

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I

IA No. 1468 of 2020

(An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016)

Pankaj Sham Joshi,
Resolution Professional for
KGS Sugar and Infra Corporation Ltd.,
12, Kakad Estate, Jamshedji Cross Road 3,
Mahim (West), Mumbai - 400 016.

... Applicant

IA No. 2436 of 2020

(An Application under Section 12(2) of the Insolvency and
Bankruptcy Code, 2016)

Pankaj Sham Joshi,
Resolution Professional for
KGS Sugar and Infra Corporation Ltd.,
12, Kakad Estate, Jamshedji Cross Road 3,
Mahim (West), Mumbai - 400 016.

... Applicant

IA No. 845 of 2021

(An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016)

Pankaj Sham Joshi,
Resolution Professional for
KGS Sugar and Infra Corporation Ltd.,
12, Kakad Estate, Jamshedji Cross Road 3,
Mahim (West), Mumbai - 400 016.

... Applicant

sd/-

In the matter of
C.P. (IB) No. 2156/MB/2019

Canara Bank ... Financial Creditor
V/s
KGS Sugar and Infra Corporation Limited ... Corporate Debtor

Date of Order: 24.12.2021

CORAM:

Shri Bhaskara Pantula Mohan, Hon'ble Member (Judicial)
Shri Narender Kumar Bhola, Hon'ble Member (Technical)

Appearance:

For the Applicant: Ms Vinita Hombalkar, Advocate.

Per: Narender Kumar Bhola, Member (Technical)

ORDER

All these Applications concerning interwoven facts and related prayers have been taken together. They shall abide by the common order passed hereunder.

2. The factual backdrop that led to the present Applications may briefly be stated. The Company Petition No. 2156 of 2019, filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) was admitted by this Tribunal by order dated 10.10.2019, whereby *inter alia* one Mr. Balady Shekar Shetty was appointed as the Interim Resolution Professional (IRP) and the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor commenced.

Sd/-

3. It is submitted that the copy of the Admission Order dated 10.10.2019 was made available to the IRP only on 04.11.2019. Therefore, the IRP took charge and initiated the CIRP of the Corporate Debtor only on 04.11.2019. Thus, there was gap of 25 days between the date of passing of the Admission Order (10.10.2019) and the date of receipt of Admission Order by the IRP (04.11.2019).
4. Thereafter, upon receipt of the Admission Order, the IRP made a public announcement on 05.11.2019, pursuant to which claims were received from the creditors of the Corporate Debtor and the Committee of Creditors (CoC) was formed.
5. Further, the IRP was confirmed as the Resolution Professional (RP) of the Corporate Debtor in the 1st meeting of CoC held on 25.11.2019. Thereafter, the CoC resolved to replace the RP of the Corporate Debtor and thus filed an Application under Section 27(3) of the Code. The said Application was allowed by the NCLT, Delhi Bench vide their order dated 27.05.2020 and accordingly the present Applicant was appointed as the Resolution Professional of the Corporate Debtor.
6. The Applicant submits that Form G inviting the Expressions of Interest (EoI) from the Prospective Resolution Applicants (PRAs) was published on 18.01.2020 and the last date for submission of Resolution Plan was 05.04.2020. However, due

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to the onset of Covid-19 pandemic and consequent lockdowns the eligible PRAs requested for extension of timeline for submission of Resolution Plan. Accordingly, the Applicant in consultation with CoC extended the last date for submission of Resolution Plan from 05.04.2020 to 13.07.2020.

7. The Applicant submits that he has received four (4) Resolution Plans till date and the CIRP of the Corporate Debtor is at crucial stage as the Resolution Plans submitted by the final eligible PRAs have been opened and are under consideration.
8. The Applicant submits that originally the 180th day of CIRP of the Corporate Debtor was supposed to be 02.05.2020. However, in the wake of Covid-19 Pandemic, a nationwide lockdown was imposed in the country from 23.03.2020.
9. The Applicant thus submits that extension of CIRP period and exclusion of the period of Covid-19 lockdowns would afford sufficient time to the CoC to negotiate with the PRAs and arrive at a successful Resolution Plan resulting in successful resolution of the Corporate Debtor.
10. It is submitted that, the CoC in 7th meeting held on 03.04.2020 and subsequently in 10th CoC meeting held on 27.07.2020, resolved to extend the period of CIRP by 90 days. Further, in the 9th CoC meeting held on 13.06.2020, the CoC passed a resolution for exclusion of period of 25

Sd/-

days from 10.10.2019 to 04.11.2019 and in the 14th CoC meeting held on 26.03.2021 passed a resolution for exclusion of period of lockdowns while computing the CIRP period of the Corporate Debtor.

