

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA-5170/2023

IN

Company Petition No. IB- 3(ND)/2020

(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:-

RKG FUND I, AND RKG FUND III, SCHEMES OF RKG TRUST (AIF)

..... APPLICANT

VERSUS

MR. DEEPAK MAINI, RP OF AMZEN TRANSPORTATION INDUSTRIES
PRIVATE LIMITED & ORS

..... RESPONDENTS

AND IN THE MATTER OF:

IDBI BANK LIMITED

... FINANCIAL CREDITOR

VERSUS

M/S. AMZEN TRANSPORTATION INDUSTRIES PRIVATE LIMITED

... CORPORATE DEBTOR

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on:12.12.2023

PRESENT:

For the Applicant : Mr. Shaurya Shyam, Raghav Dembla, Advs.

For the Respondent : Mr. Nalin Kohli, Mr. Ankit Singal, Mr.

Anshul Malik, Mr. Samyak Jain, Ms. Mansha, for Prudent ARL (R-2), Mr. Brijesh Kumar Tamber, Mr. Prateek Kushwaha Advs. for UCO Bank along with Mr. Mudit Rathee Law Officer, UCO Bank

For the RP :

Mr. Abhishek Anand, Mr. Karan Kohli

ORDER

PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The present Interlocutory Application is being filed on behalf of M/s. RKG Fund I and RKG Fund III, Schemes of RKG Trust (AIF) (managed by RKG Asset Management LLP) ('applicant') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') inter alia seeking the following relief(s):-
 - a) Set-aside the decision of the Committee of Creditors ('constituted by Respondent No.2,3 and 4') to condone the delay in submission of EMD Amount by M/s. Shanti G.D. Ispat & Power Private Limited;
 - b) Pass any such order(s) as this Hon'ble Adjudicating Authority may deem fit.

BACKGROUND

2. The Corporate Insolvency Resolution Process was initiated against M/s. Amzen Transportation Industries Private Limited ('Corporate Debtor') by this Adjudicating Authority vide order dated 04.05.2022 on an application filed by IDBI Bank ('Financial Creditor') and appointed Mr. Deepak Maini ('Respondent No.1') as the Interim Resolution Professional who was later confirmed as the Resolution Professional of the Corporate Debtor.
3. The Respondent No.1 had verified the claims received from the creditors and had constituted the Committee of Creditors of the Corporate Debtor. The re-constituted Committee of Creditors consist of Three (3) Financial Creditors namely M/s. Prudent ARC Limited ('Respondent No.2'), M/s. UCO Bank Limited ('Respondent

No.3) and M/s. WLD Investments Private Limited (Respondent No.4) and the same is taken on record by this Adjudicating Authority vide order dated 10.05.2023 in I.A./2598/2023. The composition of the re-constituted Committee of Creditors is reproduced below:-

<u>S. No.</u>	<u>Claimant Type</u>	<u>Name</u>	<u>Voting %</u>
1.	Financial Creditor	Prudent ARC (Assigned by IDBI Bank Ltd.)	41.12
2.	Financial Creditor	UCO Bank Ltd.	53.31
3.	Financial Creditor	WLD Investments Pvt. Ltd.	5.57
		TOTAL	100.00

(CoC constitution)

AVERMENTS OF THE APPLICANTS

4. Briefly stated facts of the present case as averred by the applicant and relevant for adjudication of the present issue are that the Committee of Creditors in its 3rd CoC Meeting dated 07.07.2022 had resolved for publication of Form-G, Expression of Interest (First issue of EoI) and accordingly, Form-G was issued on 16.07.2022 in Financial Express Pan India (English), Jansatta in Delhi/NCR (Hindi) and Punjabi Jagran (Punjabi) Newspaper wherein the last date of receipt of EoI is 02.08.2022 and last date of submission of Resolution Plan was 19.09.2022 which was further extended to 29.10.2022.
5. M/s. RKG Fund I and RKG Fund III, Schemes of RKG Trust (AIF) (managed by RKG Asset Management LLP) (applicant) had submitted its EoI pursuant to the First Issue of Form-G and the name of the applicant was included in the first round of submission of Resolution Plan and also the applicant has submitted its resolution plan also.

