NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201
IA/580(MP)2025
in
TP 230 of 2019 [CP(IB) 192 of 2017]

Order under Section 60(5) & Reg. 36A & 36B

IN THE MATTER OF:

Union Bank of India ....**Applicant**
V/s
Chaya Gupta RP of JSM Devcons India Pvt Ltd ....**Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 17/07/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/- Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

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THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
IA 580 of 2025
IN
TP 230 of 2019 [CP (IB) 192 of 2017]

[An application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016]

IN THE MATTER OF:
Union Bank of India
Through Authorized Representative
Mr. Sidhartha S. Mhade **...Applicant**

Versus

Ms. Chaya Gupta
Resolution Professional of
JSM Devcons India Pvt. Ltd. **...Respondent**

IN THE MAIN MATTER OF:
Daimler Financial Service Pvt. Ltd.
...Financial Creditor

Versus

JSM Devcons India Pvt. Ltd. ...Corporate Debtor

Order delivered on 17.07.2026

<u>CORAM:</u>
Shri Brajendra Mani Tripathi, Hon'ble Member (Judicial)
Shri Man Mohan Gupta, Hon'ble Member (Technical)

APPEARANCE:
For the Applicant: Mr. Deepak Saxena, Adv.
For the Respondent: Ms. Chhaya Gupta (RP-in-Person)

JUDGEMENT

1. The present interlocutory application, **IA 580 of 2025**, has been filed by the Applicant, Union Bank of India, through its authorised representative, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("the Code"), read with Sections 25(2)(h), 30 and 31 of the Code and Regulations 36A and 36B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"), seeking directions to the Resolution Professional ("RP") of the Corporate Debtor, M/s JSM Devcons India Pvt. Ltd., to consider the Expressions of Interest submitted beyond the stipulated last date by four entities and to set aside the decision of the Committee of Creditors rejecting the inclusion of the said Expressions of Interest.

2. By way of the present application, the Applicant has prayed for the following reliefs:

> **(i)** *to set aside the decision of the Committee of Creditors rejecting the inclusion of Expressions of Interest submitted by the following entities solely on the ground of delay: (a) Aranath Real Estate Private Limited; (b)*

Aikyam Stressed Assets Trust; (c) Permanent Multitrade LLP; and (d) Authum Investment & Infrastructure Limited;

(ii) *to direct the Resolution Professional to accept and process the said EOIs and include the above-named entities in the list of Prospective Resolution Applicants;*

(iii) *to direct the Resolution Professional to forthwith issue to the said entities the Request for Resolution Plan, Evaluation Matrix and Virtual Data Room access in terms of Regulations 36A and 36B;*

(iv) *to direct that any resolution plans submitted by the said entities shall be evaluated on merits and placed before the Committee of Creditors under Section 30(3) for its consideration;*

(v) *pending final disposal of the application, to direct the Resolution Professional to maintain status quo with respect to finalisation of Prospective Resolution Applicants and issuance or opening of the Request for Resolution Plan;*

3. The Corporate Debtor, M/s JSM Devcons India Pvt. Ltd., was admitted into the Corporate Insolvency Resolution Process by order of this Tribunal dated **12 April 2019,** and the present Resolution Professional was appointed thereafter and has since been entrusted with the statutory responsibility of conducting the CIRP in accordance with the Code and the Regulations framed thereunder.

4. It is the case of the Applicant that it sanctioned a term loan of Rs. 30 Crores to the Corporate Debtor, secured by a first and exclusive mortgage over approximately 51.79 acres of project land, and that it is the sole secured financial creditor of the Corporate Debtor holding 23.95% voting share in the Committee of Creditors. A copy of the Power of Attorney has been annexed to the application as **Exhibit "A".**

5. It is submitted that the Resolution Professional issued **Form-G on 6 October 2025** under Regulation 36A, inviting Expressions of Interest from prospective resolution applicants, and that the last date for submission was stipulated as **21 October 2025**. Only two entities submitted their EOIs within time. It is submitted that the CIRP has been pending for over five years, and that the limited participation received pursuant to the issuance of Form-G raised serious concerns within the CoC regarding the adequacy of competition and the likelihood of receiving a value-maximising resolution plan.

