

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

COURT-IV

I.A.(IBC)/43/2024
IN
C.P.(IB)No.509/ND/2020

[Under Section 12 of the Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016]

IN THE MATTER OF:

Mr. Anil Mata
Interim Resolution Professional
M/s. Weld Metals India Private Limited

... Applicant

IN THE MATTER OF:

Mahender Kumar

... Operational Creditor

Versus

M/s. Weld Metals India Private Limited

...Corporate Debtor

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

For the Applicant : Mr. Manish Kumar, CS
For the RP : Mr. Arvind Jadon, Ms. Taru Saxena, Mrs. Pallavi
Jadon, Adv

Order Delivered on:23.01.2024

I.A.(IBC)/43/2024
IN
C.P.(IB)No.509/ND/2020
Date of Order: 23.01.2024

ORDER

PER: DR.SANJEEV RANJAN, MEMBER (TECHNICAL)

The interlocutory application i.e. I.A.(IBC)/43/2024 is filed on behalf of Mr. Anil Mata ('applicant'), Interim Resolution Professional of M/s. Weld Metals India Private Limited under Section 12 and 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking the following prayer(s):-

- a) To allow extension of 180 days' from days for IRP/Deemed RP to take charge of management and to proceed further and complete the CIRP proceedings.
- b) To allow the exclusion of time period from 12.08.2021 to 01.12.2023 when the functioning of COC was stayed by Hon'ble Appellate Tribunal.
- c) To take on record, that IRP/Deemed RP has not received the complete Management control/charge of assets, books of accounts (except unaudited tally accounting data upto 31st March 2017) and other statutory records of the corporate debtor as all are lying at factory premises, which is under custody of the court receiver due to which the IRPI Deemed RP is not in a position to take forward the CIR Process in accordance with the timeliness as prescribed under the Code & and Regulations made thereunder.
- d) Pass such other orders and directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the matter.

2. Briefly stated the facts of the present case as averred by the applicant are that Corporate Insolvency Resolution Process was initiated by this Hon'ble Adjudicating Authority vide order dated 06.07.2021 and Mr. Anil Mata, applicant herein is appointed as Interim Resolution Professional ("IRP") of the Corporate Debtor. Further, the applicant submitted that the applicant had discharged his duty most efficient and effectively, the IRP had made the public announcement as contemplated under the provisions of the Code and regulations framed therein

and invited claims from all the creditors and had Constituted Committee of Creditors on 31.07.2021.

3. Further, the applicant submitted that one Suspended Director Mr. Suman Sehgal had filed Company Appeal (AT)(INS)/592/2021 before the Hon'ble National Company Law Appellate Tribunal against the admission order dated 06.07.2021 passed by this Hon'ble Tribunal in CP(IB) 509/ND/2021 and the Hon'ble NCLAT vide order dated 12.08.2021 had stayed the functioning of CoC till next date of hearing i.e., 14.09.2021. Further, the Hon'ble NCLAT in its order dated 14.09.2021 had vacated the stay on the functioning of CoC. The Hon'ble NCLAT vide its order dated 05.10.2021 had modified the order dated 14.09.2021, to the extent that the stay on the functioning of CoC of the Corporate Debtor vacated on 14th September, 2021 shall continue till the next date of hearing. Further, the matter was listed and heard on various occasions and the stay on functioning of CoC was vacated by the Hon'ble NCLAT vide its order dated 01.12.2023. Accordingly, the applicant seeks exclusion of time period from 12.08.2021 to 01.12.2023 (when the functioning of CoC was stayed by Hon'ble Appellate Tribunal) and to extend the CIRP Period for further period of 180 days for IRP to complete the CIRP proceedings.
4. We have heard Ld. Counsel for the Applicant and perused the averments made in the application filed by the applicant. The relevant documents annexed with the applications have been examined in detail.
5. From the record of the present case, the CIRP of the Corporate Debtor was initiated vide order dated 06.07.2021 of this Adjudicating Authority, however, the functioning of the CoC of the Corporate Debtor was stayed by the Hon'ble NCLAT vide its order dated 12.08.2021 in Company Appeal (AT)(Ins.) 592 of 2021 and the said stay on the functioning of CoC was vacated vide order dated 01.12.2023. Presently, the CIRP of the Corporate Debtor is at nascent stage and the Applicant ('Resolution Professional') has to take forward duly complied with the procedure

as prescribed under the Code for the purpose of Resolution of the Corporate Debtor .

6. The Hon'ble NCLAT in **Quinn Logistics India Pvt. Ltd v.Mack Soft Tech Pvt. Ltd and ors., dated 08.05.2018 [CA(AT) (Insolvency) No. 185 of 2018]** had held as follows:-

“9. From the decisions aforesaid, it is clear that if an application is filed by the ‘Resolution Professional’ or the ‘Committee of Creditors’ or ‘any aggrieved person’ for justified reasons, it is always open to the Adjudicating Authority/Appellate Tribunal to ‘exclude certain period’ for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances

10. For example, for following good grounds and unforeseen circumstances, the intervening period can be excluded for counting of the total period of 270 days of resolution process:-

i. If the corporate insolvency resolution process is stayed by ‘a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court.

ii. If no ‘Resolution Professional’ is functioning for one or other reason during the corporate insolvency resolution process, such as removal.

iii. The period between the date of order of admission/moratorium is passed and the actual date on which the ‘Resolution Professional’ takes charge for completing the corporate insolvency resolution process.

iv. On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the ‘Resolution Professional’ to complete the corporate insolvency resolution process.

v. If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and corporate insolvency resolution process is restored.

vi. Any other circumstances which justifies exclusion of certain period. However, after exclusion of the period, if further period is allowed the total number of days cannot exceed 270 days which is the maximum time limit prescribed under the Code.”

7. Considering the conspectus of facts, this Adjudicating Authority is of the view that the issue related to exclusion of period while computing the CIRP period had to be seen from the prism of realism and pragmatic approach should have been adopted by the Adjudicating Authority, considering the fact that the exclusion is sought on the ground that the functionality of the Committee of Creditors was stayed by the Hon'ble National Company Law Tribunal.
8. After going through the record and giving consideration to the submissions made, this Adjudicating Authority hereby orders as follows:-
- a) Exclusion of 841 days starting from time period from 12.08.2021 to 01.12.2023 from the CIRP Period of the Corporate Debtor on account of the stay imposed on the functioning of the CoC **is hereby granted.**
- b) Extension of further 90 days in the CIRP Period of the Corporate Debtor for completion of the CIRP **is hereby granted.**
9. We also note that the present application (i.e., I.A.(IBC)/43/2024) seeking extension and exclusion was filed on 05.12.2023. For an effective conclusion of the resolution process, this Adjudicating Authority further allows the exclusion of the period from the date of filing of the present application till the date of pronouncement of the present order from the Corporate Insolvency Resolution Process period. The resolution professional is directed to take all steps to complete the resolution process within the further period allowed to him in the present order.
10. In terms of the above direction, **I.A./43/2024 stands partly allowed and disposed of.**

Sd/-

**(DR. SANJEEV RANJAN)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**