

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

IA 4201/MB/2024 IN CP (IB) No.1074/MB/2023

*[Under Section 60(5) of the Insolvency and Bankruptcy Code,
2016 r/w Rule 11 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016]*

ROHSTOFFE INTERNATIONAL PRIVATE LIMITED

[CIL no.: U17111MH2010PTC305688]

Registered Address:

1304, Regent Chambers, Jamnalal Bajaj Road

Nariman Point, Mumbai – 400021.

...Applicant

V/s

1. Mr. KARTHIK NATARAJAN

(Resolution Professional of PAE Limited)

Flat No. 7, Plot No. 58, Atreya Ashram CHS

R.A Kidwai Road, Opp. SNTD, Matunga (East)

Mumbai – 400019.

2. COMMITTEE OF CREDITORS of PAE LIMITED

Through Resolution Professional

Flat No. 7, Plot No. 58, Atreya Ashram CHS

R.A Kidwai Road, Opp. SNTD, Matunga (East)

Mumbai – 400019.

...Respondents

IN THE MATTER OF:

ALP ACRES & LANDLINES PRIVATE LIMITED

...Financial Creditor

V/s

PAE LIMITED

...Corporate Debtor

Pronounced:30.09.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Sourabh Raut a/w Adv. Jinal Shah

For Respondent No. 1 & 2: Adv. Mithila Damle i/b RP

ORDER

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 This Interlocutory Application bearing I.A. (I.B.C.) 4201/MB/2024 has been filed in CP (IB) No. 1074/MB/2023 (Main Application) on 15.07.2024 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) by Rohstoffe International Private Limited (Applicant), which is one of the Prospective Resolution Applicants (PRAs), against Mr. Karthik Natarajan, who is the Resolution Professional (RP) of PAE Limited, as Respondent No. 1; and the Committee of Creditors (COC) of PAE Limited, as Respondent No. 2, praying for order against them to accept and consider Expression of Interest (EoI) in parity with other PRAs.

1.2 This Bench *vide* our order dated 22.04.2024 admitted the Main Application under Section 7 of the IBC, filed by the Financial Creditor (FC), i.e. Alp Acres & Landlines Private Limited, against the Corporate Debtor (CD), i.e., PAE Limited, for initiating Corporate Insolvency Resolution Process (CIRP) wherein Respondent No. 1/RP was

appointed as the Interim Resolution Professional (IRP). In the 1st COC meeting held on 14.05.2024, Respondent No. 1/RP was appointed as the CD's RP.

1.3 Subsequently, Respondent No. 1/RP issued Form G on 23.05.2024, inviting Eol for the CD, with a final submission deadline of 12.06.2024, which the Applicant missed; however, later submitted Eol on 19.06.2024, which was not accepted by Respondent No.1/RP, prompting the Applicant to file the present I.A.

2. CONTENTIONS OF APPLICANT

2.1 The Applicant expressed its intent to submit Eol by email dated 24.05.2024, i.e., the day after Respondent No.1/RP had issued Form G.

2.2 The Applicant states that it is eligible and highly competent to deliver an effective and commercially superior resolution plan, as it possesses experience in implementing resolution plans.

2.3 The aggregate turnover of the Applicant in the financial year 2022-23 is Rs. 7,94,71,985/-, profit after paying tax is Rs. 3,85,98,372/-, having a net worth of Rs. 13,15,69,106/-. Hence, the Applicant submits that there should not be any doubt regarding its commercial ability or competence in acquiring the CD, nor its alignment with the objectives and business of the CD.

2.4 Further, the Applicant contends that its failure to submit Eol was not due to its unwillingness, ineligibility, or commercial incapacity.

2.5 It is the case of the Applicant that timelines set for the invitation of EoI should be construed as being directory in nature as they subserve the central tenet of maximisation of value of assets of the CD and a PRA must not be outrightly denied an opportunity for the CoC to consider extension of timelines to include more commercially competitive resolution plans.

