

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

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

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

**Cont. A(IBC) No. 7/JPR/2023**  
**In CP No. (IB)- 192/7/JPR/2020**

**UNDER SECTION 12(2) of IBC, 2016**

**IN THE MATTER OF:**

**Laxmi Narain Yadav**

**.... Financial Creditor/Applicant**

**Versus**

**Maha Mayay Metals LLP**

**.... Corporate Debtor/Respondent**

**AND IN THE MATTER OF:**

**Cont. A(IBC) No. 7/JPR/2023**

**Mr. Vikram Bajaj,**  
**Resolution Professional of M/s Maha Mayay Metals LLP**  
R/o 214, Spazedge, Tower A,  
Sec- 47, Gurugram- 122018

**...Applicant**

**Present Through Video Conferencing:**

For the Applicant : Adv. Abhishek Anand

**ORDER**

**ORDER PRONOUNCED ON: 19.09.2023**



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

1. This present application bearing Cont. A (IBC) No. 7/JPR/2023 ('Application') is filed under Sections 12(2) and 60(5) of the Insolvency and Bankruptcy Code, 2016 (the 'Code/ IBC') read with Regulation 40 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') and Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') by Mr. Vikram Bajaj, Resolution Professional ('Applicant/ RP') of M/s Maha Mayay Metals LLP ('Corporate Debtor') seeking exclusion from the CIRP period of 20.06.2022 till 01.06.2023. Furthermore, he has also sought an extension of 90 days of the Corporate Insolvency Resolution Process ('CIRP') period of the Corporate Debtor.
2. This Adjudicating Authority *vide* Order dated 21.12.2021 admitted CP No. (IB)- 192/7/JPR/2020 filed on behalf of Financial Creditor, Laxmi Narain Yadav ('Financial Creditor') for initiating CIRP under Section 7 of the Code and appointed the Applicant as an Interim Resolution Professional ('IRP') of the Corporate Debtor.
3. The Resolution Professional duly made a public announcement in Form – A dated 23.12.2021 as per Regulation 6(1) of the CIRP Regulations on 23.12.2021 & 24.12.2021 in Business Standard (English – All India Edition) and Sandhya Jyoti Darpan (Hindi – Alwar Edition). A copy of the public announcement was also uploaded to the website of the Insolvency and



Bankruptcy Board of India ('IBBI'). The last date for submission of proof of claims was specified as 04.01.2022. The copy of Form – A is annexed as Annexure A –2 of the Application.

4. Pursuant to the commencement of CIRP for the Corporate Debtor, the Applicant sent letters to the *suspended* Board of Directors ('*Suspended Management*') for providing information/ document records with respect to the business/ operations of the Corporate Debtor. In response thereto, he received certain partial information/ documents while also intimating the statutory authorities to submit their claims, but no claim has been received.
5. The RP followed all the necessary steps under the Code such as collating all claims submitted by the creditors as per Section 21 of the Code, constituting the Committee of Creditors ('CoC') which is comprised of five Financial Creditors, and submitting a status report under Regulation 17 of the CIRP Regulations. A copy of the status report for the constitution of the CoC is annexed as Annexure A – 3 of the Application.
6. Consequently, the First Meeting of the CoC was held on 22.01.2022, wherein the CoC was apprised of the status of the CIRP, and put forth the resolution for the appointment of the IRP as RP for the Corporate Debtor. However, Karnataka Bank Limited, *then* majority shareholder, holding 64.91% voting rights, dissented from the resolution of IRP's appointment. A copy of the minutes of the First CoC Meeting is annexed as Annexure A – 4 of the Application. Therefore, the CoC neither approved the resolution



for the appointment of the IRP as RP nor proposed the name of any other Insolvency Professional to act as RP. Thus, the IRP performed the functions of the RP as prescribed under Regulation 17(3) of the CIRP Regulations.

