

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

**IA No. 124/2021
In
CP (IB) No. 312/Chd/Hry/2018
(Admitted Matter)**

**Under Section 60(5) of the Insolvency
and Bankruptcy Code, 2016 read with
Regulation 36A of the IBBI (IRP for CP)
Regulations 2016**

In the matter of:-

Oriental Bank of Commerce
(now Punjab National Bank)

...Financial Creditor

Vs.

Gupta Exim India Private Limited

...Corporate Debtor

And in the matter of IA No. 124/2021:-

Navdeep Grover & another

...Applicants-Resolution Applicants

Vs.

Vivek Raheja, Resolution
Professional of Gupta Exim
India Private Limited & others

...Respondents

Order delivered on: 16.07.2021

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)**

Present through Video Conferencing:-

For the applicant : 1). Mr. Anand Chhibbar, Senior Advocate
2). Mr. Vaibhav Sahni, Advocate
3). Mr. Shikhar Sarin, Advocate

For the respondent No. 1- Resolution Professional : 1). Mrs. Munisha Gandhi, Senior Advocate
2). Mr. Karan Gandhi, Advocate
3). Mr. Harsh Garg, Advocate
4). Mr. Pulkit Goel, Advocate
5). Mr. Vivek Raheja, Resolution Professional in person.

For the respondent No. 2- Punjab National Bank : 1). Mr. R.S. Bhatia, Advocate
2). Mr. T.K. Singh, Advocate

For the respondent No. 3- SIDBI : Mr. Saksham Arora, Advocate, proxy counsel for Mr. Deepender Singh, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

IA No. 124/2021

1. Shri Navdeep Grover and Shri Sandeep Grover jointly filed the instant IA against the Resolution Professional and two financial creditors of M/s Gupta Exim India Private Limited under Section 60(5) of the IBC Code, 2016 read with

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Regulation 36A of the IBBI (IRP for CP) Regulations, 2016 seeking to set aside the fresh Form G (Annexure 15) dated 21.02.2021 and to consider the resolution plan of the applicant in accordance with law.

2. Corporate Insolvency Resolution Process has been initiated against the corporate debtor M/s Gupta Exim India Private Limited when CP (IB) No. 312/Chd/Hry/2018 filed by the Oriental Bank of Commerce, now since merged with Punjab National Bank, under Section 7 of the IBC, 2016 on 29.10.2019.

3. It is stated that in terms of Regulation 36A(1) of the CIRP Regulations, 2016, the first respondent published Form G on 23.01.2020 and invited Expression of Interests from the prospective resolution applicants. Accordingly, the applicant and others have submitted initially Expression of Interests and thereafter, the resolution plans. After negotiations and deliberations from time to time, the Committee of Creditors of the corporate debtor in its 12th meeting declared the applicant as H1 and requested all the persons who have submitted resolution plans to revise their plans further. The applicant increased its upfront amount by Rs. 5 crores whereas the other bidders i.e. H2 and H3 showed their unwillingness to continue to increase their bids and therefore, their bids remained unchanged. On negotiations, the present applicant again revised its proposal and raised its upfront amount to Rs. 32 crores, total resolution amount to Rs. 87.13 crores and reduced the implementation period to 2.5 years. The present applicant submitted their resolution plan vide e-mail dated 22.01.2021 and submitted two addendums to the said plan through e-mails dated 27.01.2021 and 30.01.2021. The first respondent-RP vide e-mail dated 01.02.2021 informed the applicant that e-voting on the resolution plan is in process and the applicant will be apprised about the result soon. Respondent

No. 1-RP vide his e-mail dated 02.02.2021 without citing any valid reason informed that its resolution plan was not considered favourably by the COC and therefore, stood rejected.

4. It is further submitted that the first respondent-RP published the impugned fresh Form G on 21.02.2021 inviting fresh resolution plans. The said impugned fresh Form G dated 21.02.2021 (Annexure A-15) is violative of Regulation 36A, in as much as the timelines mentioned therein are not in accordance with the said Regulation. The applicant vide its e-mail dated 25.02.2021 requested the first respondent-RP to republish Form-G in accordance with the provisions of the Code to enable it to submit a fresh resolution plan but the first respondent-RP illegally proceeded with the impugned fresh Form-G dated 21.02.2021. Accordingly, the applicant prays for setting-aside the impugned Form-G dated 21.02.2021 and for issuance of a fresh Form-G again in accordance with the Code and to consider its plan.

