

DIVISION BENCH O-102

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

IA/1443(KB)2020
In
C.P. (IB)/184(KB)2018

**Present: 1. Hon'ble Member(J), Shri Rajasekhar V.K.
2. Hon'ble Member(T), Shri Harish Chander Suri**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 27th JANUARY, 2021, 10:30 A.M

Name of the Company	SANGITA FISCAL SERVICES PRIVATE LIMITED Vs. DUNCANS INDUSTRIES LIMITED		
Under Section	Rule 11 of NCLT, 2016		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

COUNSELS APPEARED THROUGH VIDEO CONFERENCE :

Mr. Dipankar Das, Advocate - For the Resolution Professional
Ms. Sanjana Nandi, Advocate

Ms. Aparajita Rao, Advocate -For the Prospective Resolution Applicant
Ms. Sanwal Tibrewal, Advocate
Ms. Pallavi Gandhi, Advocate
Ms. Sutapa Mitra, Advocate

ORDER

Mr. Dipankar Das, Ld. Counsel for the RP, along with Ms. Sanjana Nandi, Ld. Counsel are present. Ms. Aparajita Rao, Ld. Counsel, is present on behalf of IRC Natural Resources Pvt. Limited, prospective Resolution Applicant, seeking condonation of delay in furnishing the Earnest Money Deposit, along with the Resolution Plan and that a direction to the Respondents to place the Resolution Plan by the Applicant before the Committee of Creditors for its consideration.

It is stated that the Applicant had submitted the Resolution Plan before the last date, prescribed for this purpose i.e. 4th December, 2020. But due to certain difficulties, the Bank Guarantee of Rs. 5 Crores towards the Earnest Money Deposit could not be furnished along with the Resolution Plan. The Applicant states that it had sought seven days' time to furnish the same vide its letter dated 7th December, 2020. In the meantime, the Banker of the Resolution Applicant sanctioned the Bank Guarantee on 11th December, 2020 and vide E-mail dated 14th December, 2020, the prospective Resolution Applicant requested for a confirmation from the Resolution Professional that the delay in furnishing the Earnest Money Deposit was condoned. As on the date of the hearing of this Application, the RP did not respond to the E-mail at all.

Mr. Dipankar Das, Ld. Counsel, appearing for the RP, submitted on the last occasion that the question of condonation of delay had been placed before the Committee of Creditors. The proposal was approved by 42.4% voting in favour and 43.41% rejecting. Further, 14% abstained from voting. Mr. Dipankar Das, Ld. Counsel for the RP, further submitted on that date that the Committee of Creditors had been duly reconstituted and sought time to place the matter once again before the CoC for reconsideration. The matter was posted on 11th February, 2021, with liberty to mention.

This matter was mentioned in chambers for early listing after the CoC once again rejected the proposal and the matter was posted today for hearing.

Mr. Dipankar Das, Ld. Counsel for the RP submits that the proposal was rejected by the reconstituted CoC to the vote share of 45.16%, voting in favour, 41.28% rejecting and 13.1% absented and 0.05% abstaining.

This is a matter that should have been resolved in the month of December, 2020 itself, had the CoC kept in mind the basic objective of the Code, which was 'Resolution over Liquidation'. The decision of the CoC defies the logic.

We are convinced that the Bank Guarantee could not be furnished along with the Resolution Plan for good reasons and that no prejudice would have been caused to anyone on the delay in submission (three days), being condoned by the Committee of Creditors, keeping in view the object of the Code.

This is a matter that requires judicial intervention and accordingly, we direct the Committee of Creditors to accept the Bank Guarantee now furnished by the Applicant. The delay in this behalf is hereby condoned. The Resolution Plan shall be placed for consideration by the Committee of Creditors along with the other Resolution Plans, subject to the Applicant being otherwise eligible in terms of the criteria fixed by the Committee of Creditors.

With these directions, the IA/1443(KB)/2020 stands disposed of.

(Harish Chander Suri)
Member(Technical)

(Rajasekhar VK)
Member(Judicial)

GOUR_STENO

