

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

**I.A. No.111 of 2020 in**  
C.P. (IB) No.43/BB/2019  
U/s 60(5) of the IBC, 2016  
R/w Reg. 36A of CIRP Regulations  
& Rule 11 of the NCLT Rules, 2016

&

**I.A. No.129 of 2020 in**  
C.P. (IB) No.43/BB/2019  
Under Rules 11 and 32 of NCLT Rules, 2016  
R/w Section 60(5)(c) of the IBC, 2016

**For IA No.111 of 2020:**

**BETWEEN:**

Bilagi Sugar Mill Limited  
*Prospective Resolution Applicant*  
No.06, Prashant, KHB Colony,  
Kaladagi Road,  
Bagalkot – 587 102.

- Applicant

**AND**

Mr. M.V. Sudarshan  
*Resolution Professional of*  
*M/s. Badami Sugars Limited*  
Chalukya Nagar, Badami Taluk,  
Bagalkot – 587 201.

- Respondent

**For IA No.129 of 2020:**

Shri Sai Priya Sugars Limited  
No.S 904, 9<sup>th</sup> Floor, World Trade Center,  
Brigade Gateway Campus,  
26/1, Dr. Rajkumar Road,  
Malleshwaram West,  
Bangalore – 560 055.

- Impleading Applicant

**Order Pronounced on: 29<sup>th</sup> May, 2020**

**Coram:**

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)



**Parties/Counsels Present:**

- For the Applicant : Mr. Dhyan Chinnappa, Senior Counsel  
Mr. Vijay Narayan, Advocate
- R.P. / Respondent : Mr. M.V. Sudarshan
- For Impleading Applicant : Mr. Uday Holla, Senior Counsel with  
Mr. Perikal K. Arjun, Advocate

**ORDER**

***Per: Ashutosh Chandra, Member (Technical)***

1. **I.A. No.111 of 2020** in C.P. (IB) No.43/BB/2019 is filed by 'Bilagi Sugar Mill Limited' Prospective Resolution Applicant (hereinafter referred to as the 'Applicant') U/s 60(5) of the IBC, 2016, r/w Regulation 36A of CIRP Regulations & Rule 11 of the NCLT Rules, 2016, by inter alia seeking to allow the Applicant to be impleaded in the instant petition; to condone the delay for reasons stated by the Respondent in Annexure C, that the timelines as specified in Form G in Annexure B as lapsed and allow the applicant to submit expression of Interest and Resolution Plan; etc.
2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:
  - (1) The Applicant is a company incorporated under the provisions of the Companies Act, 1956, having its registered office address at No. 6, Prashant, KHB Colony, Kaladagi Road, Bagalkot-587102. The Applicant is in the representative capacity as one of the 'Prospective Resolution Applicant' to the Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and participation of the Applicant is germane to the present proceedings as a proper and necessary party.
  - (2) The Respondent is a IRP/Resolution Professional appointed by the Adjudicating Authority to administer the affairs of the Corporate Debtor, and to oversee the Corporate Insolvency Resolution Process of Corporate Debtor, vide order dated 27.09.2019 passed in C.P. (IB) No. 43/BB/2019. Code, 2016. Accordingly, the Respondent caused Public



Announcement seeking / invitation for expression of interest, in Form G on 05.12.2019, by fixing 26.12.2019 as last date for the submission of such expression of interest. However, the Applicant is pleading ignorance of these developments. He has further contended that the CIRP process had commenced, and was underway only in the first week of February 2020.

- (3) It is contended that the Executive Chairman of the Applicant Company was busy, and was frequently travelling on business over the last few months, including to foreign locations, and as a result, missed the publication of the Form G in the newspapers. Consequently, the Applicant was not aware that the last date for the submission of the expression of interest was 26.12.2019, and the last date for the submission of Resolution plans was 09.02.2020. As a result, the Applicant missed the deadline for filing of the expression of interest and the Resolution Plan. The delay in submitting the EOI or the Resolution Plan is neither deliberate nor wanton and is purely on account of the reasons beyond their control. Since Resolution Plans are yet to be accepted, the Applicant addressed an email communication dated 15.02.2020 to the Respondent furnishing all the relevant documents and verbally requesting him to kindly condone the delay in submitting the expression of interest, and permit the Applicant to submit the Resolution Plan at the earliest. The Applicant also undertook to submit the Resolution plan at the earliest, with a view to ensure that no delays are caused.
- (4) The Applicant was hopeful that given their experience and expertise in the very same industry, their expression of interest would be duly considered. The Applicant also met the criteria specified by the Committee of Creditors for prospective Resolution Applicants, and the Applicant does not suffer from any infirmity that is specified in section 29A of the Code. The Applicant also undertakes to intimate the Resolution Professional if it becomes ineligible at any time during the Corporate Insolvency Resolution Process, and also to maintain



confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of Section 29. For all these reasons, the Applicant thought that it would be given a fair opportunity to participate in the CIRP, given the objective of the I&B Code, 2016.

(5) It is stated that to its surprise, the Applicant was informed by way of an email dated 16.02.2020 from the Respondent that the expression of interest of the applicant was being rejected on the ground that the timelines as mentioned in Form G have expired for submission of EOI and Resolution plan without appreciating and scrutinizing the plan on its merits. Aggrieved by the said email communication, the present application, is filed on the following, among other grounds:

- a) The Impugned email communication is contrary to the spirit of the I&B Code, 2016, which is to ensure that the value of the assets and business of a Corporate Debtor is maximized. It is a well-established principle that in a competitive bidding process, having multiple bidders is likely to ensure that the highest value is obtained. The Respondent lost sight of this principle, as well as the fundamental objective of the I&B Code, 2016. Furthermore, the Respondent ought to have accepted the belated expression of interest submitted by the Applicant. Given that, Committee of Creditors is yet to approve the Resolution Plans, Respondent yet to seek approval of the Resolution Plan from this Tribunal, the Respondent ought to have granted the opportunity to the Applicant to submit the EOI and Resolution Plan, in the interests of Corporate Debtor and its various creditors and stakeholders.
- b) The Respondent ought to have considered that upon admission of a petition, the proceeding becomes one *in rem*, and the Committee of Creditors, is required to act not only in its own best interests, but also those of all the creditors and stakeholders of Corporate Debtor, with

a view to ensure that the business is revived. The Resolution Professional or the Committee of Creditors can certainly receive the Resolution Plan even after the expiry of the date of the last day of submission of EOI so long as the CIRP period has not elapsed and/or any other Resolution Plan has not already be accepted by the Committee of Creditors.

- c) The Respondent failed to note that by allowing the Applicant to submit a Resolution Plan, no prejudice whatsoever would be caused to any person. To the contrary, having additional bidders enter the process would only serve to enhance the process, and maximize the value not just for the committee of creditors, but also for all the other creditors/stakeholders of Corporate Debtor.
- d) The Respondent ought to have considered that the Insolvency and Bankruptcy Code, 2016 was introduced not with the objective of seeing that Companies get liquidated, but to ensure that a mechanism whereby companies which are in state of insolvency can be revived, is created. By rigidly adhering to timelines, the Respondents have given a go by to the true spirit of the Insolvency and bankruptcy Code, 2016. Further, the Respondents ought to have noted that the Hon'ble Supreme Court of India, as well as the various Hon'ble High Courts and the Hon'ble National Company Law Appellate Tribunal have held that the timelines prescribed in the I&B Code, 2016 are only directory and not mandatory in nature. Given that the timelines, in this instance, were in the way of ensuring the revival of the Corporate Debtor, the Respondents ought to have provided an opportunity to the Applicant. It is well-settled principle that procedure cannot defeat substantial rights of parties.
- e) They have relied upon the judgements rendered by Hon'ble NCLT and Hon'ble NCLAT in support of their case:  
*Punjab National Bank Vs. Bhushan Power & Steel Ltd.*, NCLT New Delhi, CA No. 152/PB/2018 in CP(IB) No. 202/PB/2017;



*Sharda Energy & Minerals Ltd. Vs. Impex Metal & Ferro Alloys Ltd.*, NCLT Kolkata, CA(IB) No.641/KBH/2018 in CP No. 176/KB/2018; *Binani Industries Ltd. Vs. Bank of Baroda*, NCLAT, CA (AT) (Insolvency) No.82 of 2018; *SBI Vs. Adhunik Alloys & Power Ltd.*, NCLT Kolkata, CA (IB) No. 1086/KB/2018 and CA (IB) No. 1092/KB/2018 in CP (IB) No. 387/KB/2017; *Canara Bank Vs. Deccan Chronicle Holdings Ltd.*, NCLT Hyderabad, I.A No. 253 of 2018 in C.P. (IB) No. 41/07/HDB/2017.