6. It is submitted that subsequent to the last date, **four additional entities**, each of whom satisfies the eligibility criteria under Regulation 36A (7) and possesses demonstrable financial capacity and track record in stressed-asset acquisitions, submitted complete EOIs along with supporting documents, including financial strength, Section 29A declarations, corporate credentials and undertakings to comply with the Request for Resolution Plan and Virtual Data Room requirements. It is submitted that the delay in submission was neither deliberate nor substantial, and that all four applicants expressed willingness to participate in the process immediately and without prejudice to the existing timelines.

7. It is submitted that the Resolution Professional rejected all four EOIs solely on the ground that they were received after the stipulated deadline, and that the said rejection was placed before the CoC during its 22nd Meeting. Despite detailed submissions by the Applicant Bank emphasising the necessity of broader participation in order to secure higher realisation for creditors, the CoC rejected the proposal for inclusion of the belated EOIs. It is submitted that during the same meeting, the CoC overwhelmingly approved an extension of 90 days to the CIRP specifically to enable greater deliberation and to enhance prospects of value maximisation, and that the approach of approving an extension but mechanically refusing to broaden the bidder pool is contradictory, irrational and antithetical to the very object of such extension. A copy of the minutes of the 22nd CoC meeting has been annexed as Exhibit "B" and a copy of the voting results as Exhibit "C".

8. It is submitted that Regulation 36A (6), which states that Expressions of Interest "shall be rejected" if submitted beyond the prescribed timeline, cannot be interpreted as an absolute or inflexible prohibition that disables the Resolution Professional or the Committee of Creditors from considering a belated EOI in circumstances where such consideration is necessary to secure the objectives of the Code. It is submitted that the provision must be read in harmony with the overriding statutory mandate of the Code, which places primacy on maximisation of the value of the Corporate Debtor's assets, promotion of competition, and ensuring a fair and commercially viable resolution process, and that procedural timelines, though important for discipline and efficiency, cannot be construed in a manner that frustrates substantive justice or results in a diminished, non-competitive resolution environment.

9. It is submitted that every action undertaken by the Resolution Professional and the Committee of Creditors must be examined in light of whether it advances the statutory objectives embodied in Sections 20, 25, 30 and 31 of the Code, and that excluding four financially capable and bona fide prospective applicants solely on the ground of procedural timelines, particularly when the CIRP has been extended and no resolution plan is presently under consideration, runs contrary to these core objectives.

10. It is submitted that the statutory obligation of the Resolution Professional under Section 25(2)(h) is not confined to the mere procedural formality of issuing invitations for Expressions of Interest but extends to facilitating the widest possible participation of credible applicants. It is submitted that the decision of the Committee of Creditors to reject the belated EOIs does not reflect a comprehensive application of mind to critical considerations such as the financial capability of the applicants, the importance of maintaining competitive tension in the bidding process, the potential incremental value that such participants could bring, or the adverse impact that a restricted pool of bidders could have on the recoveries available to creditors.

11. It is further submitted that, as the sole secured creditor, the Applicant's statutory rights under Sections 52 and 53 of the Code may be gravely compromised if the CIRP proceeds with an artificially narrowed competitive field, since a single-bidder or low-competition scenario invariably leads to depressed bid values, undermining the secured creditor's legitimate expectation of value recovery. It is accordingly submitted that the refusal to consider the belated EOIs is arbitrary, unreasonable and ultra vires the Code, and warrants the intervention of this Tribunal under Section 60(5), which grants wide residuary jurisdiction to ensure that the CIRP is conducted in a manner consistent with the statutory mandate of fairness, transparency and value maximisation.

12. The Applicant has also filed Written Submissions. Therein, it is stated that the Applicant holds 23.73% voting share in the Committee of Creditors, and that at its 22nd Meeting held on 03 November 2025, the CoC voted against inclusion of the aforesaid EOIs while simultaneously approving extension of the CIRP by 90 days for the stated purpose of value maximisation. It is stated that the four entities submitted complete EOIs together with Section 29A declarations, EMDs and supporting documentation, and that the Resolution Professional rejected the same solely on the ground that they were submitted beyond the stipulated timeline.

