

NEW DELHI BENCH
COURT-IV

IA/6561/ND/2023, IA-1031/2024 & IA/129/ND/2024

IN

Company Petition No. IB- 3(ND)/2020

(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

IN THE MATTER OF [IA/6561/ND/2023, IA-1031/2024 & IA/129/ND/2024] :-

MR. DEEPAK MAINI
RESOLUTION PROFESSIONAL
MA/. AMZEN TRANSPORTATION INDUSTRIES PRIVATE LIMITED
..... APPLICANT

AND IN THE MATTER OF:

IDBI BANK LIMITED
... FINANCIAL CREDITOR
VERSUS

M/S. AMZEN TRANSPORTATION INDUSTRIES PRIVATE LIMITED
... CORPORATE DEBTOR

CORAM:

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

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

Order Delivered on:18.04.2024

PRESENT:

For the Applicant: Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Sikhar Tiwari, Advs.

COMMON ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

I.A.(IBC)/6561/2023

1. The interlocutory application i.e. I.A.(IBC)/6561/2023 is filed on behalf of Mr. Deepak Maini ('applicant'), Resolution Professional of M/s. Amzen Transportation Industries Private Limited under Section 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) Allow the present application;
 - b) Extend the period of Corporate Insolvency Resolution Process beyond 08.12.2023 i.e. date on which CIRP Period is expiring in the matter of the Corporate Debtor by a period 45 days w.e.f.,09.12.2023 as approved by the Committee of Creditors unanimously in its 37th meeting dated 29.11.2023;
 - c) Pass such other or further order / order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.

I.A.(IBC)/129/2024

2. The interlocutory application i.e. I.A.(IBC)/129/2024 is filed on behalf of Mr. Deepak Maini ('applicant'), Resolution Professional of M/s. Amzen Transportation Industries Private Limited under Section 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) Allow the present application;
 - b) Extend the period of Corporate Insolvency Resolution Process beyond 23.01.2024 i.e. date on which CIRP Period is expiring in the matter of the Corporate Debtor by a period 90 days w.e.f.,24.01.2024 till 23.04.2024 as approved by the Committee of Creditors unanimously in its 38th meeting dated 20.12.2023;

- c) Pass such other or further order / order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.

I.A.(IBC)/1031/2024

3. The interlocutory application i.e. I.A.(IBC)/1031/2024 is filed on behalf of Mr. Deepak Maini ('applicant'), Resolution Professional of M/s. Amzen Transportation Industries Private Limited under Section 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) Allow the present application;
 - b) Issue appropriate directions for exclusion of CIRP period from the date of filing I.A. No. 6561 of 2023 on 06.12.2023 till the filling of L.A. No. 129 of 2024 on 06.01.2024;
 - c) Issue appropriate directions for exclusion of the period from the date of filing of I.A. No. 129 of 2024 on 06.01.2024 till adjudication by this Hon'ble Adjudicating Authority;
 - d) Pass such order as this Hon'ble Adjudicating Authority may deem fit
4. Since, the factual grounds and the nature of relief sought in all the three Interlocutory Applications are identical, this Adjudicating Authority is dealing with all the three application, in the same common order.

AVERMENTS BY THE APPLICANT

5. Briefly stated the facts of the present case as averred by the applicant are that this Hon'ble Adjudicating Authority vide order dated 04.05.2022 had admitted the Company Petition (IB) No. 3/ND/2020 filed under Section 7 of the Code by the Financial Creditor, i.e., IDBI Bank Limited against the Corporate Debtor for initiating CIRP and appointed the Applicant namely Mr. Deepak Maini as the Interim Resolution Professional (IRP) of the Corporate Debtor, who was later confirmed as the Resolution Professional of the Corporate Debtor.

6. The Applicant submitted that the Applicant herein filed an L.A. No. 6561 of 2023 on 06.12.2023 before this Hon'ble Adjudicating Authority seeking extension of the CIRP of the Corporate Debtor beyond 08.12.2023 i.e, date on which CIRP period is expiring in the matter of the Corporate Debtor as approved by the CoC unanimously in its 37 meeting dated 29.11.2023 for the foregoing reasons:-

