

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER

IA No. 249/JPR/2023

IA No.106/JPR/2020

IN CP No. (IB)- 03/9/JPR/2018

UNDER SECTION 9 OF IBC, 2016

IN THE MATTER OF:

M/s UVA Engineers Pvt. Ltd.

...Operational Creditor

Versus

Maha Associated Hotels Pvt. Ltd.

...Corporate Debtor

IN THE MATTER OF:

IA NO. 249/JPR/2023

MEMO OF PARTIES

Mr. Tara Chand Meenia, Resolution Professional

Maha Associated Hotels Private Limited,

R/o Flat No. 206, GH 3, Sector 24,

Panchkula, Haryana.

...Applicant

AND IN THE MATTER OF:

IA NO. 106/JPR/2020

**MEMO OF PARTIES**

Mr. Naresh Kumar Munjal
Resolution Professional
Maha Associated Hotels Private Limited
125, 2nd Floor, Kailash Hills, New Delhi-110065

...Applicant

Present Through Video Conferencing: -

For the Resolution Professional : Ankit Sareen, Adv.
For Erstwhile Resolution Professional : Anubha Singh, Adv.

ORDER**As Per Mr. Deep Chandra Joshi, Member (Judicial)****ORDER PRONOUNCED ON: 12.10.2023****ORDER**

1. The Interlocutory Application ('IA') bearing the IA No. 249/JPR/2023 is filed by Mr. Tara Chand Meenia ('Applicant'), the Resolution Professional of the Corporate Debtor, M/s Maha Associated Hotels Private Limited under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (the 'IBC'/'Code') and r/w Rule 11 of NCLT Rules for seeking exclusion of days starting from 15.03.2020 to 28.02.2022, from 01.03.2022 to 12.07.2022 and further from 20.06.2022 to 08.05.2023 totaling to 1149 days such further exclusion of (n) days.



2. Whereas the Interlocutory Application ('IA') bearing the IA No. 106/JPR/2020 is filed by erstwhile Resolution Professional Mr. Naresh Kumar Munjal ('Applicant'), the erstwhile Resolution Professional of the Corporate Debtor, M/s Maha Associated Hotels Private Limited under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (the 'IBC'/ 'Code') for the issuance of the necessary directions in relation to timelines with respect to the proposal of the holding company of the Corporate Debtor for One Time Settlement ('OTS') of the Debt.
3. Both Applications are being considered simultaneously for proper and effective adjudication of the issues and reliefs prayed for.
4. This Adjudicating Authority *vide* order dated 20.09.2018 commenced the Corporate Insolvency Resolution Process ('CIRP') of M/s Maha Associated Hotels Private Limited under section 9 of the Insolvency and Bankruptcy Code ('IBC'). Thereafter the period of 180 days expired on 18.03.2019. The erstwhile Resolution Professional filed an IA seeking an extension of further 90 days. This Adjudicating Authority *vide* order dated 07.03.2019 extended the period of CIRP from 18.03.2019 to 16.06.2019.
5. The erstwhile RP filed another IA 175/JPR/2019 on 04.06.2019 seeking the exclusion of 105 days from the CIRP period. This Adjudicating Authority *vide* order dated 01.10.2019 granted exclusion of 268 days from the CIRP and by virtue of the said order the period on CIRP concluded on



10.03.2020. Copy of the order dated 01.10.2019 annexed as Annexure-1 of the Application.

6. Meanwhile an IA 106/JPR/2020 was filed under Section 60(5) of the IBC, 2016 seeking necessary direction with respect to the proposal of the holding company of the Corporate Debtor for One Time Settlement ('OTS') of the debt. In view of the same the Adjudicating Authority further extended the period of CIRP till 15.04.2020.
7. Further, the Applicant states that due to COVID-19, the Hon'ble Supreme Court *Suo Moto* took cognizance in view of the situation of the COVID-19 pandemic cases and decided to extend and exclude the limitation from all judicial, quasi-judicial, administrative and other legal proceedings and submits that Regulation 40C of The IBBI (Insolvency and Resolution Process for Corporate Persons) Regulations, 2016 mentions the special provision relating to the time-line of CIRP which elaborates that the period of lockdown shall not be counted for the purposes of time-line for any activity in relation to a CIRP.
8. During the second and third waves of COVID-19 the Hon'ble Supreme Court in *Suo Moto Writ Petition No. 03 of 2022* had clarified that the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the period of limitation. Further suspended management approached the erstwhile Resolution Professional to file an appropriate application for exclusion of the timeline to take the OTS proposal into effect.



