

NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-106

IB-2161/ND/2019

IA/2595/2020

IN THE MATTER OF:

Arun Kumar Goel

Vs.

M/s Ankur Roller Flour Mills Pvt. Ltd

....Applicant

.....Respondent

SECTION

U/s 9 of IBC, 2016

Order delivered on 15.07.2020

CORAM:

SHRI ABNI RANJAN KUMAR SINHA

HON'BLE MEMBER (JUDICIAL)

SHRI K.K. VOHRA,

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant

: Mr. Mohit Nandwani for RP, Mr. Mohit Chaudhary

For the Respondent

: Mr. Md. Nausheen Samar for Suspended Directors,
Mr.Rakesh Kumar

ORDER

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

IA-2595/2020: -

1. The present application has been filed on behalf of applicant praying there in to direct the Resolution professional/ Respondent No. 1 herein to put up the Resolution Plan of the Applicants before the Committee of Creditors and restrain the CoC/Respondent No. 2 from approving any resolution plan without considering the resolution plan of the Applicants and also direct the CoC/Respondent No.2 to consider the resolution plan submitted by the Applicant(s) on its merits as Applicants have a bonafide belief that their plan will maximize the asset value of the Corporate Debtor.



2. We have heard Mr. Mohit Chaudhary, 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 fact of the application filed by the applicant in short are that: -

- i. Resolution Professional published the Invitation for Expression of Interest in form G on 06.02.2020. Last date of receipt of the Expression of Interest was notified as 22.02.2020 and last date for Submission of Resolution Plan was notified as 14.04.2020. Copy of Invitation for Expression of Interest in form G is marked as Annexure1.
- ii. In view of the national lockdown due to the outbreak of the Pandemic, the Resolution Professional issued a revised Form G with effect from 15.06.2020, wherein the last date for submission of Resolution Plan was extended to 05.07.2020, however retaining the dates for submission of expression of interest as before i.e. 22.02.2020. Copy of the revised Invitation for Expression of Interest in form G in marked as Annexure 2.
- iii. As soon as the Applicants learnt about the invitation for expression of interest issued for the corporate debtor, the Applicants jointly, on an immediate basis sent an email dated 25.06.2020 to the Resolution Professional, through their consulting firm, M/s Armada Asset Reconstruction Solutions, expressing interest in submitting a resolution plan and requesting for details/criteria etc for submission of the same. However, as no response was received from the Resolution Professional, an email dated 03.07.2020, was further sent to the Resolution professional. Consequently, the Applicants were not included in the list of Prospective Resolution Applicants. Copy of the Emails dated 25.06.2020 and 03.07.2020 is marked as Annexure 3.



- iv. Further, due to paucity of time and as the date for submission of Resolution plan as per revised form G was 05.07.2020, the Applicants submitted their resolution plan on 04.07.2020 by post and email. Copy of email dated 04.07.2020 towards submission of resolution plan and accompanying documents is enclosed herewith along with courier receipt and marked as Annexure-4. Applicants have made best efforts to enclose all necessary documents with the Resolution Plan. However, in case of any remaining documentation etc, the Applicants are willing to provide the same immediately upon being informed of the requirement.
- V. Further, the Applicants have also not been informed about the amount of earnest money required to be submitted to be eligible as resolution applicant, however the applicants are enclosing copy of demand draft of Rs. 90 lacs as EMD on an adhoc basis. In case, the EMD required is less 90 lacs, the excess amount may be refunded, and if the EMD required is more than 90 lacs, the Applicants are willing to deposit the remaining on an immediate basis. Copy of Demand Drafts No. 063090, 035591 & 013513 of Rs. 90 lacs in total is marked as Annexure-5.
3. Further, the contention of the applicant is that the resolution plan of the applicant ought to be considered and the delay in submitting the EOI be condoned for the following reasons:-
- i. The delay in submission of EOI was neither intentional nor purposeful. There was no intention to delay. As soon as the Applicants were informed about the expression of interest of the corporate debtor i.e. on 25.06.2020, the Applicants took appropriate steps.
- ii. The Applicants found it difficult to access the Form G due to the typographical error in the CIN number mentioned therein. The CIN number of the corporate debtor is U15311DL2004PTC128271 as



reflected in the master data on MCA website, however the form G mentions another incorrect CIN Number. Copy of Master data of corporate debtor is marked as Annexure-6.

- iii. The object of the Insolvency Code is to maximize the value of the assets and to ensure that best possible returns are drawn from the Resolution Plan. The Applicants are young entrepreneurs and are in the same business industry as that of the corporate debtor i.e. trading and manufacturing of agriculture commodities. Applicants have the required potential and financial capability are of the firm belief that their resolution plan will maximize the asset value of the corporate debtor. More so, the Applicants have proposed to pay off the resolution amount on an expeditious basis as has been mentioned in the resolution plan submitted therein.
- iv. The Regulations framed under the Code cannot be construed in a way so as to deprive any Resolution Applicant from coming forward at any stage prior to acceptance of other Resolution Plan by CoC/NCLT and/or expiry of CIRP period. In the present case, the CIRP period has not expired and no extension has been sought so far and no delay would be caused if applicant's plan is considered.
- v. The Applicants are successfully complying with and are meeting the eligibility criteria as required for submission of expression of interest and resolution plan as per section 25(2)(h) and are not barred under section 29(A) of the IBC or any other provision of the Code.
- vi. As the COC comprises of only one financial creditor with 100% voting power, it would not be a cause of distress/inconvenience if the resolution plan of the applicants is considered in the CoC Meeting/or before this Hon'ble Tribunal.



vii. It would be just and equitable if the resolution plan of the Applicants is considered by the COC.

