

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1560 of 2023**

[Arising out of order dated 17.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in Company Petition IB-1103(ND)/2020]

**IN THE MATTER OF:**

**Mr. SANDEEP GUPTA**

PROSPECTIVE RESOLUTION APPLICANT

R/O D-105, SOUTH CITY-I,

GURUGRAM, HARYANA-122001

PHONE-9810663256

EMAIL: aadiprop@gmail.com

**...Appellant**

**Versus**

**RAJIV BAJAJ**

RESOLUTION PROFESSIONAL

LG, B-269, Chattarpur Enclave, Phase-II,

Delhi-110079

Phone:8800794355

Email ID: cirpdiamond@gmail.com

**...Respondent**

**Present:**

**For Appellant: Mr. Karan Gandhi, Ms. Anshika Dubey, Mr. Avinash Yadav, Mr. Shivam Gautam, Advocates.**

**For Respondent: Mr. Krishnendu Datta, Sr. Advocate with Mr. Uday Pratap Singh, Advocate for R-1.**

**Mr. Anirban Bhattacharya, Mr. Rajeev Chowdhary, Advocates for CoC.**

**J U D G M E N T**

**ASHOK BHUSHAN, J.**

This Appeal has been filed challenging order dated 17.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court III by which I.A. No.3515 of 2023 filed by the Appellant seeking

*Cont'd.../*

direction to the Resolution Professional to accept Resolution Plan of the Appellant, which has been rejected. Brief facts of the case necessary for deciding this appeal are:

- (i) Insolvency Resolution Process against the Corporate Debtor – M/s Diamond IT Infracon Private Limited was commenced by order dated 03.01.2023.
- (ii) In the CIRP of the Corporate Debtor Form G was published on 06.03.2023.
- (iii) In response to Form G, five Expression of Interest were received which also included the Expression of Interest of the Appellant – Sandeep Gupta. Eligible Resolution Applicants were requested to submit their Resolution Plan.
- (iv) Communication dated 17.04.2023 was sent by the Resolution Professional with copy of Information Memorandum and Request for Resolution Plan (RFRP) requesting the Prospective Resolution Applicants to submit their Resolution Plan. Resolution Professional sent Information Memorandum and RFRP to the Appellant on 26.04.2023 to facilitate timely submission of the plan. Time for submission of Resolution Plan was till 27.05.2023 at 17:00 Hrs IST.
- (v) The CoC extended the time for submission of plan from 27.05.2023 till 03.06.2023.
- (vi) The Resolution Professional left his office at 05.30 PM on 03.06.2023. The employee of Appellant sent a whatsapp message to the Resolution Professional at 06:00 PM that he has reached the

office to submit the Resolution Plan. Appellant informed the employee that he has left the office time being over. Appellant attempted to submit his plan on 03.06.2023 through email. Email of the Appellant was replied by the Resolution Professional on 04.06.2023. Appellant sent the Resolution Plan by courier on 04.06.2023.

(vii) Resolution Plan of the Appellant having not considered, I.A. No. 3515 of 2023 was filed by the Appellant seeking direction to the Resolution Professional to accept the plan which application has been rejected.

2. We have heard Shri Karan Gandhi, learned counsel for the Appellant and Shri Krishnendu Datta, learned senior counsel appearing for the Resolution Professional.

3. In the Reply filed by the Resolution Professional Para 47 and 48 of the RFRP dated 26.04.2023 has been extracted giving time and date of the submission of plan. Para 15 of the Reply is as follows:

*“15. The RFRP dated 26.04.2023 shared with all the PRAs, including the Appellant, which in paragraph 47 and 48 clearly stated that:*

*“47. The Resolution Plan **should be submitted before 17:00 Hours IST** on the date mentioned in the Clause (referred to as the **“Binding Plan Due Date”**), at the address provided in Clause 29 above in the manner and form as detailed in this RFRP. The Resolution Professional may extend the Binding Plan Due Date by*

*seeking the approval of the CoC, and will duly inform all the Resolution Applicant(s).*

**48. Schedule of Resolution Plan Process**

<b>S.No.</b>	<b>Event Description</b>	<b>Dated</b>
1.	<i>Last date for submission of Binding Resolution Plans by the Resolution Applicant(s) (Binding Plan Due Date).</i>	27.05.2023

*The schedule of the Resolution Plan Process may be changed or modified at the discretion of the CoC or Resolution Professional.*

***The Resolution Plan has to be submitted to the Resolution Profession on the above given date by 17:00 PM in accordance with the Process note to the RFRP. The applicants are requested to adhere to the Process Note for the mannerism of submission of the resolution plans and subsequent opening of the respective plans”***

4. The time for submission of the Resolution Plan was extended till 03.06.2023. The time extension was communicated to all Prospective Resolution Applicants by Resolution Professional on 26.05.2024 that the CoC in its meeting dated 26.05.2023 has extended the time from 27.05.2023 till 03.06.2023. The Resolution Plan of the Appellant could not be submitted till 05:00 PM and the staff of the Appellant reached the office of the Resolution Professional after 05:30 PM. The Resolution Professional received a whatsapp message from one Aman on behalf of the Appellant that he has reached his office. On 06:16 PM, the Resolution Professional

replied the whatsapp message. Message received from Mr. Aman is as follows:

