

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

**IA NO.543/2023 & IA No.147/2021
IN CP (IB) NO.451/ALD/2019**

IA NO.543/2023

In the matter of

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

IN THE MATTER OF:

Mr. Ganga Ram Agarwal

Resolution Professional,

Ramnath Developers Private Limited

..... Applicant

AND

IA No.147/2021

In the matter of

An application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

**Mr. Ganga Ram Agarwal
Resolution Professional,**

Ramnath Developers Private Limited

E-10A, Kailash Colony,

New Delhi, 110048

..... Applicant

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Versus

1. Sudesh Chandra Gupta
402, Martand Chhaya Apartment,
4th Floor, 72, Shivagi Nagar,
Shankar Nagar-440010 Mh In

.....Respondent No.1

2. Satish Chandra Gupta
91/2, Civil Lines, Jhansi
284001 Up In

.....Respondent No.2

3. Santosh Kumar Dixit
734, Anjani Nagar, Unnao
Gate Bahar, Manik Chok
Jhansi, 284002 Up In

.....Respondent No.3

AND IN THE MATTER OF:

M/s Khard Enterprises

.....Operational Creditor

Versus

M/s Ramnath Developers Private Limited

..... Corporate Debtor

Order pronounced on 21st March, 2024

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

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Appearances:

Sh. Amar Vivek with : For the Applicant/RP in IA
Sh. Aditya Gauri & No.147/2021 & IA No.543/2023
Ms. Ritika Guar Advs.

Ms. Monica Nanda, PCS : For the Res. in IA No.147/2021

Sh. Prateek Mishra, Adv. : For the HUDCO in IA No.543/2023

ORDER

IA NO.543/2023

1. This application has been filed by the Resolution Professional *inter alia* praying for the following reliefs:-

- i. Allow the present Application;*
- ii. Permit the Applicant to issue fresh Form G thereby inviting PRAs to submit the EOIs for resolution of the Corporate Debtor;*
- iii. Keep the Liquidation Application being IA 147/2021 in abeyance till the possibility of finalization of fresh resolution process of the Corporate Debtor.*
- iv. Grant Liberty to the Applicant to approach this Hon'ble Tribunal through an Application under Section 12(2) of the Code appropriately seeking extension of the time period of CIRP of the Corporate Debtor; or*

2. Briefly stated the facts of the matter are that a Petition U/s 9 was filed by the Operational Creditor which was admitted in terms of an order dated 23rd January, 2020 and IRP was accordingly appointed. Accordingly the public

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announcements were made by the IRP inviting claims and the meetings of the COC were held from time to time. Two valuers were also appointed for valuation of assets including land and building, plant and machineries and securities and financial assets and the liquidation value of the Corporate Debtor was assessed as approximately Rs.11.27 Cr.

3. In the 4th meeting of the COC held on 25th June, 2020 and in accordance with Section 25 (2)(h) of the Code, read with Regulation 36A of the CIRP Regulations 2016, the Resolution was passed for publication of Form G for inviting Expression of Interest from the “Prospective Resolution Applicants”. The Form G was published on 1st July, 2020. In the next COC meeting held on 29th July, 2020, the COC was accordingly apprised that only one Expression of Interest has been received and it was deliberated upon by the COC that the Expression of Interest invited has not been able to fetch right value for Resolution Plan, and therefore it was decided to republish the Form G in the aforesaid meeting held on 29th July, 2020. The Form G

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dated 5th August, 2020 was republished inviting Expression of Interest from the PRAs.

4. In the next meeting of the COC held on 3rd September, 2020, it was taken notice of that only two bids have been received up to the last date of submission of the Expression of Interest, and therefore it was recommended to extend the timeline for the submission of the Expression of Interest by 7 days. RP received only one Resolution Plan as on 9th October, 2020.
5. It is further averred in the application that the Applicant/RP received a request from one PRA namely M/s. Meenakshi Re Rollers Pvt. Ltd. seeking extension of timeline by 30 days for the purpose of submission of the Resolution Plan and a Resolution was passed by the COC including the consent given by HUDCO and SICOM, and the timeline for submission of the Resolution Plan was extended by 15 days i.e. up to 24th October, 2020. Again extensions were served by the two PRAs to submit the Resolution Plan by another 15 or 30 days. However, no further extension was granted. Thereafter the RP scrutinized the Resolution Plan submitted

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by the Resolution Applicant and the COC was also accordingly appraised in its 9th meeting held on 1st December, 2020 about the developments which have taken place meanwhile.

