Prio S.A Vs Pravin R. Navandar & Ors

Court: National Company Law Tribunal, Mumbai Bench Court II

Date of Decision: Oct. 9, 2023

Acts Referred: Insolvency and Bankruptcy Code, 2016 â€" Section 25(2)(h), 29A, 60(5), 60(5)(c), 62, 238
National Company Law Tribunal Rules, 2016 â€" Rule 11
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2019 â€" Regulation 36A, 36A(8), 36B(1), 37, 39(1B)

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

Bench: Division Bench

Advocate: Yash Momaya, Gaurav Joshi, Ashish Kamat, Chetan Kapadia

Final Decision: Dismissed

Judgement

Kuldip Kumar Kareer, Member (Judicial)

1. This Intervention Application has been filed by an entity called PRIO having its office at Praia De Botafogo, 370, 13th floor, Rio de Janeiro Ã¢â‚¬" RJ,

Brazil seeking the following reliefs:

A. ThisÃ, HonÃ¢â‚¬â„¢bleÃ, TribunalÃ, beÃ, pleasedÃ, toÃ, allowÃ, the Applicant to intervene in Interlocutory Application No. 2787 of 2023 and be impleaded therein

as a party-Respondent;

B. That this HonÃ¢â‚¬â„¢ble Tribunal be pleased to defer the hearing of Interlocutory Application No. 2787 of 2023 till such time as this Application is heard and disposed

finally;

C. That this HonÃ¢â‚¬â„¢ble Tribunal be pleased to order and direct the RP to supply a copy of Interlocutory Application No. 2787 of 2023 together with the details,

particulars and relevant documents with regard to the arrangement arrived at between BPRL and the RP and COC to the Applicant and allow the Applicant to file its

affidavit to oppose the Interlocutory Application No. 2787 of 2023;

D. InÃ, theÃ, alternativeÃ, toÃ, PrayerÃ, B,Ã, thatÃ, thisÃ, HonÃ¢â‚¬â„¢ble Tribunal be pleased to permit the Applicant to file Affidavits / pleadings and make

submissions at the time of hearing of Interlocutory Application No. 2787 of 2023;

E. Pending the hearing and final disposal of this Application, this HonÃ¢â‚¬â„¢ble Tribunal be pleased to stay the proceedings in Interlocutory Application No. 2787 of

2023;

Brief facts of the Applicantion:

2. The present Application has been filed by PRlO S.A, one of the prospective resolution applicants (""PRIO/Applicant""). The corporate insolvency

resolution process (""CIRP"") was commenced against the Corporate Debtor vide this Hon'ble Tribunal's Order dated November 8, 2019, read with

Corrigendum Order dated November 25, 2019. After the commencement of CIRP, interim resolution professional (""IRP"") was substituted with the

resolution professional (""RP""), who published, in Form G, an invitation for submission of expression of interest (""EOI""). Pursuant thereto the Applicant

submitted an EOI on May 7, 2020. As per the EOI, the Applicant submitted an offer (""First Offer"") for the acquisition of the entire participating

interest (""Pl"") held by VEBL (a step-down subsidiary of the Corporate Debtor, incorporated in the British Virgin Islands, through which the Corporate

Debtor holds Quota/shares in IBV) indirectly through IBV Brasil Petr6leo Lda. (""IBV"") for an amount of US$32,500,000. Thereafter, the RP

requested the Applicant to present a revised offer in view of multiple extensions given by the RP. Accordingly, the Applicant presented a revised offer

(""Second Offer"") dated August 31, 2022, for the acquisition of 17.857% of the PI in the Wahoo Field. Thereafter, during the 8th meeting of the Core

Committee, after the discussion on Secord Offer, a counterproposal was made by the Core Committee, which was accepted by the Applicant. The

Applicant, on November 21, 2022, ultimately submitted a revised offer (""Third Offer"") along with all the documents requested by the RP, receipt of

which the RP acknowledged and confirmed.