9. In lieu of the same the erstwhile Resolution Professional filed the appropriate application for exclusion and extension. The erstwhile RP also filed an application to recuse himself from the role of RP in the present matter. Pursuant to that this Adjudicating Authority appointed Applicant as new RP *vide* order dated 21.03.2023.

10. It is pertinent to note that IA No. 267/JPR/2022 was filed by the erstwhile RP for exclusion and extension with certain incomplete facts and prayer, therefore the CoC resolved to withdraw the instant IA and preferred to file the present Application. The present Application is filed by the Applicant on the following grounds:

<i>Date</i>	<i>Number of Days</i>	<i>Reasons</i>
<i>15.03.2020 to 28.02.2022</i>	<i>715 days</i>	<i>SC Order granting exemption because of global COVID-19 pandemic</i>
<i>01.03.2022 to 12.07.2022</i>	<i>133 days</i>	<i>On account of OTS which was in the knowledge on Hon'ble NCLT as recorded in Order sheets dated 04.03.2020, 24.03.2022, and 12.07.2022</i>
<i>20.06.2022 to 08.05.2023</i>	<i>322 days</i>	<i>Pendency of application bearing IA/267/2022 seeking necessary exclusion and extension (38 days Common)</i>
<i>08.05.2023 till pendency of the instant IA</i>	<i>(n) Days</i>	<i>(n) would be number of additional days spent in deciding the instant IA.</i>



<i>Total Number of Days for which exclusion is being sought</i>	<i>1149 + (n) Days</i>	<i>From 15.03.2020 to 08.05.2023 [715+133+322-38+(n) days]</i>
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11. The Applicant further submits that the Hon'ble Supreme Court had granted an additional extension of 90 days between 15.03.2020 and 28.02.2022 in the cases where the limitation was expiring between 15.03.2020 and 28.02.2022. For ease of reference, the relevant extract of the order dated 10.02.2022 passed by the Hon'ble Supreme Court *in Suo Moto Writ Petition (C) No. 3 of 2020* is reproduced herein below for ready reference:

“In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022. Notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

12. Further it is stated that the period of CIRP was concluded on 30.03.2022, subsequent to that the erstwhile RP filed an IA for seeking exclusion of 623 days from 15.06.2020 to 28.02.2022 and an extension for further 180 days from the date of the order. The Applicant submits that in order to prevent the Corporate Debtor from going into liquidation it is important to exclude the period of the COVID-19 pandemic.



13. The Applicant/Resolution Professional also filed written submission *vide* Dairy No. 2055/2023 date 21.08.2023 whereby reiterated the same as mentioned in their earlier submission and additionally relied on the following judgments:

- I. *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors, Civil Appeal No. 8766-67 of 2019*
- II. *Vivek Raheja, Resolution Professional, CA (AT)(Ins) No. 331/2021*
- III. *Committee of Creditors, M/s. Vasan Health Care Pvt. Ltd. Vs. Mr. S. Rajendran, CA(AT)(Ins) No. 223 of 2021*
- IV. *Committee of Creditors of Trading Engineers International Ltd. Vs. Trading Engineers International Ltd., CA(AT) (Ins) No. 61/2021*

IA (IBC) No. 106/JPR/2020:

14. The Applicant has moved the present Application on the following set of facts:

14.1 The Corporate Debtor obtained a secured loan of Rs. 70,00,00,000/- (Rupees Seventy Crore Only) from the Punjab and Sind Bank.

14.2 Thereafter the period of 180 days expired on 18.03.2019. The erstwhile Resolution Professional filed an IA No. 65 of 2019 seeking an extension for a further 90 days. This Adjudicating Authority *vide* order dated 07.03.2019 extended the period of CIRP from 18.03.2019 to 16.06.2019.




14.3 Further the Applicant filed an IA No. 175/JPR/2019 for the exclusion of 105 days from the CIRP period of 270 days, including 90 days extension granted under Section 12(2) of the IBC, 2016. This Adjudicating Authority *vide* order dated 01.10.2019 granted an exclusion of 268 days.

14.4 It is pertinent to note that 330 days of the CIRP expired on 10.10.2020 and till 19.02.2020 last date of submission of the resolution plan no resolution plans were received from the prospective resolution applicant.

14.5 Thereafter on 29.02.2020 the Applicant proposed to initiate liquidation proceedings against the Corporate Debtor. In the meantime, the CoC has received a proposal from OTS for the outstanding debt of the Corporate Debtor from M/s Maha Hotel Projects Private Limited, the holding company of the Corporate Debtor. The said proposal of the holding company of the Corporate Debtor was placed before the CoC and is under consideration. Copy of the proposal annexed as Annexure-6 of the Application.

