

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

I.A. (IB) No. 1255 (KB)2023
in
Company Petition (IB)/128(KB)2020

An Application under Rule 11 of the National Company Law Tribunal Rules, 2016

IN THE MATTER OF:

HDFC BANK LTD.

...Financial Creditor

Versus

TAMRA DHATU UDYOG PRIVATE LIMITED

(CIN: U27209BR2006PTC109251)

...Corporate Debtor

And

IN THE MATTER OF:

TARUN KUMAR SINGH

...Applicant

Versus

MAMTA BINANI,

Resolution Professional of

Tamra Dhatu Udyog Private Limited

... Respondent No. 1

And

COMMITTEE OF CREDITORS

of Tamra Dhatu Udyog Private Limited

through Indian Bank

... Respondent No. 2

Date of Hearing: July 26, 2023

Date of Pronouncement of the Order: August 03, 2023

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI BALRAJ JOSHI, HON'BLE MEMBER (TECHNICAL)

Ld. Counsels appeared Physically/ through Video Conferencing:

For Resolution Professional:

1. Ms. Mamta Binani, RP in person

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For BoB (CoC):

1. Ms. Manju Bhuteria, Adv.
2. Mr. Avishek Guha, Adv.
3. Mr. Arunika Dutta, Adv.

For Indian Bank:

1. Mr. Santosh Kumar Ray, Adv.
2. Ms. Sumana Mukherjee, Adv.

For applicant in IA/1255/2023:

1. Mr. Abhrajit Mitra, Adv.
2. Ms. Shusna Santra, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Court is congregated through hybrid mode.
2. Heard Mr. Abhrajit Mitra, Ld. Senior Counsel for the Applicant, Ms. Manju Bhuteria, Ld. Counsel for the Committee of Creditors and Ms. Mamta Binani, Resolution Professional.
3. This instant Application is filed by Mr. Tarun Kumar Singh, the Resolution Applicant of the Corporate Debtor, seeking the following relief as:
 - a) *Allow the instant application and clarify the Order dated 05/07/2023 passed by this Tribunal in I.A. No. 980 (KB) of 2023 to the extent that fresh timeline to be indicated by the Resolution Professional (Respondent No. 1) as per paragraph 15 at page 7 of the Order dated 05/07/2023 be confined to only those **Prospective** Resolution Applicants whose enhanced financial proposals were not accepted by the Respondent No. 1;*
 - b) *Pass any such direction or order(s) as it may deem fit and proper in the interest of justice.*

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4. Submission made by the Ld. Counsel for the Applicant:

- 4.1.** The Ld. Counsel for the Resolution Applicant, Mr. Tarun Kumar Singh, submits that the **Order, dated July 05, 2023** passed by this Bench in **I.A. No. 980 (KB) of 2023** filed by the Applicant, in where the Applicant sought the enhancement of Resolution Plan submitted by the Applicant in terms of email dated 04/05/2023 sent by the Resolution Professional (Respondent No.1) *inter alia* by removing a clause from the Resolution Plan pertaining to assignment or extinguishment of third party guarantee including promoter guarantee.
- 4.2.** The Ld. Counsel for the Resolution Applicant further submits that all the Participating Resolution Applicants have submitted their enhanced Resolution Plans in terms of email dated 04/05/2023 sent by the Resolution Professional (for brevity “**RP**”), which the RP failed to disclose earlier. Thus, there is no requirement for the RP to indicate fresh timeline to allow all the Participating Resolution Applicants to enhance their Resolution Plans in terms of email dated 04/05/2023 send by the RP.
- 4.3.** It is submitted that in terms of the email dated 04/05/2023 by the RP, all the participating Resolution Applicant including the Applicant have already submitted their enhance or revised Resolution Plans with the RP by 10/05/2023. The Applicant had submitted his enhanced proposed Resolution Plan, *inter alia* removing the assignment or extinguishment of third-party guarantee including promoter guarantee as contained in Clauses 3.1(e)(iv), 3(e)(v) and 3.2.3 and other clauses of the proposed Resolution Plan submitted by the Applicant in order to enhance the financial bid of the Applicant. The proposed Resolution Plan submitted by the Applicant only was not considered by the member of the Committee of Creditors.
- 4.4.** The Applicant has already addressed a letter dated 08/07/2023 requesting the RP grant all the Resolution Applications time to submit their Resolution

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Plans as amended and restated in terms of the Email date 04/05/2023 sans any revision to the financial bid already submitted in terms of email dated 04/05/2023. As all the participating resolution applicants have submitted their enhanced Resolution Plans in terms of email dated 04/05/2023 which have been deliberated and discussed at length in the meeting of Committee of Creditors dated 11/05/2023. Thus, there is no requirement for the RP to indicate fresh timeline to allow all the participating Resolution Applicants to enhance once again their Resolution Plans in terms of email dated 04/05/2023.