3. Thereafter, the RP did not revert to the Applicant after the submission of Third Offer. It had come to the knowledge that in the IM it was provided

that the indirect acquisition of the PI is subject to the rights of contractual counterparties, including BPRL. The VEBL and BPRL were the

contractual counterparties in a Quotaholders Agreement, which was regarding the governance of IBV, dated September 12, 2008. Basis the

Quotaholders Agreement, the COC and the RP have arrived at terms with BPRL for BPRL to acquire VEBL's quotas/shares in IBV, thereby

indirectly rejecting the Third Offer.

4. From the website of this Hon'ble Tribunal, PRIO has learnt that the RP has filed the RP's Application, in which BPRL and the COC have been

arrayed as Respondents. At the hearing of the RP's Application on July 5, 2023, PRIO verily believes that the RP's Application is for sale of VEBL's

quotas (i.e., shares) in IBV to BPRL. This amounts to rejection of PRIO's Offer and acceptance of an offer submitted by another person who did not

even submit an EOI and was never a part of the final list of PRAs issued by the RP. Hence, this Application to intervene the Interlocutory Application

No. 2787 of 2023 filed by the RP.

Submissions made by Respondents

5. The Intervention Application has been resisted by the Respondents in the reply filed by the Resolution Professional, it has been pleaded that the

Application is not maintainable and is liable to be dismissed in limine. According to the Respondent, the Corporate Debtor is undergoing CIRP in

pursuance of the admission order dated 08.11.2019 whereby the Respondent was appointed as IRP and was subsequently confirmed as RP.

6. The Respondent further submits that the Corporate Debtor inter alia holds through its step-down subsidiary Videocon Energy Brazil Limited

(VEBL) quotas in IBV Brasilio Petroleo Limitada, which in turn holds participating interest (PI) in oil and gas blocks in the Fedrative Republic of

Brazil. IBV is a company incorporated under the laws of Brazil, which is joint venture of VEBL and Respondent No. 2 BPRL a group company of

Bharat Petroleum Corporation Limited. The inter-se rights of BPRL and VEBL viz-a-viz IBV are governed in terms of the quota holders agreement

(QHA) dated 12.09.2008. In view of the terms of QHA, the transfer of quotas of VEBL or transfer of VEBLÃ¢â‚¬â„¢s proportionate share of PI held by

IBV in the Brazilian assets would trigger the requirement issue a notice of 30 business days to BPRL to exercise its pre-emptive Ã¢â‚¬Å“Right of First

Refusal (ROFR)Ã¢â‚¬ to purchase VEBL quotas on the same terms as offered by the proposed purchasers of VEBL quotas. Further, as per QHA, any

transfer of VEBL quota in contravention of BPRLÃ¢â‚¬â„¢s ROFR under QHA is null and void.

7. It is further submitted that during the course of CIRP of the Corporate Debtor, Respondent No. 1 received four Resolution Plan/offers from (a)

The Applicant, (b) Eneva S.A., (c) Twin Star Overseas Limited (a group company of Vadanta Limited) and (d) RKG Fund. Considering the above

mentioned pre-existing contractual provisions, it was considered by Respondent No. 3 that in the event Respondent No. 2 exercise the ROFR, it would

be required to consummate the transaction with Respondent No. 2 and would be precluded from proceeding with the consideration and approval of the

Resolution Plan and in its commercial wisdom, Respondent No. 3 passed a Resolution in 37th meeting directing Respondent No. 1 to issue a notice to

Respondent No. 2 to exercise its ROFR under the QHA on the basis of the offers submitted by the Applicant as well as the others. Accordingly,

Respondent No. 1 issued notice dated 13.04.2023 to Respondent No. 2 and the latter vide its letter dated 17.05.2023 as well as letter dated 18.05.2023

agreed to exercise its ROFR to acquire the quotas of VEBL in IBV by matching the offers of Eneva and the Applicant. Subsequently in its 39th and

40th meetings Respondent No. 3 passed Resolution to consummate the proposed transaction with Respondent No. 2 for the sale/transfer of the quotas

of VEBL and also to liquidate the residual assets of the Corporate Debtor.