4. Further, Applicants are apprehensive that their resolution plan may not be considered by the CoC as they have not been included in the list of prospective resolution applicants by the Resolution Professional.

5. Mr. Mohit Chaudhary, Ld. counsel for the applicant in course of his arguments submitted that the RP has published Form G twice and as per the second publication of Form G, which the applicant has enclosed as Annexure-2 at page 20 of the application and the date of submission of resolution plan was 05.07.2020 and the applicants have submitted the resolution plan on 04.07.2020. He further submitted that the applicants was earlier unable to access Form G due to the typographical error in CIN Number. The CIN number of the corporate debtor is U15311DL2004PTC128271 as reflected in the master data on MCA website, however the form G mentions another incorrect CIN Number. He further submitted that there is an amendment in Regulation 40 and as per the Regulation 40 C, modal time line referred in Regulation 40 A may be changed. He further submitted that Regulation 40 C was modified on 29.03.2020 and by placing reliance on Regulation 40 C, the Ld. counsel for the applicants submitted that the date in Form G published by the RP ought to be revised in the manner suggested by the Applicant. He further submitted that as per the suggested timeline the last date of submission of resolution plan ought to have been 16.08.2020 and last date of submission of invitation of submission of interest ought to have been revised on 15.06.2020. He further submitted that in view of this fact, the resolution plan submitted by the applicant may be considered by the CoC and the RP may be directed to place it before the respondent no. 2.



6. Ld. counsel for the applicant also placed reliance on the decision of Hon'ble NCLAT in Company Appeal (AT) (Insolvency) Nos. 11 and 75 of 2020, decided on 30.01.2020 in the matter of Kundan Care Products Ltd. Vs. Surya Kanta Satapathy and Ors. and by placing reliance upon this decision, he submitted that even after the expiry of date of receiving the expression of interest, the CoC has considered the expression of interest submitted by the applicant and, therefore, the CoC may be directed to consider the resolution plan of the applicants.
7. on the other hand Ld. counsel for the RP 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 05.07.2020. 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 was extended to 10.03.2020 as per Annexure A-1, date of issue of information memorandum, evaluation matrix and request for resolution plans of prospective resolution applicants remains unchanged which are as follows: 22.02.2020, 28.02.2020, 04.03.2020, 10.03.2020, 04.03.2020. Only the last date for submitting the resolution plan which was earlier 14.03.2020 was changed to 05.07.2020 by publishing subsequent Form G. 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 and therefore, the



Regulation 40 C upon which the applicant has placed reliance is not applicable because the entire process has 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.

8. 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 on 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.

9. 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.

10. Mere plain reading of the provision shows that old Regulation 36A is substituted by the notification No. IBBI/2018-19/GN/Reg 031 dated 3rd July 2018 w.e.f. 4th 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.

11. When we shall consider the case of the applicants in the light of the aforesaid regulation then we find, it is admitted case of the applicants, that the applicants have not filed the expression of interest and they have directly filed the resolution plan through email on 4th July 2020 and Ld. Counsel appearing for the applicants contended that since there was an error in the CIN number of the Corporate Debtor in the Form G published by the resolution professional that is why they could not access the Form G and on this ground, the applicants claim the CoC may be directed to consider their plan. We further find that the another contention of the Ld. Counsel appearing for the applicants is that as per amendment made in Regulation 40 by aiding Regulation 40C, model timeline fixed by the resolution professional in the Form G ought to be revived in the manner suggested by the applicants and according to the suggestion of the applicants, the date of expression of interest ought to have been 15th June 2020. The last date of receipt of interest of expression ought to have been 1st July 2020, date of issue of provisional list of prospective resolution applicant, last date for submission of objection of provisional list, date for issue of final list of prospective resolution applicant, date of issue of information memorandum etc., last date for submission of



resolution plan, date for submission of resolution plan to Adjudicating Authority for approval ought to have been in the following manner 7th July 2020, 12th July 2020, 18th July 2020, 12th August 2020, 16th August 2020 and 30th August 2020 respectively.

12. At this juncture, we would also like to refer the argument advanced on behalf of Ld. Counsel appearing for the resolution professional, who in course of the argument submitted, the reason for publication of subsequent Form G was the date of submission of resolution plan had fallen during the lockdown period and so far for the other dates mentioned in earlier Form G has already been completed prior to the lockdown period. In the light of this submissions, when we have gone through the Form G, which are enclosed by the applicants at page 19 and 20 at Annexure A1 and A2, then we find in both the Form G there was no changed up to 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 4th 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 1st Form G and date for the submission of resolution plan to the Adjudicating Authority for approval, and same have been changed as 5th July 2020 and 20th July 2020, in place of 14th April 2020 and 29th April 2020 respectively.

13. Therefore, we are of the considered view that so far the other dates published in the Form G, which are completed prior to the lockdown period is concerned, amended Regulation 40C is not applicable and for this reason, we are unable to accept the contention of the applicants that in view of the Regulation 40C the timeline given in Form G ought to have been revised as per the proposal given by the applicants.
14. 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.
15. So far, the decision upon which the applicants placed reliance is concerned, in that decision Hon'ble NCLAT has not decided the issue rather on behalf of the resolution applicant a submission was made before the Hon'ble NCLAT. Moreover, the facts of that case is different from the facts of the case in hand. In the case in hand, it is not the case of the applicants that they have submitted the expression of interest rather they have directly filed the resolution plan after the publication of the final list of the prospective resolution applicant. Under such circumstances in our considered view the decision will not help the applicants to substantiate their claim.
16. 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.

17. 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.

Sd/-

(K.K. VOHRA)
MEMBER (T)

Sd/-
15-01-2019

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)