

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

**Company Appeal (AT) (Insolvency) No.1688 of 2023
& I.A. No. 6072, 6073 of 2023**

IN THE MATTER OF:

**Masatya Technologies Pvt. Ltd.
Successful Resolution Applicant for
Vistar Construction Pvt. Ltd.**

...Appellant

Versus

**Amit Agarwal
Resolution Professional for
Vistar Construction Private Limited & Anr.**

...Respondents

Present:

**For Appellant: Mr. Abhishek Anand, Ms. Jasleen Singh Sandha,
Advocates.**

**For Respondents: Mr. Pankaj Agarwal, Advocate for R-1.
Mr. Shohit Chaudhry, Advocate for R-2.**

O R D E R

21.12.2023: **I.A. No.6073 of 2023:** This is an application praying for condonation of 15 days' delay in filing the Appeal. The order impugned was passed on 18.09.2023 and this appeal has been filed on 02.11.2023. The ground taken in the delay condonation application is that Director of the Appellant was travelling abroad and could not sign the memorandum of appeal, hence, delay has been caused in filing the appeal. Cause shown sufficient, delay is condoned. I.A. No.6073 of 2023 stands disposed of.

2. Heard learned counsel for the parties. This Appeal has been filed against order dated 18.09.203 by which order the Adjudicating Authority while deciding I.A. No.363/ND/2023 has directed for issuance of fresh Form G,

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where the Appellant will also have liberty to submit EOI. The reason given by the Adjudicating Authority in the impugned order is that after issuance of Information Memorandum, under the orders of Delhi High Court dated 07.10.2021 and 01.06.2023 the amount of Rs.3,01,07,609/- along with 9% interest was replaced with properties (Unit Nos.901, 923 & 923A and 1022A on the 9th floor and 10th floor having covered area of 345 sq. ft.) located at Plot No.4, Dwarka City Centre, Sector-13, Dwarka, New Delhi, which shall be added in the assets of the Corporate Debtor. The Adjudicating Authority after noticing the aforesaid in Para 19, 20 and 21 has directed following:

“19. Needless to say, the Prospective Resolution Applicants (PRAs) furnish their Resolution Plans based on the Information Memorandum (IM) prepared by the Resolution Professional, where a list of all the Assets of the Corporate Debtor is given. Since the properties situated at Dwarka (ibid) were a later discovery, they were not included in the Information Memorandum. Thus, the valuation of the newly inducted properties situated at Dwarka was not conducted by the RP, and the other PRAs were not given any chance to bid for the Corporate Debtor while keeping in mind the property situated at Dwarka being part of the asset pool of the Corporate Debtor. Had the properties at Dwarka been included/added subsequently in the IM and valuation, the Fair Market Value and Liquidation Value of the Corporate Debtor would have changed significantly to attract more Prospective Resolution Applicants to submit the Resolution Plan with higher value.

20. Further, through the present Resolution Plan, the ownership rights of the newly-inducted Dwarka Properties (ibid), which were never part of the Information Memorandum notified by the RP, are proposed to be transferred to the SRA herein, who would be in an advantageous position vis-à-vis the prospective bidders in rem. In our considered view, this is a material irregularity in the exercise of the powers by the Resolution Professional during the CIR Process of the Corporate Debtor.

21. In the circumstances, we have no other option but (a) to reject the present Resolution Plan; (b) direct the Resolution Professional to conduct a fresh valuation of the Corporate Debtor's properties, inter alia, including the Unit no. 910, 923, 923A, and 1022A at 10th floor having covered area 345 Sq. Ft. forming part of the Hotel Building constructed at Plot No. 4, Dwarka City Centre, Sector-13, Dwarka, New Delhi and issue the Information Memorandum; (c) issue a fresh 'Form G' through a wide publication; and (d) complete the entire process of seeking approval of CoC, for the Resolution Plans if received, at the earliest. It is, however, made clear that the SRA of the present resolution plan will have the liberty to submit its EOI if it so wishes."

