

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

IA. No. 3106/2024

In

C.P.(IB)/1132(MB)/2023

**Application filed Under Section 60 (5)
of the Insolvency and Bankruptcy Code,
2016**

Filed by

Mr Vikram Venkatrao Gaikwad,

Proprietor of Vikram Gaikwad Group of
Companies

Having its registered address at:-

19, Shrikrishna heights, Gajanann co-op soc.,
Ganeshkhind Road, Shivaji Nagar, Pune,
Maharashtra, 411 016.

... Applicant

Versus

Mr. Jitendra Palande

Resolution Professional of Jogeshwari
Breweries Private Limited

Having its registered address at:-

Office No. 441, Kakade Bizz Icon, Ganeshkhind
Road, Shivajinagar, Pune Maharashtra – 411
005.

... Respondent No. 1

**Committee of Creditors of Jogeshwari
Breweries Private Limited**

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II
MUMBAI BENCH

Interlocutory Application No. 3106 of 2024

IN

C.P.(IB)/1132(MB)2023

Through Mr. Jitendra Palande, Resolution
Professional of Jogeshwari Breweries Private
Limited.

Having its registered address at:

Office No. 441, Kakade Bizz Icon, Ganeshkhind
Road, Shivajinagar, Pune Maharashtra – 411 005.

... Respondent No. 2

In the matter of

Mr. Vikram Venkatrao Gaikwad

... Applicant

Versus

Mr. Jitendra Palande & Anr.

... Respondents

In the Original matter between:

Sangram Gade

... Financial Creditor

Versus

Jogeshwari Breweries Private Limited

... Corporate Debtor

Order Pronounced on: - 15.10.2024

Coram:

**Anil Raj Chellan
Member (Technical)**

**Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Applicant: Counsel, Manoj Kumar Mishra a/w Counsel, Rahul Darji through VC.

For the Respondent No.1 : Counsel, Rahul Sarada a/w Counsel, Avdhoot Prabhu a/w Counsel, Divya D. Dave

For the Respondent No.2 : None

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. This Interlocutory Application is filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (the 'Code') seeking a direction to the Respondent No. 1, the Resolution Professional (RP) to consider the Expression of Interest ('EoI') submitted by the Applicant with respect to M/s Jogeshwari Breweries Private Limited, (the 'Corporate Debtor'). The Applicant has also sought directions to include his name in the provisional list of Prospective Resolution Applicants ('PRAs') and subsequently in the final list of Prospective Resolution Applicants after due diligence and consideration of the Expression of Interest of the Applicant. The reliefs sought are as follows:-

- a. To pass an Order directing Respondent No.1, the Resolution Professional to consider the Expression of Interest submitted by the Applicant with respect to the Corporate Debtor "M/s. Jogeshwari Breweries Private Limited";

- b. To pass an Order directing Respondent No. I to include the name of the Applicant in the provisional list of Prospective Resolution Applicants and subsequently, in the final list of Prospective Resolution Applicants, after due diligence and consideration of the Expression of Interest of the Applicant;
- c. To pass an Order directing Respondent No.1 to provide the Request For Resolution Plan (RFRP), Evaluation Matrix (EM), Information Memorandum (IM), and access to VDR, among other necessary documents, to the Applicant, to enable the Applicant to prepare and submit the Resolution Plan;
- d. Pursuant to the grant of aforesaid prayer clauses (a), (b), and (c), and in view of the last date for submission of resolution plan expiring on 10.06.2024, to pass an Order directing the Respondent Nos.1 and 2 to provide a reasonable period of time, preferably a week, to the Applicant for preparation of the Resolution Plan;

Facts of the case as submitted by the Applicant:-

2. On a petition filed under Section 9 of the Code, the Corporate Debtor was admitted into the Corporate Insolvency Resolution Process ('CIRP') vide order dated 09.02.2024, and Respondent No.1 was appointed as Interim Resolution Professional and is presently continuing as Resolution Professional (RP). Pursuant to the admission order dated 09.02.2024, Respondent No. 1 issued Form A on 10.02.2024 inviting claims from the creditors and based on the claims received, formed the Committee of Creditors ('CoC').