7. Further, in the Second CoC Meeting, the Applicant informed the CoC of, firstly, the appointment of two Registered Valuers to determine the fair market and liquidation value of the Corporate Debtor for all classes of Assets; secondly, the appointment of the Applicant as RP or for appointment of another Insolvency Professional as RP; thirdly, publication of Expression of Interest ('EOI') for identifying Prospective Resolution Applicants ('PRAs'); and lastly, terms of the invitation for Resolution Plan. However, such agendas were voted against by the Karnataka Bank Limited and did not garner the requisite majority. A copy of the minutes of the Second CoC Meeting is annexed as Annexure A – 5 of the Application.
8. In the Third CoC meeting held on 28.02.2022, the Applicant stated that without the approval of the CoC, it would be difficult to comply with the timelines prescribed in the Code, particularly the timeline for issuance of EOI under Regulation 35A of CIRP Regulations. Accordingly, all the previous resolutions for approval of EOI Terms and Request for Resolution Plan ('RFRP') to PRAs were again placed. The members of the CoC approved the resolution for the issuance of an Invitation for EOI and the terms of RFRP. A copy of the minutes of the third CoC Meeting is annexed as Annexure A – 6 of the Application. In compliance with Regulation 36A(1)



of the CIRP Regulations, the Applicant published Form – G dated 06.03.2022 in Indian Express (English - Jaipur Edition) and Punjab Kesari (Hindi - Jaipur Edition) with the last date for submission of EOI being 21.03.2022. A copy of the Form – G is annexed as Annexure A – 7 of the Application.

9. In the due course a total of five (5) EOIs were received upon conducting due diligence based on the material on record, RP issued a provisional list including two prospective Resolution Applicants, and the provisional list was circulated on 31.03.2022. Further, one of the prospective Resolution Applicants cured the defects, as raised by the RP, in the submitted EOI. Hence, the final list comprised three (3) prospective resolution applicants namely RKG Asset Management LLP, Raman Kumar & Ramphal Singh and Kushmesh Steel P. Ltd. & Rani Yogita. In the Fourth CoC Meeting dated 12.05.2022, the Applicant invited Ram Kumar & Ramphal Singh and Kushmesh Steel Private Limited & Rani Yogita to present their respective Resolution Plan. It was resolved that the CoC would submit their comments on the Resolution Plan within the next 10 days and Resolution Applicants would be granted a week to respond. A copy of the minutes of the fourth CoC Meeting is annexed as Annexure A – 8 of the Application.
10. Thereafter, in the Fifth CoC Meeting, the Applicant informed the members of the CoC that the CIRP period of 180 days is coming to an end on 19.06.2022, the received Resolution Plan are still under consideration, the



CoC may resolve to extend the CIRP by further 90 days in terms of Section 12. The resolution for the extension of CIRP was put to vote. Karnataka Bank Limited voted against the Resolution for extension of the CIRP period and the aforesaid resolution stood rejected. A copy of the minutes of the Fifth CoC Meeting is annexed as Annexure A – 9 of the Application. Accordingly, the Applicant filed IA No. 367/JPR/2022 under Section 33(1) of the Code, 2016 ('Liquidation IA') for seeking Liquidation of the Corporate Debtor. A copy of Liquidation IA is annexed as Annexure A – 10 of the Application.

11. Meanwhile, Karnataka Bank Limited *vide* Email dated 16.09.2022 informed the RP of One Time Settlement ('OTS') being proposed by one of the Personal Guarantor of the Corporate Debtor, Mr. Ramphal Singh for settlement of its financial loan account. A copy of the Email dated 16.09.2022 is annexed as Annexure A – 11 of the Application. Thus, during the Sixth CoC dated 22.12.2022, the status of Liquidation IA, an OTS by Karnataka Bank Limited with Personal Guarantor of the Corporate Debtor *vis-à-vis* it allowed Personal Guarantor time till 31.12.2022 was discussed. A copy of the minutes of the Sixth CoC Meeting is annexed as Annexure A – 12 of the Application.
12. The representative of Karnataka Bank Limited informed the CoC regarding the terms of OTS wherein a part amount from Rs. 5.50 Crores has been received by it. Thus, the security interest over the assets of the Corporate




Debtor stands released in the Seventh CoC Meeting dated 30.01.2022. A copy of the minutes of the Seventh CoC Meeting is annexed as Annexure A – 13 of the Application. Subsequently, *vide* Letter and Email dated 17.02.2023, Karnataka Bank Limited withdrew their claim filed in Form – C upon receiving the entire OTS amount. A copy of the Letter and Email dated 17.02.2022 is annexed as Annexure A – 14 (Colly) of Application.

