

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT V**

I.A. 1143 OF 2024

IN

C.P. (IB) No. 783 of 2021

Under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016

Ashdan Properties Privet Limited

....Applicant

vs.

Mr. Harshad Despande / Resolution Professional

&

Committee of Creditors of Corporate Debtor

...Respondents

In the matter of:

State Bank of India

... Financial Creditor

vs.

A A Estates Private Limited

...Corporate Debtor

Order Dated: 29.07.2024

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

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Appearance (Physically/ Video Conference):

For the Applicant: Sr. Counsel Mr., Mustafa Doctor a/w Ms. Saloni Sulakhe,
Mr. Punit Agarwa i/b Chaval Vassorji & Associates (PH)

For the Respondent: Adv. Nimay Dave i/b Adv. Joshua Borges (R1/RP) (PH) &
Adv. Aniruth Purusothaman (for suspended Directors) (PH)

ORDER

1. The above Interlocutory Application bearing I.A. No. 1143 of 2024 is filed by **Ashdan Properties Privet Limited** (hereinafter referred to as the "**Applicant**") seeking directions against **Mr. Harshad Despande & ors** (hereinafter referred to as the "**Respondent**") under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**the Code**") praying for following reliefs:

- a) *That this Hon'ble Tribunal be pleased to order and direct the Resolution Professional to condone the delay of one day of the Applicant in submission of its Resolution Plan, accept the Application of the Applicant, and place the Applicant's Resolution Plan dated 14h February 2024 before the Committee of Creditors of Corporate Debtor to be considered on merits ";*
- b) *Direct the Respondents to evaluate and consider the Resolution Plan of the Applicant in parity with other Resolution Plans and;*
- c) *Pending the hearing and final disposal of the present Application this Hon'ble Tribunal be pleased to, by an order, grant a stay and injunction restraining the Committee of Creditors of the Corporate Debtor from considering any resolution plan or from voting on any*

resolution plans already submitted by other Prospective Resolution Applicants;

d) Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.

BRIEF FACTS OF THE CASE AND SUBMISSIONS OF THE APPLICANT:

2. The Authorized Representative of Ashdan Properties Private Limited filed this Interlocutory Application. The Representative was authorized to file this Application vide Board Resolution dated May 3, 2021. The applicant prays for the condonation of one-day's delay in submitting the resolution plan, with a further prayer that the Committee of Creditors be directed to consider his plan. The Applicant has further sought a stay on the consideration and voting of other resolution plans until this request was considered.
3. The Applicant stated that the Corporate Debtor was admitted to CIRP on December 6, 2022 and Mr. Harshad Deshpande was appointed the Interim Resolution Professional. The first Expressions of Interest (EOI) was published on July 28, 2023, but the IRP got no response. Expressions of Interest (EOI) was published a second time on August 29, 2023, but again no response was received. In the 7th COC meeting held on November 8, 2023, It was decided to republish the EOI afresh and opt for the sale of one or more assets of the Corporate Debtor. The PRA's were allowed to submit the EOI for submission of Resolution Plan of the Corporate Debtor as a whole company or by project-wise.
4. The Applicant on 22.11.2023 requested Respondent No. 1/RP to share the EOI invitation and details about the Corporate Debtor and its assets. Respondent No. 1/RP provided the detailed EOI invitation, including the specified timelines for the process. The timelines to be adhered to were as under:

Sr No.	Date	Particulars
1.	7 th December 2023	Submission of EOI with all relevant documents
2.		Shortlisting of eligible PRAs by RP
3.	17 th December 2023	Issue of provisional list of Eligible PRAs by RP
4.	22 nd December 2023	Objections to Provisional List to be submitted
5.	1 st January 2024	Issuance of final list of Eligible PRAs to the CoC
6.	6 th January 2024	Circulation of Information Memorandum ("IM"), Evaluation Matrix ("EM"), and Request for Resolution Plan ("RFRP")
7.	5 th February 2024*	Submission of Resolution Plan(s) by PRAs (*this timeline was later extended to 14 th February 2024 by the Respondent No.1/RP by a subsequent email dated 9 ^h February 2024.

