

*In the National Company Law Tribunal
Special Bench, (Court-II), Kolkata*

IA (IB) No. 267/ (KB) /2024

In CP No. 1536/(KB) /2019

*Application under Section 60(5) of IBC, Code 2016 read with Rule 11
of the National Company Law Tribunal Rules, 2016;*

In the Matter of:

Phoenix ARC Private Limited

...Financial Creditor

Vs.

Arambagh Hatcheries Limited

...Corporate Debtor

And

In the matter of:

Abinandan Holdings Private Limited

Applicant ...

Vs.

Pinaki Sircar, RP of Arambagh Hatcheries Limited

....Respondent

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Date of Pronouncement of order: 04.04.2024

Coram:

Smt Bidisha Banerjee : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Counsel appeared physically / through video Conferencing

Mr. Vikram Wadehra, Adv.] CoC in IA(I.B.C)/1870(KB)2023and

Mr. Mayukh Roy, Adv.

Mr. Piyush Agrawal, Adv.] Respondent in IA(I.B.C)/247(KB)2024

Mr. Debojyoti Das, Adv.

Mr. Shaunak Mitra, Adv.] For the Resolution Professional

Mr. Amandeep Singh, Adv.]

Mr. Vikash Singh, Adv.]

Ms. Shayana Singhal, Adv.]

Mr. Sagar Chaurasia, Adv.]

Mr. Pinaki Sarkar] RP in person

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Mr. D. N. Sharma, Adv.] For the Applicant in ,

IA(I.B.C)/267(KB)2024

Mr. Rahul Sharma, Adv.]

Ms. Pallavi Ray, Adv.]

Ms. Tanvi Luhaniwala, Adv.] For Workers/Employees

Mr. Roshan Pathak, Adv.

Mr. Ajay Gaggar, Adv.] For the Suspended Board in

Mr. Uttiyo Mallick, Adv.] IA(IB)/1112(KB)2023,

IA(IB)/1074(KB)2022

& IA(I.B.C)/267(KB)2024

O R D E R

Per Bidisha Banerjee, Member (Judicial):

- 1. The Court convened through hybrid mode.*
- 2. Ld. Counsel for the parties were heard at length.*
- 3. This application has been preferred by the Applicant /
Abinandan Holdings Private Limited under Section 60(5) of IBC,*

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Code 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 to seek the following reliefs:

- a. *Appropriate order be passed condoning the delay on the part of the applicant in submitting the EOI as per Form G published on October 31, 2022 before the Resolution Professional / Respondent;*
- b. *Upon the delay being condoned in terms of prayer (a) above, the Resolution Professional / respondent be directed to consider the EOI submitted by the applicant in accordance with law and on its own merits;*
- c. *The Resolution Professional / Respondent be directed to furnish the Information Memorandum and the RFRP to the applicant to enable the applicant to take all necessary steps in submitting the resolution plan within such time as may be directed by this Adjudicating Authority.*
- d. *Till the disposal of the instant application, the application filed by the respondent/ RP being IA(IBC)/1870/KB/2023 for seeking liquidation of the Corporate Debtor namely Arambagh Hatcheries Limited be kept in abeyance;*

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- 4. The Applicant states that it intends to revive the Corporate Debtor.*
- 5. The Committee of Creditors of the Corporate Debtor, has resisted the prayer of Abhinandan Holdings Private Limited on the ground that it is a belated one and filed much beyond the Statutory period under IBC Code.*
- 6. The list of dates and events in regard to the CIRP Process has been furnished in the following table:*

a.

<i>Sl. No.</i>	<i>Date</i>	<i>Particular & Events</i>
<i>1.</i>	<i>May 13, 2022</i>	<i>The application filed by the Financial Creditor stood admitted with the CIRP having stood initiated against the Corporate Debtor, Arambagh Hatcheries Limited.</i>
<i>2.</i>	<i>July 25, 2022</i>	<i>First Form G published in 3</i>

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		newspapers, Anandabazar Patrika – West Bengal (In Bengali), Business Standard (in English) and Sanmarg (in Hindi)
3.	October 31, 2022	Second Form G published by the RP inviting EoI from prospective resolution applicant.
4.	November 14, 2022	Order of this Tribunal for extension of CIRP under Section 12(2) of the Code by a period of 90 days.
5.	March 31, 2023	Order of this Tribunal granting an exclusion of 60 days in the CIRP of the Corporate Debtor
6.	June 09, 2023	Order of this Tribunal granting an exclusion of 60

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		<i>days in the CIRP of the Corporate Debtor.</i>
<i>7.</i>	<i>July 29, 2023</i>	<i>The extended period stood expired. The RP, in terms of an application, being IA (IB)1380/KB/2023 informed that the CIRP qua the Corporate Debtor is in process and there is a likelihood of resolution of the Corporate Debtor as a going concern and requested for a further extension of time.</i>
<i>8.</i>	<i>August 07, 2023</i>	<i>Order of this Tribunal further extending the CIRP by a period of 60 days w.e.f. 29th July, 2023. The period of CIRP stood extended up to 28th September, 2023.</i>