6. The RP received a final Resolution Plan vide an E-mail dated 3rd February, 2021 and after due deliberation by the COC in its 10th, 11th & 12th meeting of the COC, the Resolution Plan submitted by the Resolution Applicant was put to e-voting. However the Resolution Plan was disapproved by the Members of the COC by a voting share of 92.73%.
7. In the next meeting of the COC held on 25th March, 2021 RP discussed with the Members of the COC to either to go for liquidation of the Corporate Debtor or to explore the possibility of revival of the Corporate Debtor by republishing the Form G or by reviewing the Resolution Plan submitted by the Resolution Applicant.
8. During the Course of the meeting, it was also discussed that the estimated liquidation cost of the Corporate Debtor would be about Rs.26.12 lakh and it was recommended that the Corporate Debtor be sold as a going concern and

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this Resolution was passed by the COC to liquidate the Corporate Debtor was approved by a voting share of 83.97%.

- 9.** It is also further averred that the RP vide an application bearing IA No.147 of 2021 sought to initiate the liquidation process in terms of the provisions of Section 33 (2) of the Code and the said application for liquidation has come up for consideration before this Adjudicating Authority on some of the previously occasions. Yet another effort was made in the 16th COC meeting held on 19th June, 2023 to resolve the Corporate Debtor by exploring the option by inviting fresh Resolution Plans.
- 10.** While considering this, the aspect of pendency of the aforesaid application, filed U/s 33 (2) of the Code was also considered. The RP therefore proceeded in seeking resolution proposals/scheme to revive the Corporate Debtor whereby earlier two Resolution Plans were already received and in the 17th meeting of the COC the RP presented the summary of the Resolution Plan along with the financial aspects of the proposal and in the said meeting the revised

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settlement proposal U/s 12A by Ramnath Life Style Ltd. who is the promoter of the Corporate Debtor was also considered and deliberated upon.

- 11.** In the 18th meeting of the COC however some decision was taken by resolving that this Adjudicating Authority may be approached for seeking directions to conduct the CIRP of the Corporate Debtor keeping the liquidation application bearing IA No.147 of 2021 in abeyance. And at this stage Members of the COC also had shown their intentions and willingness to explore the possibilities of finding the Resolution of the Corporate Debtor by publication of the fresh Form G.
- 12.** The averments have been made in the present application in support of inviting fresh Form G by giving reference to the fact that the Resolution of Corporate Debtor is to be preferred over liquidation, particularly in view of the fact that the liquidation can only be taken as a last resort. The reference has also been invited to the judgement passed by the Hon'ble Supreme Court in the matter of the Swiss Ribbons Pvt. Ltd. vs. Union of India.

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- 13.** With such averments, this application has been moved for seeking permission to issue the fresh Form G thereby inviting PRAs to submit the Expression of Interest for Resolution of the Corporate Debtor. The prayer had also been sought to keep the liquidation application bearing IA No.147 of 2021 in abeyance till the possibility of finalization of fresh resolution process of the Corporate Debtor.
- 14.** The Ld. Counsel representing the RP also took us through a supplementary affidavit filed by it on the e-portal of this Tribunal on 28th December, 2023. It has been averred in the said affidavit that in the 19th COC meeting held on 11th December, 2023, the entire aspects concerning continuance of the CIRP were deliberated upon in totality wherein one of the COC Members, namely, HUDCO suggested that the Resolution Professional may take up with the Adjudicating Authority to keep the liquidation application i.e. IA No.147 of 2021 in abeyance.
- 15.** In this context, the relevant part of the 19th COC meeting held on 11th December, 2023 has also been reproduced in the said supplementary affidavit. The said extract is worth

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considering, and therefore is also taken note of by us which is reproduced as under:-

“To consider and discuss withdrawal of liquidation application by Resolution Professional as per NCLT order dated 31.11.2023”

The RP apprised that as per the resolution passed in the 18th CoC meeting, RP had filed an Application in Hon’ble NCLT praying for restarting the Resolution process of the Corporate Debtor keeping the liquidation application (IA No. 147/2021) in abeyance. The said Application was registered as IA No. 543/2023 and was listed before the Hon’ble NCLT on 30.11.2023. Upon hearing the application, the Hon’ble NCLT vide its order dated 30.11.2023 has directed that this IA cannot be looked into by this Adjudicating Authority till the application for liquidation is pending and directed the RP to approach the CoC to seek directions for withdrawal of liquidation application.

The matter was deliberated in detail. Upon enquiry by HUDCO as to the submissions made during the last hearing before the NCLT, RP’s counsel indicated that he tried to convince the bench to admit the application, keeping the liquidation application in abeyance as the CoC members intends to explore the possibilities to revive the Corporate Debtor. It was informed to the Hon’ble Bench that the RP would publish a fresh Form G inviting EOI again from prospective bidders. In this regard, HUDCO clarified that the question with regards to inviting an EOI again by publishing fresh Form G or to considered the existing revised proposal submitted by the Resolution Application (who had already submitted its bid in course of the CIRP) or the settlement proposal

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submitted by the holding company of the RDPL will be deliberated and decided in due course after approval is received from NCLT as per the resolution passed in the 18th CoC.

