

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
Comp. App. (AT) (Ins.) No. 1274 of 2022**

**In the matter of:**

**Mr. Gopal Das Nyati**

**....Appellant**

**Vs.**

**Divya Jyoti Industries Ltd. & Ors.**

**...Respondents**

**For Appellant:** Advocate Rohit Dubey along with PCS Alam Khan

**For Respondents:** Ms. Arti Singh, Mr. Aakashdeep Singh Roda, Ms. Pooja Singh, Mr. Basant Pal Singh, Advocates for R6. Ms. Honey Satpal, Mr. Sunil Singh, Advocates for R2

**ORDER**

**19.10.2022:** Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the order dated 09.09.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Indore Bench, Court No.1 by which order the Adjudicating Authority has rejected the objection filed by the Appellant being I.A. No. 46(MP)2022 and allowed I.A. No. 15(MP)2022 filed by the Resolution Professional for approval of the Resolution Plan.

3. Learned Counsel for the Appellant submits that the Appellant was Successful Resolution Applicant who was to deposit EMD amount by 21.09.2021. He sent an e-mail to the Resolution Professional praying for extension of 10 days' time to furnish the Bank Guarantee which was not accepted by Resolution Professional. It is submitted that although meeting of the Committee of Creditors (CoC) took place on 28<sup>th</sup> and 29<sup>th</sup> September, 2021

where it is recorded that the Appellant is unable to deposit the 10% of total bid amount but the Appellant has requested for extension of time which was not recorded. He submits that the Resolution Plan which has now been approved is of Rs. 2 Crore less value which was given by the Appellant. He further submits that the fresh Form-G was to be issued after approval of the NCLT as well as for exclusion of time. He submits that the Adjudicating Authority has although excluded the time but has not specifically permitted issuance of Form-G. He submits that the publication of Form-G was not done in the IBBI website.

4. We have considered the submissions of the Learned Counsel for the Appellant and perused the record.

5. The copy of the minutes of the 16<sup>th</sup> meeting of the CoC held on 28<sup>th</sup> and 29<sup>th</sup> September, 2021 have been brought on the record by the Appellant himself as Annexure A-5. In the minutes, Item No.2, following has been recorded:-

**“2. To discuss the development taken place after issuance of Letter of Intent:** *Till issuance of this notice neither Performance Guarantee has been deposited nor Bank Draft/ Cash in Bank Account in lieu of Bank Performance Guarantee has been deposited by successful Resolution Applicant. Further action plan to be discussed.*

*RP informed the COC that till date neither Performance Guarantee has been deposited nor Bank Draft/ Cash in Bank Account in lieu of Bank*

*Performance Guarantee has been deposited by successful Resolution Applicant.*

*Mr. Gopal Nyati erstwhile director and also part of consortium of Resolution Applicant attended the meeting and informed the members that they are unable to fulfil the conditions of RFRP of providing performance guarantee for an amount equivalent to 10% of the total bid amount under the resolution plan.*

*After submission made by the Sh Nyati, the COC unanimously decided to adjourn the meeting till 29.09.2021 so that appropriate legal advice can be taken on this matter. Hence the meeting was adjourned to 29.09.2021 at 4:30 PM.*

*RP informed the house that as per the legal advice of the advocate and also as per clause 1.6.3 of the Request for Resolution Plan (RFRP), where the resolution applicant do not meet the requirements of the RFRP he will not be entitled to any refund of any amount paid by it or any compensation and the Resolution Professional and/or the COC shall be entitled to initiate appropriate legal proceedings against such Resolution Applicant. Therefore, COC decided to issue a notice to Resolution Applicant to declare them defaulter and forfeiture of the Bid Bond amounting to Rs. 15,00,000/- submitted by the resolution applicant. In terms of Section 74 of IBC 2016, provision of prosecution is also applicable. As such application may also be filed with Hon'ble NCLT for suitable action.*

*After the above discussion COC asked the RP about the next options available with us, on which the RP submitted that we can republish Form G with shorter timeline as there is sufficient timeline available with us for calling fresh Expression of Interest (EOI). RP further stated that as per the legal advice of the advocate and the supporting Supreme court order CIVIL APPEAL NOS.2943-2944 OF 2020 COC has the power to permit the RP to republish Form G with reduced time line within available CIRP Period and call for fresh Expression of Interest (EOI) without filing IA before Hon'ble NCLT for permission to republish EOI.”*

6. The above minutes clearly indicate that the Appellant who was present in the meeting on behalf of the Consortium of the Resolution Applicant stated that they are unable to fulfil the conditions of RFRP of providing Performance Guarantee for an amount equivalent to 10% of the total bid amount. After noticing the aforesaid, the CoC decided to adjourn the meeting and the CoC decided unanimously to conduct e-voting for fresh publication of Form-G.

7. In the 17<sup>th</sup> meeting, the issuance of Form-G was approved and thereafter Form-G was issued and new Resolution Plan was received which has been approved.

8. The submission of the Counsel for the Appellant is that although the Adjudicating Authority has excluded 58 days' period but had not granted any specific permission for issuance of Form-G. The order dated 25.11.2021 of the Adjudicating Authority has been brought on record at Page 248, which is to the following effect:-

*“IA/201(MP)2021 is filed by the RP for exclusion of 58 days from total period of CIRP on the ground that resolution plans are under consideration of CoC. RP appears through online.*

*We heard Ld. Counsel for the RP as well as Ld. Counsel for one of the members (one of the financial creditors i.e. Bank of Baroda) of the CoC. Since three plans are under the consideration of CoC and there are chances of resolution of insolvency of the Corporate Debtor, 58 days’ stands excluded from total period of CIRP. We direct RP to complete the process of CIRP within time and file report.*

*With this, IA stands allowed and disposed of.”*

9. After granting exclusion of 58 days, the Adjudicating Authority has directed the Resolution Professional to complete the process of CIRP within time and file report. When direction was issued by the Adjudicating Authority to Resolution Professional to complete the process, the process includes issuance of Form-G and mere fact that expressly Form-G was not mentioned is inconsequential, we do not find any substance in the submission of the Counsel for the Appellant.

10. Learned Counsel for the Appellant submits that he was unable to deposit the amount during that relevant period and he is now ready to deposit the said amount.

11. We are of the view that within the time when the amount was not deposited, at this stage, the Appellant cannot be permitted to deposit the

amount when another plan has been approved. Further submission that plan which has been approved has value of less than Rs. 2 Crores cannot be a ground to interfere with the approval of the Resolution Plan. Further, the Resolution Applicant whose plan has been approved was already H-2 in the earlier process in which Appellant was H-1.

12. We find that no ground has been made out to interfere with the impugned order. The Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Dr. Alok Srivastava]  
Member (Technical)**

**[Barun Mitra]  
Member (Technical)**

***Anjali/nn***