



IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
INTERLOCUTORY APPLICATION NO. 4300 OF 2023

IN
CP(IB) NO. 1738/MB/2017

*Application u/s 60(5) of the Insolvency and
Bankruptcy Code, 2016*

In the matter of:

Pravin Shivdas Herlekar

...Applicant

Versus

1. **Mr. Ajit Kumar,**

The Resolution Professional of
Omkar Speciality Chemical Ltd.

2. **Committee of Creditors** of
Omkar Speciality Chemical Ltd.

...Respondents

In the matter between

M/s. Ela Enterprise

...Operational Creditor

v/s.

Omkar Speciality Chemical Limited

...Corporate Debtor

Order pronounced on 11.01.2024.

Coram:

Shri. Kuldip Kumar Kareer : Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearances (Hearing in physical mode):

For the Applicant: Adv. Amir Arsiwala i/b Adv. Navin Arora.

For the Respondent: Adv. Amey Hadwale.

ORDER

Per: Shri. Anil Raj Chellan, Member (Technical)

1. The present interlocutory application is filed by the Applicant, who is the erstwhile promoter of Omkar Speciality Chemical Limited ('Corporate Debtor') seeking direction to the Respondent No.01/Resolution Professional and the Respondent No.02/Committee of Creditors, inter-alia, to accept the resolution plan submitted by the Applicant and consider the same on its merits, to consider the Applicant as Prospective Resolution Applicant, or in the alternative to aforesaid prayers, to direct the Respondent Nos. 01 and 02 to issue a fresh Form 'G' inviting Expression of Interest ('EoI') in order to accept the EoI from the Applicant.

2. Facts of the case:

- i. The petition for initiation of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor was admitted by the Tribunal vide its Order dated 05.12.2022 and appointed Mr. Arun Ramchandra Gaikwad as Interim Resolution Professional ('IRP') of the Corporate Debtor.
- ii. In accordance with the Regulation 36A of CIRP Regulations, the IRP published an announcement dated 15.02.2023 inviting Prospective Resolution Applicants ('PRAs') to express their interest in submitting

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their resolution plan. The said invitation contemplated 02.03.2023 as the cut-off date for submission of EoI.

- iii. The second meeting of the Committee of Creditors ('CoC') held on 06.02.2023 resolved to replace IRP and appoint Mr. Ajit Kumar (i.e. the Respondent No.01) as the Resolution Professional ('RP') of the Corporate Debtor. This Tribunal also confirmed appointment of Mr. Ajit Kumar as RP of the Corporate Debtor vide Order dated 15.03.2023.
- iv. CoC in its third meeting held on 17.04.2023 resolved to publish a fresh EoI in Form G and accordingly, published public announcement dated 27.04.2023 inviting PRAs to express their interest in submitting the resolution plan. The said invitation contemplated 13.05.2023 as the cut-off date for submission of EoI.
- v. The Applicant submitted that the Applicant was in advanced discussion with one another party for jointly submitting a resolution plan, but on account of the other party backing out from the resolution plan, the Applicant could not submit the resolution plan within the cut-off date of 13.05.2023 for submission of EoI as per Form 'G' dated 27.04.2023. While the Applicant approached the Respondent No.01 vide email dated 26.06.2023 for granting him an opportunity for submission of resolution plan, the RP refused to accept the same referring to Regulation 36A(6) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The repeated requests of the Applicant were refused by the Respondent.
- vi. In this background, the Applicant has filed the present application seeking directions to accept the resolution plan submitted by the Applicant and consider the same on its merits.


- vii. The Respondent though entered his appearance but has chosen not to file his reply.

Submission of the Applicant:

3. The Applicant submitted that the Corporate Debtor is an MSME and the Applicant is an erstwhile promoter/director of the Corporate Debtor. The Applicant submits that he was prevented by reasons beyond his control from submitting the EoI within the cut-off date and that granting an opportunity to the Applicant would enhance the chances of revival of the Corporate Debtor which is the essence and object of the Code.
4. In support of his contentions, the Counsel for the Applicant relied upon the decision of Hon'ble NCLT, Mumbai Bench in the case of Omkara Asset Reconstruction Private Limited v/s. Resolution Professional of Unimark Remedies Limited, wherein a resolution plan was accepted beyond the date as fixed by the CoC. The learned Counsel also referred to the decision of Hon'ble NCLAT in C. Raja John v/s R. Raghavendran, Company Appeal (AT)(CH)(Ins.) No. 207/2021, where a differential treatment to the promoters in the case of MSME was considered.

