

IN THE NATIONAL COMPANY LAW
TRIBUNAL COURT - I, MUMBAI BENCH ***

*** **

IA No. 1211/MB/2020

in

CP (IB) No. 2156/MB/2019

(An Application under section 60(5) of the Insolvency &
Bankruptcy Code, 2016)

Girija Sugars and Agro Private Limited,
31, New Mhada Colony, Darga road,
Aurangabad, Maharashtra.

... Applicant

V/s

1. Pankaj Sham Joshi,
Resolution Professional of KGS Sugar & Infra
Corporation Limited Gat No. 147/4, 148/1/2a, 148/1/1b,
Pimpalgaon Nipani, Niphad Nashik, Nashik 422 102.
2. Committee of Creditors of KGS Sugar & Infra Corporation
Limited Gat No. 147/4, 148/1/2a, 148/1/1b
Pimpalgaon Nipani, Niphad Nashik, Nashik 422 102.

... Respondents

In the matter of:

Canara Bank ... Financial Creditor V/s

KGS Sugar & Infra Corporation Limited

... Corporate Debtor

Order Dated: 23.11.2020

Coram:

Hon'ble Member (Judicial), Janab Mohammed Ajmal

Hon'ble Member (Technical), Shri V. Nallasenapathy

Appearances (Via Video Conference):

**For the Applicant : Adv. Kunal Kanungo with Adv. Amey Hadwale and
Adv Geeta Lundwani**

**For the Respondent : Mr Pankaj Joshi (Resolution Professional) and Ms
Vinita Hombalkar for Canara Bank and CoC**

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

Aggrieved by the decision of Respondent No. 1 in not accepting its submission of Expression of Interest (Eol), the Applicant in the capacity of a Prospective Resolution Applicant has come up with this Application seeking reversal of the decision.

2. Facts in brief that culminated in the presentation of this Application may be stated as under. This Tribunal by order dated 10/10/2019 admitted a Petition (CP No. 2156 of 2019) filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (the Code) and initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Mr. Balady Shekhar Shetty as the Interim Resolution Professional (IRP). He however was replaced by Mr. Pankaj Shyam Joshi (Respondent No. 1) as Resolution Professional (RP) by order dated 14/05/2020 of the NCLT, Principal Bench.

3. The IRP in accordance with Regulation 36A of IBBI (Insolvency Regulation Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) published public announcement dated 17/01/2020 inviting Prospective Resolution Applicants (PRAs) to express their interest in submitting the Resolution Plan. The said public announcement contemplated 10/02/2020 as the cut-off date for submission of Expression of Interest (EOIs).
4. The Applicant submits that due to its lack of knowledge it failed to submit the EOI by the cut-off date. The Applicant, however, vide letter dated 02/08/2020 addressed to Respondent No. 1 (R1) expressed its intention to submit EOI along with the Resolution Plan in respect of the Corporate Debtor. The R1 vide his email dated 04/08/2020 erroneously and arbitrarily refused to accept the request of the Applicant and without appreciating the essence and object of the Code arbitrarily refused to accept the Applicant's EOI solely on the ground that it was submitted beyond the cut-off date.
5. It is further submitted that the Applicant along with its Directors over the years have been in the similar line of business as that of the Corporate Debtor. The Applicant along with its management are immensely experienced in sugar manufacturing sector. Therefore, the Applicant has a very fine understanding of the business operations and is better placed to revive the Corporate Debtor. The R1 without even inquiring or considering the eligibility of the Applicant could not have turned down the request of the Applicant mainly at a stage where neither of the Resolution Plans had been finalised/considered by the Committee of Creditors (CoC). The Applicant submits that the least R1 was expected to do was to put forth the request before the CoC (Respondent

No. 2/R2) to deliberate and decide whether such EOI could be considered at this stage.

