

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT-III

ITEM No. 11
IA-5636/2023

IN
IB-908(ND)/2022

IN THE MATTER OF:

M/s. Joneja Bright Steels Pvt. Ltd. Petitioner/Applicant
Vs.
M/s. Nipman Fastners Industries Pvt Ltd. Respondent

Order u/S. 9 of Insolvency & Bankruptcy Code (IBC), 2016.

Order delivered on 09.04.2024

CORAM:

SH. BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)

SH. ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

HYBRID HEARING (PHYSICAL & VC)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

IA-5636/2023

List this matter tomorrow i.e. **10.04.2024.**

-Sd-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

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

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

IA-4529/2023
In
CP(IB)908(ND)/2022

Order under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF CP(IB)908(ND)/2022:

M/s. Joneja Bright Steels Pvt. Ltd. Operational Creditor
Vs.
M/s. Nipman Fasteners Industries Pvt. Ltd. Corporate Debtor

AND IN THE MATTER OF IA-4529/2023:

M/s. PTC Engineering India Pvt. Ltd. Applicant
Vs.
Mr. Naresh Kumar Munjal, RP Respondent

Order Pronounced On: 09.04.2024

CORAM:

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

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Mr. P. Nagesh Sr, Adv, Mr. Rishi Kapoor, Mr. Shashank
Agarwal, Advs.
For RP : Mr. Gopal Jain, Sr. Adv, i/b Ms. Honey Satpal in IA-
3923/2023 & IA-4528/2023. Ms. Honey Satpal, Adv. In
IA-3936/2023 & IA-5636/2023, IA-4529/2023.
Mr. Naresh Munjal RP in person.
For Respondent : Mr. Jai Anant Mr. Martin G. George, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 seeking permission to submit its Expression of Interest (EOI) in the Corporate

IA-4529/2023 In CP(IB)908(ND)/2022
Date of Order: 09.04.2024

Insolvency Resolution Process of the Corporate Debtor. The prayers made in this application are as follows:

- A. “the present Application be allowed by the Hon'ble Tribunal;*
 - B. Allow the Applicant to file its EOI in the CIRP of Nipman Fastener Industries Pvt. Ltd.*
 - C. To direct the RP to consider the EOI and supply a copy of the information memorandum, evaluation matrix and the request for resolution plans;*
 - D. to pass such order(s) as the Hon'ble Tribunal may deem fit and appropriate in the given facts and circumstances of the case.”*
- 2.** In view of the order passed in IA-4528/2023, while considering the application filed by the Applicant herein, this Adjudicating Authority has directed the Resolution Professional to accept the EOI and consider the EOI of the Applicant on merit, after due verification of the requisite documents. Accordingly, IA-4529/2023 stands **disposed of**.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

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

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

IA-3923/2023
In
CP(IB)908(ND)/2022

Order under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules 2016.

IN THE MATTER OF CP(IB)908(ND)/2022:

M/s. Joneja Bright Steels Pvt. Ltd. Operational Creditor
Vs.
M/s. Nipman Fasteners Industries Pvt. Ltd. Corporate Debtor

AND IN THE MATTER OF IA-3923/2023:

Mr. Naresh Kumar Munjal, RP Applicant
Vs.
M/s. PTC Engineering India Pvt. Ltd. Respondent

Order Pronounced On: 09.04.2024

CORAM:

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

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Ms. Honey Satpal, Adv.
For Respondent : Mr. Shashank Agarwal, Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed by the Resolution Professional seeking the following reliefs:-

A. *“That this Hon’ble Tribunal be pleased to direct the Respondent to handover the control and custody of industrial land and building at Plot no. C-198, Ghaziabad Plant situated at Yadav Nagar, Industrial Area,*

IA-3923/2023 In CP(IB)908(ND)/2022
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*Bulandshahr Road, Ghaziabad, Uttar Pradesh-201009
admeasuring 5616 Sq yards.*

- B.** That this Hon'ble Tribunal be pleased to direct the local administration under Regulation 30 to assist the Applicant to take peaceful possession of the property of the Corporate Debtor from the Respondent;*
- C.** That this Hon'ble Tribunal be pleased to direct the Respondent to pay rent of Rs. 50,000/- per month for keeping the possession of the property from w.e.f. 01.10.2019 till handover of the property with interest rate calculated at @18 percent; and*
- D.** For such other relief(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.*

- 2.** In view of the order passed in IA-4528/2023, while considering the application filed by the Respondent herein, this Adjudicating Authority has directed the Resolution Professional to accept the EOI and consider the EOI of the Respondent herein on merit, after due verification of the requisite documents. Accordingly, IA-3923/2023 stands **disposed of.**

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

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

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

IA-4528/2023
In
CP(IB)908(ND)/2022

Order under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules 2016.

IN THE MATTER OF CP(IB)908(ND)/2022:

M/s Joneja Bright Steels Pvt. Ltd. Operational Creditor

Vs.

