

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT – VI

Item No.1
IA/1301/2023 IN IB-607/PB/2020

In the matter of:

BANK OF BARODA

...FINANCIAL CREDITOR

VERSUS

MB MALLS PRIVATE LIMITED

...CORPORATE DEBTOR

And in the matter of:

NAMO E-WASTE MANAGEMENT LIMITED & VARDHMAN SALES AGENCY
(PROSPECTIVE RESOLUTION APPLICANTS)

...APPLICANT

Order under Section 60(5) of IBC, 2016.

Order delivered on 06.06.2023

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

IA-1301/2023 stands dismissed.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 1301/2023

IN

Company Petition No. (IB) – 607/(PB)/2020

*Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law
Tribunal Rules, 2016.*

In the matter of:

BANK OF BARODA

...Financial Creditor

VERSUS

MB MALLS PRIVATE LIMITED

...Corporate Debtor

And in the matter of:

**NAMO E-WASTE MANAGEMENT LIMITED & VARDHMAN SALES
AGENCY**

(PROSPECTIVE RESOLUTION APPLICANTS)

Having Registered Address at: 3723,
Gali Barna, Mahavir, Swami Chowk,
Sadar Bazar, Delhi – 110006

...Applicant

-VERSUS-

**ABHIMANYU MITTAL
RESOLUTION PROFESSIONAL**

Having registered address at:
29 FF, the white house,
Sector - 57, Gurgaon, Haryana-122003

...Respondent

Order Pronounced on: 06.06.2023

Coram:

Shri. Bachu Venkat Balaram Das, Member (Judicial)

Shri. Rahul Bhatnagar, Member (Technical)

For the Applicant: Mr. Yashoj Guglani

ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Application has been filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016 praying for the following reliefs:
 - a. To condone the delay in submitting the fixed deposit receipt as security towards the bank guarantee on the ground of natural justice;




- b. Direct the Resolution Professional to consider the resolution plan of the Prospective Resolution Applicant along with the bank guarantee;
- c. Pass such other order(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.

2. The brief facts as averred by the Applicant for filing the present Application are as follows:

- i. That the CIRP of MB Malls Private Limited, the corporate debtor, was initiated vide order dated 03.08.2022 passed by this Tribunal.
- ii. That the expression of interest in Form G was published on 18/10/2022 and the same was again published on 18/11/2022.
- iii. That the Applicant namely Vardhman Sales Agency in consortium with Namu E-waste Management Ltd is one of the Prospective Resolution Applicant and has paid Rs. 50,00,000/- (Rupees Fifty Lakhs Only) as per the Request for Resolution Plan provided by the Resolution Professional vide demand draft no 995549 dated 28.11.2022.




- iv. That the Applicant is one of the Resolution Applicant in the Corporate Insolvency Resolution Process ("CIRP") of M/s. MB Malls Private Limited.
- v. That the last date for submission of resolution plan was 31.01.2023. That the Prospective Resolution Applicant had submitted the said resolution plan on 31.01.2023 with the Resolution Professional. That due to vacation period and republic day and festive seasons and unforeseen circumstances the Resolution Applicant couldn't submit Bank Guarantee along with the resolution plan. The Prospective Resolution Applicant handed over the original fixed deposit receipt amounting to Rs.2,00,00,000/- (Rupees Two Crores Only) to the Resolution Professional on 15.02.2023.
- vi. That the 17th CoC Meeting was held on 14.02.2023 wherein the said plan was rejected on the basis that the said Resolution Plan was not in time as per RFRP. That after holding the COC Meeting on 14.02.2023 the Resolution Professional had accepted the Bank Guarantee in tune of Rs.2,00,00,000/- by the Applicant and the same is still in the hands of the Resolution Professional.



vii. That since the Resolution Plans of the other resolution applicants are yet to be placed before the COC meeting hence, the opportunity on the ground of natural justice must be given to the Resolution Applicant so that our resolution plan should also be considered by the COC of the corporate debtor.

3. The Respondent/RP has filed his reply to the present Application stating as follows:

- i. That the RP has received total seven (7) resolution plans including the one which was submitted by the Applicant. The resolution plan submitted by the Applicant was 'nonresponsive' as per the provision 3.7.1 (iv) of the Request for Resolution Plan (RFRP).
- ii. That all other six (6) resolution applicants duly provided the Bid Bond within the permissible time limit as per the requirement of the RFRP.
- iii. That the RP convened the seventh CoC meeting 14.02.2023, wherein, inter-alia, CoC members discussed the resolution plan submitted by the Applicant and noting that the resolution plan has been submitted without the requisite bid bond, i.e. a mandatory condition for the submission of




resolution plan as per the provision of the RFRP, after the discussions and deliberation, COC resolved with 100% voting that the resolution plan submitted by the Applicant is to be rejected due to non-submission of Bid Bond along with the resolution plan as per the provisions of the RFRP.