It was also stated by HUDCO that the liquidation application has been pending for last 2 and a half years. Hence, the Counsel of RP, in the next hearing, scheduled on 18.12.2023 should make attempt to convince the Hon'ble bench to admit that IA keeping the liquidation application in abeyance as it has been pending for such a long time and only arguments are pending in this matter, such that in case efforts to arrive at a resolution of the RDPL fails, the liquidation process may be continued.

After detailed discussions, it was decided that the Counsel of RP, in the next hearing, scheduled on 18.12.2023 should make attempt to convince the Hon'ble bench to admit the IA No. 543/2023, keeping the liquidation application in abeyance as it has been pending for a long time and only arguments are pending in this matter. The matter to consider the existing proposal/resolution plan or to publish a fresh Form G shall be discussed and decided in the COC meeting only after the approval of Hon'ble NCLT.

It was also detailed that a COC will be convened to discuss the issue after the outcome of the next hearing.

- 16.** We have perused the record and considered the prayer made in the present IA No.543 of 2023. It is apparent that the COC has been making all out efforts to work out a Resolution Plan so as to rescue the Corporate Debtor avoiding it from going it into liquidation. The efforts have repeatedly been made by the COC Members to continue

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with the CIRP by inviting fresh Resolution Plans by republication of Form G. It seems that the COC had applied its wisdom to go in for continuance of finding viable Resolution Plans over the process of liquidation and it is because of this reason that the liquidation application has been sought to be kept in abeyance, while pressing for the present application for seeking permission for inviting fresh Form G.

- 17.** It has been held in catena of judgements that the commercial wisdom of the COC should be regarded particularly in the context of the value maximization and for the purpose of rescue of the Corporate Debtor.
- 18.** While considering the present application i.e. IA No.543 of 2023 this Adjudicating Authority in terms of an order dated 9th February, 2024 has also observed as under:-

IA NO.543/2023

- 1.** *This application has been filed interlia seeking permission to issue fresh Form G, thereby inviting the entities to submit the EoI for resolution of the Corporate Debtor and for keeping the liquidation application IA No.147/2021 in abeyance till the process of finalization of fresh resolution process of the Corporate Debtor, and further seeking liberty to the applicant to approach this Tribunal through an*

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application U/s 12(2) of the Code seeking extension of the time period of the CIRP of the Corporate Debtor.

2. *In this case, the CIRP is stated to have been initiated on 20.01.2020 and according to the Ld. Counsel representing the RP, some extensions as well as exclusions have been sought and granted already.*

3. *The Ld. Counsel representing the RP relies upon the judgment passed by the Hon'ble NCLAT decided on 03.08.2023 in Company Appeal (AT) (Insolvency) No.513/2023 & IA No.1666/2023.*

19. Keeping in view of the totality of the circumstances and in view of the decision of the COC we are inclined to allow the present application and permit the RP to issue the fresh Form G thereby inviting Prospective Resolution Applicants to submit the Expression of Interest for resolution of the Corporate Debtor. While doing so RP would adhere to the timeline and provide for a schedule while republishing Form G for inviting the Resolution Plans from the Prospective Resolution Applicants, in accordance with the provisions of the Code and the Regulations made thereunder.

20. Another prayer has been made by the RP to keep the liquidation application bearing IA No.147 of 2021 in abeyance. However, on the date of hearing on 19th March,

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2024 the Ld. Counsel representing the RP has said that in view of the fact that the present application bearing IA No.543 of 2023 is being considered by this Adjudicating Authority, therefore he has instructions to withdraw the IA No.147 of 2021 with liberty to refile the same if need so arises.

- 21.** The said observations have been made in the order dated 19th March, 2024 as under:-

IA No.147/2021

Ld. Counsels for the parties are present.

- 1.** *This application has been filed by the Resolution Professional for seeking initiation of the liquidation process. At the outset, the Ld. Counsel representing the Resolution Professional states that he has instructions from the CoC to withdraw the said application filed for seeking initiation of the liquidation process, in the light of their application IA No.543/2023 being examined by the Adjudicating Authority for re-initiation of CIRP.*

- 22.** In view of the aforesaid observations the IA No.147 of 2021 is also permitted to be withdrawn with liberty in the aforesaid terms.

- 23.** One more prayer has been made for granting liberty to the RP to approach this Adjudicating Authority for moving an

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application U/s 12 (2) of the Code seeking extension of the time period of the CIRP of the Corporate Debtor.

24. Since by virtue of this order, we have permitted republication of Form G inviting PRAs to submit their Resolution Plans, the RP would be at liberty to move an appropriate application for seeking extension in accordance with law expeditiously.

25. The aforesaid IAs are accordingly disposed off in the aforesaid terms.

-Sd-

**(Ashish Verma)
Member (Technical)**

-Sd-

**(Praveen Gupta)
Member (Judicial)**

Date: 21st March, 2024

*Avaneesh Kumar Singh
(Stenographer)*