



**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU**
**(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)**
(Through Web-Based Video Conferencing)

IA No. 396 of 2023 in
C.P. (IB)No.89/BB/2021
U/s 31 & 60 (5) (c) of the IBC, 2016
R/w Rule 11 of NCLT Rules, 2016

In the matter of:

M/s Goldmine Online Hub Private Limited,

Registered Office at:
401, C Wing Building No. 10.
Chandivali Nisarg CHS Limited,
Mhada Colony, Andheri E,
Mumbai – 400 072.

... Applicant/Resolution Applicant
Versus

1. Sri Raghu Babu Gunturu

Resolution Professional of M/s Supreme Overseas
Exports India Private Limited
1st Floor, Plot No. 9/1, D.No.1-140/9/1D/NR,
Golden Heights, Sector III, Huda Techno Enclave,
Madhapur, Hyderabad,
Telangana 500 081.

... Respondent/Resolution Professional

2. State Bank of India,

Stressed Assets Management Branch,
R/Off: LHO Office Complex, 2nd Floor,
No. 65, St. Marks Road,
Bengaluru 560 001.

... Respondent/CoC Member

3. Drip Capital

555, Bryant Street, #356,
Palo Alto, CA 94301, United State of America
Represented by Signing Authority



Ms. Tanvi Fifadra at Solitaire Corporate Park,
2nd Floor, Guruhargovindji Marg,
Andheri, Ghatkopar Link
Mumbai, Maharashtra 400 086.

... Respondent/CoC Memeber

Order Delivered on: 22nd November, 2023

Coram: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant : Shri Srinivasulu

For the RP : Shri Vineeth Reddy with
Shri Raghu Babu Gunthutu, RP

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present application is filed on 13.06.2023 by the Applicant M/s Goldmine Online Hub Private Limited under Section 31 & 60(5) & Regulation 39 of CIRP Regulations of IBC, 2016 read with Rule 11 NCLT Rules, 2016 interalia seeking to direct the RP and the Committee of Creditors to examine the Resolution Plan submitted by the Applicant as to whether it complied with the provisions of IBC and if complied to present to the Committee of Creditors for approval of the Resolution Plan.
2. Submissions made by the Applicant is as follows:
 - a. It is submitted that this Tribunal vide order dated 07.06.2022 in C.P (IB) No. 89 of 2021 had admitted the company petition filed by State Bank of India under section 7 of IBC, 2016 against the Corporate Debtor. further, Respondent No.1 was appointed as IRP and



subsequently CoC confirmed him as Resolution Professional and the said was confirmed by this Tribunal vide order dated 22.08.2022.

- b. Accordingly, the Resolution Professional has invited for Expression of Interest from the prospective Resolution Applicants on 24.08.2022 and the last date for submission of Resolution plan as per Form G was on 23.10.2022. It is submitted that the Applicant has submitted their Resolution Plan on 04.05.2023 for Rs. 16.50 Crores and Expression of Interest. However, the RP without looking into merits of the matter or plan returned the Resolution Plan along with his Demand Drafts for Rs. 50 Lakhs paid towards EMD.
- c. It is submitted that the Resolution Applicant has sound source of funds and group companies from internal sources by way of share capital and or unsecured loans to the tune of Rs. 16.50 Lakhs. The RA shall pay the amount of performance guarantee amounting to 10% of the Resolution amount of Rs. 300 Lacs which ever higher as mentioned in RFRP. It is submitted that the RP without placing the Resolution Plan before the CoC has returned the plan submitted by the Applicant vide his email dated 03.06.2023.
- d. Further, it is submitted that the Resolution Professional has filed I.A recommending for liquidation of the company. Moreover, if the liquidation is ordered by this Tribunal, the creditors of the company may not yield considerable good amounts not even proposed by the Resolution Applicant. it is submitted that the main purpose of enactment of statute is to bring the CIRP into logical end and not to neck the company into liquidation or dissolution. Hence the present Application.