8. Respondent No. 1 has further submitted that there is no contravention of Regulation 36A of the CIRP Regulations as a result of non-submission of

EOI by Respondent No. 2 in view of the contractual terms incorporated in QHA and therefore, the submission of EOI by Respondent No. 2 was

immaterial. Moreover, the Applicant participated in the Resolution Process and submitted its offer while being fully aware of the fact that the

consideration of its offer would be subject to ROFR available to Respondent No. 2. Even the offer submitted by the Applicant itself stipulates a

condition that Respondent No. 2 should consent to waive its ROFR. The Applicant had set out in its offer that the approval of the offer made by it is

contingent upon non-exercise of ROFR by Respondent No. 2. Therefore, the Applicant has not locus standi to seek impleadment/intervention in the

approval Application.

9. The other averments made in the IA have also been denied as wrong and in the end the prayer for dismissal of the IA has also been made.

10. In the reply filed by Respondent No. 2, it has been stated that the Applicant has no vested right to intervene or seeks documents which are

confidential and do not pertain to the Applicant. Moreover, the transaction being placed before this bench for approval by Respondent No. 3/CoC is in

accordance with the Applicable laws and enforcement of security interest held by the Secured Financial Creditors of VOVL. The proposed sale is

equitable and is in consonance with the Information Memorandum (IM), RFRP and QHA and also achieves the objective of value maximization.

11. Respondent No. 3 has also filed reply more or less on similar lines and has also prayed for the dismissal of the Intervention Application.

Findings:

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

13. During the course of arguments, the Counsel for the Applicant has argued that the present intervention Application deserves to be allowed

considering the peculiar facts and circumstances of the case. According to the Counsel for the Applicant, the Respondents are simply selling the

assets and bye-passing the Resolution Process which is absolutely dehor the IB Code, 2016 and such irregularities cannot be allowed to be committed

under the garb of the commercial wisdom of CoC which cannot be stretched to an extent where it tends to violate the statute itself by egregious acts.

14. It has been argued by the Counsel for the Applicant that the Applicant has locus standi in the matter. Without the Applicant's participation in the

CIRP, on the RP and COCÃ¢â‚¬â„¢s own admissions, the question of inviting BPRL to match the offer for acquisition of Participating Interests of IBV in

Wahoo Field would not arise. In view of the fact that the ApplicantÃ¢â‚¬â„¢s participation in the CIRP is inextricably linked to the offer made by the RP

and COC to BPRL, there can be no doubt that the Applicant is a proper and necessary party and undoubtedly has the locus standi in these

proceedings. Further, the Applicant, as a prospective resolution applicant, has a right to demand that the provisions of the IBC and the CIRP

Regulations be complied with, a level playing field be provided to all prospective resolution applicants, and failing such compliance, the Applicant has a

right to approach this HonÃ¢â‚¬â„¢ble Tribunal.

15. The Counsel for the Applicant has further argued that the present application, filed under Section 60(5) of the IBC read with Rule 11 of the

National Company Law Tribunal (NCLT) Rules, 2016 is maintainable at the instance of the Applicant. Under Section 60(5)(c) the HonÃ¢â‚¬â„¢ble

Tribunal has jurisdiction to entertain or dispose of any question of law or facts, arising out of or in relation to the insolvency resolution of a corporate

debtor under the IBC. There can be no dispute that the questions raised in the present application arise out of or in relation to the CIRP of the

Corporate Debtor. Similarly, under Rule 11 of the NCLT Rules, 2016, this HonÃ¢â‚¬â„¢ble Tribunal has inherent powers to make such orders as may be

necessary for meeting the ends of justice or to prevent abuse of the process of the Hon'ble Tribunal. This would include preventing any illegality in an

insolvency process and breach of the provisions of the IBC from being perpetrated and consummated.

16. Further, according to the Counsel for the Applicant, the RP has filed the RPÃ¢â‚¬â„¢s Application seeking to consummate the transaction with BPRL.