- 5.** The Applicant further submitted that Respondent No. 1/RP on 04.12.2023 shared the background and details of the Corporate Debtor with the Applicant. The Applicant submitted its EOI and relevant documents on the same day. On 12th December 2023, Respondent No. 1 informed the Applicant that their initial submission was verified and requested for certain additional information and documents within seven days. The Applicant responded with the required information and a signed declaration on 15th December 2023.
- 6.** The Applicant submitted that on 16th December 2023, Respondent No. 1 published a provisional list of PRAs. The name of the Applicant appeared on top in this list of PRA's. The final list of 14 PRAs, the Applicant at the top, was published on 30th December 2023, along with an announcement that the RFRP, EM, and IM would be shared soon. On January 1, 2024, Respondent No. 1 informed all PRAs that VDR services had been created on December 30, 2023, to provide information about the Corporate Debtor. However, only the

RFRP, IM, and EM were uploaded, without any additional documents having been shared by the Respondent No. 1/RP.

7. The Applicant submitted that, right from January 31, 2024 onwards there were various mails exchanged with the Respondent RP particularly dated February 3rd, 7th, 8th, and 9th; 2024, about the queries relating to the Corporate Debtor's real estate projects. Although Respondent No. 1 answered some queries, but many important questions remained unanswered. Respondent No. 1 granted an extension until February 14, 2024, but even with the extension, the crucial queries from the Applicant were not answered. This lack of complete information, was considered essential for submitting a Resolution Plan by the Applicant.
8. The Applicant stated that on February 13, 2024, Respondent No. 1 notified the Applicant about certain documents received from the Corporate Debtor which were uploaded on VDR, but the Applicant was unable to access theses. Despite requesting for all these essential documents, including the Technical Due Diligence Report for significant projects, the Applicant still failed to access these uptill February 14, 2024 i.e. the last date of submission of Plans. Therefore, the Applicant requested for an extension but did not receive any response from the Respondent No. 1/RP. Nevertheless, the Applicant submitted the Resolution Plan on February 15, 2024, along with an Earnest Money Deposit of Rs. 2 crore, fulfilling all requirements. Respondent No. 1/RP accepted the submission of EMD and Resolution Plan of the Applicant without raising any issues.
9. Following the submission of the Resolution Plan on February 15, 2024, the Applicant called Respondent No. 1 to check the status of their submitted Plan the same day. Respondent No. 1 mentioned they would seek legal advice regarding the one-day delay in submission of the Plan before presenting the plans to Respondent No. 2 (COC) on February 16, 2024. After not hearing anything further from Respondent No.1, the Applicant assumed their plan

had been accepted and the delay of one day has been condoned. However, on February 23, 2024 the Applicant received an email from Respondent No. 1/ requesting their bank details for the refund of the Earnest Money Deposit (EMD). The Applicant was shocked to receive such a response at this belated stage when the name of the Applicant was on top of the list of PRA's and the Plan submitted with EMD on 15.02.2024 too was accepted by Respondent No. 1/RP.

10. The Applicant sought clarification on why and how their submitted Resolution Plan was purportedly rejected. In response on March 1, 2024, Respondent No. 1 informed the Applicant that their Resolution Plan had been presented to Respondent No. 2 (COC). However, it was noted that the plan was received after the prescribed due date specified in the Request for Resolution Plans (RFRP). Consequently, the COC decided not to open or consider the Applicant's plan.

11. The Ld. Counsel for the Applicant vehemently submitted that the stated delay of one day is non consequential as the Plan was submitted to prior to the meeting of CoC scheduled for 16.02.2024 to substantiate his arguments the Applicant relies on the Judgement passed by the Hon'ble Supreme Court of India in the case of "**Kalprai Dharamshi & Ann Vs Kotak Investment Advisors Ltd & Anr**" where in it has been held as under:

"53. ... However, what is material is that the resolution plans submitted by both the resolution applicants were within the time stipulated in the IBC for completion of the CIRP. In our view, as long as the resolution plans are submitted within the overall timeline provided under the IBC, the acceptance of resolution plans after the due date for submission but before the expiry of the CIRP timeline is permissible."

12. Hence this Application seeking condonation of one day's delay.

SUBMISSIONS ON BEHALF OF RESPONDENT/RP:

13. The Respondent No. 1/RP denied each and every allegation, insinuation, and statement as set out in the interim application. They asserted that the Applicant had not approached this Hon'ble Tribunal with clean hands and had suppressed vital facts/documents necessary for understanding the nature of the controversy in the present case. Therefore, the Applicant being guilty of '*suppresio veri*' and '*suggestio falsi*', the present application is liable to be dismissed on this count alone.

