

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT-V**

IB-2161/ND/2019  
IA/2850/2020

**IN THE MATTER OF:**

Arun Kumar Goel

....Applicant

Vs

M/s Ankur Roller Flour Mills Pvt Ltd.

....Respondent

**SECTION**

U/s 9 IBC Code, 2016

**Order delivered on 31.07.2020**

**CORAM:**

**SHRI ABNI RANJAN KUMAR SINHA**

**HON'BLE MEMBER (JUDICIAL)**

**SHRI K.K. VOHRA,**

**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant

: Mr. KushagraBandal

For the Respondent

: Md. Nausheen Samar for Suspended Directors, Mr.  
Mohit Nandwani for RP

**ORDER**

**AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

**IA-2850/2020:-**

1. The present application has been filed on behalf of applicant praying there in to direct the Committee of Creditors (Here in after referred as COC) to consider the resolution plan submitted by the Applicant on its merits as Applicant believes that its plan will maximize the asset value of the Corporate Debtor, restrain the CoC from approving any resolution plan without considering the resolution plan of the Applicant and declare the Regulation 36A of Insolvency And



Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as null and void.

2. We have heard Mr. Kushagra Bandal, Ld. counsel for the applicant, Mr. Mohit /Nandwani for RP and Mr. Md. Nausheen Samar for Suspended Board of Directors and perused the averments made in the application.

The facts of the application filed by the applicant in short are that: -

- i. That the present application is being moved on behalf of the Applicant namely M/s Salasar Impex Limited having its registered office at DSM-321, DLF Towers, Shivaji Marg, Najafgarh Road, Industrial Area, New Delhi- 110015 against the Resolution Professional of Corporate Debtor namely M/s Ankur Roller Flour Mills Pvt. Ltd. (herein after referred as 'Corporate Debtor') to allow and take part in the Resolution process of the Corporate Debtor as per publication of Form G dated 06.02.2020 under Regulation 36A(1) of Insolvency And Bankruptcy (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 (hereinafter to be referred as 'IBBI Regulations, 2016'). It is submitted that the Applicant Company vide its board resolution dated 17.06.2020 authorized Sh. Krishan Kumar Bansal to sign/verify/ appear before this Hon'ble Tribunal. The true copy of the board resolution dated 17.06.2020 is annexed and marked as ANNEXURE A/1.
- ii. That an application u/s 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'IBC') was filed against the Corporate Debtor and the same was admitted by this Hon'ble Tribunal on 25.11.2019. Accordingly, the Respondent was appointed as an Insolvency Professional by this Hon'ble Tribunal in order to take steps as mandated in IBC, 2016 and further filed its report in time bound manner. The true copy of the order dated 25.11.2019 is annexed and marked as



ANNEXURE A/2 and Respondent further prepared Information memorandum under IBC, 2016 on 18.01.2020 and thereafter, respondent published Form G i.e. Invitation for Expression of Interest dated 06.02.2020 and as per the publication under Regulation 36A(1) of Insolvency And Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the following dates were mentioned:-

Insolvency Commencement Date of the Corporate Debtor	25.11.2019
Date of invitation of expression on interest	06.02.2020
Last Date of receipt of expression of interest	22.02.2020
Date of issue of final list of prospective resolution applicants	10.03.2020
Date of issue on information Memorandum, evaluation matrix and request for resolution plans to prospective resolution applicants	04.03.2020
Last date of submission of resolution plans	14.04.2020
Estimated date for submission of resolution plan to the adjudicating authority for approval	29.04.2020

- iii. Further, the applicant going through Information Memorandum dated 18.01.2020 placed the proposal to participate in the Resolution Process of Corporate Debtor before its Board of Directors which took sufficient time



in order to give its approval and finally vide resolution dated 05.03.2020, the same was approved.