Should the RPÃ¢â‚¬â„¢s Application be allowed, the Applicant would certainly be a Ã¢â‚¬Å“person aggrievedÃ¢â‚¬ by the order of this HonÃ¢â‚¬â„¢ble Tribunal,

conferring a right of appeal under Section 62 of the IBC. It is, therefore, clear that the Applicant has the locus to maintain this application at this

juncture itself.

17. The Ld. Counsel for the Applicant has further submitted that the RP and the COC have included the Applicant in the list of PRAs and have

extensively negotiated and re-negotiated with the Applicant with respect to the ApplicantÃ¢â‚¬â„¢s offer of acquiring IBVÃ¢â‚¬â„¢s Participating Interests in

the Wahoo Field. In view of this, the RP and the COC cannot now argue that the ApplicantÃ¢â‚¬â„¢s offer was not a resolution plan, to seek to oust the

Applicant from these proceedings. In any case, even the offer made by BPRL (on the basis of the price discovery done by the RP and COC by

making the Applicant submit its bid) is also not a resolution plan. In view of this, if the Applicant is disqualified on the ground of non-submission of a

resolution plan, then BPRLÃ¢â‚¬â„¢s offer also must be rejected on the same ground.

18. The Ld. Counsel for the Applicant has further contended that given that the Applicant is a proper and necessary party, the refusal by the RP and

the COC to share any documents and information, including the purported offer by BPRL (purportedly on the same terms and price as the Applicant)

is not tenable. The only reason to not share the same is on the alleged basis that Ã¢â‚¬Å“a Resolution Plan containing sensitive and confidential information

cannot be disclosedÃ¢â‚¬ However (a) the RP did not hesitate in sharing the Applicant's (and EnevaÃ¢â‚¬â„¢s) offers with BPRL (without the Applicant's

knowledge or consent), violating this same confidentiality requirement it seeks to take shelter behind; and (b) considering that the Applicant's offer is

purportedly matched by BPRL, there ought to, naturally, be nothing secret in BPRLÃ¢â‚¬â„¢s offer warranting the refusal.

19. The Counsel for the Applicant has further argued that admittedly, BPRL did not participate in the CIRP, and did not submit an EOI. BRPL was,

therefore, not included in the final list of PRA's. The CIRP Regulations require the RP to conduct due diligence to satisfy that the PRA complies with

the provisions of Section 25(2)(h) and Section 29A of the IBC, and other requirements of the IEOI [See CIRP Regulations, regulation 36A(8)]. Given

this has not been done for BPRL, BRPL is not even be eligible to make any offer to the RP and COC. This is quite apart from the fact that it is

entirely unknown to the RP, COC, and this HonÃ¢â‚¬â„¢ble Tribunal whether BPRL would, even otherwise, meet the eligibility criteria prescribed as part

of the CIRP, including not being disqualified under Section 29A of the IBC.

20. The Ld. Counsel for the Applicant has further pointed out that under Regulation 36B(1), the RFRP is to be issued to prospective resolution

applicants whose name appears in the final list published by the RP. Because BPRL was not included in the final list, it could never have participated

in the process further. The COC under Regulation 39(1B) of the CIRP Regulations is prohibited from considering a resolution plan which is received

from an entity/person who does not appear in the final list of PRAs. This statutory requirement of the IBC cannot be circumvented or thwarted under

the guise of commercial wisdom. Accordingly, BPRLÃ¢â‚¬â„¢s offer could never have been considered. It is unknown as on date whether BPRL is

disqualified under Section 29A or if it meets the eligibility criteria set out in the IEOI as laid down by the RP and COC. As such, to permit BPRL to

acquire the assets of the Corporate Debtor in the manner sought would completely jettison the requirements and safeguards of provisions of the IBC

including Section 29A.