- 4.5. It is further submitted that Regulation 39(1A) and (1B) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 allows the modification of the Resolution Plan only once, thus the prospective Resolution Applicants cannot be given additional opportunity to revise their Resolution Plan. Thus, the fresh timeline, should be confined to only those Prospective Resolution Applicants whose enhanced financial proposals were not accepted by the RP, since the email dated 04/05/2023 already stands complied with by all the participating resolution applicants
- 4.6. It is further contended that the balance of convenience is entirely in favour of the Applicant. Grave and irreparable harm and injury would be caused to the Applicant as well as the stakeholders of the Corporate Debtor in case the prayers sought herein are not granted.
- 4.7. It is submitted that in the interest of justice it is necessary to clarify the Order dated July 05, 2023 passed by this Bench, that the enhanced Resolution Plans already submitted by the Participating Resolution Applicants in terms of email dated 04/05/2023 to be considered as Final Resolution Plans and shall not be further revised or enhanced and fresh timeline to be indicated by the Respondent No.1 as per paragraph 15 at page 7 of the Order dated July 05, 2023 should be confined to only those

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Prospective Resolution Applicants whose enhanced financial proposals were not accepted by the RP, since the email dated 04/05/2023 already stands complied with by all the Participating Resolution Applicants.

5. Analysis and Findings:

- 5.1.** It is evident that the RP of the Tamra Dhatu Udyog Private Limited (Corporate Debtor) sent an email date 04/05/2023 to the Resolution Applicant, Mr. Tarun Kumar Singh. It is stated that the members of the Committee of Creditors, in their 14th meeting held on 04/05/2023, had *inter alia* noted that in conformity with the objective to maximise the value of the Corporate Debtor, a final opportunity should be provided to all the proposed Resolution Applicants to further enhance the financial proposal of their Respective Resolution Plans, in conformity with the provisions of Insolvency and Bankruptcy Code, 2016 (for brevity “**I&B Code, 2016**”), and the same should to be submitted on or before 10/05/2023 by 6:00 PM to the RP. Further, it was clarified by the RP that the enhancement in the financial proposal should only mean an increase in the offer to creditors in due compliance with the provisions of the **I&B Code, 2016** and no other change in the existing proposed Resolution Plan should be allowed. It was further stated that such enhancement would not be construed as a change of the Resolution Plan.
- 5.2.** It is further evident that on 10/05/2023, the Applicant in terms of email dated 04/05/2023, submitted his enhanced/revised Resolution Plan to the RP, proposing removal of assignment/extinguishment of third-party guarantee including promoter guarantee, as contained in clauses 3.1(e)(iv), 3.1(e)(v) and 3.2.3 and other clauses of the proposed Resolution Plan in order to enhance the financial bid. However, the proposal of the Applicant was not considered by the members of the Committee of Creditors.

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Aggrieved by the decision taken the Committee of Creditors, the Applicant filed an interlocutory application being **I.A. (IB) 980 (KB) of 2023**.

5.3. This Court, therefore, passed an Order dated July 05, 2023, allowed the **I.A. (IB) No. 980 (KB) of 2023** of the Applicant as:

“15. In view of the above, we allow the present application. A fresh time line shall be indicated by the RP to allow all the participating Resolution Applicants to enhance their Resolution Plan in terms of the e-mail dated 04/05/2023.”

“16. With the above directions, IA is accordingly disposed of.”

5.4. It is evident that on the said Order dated July 05, 2023, this Adjudicating Authority was not apprised of the fact that all the Participating Resolution Applicants have already submitted their enhanced or revised Resolution Plan in terms of the e-mail dated 04/05/2023.

5.5. To bring clarity to the Order dated July 05, 2023, and to allow it to be implemented in accordance with the objective of the I&B Code, 2016, that no second opportunity to revise the Resolution Plan is to be provided, as also to ensure fairness qua parties, we deem it appropriate to rectify the Order dated July 05, 2023, so as to read as under:

a) In view of the above, we allow the present application. A fresh time line shall be indicated by the RP to allow all the Participating Resolution Applicants to enhance their Resolution Plan in terms of the e-mail dated 04/05/2023, if not done already.

6. Accordingly, this application being **I.A. (IB) No. 1255 (KB) 2023** is **disposed of**, in terms of the order above.

7. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

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8. Urgent certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is signed on the 03rd Day of August, 2023

Bose, R. K. [LRA]