

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I**

IA No. 1094 of 2023

In

CP(IB) No. 1137 of 2017

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

Filed by:

Jyoti Structures Limited

Valecha Chambers, 6th Floor, New Link Road, Andheri (West), Mumbai Maharashtra – 400053.

...Applicant/Resolution Applicant

In the matter of

State Bank of India.

...Financial Creditor

Versus

Jyoti Structures Limited

...Corporate Debtor

Order delivered on: 16.06.2023

Coram:

Hon'ble Member (Judicial) : Mr. H. V. Subba Rao

Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Applicant : Mr. Janak Dwarkadas, Senior Advocate

ORDER

Per: Anu Jagmohan Singh, Member (Technical)

1. The present Application is being filed by Jyoti Structures Limited ("Applicant"/ "Company") seeking exclusion of time from the

timelines prescribed under its resolution plan ("Approved Resolution Plan") for making payments, on account of the delay in execution of the tripartite agreement by Maharashtra Industrial Development Corporation ("MIDC") for perfection of mortgage, and the consequent continuing delays in disbursement of non-fund based limits to the Applicant (as prescribed under the Approved Resolution Plan), The present application is filed seeking following prayers:

- a) Order and direct exclusion of time period commencing from the repayment timelines stipulated under the Approved Resolution Plan up to the date of release of NFB Limits on account of delay by MIDC in the execution of the New Tripartite Agreement, and the consequent delay in the release of NFB Limits,
- b) Pass any other orders and/ or directions as this Tribunal may deem fit and expedient in the facts and circumstances of the present case in the interest of justice, equity and good conscience.

Submissions Advanced and Brief Facts of the case:

2. Ld. Senior Counsel Mr. Janak Dwarkadas appearing for the Applicant submits that the exclusion of time is sought for making payment under the approved resolution plan without seeking any modification of the Resolution Plan. The Resolution Plan was approved by this Tribunal on 27.03.2019.
3. Mr. Dwarkadas submits that the company is in the business of engineering, procurement and construction ("EPC") sphere, in this

sector of business, contracts stipulate submission of performance/advance bank guarantees. Therefore, the availability of bank guarantee/letter of credit limits ("NFB Facilities") from its lender is critical to the business of the company. In fact, the company had availed the NFB Facilities back in the year 2015 and had executed old tripartite agreement to secure these facilities by creation of mortgage over lease hold rights of the Applicant in the MIDC Plots. Subsequently, the Company went into CIRP and the Resolution Plan was approved.

4. It is argued that since these NFB facilities were so crucial for the business of the Applicant, the Approved Resolution Plan provided for continuation or roll over of these NFB Facilities. The Ld. Senior Counsel has taken us through clause 2, Point B and Clause F, Point 1 of the plan. Therefore, in terms of the plan, a fresh NFB agreement was entered into which in turn required a fresh tripartite agreement to be executed between the lenders, MIDC and the Applicant.
5. It is submitted that the lenders insisted on completion of execution of tripartite agreement with MIDC prior to disbursement of NFB Facilities. The New Tripartite Agreement was finally executed on 23.11.2022 after a delay of fourteen months from the date of first request letter addressed to MIDC. The Applicant submits that this

delay resulted in default of first installment which was due on 09.11.2022.

6. Pursuant to the said delay, while the Company has obtained new contracts, it has been unable to commence business thereunder, or consequently begin generating revenues under the same. Further, the Company's cashflow has also been stuck as margin. Therefore, the repayment obligations under the Approved Resolution plan has been affected.
7. The Applicant submits that the Approved Resolution Plan contemplates payment of Rs. 3674 Crores over the course of 12 years out of cash flows of the company to the Financial Creditors of the company. Further, an amount of Rs.147.43 Crores is proposed to be paid to employees and workmen over the span of first 5 years after the approval of the Plan. The repayment schedule is referred to herein below :

