(2022) 03 NCLT CK 0056

In the National Company Law Tribunal

Case No : I.A (IB) No. 208/KB/2022I.A (IB) No. 162/KB/2022 in CP (IB) No. 306/KB/2019

UCO Bank APPELLANT

Vs

Kumlai Tea and Industries Limited RESPONDENT

Date of Decision : 22-03-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 60(5)
National Company Law Tribunal Rules, 2016 — Rule 11
Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 36A, 36A(6)

Citation : (2022) 03 NCLT CK 0056

Hon'ble Judges : Rohit Kapoor, Member (J);Harish Chander Suri, Member (T)

Bench : Division Bench

Advocate : Jishnu Chowdhury, Rashmi Bothra, D.N. Sharma, Navneet Misra, Rahul Singh, Chayan Gupta, Ashutosh Singh, Shaunak Mitra, Vikash Singh, Kavach Kashyap, Sudha Singh, Rahul Auddy, Aditya Gooptu

Final Decision : Dismissed

Judgement

Rohit Kapoor, Member (Judicial)

1. These applications under Section 60(5) of Insolvency and Bankruptcy Code, 2016, AND Regulations 36A of the Corporate Insolvency Regulations Process Regulations, 2016; AND Rule 11 of the NCLT Rules, 2016 filed by the applicant for the following reliefs:-

a. Direction be passed on the Resolution Professional to consider and accept the Expression of Interest dated February 11, 2022 of the Applicant and allow the Applicant to submit its Resolution Plan following due process;

b. The application for the approval of Resolution Plan, if any, be kept in abeyance pending disposal of the present application.

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2. The Applicant states that it has the experience in the business of Tea Estate in successive / successful minutes for the last number of years. As per the notice dated November 19, 2021 the last date for submission of Expression of Interest (EOI) was December 4, 2021 and the last date for submission of Resolution Plan was January 18, 2022. However, Applicant not having the knowledge of the commencement of CIRP could not submit it's EOI in compliance with the notice dated November 19, 2021. By an order dated January 27, 2022 the erstwhile RP was replaced by the Respondent as the Resolution Professional of the Corporate Debtor, on health grounds.

3. It is stated that applicant by an email dated February 11, 2022 submitted an EOI requesting the respondent to allow the Applicant to participate in the Resolution process by submitting its Resolution Plan and also requested for specific information for the purpose of submitting its Resolution Plan. However, till date no reply has been received from the Respondent. Hence, the present application seeking direction upon the RP to consider and accept the Expression of Interest dated February 11, 2022 of the Applicant and allow the Applicant to submit its Resolution Plan following due process.

4. The Applicant in past 2 years, have completed new plantation in more than 100 hectares of vacant land and is expecting the crop to increase by 9 Lakh Kilograms by next year. Your Applicant's estate has a factory with a production capacity of 20 lakhs kilograms of tea per annum. The management of your Applicant is having three bought-leaf factories in Jalpaiguri district namely Teesta Tea Company Private Limited, Jalpaiguri Tea Estate Private Limited and Teesta Riverview Tea Company Private Limited producing more than 40 lakhs kilogram of made tea per annum.

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5. The applicant states that he is engaged in the business of Tea Bottling and has the experience in the business. The applicant was interested to expand its business and for such purpose intended to acquire tea gardens in order to enable it to be self reliant as it was purchasing tea leaves from vendors. Acquisition of tea gardens would result in cost efficiency and would also prove to be economically beneficial. It would not be out of the place to reiterate that the Application is one of the largest manufacturers of made tea in the eastern region, acquisition of tea garden would enable the Applicant to obtain green leaves directly for its manufacturing and production of tea.

6. Moreover, since the Resolution Plans are yet to be considered and deliberated upon by Committee of Creditors (CoC), acceptance of EOI and Resolution Plan of the Applicant shall not result in any prejudice or detriment to the CIRP. Pertinently, by an email dated February 17, 2022 the applicant approached the respondent requesting him to allow the Applicant to participate in the Resolution Process by submitting its Expression of Interest/Resolution Plan within a week due to certain exigencies and owing to unavoidable circumstances, more

specifically, some medical exigencies in the family of the directors of the applicant. It is significant to note that the Applicant is ready with its EOI and Resolution Plan and believes that its plan would result most beneficial for Corporate Debtors and its Creditors.

7. However, by an e-mail dated February 24, 2022 the said proposal was rejected by the Respondent expressing his inability to accept the expression of interest as the time of accepting the same has been expired. The Applicant submits that the objective of the CIRP is maximization of assets and revival of Corporate Debtor and the Applicant firmly believes that it would yield the best results because the Applicant is in an identical business and well equipped with more than requisite technical know- how and knowledge to operate the tea garden.