- f) The Respondent also lost sight of the fact that by not even considering the expression of interest of the Applicant, and summarily rejecting the same, the Respondents violated the principles of natural justice, which is a cornerstone of any administrative action. Furthermore, the Respondent, who is acting in a statutory capacity, in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016, is duty bound to grant the Applicant with at least an opportunity to present its case. The Committee of Creditors, while being well within their rights to reject the proposal of the Applicant on merits, cannot do so in a mechanical manner. The Applicant would be put to a great hardship, irreparable loss and injury if the Impugned email communication is not set aside. Not just the Applicant, but the same would affect the scores of creditors, employees and other stakeholders of Corporate Debtor, including the Corporate Debtor in the present case. Per contra, no hardship or damage will be caused to Respondents if the impugned email communication is set aside.
3. The Respondent has opposed the instant Application by filing statement of objections dated 02.03.2020, by inter alia contending as follows:
- (1) He was duly appointed IRP/RP as per admission order dated 27.09.2019. He published an invitation for expression of interest ('EOI') in Form G on 05.12.2019 under CIRP Regulation 36A (1) The invitation stipulated 26.12.2019 as the last date for receiving EOIs. However, the

Committee of Creditors ('CoC') requested the RP to extend the deadline to 30.12.2019 to accommodate any other EOIs that could be received, if any. Accordingly, the deadline for submission of EOIs was extended till 30.12.2019. He has filed five detailed progress reports, till date before the Tribunal to keep this Tribunal abreast with the progress of the CIRP. The RP has been diligent in performing his statutory duties with the support of the CoC and has not missed any deadlines by causing inordinate delays.

- (2) It is true that the Applicant addressed an e-mail to the RP on 15.02.2020 by furnishing the Applicant Company's Certificate of Networth and other documents and requested the RP to condone the delay in submitting the EOI and undertook to submit the resolution plan at the earliest. The RP replied to the e-mail addressed by the Applicant on 16.02.2020 and invited the Applicant's attention to the deadlines prescribed in the invitation for EOI, Evaluation Criteria, and Evaluation Matrix and that the bids were opened on 11.02.2020. The RP also pointed out the relevant provisions under the CIRP Regulation, 2016 to the Applicant and accordingly rejected the EOI of the Applicant.
- (3) At this juncture, it is relevant to highlight that in the 2<sup>nd</sup> CoC meeting, specific criteria for prospective resolution applicants was discussed and it was resolved by the CoC on 31.12.2019 that, the Minimum Tangible Net Worth ('TNW')/ Net Owned Funds ('NOF') for a private/public limited Company/LLP/Body Corporate/any other applicant, shall be a minimum of 100 crores at the Group level in the immediately preceding completed Financial Year. As could be clearly seen from the Applicant Company's Networth certificate declared by their Chartered Accountant, as on 31.03.2019, the Applicant's TNW stood at Rs.38,98,92,422/-. It is also pertinent to highlight the Brickwork ratings of the Applicant Company in which the audited TNW for the year 2018 stood at 41.48 Crore. In the year 2019, it has dwindled to Rs.38.98 Crore.
- (4) It is further contended that the Applicant has only paraded the delay aspect in submitting the EOI, but has not taken note off the TNW/NOF



criteria resolved by the CoC for a private limited Company to be a prospective Resolution Applicant. This Criterion is resolved by the CoC in accordance with Section 25(2)(h) of the IBC having regard to the complexity and scale of operations off the business of the Corporate Debtor. The two Resolution plans received have qualified the TNW criteria. The consideration of resolution plan by the RP of a Company, which fails to meet the TNW criteria may unnecessarily lead to other persons, who fail to meet the eligibility criteria, expressing their interest and submitting their resolution plans. Under such circumstances, the Applicant was clearly barred from being a prospective resolution applicant.

