

SL. No.2

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI- HON'BLE MEMBER (J)
CORAM: SHRI. CHARANSINGH - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 17.07.2023, At 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/805/2023 in Company Petition IB/10/2022
NAME OF THE COMPANY	Feno Plast Ltd
NAME OF THE PETITIONER(S)	The Canara Bank Ltd
NAME OF THE RESPONDENT(S)	Feno Plast Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/805/2023

This application is allowed, vide separate orders.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA No.805/2023
in
CP(IB) No. 10/7/HDB/2023

u/s. 60(5) of IB Code, 2016 r/w Rules 11, 13 & 32
of the NCLT Rules, 2016

In the matter of:

1. Mr. Haridas Krishna Kumar,
S/o H Narsaiah Erstwhile Promoter &
Whole Time Director of M/ s Feno Plast Limited
R/o Villa No.112, First Leaf, Journalist Colony,
Serilingampally, KV Ranga Reddy-500032.

2. Mr. Saparna Haridas,
W/o H Krishna Kumar,
S/o H Narsaiah Erstwhile Promoter &
Whole Time Director of M/ s Feno Plast Limited
R/o Villa No.112, First Leaf, Journalist Colony,
Serilingampally, KV Ranga Reddy-500032.

....Applicants

AND

Mr. G.Kalpana,
M/ s Feno Plast Limited
Regd. Office at H.No.16-11-19/4, G-I,
Sri Laxmi Nilayam, Saleem Nagar,
West Marredpally, Telangana.
Pin 500 036.

... Respondent/Resolution Professional

IN THE MATTER OF :

M/s.Canara Bank Limited

... Financial Creditor

AND

M/s.Fenoplast Limited

... Corporate Debtor

Date of order: 17/07/2023

CORAM:**Hon'ble Justice Telaprolu Rajani, Member (Judicial)****Shri Charan Singh, Hon'ble Member (Technical).****Counsels present:****For the Applicants** : Mr. V.K.Sajith,
Mr.V.Ravi Kumar, Advocates**For the Respondent** : Mrs. Mummaneni Vazra Laxmi, Advocate**[PER: BENCH]****ORDER**

1. That the present application is being filed by the Applicant under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 challenging the decision taken by the Respondent No.1 in rejecting the Expression of Interest proposed by the Applicant.

2. The facts of the case mentioned in the application are, briefly, as follows:

i) The company petition is filed by Canara Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016. The application was admitted initiating CIRP under IBC, 2016 and the Respondent was appointed as Interim Resolution Professional on 19.10.2022.

ii) The applicant No.1 filed IA No.1248 of 2022 before the Hon'ble Tribunal seeking a review of the admission order in view of the substantial payments remitted in compliance with the OTS proposal approved by the Financial Creditor(s). The Tribunal set aside the admission order by allowing the above IA on 15.11.2022. While applicant No.1 was in the process of arranging finance to settle the balance amount due to the financial creditors, due to the management

dispute, some of the directors objected to the investments. This resulted in failure of balance payment due to the financial creditors. Upon failure in complying with the order of the Tribunal, the financial creditor applied for revival of **CP(IB) NO.10/7/HDB/2022**.

iii) It is submitted that, the Tribunal admitted the petition vide its order dated 07.02.2023 by appointing Respondent 1 as Interim Resolution Professional.

a. Respondent No.1, after her appointment, published a newspaper Advertisement in Form-A under Section 13 of IBC, 2016 seeking claims from the prospective applicants. The Committee of Creditors (CoC) was constituted and the CoC in their meeting dated 03.04.2023, approved the draft Form-G. Respondent No.1 carried out paper publication (Form-G) on 09.04.2023 and in response to the same, the applicants had expressed their interest to submit a resolution plan as he is one of the promoters of the Corporate Debtor and a registered MSME.

b) As per the Expression of Interest approved by the Committee of creditors, the Eligibility Criteria for prospective resolution applicants to participate in the Expression of Interest was defined as under:

i) *In case of a private/ public limited company, LLP, AOP, body corporate, Partnership firms, Individuals whether incorporated in India or outside India:*

a) The prospective RA shall have a minimum tangible net worth of Rs.75 Crores as on 31st March 2022 based on audited financial statements of the RA and as certified by Statutory Auditor.

b) Minimum three years out of five years, company/ RA should be in profits and should submit 5 years audited financial statements along with provisional financial statements at EOI date while submitting expression of interest.

3. It is submitted that the applicants, in response to the paper advertisement, have expressed their interest to propose a proper resolution plan to the respondent. The applicant, on receipt of the documents, had submitted the Expression of Interest with the respondent, within the timelines, as specified in the Expression of Interest.

