank of Baroda under Section 7 of IBC and was admitted by this Tribunal vide order dated 07.02.2020 and Mr. Vivek Raheja was appointed as IRP who was later confirmed as Resolution Professional.

3. It is contended on behalf of the Applicant that after the admission of the petition, the Corporate Debtor has offered for settlement of the entire outstanding dues with the Financial Creditors who are the part of the COC. Further it was stated that the COC vide acknowledgment dated 09.07.2020 have accepted to settle the claim and are discussing the terms of settlement on the entire outstanding amount. Meanwhile RP has published Form-G on 11.06.2020 inviting for expression of interest and further proceedings with the Resolution Applicant.
4. It is contended that since the Corporate Debtor is under CIRP, the Applicant vide letter dated 08.07.2020 wrote to the Members of the COC requesting them to settle their claims of the outstanding dues and stated that they are also willing to negotiate the terms of the OTS offer.
5. Meanwhile the COC in its 4<sup>th</sup> meeting dated 06.08.2020 authorized the RP to the issue Form-G for inviting fresh expression of interest and the RP in the most illegal manner went on to re issue Form-G on 13.08.2020 and while the IA's were pending before this Tribunal, the RP proceeded to issue another Form-G on 06.10.2020, which has been issued on 149<sup>th</sup> day of insolvency commencement date. It has been further stated that there is no such provision in the Regulation of the Code to re-issue Form-G, once a period of 75 days from the insolvency commencement date lapses.
6. In reply to the above the RP stated that CIRP of the Corporate Debtor is in advance stage wherein the final list of prospective Resolution Applicant has already been issued and Resolution Plan is awaited by the two Resolution Applicant. Further stated that the Suspended Management has no locus-standi to move such kind of application when the Corporate Debtor is under the control of the Resolution Professional.

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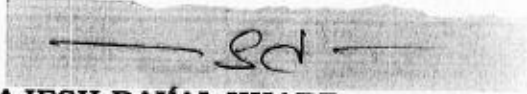
7. It is further submitted that the Applicant has been provided sufficient opportunity to settle up the claim with the Applicant and it is submitted that the RP has sent an e-mail to all COC Members on 24<sup>th</sup> July, 2020 regarding intimation of the counsel for the corporate debtor to the tribunal about the acceptance of proposal to settle the outstanding dues by the Corporate Debtor. In reply to the e-mail, the RP has received responses from Bank of Baroda and FICI wherein they have denied acceptance of any such proposal and SDF also stated that they do not allow any settlement and the entire amount is to be paid by the borrower. Further PNB also stated that they have not given any approval of the said settlement.
8. After hearing the learned counsel for the parties, this Adjudicating Authority is of the considered opinion that the provisions and object of the Insolvency and Bankruptcy Code, 2016 is with regard to a wider public interest with its main emphasis being Resolution of Corporate Insolvencies and it is not a mechanism for recovery of money or outstanding dues only. This object has been incorporated to ensure that the company is saved from corporate death, if it can be saved and in the present matter, as the applicant has shown his willingness to liquidate all the dues and settle the matter with the creditors and for which they are ready and willing to file a fresh OTS proposal before the Resolution Professional which may be placed before the Committee of Creditors. This Adjudicating Authority feels that as the object of the code is being fulfilled if the applicant settles and liquidate the outstanding dues which would not initiate the liquidation of the Company which could be saved from corporate death.
9. Thus, in order to enable the applicant to have one final opportunity to do so, this Adjudicating Authority directs that the applicant, for withdrawal of the said CIR process of the corporate debtor, may put forward the fresh proposal for settlement, to liquidate the entire outstanding dues, to the Resolution Professional so that it may be placed before the COC for consideration as the objective of the Insolvency and Bankruptcy Code is to find appropriate solution for stressed assets and if the applicant is willing to liquidate the dues of

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the creditors, they may do so by redressing it with the members of the COC. In case, the applicant files a fresh OTS proposal within 15 days from the passing of the order, the Resolution Professional may consider the same by placing it before the Committee of Creditors for its consideration within next 15 days and an appropriate orders, thereon may be passed immediately thereafter in accordance with law.

**10.** Further, if the corporate debtor fails or is not willing to file a fresh OTS for settlement, the Resolution Professional may continue with the CIR process in accordance with the provisions of the Code.

**11.** With the above observations, the IA NO. 116/2020, IA NO.136/2020, IA NO.161/2020, IA NO.213/2020, IA NO.252/2020 & IA NO. 253/2020 in CP NO. (IB) 342/ALD/2020 stands disposed of.

  
**JUSTICE RAJESH DAYAL KHARE**  
**MEMBER (J)**

**Date: 11.11.2020**

Swati Gupta  
(LRA)