

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 1924 OF 2020

Under Section 12(2) of Insolvency &
Bankruptcy Code, 2016

Mr. Amit Gupta
The Resolution Professional

...Applicant

I.A. 5476 OF 2023

Under Section 12(2) of Insolvency &
Bankruptcy Code, 2016

Mr. Amit Gupta
The Resolution Professional

...Applicant

In the matter of
C.P.(IB) No. 2300/MB/2018
Bank of India

.... Financial Creditor

Vs.

Mahavir Roads and Infrastructure Private
Limited

...Corporate Debtor

Order delivered on: 21/12/2023

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**I.A. 1924 OF 2020
I.A. 5476 OF 2023
In
CP(IB)2300/2018**

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant/RP : Mr. Harsha Sharma,
Advocate

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Application IA no. 5476/2023 is filed by Sh. Amit Gupta, The Resolution Professional ("Applicant") of M/s Mahavir Roads & Infrastructure Private Limited ("Corporate Debtor") in the Corporate Insolvency Resolution Process ("CIRP") u/s 12(2) read with section 60(5) of the Insolvency & Bankruptcy Code, 2016 ("Code") to seek extension and exclusion of period in CIRP.
2. An Application under Section 7 of the Insolvency & Bankruptcy was filed by Bank of India ("the Financial Creditor") before this Tribunal seeking initiation of CIRP of the Corporate Debtor and CIRP of the Corporate Debtor commenced vide an Order dated 21st February, 2019 pursuant to which Mr. Ankur Kumar was appointed as the Interim Resolution Professional of the Corporate Debtor.
3. The Hon'ble NCLAT vide its order dated 20th March 2019, stayed the constitution of Committee of Creditors of the Corporate Debtor pursuant to Appeal, being Company Appeal No. 275 of 2019, filed by the suspended director of the Corporate Debtor. However, Mr. Ankur

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Kumar, the Interim Resolution Professional of the Corporate Debtor was directed by the Hon'ble NCLAT to invite claims from the creditors and collate the same and ensure that the Corporate Debtor remains a going concern.

4. The stay on constitution of Committee of Creditors (CoC) of the Corporate Debtor was vacated by Hon'ble NCLAT vide its order dated 2nd July 2019, accordingly, the constitution of the CoC and subsequently the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor remained stayed for starting from 20 March 2019 to 2nd July 2019 pursuant to the order passed by the Hon'ble NCLAT
5. Thereafter, IA No. 3850 of 2019 for extension of CIRP Process for a period of 90 days and IA No. 520 of 2020 for exclusion of the period during which there was a stay on constitution of CoC by NCLAT i.e from 20th March 2019 to 2nd July 2019 were filed by the erstwhile RP and this Tribunal, vide an Order dated 26 February, 2020, allowed the IAs and directed the erstwhile RP to complete the CIRP process on or before 4th May, 2020.
6. Thereafter the erstwhile RP filed an Application No. 1924 of 2020 seeking exclusion of 222 days i.e. from 24th March, 2020 to 31 October, 2020 from the calculation of the CIRP of the Corporate Debtor on account of the Covid-19 pandemic and extend the CIRP Process till 28th December. 2020. The said Application No. 1924 of 2020 was heard and reserved for Orders on 17th August, 2021.

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7. Thereafter, the Hon'ble Tribunal vide Order dated 4 June 2021 directed the erstwhile RP and CoC not to take any decision with respect to the liquidation of the Corporate Debtor, without permission of this Tribunal.
8. The Financial Creditor had filed an Application being Interim Application No. 1261 of 2022 seeking replacement of the Resolution Professional from Mr. Ankur Kumar to Mr. Amit Gupta. Thereafter, by virtue of an order dated 13th February, 2023, the Applicant herein was appointed as the Resolution Professional for the Corporate Debtor.
9. This Tribunal passed an order vacating the stay under interim order dated 4th June, 2021 so as to enable CoC to consider liquidation of the Corporate Debtor.
10. On 10 October, 2023, Mr. Pankaj Kikavat and Bermaco Energy Systems Limited filed Interlocutory Application Nos. 4498/2023 and 4500/2023 respectively before the NCLT seeking approval and time to file the Resolution Plan. This Tribunal granted an opportunity to the Prospective Resolution Applicant to submit their resolution plan by 25th October 2023 before the Applicant with a direction that the Applicant shall place the same before the CoC for their consideration/approval.
11. This Tribunal by the said order dated 10 October, 2023 also directed the Applicant to file an application seeking extension of the CIRP process of the Corporate Debtor.
12. The password protected resolution plans on email as well as hard copy in sealed envelope have been received in the CIRP of the Corporate Debtor on 25th October, 2023