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<p>9. <i>September 25, 2023</i></p>		<p><i>At the 22nd meeting of the Committee of Creditors, in terms whereof it had been deliberated and discussed that in spite of the Tribunal having granted a period of 10 days time to submit the Bid Bond Guarantee by a prospective resolution applicant, the last date whereof stood expired and elapsed on 22nd September, 2023.</i></p> <p><i>Therefore, CoC, with 99.77% voting share unanimously decided to resolve and liquidate the Corporate Debtor as no valid and proper Expression of Interest had</i></p>
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		<i>been received till the extended cut-off date.</i>
<i>10</i>	<i>September 28, 2023</i>	<i>The extended period for the CIRP stood elapsed due to efflux of time with no compliant resolution plan having been received.</i>
<i>11</i>	<i>November 01, 2023</i>	<i>An application for liquidation of the Corporate Debtor having been filed following the Resolution passed by the CoC.</i>
<i>12</i>	<i>January 27, 2024</i>	<i>A letter by the Applicant, admittedly, seeking to submit its expression of interest for initiating CIRP of the corporate Debtor, during the pendency of the application filed by the RP seeking initiate liquidation of the Corporate</i>

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		<i>Debtor.</i>
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- 7. It is the contention of the CoC that an extension of 90 days granted after expiry of 180 days as well as exclusion of a period of 60 days have been allowed vide orders dated 31.03.2023 and 09.06.2023 passed by this Adjudicating Authority.*
- 8. Therefore, a period over and above the statutory period of 330 days for CIRP to be completed has already expired. At this belated stage, applicant's request for a copy of Information Memorandum and RFRP qua the Corporate Debtor, will tantamount to rebooting the entire CIRP process when the CoC has already resolved to liquidate the Corporate Debtor.*
- 9. Further, that the application has been filed against commercial wisdom of the Committee of Creditor. Reference has been made to the decision of the Hon'ble Apex Court in K. Sashidhar Vs. Indian Overseas Bank & Ors. [CA No. 10673 of 2018 with CA No. 10719 of 2018, CA No. 10971 of 2018 and SLP (C) No. 29181 of 2018] that "upon receipt of a rejected Resolution Plan, the Adjudicating Authority is not expected to do anything more; but is obliged to initiate liquidation process under Section*

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33(1) of the I & B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire about into the justness of the rejection of the resolution plan by the dissenting financial creditor.”

10. Reference is also made to Kalpraj Dharamshi & Anr. V. Kotak Investment Advisors Ltd. & Anr.; Civil Appeal No. 2943-2944 of 2020 that “the commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the I&B Code.

The legislature has consciously not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the Adjudicating Authority and that the decision of CoC's 'commercial wisdom' is made non-justiciable.”

11. It is averred that an amount of Rs. 7,84,67,269/- has been incurred as CIRP cost and the CoC members have already infused an amount of Rs. 6,42,44,355.17/- towards the CIRP cost, as no substantial cashflows are generated from the business

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of the Corporate Debtor due to its nearly non-operational status thereby resulting in further financial stress to the COC members with the assets of the Corporate Debtor further deteriorating under the present circumstances.

12. The RP has also resisted the prayer or by way of its submissions.

13. The workers of the Corporate Debtor have however, supported the application of IA(IBC)267/KB/2024 saying that as on 7th November, 2023, the RP has admitted their claim of Rs. 900,67,931.87.

14. We have heard the rival contentions and perused the records.

15. The Applicant has referred to the decisions of NCLT, Mumbai in IA No. 4372 of 2023 in CP(IB)No. 4304(MB) of 2019 (Salil Shashank Kulkarni Vs. Rubique Technologies India Limited; Babulal Vardharji Gurja Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. Reported in (2020) 15 SCC 1; CoC of Essar Steel India Limited Vs. Satish Kumar Gupta and Ors. Reported in (2020) 8 SCC 531, to contend that the primary focus of the Code is to ensure revival of the Corporate Debtor.

16. It is submitted that it came to know about the CIRP only on 03.01.2024 whereafter it has come up with this application.

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17. In our considered opinion, the plea of the applicant is not tenable, in view of the fact that way back on 20.09.2023 more than one year after initiation of CIRP, the CoC with 99.77% voting share have unanimously decided to resolve and liquidate the Corporate Debtor after following the laid down procedure and process.

18. As this Tribunal finds no reason to allow the Applicant extension of time to submit its EoI against Form 'G' that was published on 31.10.2022, this application is rejected.

19. However, Since the Applicant has claimed that it has tendered the EMD of 15,00,000/- (Rupees Fifteen Lakhs) in terms of bank draft vide Demand Draft No. 453795 dated 01.02.2024 drawn in favour of "Arambagh Hatcheries Limited under CIRP" at Shibpur Branch, in case the same has been encashed, the RP is directed to refund the said EMD and any other deposit in this regard.

20. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

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21. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

*Balraj Joshi
Member (Technical)*

*Bidisha Banerjee,
Member (Judicial)*

Signed on this the 04th day of April, 2024

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M. Jana (P.S.)