3. Learned counsel for the Appellant challenging the order of the Adjudicating Authority submits that the Appellant is the Resolution Applicant who has submitted his revised plan with plan value of Rs.2.67 Crore. It is submitted that the Resolution Professional in the Information Memorandum

has already mentioned about dispute regarding the property and at best the Adjudicating Authority could have directed the CoC to reconsider the Resolution Plan and there was no occasion for issuance of fresh Form G.

4. Learned counsel for the Resolution Professional submits that properties are not in physical possession of the Corporate Debtor and they shall come in the kitty of the Corporate Debtor after execution of sale deed. Learned counsel for the Resolution Professional submits that as per the direction of the Adjudicating Authority Form G has already been issued.

5. We have considered the submission of learned counsel for the parties and perused the record.

6. The Adjudicating Authority has taken in consideration the fact that properties shall come to the kitty of the Corporate Debtor, as noted above, whose value is much more than the entire plan value submitted by the Resolution Applicant, hence, order was issued for issuance of Form G. We fully agree with the observation of the Adjudicating Authority as made in Para 19, 20 and 21 of the impugned order, as extracted above, which was sufficient reason for issuance of fresh Form G. However, we are of the view that some time ought to have been fixed by the Adjudicating Authority for completion of the entire process. We, thus, while affirming order of the Adjudicating Authority issue further direction in following manner:

(i) The entire process including consideration of Resolution Plan shall be completed within a period of three months from today.

7. Learned counsel for the Committee of Creditors contends that the revaluation ought not to have been ordered by the Adjudicating Authority. Learned counsel for the Committee of Creditors relied on judgment of Hon'ble Supreme Court in **Civil Appeal No. 1527 of 2022, Ramkrishna Forgings Ltd. vs. Ravindra Loonkar, Resolution Professional of ACIL Ltd. & Anr.**, Para 29, which is as follows:

*“29. In the case at hand, we find that there was no occasion before the Adjudicating Authority- NCLT to be swayed only on the per se ground that the hair-cut would be about 94.25% and that it was not convinced that the fair value of the assets have been projected in proper manner as the bid of the appellant was very close to the fair value of the assets of ACIL. Ordering re- valuation of the assets, by the OL, Ministry of Corporate Affairs, Government of India, in-charge of the particular area, cannot be justified. As explained in **Innoventive Industries Ltd. V ICICI Bank, (2018) 1 SCC 407** and **Swiss Ribbons Private Limited v Union of India, (2019) 4 SCC 17**, the Code was specifically introduced by Parliament for ensuring quick and time-bound resolution of insolvency of corporate entities in financial trouble, by first attempting to revive the Corporate Debtor, failure whereof would entail liquidation of the Corporate Debtor's assets, and no unnecessary impediment*

should be created to delay or derail the CIRP. In the present case, both the NCLT and NCLAT erred to fully recognise that under the Resolution Plan, the Corporate Debtor was set to be revived and not liquidated. Thus, the minimum mandatory component in the Resolution Plan was only a reflection of the actual money, including upfront payment, which would go towards the FC(s). As discussed previously, the final Resolution Plan provided for the monetization proceeds of the land as also the avoidance amounts to go to the FC(s) of the Corporate Debtor.”

8. The present is not a case where the Adjudicating Authority has directed for any valuation of the assets of the Corporate Debtor. Present is a case where during the CIRP process under the orders of the High Court of Delhi properties worth value of approx. Rs.3 Crores have been added to the assets of the Corporate Debtor on basis of which the Adjudicating Authority took the view that fresh Form G should be issued so that interested Resolution Applicants may know that the value of the Corporate Debtor has increased. Thus, the judgment relied by the learned counsel for the Committee of Creditor has no application in the present case.

9. We fail to see the reason for submission of the Committee of Creditors that fresh Form G be not issued. The Committee of Creditors would always be interested in getting more and more value from the assets of the Corporate Debtor. When value has been added to the assets of the Corporate Debtor,

the submission by the Committee of Creditors that fresh process may not start cannot be accepted.

10. With these observations and direction, we dispose of this Appeal. It goes without saying that the Appellant shall be entitled to submit his Expression of Interest in response to Form G issued by the Resolution Professional.

**[Justice Ashok Bhushan]
Chairperson**

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

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