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13. In view of the aforesaid order, the Applicant called for the 37th CoC meeting wherein considering that the members of the CoC would require time to consider the Resolution Plan, negotiate on the commercials and approve the Resolution Plan post vetting by the Resolution Professional/ Legal team and in compliance with order dated 10th October 2023 the Applicant proposed to extend the CIRP period by a further period of sixty days pursuant to Section 12(2) of the Code. In view thereof, the CoC passed the following resolutions

"RESOLVED THAT as per section 12 (2) of the Insolvency and Bankruptcy Code, 2016 the consent of the Committee of Creditors be and is hereby accorded to approve the extension of the Corporate Insolvency Resolution Process by a further period of sixty days.

RESOLVED FURTHER THAT Mr. Amit Gupta, Resolution Professional, shall intimate the decurion of the members of the Committee of Creditors and make an application before the Hon'ble National Company Law Tribunal (NCLT), Mumbai Bench to extend the Corporate Insolvency Resolution Process period by such further period of sixty days."

14. We have heard the learned Counsel and perused the material available on record.

14.1. On perusal of the records, we found that IA 1924 of 2020 was heard and reserved for Orders on 17th August, 2021, however no Order has been passed therein till date. Accordingly, this Bench on 20.12.2023, and IA 1924 of 2020 was taken on Board and heard. After hearing the Counsel, this Bench finds that this Application

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seeks (a) rectification of Order dated 26th February, 2020 passed in IA 520/2020 by rectifying the date of completion of CIRP to be 20.5.2020 instead of 4.5.2020 (b) exclusion of period of 222 days i.e. 24.3.2020 to 31.10.2020 pursuant to lockdown imposed amidst COVID-19 pandemic so as to extend the period of CIRP till 28.12.2020 and (c) Order for extension of moratorium period accordingly. The Applicant has placed reliance on the NCLAT decision in the case of Reliance Naval and Engineering, wherein the Hon'ble NCLAT had allowed the exclusion of period of lockdown. After going through the records, this Bench finds the prayer in Order and allows the rectification of the Order dated 26.2.2020 by substituting the date 20.5.2020 in place of 04.05.2020 therein; and also allows the exclusion of period of lockdown from 24.3.2020 to 31.10.2020.

14.2. This Bench further notices that this Tribunal had stayed the decision with respect of liquidation of the Corporate Debtor without permission of this Tribunal vide its order dated 4.6.2021 which came to be vacated on 31.08.2023. Thereafter, Two applications were filed before this Bench by the prospective Resolution Applicants for consideration of their plan, as no order for liquidation was passed by that time. This Bench, after considering that the Code intends all efforts to be made for the resolution of the Corporate Debtor and its liquidation to be a last resort allowed both the applications by directing the Applicant to place their plan before CoC for consideration and seek further extension of 60 days vide Order dated 10.10.2023.

14.3. In the facts and circumstances of the case, this Bench finds that on account of stay granted by this Tribunal on consideration of liquidation of corporate debtor from 4.6.2021 till 31.08.2023, the

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CIRP process was at stand still. In accordance with the extensions granted by this Tribunal prior to that, the period of CIRP ended on 28.12.2020. This Bench finds that there is no application seeking extension or exclusion of period thereafter, except the present one which also seek exclusion of period from 29.12.2020 to 26.10.2023. It is matter of record that this Tribunal had not passed any order in IA 1924/2020 which sought extension/exclusion till 28.12.2020 and the order came to be passed now. Since, two Prospective Resolution Applicants are before CoC, and their plan is under consideration at this juncture, this Bench considers it appropriate to allow the prayers in IA 5476/2023 so as to exclude the period from 29.12.2020 to 26.10.2023 (which includes the period from 4.6.2021 to 31.08.2023 being the period during which the decision to consider liquidation of Corporate Debtor was stayed by this Bench) and extend the CIRP period from 27.10.2023 for further period of 60 days.

15. In view of foregoing, IA 1924/2020 and IA 5476/2023 are disposed of as allowed.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)