

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH, JAIPUR

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

**SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER**

IA No. 247/JPR/2023
In CP No. (IB)-59/7/JPR/2019

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

**Punjab National Bank
(Formerly Oriental Bank of Commerce)**

... Financial Creditor

Versus

Super Shiv Shakti Chemicals Private Limited

...Corporate Debtor

MEMO OF PARTIES

IA No. 247/JPR/2021

Super Shiv Shakti Chemicals Private Limited
Village – Shripura, Tehsil –
Rawatbhata, Chittorgarh, Rajasthan –
311001

... Applicant

For the Applicant

**: Umang Gupta, Adv.
Aditi Khandelwal, Adv.
Sachit Kumar, Adv.
R.C. Lodha, Erstwhile RP**

Order Pronounced On: 12.10.2023

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ORDER**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Interim Application ('IA') bearing IA (IBC) No. 247/JPR/2023 is filed by the M/s Super Shiv Shakti Chemical Private Limited ('Applicant/Corporate Debtor') through its authorised representative, Mr. Rakesh Jagetiya ('Director') *vide* Board Resolution dated 10.04.2023 annexed at Page No. 129 of the IA, under Section 60(5) of the Insolvency and Bankruptcy Act, 2016 (the 'Code/ IBC') read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking extension of time by an additional twelve months, as provided under Clause 19 – Licenses, Permissions, Consents and approvals of the resolution plan.

2. The present IA has been filed on the following set of facts:

- a. The Applicant is engaged in the business of manufacturing and distribution of various types of explosives, a highly regulated industry, which is governed and overseen by the Petroleum and Explosives Safety Organisation ('PESO') and requires several permissions:

Sr.	Plant	Type	Capacity	Unit	License No.
1.	PETN	Manufacture	550 (Annual)	MT	E/HQ/RJ/20/ 21/(E23420)
	Detonating Fuse	Manufacture	40 (Annual)	Million Mtrs	E/HQ/RJ/20/ 21/(E23420)
	Cast Booster	Manufacture	500 (Annual)	MT	E/HQ/RJ/20/ 21/(E23420)
2.	Slurry & Emulsion	Manufacture	30,000 (Annual)	Ton	E/HQ/RJ/20/ 22/(E23432)

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3.	Electric Detonator	Manufacture	5 Crores (Annual)	Nos.	E/HQ/RJ/20/34/(E70164)
	Fuse Head for ED	Manufacture	5 Crores (Annual)	Nos.	E/HQ/RJ/20/34/(E70164)
4.	ED (Sales)	Sales	15 Lakhs	Nos.	E/HQ/RJ/21/472/(E46846)
5.	PETN/ Cast Booster	Sales	3,000	Kgs.	E/HQ/RJ/21/519/(E89970)
6.	Detonating Fuse	Sales	10 Lakhs	Mtrs.	E/HQ/RJ/21/455/(E23418)
7.	Slurry & Emulsion	Sales	20,000	Kgs.	E/HQ/RJ/21/454/(E23394)
8.	Slurry & Emulsion	Sales	20,000	Kgs.	E/HQ/RJ/21/471/(E23396)
9.	Slurry & Emulsion	Sales	20,000	Kgs.	E/HQ/RJ/21/510/(E82880)
10.	Slurry & Emulsion	Sales	20,000	Kgs.	E/HQ/RJ/21/511/(E82868)
11.	Slurry & Emulsion	Sales	20,000	Kgs.	E/HQ/RJ/21/512/(E82871)
12.	ED (Used)	Slurry/Emulsion	75	Kgs.	E/HQ/RJ/22/211/(E23428)
		Cast Booster	25	Kgs.	
		Detonating Fuse	5,000	Mtrs.	
		ED/OD	5,000	Nos.	
		Fuse Head for ED	34,000	Nos.	
13.	A.N. – Melt	Possess for Use	1,20,000	Kgs.	A/HQ/RJ/P3/1 (A231)
14.	A.N. – Melt	Possess for Use	78,000	Kgs.	A/HQ/RJ/P3/3 (A238)
15.	A.N. – Solid	Possess for Use	3,10,000	Kgs.	A/HQ/RJ/P3/25 (A1736)
16.	A.N. – Solid	Possess for Use	60,000	Kgs.	A/HQ/RJ/P3/2 (A236)
17.	PETN (Used)	Possess for Use	10,000	Kgs.	E/HQ/RJ/22/256/(E38030)


b. Meanwhile, the Corporate Insolvency Resolution Process (‘CIRP’)

was admitted against the Corporate Debtor *vide* Order dated

10.01.2020. Subsequently, the Committee of Creditors (‘CoC’) in its


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10th CoC meeting unanimously approved the Resolution Plan filed by M/s Searock International Pvt. Ltd. ('Successful Resolution Applicant/ SRA'), which was approved *vide* Order dated 29.04.2022 under Section 31 of the Code.

