



**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**

**COURT III**

14. IA 198/2025

In

C.P. (IB)/4135(MB)2018

CORAM: MS. LAKSHMI GURUNG, MEMBER (J)  
SH. CHARANJEET SINGH GULATI, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON **14.01.2025**

NAME OF THE PARTIES: USV PRIVATE LIMITED

VS

Lok Housing and Constructions Limited

**Appearance**

For RP : Sr. Adv. Vikram S. Nankani a/w. Adv. Swati Dalmia, Adv.  
Orijit Chatterjee, Adv. Shubham Raj, Adv. Neha Sinha

For Applicant : Sr. Adv. Gaurav Joshi

For SBI/CoC : Sr. Adv. Pratik Seksaria a/w. Adv. Santosh Kumar  
Ray, Adv. Meenakshi Chaturvedi, Adv. Zeba Khan  
i/b. SKR & Associates

SECTION 7 OF THE IBC, 2016

---

**ORDER**

**Hearing Through: Virtually and Physical (Hybrid) Mode**

**I.A. 198/2025**

1. This application has been filed by Applicant/Ashdan Properties Pvt. Ltd against the Respondent No.1 RP, Mr. Hemant J. Mehta and Respondent No.2 Committee of Creditors of Lok Housing and Construction Limited seeking following reliefs:



- a. *That this Hon'ble Tribunal be pleased to direct Respondent No.1 and the Members of the CoC i.e. the Respondent No.2 to conduct the inter-se bidding/ challenge mechanism as mandated under clause 2.2.4 of the RFRP issued on 3<sup>rd</sup> April 2024 (Annexure "A").*
- b. *That this Hon'ble Tribunal be pleased to direct Respondent No.1 and the Members of the CoC i.e. the Respondent No.2 to strictly adhere to the process laid down under the RFRP issued on 3<sup>rd</sup> April 2024 (Annexure "A") to conclude the CIRP of the Corporate Debtor.*
- c. *That pending the hearing and final disposal of the present Application this Hon'ble Tribunal may be pleased to pass an order restraining the Respondent No. 2 from considering or voting upon any Resolution Plan.*
- d. *That during the pendency and final disposal and adjudication of the present Application, this Hon'ble Court be pleased to stay the CIRP of the Corporate Debtor.*
- e. *For costs;*
- f. *For such further and other orders as this Hon'ble Tribunal deems fit and proper*

2. The fact of the case briefly stated are as under:

- i. The applicant is one of the Prospective Resolution Applicants in the CIRP of the Corporate Debtor and through the instant application seeks appropriate orders to direct the Respondents to conduct the CIRP of the CD in accordance with the procedure laid down and mandated under clause 2.2.4 of the RFRP issued on 3<sup>rd</sup> April 2024.



- ii. The Committee of Creditors of the Corporate Debtor comprises of State Bank of India (voting share 82.48%), home buyers and other financial creditors (voting share 17.52%).
  - iii. Against the issue of Form-G, 20 prospective Resolution Applicants were there in the provisional list and about 14 PRAs made to the final list. Out of 14 PRAs, 6 PRAs were for the resolution of CD as a whole and 8 of them for resolution of specific clusters. Eventually only 2 PRAs submitted their Resolution Plans for resolution the CD as a whole and another 2 PRAs submitted their Resolution for specific clusters.
  - iv. The Applicant is one of the PRAs which submitted its Resolution Plan for the Corporate Debtor as a whole and one Aakshya Realty Pvt. Ltd and consortium was the other PRA which submitted the plan for the CD as a whole.
3. Mr. Gaurav Joshi, Sr. Counsel for the Applicant contended that the clause 2.2 of RFRP outlines the steps and the terms and conditions of the process for evaluating the resolution plans to ensure transparency in the process. He has emphasised on 2.2.4 (c), (e) and (g) of RFRP to drive the point that there is non adherence to the RFRP process. As per clause 2.2.4(c) of RFRP, the Resolution Professional on the instructions of the CoC was required to conduct inter-se bidding/ challenge mechanism as laid down in the out-bidding process annexed to the RFRP as Annexure-2 or any other process as may be decided by the CoC for the purpose of the maximization of the value of the assets of the corporate debtor. Further, as per clause 2.2.4(e) of RFRP, the CoC may call for resolution applicants for further negotiations of their resolution plans and thereafter the resolution applicants were to submit their final resolution plans after necessary modifications. It is submitted that the process under clause 2.2.4 is mandatory and any deviation in the said process amounts to modification in the RFRP which is legally impermissible in view of 36B(5) of CIRP Regulations.