INR Cr	Up-front	1	2	3	4	5	6	7	8	9	10	11	12
Principal Repayment	25	40	40	50	70	80	250	300	400	500	500	535	575
Interest Rate		0%	0%	0%	0%	0%	2%	2%	2%	2%	2%	4%	4%
Interest		-	-	-	-	-	61	56	50	42	32	44	23
Total	25	40	40	50	70	80	311	356	450	542	532	579	598

8. It is submitted that the Applicants have paid the upfront amount of Rs.25 Crore on 09.11.2021. It is further stated that the first instalment which was due, has not been paid.
9. The Applicant has vide its short written notes dated 21.04.2023 sought to substitute prayer clause (a) of the Application with the following prayer :

“Order and direct exclusion of time period commencing from the commencement of the repayment timeline for the year 1 payment i.e. 09.11.2021 until the date of execution of the new tripartite agreement i.e. 23.11.2022 on account of delay by MIDC in the execution of the New Tripartite Agreement, and the consequent delay in the release of NFB Limits.”

Findings:

10. We have perused the records and considered the submissions advanced by the Applicant.
11. The Ld. Senior Counsel has relied on the case of the *Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch represented by Mr. Murari Lal Jalan (as the lead member) acting through his Power of Attorney Holder Mr. Surender Singh, vs State bank of India and Ors.* wherein the

Successful Resolution Applicant filed an Application for exclusion of certain time period post approval of the Resolution Plan, which was allowed by this Tribunal.

12. We hold that the reference made by the Applicant to the aforesaid case is irrelevant because the extension granted in the said case were in the backdrop certain peculiar facts and as an exceptional case. Further perusal of the order itself, will make it abundantly clear that the Resolution Plan provided for certain pre-conditions which were to be fulfilled before the effective date. Further the date of completion of these conditions precedents was to be deemed as effective date. Moreover, the plan itself stipulated that a total of 270 days i.e. (90+180 days) will be available for fulfillment of conditions precedent and if they are not fulfilled within the said period the plan will be automatically withdrawn by the Successful Resolution Applicant.
13. Further, it was categorically mentioned in paragraph 12 of the said Order dated 11.04.2022 that the SRA was granted liberty in the plan approval order dated 22.06.2021, to approach this Tribunal for appropriate orders with regard to the extension of timeline to help prevent the SRA from frustrating the plan. It is relevant to mention that only one condition precedent was yet to be fulfilled, which was revalidation of Air Operating Certificate by the Director General of Civil Aviation and exclusion was sought of only 65 days.

14. However, per contra in the instant case, it is important to note that the resolution plan provides that the payment to the secured financial creditors to the tune of Rs.3674 Crores will be out of the equity infusion and cash flows of the Company. The said amount of Rs. 3674 Crores was proposed to be paid over a period of 12 years. The SRA submits that it has defaulted in making Year 1 payment amounting to Rs.40 Crore.
15. It is evident that the consent from MIDC has been obtained and the Tripartite agreement has been executed way back in November, 2022. It is the lenders who are withholding the disbursement of the NFB facilities. Therefore, the dispute is between the lenders and the SRA, this Adjudicating Authority has no role to play. It is in the commercial decision and the discretion of the Monitoring Committee to a) disburse the NFB facilities and give the SRA a chance to make good its default factoring in the financial aspects, possibility of turnaround of business of the Corporate Debtor or b) opt of Liquidation of the Corporate Debtor pursuant to default in repayment schedule.
16. For the afore stated reasons, we opine that reliance placed on the Order cited herein above does not strengthen the case of the Applicant. In the present matter, neither the plan provides for any conditions precedent nor has the Applicant been granted the liberty to approach this Tribunal for exclusion of timelines. Further, since there a consensus between the

lenders and the SRA with respect to exclusion of timelines and delayed payment, this Adjudicating Authority does not deem it fit to grant exclusion of time.

17. In the aforesaid backdrop of facts, **IA No. 1094 of 2023 in CP(IB) No. 1137 of 2017** is, therefore, **dismissed as rejected.**

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)
16.06.2023
Priyal

Sd/-
H.V. SUBBA RAO
Member (Judicial)