

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

IA No. 161/JPR/2020
In CP (IB) No. 45/9/JPR/2019

Coram: SHRI AJAY KUMAR VATSAVAYI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

(Under Section 60(5) Of Insolvency And Bankruptcy Code, 2016)

CP (IB) No. 45/9/JPR/2019

IN THE MATTER OF:

M/S RAJPUTANA CONSTRUCTIONS PRIVATE LIMITED
Registered Office: 13, Parivahan Marg, Civil Lines,
Jaipur-302001, Rajasthan

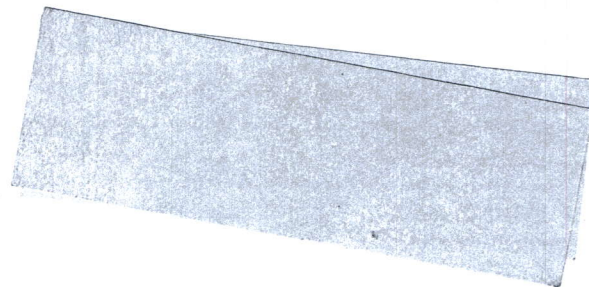
...Operational Creditor

VERSUS

FLAMINGO LANDBASE PRIVATE LIMITED
E- 194, Amba Bari, Vidhyadhar Nagar,
Jaipur- 302039, Rajasthan

...Corporate Debtor

IA No. 161/JPR/2020
In CP (IB) No. 45/9/JPR/2019



AND IN THE MATTER OF

IA No. 161/JPR/2020

MEMO OF PARTIES

**ANURADHA GUPTA
RESOLUTION PROFESSIONAL AND MONITORING AUTHORITY
FLAMINGO LANDBASE PRIVATE LIMITED**

... Applicant

VERSUS

RAJPUTANA CONSTRUCTION PRIVATE LIMITED

...Non- Applicant/ Respondent

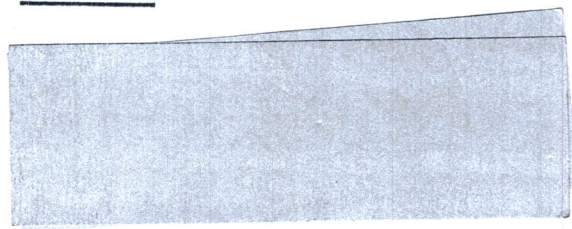
**For the Applicant : Prakul Khurana, Adv. with Anuradha
Gupta, Monitoring Authority**

**For the Non- Applicant/
Respondent : Prashant Agarwal, CA for the Resolution
Applicant**

Order Pronounced On: 18.09.2020

Per: Shri Raghu Nayyar, Technical Member

ORDER

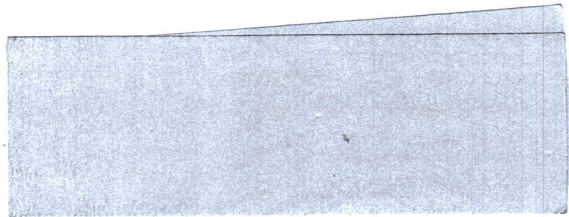


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In IA No. 161/JPR/2019

1. The instant IA has been filed by the Monitoring Authority of M/s Flamingo Landbase Private Limited, the Corporate Debtor, who was the Resolution Professional, under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking following reliefs:
 - a. To permit implementation of the approved Resolution Plan by condoning the delay in payment owing to the nation-wide lockdown in response to the global pandemic caused by the spread of Corona virus;
 - b. To permit the implementation of the approved Resolution Plan as per prayer (a) above, and to also permit the Applicant to transfer shares of the Corporate Debtor to the Resolution Applicant in terms of the Section VIII(2) read with Section VI of the Resolution Plan, post payment of the entire outstanding under the Resolution Plan;
 - c. Any other directions or the orders that this Hon'ble Tribunal may be pleased to pass.
2. It is stated that the CIRP proceedings were initiated against the Corporate Debtor on 24.09.2019, when CP (IB) No. 45/9/JPR/2019 was admitted and the Applicant herein, Mrs. Anuradha Gupta was appointed as the IRP. In

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pursuance of the initiation of the CIRP, the IRP/ RP took all the necessary steps for resolution of the Corporate Debtor. Further, vide order dated 14.02.2020, the Application for approval of the Resolution Plan of the Corporate Debtor was disposed off. The Resolution Applicant had proposed the following payment timelines as stated below in terms of Section VI of the Resolution Plan:

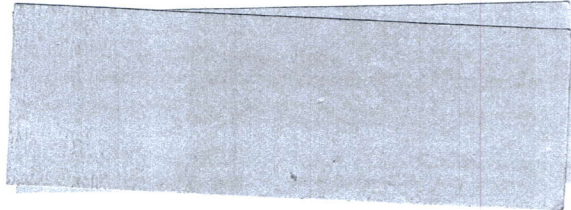
Sr. No.	Parameters	Amount payable (Rs.)	Sources of Funds	Description of Proposal
1.	Upfront payment towards CIRP Cost (on actual)	Rs. 14,00,000/- (Tentative figure as informed by RP)		100 percent upfront (on actual)
2.	Upfront payment towards Outstanding Employees Dues	NIL	The company (Resolution Applicant, sic) is having sufficient surplus working capital including positive reserve and surplus which includes refund of Income tax, WCT to meet out the proposed resolution amount to meet any the gap of receivable to our repayment	There are no dues in such regard
3.	Upfront payment towards Operational Creditor	100 per cent upfront payment in favour of Operational Creditor		100 per cent Upfront payment to the Admitted liability of Operational Creditors by RP: a) Rajputana Constructions Private Limited: Rs/ 1,07,20,952/- b) S. Bhandari & Co. Rs. 17,700/-

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4.	<i>Recovery to Financial Creditor</i>	<p>a) <i>Upfront payment from the date of approval of Resolution Plan by Adjudicating Authority: Rs. 28,61,348/-</i></p> <p>b) <i>Rs. 1,00,00,000/- within 30 days from the upfront payment of Rs. 1,00,00,000/- within 60 days from the upfront payment.</i></p> <p>d) <i>Rs. 1,00,00,000/- within 90 days from the upfront payment.</i></p>	<i>plan, we already have.</i>	<p>a) <i>Upfront payment from the date of approval of Resolution Plan by Adjudicating Authority: Rs. 28,61,348/-</i></p> <p>b) <i>Rs. 1,00,00,000/- within 30 days from the upfront payment.</i></p> <p>c) <i>Rs. 1,00,00,000/- within 60 days from the upfront payment</i></p> <p>d) <i>Rs. 1,00,00,000/- within 90 days from the upfront payment</i></p>
5.	<i>Towards share capital</i>	<i>Rs. 1,00,000/-</i>		<i>To purchase 100 percent share capital</i>

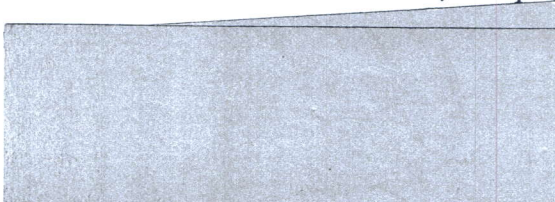
3. The Applicant stated that the Resolution Applicant made the first tranche of payment of Rs. 1,50,00,000/- on 29.02.2020. However, due to Covid-19 situation, the Central Government announced a nation-wide lockdown on

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25.03.2020 which continued upto 30.06.2020 and in view of the same, the financial plans of the Applicant got disrupted.

4. The Applicant has further stated that post lifting of substantial restrictions of commercial activities, the Resolution Applicant has made a payment of Rs. 1,00,00,000/- on 03.07.2020 by way of RTGS and has also sent scanned copies of the demand draft bearing no. 521553, dated 04.07.2020, amounting to Rs. 2,00,00,000/- and a cheque bearing no. 725297 dated 04.07.2020 of Rs. 1,00,000/-, vide its email dated 04.07.2020 and also sought transfer of shares of the Corporate debtor as per the Resolution Plan. It is submitted that if the Applicant is permitted to accept the aforesaid demand draft and cheque aggregating to Rs. 2,01,00,000/-, the entire outstanding amount under the Resolution Plan shall be paid and satisfied by the Resolution Applicant. Hence, the said period of lockdown may be excluded for the compliances required to be made with regard to the payment schedule as stipulated in in Section VI of the Resolution Plan.
5. The Applicant has also filed written submissions, wherein it has referred to the order of the Hon'ble NCLT, Chandigarh Bench, in the matter of ANG Lifesciences (India) Limited vs. Jalesh Kumar Grover, Monitoring Agency of Mansa Print & Publishers Limited, IA No. 224/2020 in CP(IB) No. 19/Chd/CHD/2018, dated 21.07.2020. In the said order, the period of



lockdown was excluded for the compliance of the approved Resolution Plan in the said matter.