13. It is submitted that Regulation 36A (6), being subordinate legislation, cannot be construed in a manner defeating the overarching objectives of the Code. Reliance is placed on **Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17,** paras 27–28, wherein the Hon'ble Supreme Court has recognised that *the Code is first and foremost a Code for reorganisation and insolvency resolution, and that maximisation of value of the assets is a very important objective of the Code.*

14. It is submitted that the use of the expression "shall" in Regulation 36A (6) is not conclusive of the mandatory nature of the provision, and that whether a statutory prescription is mandatory or directory depends upon the legislative intent, the scheme of the statute, the consequences flowing from either construction and, above all, whether the object of the legislation would be defeated or furthered. Reliance is placed on **State of U.P. v. Babu Ram Upadhya, AIR 1961 SC 751, paras 28–29.** It is submitted that construing Regulation 36A (6) as an inflexible embargo, notwithstanding extension of the CIRP, absence of prejudice and the availability of additional eligible applicants, would diminish competition and impede value maximisation.

15. It is submitted that while the commercial wisdom of the Committee of Creditors ordinarily warrants judicial deference, such deference presupposes an exercise of commercial judgment undertaken upon relevant considerations and within the confines of the Code. It is expressly submitted that the Applicant does not invite this Tribunal to substitute its assessment for that of the Committee of Creditors, and that the grievance is confined to the impugned decision having proceeded upon an assumed legal prohibition under Regulation 36A (6), rather than upon an evaluation of the applicants' credentials, feasibility, or potential contribution towards value maximisation, thereby rendering the decision internally inconsistent.

16. It is submitted that Section 60(5)(c) confers broad residuary jurisdiction upon this Tribunal to ensure that the CIRP is conducted in accordance with the provisions and objectives of the Code, and that what is sought is not substitution of the commercial wisdom of the Committee of Creditors but correction of a decision founded upon an erroneous assumption as to the effect of Regulation 36A (6). It is submitted that no prejudice would arise from inclusion of the four entities, since the CIRP stands extended and the Request for Resolution Plan had not been issued.

17. No Reply has been filed on behalf of the Respondent-Resolution Professional. The Respondent remained present during the course of the arguments and chose not to file the Reply She has raised a preliminary objection to the maintainability of the application.

<u>Analysis and Findings</u>

18. We have heard the learned counsel appearing for the Applicant and the learned counsel appearing for the Respondent, and have carefully perused the material available on record, including the application, the Written Submissions.

19. The relief which is sought in the present application, is to set aside the decision of the Committee of Creditors rejecting the inclusion of the Expressions of Interest submitted by the four entities, and to direct the Resolution Professional to accept and process the same. The remaining reliefs are consequential thereupon.

20. It is an admitted fact that the Expressions of Interest of the four prospective resolution applicants were submitted beyond the timeline stipulated. Form-G came to be published on 06 October 2025 under Regulation 36A of the CIRP Regulations in The Economic Times (English), Madhya Pradesh Edition, and in Dainik Bhaskar (Hindi), Indore and Bhopal Editions, and the last date stipulated therein for submission of Expressions of Interest was 21 October 2025. Two Expressions of Interest were received within the said date, namely, those of Mr. Sanjay Lunawat and Cube Construction Engineering Limited, and the Provisional List of Prospective Resolution Applicants comprising the said two entities was issued to the Prospective Resolution Applicants and to the members of the Committee of Creditors vide mail dated 28.10.2025. The Expressions of Interest of the four entities, namely, Aranath Real Estate Private Limited, Aikyam Stressed Assets Trust, Permanent Multitrade LLP and Authum Investment & Infrastructure Limited, came to be received thereafter, that is to say, after 21 October 2025, and were rejected on that ground alone. The Applicant does not dispute that the said Expressions of Interest were submitted after the last date; its case, both in the application and in the Written Submissions, is that the delay was neither deliberate nor substantial and ought to have been overlooked in the interest of value maximisation.