14. The Respondent submitted that the Applicant has no locus standing to file the current application. The Respondent asserted that the Applicant, merely a prospective resolution applicant in the Corporate Insolvency Resolution Process (CIRP), did not possess the necessary legal right or interest to seek the reliefs requested. According to the Respondent, the Applicant's rights as a PRA were strictly defined by the provisions of the *Insolvency and Bankruptcy Code* and its regulations.

15. Furthermore, the Respondent contended that the Applicant had not demonstrated any infringement or violation of legal or statutory rights or any act of commission or omissions on the part of the Respondent/Resolution Professional or the Committee of Creditors (COC) so as to justify filing of present Interlocutory Application. Respondent argued that the application was based solely on equitable considerations rather than on legal or statutory grounds or rights.

16. The Respondent asserted that the authority to extend timelines for submitting resolution plans laid solely with the Committee of Creditors (COC) and not with the Resolution Professional. The Respondent stated that the COC had extended the submission deadline from February 5, 2024, to February 9, 2024, and later to the final cut-off of February 14, 2024. The Applicant had requested a further extension beyond February 14, 2024. The COC in its meeting held on February

16, 2024, decided not to consider any resolution plan submitted after the deadline i.e. 14 February 2024. Therefore, not to consider the Plan submitted by the Applicant was the decision of Coc having taken under their Commercial Wisdom.

17. The Respondent emphasized that this decision was communicated to the Applicant on March 1, 2024. Therefore, according to the Respondent, there is now no basis to grant condonation of the delay in plan submission or grant of any relief related to it.

18. Moreover, the Respondent argued that there was a legal restriction (Regulation 36B of the *Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*) preventing the COC from considering resolution plans submitted after the specified deadline. Since the Applicant admitted to having submitted their plan after the cutoff date, the COC's decision not to consider it, was seen as correct, necessary and in compliance of the law. Accepting a late submission or a delayed Plan, according to the Respondent, would have constituted a breach of legal regulations and invited litigation from other PRAs, thereby prolonging the Corporate Insolvency Resolution Process (CIRP) unnecessarily.

19. The Respondent argued that the Applicant's alleged reason of delay due to the Resolution Professional's alleged failure to provide clarifications and additional documents is irrelevant and non-consequential under the law for condoning delays in submitting a resolution plan. The Respondent pointed out that other prospective resolution applicants managed to formulate and submit their plans within the specified timeline, using the same data room information provided by the Resolution Professional.

20. The Respondent No. 1/RP submitted that it was the Applicant's responsibility to independently access the information provided and conduct due diligence on the corporate debtor. They emphasized that the Resolution Professional had

explicitly stated in the Request for Resolution Plan (RFRP) that prospective applicants must carry out their own due diligence and assessment. Additionally, the RFRP stated that the Resolution Professional was not obliged to respond to queries or provide clarifications, and no extensions can be allowed to be granted based on such grounds.

21. The Respondent No. 1/RP asserted that these conditions were clearly communicated in the RFRP, which the Applicant acknowledged by participating in the Corporate Insolvency Resolution Process (CIRP). Therefore, the Respondent concluded that the Applicant could not justify its request for an extension of time based on the grounds it had presented, as these grounds were explicitly excluded under the terms of the RFRP.

FINDINGS

22. After having appreciated the arguments advanced by the both the Ld. Counsels and after having gone through the Documents placed on the record with their able assistance, it is necessary to first appreciate the facts of the case in its correct perspective.

23. From the abovestated it is evident that the case of the applicant i.e. Ashdan Properties Private Limited is that the corporate debtor was admitted to CIRP on 06.12.2022. On 28.07.2023 RP published an invitation for EOI as per Form 'G' of CIRP Regulations. On 29.08.2023 Form 'G' was re-published. However, no resolution plans were received. In its 7th CoC meeting held on 08.11.2023, the respondent/RP resolved to re-publish Form G once again. The applicant vide E-mail dated 22.11.2023 approached the RP and requested for the detailed invitation for EOI of corporate debtor. The same was forwarded by the respondent no 1, wherein time line were given and the last date of the submission of the resolution plan was stated as 05.02.2024. It deserves to be mentioned that this date i.e. 05.02.2024 was subsequently extended to 14.02.2024.