21. According to the Counsel for the Applicant, contrary to the provisions of the IBC and the regulations thereunder, the RP with the approval of the

COC has simply gone ahead and purported to consummate a transaction with BPRL in complete secrecy. By doing so, the RP and COC are

attempting to enforce a contractual provision through the statutory process of CIRP, which is impermissible. The RP has bypassed the statutory

process of the IBC, which requires transparency and a level playing field for all bidders. Needless to state, any such failure to maintain a level playing

field amounts to a breach of the process under the IBC and is antithetical to the objective of value maximization. The Counsel for the Applicant has

relied upon Amritvani Exim Private Limited v. Ajanta Offset and Packaging Limited, I.A. 1528/ND/2022 in CP No. IBÃ¢â‚¬" 1526/ND/2019, whereby It

has been held that it is trite law that when a statute confers a power to do an act and lays down the method in which the power has to be exercised, it

necessarily prohibits and excludes doing of that act in any other manner than that which has been prescribed.

22. The Counsel for the Applicant has further argued that the contention of COC that its actions fall within the ambit of its commercial wisdom is also

fallacious. He has further contended that the Ã¢â‚¬Å“commercial wisdomÃ¢â‚¬ of the COC does not entitle it to jettison the mandatory requirements of the

IBC and the CIRP Regulations.

23. The Ld. Counsel for the Applicant has further argued that in the facts of the present case, the ROFR in the QHA is not triggered by the

Applicant's offer. The QHA is governed by Brazilian Law. The Applicant has obtained written opinion on Affidavit from a leading Brazilian law firm

which has stated that the ROFR does not apply inter alia for the reasons that the Applicant's offer relates solely to an asset of IBV Brazil Ltd. (IBV)

i.e., the participating interest held in the Wahoo Field. Further, there is no ROFR under the QHA in respect of a sale of assets by IBV. Resultantly,

given that the offer does not relate to the purchase of quotas under the QHA, the Applicant's offer does not trigger the ROFR under the QHA.

Pertinently, no contra material has been produced by any of the Respondents. Even otherwise, Foreign law (such as Brazilian law) is a question of

fact before any Indian court and must be pleaded and proved as such.

24. The Ld. Counsel for the Applicant has further contended that even otherwise, without prejudice to the above, the RP is not obligated to consider /

comply with a ROFR clause in an agreement by VEBL, a step-down subsidiary, in the CIRP of the Corporate Debtor, as the Corporate Debtor is not

party to that agreement.

25. The Ld. Counsel for the Applicant has further contended that the Applicant cannot be said to be estopped from challenging either the sale of

assets of BPRL being contrary to the IBC / CIRP Regulations; or the invocation or applicability of the ROFR on the ground that the Applicant's offer

was subject to the ROFR. According to the Counsel for the Applicant, there can be no estoppel against the provisions of a statute or against the law,

such as the CIRP Regulations. In support of his contentions the Ld. Counsel for the Applicant has relied upon MCGM v. Abhilash Lal, (2020) 13 SCC

234, whereby it has been held that there can never be estoppel against statute / law.

26. In the light of the above contentions, the Counsel for the Applicant has urged that the Applicant be allowed to intervene and oppose the IA 2787 of

2023 as a Respondent.

27. On the other hand, the Counsel for the RP has argued that the contention raised by the Counsel for the Applicant that the assets could not have

been sold otherwise than by way of a Resolution Plan is a fallacious one and deserves to be rejected outrightly. According to the Counsel for the RP,

the Applicant participated in the process of sale knowing fully well the terms and conditions of the process and throughout the process, the Applicant

was aware that the proposed sale was a contingent one which depended upon occurrence or non-occurrence of certain events. The Applicant was

further aware that the acceptance of its offer was subject to the right of first refusal of BPRL and this fact has been candidly admitted by the

Applicant in para 25 of the IA wherein it is mentioned that the indirect acquisition of PI in the Wahoo Field was subject to the rights of the contractual

counter parties including BPRL. Therefore, now the Applicant cannot turn around and claim that the process of sale is not legitimate. It, therefore,

cannot be disputed that the offer made by the Applicant was subject to exercise of the right of first refusal by BPRL. The said right of BPRL was

never challenged by the Applicant. The Counsel for the Applicant has further contended that the Applicant has no locus to intervene in the matter now

after the bid given by the Applicant could not fructify considering the fact that the right of first refusal was exercised by BPRL and further that BPRL

had the said right as per the terms and condition incorporated in the quota holders agreement dated 12.09.2008. The Counsel for the RP has further

argued that the present Application has been filed only to delay the proceedings and is vexatious in nature.