6. The Committee of Creditors in its 7th CoC Meeting dated 03.10.2022 had resolved for fresh publication of Form-G Expression of Interest ('Second Issue of EoI') and accordingly, a fresh Form-G was re-issued on 16.10.2022('Second Issue of EoI') and the applicant was once again declared as one of the eligible Prospective Resolution Applicants. The Committee of Creditors after the second round of invitation and submission of the Resolution Plans for the Corporate Debtor, the members of the Committee of Creditors were unable to agree and form a majority vote for any of the Resolution Plans put forth by the Respondent No.1 for voting and as a result Second round of Form-G was annulled and the Committee of Creditors resolved to start the process afresh.
7. The Committee of Creditors in its 23rd CoC Meeting dated 12.06.2023 had resolved for fresh publication of Form-G Expression of Interest ('Third Issue of EoI') and accordingly, a fresh Form-G was re-issued 18.06.2023 in Financial Express ('English'), Jansatta ('Hindi') and Rozanna Spokeman ('Punjabi') wherein the last date of submission of EoI was 03.07.2023 and the last date for submission of Resolution Plan was 14.08.2023
8. The Applicant was once again declared as one of the eligible Prospective Resolution Applicants pursuant to the Third issue of EoI and the Request for Resolution Plan ('RFRP') document was issued to the Applicant which stipulates the following conditions:-
 - a) The Resolution Plan shall be submitted on or before 14.08.2023
 - b) Along with the Earnest Money Deposit of Rs. 1.5 Crores by way of a Performance Bank Guarantee/RTGS.
9. The Applicant in compliance of the stipulated conditions of RFRP, vide its e-mail dated 14.08.2023 had submitted its Resolution Plan along with the earnest money deposit by way of a RTGS to the Resolution Plan for the purpose of placing the resolution plan before CoC for voting.

10. The Applicant had learnt that one of the Prospective Resolution Applicant namely M/s. Shanti G.D. Ispat & Power Private Limited had failed to submit its Earnest Money Deposit within the stipulated time period i.e., 14.8.2023 as prescribed in the RFRP document. Also, the applicant submit that despite there being a considerable delay in the submission of the EMD Amount by the other eligible PRA namely, Shanti G.D. Ispat & Power Pvt. Ltd., the Committee of Creditors in its 27th CoC Meeting dated 16.08.2023 with 53.31% voting had decided to waive the mandatory compliance of the last date for submission of the EMD Amount as stipulated under the RFRP Document and condoned the delay in the submission of EMD of the other PRA.
11. The Applicant submits that the Committee of Creditors has condoned the delay of the Prospective Resolution Applicant namely M/s. Shanti G.D. Ispat & Power Private Limited in complete disregard of the fact that the CIR Process of the Corporate Debtor is running on borrowed time line, on a period beyond 330 days Furthermore, if the Committee of Creditors is not keeping in mind the timelines stipulated under the RFRP Document. Accordingly, the applicant prays for the relief(s).

REPLY OF THE RESPONDENTS

12. The Resolution Professional ('Respondent No.1') had submitted its limited reply and submitted that the Applicant in the present application has not sought any relief or prayer against the Respondent No.1.
13. M/s. Prudent ARC Limited ('Respondent No.2') member of the Committee of Creditors had filed its reply and submitted that decision / resolution of the CoC under challenge in the present interlocutory application (i.e. to condone the delay in submission of EMD amount by Shanti GD Ispat) was passed in the 27th CoC meeting dated 16.08.2023 with 53.31% voting i.e. only by Respondent no. 3 namely UCO Bank Ltd. The other 2 of 3 CoC members (i.e. Prudent ARC ('Respondent No.2') & WLD Investments Pvt. Ltd. ('Respondent No.4')) had voted

against the same. The Respondent No.2 is supporting the present interlocutory application being IA 517012023 and did not file a separate interlocutory application challenging the said resolution, as the present IA 517012023 was already pending before the Hon'ble Tribunal for adjudication.

