IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. I

IA No. 1184/2020
in
CP (IB) No. 241/NCLT/MB/2018

In the matter of an Application under Section 60 (5) of the I&B Code, 2016

Consortium of Shree Sidhivinayak Cotspin Pvt. Ltd,
Mr. Pradeep Mehta, Mr. Kiran Mehta,
Mr. Rajesh Mehta and Mr. Atul Ganatra.
… Applicant/Successful Resolution Applicant
V/s

Sujata Chattopadhyay, Resolution Professional and Anr.
… Respondent

CP (IB) No. 241/NCLT/MB/2018

In the matter of:
JM Financial Asset Reconstruction Co Ltd
… Financial Creditor
V/s
Maruti Cotex Limited
… Corporate Debtor

Order Dated: 07.09.2020

<u>Coram</u>:
Hon'ble Member (Judicial), Janab Mohammed Ajmal

Hon'ble Member (Technical), Shri V. Nallasenapathy

<u>Appearance</u>:

For the Applicant: Mr. Ashish Kamat with Mr. Amir Arsiwala, Mr. Gautam Sahni, Mr. Kayomars Kerawalla i/b Vesta Legal
For the Resolution Professional: Ms. Prapti Kedia i/b Rushabh Thacker.
For the Financial Creditor: Mr. Rohit Gupta & Ms. Amrita Dubey i/b Indus law

Per: V. Nallasenapathy, Member (Technical)

ORDER

This is an Application filed by the Successful Resolution Applicant of the Corporate Debtor M/s Maruti Cotex Ltd. seeking the following reliefs: -

a. *That this Hon'ble Tribunal be pleased to allow the speaking to the minutes/rectification of the Order, to reflect the amount apportioned towards the dues of the Operational Creditors i.e. Rs. 50,00,000/- (Rupees Fifty Lakh only) against the total liability of the Operational Creditors i.e. Rs. 87,03,60,530/- (Rupees Eighty Seven Crore Three Lakh Sixty Thousand Five Hundred and Thirty only) and;*
b. *That this Hon'ble Tribunal be pleased to allow a revision/modification/relaxation in the Resolution Plan with respect to the timeline/timeframe for payment to financial creditors/operational creditors and/or other stakeholders and extend the said time line by a further period of 90 days, i.e. 21st November, 2020;*
c. *Ad-interim reliefs in terms of prayer b) above;*
d. *For costs; and*
e. *Such further and other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. Heard the counsel for the Applicant, counsel for the CoC as well as the Resolution Professional.
3. This Bench by an order dated 2nd July 2020 in M.A. No. 422/2019 approved the Resolution Plan for the Corporate Debtor submitted by the Applicant herein. At Para No.14 of the above said order, in the table, it was clearly mentioned that the admitted claim of the operational creditors is of Rs 54.71 Crores and the CoC decided to provide a sum of Rs. 50,00,000/- only for payment of Operational Creditors. The Resolution Professional who was

present during the hearing, submitted that only two Operational Creditors filed claims to the extent of RS. 54.71 Crores and both the claims were admitted for the very same amount of Rs. 54.71 Crores. In view of the fact that claim filed by the operational creditors is Rs. 54.71 Crores and the prayer "a" supra is not in consonance with the facts of the case and hence it is not necessary to clarify that total liability of the Operational Creditors is Rs. 87,03,60,530/- (Rupees Eighty Seven Crores Three Lakhs Sixty Thousand Five Hundred and Thirty) as sought for by the Applicant. Hence the prayer "a" is rejected.