- i. The 35th CoC meeting was convened on 08.11.2023 which was subsequently postponed to 09.11.2023 wherein the Resolution Professional apprised the CoC members that the deliberations/compliance with respect to the two Resolution Plans submitted PRAs was completed during 34th CoC Meeting and that in the said meeting further discussions took place on the said subject matter regarding the evaluation matrix, feasibility & viability and approval of two Compliant Resolution Plans during the 35th CoC meeting.
- ii. The 36th CoC meeting was convened in two sessions one being on 16.11.2023 and other on 17.11.2023 wherein after due discussions and deliberations the Resolution Plans submitted by both the PRA's were put up for e-voting.
- iii. The Applicant in the 37th CoC Meeting dated 29.11.2023 had apprised the CoC members that representative from UCO Bank, CoC member had mentioned that, they have already forwarded the necessary details to their zonal office with respect to voting on the Resolution Plans and that their Zonal office/head office would take 15-20 days more to vote on the resolution plan and therefore, extension of minimum 30 more days may be sought from this Hon'ble Adjudicating Authority in order to complete the process as per the provisions of the Code. In view of the facts stated by the Applicant the CoC members after due discussions and deliberation had ratified and approved to extend the said CIRP period by 45 days w.e.f. 09.12.2023 till 23.01.2024.

7. Further, the Applicant submitted that the Applicant herein filed an L.A. No. 129 of 2024 on 06.01.2024 before this Hon'ble Adjudicating Authority seeking extension of the CIRP of the Corporate Debtor beyond 23.01.2024 i.e. date on which CIRP Period is expiring in the matter of the Corporate Debtor by a period 90 days w.e.f., 24.01.2024 till 23.04.2024 as approved by the Committee of Creditors unanimously in its 38th meeting dated 20.12.2023 for the foregoing reasons:-

- i. The Applicant had vide email dated 14.12.2023 intimated RC Rail Products Private Limited and Shanti GD Ispat and Power Private Limited along with Shanno Business India Private Limited that Resolution Plans submitted on 14.08.2023 and revised Resolution Plan submitted on 09.10.2023 were put up for c-voting in the Resolutions of 36th CoC meeting on. However, the Resolution Plans could not be approved by the members of CoC with the requisite votes as per the Section 30(4) of the Code.
- ii. The Applicant had convened 38th CoC meeting on 20.12.2023, wherein the Applicant apprised the members of CoC that he has received an email on 14.12.2023 from Prudent ARC wherein they have requested to add agenda of holding fresh round of Challenge Mechanism Process in the 38th CoC meeting. Further, the Resolution for issuing fresh Form-G was approved by the CoC with the 100% voting in favour.

8. The Applicant also submitted that the Applicant herein filed an L.A. No. 1031 of 2024 on 24.02.2024 before this Hon'ble Adjudicating Authority seeking extension of the CIRP of the Corporate from the date of filing I.A. No. 6561 of 2023 on 06.12.2023 till adjudication by this Hon'ble Adjudicating Authority for the foregoing reasons:-

- i. It is submitted that L.A. No. 6561 of 2023 has been listed a number of times on 08.12.2023, 12.12.2023, 18.12.2023, 21.12.2023, 10.01.2024, 11.01.2024, 18.01.2024 and 05.02.2024, however the matter could not be taken due to paucity of time and both the

Applications being I.A. No. 6561 of 2023 and 129 of 2024 and thus, the same could not be adjudicated by this Hon'ble Adjudicating Authority.

- ii. That this Hon'ble Adjudicating Authority has the power to exclude the time lost in pendency of proceedings due to which the Applicant could not take steps to conduct the CIRP of the Corporate Debtor.

ANALYSIS AND FINDING

3. We have heard Ld. Counsel for the Applicant and perused the averments made in the application and the written submissions filed by the parties. The relevant documents annexed with the applications have been examined in detail.
4. The CoC in its 37th Committee of Creditors meeting dated 29.11.2023 with 100% voting in favour of the resolution (Item No.A) approved seeking extension of Corporate Insolvency Resolution Process period by Forty Five days (45 days) beyond CIRP Period ending on 08.12.2023. The relevant portion of the said Resolution is reproduced herein below:-

A. Resolution Voted during the meeting as per CIRP Regulations 25 (3) & (4).

Extension application of CIRP period for 45 days (beyond 330 Days)

As deliberated above in item no. E of Part 2 above, the following resolution has been put below for CoC approval-

"RESOLVED THAT, pursuant to Second Proviso to Section 12 (3) of the Insolvency & Bankruptcy Code, 2016, and CIRP Regulations 25 (3) & (4), the proposal for extension/exclusion of CIRP period for another 45 days (beyond current CIRP end date of 8th December, 2023), be and is hereby approved