14. M/s. Union Bank ('Respondent No.3') member of the Committee of Creditors had filed its reply and submitted that CoC in its 27th CoC Meeting conducted on 16.08.2023 had resolved to extend for the submission of the EMD to PRA namely M/s. Shanti G.D. Ispat & Power Private Limited and consequently, EMD was submitted by the PRA on 17.08.2023. Also, since the minutes of meeting is to be circulated within 48 hours, for the sake of convenience, the Resolution Professional has recorded in the 27th CoC minutes dated 16.08.2023 recorded that the EMD of PRA is received on 17.08.2023 which means that the EMD was submitted during the preparation of minutes of meeting.
15. The Respondent No.3 also submitted that the RFRP document to which the Applicant had agreed by signing the participation documents had agreed to the clause that the CoC may extend the time for submission of the Resolution Plan and the EMD amount is being a part and parcel of the Resolution Plan.
16. The Respondent No.3 submits that in the entire Application, the Applicant has failed to set out as to what is the violation of law committed either by the Resolution Professional or by the CoC. The entire Application of the Applicant is meritless on account of settled position of law laid down by the Hon'ble Supreme Court regarding the commercial wisdom of CoC which is paramount and the Adjudicating Authority only have a jurisdiction to intervene in the commercial wisdom only in case of violation of Section 30 of the Code, 2016. However, in no case of violation of any provision of IBC or Regulations has been highlighted or pointed out by the Applicant. Therefore, this Application deserved to be dismissed for the want of jurisdiction to deal any of the action of the CoC.

ANALYSIS AND DISCUSSION

17. This Adjudicating Authority has carefully heard the arguments advanced by Learned Counsels for the parties and minutely perused the averments made in the application, reply, rejoinder and written submissions filed by the parties. The relevant documents annexed with the respective submissions have also been meticulously perused. In view of the facts and averments made on behalf of the parties, the issue which arises for this Adjudicating Authority's consideration: **“Is the Committee of Creditors empowered, in accordance with the Insolvency and Bankruptcy Code, 2016, and the Request for Resolution Plan documents, to decide on extending the deadline for Prospective Resolution Applicants to submit their Earnest Money Deposit?”**
18. From the records, it is observed that the Resolution Professional ('Respondent No.1') had apprised the CoC Members in its 27th CoC Meeting dated 16.08.2023 that the Respondent No.1 had received the resolution plan(s) along with EMD from three (3) Prospective Resolution Applicants, however, the fourth Prospective Resolution Applicant namely, M/s. Shanti G.D. Ispat & Power Private Limited jointly with Shanno Business India Private Limited had only submitted the soft copy of the Resolution Plan within the stipulated timeline and further the fourth Prospective Resolution Applicant namely, M/s. Shanti G.D. Ispat & Power Private Limited jointly with Shanno Business India Private Limited had vide e-mail dated 14.08.2023 had cited the reason for non-submission of EMD and mentioned that the EMD will be submitted within the next working date. The given matter was discussed among the CoC Members and the consultation from the Corporate Debtor's legal counsel was also sought. After due deliberations, the CoC with 53.31% voting in favor had approved the extension in submission of the Earnest Money Deposit beyond 14.08.2023 by M/s. Shanti G.D. Ispat & Power Private Limited jointly with Shanno Business India Private Limited. The relevant extract of the minutes of 27th CoC Meeting dated 16.08.2023 is extracted below:-

D. Update on Receipt/submission of Resolution Plan by the last date of 14th August, 2023

As deliberated above in item no. J (a) of Part 2 above, the CoC is requested to approve the following resolution:

"RESOLVED THAT Pursuant to Regulation 36(B)(6) of CIRP Regulations, 2016 the Resolution Applicant named Shanti G.D. Ispat & Power Pvt. Ltd. Jointly with Shanno Business India Private limited is allowed to submit EMD/PBG for EMD after last date of submission, which is August 14 2023, be and is hereby approved by the members of the CoC..

(Relevant extract of the CoC Resolution passed in 27th CoC Meeting)

19. Furthermore, on perusal of minutes of the 28th CoC Meeting dated 25.08.2023, this Adjudicating Authority observed that the CoC was duly informed that the resolution to allow the 4th Prospective Resolution Applicant namely M/s. Shanti G.D. Ispat & Power Private Limited jointly with Shanno Business India Private Limited was approved with 53.31% votes in favour subsequent to which all the 4 Prospective Resolution Applicants including M/s. RKG Fund I & II ('applicant') as well as M/s. Shanti G.D. Ispat & Power Private Limited jointly with Shanno Business India Private Limited were invited to introduce themselves and open the Resolution Plan as submitted by them respectively. It was further noted in the minutes that all the Resolution Applicants duly confirmed that the process of opening the Resolution Plan(s) as submitted by all the 4 Resolution Applicants are conducted in a fair and transparent manner. The relevant extract of the minutes of 28th CoC Meeting is extracted below:-