- c. The Applicant, before the initiation of the CIRP, remained 'non-compliant' with the statutory requirements and the operations were kept dormant. However, the SRA acquired the Corporate Debtor as a 'going concern' and was required to do manual submission of the statutory forms with the Registrar of Companies ('RoC'). The SRA was unable to obtain the license given the non-appointment of the new directors and 'Active – Non-Compliant' status. Consequently, the new Board of Directors ('BoD') were appointed on 04.05.2022 and made various attempts to file Form DIR – 12, which were unsuccessful.
- d. Such exercise was necessary under Rule 77 of the Explosive Rules, 2008 as to manufacture, handle, and sell explosives, a company need an active license. In the intervening time, the Applicant wrote a Letter dated 05.06.2022 for induction of directors in the BoD of the Corporate Debtor to the Section Officer, Industrial Licensing Section, Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry. A copy of the Letter dated 05.06.2022 is annexed as Annexure – E of the IA. The induction of



directors and clearance cannot be effected till the change in BoD of the Corporate Debtor is reflected on the website of the Ministry of Corporate Affairs ('MCA').

- e. Further, the process of changing the name of the directors on industrial license involves an antecedent verification of directors by the Intelligence Bureau, Department of Central Bureau of Investigation, Ministry of Home Affairs, which took approximately six months to complete. Hence, the license for manufacturing of PETN, Denoting Fuse and Cast Booster along with manufacturing of Detonator, Fuse Head for Electronic Detonator has been granted to the Corporate Debtor, but the license for manufacturing of nitrate mixture is still pending. The PESO has requested the Applicant to carry out certain modifications at the factory. A copy of the application for renewal of license dated 22.03.2023 for manufacturing nitrate mixture is annexed as Annexure – I of the IA.
- f. It was informed to the Applicant that before submission of Form DIR – 12, the Applicant was required to submit Form INC – 22A regarding the situation of the registered office and the appointment of a statutory auditor of the Corporate Debtor. Thus, the Applicant complied with all the irregularities and the status of the Applicant was reflected in the MCA portal as 'Active – Compliant' on






14.07.2022. A copy of the receipt of the filing is annexed as Annexure – F of the IA.

- g. It has also applied for renewal of Consent to Operate of its unit ID 29976 *vide* Letter dated 05.01.2023 to Member Secretary, Rajasthan State Pollution Control Board ('RSPCB'). A copy of the Letter dated 05.01.2023 is annexed as Annexure – G of the IA. As a result, it was informed by RSPCB *via* a show cause notice dated 01.03.2023 that there were several outstanding notices issued during the pendency of CIRP, which was duly responded by the Applicant *vide* Letter dated 09.03.2023. A copy of the Letter dated 09.03.2023 is annexed as Annexure – H of the IA. Pursuant to the Letter dated 09.03.2023, there has been no communication from RSPCB.
- h. The SRA as per the approved Resolution Plan was required to pay a sum of Rs. 65,96,391/- as against the demand of Rs. 16,49,09,767/- which is four per cent of the admitted claim amount towards a full and final settlement of the statutory dues of income tax, penalties, interest, and fines. Accordingly, the Applicant *vide* Letter dated 23.06.2022 requested the Assistant and Principal Commissioner of Income Tax, Rajasthan to waive all outstanding demands and withdraw all pending notices while issuing 'No Dues Certificate' for the Assessment Years 2019-20, 2020-21 and 2021-22. However,






there has been no response in this regard. A copy of the Letters dated 23.06.2022 is annexed as Annexures – J & K of the IA, respectively.

- i. Furthermore, the Corporate Debtor had purchased the land, mentioned under Clause 18 of the approved resolution plan, from the erstwhile owners/ directors/ promoters by issuing shares as a consideration in lieu of the land and took ownership of the same, which is also reflected in the filings with MCA by the erstwhile management. Nevertheless, the erstwhile management did not carry out the mutation entries with the respective land revenue authority. A copy of the forms filed with MCA is annexed as Annexure – L Colly of the IA. Such non-actions of the erstwhile management have hampered the operability of the Applicant by the SRA.
- j. Moreover, the SRA has incurred expenditure to the tune of Rupees Ten Crores in refurbishing and recommissioning the plant & factory of the Corporate Debtor *inter-alia* installation of new water pipelines, repairing damaged electrical panels and water pumps, procurement of necessary office furniture, hiring of staff accommodation, repair of 12 KM grid line to restore three-phase power supply, etc. Additionally, in compliance with the approved resolution plan, the SRA has paid the entire dues towards the financial and operational creditors and statutory dues.