4. The Applicant submits that Respondent No. 1, resolution professional is mandated to verify whether the proposed resolution applicants are satisfied with the minimum eligibility criteria or not, as approved by the committee of creditors. In that process, the respondent/ resolution professional, after going through the detailed expression of interest submitted by these applicants found them ineligible as the applicants do not satisfy the minimum eligibility criteria approved by the committee of creditors and sought an explanation with respect to the same.

5. The Applicants placed the relevant case laws and it was mentioned that the minimum eligibility criteria for filing an expression of interest is not applicable to the promoters of an MSME corporate debtor who want to file the expression of interest. It appears that the respondent resolution professional also sought legal opinion on this particular issue of eligibility of promoters filing the expression of interest irrespective of the eligibility criteria fixed by the committee of creditors.

6. It is submitted that the Respondent/ Resolution Professional had shared the prospective resolution plans with the members of the committee of creditors and the promoters, along with the notice for the meeting of the committee of creditors of the corporate debtor. It was found by the applicant that the expression of interest proposed by the applicant was disqualified by quoting a reason that the eligibility criteria fixed by the committee of creditors is not met by the

applicant. But the applicant's contention is that it does not apply to them, being the erstwhile promoters of the MSME corporate debtor.

7. The Applicants further submit that during the meeting with the committee of creditors, the Respondent Resolution Professional also informed the Committee of Creditors that as per the legal Opinion sought by the respondent with respect to the particular issue of entertaining the expression of interest submitted by the erstwhile promoters in their individual capacity, it was opined that the EoI received from the promoters needs to be entertained irrespective of whether they satisfy the eligibility criteria or not. The respondent resolution professional sought the decision of the Committee of Creditors in view of the Legal Opinion and the case laws provided by the applicants for admission of their expression of interest.

8. The Committee of Creditors, after hearing the version of the applicant No.1 in the meeting and on the basis of the Legal opinion shared by the respondent, raised a query "is there any provision in IBC that the CoC must admit an Expression of Interest even if the same does not satisfy the minimum eligibility criteria". The respondent resolution professional informed the CoC that there is no such provision in IBC and in turn the CoC asked the Respondent Resolution Professional to take a call on the present issue of entertaining the expression of interest of the applicants.

9. The applicant submits that it is very pertinent to mention here that one of the ex-directors of the corporate debtor i.e., Mr. Sanjay Kumar Haridas attended the CoC meeting and objected to the applicants submitting the expression of interest, by quoting irrelevant reasons not connected to the ongoing corporate

insolvency resolution process and sought to extend the time limit for them to file an expression of interest. The Plea of Mr. Sanjay Kumar Haridas got rejected by the committee of creditors, informing him that they are not allowing him to file an expression of interest at this juncture. It was further submitted that the Committee of Creditors, for the reasons best known to them took the view of Mr. Sanjay Kumar Haridas, the erstwhile promoter, who has no locus to speak, sought the opinion of the respondent resolution professional in entertaining the expression of interest of the applicants herein.

10. The Respondent Resolution Professional is of the opinion and impression that the Judgments submitted by the Applicants and the Legal Opinion sought by her is not binding on her to approve the expression of interest and hence advised the Applicants to approach this Tribunal for proper directions.

11. The applicant submits that in the minutes of the meeting it is recorded that "The RP further informed the CoC members that the legal opinion is just an opinion and **judgements are not binding on the RP** and that the judgements will differ on case-to-case basis. There is no specific section or regulation to direct the RP to accept the EoI submitted by the suspended promoter director. The RP suppressed the fact that there is no prohibition against the Promoter other than prohibition under 29A which is not applicable to the Applicant. In view of the decision taken by the respondent resolution professional in rejecting the expression of interest submitted by the applicants, being the erstwhile promoters of MSME corporate Debtor and the applicants herein are compelled to present this application before this Tribunal for appropriate directions and exemption in satisfying the eligibility criteria so far

as it relates to "**net-worth**" as mentioned in the approved detailed expression of interest.

12. It is submitted by the applicant that he being the Promoter Director of the corporate debtor was keen on restarting the business operations of the units and is best suited to submit a workable, viable, and feasible Resolution Plan as he has 40 years of hands-on experience dealing with the Operational Creditors and Workman on a One-on-One basis. However, the eligibility criterion specified in the invitation to submit an Expression of Interest prescribed a Minimum "Tangible Net Worth of RS.75 Crores" for an individual who submits the Expression of Interest. Hence the expression of interest submitted by the applicant to the respondent Resolution Professional on 25.04.2023 has not been accepted.