At this stage in consultation with CoC, RP called all the representatives of the Resolution Applicants, one by one and further asked them to introduce themselves. He further one by one opened the sealed envelopes of the resolution plan in the presence of respective RA's and in the presence of CoC members/Directors (Power Suspended). RP also one by one, along with opening of the sealed envelope of the resolution plans asked the RA's to share the passwords of the soft copy of their respective resolution plans. The soft copies of the Resolution plan were also opened in the presence of respective RA's. and in the presence of CoC members/Directors (Power Suspended).

Following Representative of Resolution Applicants (RA) attended on their behalf:

S. No.	Name of the RA	Name of the Representative of RA
1	RV Rail	Mr. Sanat Pyne
2	Jupiter Wagons	Mr. Rajiv Tulsyan
3	Shanti D Ispat	Mr. Praveen Vishawakarma
4	RKG Fund I & III	Mr. Jaseel Paloth

RP further took confirmation from all the Representative of RA's whether the resolution plans were opened in the transparent manner or not. All the RA's duly confirmed with the fairness and transparency of the said process and confirmed that, they were satisfied with the entire exercise.

(Relevant extract of the CoC Resolution passed in 28th CoC Meeting)

20. We have also carefully gone through the relevant statutory provisions of Regulation 36B (6) of the IBBI (CIRP) Regulations, 2016. The relevant provision are reproduced herein below in verbatim for ready reference:-

“36B. Request for resolution plans.

(1)*****

(2)*****

(3)*****

(4)*****

(4A)*****

(5)*****

(6) The resolution professional may, with the approval of the committee, extend the timeline for submission of resolution plans.

(6A)*****

(7)*****

21. The relevant covenant of the Request for Resolution Plan dated 12.07.2023 issued to the Prospective Resolution Applicants are reproduced below:-

“2.1 Bid Due Date

A Qualified Bidder shall submit the Resolution Plan by 14th August, 2023 (“Bid Due Date”) at the address/email id amzen.cirp@insolvencyservices.in of the Resolution Professional in the manner and form set out in this Bid Document. The Resolution Professional (acting on the instructions of the CoC) may extend the time for submission of the Resolution Plan subject to the provisions of the IB Code and subject to receipt of a CIRP extension, if required, from the Adjudicating Authority.

2.2 Notes to the Qualified Bidder

(x) CoC may decide on the extension of time that shall be granted, considering the circumstances, to the Qualified Bidder(s) for submission of the Resolution Plan. This process of extending time of submission of Resolution Plan shall be read with point no. 2.1.”

22. A combined reading of Regulation 36B (6) of the IBBI (CIRP) Regulations, 2016 with Clause 2.1 and 2.2(x) of the RFRP document dated 12.07.2023, provides that the Committee of Creditors in its commercial wisdom may extend the timelines stipulated with regard to the submission of the Resolution Plan. The CoC in its 27th CoC Meeting dated 16.08.2023 had extended the timeline for submission of the Earnest Money Deposit.

23. Also, it is an undisputed fact that the Prospective Resolution Applicant namely M/s. Shanti G.D. Ispat & Power Private Limited jointly with Shanno Business India Private Limited had submitted their Performance Bank Guarantee for Earnest Money Deposit amount on 17.08.2023.
24. From the above conspectus of facts, it is evident that the Committee of Creditors was duly apprised about the non-submission of Earnest Money Deposit by M/s. Shanti G.D. Ispat & Power Private Limited jointly with Shanno Business India Private Limited and after deliberations and discussions, resolution for condoning the delay in submission of the Earnest Money Deposit was put before the CoC for voting which was duly approved with 53.31% vote in favor. Further, the applicant being one of the Resolution Applicant in the 28th CoC Meeting had confirmed that the process of opening and presenting the Resolution Plan(s) as submitted by all the Four (4) Prospective Resolution Applicant(s) including the Resolution Plan submitted by M/s. Shanti G.D. Ispat & Power Private Limited jointly with Shanno Business India Private Limited is opened with all the fairness and in a transparent manner and further confirmed that they were satisfied with the entire exercise. Therefore, it is not understood as to how the applicant suddenly raised its objection to the resolution of the CoC approving the extension in the submission of the Earnest Money Deposit. Also, M/s. Prudent ARC ('Respondent No.2') had also not challenge the participation of M/s. Shanti G.D. Ispat & Power Private Limited jointly with Shanno Business India Private Limited in the subsequent CoC Meetings.
25. The Applicant had placed reliance on the Hon'ble NCLAT's judgement in the case of **Dwarkadish Sakhar Karkhana Ltd. vs. Pankaj Joshi, RP of KGS Sugar & Infra Corporation Ltd & Anr. [C.A.(AT)(Ins)No.233 of 2021]**, on perusal of the judgment relied upon by the Applicant, we are of the considered view that the case of Dwarkadish Sakhar Karkhana Ltd (Supra) turned on its own fact and is distinguishable from the present case on the count that in the former case the decision of the CoC allowing the PRA to file to file EOI after the due date is under