- iv. Further, after getting aforesaid resolution dated 05.03.2020 from the Board of Director, the Applicant approached the Respondent to allow the Applicant to participate but the formal submission and approval of the Expression of Interest could not be obtained as the office of the Applicant was closed due to 'Holi' Holidays.
- V. Further, due to the spread of the pandemic i.e. COVID-19 in our country, the officials of the Applicant did not open their office and lastly the official of the applicant sent mails dated 22.05.2020 & 10.06.2020 to the Respondent wherein the Applicant seeks permission of the Respondent for participating in the Resolution process of the Corporate Debtor but after several requests and reminders, the Respondent vide email dated 22.06.2020 had refused the proposal of the Applicant. The Respondent has failed to appreciate the well settled law in regard to the acceptance of the Resolution Plan by any third party.
3. Further, Respondent had failed to appreciate the fact that the non submission of expression of interest by the Applicant was not under its control. Further, the time limit prescribed under regulation 36A of the IBBI is not mandatory and can be extended in cases where proper explanation is given. Further, the Respondent has failed to consider the fact that no prejudice shall be caused to any party in case the Applicant is allowed to participate in the Resolution Process of the Corporate Debtor. Further, the Respondent had violated the settled principal of law and deprived the Applicant from submitting the resolution plan.
4. The Ld. counsel appearing for the applicant in course of his arguments raised all the facts mentioned in the application and he further



submitted that the applicant could not file the expression of interest within the time prescribed in the Form G because the matter was pending before the Board of Directors of the applicant company and the moment the Board of Directors resolved to participate in the resolution process of the Corporate Debtor, the applicants approached the respondent but respondent fails to consider his claim. He further submitted that Regulation 36 A (1) is not mandatory so time may be extended and applicant may be permitted to file the resolution plan and the respondent may be directed to place it before the CoC to consider the resolution plain on merit.

5. On the other hand, Ld. Counsel for the RP submitted that earlier one IA bearing no. IA-2595/2020 was filed on the same ground and this Adjudicating Authority after considering the submissions made on behalf of the parties, rejected the prayer and the facts of this IA is almost same to the facts of IA-2595/2020. He further submitted that the ground which he has taken in IA-2595/2020 are also applicable in the case in hand.
6. Ld. counsel for the RP further submitted that admittedly the Form G was published twice due to the COVID 19 Pandemic but by publishing the second Form G, only the date for submission of resolution plan was extended because in the earlier Form G, the date of submission of resolution plan was 14/04/2020 which had fallen during the lockdown period and that is the reason the date for submission of resolution plan was extended by publishing second resolution plan by excluding the lockdown period and the last date for submission of plan was 5<sup>th</sup> July 2020. He further submitted that so far the last date for receipt of expression of interest, date of issue of provisional list of prospective resolution plan, last date of submission of objection to the provisional list, date of issue of information memorandum, evaluation matrix and



request for resolution plans of prospective resolution applicants remains unchanged. He further submitted that so far the other procedure which are required to be followed for the submission of resolution plan, that has already been completed prior to the lockdown period . He further submitted that as per the Regulation 36 B, the resolution professional shall make a request for resolution plan shown to the following persons referred in Regulation 36B I.e(a) *every prospective resolution applicant in the provisional list; and*

*(b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list.*

and therefore, the prayer of/ the applicant may be rejected.

7. Ld. counsel for the suspended Board of Directors, Mr. Md. Nausheen Samar submitted that as per Regulation 36 A (6), the expression of interest received after the time specified in the invitation under Clause (b) of Sub-Regulation 3 shall be rejected and thereafter, the RP shall under Regulation 36 A (10) shall issue a provisional list of the eligible prospective resolution applicants within 10 days of the last date for submission of the expression of interest to the Committee and under Sub-Regulation 11 of Regulation 36 A, any objection to inclusion or exclusion of the prospective resolution plan in the provisional list referred in Sub-Regulation 10 may be met with the supporting documents within 5 days from the date of issuance of the provisional list and after considering the objections, the RP under Regulation 36 A (12) shall issue a final list of prospective resolution applicants within 10 days of the last date on receipt of the objections of the committee. He further submitted that in Regulation 36 B, the RP shall issue the information memorandum, resolution matrix and a request of resolution plan within 5



days of the date of issue of the provisional list and thereafter minimum 30 days may be given to the prospective resolution applicants to submit their resolution plan, So the resolution plan submitted by the applicant is not liable to be accepted by the CoC because the applicant had not submitted the expression of interest within the period prescribed in Form G.