M/s Nipman Fasteners Industries Pvt. Ltd. Corporate Debtor

AND IN THE MATTER OF IA-4528/2023:

M/s PTC Engineering India Pvt. Ltd. Applicant

Vs.

Naresh Kumar Munjal, RP & Ors. Respondents

Order Pronounced On: 09.04.2024

CORAM:

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

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Mr. P. Nagesh Sr, Adv, Mr. Rishi Kapoor, Mr. Shashank Agarwal, Advs.

For RP : Mr. Gopal Jain, Sr. Adv, i/b Ms. Honey Satpal in IA-3923/2023 & IA-4528/2023. Ms. Honey Satpal, Adv. In IA-3936/2023 & IA-5636/2023, IA-4529/2023.

Mr. Naresh Munjal RP in person.

For Respondent : Mr. Jai Anant Mr. Martin G. George, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 seeking a direction to the Resolution

IA-4528/2023 In CP(IB)908(ND)/2022
Date of Order: 09.04.2024

Professional to exclude the immovable property in question from the asset pool of the Corporate Debtor.

2. The prayers made in this application are as follows:

- *“The present Application be allowed; and*
- *The factory premises (including the land and building) situated at Plot NO.C-198, Yadav Nagar Industrial Area, Bulandshahar Road, Ghaziabad, Uttar Pradesh and run by the Applicant be excluded from the asset pool of the Corporate Debtor;*
- *directions be issued to the RP/Respondent to not include the said factory premises in the Information Memorandum prepared during the corporate insolvency resolution process ("CIRP") of the Corporate Debtor as an asset of the Corporate Debtor;*
- *direct the State Bank of India ("SBI"), the Respondent No.2, to issue the 'No-Objection Certificate' for releasing the charge over the Property;*
- *directions be issued to the Respondent to take appropriate and necessary actions for execution and registration of the Sale Deed of the Property in favour of the Applicant upon receipt of the balance consideration from the Applicant;*
- *such orders may be passed, which Hon'ble Tribunal may deem fit & proper, in the interest of justice and equity.”*

Brief facts

3. The Applicant is part of 'Progressive Tools & Components Private Limited' which has more than 3 decades long standing in the business of manufacturing OEM tools, equipment, automobile parts, dies, etc. and has about 3 factory units that employ more than 1000 employees and workforce.

4. The Corporate Debtor is also a company operating in the same industry and business line as that of the Applicant.

5. In February 2019, the Corporate Debtor approached the Applicant with an offer to sell the property in question. The Applicant accepted the offer to purchase the property at a total consideration of Rs. 6.31 crores. It was agreed by the Corporate Debtor that out of the said Rs. 6.31 crores, Rs. 5 crores would be paid to the State Bank of India for releasing the charge over the property so that the property could be sold/transferred to the Applicant free of encumbrances. The Corporate Debtor informed the Applicant that the property was a leasehold property given by the U.P. State Industrial Development Corporation Ltd. (“UPSIDC”) for 90 years under a registered lease deed dated 17.01.1998.
6. Pursuant to the agreement, the Applicant paid a sum of Rs. 2 crores and the parties signed a Memorandum of Understanding dated 27.02.2019. The remaining consideration was to be paid as follows:-
- *Rs.3,00,00,000/- (Rupees Three Crores only) by April 07, 2019;*
 - *Rs.1,31,00,000/- (Rupees One Crores and Thirty Lakhs only) to be paid after vacating all bank charges and the time of submitting the transaction documents with UPSIDC.*
7. Thereafter, the parties entered into an agreement to sell dated 01.03.2019. The parties agreed that the transfer/sale of the property was subject to the consent/approval of UPSIDC along with the execution of the sale deed/transfer deed and the responsibility to obtain the consent/approval/transfer

permission from UPSIDC was upon the Applicant, however, the Corporate Debtor was obligated to extend cooperation and provide necessary documents as required by the UPSIDC. It was also agreed that in case the documents are provided by the Corporate Debtor (seller) then the parties had the right to extend the time for completion of the transaction by mutual consent.

8. The Applicant paid an amount of Rs. 3 crores by 07.04.2019. However, the Corporate Debtor failed to obtain no objection from the banks and provide requisite documents to the Applicant to obtain the approval of UPSIDC for the transfer of property as agreed in the terms of the agreement to sell. Since the Corporate Debtor failed to extend the necessary cooperation, it offered to put the Applicant for possession of the property. Accordingly, the parties entered into a sub-lease agreement dated 21.09.2019 whereby the Applicant was put in possession of the property by the Corporate Debtor. The lease rent under the Sub-lease agreement was fixed at a nominal sum of Rs. 50,000/- per month since only a sum of 1.31 crores was left for payment out of the total agreed amount. A lease was to be extended from time to time because of the Covid-19 Pandemic and the Applicant never defaulted in the payment of the lease rent in terms of the Sub-Lease Agreement.

9. The Applicant has contended that it had completed its part of performance under the agreement to sell and it is for the

Corporate Debtor to complete the transaction. It is also submitted that the Applicant is ready and willing to pay the balance consideration of Rs. 1.31 crores.