challenge whereas in the present case the decision of the CoC regarding the extension of the timeline for submission of resolution plan is under challenge.

26. At this juncture, it is also pertinent to refer Hon'ble Supreme Court's judgement in **Kalpraj Dharamshi and Anr. vs. Kotak Investment Advisors Limited and ANR. [(2021) 10 SCC 401]; Judgement dated 07.08.2023** wherein the Hon'ble Supreme Court observed as follows:-

“172. No doubt, it is sought to be urged, that since there has been a material irregularity in exercise of the powers by RP, NCLAT was justified in view of the provisions of clause (ii) of sub-section (3) of Section 61 of the I&B Code to interfere with the exercise of power by RP. However, it could be seen, that all actions of RP have the seal of approval of CoC. No doubt, it was possible for RP to have issued another Form 'G', in the event he found, that the proposals received by it prior to the date specified in last Form 'G' could not be accepted. However, it has been the consistent stand of RP as well as CoC, that all actions of RP, including acceptance of resolution plans of Kalpraj after the due date, albeit before the expiry of timeline specified by the I&B Code for completion of the process, have been consciously approved by CoC. It is to be noted, that the decision of CoC is taken by a thumping majority of 84.36%. The only creditor voted in favour of KIAL is Kotak Bank, which is a holding company of KIAL, having voting rights of 0.97%. We are of the considered view, that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of “commercial wisdom”, NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.”

27. Having regard to the aforesaid discussion and the judgments relied upon, this Adjudication Authority is of the view that the legislature by virtue of Section 21(8) of the Code, 2016 read with Regulation 36B (6) of the IBBI (CIRP) Regulations, 2016 has consciously entrusted the Committee of Creditors with the power to take decision as to extend the timeline for submission of resolution plans and in the instant case, the Committee of Creditors in its commercial wisdom had with a requisite majority of more than 51% votes in favour had resolved to extend the time limit for submission of the EMD beyond the stipulated timeline as provided in Form-G dated 18.06.2023.

28. The Adjudicating Authority deems it necessary to emphasize a crucial aspect of the applicant's approach. It is widely recognized that the Corporate Insolvency Resolution Process (CIRP) operates within strict time constraints, and the commercial wisdom of the Committee of Creditors (CoC) holds paramount significance. The applicant was well-informed about the CoC's decision to extend the timeline for the submission of the Earnest Money Deposit (EMD), as confirmed by the applicant in the 28th CoC Meeting dated 25.08.2023, that the process of opening the Resolution Plan for all four Prospective Resolution Applicants (PRAs) is conducted in a transparent and fair manner and that they were satisfied with the entire exercise. Despite this, the applicant, seemingly with the objective of obstructing the process, has chosen to file the present application seeking to set aside the CoC's decision to condone the delay in the submission of the EMD amount by Shanti G.D. Ispat & Power Private Limited. The actions of the applicant, in the role of a prospective resolution applicant, appear to be nothing more than a hindrance to the CIRP of the Corporate Debtor. This Adjudicating Authority expresses displeasure of such practices and strongly advises the applicant to refrain from engaging in such conduct in future proceedings.

29. Resultantly, the present Interlocutory Application i.e., I.A./5170/ND/2023 in C.P.(IB)/03/2020 being devoid of merits stands **dismissed** with no order to cost.

Let the copy of the order be served to the parties

Sd/-

(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)