

**Through Videoconference**

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

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IA No. 1077 of 2020  
in  
C.P. (IB) No. 1329/MB/2017

(An Application under Rule 11 of the National Company Law Tribunal Rules,  
2016)

Kamla Industrial Park Limited  
Flat No: Unit No - 227, Floor No. 2,  
Gundecha Industrial Estate, Akurli Road,  
Kandivali (E), Mumbai – 400 101 ... Applicant

V/s

1. Monitoring Committee of Corporate Debtor  
Through Mr. Hemant J. Mehta,  
B4, Panchsheel Nath Pal Nagar, Ghatkopar,  
Mumbai – 400 077.
2. Registrar of Companies, (Maharashtra, Mumbai)  
100, Everest, Marine Drive,  
Mumbai – 400 002 ... Respondents

*In the matter of:*

State Bank of India ... Financial Creditor  
V/s  
Metallica Industries Limited ... Corporate Debtor

Date of Order: 19.05.2021

CORAM:

Janab Mohammed Ajmal, Hon'ble Member Judicial

Shri V. Nallasenapathy, Hon'ble Member Technical

*Appearance:*

For the Applicant: Mr Amir Arsiwala with Ms Radhika Motiani,  
Advocates.

For Respondent No.1: None

For Respondent No. 2: None

*Per: Janab Mohammed Ajmal, Member Judicial*

**ORDER**

This is an Application by the Successful Resolution Applicant seeking certain directions against the Registrar of Companies, Maharashtra, Mumbai (Respondent No. 2/R2).

2. The facts giving rise to the Application are that Metallica Industries Limited (the Corporate Debtor) went into Corporate Insolvency Resolution Process (CIRP) by an order dated 13.04.2018 in the aforementioned Company Petition. The present Applicant was one of the Resolution Applicants in response to the Public Announcement and subsequent action taken during CIRP. This Tribunal by an order dated 16.10.2019 (wrongly mentioned as 19.10.2019 in the Application) in MA No. 660 of 2019 approved the Resolution Plan submitted by the Applicant.
3. The former promoters of the Corporate Debtor were engaged in various nefarious activities and criminal prosecution had been initiated against them. They had reportedly been arrested and had been in jail prior to the admission of the aforementioned Company Petition.
4. The Corporate Debtor was involved in the development of one Real Estate Project namely the Industrial Gala Complex admeasuring 6645.10 sq. mtrs. in Kandivali (West), Mumbai. The Company Petitioner and the Gala owners were

the financial creditors of the Corporate Debtor. It was felt necessary that if the Gala owners themselves could submit a Resolution Plan, their earlier investment would remain protected and the Company would not go into liquidation which ultimately may adversely affect their investment. Eventually all the Gala owners supported the Resolution Plan submitted by the Applicant.

5. In pursuance to the Resolution Plan the Applicant has cleared dues of the sole Secured Creditor (Company Petitioner) and has received 'No Dues Certificate' there for. The Books of Accounts of the Corporate Debtor shows that it was in arrears of ₹. 1,21,13,467/- to the Municipal Authorities towards Property Tax as on the Insolvency Commencement Date (ICD). The Applicant has paid the arrears in instalments and the last instalment was due in July 2020.
6. The Application reveals that the Resolution Plan is unique in the way that the beneficiaries themselves would take over the Corporate Debtor and complete the Real Estate Project, where they have invested their substantial hard earned money. The Resolution Plan proposes that the shareholding of the Corporate Debtor would be written down and 10,500 fresh equity shares of ₹. 10/- each would be issued to 7 (seven) persons named in the Resolution Plan. Eventually the Gala owners would be issued with shares and ultimately the Company would be wholly owned by them.
7. Amidst its efforts to bring about early resolution of the Corporate Debtor the Applicant has been facing difficulty in implementation of the Resolution Plan, in getting the regulatory compliances accomplished. First, for the fraudulent actions of the former promoters and secondly due to the complications and lockdown resulting by the Covid-19 Pandemic. The Applicant accordingly has not been able to adhere to the timelines set out in the Resolution Plan. Because of the negligence of the former promoters, Annual Returns and Balance Sheets subsequent to 31.03.2013 have not been filed.

8. The Applicant has also not been able to lay its hands on the relevant documents prior to 16.10.2019. No authentic data having been submitted by the disqualified directors, the present directors are not able to sign any anterior document. The Applicant could only be able to provide and submit returns and statements for the period subsequent to 16.10.2019.
9. The Application further avers that the Resolution Plan approved by the Adjudicating Authority is binding on all including R2. While getting the statutory compliances made, the Applicant interacted with the officials of R2 and was informed that he must file all previous annual returns and balance sheets, failing which the Corporate Debtor would continue to remain in default of its statutory obligations. It would therefore be unfair to expect the Applicant to comply with the statutory obligations of the Corporate Debtor anterior to 16.10.2019. The Applicant is unable to access those information / data basing on which the statutory compliances are to be made. The Applicant has accordingly made representation to R2 in that regard, which is pending for consideration.
10. It is further submitted that the Resolution Plan was to be implemented within a period of 10-12 months from the date of approval (i.e. 16.10.2019). But because of onset of the Covid-19 Pandemic from March 2020 and resultant dislocation / disruption all around, the Applicant has not been able to complete the implementation within time.
11. Considering the gravity of the situation facing the whole world the Hon'ble Apex Court and the Hon'ble National Company Law Appellate Tribunal (NCLAT) have extended the timelines and suitable amendments have also been made to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in that regard. The Applicant accordingly seeks the following reliefs.