6. The Applicant submits that the decision of R1 in rejecting

Applicant's request is erroneous for the reasons mentioned below:

- a. Cut-off date as contemplated under Form G to submit EOI cannot be held to be as mandatory and can be extended by the CoC in the interest of the Corporate Debtor.**
- b. RP/CoC can receive the EOI or Resolution Plan even after the expiry of the last day of submission of EOI or Resolution Plan, so long as the CIRP Period has not elapsed and/or any other Resolution Plan has not already been approved by the CoC.**
- c. Nothing bars the Respondents from issuing a fresh Form G and accepting the EOI of the Applicant.**
- d. The object of the Code is to maximize the value of the assets and to ensure that best possible returns are drawn from Resolution Plan. The action of R1 is rejecting the Applicant's request of submitting its EOI and Resolution Plan would defeat the object of the Insolvency Code.**

7. The Applicant further submits that R1 with the approval of R2 has already accepted an EOI and a Resolution Plan from an entity named Dwarkadhish Sakar Karkhana Limited (DSKL), after the cut-off date.

While doing so the RP and the CoC in 9th CoC meeting held on 13/06/2020 have given appropriate reasoning for acceptance of EOI of DSKL at a belated stage. The Applicant states that such reasoning should also apply in case of the Applicant.

8. The Applicant has relied on the judgement of Hon'ble NCLAT in the matter of Kotak Investment Advisors Ltd vs Mr Krishna Chamadia & Ors. (Company Appeal (AT) (Insolvency) no. 344-345 of 2020), wherein the Appellate Authority has categorically held as follows:

“30. We are of the considered opinion that after the expiry of the deadline for submission of Resolution Plan, the Resolution Professional, with the approval of CoC, was fully authorized to invite fresh invitation for Expression of Interest for submission of Resolution Plan...”

9. Relying upon the above findings the Applicant submits that, at the stage where neither of the Resolution Plans are opened, the R1 with the approval of R2 could comfortably issue a fresh publication in Form G, inviting EOIs in respect of the Corporate Debtor. Further, the exercise of issuing fresh Form G in turn supports the object of maximization of value of assets as the CoC would have multiple plans to deliberate upon and it would enable the CoC to choose the best option for the Corporate Debtor and its stakeholders. The Applicant also submits that considerable CIRP period is available with the Corporate Debtor. No harm or prejudice thus would be caused to either of the parties including Corporate Debtor if a fresh Form G inviting EOI is issued.

10. The Applicant in order to buttress its point has relied on following NCLT and NCLAT Judgments, wherein the Adjudicating Authorities and the Appellate Authority have permitted submission of EOI or Resolution Plan at a subsequent date:

- a. Punjab National Bank...V/s...Bhushan Power & Steel Ltd. NCLT, New Delhi, CA No. 152/PB/2018 in CP (IB) 202/PB/201;
- b. Sharda Energy and Minerals Ltd....V/s....Impex Metal and Ferro Alloys Ltd. NCLT Kolkata, CA (IB) No. 641/KBH/2018 in CP No. 176/KB/2018;
- c. Binani Industries Ltd....V/s....Bank of Baroda, NCLAT, CA(AT) (Insolvency) No. 82 of 2018;
- d. SBI...V/s... 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;
- e. Canara Bank...V/s...Deccan Chronicle Holdings Ltd, NCLT, Mumbai, MA No. 1529 of 2018 in CP No. 120 of 2017;
- f. ICICI Bank Limited...V/s.... Unimark Remedies Ltd, NCLT, Mumbai MA No. 1529 of 2018 in CP No. 197 of 2018;
- g. Rana Saria Poly Pack Pvt. Ltd....V/s....Uniword Sugars Pvt. Ltd., NCLT Allahabad, IA No. 145/2020 in C.P. No. 120/2017”.

11. The Applicant further submits that Regulations framed under the Code cannot be construed in a way so as to deprive any PRA from coming forward and submitting its EOI or Resolution Plan at any stage prior to acceptance of another Resolution Plan by CoC / NCLT and/or expiry of CIRP Period.