13. In the meantime, one of the Financial Creditors, Mr. Laxmi Narain Yadav *vide* Email dated 22.02.2023 informed the Applicant that no concrete settlement has been arrived at by the rest of the CoC Members with the Personal Guarantor and requested the Applicant to convene the CoC meeting at the earliest to consider the Resolution Plans received earlier to proceed further with CIRP. A copy of the Email dated 22.02.2023 is annexed as Annexure A – 15 of the Application.

14. Furthermore, the Applicant filed an application being I.A. No. 179/JPR/2023 seeking the following reliefs:

*I. Allow the present application and exclude the period from 20.06.2022 (the last date of CIRP) till the date when the present Application is decided. Furthermore, extend the GIRP period by 90 days beyond the period of 180 days;*

*II. Kindly take the revised and updated list of creditors on record in terms of Section 25(2) (e) of the Code, 2016 as detailed in paragraph 26 in view of the settlement being arrived at between Respondent No. 2 and the Personal Guarantor of the Corporate Debtor;*



*III. Grant permission to the Applicant to convene a meeting of the reconstituted Committee of Creditors thereby, placing the Resolution Plans received earlier in the CIRP of the corporate Debtor before the reconstituted Committee of Creditors for their consideration.*

15. As the CoC was inclined to continue with the revival of the Corporate Debtor through CIRP, IA No. 367/JPR/2022 was withdrawn *vide* Order dated 11.05.2023. While IA No. 179/JPR/2023 was disposed of with the following directions *vide* Order dated 01.06.2023:

*‘Applicant has prayed that a revised and updated list of creditors is permitted to be taken on record and permission be granted to the Applicant to convene a meeting of the reconstituted Committee of Creditors. To this aspect, Application is allowed. It is also prayed by the Applicant that a mandatory period of 180 days for the conclusion of the CIRP period on 20.06.2022 and he seeks exclusion of a period from 21.06.2022 till the date of passing the order. The applicant may file a separate application for exclusion/ extension of the CIRP period.*

*Hence, IA No. 179/JPR/2023 is partly allowed.’*

16. Consequently, in the Eighth CoC Meeting dated 08.06.2023, the IRP updated and reconstituted the CoC while the CoC appointed IRP as RP as per Section 22 of the Code. A copy of the minutes of the Eight CoC Meeting is annexed as Annexure A – 18 of the Application. Further, the CoC members with the requisite majority passed the resolution for filing the present application for exclusion and extension of the CIRP. Pursuant to the

settlement of the claim of Karnataka Bank Limited, the CoC was reconstituted as under:


<b>Financial Creditor</b>	<b>Total Amount Admitted</b>	<b>Voting Percentage</b>
Laxmi Narain Yadav	Rs. 2,78,93,145.38	82.01%
Kimmi Modi	Rs. 7,40,000	2.18%
Girdhar Jalani/Jhalani Electricals	Rs. 11,95,000	3.51%
Neeraj Yadav	Rs. 41,85,365.23	12.31%
<b>Total</b>	Rs. 3,40,13,510.60	100.00%

17. It is submitted that the primary objective of the Code is the resolution of the Corporate Debtor and maximising the interests of the stakeholders as enumerated in the preamble of the Code. The Applicant has relied upon the following judgements:

*a. Arcellor Mittal India Pvt. Ltd. v. Satish Kumar Gupta, Civil Appeal No. 9402-9405 of 2018.*

