

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

MA No. 1529 OF 2018

IN CP No. 197 OF 2018

Under Regulation 36A of IBC, 2016.

In the matter of

ICICI Bank Limited

... Petitioner

Vs.

Unimark Remedies Ltd.

... Respondent

MA No. 1529 of 2018

Omkara Asset Reconstruction Pvt. Ltd.

... Applicant

Vs.

Resolution Professional of Unimark  
Remedies Ltd.

Order Delivered on 21.12.2018

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Applicant: Adv. Mayur Khandeparkar a/w Adv. Kunal Kanungo i/b  
M/s. Cogito Legal.

For the Respondent: Mr. Prakash Shinde, Advocate, a/w Mr. Darshit Dave,  
Advocate, i/b MDP Partners

*Per: Bhaskara Pantula Mohan, Member (J)*

ORDER

1. This application is filed by Omkara Assets Reconstruction Private Limited (Applicant) as a member of joint-venture between Omkara Assets Reconstruction Private Limited and Raju Chemicals Limited against the Resolution Professional (RP) of Unimark Remedies Ltd (Corporate Debtor) with the following prayer:

- a. *That this Hon'ble Tribunal be pleased to call for the records of the 13<sup>th</sup> CoC meeting and after satisfying itself of the illegality of the decision of the CoC, refusing to open the envelop of the Resolution Plan sent by the Applicant and to return the same to the Applicant without considering the resolution plan on its merits, be pleased to quash and set aside the decision of the CoC;*
- b. *That this Hon'ble tribunal be pleased to direct the CoC to consider the resolution plan submitted by the Applicant on its merits as Applicant believes that its plan will maximize the asset value of the Corporate Debtor;*
- c. *That this Hon'ble Tribunal by an order and injunction restrain the CoC from approving any resolution plan without considering the resolution plan of the Applicant;*
- d. *Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of the present cae.*

2. It is submitted that the Corporate Debtor was put into CIRP by an order of this Tribunal dated 03.04.2018 and consequently the present Applicant submitted its claim to the IRP and on admission of the claim the Applicant was made as member of the Committee of Creditors ('CoC') of the Corporate Debtor. On 08.06.2018, CoC invited prospective resolution Applicants to submit Expression of Interest ('EOI') on or before 29.06.2018 which was subsequently extended to 31.10.2018 and the RP received three EOI from prospective resolution Applicants. The CoC fixed 31.10.2018 as the cut-off date for the Resolution Applicants ('RA') to submit the Resolution Plan for approval by the CoC. It is further submitted that two Resolution Plans were received by the CoC before the deadline of 31.10.2018. The Applicant submits that it was unable to submit the Resolution Plan within the time specified. However the Applicant submits that they have forwarded a copy of the resolution plan to the Respondent RP on 11.12.2018.

3. The Applicant submits that CoC in the 13<sup>th</sup> meeting held on 12.12.2018 refused to open the cover containing the Resolution Plan submitted by the Applicant solely on the ground that it was submitted after the cut-off date even without appreciating and scrutinizing the plan on its merits. However CoC in the same meeting permitted one Resolution Applicant lead by Asset Reconstruction Company India Limited ('ARCIL') to revise their plan and submit a fresh revised Resolution Plan for consideration

by CoC. The Applicant alleged that the CoC acted in an arbitrary manner by refusing to accept the plan submitted by the Applicant. It is contended that no harm or prejudice would be caused to the Company or the CoC or the Corporate Debtor if the Resolution Plan submitted by the Applicant is scrutinized by CoC for its consideration purely on merits. Further, it is claimed that it will be beneficial to the CoC, Creditors and the Corporate Debtor. It is further contended that by refusing to accept the plan submitted by this Applicant the CoC has effectively monopolized the Corporate Insolvency Resolution Process ('CIRP') in favour of ARCIL. The Applicant further contends that once CoC granted an opportunity to one of the resolution Applicants to submit a fresh revised Resolution Plan and in the same manner the CoC ought to have treated the present application in parity of the same and should have considered the Resolution Plan submitted by the Applicant. It is further alleged that neither the RP nor the CoC opened the envelope containing the Resolution Plan or consider the Resolution Plan on merits. Hence this application.

4. Applicant submits that the decision of RP/COG in rejecting resolution plan is erroneous for the following reasons:

- a. Cut-off date as contemplated by EOI is not mandatory and can be extended.
- b. RP/ CoC can certainly receive the Resolution Plans even after the expiry of the date of the last day of submission of EOI so long as the CIRP period has not elapsed and/or any other Resolution Plan has not already be accepted by the CoC.
- c. RP is required to present the Resolution Plan to the CoC as provided under Section 30(3) of the Code, but admittedly RP in the present case has not submitted the Resolution Plan in the manner as contemplated but as only forwarded the envelop to the CoC and by doing so RP in fact has extended the period for submission of Resolution Plan and therefore CoC was duty bound to consider the Resolution Plan on merits.
- d. CoC is mandated under section 30(4) of the Code to consider the Resolution Plan on merits and it cannot reject the Resolution Plan forwarded by RP without considering the same on its merits.
- e. The object of the Insolvency Code is to maximize the value of the assets and to ensure that best possible returns has drawn from

Resolution Plan and the action of the CoC in rejecting the Resolution Plan would defeat the object of the Insolvency Code.