12. The Applicant further relying on the Judgment of ICICI Bank Limited...V/s...Unimark Remedies Limited, MA No. 1529 of 2018 in C.P. No. 197 of 2018, submits that the object of the Code is to enable maximization of the value of Corporate Debtor's assets with a view to promote entrepreneurship, availability of credit and balancing the interest of all stakeholders. Therefore, it cannot be denied that

availability of multiple Resolution Plans gives an upper hand to the CoC to carry out a proper competitive analysis of all the Resolution Plans put before them and further enables the CoC to efficiently negotiate with the Resolution Applicants and then approve the best plan depending upon its feasibility and viability. The Applicant submits that on the backdrop of the aforesaid the act of R1 in rejecting Applicant's request to submit its EOI and Resolution Plan on flimsy and technical ground is detrimental to the spirit of the code and hence needs to be reversed.

13. The Applicant submits that due to the nationwide lockdown imposed by the Government of India in connection with the outbreak of Covid-19 pandemic, the Applicant was thoroughly engaged in managing its operations and tackling the unexpected challenges and therefore the Applicant despite of the best possible efforts could not submit its EOI within time and therefore the delay in submitting its EOI deserve to be excused in light of Regulation 40C of CIRP Regulation.

14. The Applicant thus seeks the following reliefs:

- a. that this Hon'ble Tribunal be pleased to direct the Respondent No. 1 and Respondent No. 2 to accept the EOI and declare the Applicant as a prospective resolution applicant in terms of Regulation 36A of CIRP Regulations.
- b. In alternative to the prayer clause (a) this Hon'ble Tribunal be pleased to direct the Respondent No. 1 and Respondent No. 2 to issue a fresh Form – G inviting EOI and in order to accept the EOI from the Applicant;
- c. That this Hon'ble Tribunal be pleased to direct the Respondent No. 1 and Respondent No. 2 to accept the resolution plan submitted by the Applicant and consider the same on its merits;

- d. That this Tribunal by an order and injunction restrain the CoC from approving any other resolution plan without considering the Resolution Plan of the Applicant.

15. Respondent Nos. 1 & 2 have filed a combined reply and submit that on 17.01.2020 (wrongly mentioned as 18/01/2020) an invitation of EOI in Form G was published by the IRP. As per the Form G, last date of receipt of EOI was 10/02/2020 and the last date for submission of Resolution Plan was 05/04/2020. Further, the RP on 06/03/2020 issued a final list of eligible PRAs of the Corporate Debtor. The final list contained the following four PRAs:

- a. Gangamai Industries and Construction Limited;
- b. Hemant Hari Bhatrak (Consortium of Individual);
- c. Jai Hind Sugar Private Limited;
- d. Sitson India Private Limited.

16. It is further submitted that on 12/03/2020 the previous RP received an email and a letter from DSKL expressing its interest to submit a Resolution Plan for the Corporate Debtor. The said request was summarily rejected on the sole ground of delay in submission of EOI without going into the merits or eligibility of DSKL. However, due to repeated requests from DSKL to submit Resolution Plan, the erstwhile RP placed the matter for consideration before the 7th meeting of the CoC held on 03/04/2020, wherein the CoC granted approval to the erstwhile RP to reject the request made by DSKL for submitting an EOI as it would delay the CIRP.

17. The Respondents further submit that, due to the unforeseen calamity of Covid-19 Pandemic and nationwide lockdown, the Prospective

Resolution Applicants requested for extension of time to submit the Resolution Plan and accordingly the last date for submission of Resolution Plan was extended till 13/07/2020. However, one of the four PRAs, M/s Sitson India Private Limited dropped itself out from the Resolution Process and the Corporate Debtor was then left with only three eligible PRAs.

18. The Respondents submit that, R1 after taking over charge as Resolution Professional of the Corporate Debtor and upon perusing the record received from the erstwhile RP, was of the opinion that DSKL should not have been denied the opportunity to submit its EOI and to participate in the Resolution Process of the Corporate Debtor. Therefore, once again R1 placed the issue of late submission of EOI by DSKL for consideration before CoC during the 9th CoC meeting. It is submitted that the CoC after deliberating upon judicial precedents and in light of changing business circumstances due to Covid-19 Pandemic, thought it prudent to permit DSKL to submit Resolution Plan for the Corporate Debtor for maximization of value of assets of the Corporate Debtor and accordingly the CoC passed a resolution with 100% vote allowing DSKL to participate in the Resolution Process of the Corporate Debtor.