2.6 Further, the Applicant states that adherence to timelines ought not to prevail over the key objective of the IBC, namely, maximisation of value of all stakeholders and a competent resolution applicant must be considered on commercial rather than technical grounds.

2.7 The Applicant further submits that the process has not gone beyond the stage of consideration of plans and its inclusion at this juncture will not impact the established timelines adversely. It would be appropriate and expedient for the maximisation of value to allow it to submit its EoI at this stage.

2.8 Lastly, the Applicant states that the judgments of the Courts/Tribunals also hold that the CoC in the exercise of commercial wisdom may consider an EoI after the lapse of the deadline or extend the deadline to support such interpretation.

3. CONTENTIONS OF RESPONDENTS

3.1 Respondent No.1/RP states that upon receiving the email dated 24.05.2024 from the Applicant, requesting advice on the process of filing its EoI, he duly responded to it on 02.06.2024 by sharing the

detailed invitation for Eol containing the details of the CD, procedure for submitting Eol, participation money deposit, etc.

3.2 Respondent No.1/RP drew our attention to one of the grounds for rejection of an Eol as outlined in the 'Deed of Invitation for EOI', which mentioned as follows:

"The Resolution Professional/Committee of Creditors will have absolute right for rejection of Expression of Interest in the following situations:

a.

b.

c.

d. If the Expression of Interest is submitted by the Prospective Resolution Applicant after the last date for submission of Expression of Interest in compliance of Regulation 36A(6) of CIRP Regulations."

3.3 Respondent No.1/RP on 11.06.2024, sent a reminder email to all the PRAs (including the Applicant) to ensure that the Eols are submitted within the time frame, i.e. 12.06.2024. Respondent No.1/RP argues that despite receipt of the said email, the Applicant neither responded to the same nor filed its Eol on time.

3.4 Respondent No.1/RP received the Applicant's Eol vide email dated 19.06.2024, i.e. 7 days past the last date for submission of Eol, and hence, he lawfully rejected the Eol by responding to the mail on 19.06.2024 along with refunding the participation money in the

Applicant's bank account through NEFT on 23.07.2024 and communicating the same to it by email.

3.5 The Respondent No.1/RP further contends that the Applicant in its defence has stated no specific reason or situation whatsoever in an attempt to justify the delay occasioned in submitting its Eol, and, hence, this I.A. should not be entertained.

3.6 In this I.A., the Applicant has sought directions against Respondent No. 1/RP to issue fresh Form G and consider the Eol submitted by the Applicant in parity with the other resolution applicants. If the I.A. is allowed, it would take longer time in the CIRP of the CD, which would defeat the purpose of timely completion of the processes under the IBC.

3.7 Lastly, Respondent No.1/RP contends that it is settled law that the time prescribed in Form G as the last date of submitting the Eol is sacrosanct and ought to be adhered to strictly, as stated in Regulation 36A(6) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations).

4. ANALYSIS AND FINDINGS

4.1 We have heard both the Ld. Counsel for the Applicant and the Respondent No.1/RP and perused the materials available on record.

4.2 This I.A. is filed for directing the RP to issue fresh Form G to evaluate and consider the Eol of the Applicant. The only question involved in this I.A. is whether Respondent No. 1/RP is justified in not accepting the Eol received by him on 19.06.2024, after the last date of receipt Eol specified in Form G, i.e., 12.06.2024. It is relevant to consider

Regulation 36A of the CIRP Regulations which stipulates the criteria for inviting the Eols from the PRAs. Regulation 36A(3)(b) of the CIRP Regulations provides that the RP shall, *inter alia*, provide for the last date for the submission of Eol which shall not be less than fifteen days from the date of issue of detailed invitation in Form G. Further, as per Regulation 36A(5), a PRA who meets the requirements specified in the invitation for the Eol, may submit the same within the time specified in the invitation under Regulation 36A(3)(b) referred to above. Furthermore, Regulation 36A(6) mandates that the Eol received after the time specified in the invitation under Regulation 36A(3)(b) shall be rejected.