- f. The Regulations framed under the Code cannot be construed in a way so as to deprive any Resolution Applicant from coming forward at any stage prior to acceptance of other Resolution Plan by CoC/NCLT and/or expiry of CIRP period.
- g. The Applicant submits that in the following cases, NCLT and NCLAT have permitted submission of Resolution Plan at a subsequent date:
- i. *Punjab National Bank vs. Bhushan Power & Steel Ltd. NCLT New Delhi, CA No. 152(PB)/2018 in CP (IB)-202(PB)/2017*
  - ii. *Sharda Energy & Minerals Ltd. Vs. Impex Metal & Ferro Alloys Ltd. NCLT Kolkata, CA(IB) No. 641/KBH/2018 in CP No. 176/KB/2018*
  - iii. *Binani Industries Ltd. Vs. Bank of Baroda, NCLAT, CA(AT) (Insolvency) No. 82 of 2018*
  - iv. *SBI vs. Adhunik Alloys & Power Ltd., NCLT Kolkata, CA (IB) No. 1086/KB/2018 and CA (IB) No. 1092/KB/2018 in CP (IB) No. 387/KB/2017*
  - v. *Canara Bank vs. Deccan Chronicle Holdings Ltd., NCLT Hyderabad, IA No. 253/2018 in CP(IB) No. 41/7/HDB/2017.*
- h. Regulation 36A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 was amended w.e.f. 03.07.2018 will not apply to this case since EOI had been issued by the RP on 08.06.2018. However, the erstwhile Regulation 36A which came into effect on and from 06.02.2018 would be applicable to this case. In any case RP himself has not issued EOI in terms of Form G and therefore cannot oppose this present application.

5. The counsel for the Respondent filed written submissions contending that the Applicant is one of the Financial Creditors of the Corporate Debtor and also a member of CoC and therefore is aware of the strict timelines prescribed under the Insolvency and Bankruptcy Code. It is submitted that pursuant to section 25(2)(h) of the code, the RP had issued advertisement on 08.06.2018 inviting EOI from prospective resolution Applicants. The last date for submission of EOI was extended thrice by announcement made on the website of the Corporate Debtor that is on 28.06.2018, 19.07.2018 and 17.08.2018. It is further submitted that the request for resolution plans (RFRP) inviting resolution plans from Resolution Applicants was published on

the website of the Corporate Debtor on 16.07.2018 with the cut-off date for submission of the Resolution Plan as 14.08.2018. Subsequently, the cut-off date was extended to 14.09.2018, and thereafter to 01.10.2018 and further extended to 31.10.2018. It is submitted that four EOI were received from Resolution Applicants and two Resolution Plans were received within the cut-off date of 31.10.2018. The Applicant herein has not submitted the Resolution Plan on or before 31.10.2018, however the Applicant has submitted the Resolution Plan on 12.12.2018 which is beyond the cut-off date. It is further submitted that the 270 days of CIRP will expire on 29.12.2018. The Respondent submits that the present application is a clear abuse of process of law with mala fide intent to disrupt the CIRP and this Application is to be dismissed with exemplary cost.

6. In reply to the contention of the Respondent, the Applicant further submits that they were making efforts to tie up with some prospective investors and it was only few days back a concrete picture has emerged which would in their opinion can definitely revive the prospects of the company. The delay in submitting the Resolution Plan is neither deliberate nor wanton and is purely on account of the reasons beyond their control.

7. This Bench after hearing both the parties, looked into the Regulations which would not allow the acceptance of any proposal by any resolution Applicant beyond the date as fixed by the CoC. It is clear that the Resolution Applicant had approached the RP with a proposal at the 12<sup>th</sup> hour but certainly before accepting or finalization of any Resolution Plan.

8. Now the point is whether the Resolution Plan of the Applicant can be considered at this belated hour or should the same be rejected even without looking into the same. In our view of the case and keeping in view the very object of the Code, when there is a clash/ conflict between the Regulations and the Code, the object of the Code is paramount and not the Regulations which are formed only for the just implementation of the Code. Purely on the basis of technicalities, the rejection of Resolution Plan even without looking into its merits, is certainly an act which shall go against the very spirit of the Code and may even result in a huge loss to the Company. Any Regulation which does not anticipate such a situation and if the same comes in the way of proper justification and implementation of the principles of the Code, the same need not be considered nor can be treated as an impediment in the implementation of the Code.

9. For all the aforementioned reasons we are of the considered view that the spirit of the Code is first and then comes the other things. The rejection of the Resolution Plan by the CoC even without opening the envelope containing the Resolution Plan on the ground that the same is submitted after the expiry of the stipulated time fixed by the CoC, is certainly against the law/Code and we hereby direct the Respondent to forthwith consider the Resolution plan of the Applicant on its merits and judicious decision may be taken in the best interest of the parties concerned. The Application is allowed.