13. Counter filed by the respondent in the application filed by the suspended director:

i) The respondent submits that regarding the discussion about the expression of interest submitted by the Applicant in the CoC meeting, it is submitted that the members of CoC, after elaborate discussions about the eligibility criteria specified and the relaxations under Section 240A of IBC to prospective Resolution Applicants in the corporate insolvency resolution process or pre- packaged insolvency resolution process of any micro, small and medium enterprises, expressed that the relaxations are not with respect to the eligibility criteria specified as per Section 25(h) and declared that the applicant does not meet the minimum eligibility criteria of a prospective resolution applicant.

ii) It is submitted that it is true that another Director of the Suspended Board raised objections to the EOI submitted by the Applicant on the ground that they have not given authorization to submit EOI with respect to the CD, but the RP clarified that the Applicant submitted EOI in his individual capacity.

iii) The respondent submits that the Applicant quoted the following Orders:

A) Orders passed by the Hon'ble NCLAT in Company Appeal (AT) (CH) (INS) No. 207/2021.

In the above referred case law, the appellant therein submitted that he will submit the net worth certificate and taking into consideration of the submission, the Hon'ble Appellate Tribunal passed orders. Therefore, the above referred case law is not applicable to the present case.

B. Orders Passed by Hon'ble Kochi Bench in IA (IBC) No.64/KOB/2021.

In the above referred case law the Hon'ble Tribunal Ordered the Applicant therein to submit the Resolution Plan under individual capacity and no other relief was granted. Therefore, the above referred authority is not applicable to the present facts of the case. Therefore, the RP rightly opined that Judgments referred and the legal opinion are not binding on the RP to approve the EOI.

iv) The averments made by the applicant that the RP suppressed the facts of eligibility criteria of the Applicant and rejected the EOI are strongly and vehemently denied and the Applicant is put to strict proof of the same. Respondent/RP informed the members of COC about the provisions of the Code and relaxations under Section 240A of the Code and also about the Legal Opinion. The Members of the COC, after elaborate discussions and considering the operations of the CD, opined that the Net worth criteria specified is to ensure that the Insolvency resolution Process of the CD will be completed successfully and rejected the EOI submitted by the Applicant.

v) The respondent submits that the Applicant being the Suspended Director of the CD till date, did not submit any information to the RP for smooth completion of the CIRP process like Audited financials for previous financial years, Provisional financials as on the CIRP commencement date, fixed assets register, accounting software backup, books of accounts etc. RP filed an Application against the Applicant u/s 19(2) of IBC, 2016 against their non-

cooperation which is before the Tribunal. The intention of the Applicant is to drag and derail the CIR process of the CD. Therefore, the Application is liable to be dismissed.

14. **RELIEFS SOUGHT:**

The Applicant has made following prayers before this Tribunal:

- a) Direct respondent No. 1 Resolution Professional to accept the Expression of Interest of the Applicant as Prospective Resolution Applicant under Section 240A of IBC since Corporate Debtor is a deemed MSME.
- b) Direct the Respondent 1, 2 & 3, the RP, and Committee of Creditors to relax the eligibility criterion requirement of the minimum tangible net worth of Rs.75 crores for the applicant/ promoter of Corporate Debtor in view of the settled position of law;
- c) Declare that since the Applicant is contesting the non-inclusion of his name in the provisional list to issue RFRP and IM to this applicant too, and the Resolution plan submitted by him to be accepted and dealt in accordance with law;
- d) Pass such other order or orders which this Tribunal may deem fit and proper in the circumstances of the case.

15. We have heard the learned counsels for the Applicant and the Respondent, Resolution Professional and have gone through the documents produced on record. The point to be considered in this case is:

“ Whether promoter of MSME unit, applicants herein, are also exempted from the other eligibility criteria spelt out

in RFRP other than the exemptions provided to them under section 29 A (c) and (h) vide application of section 240 A(1)”

16. This application is filed by two erstwhile directors of corporate debtor under CIRP which is registered as an MSME unit. The main grievance of the applicants is against the resolution professional who declared them ineligible to submit expression of interest as they are not meeting the criteria of Net Worth as stipulated in RFRP. Their submission is that being a MSME unit they are eligible for relaxation in meeting the eligibility criteria as laid down in RFRP.

17. The Applicants placed reliance on the orders passed by the Hon'ble NCLAT, Chennai in C.P.(AT)(CH)(INS) No. 207/2021. In the said order, the NCLAT has held, by way of reiteration, that if the Corporate Debtor is an MSME, it is not necessary for the promoters to compete with other resolution applicants to regain control of the Corporate Debtor. In the said case also, the resolution applicant did not submit the net-worth certificate, which was worth Rs. 2 crores. The NCLAT, for deciding the issue on hand, considered the Judgment in the case of Saravana Global Holdings Ltd and Anr. Vs. Bafna Pharmaceuticals Ltd. and Ors. In CP CA(AT)(INS) No. 203 of 2019, dated 04/07/2019, NCLAT, Principal Bench wherein the Principal Bench observed vide Paras 20 to 22 as under:

