



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court -II)  
KOLKATA**

**IA(IBC)/938(KB)2023  
in  
CP(IB)/1180(KB)2020**

*Under section 60(5) of the Insolvency & Bankruptcy Code, 2016*

*In the matter of:*

State Bank of India

.... **Financial Creditor**

*Versus*

Kaushik Global Logistics Limited  
(U51109WB2000PTC091319)

.... **Corporate Debtor**

*And*

*In the matter of:*

Mr. Ram Ratan Modi,

Resolution Professional of Kaushik Global Logistics Limited

... **Applicant**

**Order reserved on: 15/05/2023**

**Order pronounced on: 02/08/2023**

*Coram:*

**Smt. Bidisha Banerjee**

**: Member (Judicial)**

**Shri Balraj Joshi**

**: Member (Technical)**

*Appearances (through hybrid mode):*

For RP

: Mr. Siddhanth Makkar Adv.

For members of suspended  
Board of Directors of Corporate  
Debtor

: Mr. D. N. Sharma, Adv.  
Mr. Abhishek Jain, Adv.



## ORDER

*Per: Balraj Joshi, Member (Technical)*

1. This Adjudicating Authority convened through hybrid mode.
2. This application has been filed u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016, (in short “**IBC**”) by the Resolution Professional (in short “**RP**”) of Kaushik Global Logistics Limited, Corporate Debtor, praying for exclusion of 60 days in total, i.e., 35 days from 17/03/2023 till 21/04/2023 and additional 25 days as requested by the SBI for voting on Resolution Plan of the Corporate Debtor. This application is supported by an affidavit<sup>1</sup> duly affirmed by the RP.
3. This Adjudicating Authority, on a petition filed u/s. 7 of the IBC read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by State Bank of India, Financial Creditor, *vide* order<sup>2</sup> dated 10/06/2022 in CP(IB)/1180(KB)2020, had ordered initiation of CIRP against Kaushik Global Logistics Limited appointing Mr. Ram Ratan Modi as the Interim Resolution Professional (in short “**IRP**”).
4. In terms of section 15 of the IBC Public Announcement was made in Form A on 12/06/2022 in “*Financial Express*” (English) and “*Aajkaal*” (Bengali) inviting claims from creditors of the Corporate Debtor and Committee of Creditors (in short “**CoC**”) was duly formed on 02/07/2022 with three secured Financial Creditors, namely, (1) State Bank of India, (2) Bank of Baroda and (3) Bank of India. In terms of regulation 17 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 IRP has filed report with this Adjudicating Authority intimating constitution of CoC.
5. 1<sup>st</sup> CoC meeting was held on 11/07/2022. The appointment of applicant as Resolution Professional was not confirmed by the CoC at its first meeting. Subsequently, at the 6<sup>th</sup> CoC meeting held on 09/11/2022, the CoC has approved

<sup>1</sup> At pages 24 to 26 of the application

<sup>2</sup> Annexure A-1 at pages 27 to 40 of the application

the appointment of IRP as Resolution Professional (in short “**RP**”).

6. One of the suspended members of the Board of Directors of the Corporate Debtor had filed an appeal before the Hon’ble NCLAT being **Appeal (AT) (Insolvency) No. 744 of 2022**. Upon hearing the appeal on 08/07/2022, Hon’ble NCLAT has passed the following orders<sup>3</sup>:

“.....CoC may proceed and receive the Resolution Plan but voting with regard to approval of the plan will not be done without leave of the Court”.

However, the aforesaid appeal was dismissed by the Hon’ble NCLAT *vide* its order<sup>4</sup> dated 09/01/2023.

7. In terms of regulation 36A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short “**Regulations, 2016**”) Form G was published on 24/08/2022 in “*Financial Express*” (English) and “*Aajkaal*” (Bengali) inviting Expression of Interest (in short “**EoI**”) from prospective resolution applicants (in short “**PRA**”). The last date of submission of EoI was on 08/09/2022. In response, the applicant had received three EoIs within the stipulated due date. Upon verification, provisional and final list of PRAs were issued on 18/09/2022 and 03/10/2022 respectively. Accordingly, copy of Information Memorandum, Request for Resolution Plan (in short “**RFRP**”) and Evaluation Matrix were duly shared with the PRAs for submission of resolution plan. According to Form G published, last date of submission of Resolution Plan was 23/10/2022. One of the PRA, viz., **Rishikunj Vincom Private Limited**, *vide* e-mail dated 21/10/2022 had requested for extension of time for submission of resolution plan till 04/11/2022. With the approval of the CoC, having 70.17% voting share, time to submit resolution plan was extended till 04/11/2022 and the same was informed to all the prospective resolution applicants by e-mail dated 25/10/2022. Accordingly, the applicant had received one resolution plan from **Rishikunj Vincom Private Limited** on 04/11/2022.