28. The Ld. Counsel for the RP has further argued that having participated in the process knowing fully well the rules of the game, the Applicant is

now estopped from claiming that the entire process was bad in the eyes of law or the same was totally against the provisions of the Code.

29. The Ld. Counsel for the CoC, Mr. Chetan Kapadia has also argued that the Applicant has no locus to intervene in the matter. He has further

contended that provisions of IBC cannot override the contract and, therefore, it cannot be successfully argued that the right of first refusal of BPRL

was not applicable in the CIRP of the Corporate Debtor.

30. The Ld. Counsel for BPRL, Mr. Ashish Kamat has argued that the Applicant is neither a necessary nor a proper party in IA 2787 of 2023. He

has further contended that the Applicant is only an unsuccessful bidder and the bid was subject to the rights of BPRL and further that the Applicant

was fully aware of this fact throughout. Therefore, having lost the bid due to the fact that the right of first refusal was exercised by the BPRL, the

Applicant has been left no locus to challenge the process of sale. The Counsel for the Applicant has further contended that even otherwise the right of

BPRL was its contractual right as per the Brazilian law and the provisions of the IBC cannot be extended to override the contractual laws of a foreign

country. Therefore, under no circumstances could the right of BPRL be bye-passed to uphold the bid of the Applicant. The Ld. Counsel for BPRL

has also prayed for the dismissal of the intervention Application being devoid of any merit.

31. We have weighed the contentions raised by the Counsel for the parties and have carefully gone through the records.

32. By way of this IA the Applicant is seeking to intervene in IA 2787 of 2023, which has been filed by the Respondent No. 1 u/s 60(5) of the Code,

2016 seeking approval of the offer received from BPRL for purchase of interest held by the Corporate Debtor in oil and gas assets in Brazil and for

undertaking all necessary steps for the conclusion of the CIRP of the Corporate Debtor.

33. The pleaded case of the Applicant in the Intervention Application itself that before inviting offers, in the information memorandum, it was provided

that the indirect acquisition of PI would subject to contractual rights of the counter parties including BPRL. It was also disclosed that ROFRÃ, wasÃ,

existingÃ, inÃ, BPRLÃ¢â‚¬â„¢sÃ, favourÃ, underÃ, QHAÃ, dated 12.09.2008 executed between BPRL and VEBL with regard to IBV. The Applicant

has attached the offer letter dated 31.08.2022 submitted with the Respondent No. 1 and in the said letter itself, the Applicant has mentioned that the

offer being made by it was contingent upon the occurrence or non-occurrence of certain events. The Applicant has further stated therein that it shall

not be deemed as an Applicant of a Resolution Plan nor a party to the Insolvency procedure whatsoever being a potential buyer of the assets to be

sold as permitted under the Insolvency procedure. The Applicant further stated that VEBL shall individually seek the consent of BPRL and its non-

exercise of ROFR and further that the Applicant shall not have any responsibilities in connection with the obtainment of such consent and non-

exercise.

34. TheÃ, ApplicantÃ, hasÃ, furtherÃ, attachedÃ, anotherÃ, letterÃ, dated 21.11.2022 wherein too the Applicant has stated that the offer is not a

Resolution Plan and shall not be deemed one and the offer is contingent upon approval of CADE and ANP (some Authorities of Brazil) as well as

upon the consent to be given by BPRL. Therefore, it is writ large that the Applicant had only made an offer to acquire the 17.85% of the participating

interest in the Vahoo Field held by VEBL. It has also been candidly admitted by the Applicant in its offer letters that it was not to be considered an

Applicant of a Resolution Plan nor a party to the Insolvency procedure whatsoever. The Applicant was fully aware that the offer being made by him

was subject to the exercise of ROFR by BPRL which further indicates that the Applicant was also in the know of the terms and conditions of the

QHA under which BPRL had ROFR in the event of any transfer by the other stake holder. Having participated in the process of sale of PI knowing

fully well that the offer made by the Applicant was contingent upon exercise of ROFR by BPRL, the Applicant cannot now turn around and claim that

the entire process was against the law or was dehor the IB Code, 2016 or the CIRP Regulations. In our considered view, the Applicant has absolutely

no locus nor can it be heard harping that the approval of the proposed sale by Respondent No. 3 in favour of BPRL following its exercise of ROFR

under QHA is illegal, null and void.