The Hon'ble Supreme Court of India has stated that '*only reasonable construction of the Code is the balance to be maintained between timely completion of the corporate insolvency resolution process, and the corporate debtor otherwise being put into liquidation ... If there is a resolution applicant who can continue to run the Corporate Debtor as a going concern, every effort must be made to try and see that this is made possible.*'

*b. Swiss Ribbons Pvt. Ltd. v. Union of India & Ors., W.P. (c) No. 99 of 2018.*




The Hon'ble Supreme Court has emphasised that the resolution of the Corporate Debtor is a rule and liquidation is an exception under the Code. It has held that *'the primary focus of the legislation is to ensure revival and continuation of the Corporate Debtor by protecting the Corporate Debtor from its management and a corporate death by liquidation. The Code is thus a beneficial legislation which puts the Corporate Debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the Corporate Debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the Corporate Debtor, but, in fact, protective of its interests.'*

c. *Kalpraj Dharamshi & Anr. v. Kotak Investment Advisors Ltd. & Anr., Civil Appeal Nos. 2943-2944 of 2020.*

In *Kalpraj (Supra)*, the Hon'ble Apex Court has held that the legislative object and intent behind the enactment of the Code was to restructure and revive the Corporate Debtor in a time-bound manner is important. However, the commercial wisdom of the CoC is paramount as the Code also enshrines the maximisation of the value of the assets of the Corporate Debtor to bring it back into the economic mainstream.

d. *Jay Overseas Pvt. Ltd. v. Mr. George Samuel & Anr., Company Appeal (AT) (Ins.) No. 1117 of 2020.*



The Hon'ble NCLAT in the above-mentioned case has allowed the Resolution Applicant to file a revised resolution plan on the ground that the liquidation order is not passed and the Corporate Debtor would be saved from the clutches of corporate death. It observed:

*'6. The Learned Counsel are not disputing that Respondent No. 2 is 'Committee of Creditors' having 100% voting right. The Learned Counsel for Respondent No. 2 submits that if this Hon'ble Tribunal directs Respondent No. 2 is ready to consider the revised Resolution Plan (Annexure P/6). Counsel for Respondent No. 1 does not object. In view of the above, an effort may be made if the 'Committee of Creditors' accepts the revised Resolution Plan (Annexure P/6). As the liquidation order is yet not passed, there will be no harm if an attempt is made to save the Corporate Debtor from liquidation.'*

18. In the present case, it is seen from the records that Karnataka Bank Limited used its majority voting share powers to delay the timely resolution of the Corporate Debtor on various instances and conveniently bowed out of the CIRP. However, Karnataka Bank Limited, while accepting OTS, has also relinquished its security interest over the assets of the Corporate Debtor. The Applicant or the reconstituted CoC are not responsible for the delays caused by non-completion of the CIRP within 180 days. Hence, the Adjudicating Authority should resort to the route of the Liquidation process only upon the failure of the resolution process to revive the Corporate Debtor.



19. According to the status reports of the RP, there are underlying assets of the Corporate Debtor and pursuant to the publication of Form – G, there were two PRAs whose resolution plans needed consideration and deliberation from the CoC for the successful revival of the Corporate Debtor. In such circumstances, when the CoC itself has approved the resolution, this Adjudicating Authority has limited scope of judicial review of the commercial wisdom of the CoC, when such exercise is undertaken in accordance with the Code.
20. In view of the foregoing narrative, we are inclined to allow the present Application in the interest of justice for the Corporate Debtor through route the resolution instead of pushing the Corporate Debtor into the clutches of liquidation. Thus, we exclude the period from 20.06.2022 till 19.09.2023. Additionally, we also extend the CIRP period as per Section 12 of the Code for a further 90 days for successfully concluding the CIRP of the Corporate Debtor. It is directed to the RP to undertake such an exercise effectively and efficiently. The CoC is free to undertake every recourse available under the Code including, but not limited to, the republication of Form – G

*-Sd-*

**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

*-Sd-*

**ATUL CHATURVEDI,  
TECHNICAL MEMBER**