24. Further the case of the applicant is that he was regularly in touch with the RP seeking certain information with a view to submit resolution plan. RP from time to time responded to those queries raised by the applicant. It is the case of the applicant that the information sought by them was necessary key information required for preparation of its resolution plan. The applicant has further submitted that in view of the fact that complete information was not provided, thus, the applicant further sought some additional information on various dates. The learned counsel for the applicant further submits that by an E-mail dated 08.02.2024 since the due diligence of projects was yet to be completed by the RP, the applicant requested for two-week's time for submission of the resolution plan stating that several crucial documents were yet to be provided by the RP. Respondent 1/RP at this stage extended time for submission of the resolution plan up to 14.02.2024. But unfortunately queries raised by the applicant remained unanswered. It is further submitted that on 13.02.2024 i.e. one day prior to the last date of submission of the resolution plan, the respondent/RP informed the applicant that certain documents had been received from the Corporate Debtor which were uploaded on VDR. The applicant tried to access the documents but was unable to open the file and apprised the respondent/RP of the same. The RP forwarded these documents on 14.02.2024. The applicant thus informed the Respondent/RP that several crucial documents including technical due diligence report of the project specifically of RNA address were yet to be provided and therefore requested for an extension of time for submission of resolution plan.

25. The applicant received no response to this E-mail. The applicant was required to physically submit the resolution plan to Respondent/RP who was based at Pune. The applicant finally decided to physically submit the plan but could not do so before the dead line of 5 P.M. on 14.02.2024. The applicant thus dispatched physical copy of the proposed resolution plan on 15.02.2024 and handed over the same to RP at Pune. The EMD of Rs. 2 Crore by way of cheque was also credited into the bank account of the corporate debtor on 15.02.2024.

Respondent no. 1/RP accepted the resolution plan without raising any issue. Subsequently, the applicant was informed telephonically by Respondent/RP that the plan of the applicant shall be placed before CoC after obtaining the legal opinion with respect to delay of one day in submission of resolution plan. The presumption of the applicant was that his plan shall be placed before the CoC but vide an E-mail dated 23.02.2024, the Respondent/RP sought the bank details of the applicant for refund of EMD. The applicant informed the RP that their plan was submitted on 15.02.2024 i.e. a day prior to the scheduled CoC meeting which was scheduled for 16.02.2024, when the plans were to be opened. Vide an E-mail dated 01.03.2024 Respondent/RP informed the applicant that their plan was placed before the CoC and the CoC informed that since the resolution plan of the applicant had been received after the due date so stated under RFRP, thus, CoC decided not to open and consider the Resolution Plan of the Applicant same.

26. The further contention of the applicant is that the delay of one day primarily happened because of the delay or failure on the part of the Respondent/RP in providing crucial information which was required for the purpose of preparing resolution plan. Thus, it was the delay on the part of the respondent/RP in sharing the requisite necessary information which was provided by the RP as late as till 13.02.2024. The applicant has submitted that even if there was a delay of one day in submitting the plan, the same has not caused any delay to CIRP or prejudice to the interest of any party as the CoC was scheduled to meet on 16.02. 2024. The plan in any case was presented before the scheduled meeting of CoC. Thus, the plan merits consideration. Otherwise also it is submitted that in order to maximize the value of corporate debtor it was incumbent upon the CoC and the RP to consider the plan of the applicant. In addition to the above stated submission, learned counsel has also drawn our attention to *Regulation 36(B)(6)* which states are as under:

“The resolution professional may, with the approval of the committee, extend the time line for submission of resolution plan”

Thus, the counsel submitted that this regulation which was brought vide notification with effect from 04.07.2018 gives discretion to the RP with the approval of the CoC, to extend the time line for submission of the plan. Learned counsel also referred to the judgement of the Hon'ble coordinate bench in **MA No. 1569 of 2018** in **CP 197 of 2018** of **ICICI Vs Unicorn** of the coordinate bench, wherein while relying upon the judgement of the Hon'ble NCLAT dated 08.05.2018, the court was pleased to direct the RP and the CoC to consider the resolution plan submitted by the applicant.