19. That as per Regulation 36A(11) of CIRP Regulations, all the other final PRAs of the Corporate Debtor raised their objections to the inclusion of DSKL as a PRA, on the ground of violation of Regulation 36A(6) of CIRP Regulation. All these objections raised by the said PRAs were rejected by R1 on the ground that deviation from Regulation 36A(6) is permissible as per judicial precedents, if the same is done for maximization of value of assets of the Corporate Debtor and if it does not prejudice or delay the CIRP.

20. One of the final PRAs namely, M/s Gangamai Industries and Construction Limited, filed an Interlocutory Application (IA) No. 1029 of 2020 before this Tribunal, challenging the decision of R1 & R2 allowing DSKL to submit the EoI belatedly. It is submitted that IA No. 1029/2020 has been heard on 09/07/2020 and reserved for orders. Orders are awaited.

21. The Respondents submit that in light of IA No. 1029/2020 being reserved for orders, R1 pursuant to obtaining legal opinion, decided that none of the Resolution Plans received from the final eligible PRAs will be opened till the order is passed in IA No. 1029 of 2020.

22. The Respondents submit that, at this juncture the Applicant herein by an email dated 02/08/2020 expressed its interest to submit a Resolution Plan for the Corporate Debtor. However, the last date for submission of EoI as per Form G was 10/02/2020 which was much before any lockdown or restriction on movement due to Covid-19 pandemic, further the extended date for submission of Resolution Plan was also 13/07/2020. Therefore, R1 responding to Applicant on 04/08/2020, informed that a similar decision taken by the Respondents to accept a belated EOI against the same Corporate Debtor is already under challenge and therefore R1 is not inclined to consider the Applicant's request at this juncture. The Respondents submit that, R1 being an officer appointed by this Tribunal and keeping in mind the authority of this Tribunal, R1 chose not to accept or reject the request of the Applicant until final orders are passed in IA No. 1029 of 2020.

23. The Respondents further submit that the Applicant, instead of waiting for the outcome/final decision in IA No. 1029 of 2020, prematurely approached this Tribunal and filed the present Application to force the hands of R1 & R2 to accept the belated submission of EOI and to allow the Applicant to submit Resolution Plan for the Corporate Debtor. The Respondents submit that the Applicant in its Application has concealed the pendency of IA No. 1029/2020 and thus attempted to mislead this Tribunal by submitting that the Respondents have acted unfairly, arbitrarily and in violation of the Code.

24. The Respondents submit that, the judgment relied by the Applicant in the matter of Kotak Investment Advisors Ltd...VS...Mr. Krishna Chamadia, RP of Ricoh India Limited (supra), was passed after the final arguments were closed and order was reserved in IA No. 1029 of 2020. Also, in said Judgment the Hon'ble NCLAT has held that after expiry of the deadline for submission of EOI, CoC is fully competent to extend the timeline for submission of EOI by following the Rules and Regulations as per due process. The acceptance of EOI and Resolution Plan after the expiry of timeline for submission of EOI and Resolution Plan was held to be illegal. It was held that illegal exercise of power by the RP in conducting CIRP cannot be treated as an exercise of power for maximization of value under commercial wisdom of CoC.

25. The Respondents further submit that, alternatively the Applicant has prayed that Respondents be directed to issue fresh Form G in order to accept the EOI of the Applicant. However, the Applicant was afforded an equal opportunity to submit an EOI and Resolution Plan within the timeline prescribed under Form G and the Applicant failed to abide by the prescribed timelines for submission of EOI. Therefore, the Applicant

cannot be permitted to attribute its incompetency by making allegations of arbitrariness and unfairness on the part of R1. Therefore, the present Application deserves to be dismissed.