8. Now, in the light of the submissions raised on behalf of the parties, we would like to consider the prayer of the applicant but before that we would like to refer Regulation 36A and Regulation 36B and same are quoted below:-

**36A. Invitation for expression of interest.**

*(1) The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.*

*(2) The resolution professional shall publish Form G-*

*(i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the resolution professional, the corporate debtor conducts material business operations;*

*(ii) on the website, if any, of the corporate debtor;*



*(iii) on the website, if any, designated by the Board for the purpose; and*

*(iv) in any other manner as may be decided by the committee.*

*(3) The Form G in the Schedule shall –*

*(a) state where the detailed invitation for expression of interest can be downloaded or obtained from, as the case may be; and*

*(b) provide the last date for submission of expression of interest which shall not be less than fifteen days from the date of issue of detailed invitation.*

*(4) The detailed invitation referred to in sub-regulation (3) shall-*

*(a) specify the criteria for prospective resolution applicants, as approved by the committee in accordance with clause (h) of sub-section (2) of section 25;*

*(b) state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants;*

*(c) provide such basic information about the corporate debtor as may be required by a prospective resolution applicant for expression of interest; and*

*(d) not require payment of any fee or any non-refundable deposit for submission of expression of interest.*

*(5) A prospective resolution applicant, who meet the requirements of the invitation for expression of interest,*



*may submit expression of interest within the time specified in the invitation under clause (b) of sub-regulation (3).*

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

*(7) An expression of interest shall be unconditional and be accompanied by-*

*(a) an undertaking by the prospective resolution applicant that it meets the criteria specified by the committee under clause (h) of sub-section (2) of section 25;*

*(b) relevant records in evidence of meeting the criteria under clause (a);*

*(c) an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable;*

*(d) relevant information and records to enable an assessment of ineligibility under clause (c);*

*(e) an undertaking by the prospective resolution applicant that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process;*

*(f) an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any*



*refundable deposit, and attract penal action under the Code; and*

*(g) an undertaking by the prospective resolution applicant to the effect that it shall 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.*

*(8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with-*

*(a) the provisions of clause (h) of sub-section (2) of section 25;*

*(b) the applicable provisions of section 29A, and*

*(c) other requirements, as specified in the invitation for expression of interest.*

*(9) The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under sub-regulation (8).*

*(10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.*



(11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list.

(12) On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.

**36B. Request for resolution plans.**

(1) The resolution professional shall issue the information memorandum, evaluation matrix and a request for resolution plans, within five days of the date of issue of the provisional list under sub-regulation (10) of regulation 36A to –

(a) every prospective resolution applicant in the provisional list; and

(b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list.

(2) The request for resolution plans shall detail each step in the process, and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines.



*(3) The request for resolution plans shall allow prospective resolution applicants a minimum of thirty days to submit the resolution plan(s).*

*(4) The request for resolution plans shall not require any non-refundable deposit for submission of or along with resolution plan.*

*(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.*

*Explanation I. – For the purposes of this sub-regulation, “performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.*

*Explanation II. – A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.*



*(5) Any modification in the request for resolution plan or the evaluation matrix issued under sub-regulation (1), shall be deemed to be a fresh issue and shall be subject to timeline under sub-regulation (3).*

*(6) The resolution professional may, with the approval of the committee, extend the timeline for submission of resolution plans.*

*(7) The resolution professional may, with the approval of the committee, re-issue request for resolution plans, if the resolution plans received in response to an earlier request are not satisfactory, subject to the condition that the request is made to all prospective resolution applicants in the final list:*

*Provided that provisions of sub-regulation (3) shall not apply for submission of resolution plans under this sub-regulation.*

