

SL. No.3

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI.RAJEEV BHARDWAJ- HON'BLE MEMBER (J)

CORAM: SHRI.SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 22.12.2023 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1426/2023 IA (IBC)/1330/2023 in Company Petition IB/10/2022
NAME OF THE COMPANY	Feno Plast Limited
NAME OF THE PETITIONER(S)	The Canara Bank Ltd
NAME OF THE RESPONDENT(S)	Feno Plast Limited
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1426/2023 and IA (IBC)/1330/2023

Orders pronounced, recorded vide separate sheets. In the result, these applications are disposed of.

SD/-
MEMBER (T)

SD/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-II**

**IA. No. 1330 of 2023
IA. No. 1426 of 2023
In CP (IB) No.10/7/HDB/2022**

[Under Rules 11, 13 & 32 of the NCLT Rules 2016]

In the matter of M/s. Canara Bank Limited vs. M/s. Feno Plast Limited

1. Mr. Haridas Krishna Kumar, S/o. H Narsaiah,
Erstwhile Promoter & Whole Time Director of
M/s Feno Plast Limited
Villa No.112, First Leaf,
Journalist Colony, Gopannapally,
Serilingampally, K V Ranga Reddy – 500032.

2. Saparna Haridas, W/o. H Krishna Kumar,
Erstwhile Promoter Group of
M/s Feno Plast Limited
Villa No.112, First Leaf,
Journalist Colony, Gopannapally,
Serilingampally, K V Ranga Reddy – 500032.

...Applicants

AND

Mrs. Kalpana G.
RP-Feno Plast Limited
Office at H.No. 16-11-19/4, G-1,
Sri Laxmi Nilayam Saleem Nagar Colony,
West Marredpally Telangana. PIN: 500036.

...Respondent

Date: 22.12.2023

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Mr. VK Sajith & Mr. V. Ravi Kumar, Advocate
For the Respondent : Mrs. Mummaneni Vazra Laxmi, Advocate

Per: Rajeev Bhardwaj, Member (Judicial)

ORDER

1. Both IA No.1426/2023 and IA No.1330/2023 are being taken together for decision as they are interlinked and connected.
2. The brief facts necessary to dispose of both the applications, as stated, are that:
 - 2.1 M/s. Canara Bank Limited filed CP No.10/7/HDB/2022 under Section 7 of the IBC against M/s. Feno Plast Limited (hereinafter referred as corporate debtor) and the petition was admitted on 07.02.2023.
 - 2.2 The Applicants are the erstwhile promoters of the corporate debtor.
 - 2.3 The Respondent being the Resolution Professional of the corporate debtor issued publication dated 09.04.2023 in Form-G of invitation for Expression of Interest (EOI) from the prospective investors.
 - 2.4 The Applicants in the capacity of erstwhile promoters of the corporate debtor, being a registered Micro, Small and Medium Enterprises (MSME) have also expressed their interest to file Resolution Professional, but the same was rejected by the respondent.
 - 2.5 Aggrieved with the decision of the respondent, the applicants filed an IA No.805/2023 and vide order dated 17.07.2023, this Authority passed directions to accept the EOI of the applicants as deemed MSME and relax the eligibility criteria etc.

- 2.6 After passing of the order dated 17.07.2023, the respondent sent an e-mail to the applicants that no timeline has been fixed by this Authority for submitting the resolution plan and finally a month's time was granted for this purpose.
- 2.7 It is claimed that the respondent has not complied with the direction of this Authority, despite the fact that the applicants as the erstwhile promoters of the corporate debtor, being a registered MSME, were exempted from complying with the mandatory threshold approved by the CoC.
- 2.8 However, the respondent insisted that the applicants were to meet the eligibility criteria as has been approved in the 2nd CoC meeting held on 03.04.2023.
- 2.9 On the issue that the applicants' non-compliance of the eligibility norms, the applicants have relied upon the decision of the Hon'ble NCLAT in *C. Raja John versus Mr. R. Raghavendran & Ors., in Company Appeal (AT) (CH) (INS) No.207 of 2021 and M/s. Sarvana Global Holdings Ltd. & Anr. versus M/s. Bafna Pharmaceuticals Ltd. & Ors. Company Appeal (AT) (Insolvency) No.203/2019.*
- 2.10 Therefore, delay in submission of the resolution plan by the applicants resulted in the applicants' name not being included in the final list of prospective resolution applicants as well as request for resolution plan (RFRP). The applicants have also not been exempted from meeting the eligibility criteria, i.e., requirement of the minimum worth of Rs.75 Crores as approved by the CoC.