- i) *That this Hon'ble Tribunal may be pleased to direct the Respondent No. 2 to not insist upon compliance of any regulatory requirements of the Companies Act, 2013, pertaining to the period of time prior to the 19<sup>th</sup> of October, 2019, and to not take any coercive action against the Corporate Debtor arising out of the same;*
- ii) *That this Hon'ble Tribunal may be pleased to direct the Respondent No. 2 to waive the requirement of filing of annual returns or balance sheets for the period of time prior to the 19<sup>th</sup> of October, 2019;*
- iii) *That this Hon'ble Tribunal may be pleased to extend the tenure to implement the Resolution (plan) up to the end of December, 2021;*
- iv) *Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case.*

12. R2 in its reply submitted that it has no authority to waive the statutory compliances mandated in the Companies Act, 2013 (the Act). Section 17(2)(e) and Section 23(2) of the Code requires that the Resolution Professional shall comply with the requirements under any law for the time being in force and the same would accordingly apply to the Resolution Applicant who takes over the Company. Besides, General Circular No. 08/2020 dated 06.03.2020 issued by the Ministry of Corporate Affairs (MCA), clarified that the Annual Returns in E-form no. MGT-7 and the Financial Statements in E-form No. AOC-4 and other documents as per the provisions of the Act shall have to be filed along with the required fees till such time the Company remains under CIRP. Therefore, the statutory requirements could not be waived, as sought for.

13. As the averments made in the Application would indicate, the Applicant has expressed its genuine difficulty in collating the data for filing of anterior statutory returns and statements and the inability of the Statutory Authority (R2) in accepting the current (post 16.10.2019) returns and statements.

Considering the peculiar circumstance this Bench on 18.09.2020 passed the following order.

*“Heard the Counsel for the Applicant in IA No. 1077 of 2020. This Bench requires the presence of some officer from the office of the Registrar of Companies (RoC), so that the issue with regard to the filing of Returns with the RoC through e-filing can be settled. Accordingly, the Applicant is directed to inform the next date of hearing to the RoC, for some officer from the RoC to be present and the matter of filing can be discussed. List this matter on 05.10.2020 for further orders.”*

14. On 05.10.2020 considering the technical difficulty, the Bench passed the following order:

*“Mr. Amir Arsiwala, Counsel for the Successful Resolution Applicant is present. Ms. Yogini Chauhan, Deputy Registrar representing the RoC is also present and submits regarding E-filing that it will be appropriate for the Applicant to approach the RoC for the Resolution of the problem which Applicant / Resolution Applicant is facing. Thus the Applicant may take up the matter with the RoC for Resolution of the issue. List the matter on 28/10/2020 awaiting result of the discussion between the Applicant and the RoC.”*

15. It appears that the matter has not been resolved yet and intervention of the Bench has thus become imperative.

16. The Applicant in his Additional Affidavit dated 17.09.2020, has informed to have undertaken the following works in pursuance to the Resolution Plan.

*“10. With respect to the timeline for completion of the Resolution Plan the following acts were undertaken in February and March 2020:*

- a. A new Company Secretary was appointed to expedite work.*
- b. BMC's temporary waterline payment was made for connection.*

- c. The 3<sup>rd</sup> instalment of BMC Assessment was made.*
- d. List was installed for materials at site.*
- e. Some building raw materials were purchased and delivered at site for starting miscellaneous work.*
- f. RCC consultant feasibility report was received.*
- g. Architects appointment file was forwarded to Executive Engineer of BMC.*

*11. The following acts were undertaken in the Month of April to June 2020:*

- a. Partial work of restoration is in progress.*
- b. Pillar Jacketing work was in progress as recommended by RCC Consultant.*
- c. Creation of Partition wall of Galas was in progress for the first floor.*
- d. Reconstruction of Pardi Work was started to replace existing old Pardi.*
- e. Mr. Mitesh P. Kothari a Director of the Resolution Applicant was added as a Director of the Corporate Debtor from the back end process by the RoC department.*

*12. The following acts were undertaken in the Month of July 2020:*

- a. Mr. Mitesh Kothari, Chetan Soni, Himanshu Mehta and Amit Dhanak were appointed as directors. Their additions were made by the Registrar of Companies office after removing erstwhile Directors / authorized signatory as per provision of Resolution Plan.*
- b. Application for reduction of Capital was made to the Registrar of Companies.*
- c. A new GST Number was allotted and certificate of Registration was obtained.*
- d. GST Number as per certificate was received.*
- e. Scrutiny fees was paid to BMC for Plan approval.*
- f. Provisional NOC from Chief Fire Officer was obtained.*