k. In such sets of aforementioned circumstances, which are out of the control of the Applicant, it has been unable to procure the requisite licenses and approvals from the concerned departments. Hence, under Clause – 19 of the approved resolution plan, the period of twelve months would expire on 29.04.2023 for carrying out statutory obligations without suffering any adverse implications including any revocation of licenses or levy of penalties. Thus, it is prayed:

i. Extend the period by an additional 12 months, as provided under Clause 19 of the approved resolution plan, to comply with the statutory obligations without suffering any adverse implications, including revocation of licenses or levy of penalties, or till such time the aforementioned obligations are complied with, whichever is later.

ii. In the interim, restrain the Collector of Chittorgarh, as well as other government departments from taking any adverse actions including revocation of licenses or levy of penalties against the Corporate Debtor.

iii. Grant any other reliefs as may be deemed fit by this Tribunal.

l. The Applicant has relied on the following judgments of the coordinate benches of this Adjudicating Authority:






- i. *Fitcast Founders & Engineers Pvt. Ltd. v. Shri Rajat Mukherjee, RP for Shaifali Rolls Ltd. & Ors., IA No. 240 of 2020 In IA 352/2019 In CP (IB) No. 162/NCLT/AHM/2018.*
- ii. *Prestige Estate Projects Ltd. v. Jayesh Sanghrajka & Ors., IA No. 1123/2021 In CP No. 2714/I&B/2018.*
- iii. *Taguda Pte. Limited v. Subodh Kumar Agrawal, IA/887/2022 & IA/1606/2022 In IA/1447/2021 In CP (IB) No. 1790/MB/2017.*
- iv. *M/s JM Financial Asset Reconstruction Company Ltd. & Ors. v. Bheema Cements Ltd., IA No. 1538 of 2022 In CP (IB) No. 97/7/HDB/2018.*

3. Pursuant to Order dated 17.05.2023, Mr. Rishabh Chand Lodha, erstwhile Resolution Professional & Ex-Chairman of the Monitoring Committee of the Corporate Debtor filed an affidavit-in-rely *vide* Dairy No.1593/2023 dated 27.06.2023 wherein he has stated that

- a. The spirit behind IBC is to promote the success of the resolution of Corporate Debtor by not only allowing the operations as an ongoing concern but also supporting the SRA from time to time to overcome the barriers and external factors which affect the non-continuance of operability of the Corporate Debtor.
- b. As per the approved resolution plan, all the amounts, as due and payable to the creditors of the Corporate Debtor, have been paid by the SRA in entirety. There are no amounts that are currently due and



payable and the resolution plan has been successfully complied with by the SRA.

- c. The monitoring committee has been dissolved as per the mandate of the Resolution Plan and the final payments are made under this plan to financial creditors. However, any extension of time will be a great help to the SRA to approach different authorities for granting permission as the Applicant has been able to make out a *prima facie* case. Further, as per Rule 15 of the NCLT Rules, the Adjudicating Authority is vested with the power to extend the timelines in the interest of justice.
4. We have heard the Learned Counsels for the parties and perused the averments made in the application, reply, written submission, and the documents enclosed with their respective application(s).
5. In view of the foregoing narratives, including the payment of the entire dues of the statutory authorities, financial and operational creditors as per the approved Resolution Plan; genuine efforts being made for recommissioning of operability and renewal of the licenses of the Corporate Debtor; and considering the delays caused which were out of control of the Applicant in implementation of the approved resolution plan, we are inclined to allow the present IA.
6. Therefore, under the peculiar circumstances of this case, denial of the extension of time for the effective implementation of the approved



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resolution plan is not just and proper as it would hamper the progress of the Corporate Debtor to be independently sustainable. Hence, the present IA filed seeking an extension of time by an additional twelve months, as provided under Clause 19 – Licenses, Permissions, Consents, and approvals of the approved resolution plan deserves to be allowed. The Applicant shall make every endeavour to complete the requisite compliance within twelve months from this Order.

7. Further, it is expected that the concerned authorities shall provide their assistance in accordance with the law and duly act following the spirit of the Code to help the Corporate Debtor stand on its feet. In addition, this Order shall form an integral part of the Resolution Plan approved on 29.04.2022 in IA No. IA No. 41/JPR/2021 and shall have immediate effect. Accordingly, the present IA is disposed of with the above observations.

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**ATUL CHATURVEDI,
TECHNICAL MEMBER**