21. It is equally borne out from the record that the Resolution Professional did not close the matter at her own level. The said four entities not having been included in the Provisional List, and requests having been received from them, the Resolution Professional placed the matter before the Committee of Creditors at its 22nd Meeting, recording that the consideration of their Expressions of Interest shall be subject to the approval of the Committee of Creditors and shall be dealt with in accordance with the provisions of the Code. Regulation 36A (6) was extracted in terms, and the views of the members of the Committee of Creditors were invited upon the question. The question was thereafter carried to a formal resolution at Item No. B-3 and put to vote through e-mail/ballot. The ballot sheets were circulated to the members on 06 November 2025, the voting commenced on 06 November 2025 and concluded on 10 November 2025, and the Resolution Professional submitted her report thereon dated 11 November 2025.

22. The question which therefore arises for our consideration is whether the decision of the Committee of Creditors rejecting the

Expressions of Interest of the four entities is open to interference by this Tribunal.

23. The Committee of Creditors is supposed to take its decision by the requisite majority. **Section 21(8) of the Code lays down the general rule, providing that *"save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors"*,** and where the Code intends a higher threshold it says so expressly, as by Section 30(4), which requires sixty-six per cent for approval of a resolution plan. In the present matter, the resolution at Item No. B-3, seeking approval to consider the four entities for participation as Prospective Resolution Applicants notwithstanding the belated submission of their Expressions of Interest**, secured assent of 23.73% only**, being the vote of the Applicant, and was met with **dissent of 74.89%**, with 1.38% not voted. The resolution accordingly stood not approved. The minute's record that, the members of the Committee of Creditors holding 74.89% of the voting share having declined to consider the Expressions of Interest submitted after the due date, it was decided that the corporate insolvency resolution process shall continue with the consideration of only the two Expressions of Interest received within the prescribed timeline. The decision impugned is thus a decision of the Committee of Creditors taken by the requisite majority.

24. Under the Insolvency and Bankruptcy Code, 2016, the commercial wisdom of the Committee of Creditors has been assigned paramount importance. The Committee of Creditors is the ultimate body which has to take a decision in the collective interest of all the creditors of the Corporate Debtor. Even assuming that Regulation 36A (6) does not operate as an absolute bar, and that it was open to the Committee of Creditors to consider an Expression of Interest received after the due date, the Committee of Creditors has in its commercial wisdom declined to do so. The decision impugned is therefore not open to interference by this Tribunal.

25. It is relevant to notice the ground upon which the present application has been filed by Union Bank of India. The Applicant is the sole Secured Financial Creditor of the Corporate Debtor. Its case is that only two Expressions of Interest having been received within the stipulated date, and the corporate insolvency resolution process having remained pending for over five years, the limited participation received pursuant to the issuance of Form-G raised serious concerns regarding the adequacy of competition and the likelihood of receiving a value-maximising resolution plan. It is its case that the four entities satisfy the eligibility criteria under Regulation 36A(7), possess demonstrable financial capacity and a track record in stressed-asset acquisitions, and had submitted complete Expressions of Interest along with supporting documents, Section 29A declarations, Earnest Money Deposit, corporate credentials and undertakings to comply with the

Request for Resolution Plan and Virtual Data Room requirements; that their participation is essential for increasing competition and safeguarding the commercial objectives of the resolution process; and that the delay in submission was neither deliberate nor substantial. It is urged that a single-bidder or low-competition scenario invariably leads to depressed bid values, thereby undermining the legitimate expectation of value recovery of the Applicant as the sole secured creditor. The ground, in substance, is that had there been more Expressions of Interest, there would have been a better resolution plan, and that the rejection of the belated Expressions of Interest is therefore against the commercial interest of Union Bank of India.

26. Again, this argument is not tenable. The commercial interest which falls for consideration is not that of the Applicant alone, but of all the creditors of the Corporate Debtor, and it is to be decided by the collective majority. An individual creditor cannot question a decision which has been taken by the majority of the Committee of Creditors. The contentions raised are, therefore, misconceived and untenable in the eye of law.

27. Apart from the above, it is also important that the Applicant has no locus standi to plead the case of the four prospective resolution applicants. Those entities are not before us, and none of them has approached this Tribunal complaining that its Expression of Interest was not taken on record.

28. In view of the discussion as above, the prayers made by the applicant are not tenable and are liable to be rejected.

29. Accordingly, **IA 580 of 2025** is **dismissed** & **disposed of.**

Sd/-	Sd/-
MAN MOHAN GUPTA	**BRAJENDRA MANI TRIPATHI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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