- iv. That subsequently, the Applicant provided purported copy of Fixed Deposit Receipts (FDRs) allegedly opened by it for bank guarantee vide email dated 24.02.2023.
- v. That vide email dated 01.03.2023, the RP had duly informed the Applicant that since bank guarantee has not been furnished by the Applicant along with the resolution plan till the last date of submission, i.e., 31.01.2023, accordingly, the resolution plan has not been submitted in terms of the requirement of the RFRP. It was also informed to the Applicant that the approved mode of payment does not include payment through FDRs issued in the name of Resolution Applicant, (Applicant herein). The Applicant was duly informed that its resolution plan has been rejected by the COC for being non-compliant of the RFRP.



- vi. That the six other resolution plans submitted by other PRAs have been opened and are being deliberated before the CoC and they are under active consideration by the CoC members. At this belated stage, therefore, to condone the delay in submission of the Bid Bond would sabotage the rights and contentions of the proposed resolution applicants and will have a cascading effect on the CIR Process.
4. The present I.A has been filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 to condone the delay in submitting the fixed deposit receipt as security on the ground of natural justice and to direct the RP to consider the Resolution Plan submitted by the Applicant PRA.
5. The Respondent/RP has stated that the Resolution Plan submitted by the Applicant was non-responsive in terms of Clause 3.7.1 of the RFRP. Clause 3.7.1 of the RFRP is reproduced herein below:
- “3.7.1 Submission of Bid Bond:** All Resolution Applicants shall provide Rs. 2 Cr. (Indian Rupees Two Crore only) as a bid bond




("Bid Bond"), in favour of the Corporate Debtor, in one of the following form:

- i. A Bank Guarantee issued by any scheduled commercial bank in India ("Bank") which shall be in accordance with Format VIII (Bid Bond BG) of this RFRP or*
- ii. A direct deposit by way of the RTGS/ NEFT/ Bank Transfer in a bank account of a Corporate Debtor, details of which shall be shared separately, or*
- iii. An account payee Demand Draft issued by any scheduled commercial bank in India in favour of the Corporate Debtor.*
- iv. The Bid Bond shall be valid from the date of submission of the Resolution Plan by the Resolution Applicant during the Resolution Validity Period and for a period of 6 Months thereafter and shall be subject to re-issuance or extension by the Resolution Applicant as may be required by the COC (as assisted by the Resolution Professional) ("Bid Bond Validity").*

It is hereby clarified that non submission of the Bid Bond by the Resolution Applicant, along with the submission of the Resolution Plan, shall lead to rendering of that particular Resolution Plan as non-responsive by the Resolution Professional, and accordingly the COC shall have the right to reject such Resolution Plan."



- 6.** Clause 3.7.1 of the RFRP very clearly states that in case a Resolution Plan is submitted without the Bid Bond, the CoC shall have a right to reject such plan. In response to the RFRP, 7 plans were received including the one submitted by the Applicant. The other 6 plans had duly furnished the Bid Bond. Further, the Applicant was informed by the Respondent/RP vide e-mail dated 04.02.2023 that the copy of Bank Guarantee had not been furnished by the Applicant which was a mandatory condition as per the RFRP and the resolution plan submitted by him is not eligible in terms of RFRP. Approval or rejection of Resolution Plans placed before the CoC is entirely the commercial wisdom of CoC and this Adjudicating Authority is not expected to ordinarily interfere with the decisions of the CoC. In the instant case, the CoC was well within its right to reject the Plan submitted by the Applicant as it was not compliant as per the RFRP.
- 7.** The submission of bid bond was a pre-requisite for the Plan submitted by the Applicant to be considered by the CoC. Therefore, allowing the present Application will open the floodgates to claim such a relief wherein minimum requirements under the RFRP are not met by the PRAs as a practice.



8. In light of the above, we find no substance in the Application filed by the Applicant. Accordingly, IA/1301/2023 stands dismissed. No orders to cost.

File be consigned to records.

Let a copy of order be served to parties.

SD/-

SD/-

(RAHUL BHATNAGAR) (BACHU VENKAT BALARAM DAS)
MEMBER (TECHNICAL) MEMBER (JUDICIAL)