

(2024) 03 NCLT CK 0028

In the National Company Law Tribunal

Case No : IA No. 2390 Of 2023 In CP(IB) 518 (IB)2020

Shree Siddhivinayak Cotspin Private Limited

APPELLANT

Vs

Rajan Deshraj Agarwal

RESPONDENT

Date of Decision : 11-03-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 60(5)

National Company Law Tribunal Rules, 2016 — Rule 11

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations 2016 — Regulation 36A(3), 36A(4), 36A(6), 36A(10), 36A(12)

Citation : (2024) 03 NCLT CK 0028

Hon'ble Judges : Kuldip Kumar Kareer, Member (J); Anil Raj Chellan, Member (T)

Bench : Division Bench

Advocate : Prateek Seksaria, Aniruth Purusothaman, Amir Arsiwala, Farzeen C Pardiwalla, Ayush Kothari, Shreyansh Desai, Vikram Nankani, Manoj Mishra

Final Decision : Disposed Of

Judgement

Kuldip Kumar Kareer (Judicial)

1. This Application has been filed by the Applicant i.e. Shree Siddhivinayak Cotspin Private Limited seeking following prayers;

a. to direct the Respondents to permit the Applicant to submit an Expression of Interest for the Corporate Debtor;

b. to direct the Respondents to consider the Expression of Interest which would be submitted by the Corporate Debtor;

c. pass ad-interim or interim order in terms of clause (a);

d. to pass any orders(s) as the Tribunal may deem fit.

Facts of the Case:

2. The Corporate Debtor i.e. Sristi Hospitality Private Limited is an Company

incorporated on 08.08.2023 under the Companies Act, 1956.

3. The Respondent no. 2 i.e. Saraswat Co-operative Bank Limited filed an Application bearing Company Petition (IB) no. 518 of 2022 under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor.

4. This Tribunal admitted the aforesaid Petition against the Corporate Debtor vide order dated 27.02.2023, whereby CIRP was initiated for the Corporate Debtor and Respondent no. 1 was appointed as Interim Resolution Professional of the Corporate Debtor.

5. The Respondent no. 1 issued Form-G invitation for Expression of Interest dated 16.05.2023 and last date for receipt of Expression of Interest was 31.05.2023.

6. The Applicant is one of the foremost integrated global players engaged in the business of ginning of raw cotton into bales, all types of yarns, cotton, waste, and fabrics. The Applicant sent an email dated 01.06.2023 to the Respondent no. 1 requesting him to allow it to submit an EoI for the Corporate Debtor on 01.06.2023. It is submitted that the delay was not deliberate and occurred as the director of the Applicant had been out of station for almost 15 days prior to the last date of submission for an EoI.

7. The Applicant sent a letter dated 02.06.2023 to the Respondents requesting them to condone the delay of 2-5 days in submitting an EoI. The Applicant further stated it shall submit an EoI within 3 days from the date of receipt of confirmation of condonation of delay.

8. The Respondent no. 1 sent an email dated 03.06.2023 to the Applicant informing them that he had placed the request for extending timeline for submitting EoI but the CoC had stated that the timeline for submitting an EoI should not be extended.

9. It is submitted that the Hon'ble Supreme Court of India vide judgment dated 10.03.2021 in the matter of Kalpraj Dharamshi & Anr vs. Kotak Investment Advisors Ltd. & Anr has held that the CoC can permit a Resolution Professional to consider an EoI and a Resolution Plan submitted well after the last date of submission of an EoI for the Resolution of a Corporate Debtor under the Code.

10. Hence, the Applicant has filed this Application seeking condonation of a delay of one day on the part of the Applicant to submit an EoI and seeking further directions to the Respondents to permit the Applicant to submit an EoI and to Respondent no. to consider the same.

Submissions of the Respondent No. 1:

11. This reply has been filed by the RP/Respondent no. 1 denying all the contentions and averments of the Applicant in IA 2390 of 2023 which are contrary to the stand of the Respondent no. 1. Further Respondent no. 1 stated that nothing contained in the IA 2390 of 2023 be deemed to be admitted merely

for the want of a specific denial.

12. As per Regulation 36A(6) of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations 2016, the Expression of Interest received after time specified in the invitation under clause (b) of sub-regulation (3) shall be rejected. The intention of the law is that the Resolution Professional cannot receive any expression of interest which are filed after time specified in the invitation under clause (b) of sub-regulation (3) of the Regulation 36A of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations 2016.

13. It is further stated that it is not within the powers of the Respondent no. 1 to provide further time to file Expression of Interest. In such matters the Respondent no. 1 has to abide by the commercial wisdom of the CoC. The Respondent no. 1 based on the decision of the CoC (Respondent no. 2) refused to allow further time to the Applicant to file Expression of Interest to express Expression of Interest after the timeline for submission of Expression of Interest was over. The Respondent no. 1 has expressed regret to all such persons who approached after the last date filing Expression of Interest was over which is also the case of the Applicant.