35. The contention raised by the Counsel for the Applicant that the Applicant cannot be said to be estopped from challenging the approval of the sale

in also not tenable. Merely because the Applicant was a highest bidder cannot be taken to mean that it can override the contractual rights of BPRL.

Similarly, the contention raised by the Counsel for the Applicant that section 238 of the Code, overrides any contractual rights and obligation of the

parties so far as QHA is concerned, is also specious. In our considered view, the scope of Section 238 of the Code, 2016 cannot be stretched to hold

that it overrides or obliterates all sorts of contracts. Moreover, the QHA is a contract under which the parties hold certain rights and obligations in an

asset stationed abroad and therefore, the legitimate contracts of the parties cannot be said to be overridden by the provisions of the Code, 2016.

36. Since the Applicant seems to be having absolutely no locus in the matter, it cannot be allowed to assail and question the commercial wisdom of

Respondent No. 3 which would be considered while adjudicating IA No. 2787 of 2023.

37. It has also been vehemently argued on behalf of the applicant that the process of sale being carried out by the RP and the COC is in violations of

the provisions of the Code and CIRP Regulations. It has been pointed out that BPRL was never in the fray nor it ever was one of the PRAs.

According to the learned Counsel for the applicant, as per the provisions of Regulation 39(1-B) of the CIRP Regulations for Corporate Persons, the

COC cannot consider any resolution plan received from a person who does not figure in the list of prospective resolution applicants. Therefore, the

offer of BPRL could not have been considered at all.

38. We have considered the above contentions of the learned Counsel for the applicant but have found the same to be devoid of any force or

substance. Regulation 37 of the CIRP Regulations clearly provide that a resolution plan can provide for measures for the insolvency resolution of the

corporate debtor for maximization of value of its assets including sale of all or parts of the assets. How a sale is to be or can be effected would

depend upon the facts and circumstances of each particular case and the same would also be subject to contractual rights and liabilities of all the stake

holders involved. Therefore, there cannot be a straight jacket formula which can be or has to be applied in each and every insolvency resolution. In

extraordinary situations, COC can always adapt to a given situation using its commercial wisdom. Therefore, it cannot be concluded that the whole

process is violative of the Code as well as the Regulations. Besides, as earlier pointed out, the applicant has absolutely no locus in the matter nor any

of its rights are being infringed as the applicant was conscious of the fact throughout that its offer was a contingent one.

39. The Counsel for the Applicant has further relied upon some legal opinion obtained from some Brazilian lawyer whereby it has been opined that the

ROFR can be exercise subject to fulfillment of certain conditions as per certain articles of Brazilian Civil Code. However, in our considered view, no

significance can be attached to the legal opinion relied upon by the Applicant.

40. The Counsel for the Application has further relied upon Municipal Corporation of Grater Mumbai V/s Abhilash Lal and Others 2019 SCC Online

SC 1479 as well as Harishankar Jain V/s Sonia Gandhi 2001 SCC Online SC 1095 on the point that there cannot be any estoppel against law. As

discussed in the forgoing part of this order, we are of the considered view that the law laid down in the cited cases cannot be applied to the facts and

circumstances of this case considering the fact that the Applicant participated in the process with all knowledge of the terms and conditions of QHA

and ROFR of BPRL and the offer made by the Applicant was a contingent one.

41. As a result of the forgoing discussion, we are of the considered view that the Intervention Application is devoid of any merit and is hereby

dismissed.