2.11 Even the respondent did not call the meeting of the CoC and placed the order dated 17.07.2023 in IA No.805/2023 for compliance.

2.12 In these circumstances, the applicants have prayed in IA No.1426/2023 as below:

- i. Direct the respondent resolution professional to accept the resolution plan proposed by the applicants without seeking the payment of EMD;
- ii. Direct the resolution professional respondent to place the resolution plan proposed by the Applicants without verifying that the prospective resolution plan crossed the eligibility threshold or not;
- iii. In view of the Judgements referred to above supra, direct the committee of creditors to verify the resolution plan proposed by the applicants in terms of viability and feasibility in terms of the applicants being the erstwhile promoters of CD are not competent with the other resolution applicants.

2.13. In the I.A No. 1330/2023, the following relief has been prayed for:

- i. By virtue of the powers vested under Rule 15 of NCLT Rules, 2016, allow the present application by extending the time granted by the respondent for submitting the proposed resolution plan from 16.08.2023 to 06.09.2023 by setting aside the decision of the Respondent resolution professional;
- ii. Direct the respondent herein to comply with the orders of the Tribunal in its entirety i.e., to;
 - a) Place before the CoC the final list of prospective resolution applicants which includes this applicant also as per the directions of this Tribunal in IA No.805 of 2023;

b) To call for the CoC meeting immediately and place the directions to amend the eligibility criteria by a resolution and so far, Applicants to qualify to submit the resolution plans in accordance with the law;

3. The respondent by filing counter has contested and contended the averments made in the application.

3.1 It is submitted that in view of the complexity and scale of operation of the business of the corporate debtor, the eligibility criteria of the PRAs was approved in the 2nd CoC meeting of the CoC on 03.04.2023. Section 240A of the IBC says that in case of MSME units, relaxation can be provided only with respect to clause (c) and (h) of section 29A of the IBC.

3.2 When no other relaxation can be given to the MSME units, except as provided under clause (c) and (h) of the section 29A, relief sought by the applicant cannot be accepted.

3.3 The aim and objective of the IBC is to maximize the value of the corporate debtor in a time bound manner and the applicants are misusing the provision of law.

3.4 It is submitted that in view of the orders dated 17.07.2023 in IA No 805/2023, the respondent has accepted the EOI filed by the applicants and allowed time of 30 days to submit the resolution plan. The said plan is required to be compliant with the provisions of the IBC and regulations thereunder and it is only then the said plan is to be placed before the CoC for approval.

- 3.5 In response to the directions, three PRAs have already submitted their resolution plan by submitting refundable advances of Rs.5 crores. However, no such resolution plan has been submitted by the applicants and instead of this they are filing the applications for the extension of time etc.
4. We have heard Ld. Counsel for both the parties and have also gone through the entire records.
5. The crux of the matter is the compliance of the order dated 17.07.2023 in IA No.805/2023 and the order is reproduced below:
- i. Direct Respondent No.1 RP to accept the Expression of Interest of the Applicant as Prospective Resolution Applicant under section 240A of IBC since Corporate Debtor is a deemed MSME.*
 - ii. Direct Respondent 1, 2 & 3 the RP and Committee of Creditors to relax the eligibility criteria requirement of the minimum tangible net worth of Rs.75 Crores for the applicant/promoter of Corporate Debtor, and*
 - iii. Declare that since the applicant is contesting the non-inclusion of his name in the provisional list to issue RFRP and IM to this applicant too, the Resolution Plan submitted by him shall be accepted and dealt with in accordance with law.*
6. It is admitted by the respondent that condition No.1 has already been complied with and expression of interest of the applicants as per the provisions of the section 204A of the IBC has been accepted. The dispute is only regarding compliance of direction Nos.2 and 3 of the order dated 17.07.2023 in IA No.805/2023.

