



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III**

Item No. 01
IA-3515/2023
In
IB-1103(ND)/2020

IN THE MATTER OF:

M/s Kaliber Associates Pvt. Ltd

.....**FINANCIAL CREDITOR**

Vs.

M/s Diamond IT Infracon Pvt. Ltd.

.....**CORPORATE DEBTOR**

SECTION

U/s 7 of IBC, 2016

Order Pronounced on 17.07.2023

CORAM:

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

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IA-3515/2023
is **dismissed**.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III

New IA-3515/2023
In
IB-1103(ND)/2020

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

M/s Kaliber Associates Pvt. Ltd.

.....APPLICANT/PETITIONER

Vs

M/s Diamond IT Infracon Pvt. Ltd.

.....RESPONDENT

&

IN THE MATTER OF:

Sandeep Gupta

.....APPLICANT

Vs.

Rajiv Bajaj – RP

.....RESPONDENT

Pronounced on 17.07.2023

CORAM:

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

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant

: Mr. Karan Gandhi Advocate

For the RP

: Mr. P. Nagesh Senior Advocate.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed by the Applicant under Section 60(5) of IBC, 2016 under Rule 11 of NCLT Rules, 2016 seeking to direct the Resolution Professional to accept the Resolution Plan of the Applicant.
2. The Applicant, Mr. Sandeep Gupta, one of the Prospective Resolution Applicant (PRA) is aggrieved with the action of the Resolution Professional in not considering the Resolution Plan of the Applicant. It is the case of the Applicant that the Resolution Professional sent a copy of the Information Memorandum (IM) and a request for Resolution Plan (RFRP) on behalf of Committee of Creditors (CoC) vide email dated 17.04.2023 to the Applicant/PRA to submit the Resolution Plan on or before 26.05.2023.



Subsequently the time was extended from 27.05.2023 to 03.06.2023. The Applicant has contended that in the email dated 26.04.2023, the timeline of 5:00 PM as was mentioned in the earlier email dated 17.04.2023 was not mentioned and therefore the Applicant presumed that the time for submission of Resolution Plan is 11:59 PM of that date and therefore submitted the Resolution Plan at 6:00 PM on 03.06.2023. However, the Resolution Professional refused to accept the said Resolution Plan submitted by the Resolution Applicant. It is further submitted that the Applicant was ready with Demand Draft of Rs. 50 Lakhs to be handed over to the Resolution Professional but the Resolution Professional did not pick up the calls and did not allow the Applicant to submit the Resolution Plan and the demand draft of Rs. 50 Lakhs.

- 3.** Mr. P. Nagesh, Learned Senior Counsel appearing for the Resolution Professional, opposing the application submitted that the Applicant did not adhere to the timelines given by the Resolution Professional and it cannot be presumed that the time was changed from 5:00 PM to 11:59 PM just because of the reason that no timeline was mentioned in the email dated 26.04.2023. He further submitted that all the Resolution Plans which have been received from other PRAs have been processed and are ready for being placed before the CoC for voting and in case the Applicant is allowed to present his Resolution Plan at this stage it will delay the entire process and it will be against the objective of the Court.
- 4.** Mr. Nagesh, Learned Senior Counsel therefore submitted that the present application ought to be rejected.
- 5.** We have heard the submissions of Learned Counsel appearing for the parties and also considered the facts and circumstances of the case. We do not agree with the submission made by the Learned Counsel appearing for the Applicant that there can be any presumption with regard to the time for submission of the Resolution Plan because vide email dated 26.04.2023, the date of submission of the Resolution Plan was only mentioned and there was no change in the time. Further, we do not find any reason as to why the Applicant did not submit the Resolution Professional within the time and waited till the last minute for submitting the same. At the Applicant being diligent enough he would have taken immediate steps to submit the Resolution Professional



within the extended period instead of taking a lame excuse that the time was not mentioned in the email dated 26.04.2023.

6. We therefore do not consider it appropriate to entertain this application.

IA **dismissed**.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)