4. It is submitted that after evolution of the Resolution Plans, have failed to conduct inter-se bidding/challenge mechanism and without calling any of the Resolution Applicants for negotiation or conducting the inter-se bidding, and in contravention of clause 2.2.4(c) of RFRP, have decided to proceed on voting of the resolution plans warranting to filing of this I.A. The applicant has further stated that they have after learning that the Respondents have abandoned the process of conducting the inter-se bidding, have written various emails starting from 05.11.2024 to the RP and the SBI, however no response for the same could be solicited.
5. Per contra, Sr. Counsel Mr. Vikram S. Nankani referred to the clause 2.2.4 (d) and (g) of the RFRP and also referred to the various other aspects of the RFRP and stated that the RP has acted on the instructions of the CoC which is in accordance with the stipulation of the RFRP, as also applicable regulations of the Code.
6. Sr. Counsel. Mr. Pratik Seksaria appearing on behalf of the SBI referred to the clause 1.6.2 and reemphasised the specific mentions in sub clauses (a), (b) and (g) of clause 2.2.4 of the RFRP. He also referring to the fact mentioned in the application regarding the plans and about the abandonment of the process of inter-se bidding submitted that same falls within the trap of fraudulent and corrupt practices as mentioned at para 6 of the RFRP.
7. He further placed reliance on para 78,79 and 82 of the decision of Hon'ble Supreme Court in the case of ***Arcelormittal India Private Limited Vs. Satish Kumar Gupta and Others in (2019) 2 Supreme Court Cases 1*** and also on the decision of Hon'ble Supreme Court in the case of ***Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers Vs. New J. K. Roadways, Fleet Owners and Transport Contractors and others***. He more specifically stressed on para 14 of the above decision to drive home the point that “*the*



*authority that authors the tender documents is the best person to understand and appreciated its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings”.*

8. The Respondents by advancing such argument requested for issue of notice and sought time for filling the response. The applicant argued that the voting on the plan has begun on 09.01.2025 and is to conclude on 15.01.2025 and therefore there was urgency for ad interim relief, because in case the voting gets concluded and LOI gets issued to any of the PRAs then present application would become infructuous.
9. We have considered the fact as have been argued and the stipulation of the clauses of RFRP and we are *prima facie* of the opinion that notice needs to be issued to the Respondents for filling the reply for taking a final decision in respect of this application.
10. Accordingly, we direct the Respondents to file reply within 2 weeks after serving the copy to the applicant and ensure the same is reflected on DMS well before the next date of hearing.
11. However, it is noted that while the Applicant had sent multiple emails to the RP and the SBI starting from 05.11.2024 which was post its knowledge of abandoning the out-bidding process, no reply however could be solicited. Further it is submitted before us by the Ld. Counsel for the Respondents that the resolution to the effect of abandoning the out-bidding process was only approved on 27.12.2024 by a vote share of above 99%. It is not clear as to how and for what specific reasons, the out-bidding process has been decided not to be undertaken in the process of price discovery and evaluation of the plans.
12. Accordingly, considering the fact and circumstances of the present case and the arguments put forward from both sides as also the case laws cited and in the interest of justice, we deem it appropriate not to stall the voting process. However, it is directed that post conclusion of the



voting process, the result may be kept in a sealed cover and LOI be not issued to the selected PRA till the next date of hearing.

13. List this mater on **10.02.2025** for further consideration.

Sd/-  
CHARANJEET SINGH GULATI  
Member (Technical)  
*---Rajeev---*

Sd/-  
LAKSHMI GURUNG  
Member (Judicial)