9. Mere plain reading of the provision shows that old Regulation 36A is substituted by the notification No. IBBI/2018-19/GN/Reg 031 dated 3<sup>rd</sup> July 2018 w.e.f. 4<sup>th</sup> July 2018 and as per the amended regulation the details have been provided, how to invite the expression of interest, preparation of provisional list and publication of the final list of the prospective resolution applicant. The time frame has been given in the new amended Regulation 36A, which was not earlier in the old . Mere plain reading of the regulation shows that expression of interest must be received within the time published in the Form G, if it is not received within the time published in the Form G as specified in Regulation 36A (3) (b) then the expression of interest received after the time specified in



the notification under Clause (b) of sub regulation (3) shall be rejected as per Regulation 36A (6) of IBBI (Insolvency Professional Agencies) Regulation 2016 and thereafter as per the sub regulation 10 and 12 of Regulation 36A IBBI (Insolvency Professional Agencies) Regulation 2016, firstly a provisional list of eligible prospective resolution applicant will be prepared and thereafter, after considering the objection if any, under Regulation 36A (11), a final list of prospective resolution applicant will be issued and as per Regulation 36B the prospective resolution applicants shall be allowed to submit the resolution plan within minimum 30 days.

10. When we shall consider the case of the applicant in the light of the aforesaid regulation then we find, it is admitted case of the applicant, that the applicant has not filed the expression of interest and reasons for not filing the expressions of interest as stated by the applicant in his application is that the applicant placed the matter before the Board of Directors of its company but it was Board of Directors, who took more time in taking the decision and ultimately the Board of Directors took the decision on 25.03.2020 and second ground for not filing the expression of interest is thereafter, the office was closed due to Holi and the 3<sup>rd</sup> reason is due to COVID-19, the office of the applicant was closed and by taking all three grounds, the applicant claimed that they could not file the expression of interest within time for the reason, which was beyond his control.

11. Now, in the light of the aforesaid facts, we would also like to consider whether the grounds taken by the applicant are reasonable or not? We find that the applicant in para 4 of the application has referred the different dates for completion of the stage, which was published in the Form G and as per the averments made in the application, we find that the date of issue of final list of prospective list of resolution



applicant as per the Form G was 10.03.2020, whereas the last date of receipt of expression of interest was 22.02.2020, which means the last date of submission of expression of interest and the finalization of the list of prospective list of resolution applicant was prior to the lockdown period.

12. At this juncture, we would like to refer the submissions of the petitioner's counsel that due to Holi Holiday, the office was closed. The festival of Holi was on 10.03.2020, which was the last date for finalization of the list of prospective list of resolution applicant and thereafter the office was opened from 11.03.2020 till 21.03.2020 before the lockdown, which was commenced from 23.03.2020, therefore, the submission of the petitioner's counsel that the office was closed due to Holi festival is not liable to be accepted. At this juncture, we would also like to refer the arguments advanced on behalf of the applicant, who has also taken one of the ground that the Board of Directors of the applicant's company took sufficient time to resolve. We find that the applicant has not assigned the reasons under what circumstances when the applicant came to know about the Information Memorandum, which was prepared on 18.01.2020, then why the Board of Directors had not taken the decision earlier, especially when the time limit is prescribed in Regulation 36 A of the IBBI. It is the settled principal of law help those who are vigilant over their right and not those who are slept over their right. Applying this principle, when we shall consider the case of the applicant then we find that that knowing-fully this fact that there is a time period prescribed to conclude the CIRP and for that the Regulation 36A has come by way of amendment in the IBBI Regulation, 2016 vide notification no. IBBI/2018-19/GN/REGOD1 dated 03.07.2018 w.e.f. 04.07.2018, the Board of Directors of the applicant had not taken any decision quickly rather sat over the matter for a long time and took a




resolution only on 05.03.2020. In our considered view, the time prescribed under the Regulation 36 A (1) cannot be changed at the instance of the applicant on the ground that the Board of Directors of the company had not taken the decision earlier.