*“Sir, Aman this side from Sandeep Gupta Ji's office.  
I am present at B-269 to handover the Resolution  
Plan of Diamond ITinfracon Private Limited.*

*6:00 pm”*

5. At 06:20 PM, an email was sent by the Appellant to the Resolution Professional which has been brought on the record by the Resolution Professional at page 137, which is as follows:

*“SANDEEP GUPTA <aadipropo105@gmail.com>*

*Sat, Jun 3, 2023 at 6:20 PM*

*To: DIAMOND IT <cirpdiamond@gmail.com>*

*Dear Sir,*

*We are enclosing the Resolution Plan Password  
Protected of Diamond ITInfracon Pvt Ltd under CIRP.  
Hard Copy of Resolution Plan and Demand draft of  
Rs 50,00,000/ drawn on Bank of Baroda Sec 31  
Gurgaon 122001, has already been delivered at  
your office, Please acknowledge the same.*

*Thanking You*

*Sandeep Gupta*

*Mo. 09810663256”*

6. The email of the Appellant was again replied by the Resolution Professional on 04.06.2023 in following manner:

*“DIAMOND IT <cirpdiamond@gmail.com>*

*Sun, Jun 4, 2023 at 8:11 AM*

To: SANDEEP GUPTA <aadipropo105@gmail.com>

Dear Mr. Gupta,

*This is to inform you that your resolution plan was not delivered at my address within the time and hence I had not been available at my address to accept the same. The time to accept resolution plans lapsed at 17:00 hours and I had left my office at 17:30 hours. The delivery person you had sent only reached my office at 6:00 pm and sent mail at 18:00 hours. I politely informed you that I was bound by the request for resolution plan, after receiving a message from you stating that delivery person had come at 17:15 hours, which too was beyond the time prescribed by the RFRP and hence beyond my ability to accept the plan. You may take note of the same.*

*I wish you the best for participation in future NCLT resolution processes.*

*Best regards,*

*Rajiv Bajaj”*

7. Learned counsel for the Appellant submits that there was no time prescribed for submission and Resolution Professional could have submitted before 12:00 PM.

8. We do not find any substance in his submission as time mentioned for submission of plan in RFRP was 17:00 Hrs. When the time was extended from 27.05.2023 to 03.06.2023, the time for submission of plan shall remain the same. Admittedly, the Appellant attempted to submit the

plan after 17:00 Hrs. 03.06.2023. When the time was extended, the Appellant took risk in submitting the plan at last hours that too after 17:00 Hrs.

9. Learned counsel for the Appellant further submits that the CoC is willing to consider the Resolution Plan of the Appellant.

10. In the Reply filed by the Resolution Professional it has been pleaded that the CoC considered the Resolution Plan of SVIP Reality Pvt. Ltd. but in the 8<sup>th</sup> CoC meeting held on 04.09.2023 plan has been rejected and CoC approved the liquidation of the Corporate Debtor. It has been submitted that the Resolution Professional has filed I.A. No.5123 of 2023 under Section 33(2) seeking liquidation. In Para 34 of the Reply of the Resolution Professional following has been pleaded:

*“34. That the COC had already considered the Resolution Plan by SVIP Reality Pvt Ltd, PRA. However, in the 8th CoC meeting, held on 04.09.2023, this resolution plan was rejected and the COC approved the liquidation of the Corporate Debtor. Thereafter, the RP/Respondent filed the IA No. 5123/2023 under Section 33(2) of IBC, 2016 seeking liquidation of the Corporate Debtor which was first listed on 03.10.2023 and is pending consideration before the Hon'ble NCLT. Further, the IA No. 5123/2023 was listed for hearing before the Ld. NCLT, New Delhi on 04.01.2024 wherein the Respondent No. 2 orally agreed to reconsider the Resolution Plan proposed by SVIP Reality Pvt. Ltd.,*

*PRA, and an addendum to the Resolution Plan with enhanced value was submitted to the Respondent vide email dated 09.01.2023, This was also shared with the Respondent No. 2 and is being considered by the SCC of the Respondent No.2. The True Copy of email dated 10.01.2024 sent to the sole CoC member stating the enhanced plan with addendum received from prospective Resolution applicant, SVIP Reality Pvt. Ltd., is annexed herewith and marked as ANNEXURE A-16.”*

11. In view of the facts as brought on the record by the Resolution Professional in his reply, we see no reason for consideration of Resolution Plan at this stage. Resolution Plan having not been submitted by the Appellant within time prescribed and the CoC having considered the Resolution Plan which was received in time and has decided to reject the plan and given approval for liquidation. No relief can be granted to the Appellant as prayed in the appeal. We find no merit in the appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**[Arun Baroka]  
Member (Technical)**

**NEW DELHI**

**23<sup>rd</sup> April, 2024**

*Archana*