

Balaji Niryaat Private Limited Vs Arun Kumar Gupta, RP of Reform Ferro Cast Limited & Anr.

Court: National Company Law Tribunal, Kolkata Bench

Date of Decision: Jan. 21, 2025

Acts Referred: Insolvency and Bankruptcy Code 2016 " Section 7, 60, 31

Hon'ble Judges: Sameer Kakar, Member (T); Bidisha Banerjee, Member (J)

Bench: Division Bench

Advocate: Mamta Binani, Rohit Sharma, Devesh Kr. Bhutra, Urmila Chakraborty, Arun Kumar Gupta

Final Decision: Dismissed

Judgement

Per: Bidisha Banerjee, Member (Judicial)

1. IA(IBC)/81/KB/2025- is an application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National

Company Law Tribunal Rules, 2016 by the Applicant seeking following reliefs:-

A. Appropriate order be passed condoning the delay on the part of the Applicant in submitting the EOI as per Form G (Version 2.0) published

on 06/09/2024;

B. The Resolution Professional/ Respondent No.1 be directed to furnish detailed Form G, Information Memorandum and the Request for

Resolution Plan (RFRP) to the Applicant to enable the Applicant to take all necessary steps in submitting the expression of interest and the

resolution plan within such time as may be directed by this Adjudicating Authority;

C. Till the disposal of the instant application the Resolution Professional/Respondent No.1 be directed to not proceed with the approval of any

resolution plan(s), if submitted by any other resolution applicant and / or restrain the Resolution Professional / Respondent from filing

application before this Hon'ble Tribunal seeking initiation of liquidation of the Corporate Debtor;

Submissions of the Applicant

2. It is submitted that State Bank of India, a Financial Creditor of the Corporate Debtor had filed a petition under section 7 of the Code, for initiating

CIRP against Reform Ferro Cast Limited (Corporate Debtor). This Adjudicating Authority vide its order dated 21/11/2022 admitted the petition and

appointed Mr. Arun Kumar Gupta as the Interim Resolution Professional(IRP).

3. The public Announcement inviting claims from the creditors of the Corporate Debtor in Form A was published by the IRP on

23/11/2022.Subsequently, Form G was published on 16/01/2023 and Form G(Versión 2) was published on 06/09/2024 pursuant to which the last date

of submission of the resolution plan is 05/11/2024.

4. That one of the directors of the Applicant became aware of the Form G(Versión G) dated 13/07/2024, sometime in the end of December 2024,

however, owing to the Christmas and New years holidays, the Applicant was unable to gain legal knowledge to pursue the said Form G and

could not submit its EOI within the stipulated time frame. Further, the Applicant also became aware of the unsettled position of the ownership of the

land of the Corporate Debtor. Immediately, after the holidays, the Applicant availed legal guidance and sent an email to the Respondent No.1 on

10/01/2025, inter alia, expressing its desire to participate in the resolution process of the Corporate Debtor and sought for necessary documents for

submitting its EOI and the resolution plan. The Respondent No.1 replied to the email of the Applicant on 11/01/2025, stating that the time for

submission of the EOI has expired on 21/09/2024.

5. It is submitted that the Applicant is submitting its audited financial statement for the previous 2 financial years, evidencing its wherewithal to acquire

the Corporate Debtor. The Applicant states that it is in a position of give viable and feasible resolution plan, which will not only benefit the

stakeholders of the corporate debtor, but will also aid the value maximisation of the assets of the Corporate Debtor, which is one of the primary

objective of the Code. It is submitted that the resolution of the Corporate Debtor, will also effectuate safeguarding the employments of various

employees/workmen of with the Corporate Debtor.

6. It is submitted that the Applicant is engaged in the business of high quality stainless steel products and the promoter/ director of the Applicant

possess vast knowledge in steel, hence the Applicant see an opportunity for adding economic synergy in its business with that of the Corporate

Debtor. The applicant is very interested in submitting its resolution plan with the Respondents for consideration on the merits of the plan. The

Applicant states that its net worth of the Applicant as on 31/03/2024, which stood at Rs.21,64,96,000/- crores thereby evidencing that the Applicant

has the experience and wherewithal to revive the Corporate Debtor and is in a position to offer a reasonably productive offer for the consideration of

the CoC, which will not only benefit the Respondent No.2 but will also aid in value maximisation and revival of the Corporate Debtor.

7. It is submitted that CIRP of the Corporate Debtor is still going on and no resolution plan has yet been approved, hence it would be just and fair to

give the Applicant an opportunity to put in its plan for not only meeting the objective of the Code but also to aid in reviving the Corporate Debtor and

generating employment to the workers and employees of the Corporate Debtor.

8. The Applicant states that in the matter of Jai Kishore Gupta vs. Balaji Paper and Newsprint Paper Limited, this Adjudicating Authority in IA 1086

of 2022, granted extension to the prospective resolution applicant to submit its EOI and further granted 7 days time to submit a resolution plan.