14. In case the relief as sought is granted, then the whole process of publishing Form G has to be undertaken afresh which shall delay the process of resolution of the Corporate Debtor.

15. In case the relief as sought is granted then it shall be prejudicial to the interest of the Resolution Applicants who have submitted Expression of Interest in time.

16. In the present Interlocutory Application, the Applicant has stated that it has inadvertently missed the deadline of 31.05.2023 to submit the Expression of Interest. The Applicant has also stated that the Applicant missed the deadline for submitting the Expression of Interest as the Directors were travelling. It can be seen from the documents annexed

by the Applicant to its IA that only one Director was travelling. The other two Directors, who are part of the Consortium, which wants to file Expression of Interest were available to submit the Expression of Interest in the time allowed which was not done. Member of Consortium of which the Applicant belongs were aware of the publication of Form G but chose to wait up to 01.06.2023 for the return of the Director who was traveling.

17. If the Applicant had any Bona fide interest in the Resolution of Srishti Hospitality Private Limited, then it would have filed the Expression of Interest in time.

18. Further Respondent no. 1 has stated that the six prospective Resolution Applicants have submitted Expression of Interest. All six Prospective Resolution Applicants were declared as provisionally eligible as per Regulation 36A(10) of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016.

The Respondent no. 1 has declared the final list of Prospective Resolution Applicants as per Regulation 36A(12) of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016. Therefore, Respondent no. 1 has requested to dismiss the present Application without granting any reliefs as sought.

Submissions of the Respondent No. 2:

19. In the reply has by the Respondent no. 2, the Respondent no. 2 has stated that the Applicant does not have any locus-standi to file the Interim Application and seek condonation of delay in submitting an Expression of Interest as the Applicant had neither participated in submitting the Expression of Interest (EoI) within the stipulated timeframe within which the EoI was required to be submitted i.e. 31.05.2023 nor had ever made enquiries or sought for copies of expression from the Respondent no. 1 within the said stipulated timeframe and as such the Applicant is a complete stranger in the Resolution Process of Corporate Debtor. Thus, the Interim Application is not maintainable and on this ground alone, the Interim Application deserves to be rejected.

20. Further, the Applicant is attempting to drag and delay the resolution process by seeking to participate belatedly and much after the timeframes set out in Form G which is contrary to the spirit of the Insolvency and Bankruptcy Code, 2016. Therefore, the present Interim Application deserves to be dismissed with order as to compensatory costs.

Analysis and Findings:

21. We have heard the Counsel for the parties and have gone through the records.

22. During the course of arguments, Counsel for the Applicant has argued that as per the information available, the Successful Resolution Applicant, whose plan has been approved by the CoC, has proposed to invest/pay a sum of Rs. 32 crores for the revival of the Corporate Debtor. The Counsel for the Applicant has further contended that as against the said amount, the Applicant is willing to pay more than Rs. 35 crores. According to the Counsel for the Applicant, there was a delay of just 1 day in the submission of the EoI by the Applicant due to which he was not allowed to file its plan and the delay, if any, deserves to be condoned. The Ld. Counsel has further argued that form G published by Respondents was also not in consonance with the provisions of Regulation 36A of CIRP Regulations. In this regard, the Counsel for the Applicant has pointed out that in Form G (Exhibit E), against column no. 8 and 9, it has simply been mentioned that the information can be sought from the office of the RP. In addition to this, the address and Email ID of the RP has been given. According to the Counsel for the Applicant, as per Regulation 36A (3) & (4) Form G shall state where the detailed invitation for Expression of Interest can be downloaded or obtained from and also provide the last date for submission of Expression of Interest which shall not be less than 15 days from the date of issue of detailed information.

Regulation 36A (4) further provides that the invitation referred to in Regulation 36A (3) shall specify the criteria for PRAs and also provide basic information about the Corporate Debtor as may be required by a prospective Resolution Applicant for Expression of Interest. Ld. Counsel for the Applicant has further contended that the information given at serial no. 8 and 9 of Form-G does not meet the requirements of Regulation 36A and, therefore, on this account also, the delay of one day is liable to be condoned and an opportunity of submitting a Resolution Plan may be given to the Applicant.