13. *The following Acts were undertaken in the Month of August 2020:*

- a. *A Current Bank Account was opened with HDFC Akurli Road, Kandivali East Branch in August.*
- b. *Old Charge over immovable property under the Resolution Plan had been removed from the RoC's website.*
- c. *Auditing of Financials including balance sheets since 2013-2014 was in process.*
- d. *BMC road status with respect to the project was confirmed.*
- e. *Title search was allotted to the Advocate.*
- f. *SBI cancellation of mortgage deed was in process.*
- g. *TDS Number was applied for.*
- h. *Revised plans as per new norms were submitted to BMC for approval.*
- i. *The 4<sup>th</sup> Instalment of BMC Assessment i.e., Rs. 26,13,467/- was paid on 11.09.2020."*

17. It is further submitted that the Corporate Debtor initially used extensible business reporting language (XBRL) for the purpose of filing with the Respondent No. 2. XBRL being the standardized computer language that businesses use to send information back and forth. The same is the requirement when the share capital of firm is above ₹. 5,00,00,000/-. Now that the share capital of the Company has reduced to ₹. 1,05,000/- the management should not be forced to file through this medium. However, once XBRL is adopted it would not be possible for the Company to use another medium for filing. This however should not be applied to the present case. The Company faced with such a predicament, should be allowed the normal procedure for filing. Since the former promoters had not conducted regular Board Meetings, the Applicant is at a loss to put the date of the Board Meetings in the Forms. In the absence of which the Form in online filing is not accepted. The Corporate Debtor accordingly could be allowed to put 'best estimate date' when the board meetings of the erstwhile directors ought to have taken place during the



particular financial year. It is accordingly submitted that the necessary directions in that regard may have to be made so that the technical issues can be resolved.

18. As it would appear from the materials above, the Applicant is taking all possible steps in right earnest to get the Resolution Plan implemented. The e-Filing of statements and returns obviously could not have envisaged all eventualities arising out of a successful resolution of a Corporate Debtor. It is settled that when the technical considerations are pitted against the substantial justice, cause of substantial justice would be preferred. Therefore, interest of justice requires that the Applicant shall have to be provided with all the support for getting the statutory compliances done.
19. The new management of the Corporate Debtor could not be held liable and responsible for the malfeasance and misfeasance committed by the former promoters / directors of the Corporate Debtor. It could not be saddled with the repercussions of reprehensible actions of the erstwhile management. The Hon'ble Apex Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC OnLine SC 1478* have recognised such a predicament of the new management in respect of fresh claims and have afforded the rescue/respice in the following words.

“67. ....

*A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the*

*successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove.”*

20. Though the present predicament faced by the Applicant is not in respect of any new claim, the principle and sentiment echoed by the Hon'ble Court can be applied to resolve the present imbroglio. Rules of procedure are but handmaidens of justice (*Mr. Shaik Salim Haji Abdul v. Mr. Kumar & others: AIR 2006 SC 396*). The Hon'ble Court in *Sardar Amarjit Singh Kalra v. Pramod Gupta: (2003) 3 SCC 272* observed that laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizens under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. In the same vein the Hon'ble Court in *N. Balaji v. Virender Singh: (2004) 8 SCC 312* observed that the procedure would not be used to discourage the substantial effective justice but would be so construed as to advance the cause of justice. The Hon'ble Court in *Collector, Land Acquisition v. Mst. Katiji: AIR 1987 SC 1353* ruled that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. The principle has also been echoed by the Hon'ble Supreme Court in *Laxmibai v. Bhagwantbuva (Civil Appeal No. 2058 of 2003 decided on 29.01.2013)*.
21. Taking the facts and circumstances of the case into consideration and the principles decided, it would accordingly be appropriate to pass the following orders. Hence ordered.

#### ORDER

The Application be and the same is allowed on contest.

- i. The present management of the Corporate Debtor shall be permitted to approve the Accounts and Returns of the

Corporate Debtor for the period prior to 16.10.2019 in its next meeting. The Applicant shall file the relevant Returns and Statements for the period within three months hence. The action shall not invite any penalty whatsoever from the Respondent No. 2.

- ii. The Corporate Debtor is permitted to file Accounts and Returns subsequent to 16.10.2019, within a period of three months hence and the same shall be accepted without any penalty.
- iii. It is made clear that the present management of the Corporate Debtor shall not in any manner be held accountable for the default committed by the Corporate Debtor or its promoters / directors prior to 16.10.2019.
- iv. The RoC (Respondent No. 2) or the appropriate authority shall consider accepting Returns and Statements in physical form in case of incompatibility in online submission / e-filing.
- v. The implementation of the Plan is extended till 31.03.2022. All concerned shall make all endeavours to facilitate implementation of the Plan within the period.

Sd/-

V. Nallasenapathy  
Member (Technical)

Sd/-

Janab Mohammed Ajmal  
Member (Judicial)