26. The Respondents submit that, in the event this Tribunal is inclined on granting the reliefs sought by the Applicant then the Tribunal may be pleased to direct R2 to consider the issuance of fresh Form G without opening the Resolution Plans already submitted and without disclosing the fair value and liquidation value of the Corporate Debtor. R1 submits that issuing fresh Form G entails expenditure of time and money and the decision falls solely in the commercial wisdom of R2. The Respondents also submit that no changes will be affected to the eligibility criteria of PRA or evaluation matrix upon issuance of fresh Form G and the Resolution Applicants who have already submitted the Resolution Plans may also be permitted to revise their Plans.

27. We have heard the learned Counsel for both the sides at length on the Application. The principle underlying the Code for Corporate Resolution of a Company is required to be kept in mind while going about the Resolution of the Corporate Debtor. The purpose of Resolution is to see that the Company and its assets are not wasted under an inefficient management. The Resolution aims at putting the Company and its group entities in better hands which the Hon'ble Apex Court in Swiss Ribbons v. Union of India: (2019) 4 SCC 17 indicated that the timelines within which the Resolution Process takes place again protects the Corporate Debtor's assets from further dilution and also protects all its creditors and workers by seeing that the Resolution Process goes through as fast as possible so that the another management can through its entrepreneurial skills resuscitate the Corporate Debtor to achieve its

revival. It was indicated that the object of keeping a Company/ Corporate Debtor alive in the hands of another management through Corporate Insolvency Resolution Process (CIRP) is in the interest of all the stake holders. The Hon'ble Court in Swiss Ribbons (supra) inter alia observed as follows with regard to objects of the Code.

“As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme workers are paid, the creditors in the long run will be repaid in full, and shareholders/ investors are able to maximize their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets.”

28. This underlying object and principle of the Code, in resolving a debt-ridden Corporate Debtor, cannot be lost sight of. The adherence to specific timeline for resolution is the essence, which in effect would bring about successful resolution of a beleaguered Company. The

Applicant herein was informed by an e-mail dated 4th August 2020 that its request for submitting EoI could not be considered. The invitation for EoI was widely publicized in two newspapers namely 'Business Standard' and 'Lokmat', the last date of submission of EoI was 10.02.2020. The ground that the Applicant due to lack of knowledge failed to submit EOI within time cannot be accepted. Besides no indulgence can be given to someone who hasn't been vigilant enough. The Applicant has not shown any sufficient cause for its delay in submitting its EoI. Mere stating that it was engaged in tackling the unexpected challenges on account of Covid-19 Pandemic would not be considered sufficient reason to condone the delay. No reason is assigned as to how the pandemic affected the efforts of the Applicant in approaching the R1 in submitting the EoI. We are not persuaded by the submissions made on behalf of the Applicant to condone the delay and accept its EoI. The referred decisions are distinguishable on facts. The orders therein were passed depending upon the relevant facts in the respective cases. Those thus cannot have universal relevance and application. The present facts are distinct. The Applicant has been negligent in submitting the EoI to the R1. It has not been able to satisfactorily explain such latches. The present Applicant thus doesn't merit consideration and is liable to be rejected. We hereby do so. Hence ordered.

ORDER

The IA No. 1211 of 2020 be and the same is rejected on contest. There would however be no order as to costs.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Mohammed Ajmal
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
COURT No. – I, MUMBAI BENCH**

*** *** ***

**IA No. 1211/MB/2020
in
CP (IB) No. 2156/MB/2019**

**Canara Bank
V/s
KGS Sugar & Infra Corporation Limited**

*** *** ***

Dated 23rd November, 2020

ORDER

The work of the Tribunal has been closed due to Covid-19 pandemic as per letter dated 22.03.2020 and subsequent follow up orders of the Principal Bench, National Company Law Tribunal. The Principal Bench vide Order dated 31.07.2020, constituted this Bench for hearing of the urgent matters through Video Conference (VC).

The matter is taken up on VC. Mr. Pankaj Jain, RP is present. Order pronounced. IA No.1211 of 2020 rejected, vide separate order.

**Sd/-
V. NALLASENAPATHY
Member (Technical)**

**Sd/-
MOHAMMED AJMAL
Member (Judicial)**