FINDINGS

5. We have heard the learned Counsels for the Applicant and the Respondent and we have carefully gone through the pleadings and the documents and materials placed on record.
6. The present application has been filed by the erstwhile promoter of the Corporate Debtor seeking directions to the Respondents, inter alia, to consider



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the resolution plan submitted by the Applicant on its merits or in the alternative, to direct the Respondents to restart the process by issuing a fresh Form G inviting expression of interest in order to accept the EoI from the Applicant. The reason given by the Applicant for lately expressing his interest to submit a resolution plan beyond the cut-off date is that the Applicant was in advanced discussion with one another party for jointly submitting a resolution plan, but on account of the other party backing out from the plan, the Applicant could not submit the resolution plan within the cut-off date of 13.05.2023 for submission of EoI as per Form G dated 27.04.2023. While the Applicant approached the Respondent No.01 on 26.06.2023 for granting him an opportunity for submission of resolution plan, the Respondent refused to accept the same referring to Regulation 36-A (6) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Counsel for the Applicant submits that the Applicant was prevented by the reasons beyond his control from submitting the EoI within cut-off date and that granting an opportunity to the Applicant to submit plan would enhance the chances of revival of the Corporate Debtor since the Applicant, who was the promoter, had incorporated the Corporate Debtor and the Applicant has a very fine understanding of the business operations and is therefore better placed to revive the Corporate Debtor. In support of the Applicant's contentions, the Counsel for the Applicant has relied upon the decision of Hon'ble NCLT, Mumbai Bench in the case of Omkara Asset Reconstruction Private Limited v/s. Resolution Professional of Unimark Remedies Limited, wherein a resolution plan was accepted beyond the date as fixed by the CoC. The learned Counsel also referred to the decision of Hon'ble NCLAT in C. Raja John v/s R. Raghavendran, Company Appeal (AT)(CH)(Ins.) No. 207/2021, where a differential treatment to the promoters in the case of MSME was considered.

7. We have carefully weighed and examined the contentions placed on behalf of the Applicant.
8. Regulation 36-A (6) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (being hereinafter referred to as 'CIRP Regulations' for the sake of brevity) as modified by Notification No. IBBI/2018-19/GN/REG031 dated 03-07-2018 (w.e.f. 04-07-2018) provides that the expression of interest received after the time specified in the invitation under clause (b) of sub-regulation (3) **shall** be rejected. Thus, the contention of the Applicant that the Respondent No.01 has acted arbitrarily by refusing to accept the EoI from the Applicant after cut-off date is untenable.
9. Adherence to the timelines and cut-off dates as published in Form-G has been made mandatory to provide equal opportunity to all the resolution applicants and there cannot be any selective opening of window for certain resolution applicants, even in the case of MSMEs, to participate in the resolution process of the Corporate Debtor after the expiry of cut-off date. The CIRP Regulations provide a detailed process for invitation of expression of interest, submission of EoI, conducting due diligence of PRAs, preparation of provisional list of eligible PRAs, opportunity for raising objections regarding inclusion or exclusion of a PRA and preparation of final list of PRAs. All of the above steps are required to be completed in the manner and the time frame prescribed under the CIRP Regulations. The extension of deadlines as provided under IBC, 2016 would run counter to the very objective i.e., to resolve insolvency of the Corporate Debtor in a time-bound manner, as there would be greater erosion of assets of the Corporate Debtor and may push the creditors into greater financial difficulties due to delay in receiving their dues.

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10. Counsel for the Applicant has relied upon the ruling of the Hon'ble NCLAT in C. Raja John v/s R. Raghavendran, Company Appeal (AT)(CH)(Ins.) No. 207/2021, wherein it was held that 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. However, in this regard, we wish to state and observe that the aforesaid ruling of the Hon'ble NCLAT has been reversed by the Hon'ble Supreme Court of India in R. Raghavendran v/s. C. Raja John & Ors vide Judgment dated September 13, 2023 in Civil Appeal No. 2552/2022. Therefore, it is of no avail to the Applicant.
11. Even otherwise, the reasons stated in the application for late submission of EoI are unsubstantiated and also do not justify a direction to start the process afresh by issuing a fresh Form G inviting EoI.
12. Therefore, in our considered view, the Respondent No.01 has rightly rejected the EoI which is submitted beyond the timeline as mandated under the Regulation 36-A (6) of the CIRP Regulations and this Adjudicating Authority finds no error in the decision of the Respondent No.01 in rejecting the EoI that is filed belatedly. The application cannot be justified both in law and facts. The Applicant has not given a valid reason or proper and satisfactory explanation justifying the delay in filing the EoI, in any event, we find that the Respondent No.01 has rightly exercised his power under Regulation 36-A (6) of the CIRP Regulations. In view of the above, **I.A No. 4300 of 2023 is hereby dismissed.**

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)