<sup>3</sup> Annexure A-2 at pages 41 and 42 of the application

<sup>4</sup> Annexure A-4 at pages 44 and 46 of the application




8. Meanwhile, on 05/11/2022 the applicant had admitted claim of **Dhanlaxmi Bank Limited** being one of the secured Financial Creditor, whose claim was under verification and accordingly reconstituted the CoC on 05/11/2022 with four Secured Financial Creditor as well as updated the List of Creditors also on 05/11/2022.
9. At the 6<sup>th</sup> CoC meeting held on 09/11/2022, the CoC after due deliberations on the point of extension of CIRP by 90 days had unanimously approved the agenda for extension of CIRP period by 90 days from 07/12/2022. Accordingly, an application being IA(IBC)/1532(KB)2022 was filed praying for 90 days extension from 07/12/2022. Upon hearing the application, this Adjudicating Authority *vide* order<sup>5</sup> dated 07/12/2022 had allowed the application and granted 90 days extension of CIRP period thereby the 270 days CIRP period would come to an end on 07/03/2023.
10. At the 11<sup>th</sup> CoC meeting<sup>6</sup> held on 23/02/2023, the revised resolution plan was put for voting. Also, proposed resolution for exclusion of 66 days from 04/11/2022 to 09/01/2023, during which period no decisions could be taken on the resolution plan in terms of the order of the **Hon'ble NCLAT**, was placed before the CoC members for approval. Considering the urgency, the RP *vide* e-mail dated 27/02/2023 requested the CoC members to give consent to file an exclusion application. Copies of e-mails collectively forms **Annexure A-6**<sup>7</sup>. Accordingly, the CoC accorded their consent for exclusion of 66 days from the CIRP period and an application being IA(IBC)499(KB)2023 was filed with this Adjudicating Authority. This Adjudicating Authority *vide* order dated 20/03/2023 passed in the aforesaid IA had excluded 66 days from 04/11/2022 to 09/01/2023, thereby the 270 days CIRP period would come to an end on 12/05/2023.
11. Meanwhile, *vide* e-mail dated 17/04/2023, one of the members of the CoC, namely, Bank of Baroda informed the applicant pertaining to additional assets of

---

<sup>5</sup> Annexure A-3 at pages 43 of the application

<sup>6</sup> Annexure A-5, Minutes of 11<sup>th</sup> CoC meeting, at pages 47 to 62 of the application

<sup>7</sup> At pages 63 to 69 of the application



---

the Corporate Debtor and the time from 17/03/2023 to 21/04/2023, i.e., 35 days were taken to identify, get the same valued in order to apprise the CoC members and the Resolution Applicant the factual position of the additional assets of the Corporate Debtor. Thereafter, at the 13<sup>th</sup> CoC meeting held on 24/04/2023, the resolution plan was put for voting before the CoC. One of the members of the CoC, i.e., State Bank of India has requested to extend the voting timeline on Resolution Plan by 30 days.

12. The applicant called the 14<sup>th</sup> CoC meeting on 06/05/2023 to discuss on further exclusion of timeline from the CIRP period and accordingly following Resolutions were proposed:

*“RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorized to file an application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 with the Hon’ble NCLT, Kolkata Bench praying for exclusion of 60 days from CIRP period on the ground of time taken/utilized officially/required for identification and valuation of addition of assets and extension sought by SBI for voting on resolution plan.”*

*“RESOLVED FURTHER THAT the Resolution Professional be and is hereby authorized to take all action and incur expenditure necessary to give effect to the above Resolution passed by the Committee. The said expenses shall form part of the CIRP cost.”*

It was recorded in the Minutes<sup>8</sup> of the 14<sup>th</sup> CoC meeting that during the meeting all the CoC members were present and accorded their consent unanimously for the above resolutions and the same were taken as approved and ratified.

13. We have heard the Ld. Counsel for the RP, perused the application and the documents attached therewith.
14. *Vide* order dated 07/12/2022 and 20/03/2023, this Adjudicating Authority had already granted an extension of 90 days and exclusion of 66 days periods respectively, thereby the 270 days CIRP period would come to an end on 12/05/2023. However, the Resolution Professional has not been able to complete the entire CIRP process within the said 270 days period.

---

<sup>8</sup> Annexure A-7 at pages 70 to 73 of the application



15. In terms of the judgment of the Hon'ble Apex Court dated 05/11/2019 in **Committee of Creditor of Essar Steel India Limited vs. Satish Kumar Gupta and Others, (2020) 8 SCC 531 (para 127)**, it was held that if, on the fact of a given case it can be shown to the Adjudicating Authority or the Appellate Authority under the Code that only a short period of time is left for completion of the insolvency process beyond 330 days and 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, it may be upon the Adjudicating Authority in such case for to extend the time.
16. The main objective of the Code is to resolve the Corporate Debtor as "a going concern" by way of a resolution plan and productive resources of economy can be put to best use, whereas liquidation means death of the Corporate Debtor. Liquidation is the last option when there is no scope for resolution.
17. Here, in this case, the Resolution Professional has in his hand one prospective resolution applicant, who has submitted its resolution plan and the CoC at its 14<sup>th</sup> meeting has consented for taking 60 days' exclusion of time for taking decisions on the Resolution Plan submitted by the PRA. In the above scenario not granting some time to resolve the Corporate Debtor would go against the basic object of the Code, i.e., to revive the Corporate Debtor as a going concern.
18. Therefore, we exclude the time within which this IA(IBC)/938(KB)2023 was under judicial consideration from 13/05/2023 to this date, and further grant an enlargement of time of 60 days' time as prayed for in prayer (a) of the application and also in the interest of the resolution of the Corporate Debtor and therefore CIRP period would come to an end on **30.09.2023**. We direct the Resolution Professional to **strictly adhere to this time frame and complete the CIRP within the given time as above**.
19. **IA(IBC)/938(KB)2023** shall stand disposed of in accordance with the above directions.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court II)

IA(IBC)/938(KB)2023  
in CP (IB)/1180(KB)2020

---



20. List the Main C.P. on **04/09/2023** for further consideration.
21. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
22. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

Signed on this, the 2<sup>nd</sup> day of August, 2023.

hb.