5. The first respondent-RP submits that CIRP proceedings were initiated against the corporate debtor M/s Gupta Exim India Private Limited on 29.10.2019. The CIRP period was extended by 90 days more and also excluded the period of 98 days after lockdown and accordingly, the period was extended upto 31.10.2020, by order of this Adjudicating Authority dated 31.07.2020. Again the period of CIRP was extended by 60 days more beyond 270 days after excluding the period of the pendency of the application filed for that purpose and accordingly, the CIRP period was to expire on 04.02.2021. Again vide order dated 08.02.2021, a further period of 31 days of lockdown was also excluded and thereby the CIRP period was to expire on 15.03.2021. The first respondent-RP further submitted that in pursuance of the Form-G, three resolution plans were

received including that of the applicant. The COC in its meeting held on 01.02.2021, considered all the three resolution plans, however, rejected all of them, including the resolution plan of the applicant, though he was H1 bidder at that point of time. Thereafter, one of the resolution applicant i.e. M/s Giriraj Coated Fab Pvt. Ltd. who was H2 bidder gave a letter dated 04.02.2021 showing its willingness to increase the offer price. The COC in its 15th meeting held on 20.02.2021 resolved to issue a fresh Form-G. Since the CIRP period was expiring on 15.03.2021, the first respondent-RP issued the fresh Form-G on 21.02.2021, however, with short timelines in comparison to the timelines provided under Regulation 36A of the CIRP Regulations. The applicant though initially objected for republication of the Form-G but vide e-mail dated 26.02.2021 (Annexure A-7) given his consent to participate in the resolution of the corporate debtor by stating that the amount already deposited be considered towards the fresh EMD required as per the republished Form-G.

6. In pursuance to the impugned Form-G, two earlier prospective resolution applicants and one new prospective resolution applicant submitted their resolution plans but the applicant in the instant IA though one of the prospective resolution applicant under the republished Form-G, did not submit its resolution plan though participated in the process. Since the applicant failed to submit his resolution plan, the instant IA is liable to be dismissed.

7. Heard Mr. Anand Chhibbar, the learned senior counsel for the applicant, Ms. Munisha Gandhi, the learned senior counsel for the respondent No. 1-RP, Mr. R.S. Bhatia and Mr. T.K. Singh, the learned counsels for respondent No. 2 and Mr. Saksham Arora, the learned proxy counsel for Mr.

Deepender Singh, the learned counsel for respondent No. 3 and perused the pleadings on record.

8. Most of the above referred facts are not in dispute. However, the applicant submits that since he was the H1 bidder in pursuance to the first Form-G and since his plan value of Rs. 87.13 crores was exposed to all and M/s Giriraj Coated Fab Pvt. Ltd. clandestinely got the said info and hence, though withdrawn from the process in respect of the first Form-G but submitted a fresh resolution plan for Rs. 88 crores. Hence, the fresh process of issuing Form-G and all consequential actions should be set-aside as the same is vitiated by fraud and collusion. It is, further submitted that the impugned Form-G dated 21.02.2021 having not provided the required timelines as per Regulation 36A(1), is liable to be set-aside. On the other hand, the first respondent-RP submits that the object of the Code is the maximization of the value of the assets of the corporate debtor and when one of the resolution applicant offered the bid of Rs. 88 crores i.e. more than the rejected bid of the applicant, the COC and the RP are right in issuing fresh Form-G and to proceed with the fresh process of approval of the resolution plans. The first respondent-RP further submits that the applicant having given his consent to participate in the process in pursuance of the fresh Form-G by stating that the amount already deposited be considered towards the fresh EMD required as per the republished Form-G, is estopped from challenging the fresh Form-G on any ground. Further, the applicant having not submitted any fresh resolution plan, though opportunity was provided to him, cannot raise any objection for consideration of the resolution plans of others by the COC. It is also submitted that since the CIRP period was expiring on 15.03.2021, the reduced timelines in fresh Form-G are justified.

9. It is not in dispute that the object of the Code is maximization of the value of the assets of the corporate debtor. Hence, no prospective resolution applicant can object if the COC in its commercial wisdom rejects a particular resolution plan and in deciding to issue a fresh Form-G. The applicant though got an opportunity to submit a fresh resolution plan, and has chosen not to submit the same but on the other hand, filed the instant application.

10. It is to be seen that the resolution of the respondent-corporate debtor has already been delayed for substantial period due to various reasons including different long spells of lockdowns due to Pandemic Covid-19. It is not in the interest of the corporate debtor and any of its stakeholders to further delay the resolution process. The applicant having given consent to participate in the process in pursuance of the impugned Form-G dated 21.02.2021 cannot challenge the same. However, in view of the object of the Code, we are inclined to give a short time to all the prospective resolution applicants including to the applicant to submit their resolution plans or revised resolution plans as the case may be within a specified time.

11. In these circumstances and for the aforesaid reasons, the instant IA is disposed of by permitting the applicant and all other prospective resolution applicants to participate in the resolution process of the corporate debtor and to submit their fresh resolution plans/revised resolution plans within 10 days from today and on submission of the same the said plans shall be considered by the COC and file an appropriate application through the R.P., before this Adjudicating Authority within 15 days, therefrom. The period of CIRP is extended accordingly to the said extent. The Resolution Professional shall communicate this order to all other prospective Resolution Applicants who are not parties to this application.

The Registry shall issue a copy of this order to all the parties and their counsels today itself.

12. Accordingly, IA No. 124/2021 is disposed of.

Sd/-

(Raghu Nayyar)
Member (Technical)

Sd/-

(Ajay Kumar Vatsavayi)
Member (Judicial)

July 16th, 2021
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