4.3 From the above, it is clear that the RP is mandated to reject Eols received after the time specified in Form G. In the instant case, there is no evidence to suggest that the RP has considered any other Eol submitted by other PRAs beyond time specified *viz.*, 12.06.2024. It is the admitted case of the Applicant that the Eol was submitted by it only on 19.06.2024. The Applicant has not demonstrated any cogent reason for the delayed submission of Eol.

4.4 The long title (preamble) to the IBC, *inter alia*, points to a 'time-bound manner' of reorganisation and insolvency resolution process of corporate persons, etc. Hence, we hold that timelines prescribed under the IBC are sacrosanct and are to be strictly adhered to and extensions or deviations are to be granted only in exceptional circumstances. It reinforces that the RP cannot accept delayed Eols without exceptional circumstances. In the present case, the Applicant's contentions lacked

any valid/justifiable reason or exceptional circumstance for the delay in submitting the EoI.

4.5 In a CIRP, the IRP/ RP is under obligation to abide by all the applicable laws. The Code of Conduct applicable to the RPs under the First Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (IP Regulations), under Regulation 7(2)(h) categorically provides that an IP must adhere to the time limits prescribed in the IBC, rules, regulations, and guidelines for CIRP and other processes. Therefore, we hold that the RP is under no obligation to consider the EoI received after the time specified for submission.

4.6 Therefore, it cannot be held that Respondent No.1/RP has acted arbitrarily by refusing to accept the EoI which was received by him after the last date of the receipt of the same had passed. The Applicant was made aware, by the Respondent No.1/RP, of the deadline to submit EoI and that it received reminders from him for the same, but failed to submit EoI within the stipulated time. For example, Respondent No.1/RP sent email dated 11.06.2024 calling upon the PRAs, including the Applicant, to submit EoIs with the requisite documents.

4.7 Allowing deviations, like the one requested by the Applicant in the matter at hand, without valid reasons will cause misuse of insolvency resolution process and will also be prejudicial to the other PRAs, undermining integrity and sanctity of CIRP.

4.8 The Ld. Counsel for the Applicant argued that the RP ought to have brought to the notice of the CoC, the EoI submitted by the Applicant on 19.06.2024, even though it was delayed. He submitted that the

Applicant has extensive experience in the field, and hence, its EoI would have been better than the other EoIs submitted by other PRAs. He also submitted that the RP has arbitrarily rejected the EoI submitted by Applicant which is against the law. However, the Ld. Counsel did not bring to our notice any provision, either in the IBC or the CIRP Regulations, requiring the RP to seek permission/approval of the CoC to consider any delayed EoI submitted after the time specified in Form G. The various decisions of the Hon'ble Supreme Court and some coordinate Benches of NCLT are on different factual matrix and hence, not found to be relevant in the instant case.

4.9 It is also relevant to consider Regulation 40A of the CIRP Regulations, which presents a model time-line of CIRP to be followed by the RPs. Specific time-lines have been provided for various activities under different sections of the IBC and CIRP regulations, including the time-lines under Regulation 36A. If RP starts accepting delayed EoIs, it would negate the very objective of the Code and CIRP Regulations in meeting the stipulated time-lines. If RP starts considering EoIs after the stipulated timeline, there would be no end to closure of EoI process. Hence, we hold that the RP has followed the law as laid down. The IRP/RP is also duty bound to rigorously follow the mandate of the IBC and the Regulations to maintain the discipline and efficacy of the insolvency resolution process.

ORDER

In view of the foregoing, I.A. No.4201 of 2024 is **dismissed**.

The designated Registrar is directed to forward an electronic version of this Order to the Insolvency and Bankruptcy Board of India (IBBI) for information and record.

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

(LRA-Alka Siwach)