11. In view of the above developments the Applicant is thus before us respectively seeking the following reliefs:

IA No. 1468/2020: -

- a) Pass an order directing the exclusion of 25 days between the date of the order admitting the Company Petition (IB) No. 2156 of 2019 dated 10.10.2019 and the date of receipt of the said order by the Interim Resolution Professional on 04.11.2019 from reckoning of the time period of CIRP of the Corporate Debtor;
- b) For such other reliefs as this Hon'ble tribunal may deem fit in the facts and circumstances of the present case.

IA No. 2436/2020: -

- a) That this Hon'ble Tribunal may be pleased to declare that the period of lockdown imposed in the State of Maharashtra be excluded while computing the timeline for CIRP of the Corporate Debtor;
- b) That this Hon'ble Tribunal may be pleased to direct that the CIRP of the Corporate Debtor be extended by a period of 90 days from the 180th day of CIRP of Corporate Debtor;

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- c) Pass any other orders/directions as deemed fit and necessary by this Hon'ble Tribunal in the interest of justice and equity.

IA No. 845/2021

- a) This Hon'ble Tribunal may be pleased to exclude the period of lockdown imposed in the entire State of Maharashtra, where the registered office of the Corporate Debtor is situated, from 23rd March 2020 to 31st March 2021 i.e. a total of 374 days while computing the CIRP period of the Corporate Debtor;
- b) Costs, and;
- c) For such other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

12. We have heard the learned counsel appearing for the Applicant and have perused the records. The averments made in the Applications would indicate that the outbreak of the pandemic has adversely impacted the progress of the CIRP as it has been on trade and commerce in the world in general and in our country in particular. Taking into consideration the overall situation the Hon'ble Supreme Court and Hon'ble NCLAT have passed the following Orders:

- The Hon'ble Apex Court on 23.03.2020 in Suo Moto Writ Petition (C) No. 3/2020 passed the following order.
"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant

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difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction."

- The Hon'ble NCLAT on 30.03.2020 in Suo Moto Company Appeal (AT) (Insolvency) No. 01 of 2020 ordered as follows.

"(1) That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for Resolution Process under Section 12 of the Insolvency

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and Bankruptcy Code, 2016, in all cases where 'Corporate Insolvency Resolution Process' has been initiated and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal.

(2) It is further ordered that any interim order/ stay order passed by this Appellate Tribunal in anyone or the other Appeal under Insolvency and Bankruptcy Code, 2016 shall continue till next date of hearing, which may be notified later."

- The Hon'ble Supreme Court on 08.03.2021 in Suo Moto Writ Petition (C) No. 3/2020 passed the following order.

"...

2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions: -

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

"..."

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13. Also, in view of the exclusion of lockdown period from the CIRP, Regulation 40C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was incorporated vide Notification dated 20th April, 2020 (effective from 29th of March, 2020), which provides, "...the period of lockdown imposed by the Central Government in the wake of Covid -19 outbreak shall not be counted for the purposes of the timeline for any activity that could not be completed due to such lockdown, in relation to a CIRP".
14. In view of such statutory changes and orders of the Apex Court, it would accordingly be appropriate to extend the period of limitation and exclude the pandemic phase from the period of CIRP. Moreover, in view of the prospective resolution applications there is a fair possibility that the Corporate Debtor may go through a successful resolution. IA Nos. 1468 & 2436 of 2020 and IA No. 845 of 2021, in our considered opinion can be allowed. Hence ordered.

ORDER

IA No. 1468 of 2020, IA No. 2436 of 2020 and IA No. 845 of 2021 be and the same are allowed. The CIRP period is extended by 90 days from today, this extension includes the extension and exclusions sought. No costs.

Sd/-

Narender Kumar Bhola
Member (Technical)

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)