7. In this context, the eligibility criteria approved by the CoC on 03.04.2023 for the prospective resolution applicants is material to determine whether the respondent has complied with the direction No.2 and 3 of this Authority or not.
8. The relevant portion of this criteria is reproduced as below:
 - i. ***Category A – In case of a private/public limited company, LLP, AOP, body corporate, Partnership firms, Individuals whether incorporated in India or outside India.***
The prospective RA shall have a minimum tangible net worth of Rs.75 Crores as on 31st March 2022 based on audited financial statements of the RA and as certified by statutory auditor.
9. The second condition is relating to the aforesaid clause and the third condition is relating to the approval of the resolution plan submitted by the applicants.
10. It is admitted by the respondent that the order dated 17.07.2023 was not placed before the CoC and the criteria on the basis on which the applicants were asked to submit the resolution plan was approved on 03.04.2023 which was prior to the passing of the order dated 17.07.2023 in IA No. 805/2023.
11. In para 17 of the counter filed in IA No.1330/2023, the respondent has taken the plea that the proposed resolution plan, if it is compliant with the provisions of the IBC and regulations made thereunder has to be placed before the CoC for their approval. Therefore, the direction issued by this Authority in order dated 17.07.2023 was not put up before the CoC for its consideration.

12. The applicants have relied upon the decisions of Hon'ble NCLAT in *Mr. C. Raja John and M/s. Sarvana Global Holdings Ltd, & Anr. cases (Supra)* to submit that the MSME unit is exempted from meeting the eligibility criteria, especially the requirement of holding minimum net worth is not applicable.
13. Both the judgments relied upon by the applicants were in issue before the Hon'ble Supreme Court in appeal filed in *Mr. C. Raja John* case supra, titled as *Mr. R. Raghavendran versus Mr. C. Raja John & Ors. (2023) ibclaw.in 107 SC*. However, the Hon'ble Supreme Court has set aside the Para 32 & 34 of *Mr. C. Raja John* case supra. The observations made in paragraph Nos.32 & 34 of the said Judgment read as under:

“32) In any event, it is unequivocal that the Corporate Debtor is an MSME and as held by this Tribunal that it is not necessary for the Promoters to compete with other Resolution Applicants to regain the control of the Corporate Debtor.

34) Further, this Tribunal, keeping in view of the object of the Code that the Maximization of the Value of the Assets of Corporate Debtor is to be kept in mind in achieving its object. To give an opportunity to regain the control of the Corporate Debtor, the Management/Promoters/Erstwhile Directors of the Corporate Debtor being an MSME, not necessary to compete with other Resolution Applicants.”

14. On the question of judgment of Hon'ble NCLAT in *M/s. Sarvana Global Holdings Ltd. & Anr. versus M/s. Bafna Pharmaceuticals Ltd. & Ors*, it was held by the Apex Court that there should be exceptional circumstances like (a) before the constitution of COC (b) in terms of S. 12 A of the code on basis of an offer given by the promoter to claim such exemption and finally it was held in para No.14:

“We are, thus, clearly of the view that the appellant cannot be faulted for calling for other proposals in which the proposal given by respondent No.1 was also to be examined, put them to voting before the CoCs and declare the results.”

Date: 22.12.2023

15. Hence, the others can also give resolution plan in pursuance of the EoI and these are to be considered along with the plan of MSME.
16. In view of aforesaid discussion:
 1. The RP is directed to put up the order dated 17.07.2023 in IA No. 805/2023 for consideration of the CoC.
 2. The CoC shall decide about the eligibility criteria in view of the Judgement of the Hon'ble Supreme Court *Mr. R. Raghavendran versus Mr. C. Raja John & Ors. (2023) ibclaw.in 107 SC.*
17. Consequently, both the applications are disposed of.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

Apoorva