4. The counsel for the Applicant submitted that this Bench has approved the Resolution Plan on 2nd July 2020 and the Applicant is trying to arrange funds from HDFC Bank. However due to Covid-19 Pandemic, declared on 25/03/2020, there is difficulty in disbursement of the loan by the HDFC Bank and hence filed this Application seeking 90 days' time to bring in money as stated in the Resolution Plan.
5. The Applicant submitted that the lockdown was on account of Covid-19 Pandemic and as per the guidelines issued by the Government, movement of individuals were restricted, and the Banks have been working with skeletal staff for providing essential and emergency services only. Restrictions in Mumbai also hampered the business in general. It is further submitted that in Kolhapur District, where the factory is situated, there was complete lockdown from 18 July-26 July 2020 and the Applicant was unable to take charge of the Corporate Debtor. The Applicant further submitted that at the time of submitting the Resolution Plan there was no Covid-19 but however subsequently this has become a global pandemic.
6. The Applicant submits that in view of the exceptional circumstances beyond their control it was not possible to honour the payment as envisaged in the Resolution Plan and hence this Application.
7. The counsel for the Applicant, to buttress his point that extension of 90 days has to be given, relied on the following:

a. Hon'ble Supreme Court in Suo-Motu Writ Petition (Civil) No. 3 of 2020 in Re: Cognizance for extension of limitation ordered 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/ /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."

b. The Hon'ble NCLAT by exercising power under Rule 11 of the NCLAT Rules, 2016 ordered as below: -

   "4.2.1. In light of the directions passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020 the Hon'ble National Company Law Appellate Tribunal held that 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." The Hon'ble Appellate Tribunal in exercise of powers conferred under Rule 11 of National Company Law Appellate Tribunal Rules, 2016 r/w the decision of this Appellate Tribunal rendered in the matter of "Quinn Logistics India Pvt. Ltd. V/s. Mack Soft Tech Pvt. Ltd." in Company Appeal (AT) (Insolvency) No. 185 of 2018 decided on 8th May ordered 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 modified later."

8. The Applicant further submits that the Insolvency and Bankruptcy Board of India inserted Regulation 40(C) to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, vide notification dated 29th March, 2020 and the same is as under:-

> *"40C. Special provision relating to timeline: Notwithstanding the timelines 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 timeline*

> *for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”*

9. The CoC of the Corporate Debtor filed reply to the Application and submitted that the Resolution Applicant has pumped in money to the extent of Rs. 17 Crores and also arranged for the performance guarantee of Rs. 15 Crores. Therefore, out of Rs. 77.1 Crores a sum of Rs. 17 Crores has been received guarantee was received to the extent of Rs. 15 Crores and the balance outstanding is Rs. 45.1 Crores.
10. The Respondents opposes the Application on the following grounds: -
    a) During the hearing of the Application for approval of Resolution Plan (Application No. 420 of 2020) the Applicant herein submitted that they have sufficient balance in the accounts to meet the funding for the Resolution Plan. The Applicant has produced the certificate issued by HDFC Bank certifying the availability of funds in the account of the Resolution Applicant. Since the Applicant has the requisite sanction for the loan by HDFC Bank, now they should not come with this plea. The Applicant is trying to take undue advantage of the COVID-19 Pandemic and Lockdown.
    b) On the date of approval of the Resolution Plan the pandemic situation was in existence and no request was made for extension at the time itself.
    c) The respondents submits that this Bench may direct the Applicant to expedite the payment as agreed in the Resolution Plan and seeks for dismissal of this Application.

11. This Bench has noticed that the Applicant has already brought in substantial amount for implementing the Resolution Plan as approved by this Bench. Even though the lenders of the Resolution Applicant have already given in-

principle sanction for the loan to be availed by the Applicant, there is some delay in disbursement due to the situation arising out of Covid-19 Pandemic prevailing worldwide.

12. We are of the view that the prevailing situation is an unprecedented and extraordinary situation. We are thus inclined to grant time to the Resolution Applicant for arranging funds. Prayer "b" is allowed and the time is extended till 26 November 2020 for making payment as provided in the Resolution Plan approved by this Bench on 2nd July 2020.
13. Accordingly this Application is partially allowed as indicated above.

Sd/-	Sd/-
V. Nallasenapathy	Janab Mohammed Ajmal
Member (Technical)	Member (Judicial)