

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA No. 79/2023

IN

CP (IB) No. 68/ALD/2021

In the matter of

An application under Section 12 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 40 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation, 2016 and Rule 11 of the NCLT Rules, 2016.

In the matter of

Mr. Govind Ram Dewangan & Ors.Financial Creditors

Versus

M/s Milani Techno Engineering LimitedCorporate Debtor

And

In the matter of:

Mr. Anurag Nirbhaya

Resolution Professional

In The Matter Of Milani Techno Engineering Limited

Regd. Address 204, Sagar Plaza, Plot No.19

District Centre, Laxmi Nagar, Delhi-110092

..... Applicant

Coram:

Shri Praveen Gupta : Member (Judicial)

Shri Ashish Verma : Member (Technical)

Page 1 of 6

IA No. 79/2023 IN CP (IB) No. 68/ALD/2021

-Sd-

-Sd-

COUNSEL APPEARED THROUGH PHYSICAL HEARING:

Sh. N Raja Singh alongwith Ms. Manisha Chaudhary, Sh. Shravan Chandrashekhar & Sh. Misbahul Haque, Adv.

: For the Applicant/RP in IA No.79/2023

Date of pronouncement: 24.05.2023

ORDER

1. The present IA has been filed by Resolution Professional with the following prayer:-
 - a. Extend the period of CIRP of M/s Milani Techno Engineering Limited by a period of 90 days beyond 19.02.2023, i.e. 180 days from the CIRP date in accordance with the provisions as laid down in section 12(2) of the Code and pass appropriate order under Section 12(3) for extension of period;
 - b. Exclude the time period from the date of filing of the present Application till its disposal by this Hon'ble Adjudicating Authority from the total extended period of CIRP;
2. The CIRP was initiated vide an order dated 24th August, 2022 in a petition filed under Section 7 of the Code. Accordingly, the Resolution Professional invited claims from the Creditors of the Corporate Debtor by making publications in different newspapers. In response to the said publications, 18 claims from the Financial Creditor in Class were received and CoC was accordingly constituted. Thereafter, an application for appointment of Authorized Representative was filed and the same was taken on record by this Tribunal vide its order dated 27th September, 2022. In the first meeting of the CoC, the IRP who was originally appointed by virtue of the admission order was confirmed as Resolution Professional.

3. In one of the subsequent meetings of the CoC held on 13th February 2023 in order to expedite consolidation of assets, it was resolved directing the Resolution Professional to seek an extension of CIRP beyond 180 days so as to collect requisite information.
4. In the said meeting, it has been averred in Paragraph No.17 of the application that the resolution for seeking extension of 90 days beyond 180 days was approved by the CoC with 100% vote share. The agenda for the said meeting has been placed at Page 162 and a communication dated 18th February, 2023 placed at Page 168 sent by the Authorized Representative acting on behalf of the Financial Creditors in Class stating that the e-voting facility was given to the members from 16th February, 2023 till 17th February, 2023, which was further extended till 18th February, 2023 and the voting process ended on 18th February, 2023 during which 6 out of 18 members casted their votes. After expiry of the e-voting period on 18th February, 2023 and the voting results of the Financial Creditors in Class have been attested alongwith this communication. The result of the voting of the members is mentioned at Page 169 saying that the resolution is approved by more than 50% of the Financial Creditors in Class present in voting. Further as per the breakup of the percentage of voting and then the resolution passed is as given at Page 170 and 171. It is observed that Sri Sanjeev Gupta, Authorized Representative of the Financial Creditors in Class has stated that in order “to clarify, if a decision is taken by a vote of more than 50% voting share of the Financial Creditors who have voted on the Resolution, the vote cast by the Authorized Representative on behalf of the respective class is to be treated as 100% voting on behalf of the respective Class who voted for more than 50%/66% in

favour of the approval”. This Tribunal vide an order dated 08th May, 2023 has recorded that the Ld. Counsel representing the RP has sought time to place on record the communication received from the Authorized Representative concerning his voting as an Authorized Representative.

5. An additional affidavit has been filed on behalf of the Resolution Professional vide Diary No.1460 dated 18th May, 2023 wherein as per Annexure A1, a communication was sent by the Authorized Representative of the Financial Creditors in Class on 18th February, 2023, thereby annexing his consolidated report on decision taken by the members of the Class through e-voting held from 16th February, 2023 till 18th February, 2023.
6. Further another communication dated 28th March 2023 has been placed at Annexure A2 wherein Mr. Sanjeev Gupta, the Authorized Representative sent an e-mail dated 29th March, 2023 which is reproduced here below.

Sanjeev Gupta ar.milanitechno@gmail.com

Wed, Mar 29, 2023 at 11:18 AM

To: “Milani Techno Engineering Ltd.” cirp@milanitechno.com

Cc: anurag@canirbhaya.com

Sir,

I am writing in response to your email dated 28.03.2023 in which you sought clarification on the vote casted by the AR of financial creditors in a class, as per section 25(A) (3A) of the Insolvency and Bankruptcy Code, 2016 in the 4th Committee of Creditors (COC) meeting regarding Milani Techno Engineering Limited, held on 13.02.2023.

I hereby clarify that I have sent you the e-voting result dated 18.02.2023 through an email, therefore, kindly consider the said email as the vote casted by me as per section 25A (3A) of the Insolvency and Bankruptcy Code, 2016. Further I would like to clarify that:-

1. Resolution No. B-1 was approved by more than 50% of Financial Creditors in Class (Present and Voting), hence, Resolution No. B-1 was approved by the undersigned in its report also.
2. Resolution No. C-1 was approved by more than 50% of Financial Creditors in Class (Present and Voting), hence, Resolution No. C-1 was approved by the undersigned in its report also.

Wish Warm Regards,

Mr. Sanjeev Gupta,

(Insolvency Professional)

Authorized Representative of Financial Creditors in Class (Investors)

In the matter of Milani Techno Engineering Limited

IBBI Reg. No.:-IBBI/IPA-001/IP-P01575/2018-2018/12408

AFA Validity: 28.11.2022 to 27.11.2023

7. This communication of the Authorized Representative made on behalf of the Financial Creditors in Class as being their Authorized Representative to cast votes substantiates voting in favour of the resolution for seeking extension in time, particularly in view of the fact that the votes casted/approved by him.
8. Thus, in view of the resolution passed by the CoC approving to seek extension in time for a period of 90 days beyond 19th February, 2023. We are inclined to grant extension in the CIR Process for a period of 90 days as well as grant exclusion in time from the date of filing of the present application till its disposal.

9. It is noted that the present application has been filed on e-portal on 18th February, 2023. However, since the CIRP was already upto 19th February, 2023, therefore, this exclusion of time would commence from 20th February, 2023 till today when this IA is disposed off. Therefore, the present application is allowed and 90 days extension is granted beyond 19th February, 2023 with exclusion of time from 20th February, 2023 till today.
10. It is expected that the Resolution Professional will take expeditious steps and measures to complete the CIRP within the extended period of time.
11. The IA No.79/2023 is accordingly allowed and stands disposed off.

-Sd-

(Ashish Verma)
Member (Technical)

24th May, 2023

Priya Agarwal
(Stenographer)

-Sd-

(Praveen Gupta)
Member (Judicial)