SD/-  
V. Nallasenapathy  
Member (T)

SD/-  
Bhaskara Pantula Mohan  
Member (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

MA No. 1569 OF 2018

IN CP No. 197 OF 2018

Under Section 60 (5) of IBC, 2016.

In the matter of

ICICI Bank Limited

... Petitioner

Vs.

Unimark Remedies Ltd.

... Respondent

MA No. 1569 of 2018

Mr. Amit Gupta

... Applicant/ Resolution Professional

Order Delivered on: 21.12.2018

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Applicant: Mr. Prakash Shinde, Advocate, a/w Mr. Darshit Dawe,  
Advocate, i/b MDP Partners

*Per: Bhaskara Pantula Mohan, Member (J)*

**ORDER**

1. This application is filed by the Resolution Professional Mr. Amit Gupta seeking this Tribunal to exclude the period of 15 days from the Corporate Insolvency Resolution Process ('CIRP') u/s 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code').

2. It is submitted that the Corporate Debtor was put into CIRP by an order of this adjudicating authority dated 03.04.2018, the applicant was appointed as Interim Resolution Professional (IRP), the CIRP period in terms of Section 12(1) of the Code expired on 30.09.2018, by an order of this Tribunal dated 10.09.2018 an extension of 90 days was granted and accordingly the CIRP will come to an end on 29.12.2018. The applicant

further submits that the order of admission of CIRP was passed on 03.04.2018 but the said order copy was received by the Applicant only on 06.04.2018. One Omkara Asset Reconstruction Pvt. Ltd. (Potential Resolution Applicant) who is also a member of Committee of Creditor (COC) of the Corporate Debtor belatedly submitted a resolution plan on 11.12.2018 to the Applicant after the last date for submission of the resolution plan which was fixed on 31.10.2018, the said resolution plan was not considered by the COC since it was received after the due date. The said Omkara Asset Reconstruction Company filed an application before this Tribunal for a direction to the COC/RP to consider the Resolution Plan and the said application was pending before the adjudicating authority from 17.12.2018 onwards. The Applicant further submits that he has to examine the resolution plan submitted by the Potential Resolution Applicant to find out whether the resolution plan is in consonance with the provisions of section 29(A), 30(2) of the Code and the applicable provisions of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016. He further submits that the Resolution Plan has to be evaluated by COC, COC has to negotiate with the Resolution Applicant etc. Therefore, it is submitted that additional time will be required to complete the steps as mentioned above.

3. The Hon'ble NCLAT in its order dated 08.05.2018 in the case of "*Quinn Logistics India Pvt. Ltd. Vs Mack Soft Tech Pvt. Ltd. & Others*" at Para 9 & 10 of the order held as below:-

*"9. From the decisions aforesaid, it is clear that if an application is filed by the 'Resolution Professional' or the 'Committee of Creditors' or 'any aggrieved person' for justified reasons, it is always open to the Adjudicating Authority/Appellate Tribunal to 'exclude certain period' for the purpose of counting the total period of 270 days, if the*



*facts and circumstances justify exclusion, in unforeseen circumstances.*

*10. For example, for following good grounds and unforeseen circumstances, the intervening period can be excluded for counting of the total period of 270 days of resolution process:-*

*(i) If the Corporate insolvency resolution process is stayed by 'a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court.*

*(ii) If no 'Resolution Professional' is functioning for one or other reason during the Corporate Insolvency Resolution Process, such as removal.*

*(iii) The period between the date of order of admission/moratorium is passed and the actual date on which the 'Resolution Professional' takes charge for completing the Corporate Insolvency Resolution Process.*

*(iv) On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the 'Resolution Professional' to complete the corporate insolvency resolution process.*

*(v) If the Corporate Insolvency Resolution Process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and Corporate Insolvency Resolution process is restored.*

*(vi) Any other circumstances which justifies exclusion of certain period.*

*However, after exclusion of period, if further period is allowed the total number of days cannot exceed 270 days which is the minimum time limit prescribed under the Code".*

4. This Bench has considered the Misc. Application no. 1529 of 2018 filed by one M/s Omkara Asset Reconstruction Pvt. Ltd., for a direction to the

Resolution Professional, who is the Applicant herein, to consider the Resolution Plan submitted by it belatedly and considering the facts and circumstances therein, this Bench allowed the said application by directing the Resolution Professional to consider the Resolution Plan submitted by them.

5. In view of the above said circumstances, this Bench, considering the warranting situation in this case, hereby excludes the period of 5 days i.e. the period of pendency of Application No. 1529 of 2018 before this bench from 17.12.2018 to 21.12.2018, considering the facts, the Resolution Professional has to carry out the certain duties and obligations with regard to the resolution plan before submission of same to the COC. In the normal course, the CIRP period will come to an end on 29.12.2018. But in view of the above extraneous circumstances warranting the interference of this Bench which is of the considered view that the period of 5 days during which the Application No. 1529 / 2018 was pending, is required to be excluded and consequently the CIRP period of 270 days will end on 03.01.2019.

6. Accordingly, the Application is disposed in the above terms.

Sd/-  
V. Nallasenapathy  
Member (T)

sd/-  
Bhaskara Pantula Mohan  
Member (J)