- 10.** It is submitted that in the month of February, 2023, the applicant received the “possession notice” dated 02.02.2023 from the State Bank of India (One of the Bankers of the Corporate Debtor) under the provisions of Section 13 (4) of the (“SARFAESI Act”). In the meantime, the CIRP of the Corporate Debtor commenced pursuant to the order dated 21.04.2023 passed by this Adjudicating Authority in an application filed by an Operational Creditor namely, M/s Joneja Bright Steels Pvt. Ltd.
- 11.** The Respondent/ Resolution Professional filed a reply affidavit denying the allegations made by the Applicant. The Respondent raised certain preliminary objections with regard to the locus standi of the Applicant and the maintainability of the present application.
- 12.** It is submitted that on 07.07.2023, the Respondent issued Form-G, as approved by the CoC, in terms of Regulation 36A (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("Regulations 2016"), inviting "Expression of Interest for Nipman Fasteners Industries Pvt. Ltd." ("Form G") from the Prospective Resolution Applicants. The last date for receipt of EOI was fixed as 24.07.2023.

- 13.** It is submitted that the Respondent has received a total of 29 EOIs on or before the cut-off date as decided by the CoC and publicly announced by way of Form-G. It is further submitted that the following two EOIs were received after the Cut-off date.
- *M/s RPPL Industries Ltd. (received on 25.07.2023)*
 - *Mr. Paramjit Gandhi (received on 26.07.2023)*
- 14.** It is submitted that one Mr. Prem Chand Gandhi who is one of the directors of the Applicant filed the EOI on 26.07.2023 after the expiry of the deadline for submission of the EOI i.e. 24.07.2023 and therefore, such submission of the claim are in contravention with the provisions of Regulation 36A (6) of the CIRP Regulations. Therefore, the EOI received from Mr. Gandhi was not admitted/rejected by the RP in terms of said regulations and it was conveyed to the Applicant Vide email dated 03.08.2023.
- 15.** The CoC in the 5th meeting held on 27-08-2023 affirmed the rejection of EOIs received belatedly. The RP has therefore, submitted that since the CoC in his commercial wisdom has decided that the extension of the timeline of CIRP will defeat the objective of the Code in the maximization of the value of the assets of the Corporate Debtor, the present application is liable to be dismissed.
- 16.** Heard the submission of Ld. Counsel appearing for both the parties and perused the record.

- 17.** It is an admitted case of the parties that the parties entered into an agreement to sell on 01.03.2019 for the sale of the property in question for a total consideration of Rs. 6.31 crores. The applicant had paid a sum of Rs. 5 crores out of the total amount of 6.31 crores by 07.04.2019 and an amount of Rs. 1.31 crores was to be paid after the Corporate Debtor had obtained NOC and release of charges from the banks. It is also not in dispute that the Corporate Debtor failed to obtain the NOC and release the charge from the banks. Further, the Corporate Debtor has to be the Applicant in possession of the property by entering into a Sub-lease agreement dated 21.09.2019 because of the failure to get the NOC and release of charge, at a monthly lease rent of Rs. 50000. Thereafter, the Applicant commenced its business operation from the said premises. It is also not in dispute that the Applicant has always expressed his willingness to pay the balance consideration of Rs. 1.31 crores and fulfil its part of the contract for execution of the sale deed. However, the Corporate Debtor did not fulfil its part of the contract and failed to obtain the NOC and release of charges from the banks.
- 18.** A perusal of the reply affidavit filed by the Resolution Professional/Respondent indicates that the Applicant filed the EOI on 26.07.2023, whereas the last date for submission of the EOI was 24.07.2023. Therefore, there was a delay of two days in submitting the EOI.

- 19.** The Resolution Professional rejected the claim of the Applicant vide email dated 03.08.2023 merely on the ground that the claim was belated. However, the RP has not assigned any other reasons for not admitting the claim.
- 20.** Having regard to the fact that the agreement to sell between the parties was entered into way back on 01.03.2019 and a substantial part of the amount has been paid by the Applicant to the Corporate Debtor and the Corporate Debtor had failed to fulfil its obligations under the agreement in obtaining the NOC from the Statutory Authorities and taking any steps for releasing the charge over the property from the SBI. Consequent to this, the Corporate Debtor put the Applicant in possession of the property.
- 21.** We are of the considered view that the Resolution Professional ought to have considered the claim on merits instead of rejecting the same merely on the ground of delay of two days.
- 22.** Moreover, the Resolution Professional has not denied the averments made by the Applicant that the Applicant was always ready and willing to perform its part of the contract and pay the balance amount of Rs. 1.31 crores.
- 23.** In fact, it is the Corporate Debtor who failed to discharge its obligations in fulfilling the terms of the agreement to sell for which the Applicant, in our considered view cannot be found fault with.

- 24.** We, therefore, direct the Resolution Professional to accept the EOI and consider the EOI of the Applicant on merit, after due verification of the requisite documents and place it before the CoC for consideration.
- 25.** In view of the above direction, IA-4528/2023 stands **disposed of**.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

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