“20. The Committee of Creditors is to consider the feasibility, viability and such other requirements as has been specified by the Board. If it proposes maximization of the assets and is found to be feasible, viable and fulfil all other requirements as specified by the Board, the company being MSME, it is not necessary for the Committee of Creditors to follow all the procedures under the Corporate Insolvency Resolution Process. For example, if case is settled before the constitution of the Committee of Creditors or in terms of Section 12A on the basis of offer given by Promoter, in such case, all other procedure for calling of application of Resolution Applicant, etc. are not

followed. If the promoter satisfies all the creditors and is in a position to keep the Corporate Debtor as a going concern, it is always open to Committee of Creditors to accept the terms of settlement and approve it by 90% of the voting shares. The same principle can be followed in the case of MSME.

21. The Parliament with specific intention amended the provisions of the I&B Code by allowing the Promoters of MSME to file Resolution Plan. The intention of the legislature shows that the Promoters of MSME should be encouraged to pay back the amount with the satisfaction of the Committee of Creditors to regain the control of the Corporate Debtor and entrepreneurship by filing Resolution Plan which is viable, feasible and fulfils other criteria as laid down by the Insolvency and Bankruptcy Board of India.

22. Therefore, we hold that in exceptional circumstances, if the Corporate Debtor is MSME, it is not necessary for the Promoters to compete with other Resolution Applicants to regain the control of the Corporate Debtor.”

17.1 The appellant therein, however, stated that he will provide Net Worth Certificate at the time of submission of Resolution Plan. Considering the said fact, the applicant was also permitted to submit the Net Worth Certificate to the Resolution Professional. After having said so, in the paragraph that followed ie. Para No. 32 of the judgment, the NCLAT observed that *“In any event, it is unequivocal that the Corporate Debtor is an MSME and as held by this Tribunal that it is not necessary for the Promoters to compete with other Resolution Applicants to regain the control of the Corporate Debtor”*.

17.2 The object of the Code, which is maximization of the Value of the Assets of Corporate Debtor, is also taken into consideration by the NCLAT and it observed that in order to give an opportunity to regain the control of the Corporate Debtor, the Management/Promoters/Erstwhile Directors of the Corporate

Debtor being an MSME, need not compete with other Resolution Applicants.

18. The NCLT, Kochi Bench in IA(IBC) No. 64/KOB/2021 in IBA No. 52/KOB/2019, order dated 20th April, 2021 also dealt with a similar case, wherein, the Net Worth mentioned was Rs. 10 Crores. The applicant placed reliance on Saravana Global Holdings Ltd and Anr. Vs. Bafna Pharmaceuticals Ltd. and Ors. (cited supra). Relevant paragraphs of 20 to 22 from Saravan Global Holdings Ltd., as extracted by the NCLAT in its order, mentioned at Para No. 17, as above, were also extracted by the NCLT, Kochi.

19. The ratio laid down in the above judgments, would explain the rationale behind permitting MSMEs to submit resolution plan irrespective of they not submitting the Net Worth Certificate.

20. Reliance was also placed in Swiss Ribbons Pvt. Ltd. and Another Vs. Union of India and Others, 2019 SCC Online SC 73, rendered by the Hon'ble Apex Court, wherein, it was made clear that I&B Code envisages maximization of value of assets of the Corporate Debtor so that they are efficiently run as going concerns and in turn will promote entrepreneurship. It was observed that the liquidation can be ordered as a last resort if there is no Resolution Plan and the Resolution Plan submitted are not fulfilling the criteria laid down therein.

21. Hence, the objective in permitting the MSMEs to participate without furnishing the Resolution Plan Certificate is very well explained in the above judgements and following the ratios laid down in the said judgments, we deem it fit to allow this application.

22. In the result, the application is allowed and we:

- i) Direct Respondent No. 1 RP to accept the Expression of Interest of the Applicant as Prospective Resolution Applicant under section 240A of IBC since Corporate Debtor is a deemed MSME,
- ii) Direct Respondent 1, 2 & 3, the RP and Committee of Creditors to relax the eligibility criteria requirement of the minimum tangible net worth of Rs. 75 Crores for the applicant/promoter of Corporate Debtor, and
- iii) Declare that since the applicant is contesting the non-inclusion of his name in the provisional list to issue RFRP and IM to this applicant too, and the Resolution Plan submitted by him shall be accepted and dealt with in accordance with law.

23. Accordingly, **I.A.No. 805 of 2023 in CP (IB) No.10/7/HDB/2023** is allowed and stands disposed of.

Sd/-
CHARAN SINGH
MEMBER (TECHNICAL)

Vinod/kv

Sd/-
JUSTICE TELAPROLU RAJANI
MEMBER (JUDICIAL)