3. Thereafter, Respondent No. 1 issued Form G on 24.04.2024 inviting Expression of Interest from Prospective Resolution Applicants ('PRAs') to submit their EoIs by 09.05.2024. As per Form G, the last date for submission of the Resolution Plan was 10.06.2024.
4. It is submitted that as per Clause 2 (v) of the detailed Invitation for Expression of Interest, it was mandatory for all potential PRAs to provide the EoI by 09.05.2024 at 05.00 PM along with required annexures with a password in a separate email. A soft copy of the EoI along with the required annexures was required to be emailed to RP in a protected PDF format and the password must be shared in a separate mail.
5. The Applicant states that he submitted his EoI by email on 09.05.2024 from 4:14 PM to 4:28 PM along with prescribed Annexures and a scanned copy of the Demand Draft ('DD'). It is stated that the authorized person of the Applicant also visited the office of Respondent No. 1 on 09.05.2024 at 4:45 PM where the Applicant furnished all physical documents including DD in a sealed envelope, which was within the deadline on 09.05.2024 at 5:00 PM. Respondent No. 1 refused to accept the physical documents by hand delivery and asked the Applicant to physically send the EoI documents by post/courier only.

6. The Applicant, therefore, sent the documents via courier which were delivered to Respondent No.1 on 10.05.2024. The Applicant states that Respondent No. 1 refused to accept the EoI, despite submitting the same by email within the timeframe fixed in Form G, citing the reason that it was not submitted within the timelines. The Respondent vide his mail dated 15.05.2024 informed the Applicant that the entire set of EoI documents along with the DD for the EMD was not received by the submission deadline and Applicant's EOI would not be considered for further processing for the reasons as stated above. However, the Applicant has followed up with Respondent No. 1 for considering his EoI.
7. Despite continuous follow-ups by the Applicant, the Respondent has failed to provide the provisional list of PRAs, RFRP, information memorandum, evaluation, matrix, or access to the VDR to the Applicant. Finally, since the deadline for submission of the resolution plan was set to expire on 10.06.2024, the Applicant was constrained to send a mail on 05.06.2024 to Respondent No.1/ RP requesting for urgently providing the same but no response could be elicited from Respondent No. 1/RP.
8. In the above circumstances, the Applicant has filed the present Application and has contended that the procedure adopted by Respondent No.1 is arbitrary and lacks transparency.

9. The Applicant states that he is a potential Prospective Resolution Applicant, who had evinced interest in the Corporate Debtor from the inception as can be seen from the WhatsApp communications on 20.02.2024, 02.03.2024, 04.04.2024, 16.05.2024, 30.05.2024 and 07.06.2024.
10. The Applicant has contended that the EoI was submitted within the timeline but the RP did not accept the hand delivery and instead asked for the physical documents to be sent by post/courier. The documents sent by courier reached Respondent No. 1 on 10.05.2024 for reasons beyond the control of the Applicant.
11. It is submitted that RP has behaved suspiciously and has deliberately not included the name of the Applicant in the provisional list and final list of PRAs using technical grounds.

Submissions of Respondents: -

12. The Respondent No. 1 has filed his affidavit in reply. Respondent No. 1 has submitted that as per the invitation for Expression of Interest, the Expression of Interest along with annexures were to be received by him in physical and electronic form. Further, all Prospective Resolution Applicants were required to submit the Earnest Money Deposit (EMD)

by post/courier only on or before 09.05.2024 by 5:00 PM. It was expressly mentioned in the invitation for Expression of Interest that no personal appearance was to be entertained by the Resolution Professional. All the annexures form an integral part of the Expression of Interest. However, the Expression of Interest from the Applicant was received by Respondent No. 1 only on 10.05.2024.

13. Respondent No.1 has contended that the Applicant did not submit the EoI along with Annexures thereto including EMD within the stipulated time and not in the manner as stipulated. Thus, the submission that there is merely a day delay in submission of the Expression of Interest is not correct. It is further denied that any person on behalf of the Applicant visited Respondent No. 1's office on 09.05.2024 to submit the Expression of Interest. This is a concocted story of the Applicant without any evidence to suit his case. Even otherwise, the aforesaid reasons are not justifiable and EoI was bound to be rejected, as the EoI was to be received via post/courier on or before 09.05.2024 latest by 5:00 PM which has not been the case.
14. Respondent No. 1 has further submitted that as per Regulation 36A (6) of the CIRP Regulations, it is mandatory for the Resolution Professional not to receive any Expression of Interest which is filed

after the time specified in the invitation issued under Regulation 36A (3) of the CIRP Regulation. Therefore, Respondent No. 1 has rightly rejected the Applicant's Expression of Interest. It is further submitted that the timeline given in Regulation 36A (6) is to be adhered to strictly.