23. Ld. Counsel for the Applicant has further argued that no prejudice is likely to be caused to the Respondents or anybody else if the Applicant is permitted to submit the EoI. In this regard, the Ld. Counsel for the Applicant has further argued that since the Applicant is proposing to pay more than the Resolution Applicant, whose plan has been approved, this would also help in achieving the object of maximization of the value of the Corporate Debtor which is the primary object of the IB Code, 2016. Ld. Counsel for the Applicant has further pointed out that in the additional affidavit dated 11.09.2023 submitted by the Applicant, it is stated that the Applicant proposes to pay a sum of Rs. 35 crores as against Rs. 32.41 crores offered by the Resolution Applicant, whose plan has been approved. In the affidavit, the Applicant has further proposed to infuse Rs. 10 crore more into the Corporate Debtor to be utilized as working capital and, thus, the total outlay of the Resolution Plan of the Applicant would come to Rs. 45 crores. Therefore, taking into consideration all these facts, the Application deserves to be allowed to submit to EoI which would be in the larger interest of all the stakeholders.

24. On the other hand, the Ld. Counsel for the Resolution Professional has argued that the Application is nothing but an afterthought and deserves to be dismissed. In this regard, the Counsel for the RP has argued that in the first ever communication sent by the Applicant i.e. the Email dated 01.06.2023 (Exhibit-G), it has simply been stated that the director of the Applicant namely Kiran J Mehta was out of station for the last 15 days. According to the Counsel for the RP, there is no mention of any lack of information due to which the EoI could not be submitted by the Applicant. Counsel for the RP has further referred to the second communication sent by the Applicant on 02.06.2023 (Exhibit-J) wherein also simply a request for condoning the delay in filing the EoI has been made on the ground that the Applicant was travelling for business purposes and missed the timeline for the submission. Therefore, according to the Counsel for the RP, the argument that the information given in Form-G was deficient or was not as per Regulations is nothing but a false plea.

25. The Counsel for the RP has further argued that the travel details (Exhibit H) of the Director of the Applicant clearly show that the concerned Director had come back to Bombay on 26.05.2023 whereas the last date for submission of EoI was 31.05.2023 as per Form-G. Therefore, the Applicant had ample time to submit the EoI and since the same was not submitted within the timeline

provided under the Code as well as Form-G, the Applicant has no vested right to claim that he may now be permitted to submit the EoI.

26. The Counsel for the RP has further contended that the argument that Form-G published by the RP was not in accordance with Regulation 36A is also not correct as the same has been published strictly in accordance with the format given in the Regulation.

27. In support of his contention, the Counsel for the RP has relied upon *Dwarkashish Sakhar Karkhana Ltd. vs. Pankaj Joshi and others* Company Appeal (AT)(Insolvency) No. 233 of 2021 decided on 28.06.2021 whereby the Hon'ble NCLAT has held that even if no consequences of non-compliance of Regulation 36A has been provided but Regulation 36A(6) provides that EoI received after time satisfied shall be rejected. The Counsel for the RP has therefore, prayed for the dismissal of the Application.

28. Counsel for the CoC has also adopted arguments by the Counsel for the RP.

29. We have thoughtfully considered the arguments made by the Counsel for the parties and have gone through the records.

30. Primarily, the case of the Applicant is that he was not in a position to submit the Expression of Interest on account of the fact that in Form- G the necessary information was not readily available. It has also been pointed out that against the column 8 and 9 of Form-G, simply the email ID and address of the RP was given indicating that requisite information can be had from the RP by contacting him at the given address. However, in the first communication sent by the Applicant on 01.06.2023, which is at Exhibit G on record, it has simply been stated that the Applicant could not submit the EoI as its Director Kiran J Mehta was out of station for 15 days. In the said email, nothing is mentioned with regard to any lack of information which might have incapacitated the Applicant from submitting the Expression of Interest. Similarly, in the second communication dated 02.06.2023, which is at Exhibit J on record, the condonation of delay in filing the Expression of Interest has again been sought on the ground that the Applicant was travelling for business purposes due to which he missed the timeline for submission of EoI. However, the travel details Exhibit-H submitted by the Applicant himself clearly shows that the concerned director of the Applicant had come back to Mumbai on 26.05.2023⁶. As against this, the last day for submission of EoI was 31.05.2023 as per Form-G. Therefore, the plea that the EoI could not be submitted in time due to travel engagements of the Director of the Applicant is also not factually correct, nor on this ground the delay in filing the EoI, even it is of just one day, be condoned.

31. At the same time the plea that the Form-G was not as per norms or that it did not contain the necessary information is also not correct. As per Form-G, RP could be contacted at the given address for the necessary information, if any, but the Applicant never contacted the RP at any point of time for any information. It has also not been explained as to what information was required for want of

which EoI could not be submitted by the Applicant. Therefore, even this plea is not tenable. Besides it has been categorically held in *Dwarkashish Sakhar Karkhana Ltd. vs. Pankaj Joshi and others* (Supra) by the Hon^{ble} NCLAT that timeline given in the Regulation 36A(6) are to be adhered to strictly.

32. As a result of the foregoing discussions, we do not find any legitimate reasons to allow the condonation of delay in filing the EoI. Therefore, the present Application i.e. IA 2390 of 2023 is hereby summarily rejected. With no order as to costs.