27. To appreciate the peculiar facts and circumstances of the present case we need to keep in mind the purpose and objective of the Code which is to maximize the value of the assets of the Corporate Debtor and to ensure a fair resolution process. Given the substantial Earnest Money Deposit and the thorough engagement of the Applicant, by raising relevant queries for submission of Plan and the failure of the Applicant to access the information provided by the RP on VDR is evidently reason enough to accept the fact that Applicant was genuinely interested in submitting the Resolution Plan, the Applicant be not made to suffer from participating/consideration of his Plan submitted. The Hon'ble Supreme Court in the case "*Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors*" has been pleased to hold as under:

"the timelines under the IBC are directory and not mandatory, especially in circumstances where strict adherence would cause injustice or defeat the purpose of the IBC. The judgment supports a pragmatic approach to ensure the successful resolution of the corporate debtor".

In "**Arcelor Mittal India Private Limited vs. Satish Kumar Gupta & Ors Civil Appeal Nos. 9402-9405 of 2018**". The Hon'ble Supreme Court has held :*"ultimate aim of the IBC is to balance the interests of all stakeholders and ensure the resolution of the corporate debtor. Flexibility in procedural requirements is encouraged to achieve substantive justice"*.

28. On the other hand, the learned counsel for the RP submitted that the resolution plan of the applicant was not considered being a belated plan. On account of legal bar of time line the CoC could not consider the resolution plan of the applicant and the consideration of the resolution plan belatedly submitted by the applicant would have amounted to breach of law and violation of regulations.

29. It is evident from the perusal of the facts and circumstances of this case and the reply filed by Respondent No. 1/RP that the RP and also CoC seems to have lost sight of Regulation 36(B)(6) of IBBI (CIRP Regulation 2016) and thus failed to exercise the discretion having been granted under the regulations to RP in consultation with CoC.

30. Be that as it may as stated above the object of the IBC is to maximize the value of the corporate debtor. The Tribunal holds that the COC's decision to reject the Applicant's plan solely based on a technical delay of one day in submitting the Resolution Plan, without considering the substantive efforts having been put in and the potential value of the plan, is not in the spirit of the CIRP objectives. *The Hon'ble Bench relies on the judgement of the Hon'ble NCLAT in:*

“IDBI Bank Ltd. Vs. Jaypee Infratech Ltd. Company Appeal (AT) (Insolvency) No. 253 of 2017, wherein the Hon'ble NCLAT emphasized the need for the COC to consider resolution plans even if they are submitted after the prescribed deadline, provided that such consideration does not affect the overall CIRP timeline. The judgment underscores the importance of substantial compliance over technical adherence to timelines”.

Similarly, in “Binani Industries Limited vs. Bank of Baroda & Anr. Company Appeal (AT) (Insolvency) No. 82 of 2018, the Hon'ble NCLAT held that the rejection of a resolution plan without evaluating its merits is not permissible. The NCLAT emphasized that all resolution plans should be opened and considered to ensure a fair and equitable resolution process.

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This decision highlights the necessity for the COC to consider the contents of the plan before making any rejection decisions”.

31. Thus, keeping the above stated law and the facts in mind and also in addition to fact that the last date of submission of the Resolution Plan was 14 February 2024 and the Applicant submitted its Resolution Plan on 15 February 2024. Whereas the Plans were to be considered by the CoC on 16 February 2024. Thus one fact is absolutely clear that the delayed submission of the Plan by the Applicant has not caused any delayed or prejudice to the interests of any of the parties or has affected the timelines of CIRP. The non-consideration of their Plan submitted is bound to cause prejudice to the interest of the Applicant and would be against the objectives of the Code itself which emphasis on ‘*maximization of the value of Corporate Debtor*’.

32. The Tribunal therefore concludes holding that the delay of 24 hours/ 1 day in the submission of the Resolution Plan was caused by legitimate challenges in accessing necessary information. Therefore, the delay deserves to be condoned, and the Resolution Plan submitted by the Applicant on 15th February 2024 merits consideration by the COC.

33. Thus, keeping the totality of the circumstances in mind we deem it appropriate to direct the CoC/RP to consider the Plan of the Applicant before taking any final call on the Resolution Plans under consideration. With the said directions this **IA 1143 of 2024 stands Allowed and thus disposed off.**

Sd/-
Madhu Sinha
Member(Technical)
/Priyanka/

Sd/-
Reeta Kohli
Member (Judicial)