14.6 After the perusal of the contents of the said proposal it was observed that an offer to settle the total outstanding debt of the Bank of Rs. 94.70 Crores by paying a sum of Rs. 45 Crores in two tranches spread over four months with a condition that all proceeding filed by the CoC through Applicant against the Corporate Debtor shall be withdrawn



including the proceedings pertaining to preferential transactions of about Rs. 54 Crores allegedly siphoned off.

14.7 Further the Applicant states the said proposal was under consideration by the CoC however it was received just before the completion of 330 days of the CIRP.

15. We have heard the Learned Counsels for the parties and perused the averments made in the Applications, written submissions, and the documents enclosed with their respective application(s).

16. The Resolution Professional has failed to provide any valid reason for the exclusion of period except as excluded by the Hon'ble Supreme Court *via Suo Moto Writ Petition No. 03 of 2022* from 15.03.2020 to 28.02.2022. Nevertheless, taking into account the exclusion provided by the Hon'ble Apex Court the RP has not provided any concrete justification or any substantial evidences for his non responsive and lackadaisical approach to grant the exclusion as sought in IA (IBC) No. 249/JPR/2023. There appears to be no pending litigation as well against the Corporate Debtor which can be attributable to the delay in continuance of the CIRP procedure.

17. Further, in the present case, there is neither any Resolution Plan that is pending nor any valid ground to file an application seeking exclusion and extension of CIRP beyond 330 days. At this juncture, a timely resolution of insolvency must be preferred. Moreover, the code specifies the time-



bound process, which will not be extended, to better preserve the ‘Economic Value of the Asset’. If an Adjudicating Authority extends the Insolvency Resolution Process beyond the timeline mentioned under the provisions of the code, the same will be in the negation of the underlying policy behind the code of ensuring timely resolution of Corporate Insolvency.

18. Although, the resolution of ‘Corporate Insolvency’ to ensure the survival of a company/enterprise as a going concern is one of the key objectives of the IB code however this should not hamper the cost of efficiency. To put it succinctly, a ‘Timely Liquidation’ is preferred over an endless ‘Resolution process’. No doubt, the ‘Liquidation value’ tends to go down with an efflux of time as many ‘Assets’ suffer from high economic depreciation value. If one construes in the teeth of the object sought to be achieved by the IB Code and in the light of consequences provided by Section 33 of the Code, therefore, makes it unerringly clear that the periods mentioned under the provisions of the Code to conclude the CIR process is mandatory and cannot be extended beyond specified period. If the time specified by statute is changed, then it will give room for wider complications/implications, in the considered opinion of this Adjudicating Authority. It is significant to point out that the pre-occupation of the IB Code with ‘timely resolution of insolvency’ is an important factor.



19. Therefore, this Authority is not inclined to grant the exclusion. Since the CIRP of the Corporate Debtor has failed to yield any successful resolution, the Applicant is at liberty to move an appropriate application seeking Liquidation of the Corporate Debtor.

20. Further IA No. 106/JPR/2020 was filed by the erstwhile resolution professional for the issuance of the necessary directions in relation to timelines with respect to the proposal of the holding company of the Corporate Debtor for One Time Settlement ('OTS') of the Debt. It is seen that the Application was filed in the year 2020 and during the pendency of this matter, the RP was replaced. In the pleading filed thereafter, there is no update/advancement provided regarding the OTS proposal which was offered by the holding company of the Corporate Debtor to the Financial Creditor. No update/information has been placed before us regarding the consideration or advancement of the OTS proposal by the Financial Creditor. It is seen that almost 3 years have elapsed from the date of filing of the Application. There is no indication to prove that the said OTS proposal has been considered or rejected by the CoC. In the absence of such information, we cannot presume that the CoC has been sitting upon the OTS proposal waiting for directions or deliberation.

21. Moreover, it has been held that this Adjudicating Authority cannot force the parties to settle the matter. The erstwhile RP moved the application



seeking an extension based on the pending consideration of the OTS proposal before the Financial Creditor. Therefore, in the absence of any progress, we are not inclined to direct the Financial Creditor to consider the said OTS proposal after a period of 3 years or more from the date of request. Also, just by relying on the fact that the OTS proposal scheme is/ has been pending consideration before the Financial Creditor, the CIRP cannot be extended beyond 330 days. In light of the foregoing, this Interlocutory Application is rejected and thereby disposed of accordingly.

-Sd-

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

-Sd-

**ATUL CHATURVEDI,
TECHNICAL MEMBER**