3. The Learned Counsels for the respondent filed their reply submitting as follows:



- a. It is submitted by the Learned Counsel for the RP that as per Regulation 36A of IBBI (CIRP) Regulations, 2016 public announcement inviting the Expression of Interest (EOI), for submissions of Resolution Plan from the prospective Resolution Applicant was issued in Newspapers on 24.08.2022. further, as per the contents of the Form G, the last date for the submission of the EOI was 08.09.2022, last date for the issuance of the Provisional List of the Prospective Resolution Applicants was 18.09.2022, the last date for the issuance of Final List of PRA's was 03.10.2022 and the last date for the submission of Resolution Plan was 23.10.2022.
- b. Further, as per the Final List of PRA's there were three PRAS', i.e., Kundan Care Products Limited, Mr. Sivachaitanya Saikam and consortium of Mr. Bhumireddy Gari Mohan Reddy and Mrs, Pushpalata Bai. It is also further submitted that the EResolution Plan submitted by one of the Resolution Applicants namely Mr. Siva Chaitanya Saikam was not approved by the CoC and the member of the CoC approved the resolution to liquidate the Corporate Debtor with a voting share of 96.55%. The liquidation IA was also filed before this Tribunal on 06.04.2023 and is currently pending.
- c. Moreover, the resolution plan was submitted by the Applicant after the CoC has decided to liquidate the Corporate Debtor and the same cannot be considered as per the extant provisions of the Code.
- d. It is further submitted that as per Section 5 (26) of the Code "Resolution Plan" means a plan proposed by Resolution Applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II. Further, as per section 5 (25) of the Code, " Resolution Applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made



under clause (h) of sub-section (2) of section 25. Moreover, as per Section 25(2)(h) of the Code, “the Resolution professional shall undertake to invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board to submit a resolution plan or plans.”

- e. It is submitted that since the applicant failed to file his EOI within the stipulated time, consequently his name was not included in the Final List of PRAs’ as per Regulation 36A (10) of CIRP Regulations. Therefore, as per the provisions of law, a person whose name is not included in the list of Prospective Resolution Applicant is not eligible to submit a Resolution Plan. Accordingly, it is not incumbent upon the Resolution Professional/Committee of Creditors to consider the Resolution Plan submitted by the Applicant as the same is not submitted by a Prospective Resolution Applicant and such a plan cannot be termed as Resolution Plan.
 - f. Further, Learned Counsel for the Financial Creditor, SBI, submits that the plan of Rs. 16.50 crores by the applicant provides for only Rs. 14.50 crores for various stakeholders, the balance of Rs. 2.00 crores will be provided for Capital expenditure. It is pointed out that in CoC a resolution Plan of almost an equal value was rejected, as the same was not found to be commercially viable. It is submitted that the Plan submitted by the Applicant is not commercially viable and not acceptable to the Respondent No.2, having the voting share of 96.55%.
4. The Learned Counsel for the Applicant filed his Rejoinder and the same is taken on record. On 21.09.2023, this Tribunal directed the parties to file written submissions and the complied is by the Applicant vide diary date 4983 and the same is taken on record.



5. Heard the Counsel for both the parties and perused the records available.
6. The present petition is filed by Resolution Applicant M/s Goldmine Online Hub Private Limited seeking direction from this Tribunal to RP and CoC to consider the Plan submitted by the Applicant.
7. On perusal of the records it is observed that the RP has issued public announcement for inviting the EOI on 24.08.2022 and the last date for submission of EOI was 08.09.2022. However, the Resolution Applicant/Applicant has submitted his EOI only on 04.05.2023. Further, it is pertinent to note that 9th CoC meeting held on 04.03.2023 had decided with 96.55% to liquidate the corporate debtor. the Applicant has submitted the EOI at a very belated stage that is even after approval for liquidation of the corporate debtor by the CoC. The I.A for liquidation was filed in this Tribunal on 06.04.2023; i.e., much before this application was filed by the Applicant.
8. One of the contention raised by the Respondent No. 2, Financial creditor of the Corporate Debtor, who is holding 99.55% of the voting share is that the Plan submitted by the Applicant is not commercially viable and not acceptable by Respondent No.2/Financial Creditor. It is further submitted that the Plan for Rs. 16.50 crores by the applicant provides for only Rs. 14.50 crores for various stakeholders, the balance of Rs. 2.00 crores will be provided for Capital expenditure and the said is not acceptable by Respondent No.2.
9. Further it is relevant to point that Regulation 36 A (6) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that “ *the expression of interest received after the time specified in the invitation under clause (b) of sub-regulation (3) shall be rejected.*”
10. Hence considering the facts and circumstance of the case. This tribunal is of the considered opinion that the EOI and the resolution plan is submitted at a very belated stage and the Financial Creditor holding



99.55% of the voting share in the CoC has also filed its objection in considering the plan. Hence this Tribunal is not inclined in allowing the Application filed by the Applicant. Accordingly, I.A No. 396 of 2023 is **dismissed.**

-Sd-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd-

**(T. KRISHNAVALLI)
MEMBER (JUDICIAL)**