Further, in the matter of Lotus One Investment Pvt.Ltd. vs. DBS Bank & Ors. in IA 578/KB/2022, this Adjudicating Authority vide its order dated

20/07/2022, was pleased to allow further time to the Applicant to submit its EOI and resolution plan, despite the expiry of the time period of submission

of EOI and the resolution plan.

9. In the matter of Govind Prasad Todi &Anr. Vs. Satya Narayan Guddeti & Ors., the Hon'ble NCLAT, vide its order dated 14/02/2023, wherein

despite of expiry of 330 days of the CIRP period, the resolution professional was directed to proceed once again from the stage of the issuance of

Form G and complete entire process within 90 days from the date of the order i.e., 14/02/2023. In the matter also, reviving the corporate debtor was

given supremacy and liquidation was considered to be the last resort. Accordingly, one more chance of revival was granted to the corporate debtor.

10. That in the light of the judgement of ICICI Bank Limited vs. Unimark Remedies Limited, the object of the Code is to enable maximisation of the

value of the Corporate Debtor's assets with a view to promote entrepreneurship, availability of credit and balancing the interest of all

stakeholders.

11. The Applicant prays before this Adjudicating Authority that direction should be passed upon the Respondent No.1/Resolution Professional and/ or

the members of the CoC of the Corporate Debtor to consider the prayer and to allow the applicant to submit its resolution plan, in the backdrop of

aforesaid reasons.

WRITTEN NOTES OF ARGUMENTS ON BEHALF OF RP

12. EOI request e-mail of the applicant was received by the RP for the first time on 10.01.2025 which we replied on 11.01.2025 as below

"as per CIRP Regulation 36A(6), any EOI received after time specified in Form G shall be rejected. Our Form G, as you are

yourself aware, was published on 06.09.2024 and the last date for receipt of EOI was 21.09.2024.

13. The RP had issued 2 Form G " 16.01.2023 and 06.09.2024, Balaji Niryat has never submitted an EOI on either occasions. Balaji Niryat Pvt.

Ltd. The request is clearly beyond the permissible time frame without any justified reason.

14. The CIRP period is expiring on 31.01.2025 and State Bank of India, Kolkata office (99.9% voting share in the CoC) has recommended approval

of 1 out of 3 resolution plans and has already sent all the 3 resolution plans to its head office at Mumbai for final approval. The approval from

SBI's head office is expected to be received anytime now and voting would be held shortly thereafter.

15. RP and CoC opposes the application and prays to the Hon'ble Tribunal to not allow a new resolution applicant at this belated last stage. The

resolution process for the CD has progressed significantly, and we are now at the final stage where resolution plans are under consideration by the

CoC. At this stage, reopening the process to accommodate late EOIs would undermine the integrity of the CIR Process and delay its timely

conclusion.

16. We have considered the rival contentions and perused records.

17. Regulation 36A(6) of the CIRP Regulations explicitly states that an EOI submitted after the deadline should be rejected.

18. In a similar situation this Tribunal in Khayerbari Tea Company Limited vs Shyamal Kumar Bhattacharjee, RP of Kumlai Tea and Industries Ltd.

has held that exercise of discretion Under Section 60(5) of the Code is not as a matter of course. 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 value maximization of the value of assets, and

dismissed the application with costs.

19. Further, in Kalinga Allied Industries India Pvt. Ltd. vs. Hindustan Coils Ltd. in Company Appeal (AT) (Insolvency) No. 518 of 2020; Hon'ble

NCLAT referring Hon'ble Supreme Court in the matter of Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Ors. (2020) ibclaw in

355 NCLAT and Shrawan Kumar Agrawal Consortium Vs. Rituraj Steel Private Limited [2020] ibclaw. in 250 NCLAT has deprecated quantitative

analysis or interference with Commercial Wisdom of the CoC even where a plan with higher value is offered. Hon'ble NCLAT has held that;

"We are of the considered view that the Adjudicating Authority has a very limited power of judicial scrutiny under Section 31 of

the Code and the statutory provision does not permit this Adjudicating Authority to interfere with commercial wisdom of the CoC.

Even for maximization of value of assets of the Corporate Debtor. In the Impugned order, Ld. Adjudicating Authority erroneously

assumed that it is the duty of the Adjudicating Authority to satisfy itself that the price offer is reasonable and adequate. For this

purpose, considered the liquidation value and fair value of the Corporate Debtor and price offered by successful Resolution

Applicant and reached a conclusion that the Respondent No.1's offer is around 12% more than the offer of successful

Resolution Applicant. We are of the considered view that Ld. Adjudicating Authority has exceeded his jurisdiction and indulge in

quantitative analysis which is not permissible under Section 31 of the I&B Code. (p12-14).

20. Further, this Tribunal has no scope of interpretation of provisions in favour of any party.

21. In view of the above propositions, we do not find merit in the prayers. Hence, the IA(IBC) No. 81/KB/2025 is rejected. No costs.

22. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.