- (5) The Resolution Professional is following the timelines set in the Code and the relevant Regulations so far. He has also issued a notice under Regulation 36 A (12) of CIRP Regulation and finalized the list of Prospective Resolution Applicants and circulated the same to Members of CoC on 19.01.2020 through e-mail. Further the RP would not have any power to accept any EOI after publishing the Notice under 36A (12).
- (6) The rejection of EOI by the RP was backed by the CIRP Regulations, the relevant provision iterated as under:

*Regulation 36A (6): The expression of interest received after the time specified in the invitation under clause (b) of sub-regulation (3) shall be rejected.*

The legislature was wise in its wisdom to use the word 'shall' to reject any EOI received after time lapse. Regulation 36 A substituted the erstwhile Regulation 36A vide notification dated 03.07.2018 w.e.f. 04.07.2018 bearing number IBBI/2018-19/GN/REG 031. The erstwhile Regulation 36A did not expressly stipulate to reject the EOIs received at a belated stage. The Legislature has cautiously substituted the present Regulation 36A which gives no discretion whatsoever for the RP to consider EOIs received after time lapse. Therefore, the RP did not have any discretion to entertain the EOI by the Applicant, after the lapse of

deadline specified in the invitation, much less the Applicant who did not meet the evaluation criteria as well.

- (7) It is contended that the questionable motives of the Applicant Company are to be gathered from the circumstances under which the Applicant Company has approached this Tribunal with unclean hands, by suppressing facts. One Mr. Shivanagowda Rudragowda Patil, one of the Directors of HDM Infrastructure Private Limited, is also a Director at the Bagalkot District Central Co-operative Bank Ltd., which bank is lead banker to the consortium arrangement for lending to the Corporate Debtor and also a member of the CoC. It was well within the knowledge of the Applicant that the CoC would meet on 28.02.2020 to accept the resolution plan. At the penultimate stage of the CIRP, the Applicant Company chose to address an e-mail to the RP and then to approach the Tribunal by filing the application under reply seeking sustainable prayers. The Application under reply is a clear abuse of process of law with mala-fides to disrupt the CIRP.
- (8) On perusal of the application, it can be seen that the Applicant, at prayer (iv) sought an interim order of injunction to restrain the CoC from approving any resolution plan. Under such circumstances, the ulterior and wavering motives with which the Applicant has approached this Tribunal by filing the application under reply is but questionable and the irreparable injury that will be caused to the CoC is beyond expression. The CoC consists of 17 Financial Creditors, who have, after detailed discussion and considering both the Resolution Plan placed before it has resolved to go with Resolution Plan 2 submitted by M/s. Sai Priya Sugars Ltd. With 100% majority on 28.02.2020.
4. Heard Mr. Vijay Narayan, learned Counsel for the Applicant, and Mr.Sudarshan learned Resolution Professional/Respondent. We have carefully perused the pleadings of the Parties, and the extant provisions of the Code and the Rules made thereunder, as also the cases cited in support.



5. The objectives of the Code inter alia are to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals **in a time bound manner** for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues etc. The Code contemplates principles of natural justice while deciding the issues/matters arising under the provisions of Code while keeping in mind the objectives of Code.
6. The issues arising for consideration in the instant Application are whether the Applicant is a proper and necessary party to be impleaded in the main Company Petition, whether it has come with a bona-fide claim and reasons for seeking extension of time lines in the CIRP; and whether any prima facie case is made out on merits for any interference to be made by this Authority.
7. As detailed supra, basic facts about the commencement of the CIRP vide order dated 27.09.2019, steps taken by the RP, Public Announcement seeking / invitation for expression of interest, the last date for the same, the treatment of the Applicant's EOI etc. are not in dispute and are part of record. However, the Applicant pleads ignorance of the same and contends that the CIRP started only in the first week of February 2020. This assertion we find to be patently untenable as the Code itself prescribes that the CIRP commences on the date the Petition u/s 7 or 9, as the case may be, is admitted, which in this case was 27.09.2019.
8. Further, the Applicant has made an even more unacceptable averment that the Executive Chairman was busy, and was frequently travelling abroad and missed the newspaper publication calling for EOIs and was unaware of the last dates i.e. 26.12.2019 and 09.02.2019 for submission of EOI and Resolution Plan respectively. This is a patently bald statement without any merit whatsoever, keeping in view the strict timelines provided in the Code for completion of the CIRP. The same is liable to be rejected.