"RESOLVED FURTHER THAT, RP may take necessary steps for filing the necessary applications before Hon'ble NCLT"

[Extract of Resolution voted with 100% consent in the 37th CoC Meeting of the Corporate Debtor]

5. Consequent, to the resolution seeking extension of 45 days in CIRP Period of the Corporate Debtor, the Resolution Professional had preferred an I.A/6561/2023 before this Adjudicating Authority on 06.12.2023 and the same is pending for adjudication. The CoC in its 38th CoC Meeting after considering the fact that the Resolution Plan(s) put for voting before the CoC were rejected by CoC and hence, the CoC with 100% voting in favour had resolved to issue fresh Form-G along with seeking further 90 days extension in the CIRP of the Corporate Debtor. The relevant extract of the said Resolution is reproduced herein below:-

1) Issuance of Fresh Form G in Amzen Transportation Industries Private Limited-

As deliberated above in item no. G of Part 2 above, the following resolution is put up below for CoC approval-

"RESOLVED THAT, in pursuance to Regulation 36A of the IBBI (Insolvency resolution process for Corporate Persons) Regulations, 2016, that the proposal to issue Fresh Form G, be and is hereby approved by the members of the CoC

RESOLVED FURTHER THAT Resolution Professional be and is hereby authorized to do all such acts, deeds and things as may be required necessary or incidental thereto."

2) Extension of CIRP period by 90 days

As deliberated above in item no. G of Part 2 above, the following resolution is put up below for CoC approval-

"RESOLVED THAT pursuant to Section 12 of IBC, 2016, filing of application by the RP to Adjudicating Authority to seek extension of time for 90 days (beyond 45 days for which an application has already been filed with Adjudicating Authority) of Corporate Insolvency Resolution Process for initiating fresh round of issuance of form G to invite EOI/Resolution Plans, be and is hereby approved."

"RESOLVED FURTHER THAT Resolution Professional be and is hereby authorized to do all such acts, deeds and things as may be required necessary or incidental thereto

[Extract of Resolution(s) voted with 100% consent in the 38th CoC Meeting of the Corporate Debtor]

6. The Hon'ble Supreme Court in "**Essar Steel India Ltd. through Authorised Signatory v. Satish Kumar Gupta & Ors. (Civil Appeal No. 8766-67/2019)** dated 15.11.2019" had observed as under:

"The effect of this declaration is that ordinarily the time taken in relation to the Corporate Resolution Process of the Corporate Debtor must be completed within the outer limit of 330 days from the Insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the Insolvency Resolution Process beyond 330 days, and that it would be in the interest of all stakeholders that the Corporate Debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and /or Appellate Tribunal the delay or a large part thereof being attributable to

the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate tribunal to extend time beyond 330 days.”

7. 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.”

8. In view of the aforesaid discussion and judgement, for completion of CIRP of Corporate Debtor, the Corporate Insolvency Resolution Process Period of the Corporate Debtor is hereby extended for a further period of 90 days from the date on which CIRP Period was expiring i.e., 09.12.2023. **Accordingly, I.A.(IBC)/6561/2023 & I.A. 129/2024 stands disposed off.**

9. We also note that the present applications i.e., (i) I.A.(IBC)/6561/2023 seeking extension of 45 days beyond 08.12.2023 was filed on 06.12.2023 & (ii) I.A. 129/2024 seeking extension of 90 days beyond 23.01.2024 was filed on 06.01.2024. For an effective conclusion of the resolution process, this Adjudicating Authority further allows the exclusion of the period from filing of I.A. No. 6561 of 2023 on 06.12.2023 till the date of pronouncement of the present order from the Corporate Insolvency Resolution Process period of the Corporate Debtor. **Accordingly I.A.(IBC)/1031/2024 stands allowed.**
10. 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.
11. For the sake of clarity, the tabular presentation of the timeline of Corporate Insolvency Resolution Process after considering the exclusion and extension granted by this Adjudicating Authority in the preceding paragraph of this order is represented herein below:-

Particulars	Revised Last Date of CIRP
CIRP Expiring as submitted by the Applicant	08.12.2023
Exclusion of 134 days Period from 06.12.2023 till 18.04.2024	20.04.2024
Extension of 90 days in the CIRP Period	19.07.2024

Sd/-

(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)