13. At this juncture, we would also like to refer this fact that although in the prayer portion, the petitioner made a prayer to declare Regulation 36 a null and void but no ground is mentioned in the application for that prayer. Of course, it is mentioned in the application that the said provision is not mandatory, in our considered view, when we shall read the Regulation 36A along with Section 12 of the IBC ,which describes the period for completion of the Insolvency Resolution Process then we are of the view that the submission of the applicant that the provision contained under Regulation 36A is not mandatory is not liable to be accepted rather in view of Section 12 of the IBC, the RP is required to fix a date for completing the every stage in order to complete the Insolvency Resolution process within time limit prescribed under Section 12 of the IBC and that is the reason in the Form G, the RP has published the date for taking different steps and that too in view of Regulation 36A.
14. At this juncture, we would also like to refer Regulation 36A (3) which says that the last date for submission of expression of interest shall not be less than 15 days from the date of issue of detailed invitation and Regulation 36 A (6), further say that the interest received after the time specified in invitation in clause (d) of Sub-Clause (3) shall be rejected. Therefore, we are of the considered view that there is no irregularity committed by the resolution professional while mentioning the date in the Form G and the person who intends to file their expression of interest is required to act as per the date published in the Form G and if the person fails to act as per the date published in the Form G then any expression of interest received after the time specified

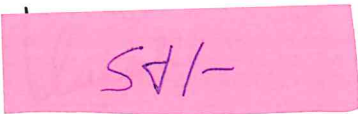


in the Form G in view of the Regulation 36A (6) is liable to be rejected and the resolution professional rightly rejected the submission of the applicant to permit him to file the resolution plan.

15. At this juncture, we would also like to make it clear that as per the submissions of the Ld. counsel for the RP, Form G was published twice due to the fact that the date of submission of resolution plan had fallen during the lockdown period and so far the other date mentioned in the earlier Form G has already been completed and that is the reason in both the Form G there was no changes upto the column No. 15 and column No. 17, 19 to 23, only changed which has been made in subsequent Form G is in Column No. 16 and 18, which relates to the last date for the submission of resolution plan and the estimated date for submission of resolution plan to the Adjudicating Authority for approval. Therefore, we find force in the contention raised on behalf of Ld. Counsel appearing for the resolution professional that the process for inviting the expression of interest, submission of the expression of interest, preparation of the provisional list, submission of objection of the provisional list, issuance of the final list of prospective resolution applicants and date of the issue of information memorandum, provisional matrix and request for resolution plan to prospective resolution applicant have already been completed on or before 4<sup>th</sup> March 2020, much before the period of lockdown commenced. Since the last date had fallen during the lockdown period, that is the reason by publishing subsequent Form G the Resolution Professional had extended only that period, which had fallen within the lockdown period, i.e date for submission of the resolution plan as published in the 1<sup>st</sup> Form G and date for the submission of resolution plan to the Adjudicating Authority for approval, and same have been changed as 5<sup>th</sup> July 2020 and 20<sup>th</sup> July 2020, in place of 14<sup>th</sup> April 2020 and 29<sup>th</sup> April 2020 respectively.



16. For the reasons discussed above, since the applicants failed to submit their expression of interest within the period prescribed in the Form G, therefore, we are unable to accept the contention of the applicants that the respondent No. 1 may be directed to put up the resolution plan before the CoC and the CoC Respondent No. 2 may be directed to consider the resolution plan of the applicants.
17. For the reasons discussed above, we are unable to accept the contention of the applicants to issue the direction to respondent no. 1, resolution professional to put up the resolution plan submitted by the applicants before the CoC and direct the CoC to consider their plan, Hence, we have no other option but to reject the prayer of the applicant.
18. **Accordingly, it is therefore ordered that the prayer of the applicants to direct the resolution professional/ respondent No. 1 to put up the resolution plan of the applicants before the Committee of Creditor and to direct the Committee of Creditor to consider the resolution plan submitted by the applicants on its merit is hereby rejected. Hence, the present application is hereby DISMISSED.**

  
(K.K. VOHRA)  
MEMBER (T)

  
(ABNI RANJAN KUMAR SINHA)  
MEMBER (J)