8. t is stated by CoC:-

Date of Commencement of CIRP: 01/08/2019

Dates on which Form-G

was published in 2 news

papers

Last date of submission of

EOI

1st issue of FORM –G

15/10/2019

30/10/2019

Extension I

31/10/2019

15/11/2019

One EOI received on 15/11/2019 -

Extension II

15/11/2019

30/11/2019

Extension III

31/11/2019

15/12/2019

Extension IV

19/12/2019

18/01/2020

Stay on the CIRP from 7.2.2020 to 15.11.2021

Extension V

19/11/2021

04/12/2021

Pursuant to Form G published on 19.11.2021, RP received EOI from following four Parties and these four parties have been declared as Prospective Resolution Applicant (PRA)

1) Terrai Tea Co Ltd

2) Sunrise Industries

3) Sumit Kumar Khanna

4) Naresh Chandra Mittal

The last date for submission of Resolution Plan was 18th January, 2022 which was extended to 02.02.2022.

02.02.2022 – Terai Tea Co Ltd submitted its Resolution Plan (only 1 applicant)

08.02.2022 – 10th CoC meeting held and time to submit Resolution Plan was extended till 17.02.2022. The Plan of Terai submitted on 02.02.22 was not opened.

17.02.2022 – Revised Plan submitted by Terai Tea Limited (only 1 applicant)

21.02.2022 – 11th CoC meeting in which the plan of Terai Tea was opened by the RP and is under scrutiny of RP and CoC. It is further stated by the CoC:

1. The new entities wanting to submit the plans will delay the entire plan approval procedure silence one plan is already up for consideration before the CoC;

2. As per Regulation 36A(6) of the CIRP Regulations, no EOIs after the last date can be accepted by the RP and since time is of essence in the Resolution Plan process, the applications should be dismissed;

Minutes of the CoC have been enclosed by CoC:

Minutes of the 9th CoC held on 10th January, 2022.

Minutes of the 10th CoC held on 8th February, 2022.

Minutes of the 11th CoC held on 21st February, 2022.

9. Applicant in the present case seeks to submit their Resolution Plan before the Resolution Applicant and consideration of the same by CoC. Admittedly, there is a delay on the part of the applicants. The last date was submission of EOI was 4th

of December, 2021 as is evident from the schedule of dates furnished by the CoC.

10. IA 208/KB/2022 was filed before this Adjudicating Authority on 1st of March, 2022 and in IA 162/KB/2022 on 18th of February, 2022 seeking direction upon Resolution Professional to accept the expression of interest (EOI) and place it before the CoC for its consideration.

11. Both these applications have been moved under Section 60(5) of Insolvency and Bankruptcy Code, 2016. It is also admitted position that the CIRP started in October, 2019 and is one Resolution Plan submitted before Resolution Professional which now has been placed before CoC for consideration. Both the applicants have come before this Adjudicating Authority only after the plan was submitted before CoC for its consideration.

12. Exercise of discretion under Section 60(5) of Insolvency and Bankruptcy Code, 2016, is not as a matter of course. It is only in exceptional circumstances, the period of CIRP can be extended by the Adjudicating Authority.

13. We are of the view:-

i. The Code does not provide that anyone can walk into at any time with the argument that he is interested to participate in CIRP in the interest of maximization of the value of the assets. It is not a mere matter of procedure the timelines have been prescribed by the Code. These timelines have a definite purpose and to achieve this purpose, it is very necessary to adhere to these timelines. It is provided in the very object of the Act that the process of CIRP has to be completed in a time bound manner.

14. We have perused the applications, after perusal of the applications and after hearing the Ld. Counsel for the applicants, we find that these applications do not contain any such exceptional reason or circumstances for which the applicants can be allowed to place the bid before Resolution Professional. At this juncture, as mentioned above, the process started in 2019 and the CoC is already considering one Resolution Plan before it. We do not find any reason in these applications for extending the period of CIRP permitting these applicants to furnish their Resolution Plan.

15. We are of the view that these applicants were 'fence sitters' who have come only after the Resolution Plan was placed before the CoC. It is clear from the list of dates submitted by the CoC, the time for submission of EOI was extended 5 times.

16. We find absolutely no justified reasons in these applications to grant the relief asked by the applicants. Both these applications are dismissed with cost of Rs. 25,000/- each.

17. List this CP (IB) No. 306/KB/2019 on 22/04/2022.

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