15. Respondent No. 1 submits that in response to Form G published, Respondent No. 1 has received three valid EoIs from Prospective Resolution Applicants (PRAs) and the Resolution Plans submitted by the PRAs are presently under consideration. Respondent No. 1 submits that he duly intimated to the Applicant vide his email dated 15.05.2024 regarding the rejection of EoI and that Respondent No. 1 is not bound statutorily or even otherwise to respond to emails and SMS/WhatsApp communications of the Applicant. Merely because Respondent No. 1 has not replied to the WhatsApp communications and mail, it cannot be assumed that Respondent No. 1 had any ulterior motive of debarring the Applicant from participating in the Resolution Process.
16. Respondent No. 1 further submits that no case has been made out by the Applicant and granting of any relief to the Applicant would prejudice and deny the ongoing CIRP Process. Hence, Respondent No. 1 prays for the dismissal of the Application.

Analysis and finding:-

17. We have heard the Counsel for the parties and have perused the documents on record.
18. The case of the Applicant is that he has submitted the EoI within the stipulated time by email and the physical copy of the EoI together with Annexures and EMD could not be delivered within the stipulated time on account of the refusal by the Respondent No.1 to accept hand delivery. This necessitated sending the physical copy by courier which was received by Respondent No.1 on 10.05.2024 i.e., one day after the stipulated date of 09.05.2024. On the other hand, Respondent No.1 has refuted the same and stated that no person from the Applicant visited the Respondent's office on 09.05. 2024 and the EoI was received only after the stipulated time on 10.05.2024. Even otherwise, as per the form G, the EoI cannot be submitted physically. Respondent No.1 has further submitted that it is mandatory to adhere to the time specified in the invitation for expression of interest as per Regulation 36A of the CIRP Regulations.
19. We have carefully considered the rival contentions of the parties. There is no dispute that the physical copy of the EoI together with the Annexures and EMD was received by Respondent No. 1 on 10.05.2024. However, the Applicant contends that he attempted to submit the physical copy together

with annexures to Respondent No.1 before the stipulated time by hand delivery which the Respondent vehemently denied. It is observed that the Applicant in the Application states that '*the authorized person of the Applicant also visited the office of the Respondent No.1 on 09.05.2024 at 4.45 PM, where the Applicant furnished all the physical documents with DD in a sealed envelope, which is within the deadline of 09.05.2024 at 05.00 PM.*'. However, the emails sent by the Applicant did not make mention regarding aforesaid attempted delivery of the physical copy together with the Demand Draft. Further, the Applicant for the first time stated the same in his email dated 06.06.2024. It is also observed that the averments regarding attempted physical delivery are vague and not supported by any verifiable credentials or other evidence. Even otherwise, it is observed that the invitation for Expression of Interest specifically mentioned that no physical appearance was to be entertained by the RP. In the circumstances, it is evident from the records that the Applicant submitted the Expression of Interest one day after the date specified for submission.

20. The records reveal that the Respondent vide his email dated 15.05.2024 informed the Applicant that the EoI documents were received late and hence the Applicant's EoI would not be considered for further processing. While the Applicant was fully aware of the published

schedule for the issue of the provisional list and final list of prospective Resolution Applicants, the date of issue of the Information Memorandum evaluation matrix, and the last date for submission of the Resolution Plan, the Applicant appears to have sent the email on 06.06.2024 and have filed this Application on 08.06.2024. By this time three PRAs have already filed their Resolution Plans which are under consideration by the CoC.

21. The Applicant has not stated any reasons for the delayed submission of EoI or delayed filing of the Application before this Tribunal when the Respondent had admittedly informed the Applicant on 15.05.2024 that his EoI would not be considered on account of breaching the deadline.
22. The Applicant has submitted that he was always keen to submit a resolution plan for the Corporate Debtor. However, the Counsel for the Respondent vehemently contended that the timeline stipulated in the invitation for EoI is mandatory as per Regulation 36A (6) of the CIRP Regulations on account of the use of the word 'shall' therein. In support of the above contention, the Counsel for the Respondent relied on the decisions of the Hon'ble Principal Bench of NCLT in IA No. 5053 of 2021 in C.P. No. 160 of 2018 wherein it was noted that the applicant therein did not give any justification for delay in filing the EoI. The

Respondent has also relied upon various orders passed by this Bench rejecting the late submission of EoI.

23. In furtherance of the above discussion, it is observed that any direction to consider the EoI received after the specified time would run counter to the very objective of resolving the insolvency of the Corporate Debtor in a time-bound manner. Thus, the Application cannot be justified both in law and on facts. We find that the Respondent has rightly exercised his power under Regulation 36A(6) of the CIRP Regulations. We, therefore, **dismiss** the present application i.e., **I.A. No. 3106 of 2024** with no order as to costs.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
/SALAM/

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)