6. The Hon'ble Supreme Court of India in *Suo Motu Writ Petition (Civil) No(s).3/2020 in Re: cognizance for extension of Limitation*, vide order dated 23.03.2020, observed as under:-

"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

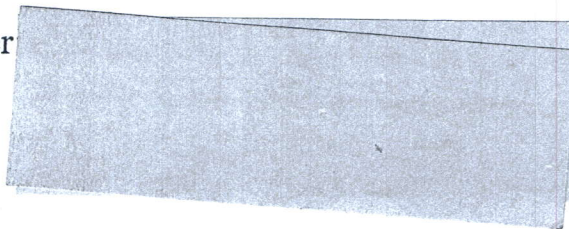
We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

7. The Hon'ble National Company Law Appellate Tribunal in *Suo Moto-Company Appeal (AT) (Insolvency) No.01 of 2020*, vide order dated 30.03.2020, observed as under

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“Upon requests for urgent listing of cases having been made telephonically to Registrar of this Appellate Tribunal from various persons, who were unable to physically file the same on account of complete lockdown declared by Government with effect from 25th March, 2020, we take suo moto cognizance of the unprecedented situation arising out of spread of COVID19 virus declared a pandemic. Having regard to the hardships being faced by various stakeholders as also the legal fraternity, which go beyond filing of Appeals/ cases, which has already been taken care of by the Hon’ble Apex Court by extending the period of limitation with effect from 15th March, 2020 till further order/s in terms of order dated 23rd March, 2020 in Suo Motu Writ Petition (Civil) No(s).03/2020, inasmuch as certain steps required to be taken by various Authorities under Insolvency and Bankruptcy Code, 2016 or to comply with various provisions and to adhere to the prescribed timelines for taking the ‘Resolution Process’ to its logical conclusion in order to obviate and mitigate such hardships, this Appellate Tribunal in exercise of powers conferred by Rule 11 of National Company Law Appellate Tribunal Rules, 2016 r/w the decision of this Appellate Tribunal rendered in “Quinn Logistics India Pvt. Ltd. vs. Mack Soft Tech Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.185 of 2018” decided on 8th May, 2018 do hereby order as follows: -

- (1) *That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for ‘Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where ‘Corporate Insolvency Resolution Process’ has been initiated and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal.*
- (2) *It is further ordered that any interim order/ stay order passed by this Appellate Tribunal in anyone or the other Appeal under Insolvency and*



Bankruptcy Code, 2016 shall continue till next date of hearing, which may be notified later.

A copy of this order be communicated to Registrar of National Company Law Tribunal, New Delhi with a request to circulate the same to all Benches of NCLT across the country including the Principal Bench based at Delhi.

A copy of this order be also communicated to Secretary, Ministry of Corporate Affair, New Delhi for information and compliance by various Authorities under its control."

8. Thereafter, the Insolvency and Bankruptcy Board of India, inserted Regulation 40C to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, vide notification dated 29.03.2020 and the same is as under:-

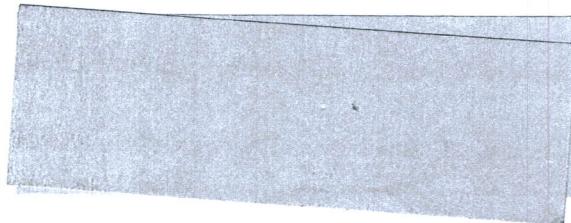
"40C. Special provision relating to time-line

Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process"

9. Similarly, the Insolvency and Bankruptcy Board of India, vide notification dated 20.04.2020, inserted Regulation 47A to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the said regulation reads as under :-

"Exclusion of period of lockdown

47A. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake



of Covid-19 outbreak shall not be counted for the purpose of computation of the timeline for any task that could not be completed due to such lockdown, in relation to any liquidation process.”

10. In the circumstances and since the facts are not disputed and in view of the orders of the Hon'ble Supreme Court of India, National Company Law Appellate Tribunal and the Regulations issued by Insolvency and Bankruptcy Board of India, the period of lockdown from 25.03.2020 to 30.06.2020 shall be excluded for the compliances required to be made with regard to payment schedule as mentioned under the Resolution Plan and the Monitoring Authority shall proceed accordingly by accepting payment from the Resolution Applicant.
11. IA 161/JPR/2020 is allowed and stands disposed off accordingly.

Sd—

**SH. RAGHU NÄYYAR,
TECHNICAL MEMBER**

Sd—

**SH. AJAY KUMAR VATSAVAYI,
JUDICIAL MEMBER**