9. On the other hand the RP has followed the timelines prescribed in the Code and the Regulations in regard to the conduct of the CIRP. The list of prospective RAs was finalised after issue of notice under Regulation 36A (12) and circulated to the CoC members on 19.02.2020, a copy of which has been filed. As per this Regulation the RP had no option but to reject delayed EOIs. There is nothing questionable in the process followed by the RP that requires our intervention.
10. Further, we find that in the 2<sup>nd</sup> CoC meeting, specific criteria for prospective resolution applicants was discussed and it was resolved by the CoC on 31.12.2019 that, the Minimum Tangible Net Worth ('TNW') / Net Owned Funds ('NOF') for a private/public limited Company/LLP/Body Corporate/any other applicant, shall be a minimum of 100 crores at the Group level in the immediately preceding completed Financial Year. However, as per Applicant Company's Networth certificate declared by their Chartered Accountant, as on 31.03.2019, its TNW stood at Rs.38.99 Crore. This was lower than its Brickwork ratings for 2018 when its audited TNW stood at 41.48 Crore. Therefore, though the case of the Applicant was rejected on the ground of delay, it was also considered on merits / eligibility against the broad parameters laid down by the CoC. Hence, as the Applicant did not meet the basic criteria, apart from attempting a consideration of its delayed application by the RP, no purpose would be served in condoning the delay as prayed for. This also works against the objects of the Code, namely conduct of a time bound resolution process. Further, undue delay can lead to diminution in the value of the assets of the Corporate Debtor, which works against the basic objective of maximisation of the value of assets. Hence, we are of the considered view that the Applicant has failed to make out any case as to why it should be permitted to be impleaded in the main Petition, and no case is made out for any interference by this Adjudicating Authority in the CIRP. The RP may continue with the process, keeping in mind the provisions of the Code and the Rules framed in this regard, and the timelines mentioned therein.



11. In the above circumstances, the IA No.111 of 2020 in CP (IB) No.43/BB/2019 is dismissed, being devoid of merits.
12. During the pendency of the above IA 111 of 2020, on 02.03.2020, an IA has been filed by M/s Shri Sai Priya Sugars Ltd, Bangalore, (hereinafter referred to as 'Impleading Applicant') numbered as I.A. No.129 of 2020 in C.P. (IB) No.43/BB/2019, seeking to be impleaded in the proceedings in I.A. No.111 of 2020. In the said IA, it is stated that insolvency commencement date in the said Petition was 27.09.2019. As per the invitation for EOI dated 05.12.2019 published in pursuance to the commencement of insolvency, the last date for submission of the resolution plan by resolution applicants was 09.02.2020. In due adherence to the terms of the invitation for EOI, on 08.02.2020 the Impleading Applicant submitted before the CoC of the Respondent its resolution plan for the amount of Rs.10.35 crore. The Impleading Applicant's resolution plan was shortlisted by the RP and presented to COC along with another resolution applicant, viz. T. Rajkumar. On 18.02.2020 it was the Impleading Applicant's resolution plan for Rs.10.35 crore alone that was confirmed. In consideration of the CoC's decision, the Impleading Applicant submitted a revised resolution plan wherein the amount was enhanced from Rs.10.35 crore to Rs.17 crore. During the CoC meeting held on 28.02.2020 the Impleading Applicant's resolution plan for Rs.17 crore was duly approved. The instant application is being filed in furtherance to the above resolution passed during the CoC meeting held on 28.02.2020. With reference to IA 111 of 2020, it is stated that allowing a new party to provide a resolution plan will prejudice the interest of the Company, its creditors and the rights of successful bidder. It is further stated that in view of the above, it is imperative that the instant application be allowed, and the Impleading Applicant be arrayed as an Operational Creditor in the instant proceeding.
13. We have heard Mr. Uday Holla, Ld. Senior Counsel for the Impleading Applicant in IA No. 129 of 2020, his vehement opposition to the admission of IA No.111 of 2020, and also examined the contentions which form part of the IA No.129 of 2020, as mentioned in brief above. We are in agreement. However, since the matter has been considered above in IA No.111 of 2020,



and a view has been taken that this Adjudicating Authority shall not interfere in the on-going CIRP, this fresh IA No.129 of 2020 is disposed of as the same has become infructuous.

14. In the result, I.A. No.111 of 2020 in C.P. (IB) No.43/BB/2019 is hereby dismissed and I.A. No.129 of 2020 in C.P. (IB) No.43/BB/2019 is disposed of as above.



**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**

Amar