IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

I.A. (IB) No. 96/CB/2023
In
T.P. No. 38/CTB/2019
[Earlier CP (IB) No. 1289/KB/ 2018]

In the matter of:

An application under Section 60(5) of IBC, read with Rule 11 of the NCLT Rules, 2016;

-And-

In the matter of:

LORA MITRA RATH, At Kairapari, Kotasahi, Bainchua, Tangi, Cuttack, Dist.-Cuttack, Odisha- 754 022;

... Applicant

-Versus-

1. **SAMBHU LAL AGARWAL**, At. Kolkata Bazar Building, 2nd Floor, Nayapara, Sambalpur, Odisha- 768 001;

... 1st Respondent/Resolution Professional

2. **BANK OF INDIA**, At. Bank of India Building, 2nd Floor, 5, B.T.M Sarani, Kolkata, West Bengal- 700 001;
3. **SERI EQUIPMENT FINANCIAL SERVICES LTD**., At Plot-Y-10, Block - EP, Salt Lake Sector-V, Kolkata, West Bengal – 700 091;
4. **TATA CAPITAL FINANCIAL SERVICES LTD**, At. 11th Floor Tower A, Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai, Maharashtra- 400 013;

... Respondents 2 to 4. /CoC Members

-In-

Bank of India, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking Act, 1970) having its Head Office at Star House-1, C-5, G-Block, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra, and having its office at Bank of India, Bhubaneswar Zonal Office,

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Star House, Jaydev Vihar, Nayapalli, Bhubaneswar, Odisha-751 015 and also at Branch Office at Ranihat Branch, Bajrakabati Road, Cuttack, Odisha- 751 015;

... Petitioner/ Financial Creditor

-Vs-

MAA DURGA FLOUR MILLS PVT. LTD. a company incorporated under the Provision of Companies, Act, 1956 having its Registered Office at Kairapari, Kotsahi (Tangi), Cuttack, Odisha – 754 022;

... Respondent/Corporate Debtor

Order pronounced on: 28.02.2024

Coram:

Shri P Mohan Raj	Member (Judicial)
Shri Kaushalendra Kumar Singh	Member (Technical)

Counsel on Record (Through Hybrid Mode)

For the Applicant	Mr. Saswat K. Acharya, Adv.
For the 1st Respondent	Ms. Suranjana Chatterjee, Adv
For the 2nd Respondent	Ms. Tuna Sahu, Adv.
For the 3rd Respondent	Ms. Suparna Sardar, Adv
For the 4th Respondent	Mr. R. K. Nanda, Adv.

ORDER

1. This is an application filed under Rule 11 of NCLT Rules, 2016 by the Successful Resolution Applicant to exclude the period from 01.11.2021 to 07.11.2022 from the period of one year to implement the resolution plan approved by this Adjudicating Authority on 01.11.2021.
2. **The brief background of the case necessary to dispose of this application are as follows:** The Corporate debtor **Maa Durga Flour Mills Private Limited** was admitted into CIRP in T.P. (IB) No. 38/CTB/2019 by order dated 04.09.2019 in the petition filed by Financial Creditor Bank of India

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under Section 7 of IBC, 2016. Mr. Sambhu Lal Agarwal was appointed as Interim Resolution professional. Then he was appointed as Resolution Professional. The corporate debtor is MSME, the resolution applicant is suspended director of the corporate debtor. The Resolution plan submitted by the applicant was approved by the CoC in its 12th meeting held on 25.11.2020 with 99.46% votes. The plan was approved by this Adjudicating Authority in IA. No.24/CB/2021 by order dated 01.11.2021, with exception. In the plan provision is made for an extinguishment of personal and Corporate Guarantee extended by the promoter Group of corporate debtors, but this Authority declined to grant this relief. Aggrieved by this the applicant preferred Company Appeal (AT)(Ins) No. 104 of 2022 before NCLAT-Delhi, the said appeal was dismissed on 07.11.2022 for non-prosecution. As per approved plan amount of Rs. 9.84 crores should be paid in staggered manner by 31.03.2023. The applicant seeks exclusion for the period when the appeal was pending before the NCLAT-Delhi. The Resolution professional and CoC members are arrayed as respondents, of course they are not objecting to allow this application. If the situation remains as it was on the date of approval of resolution plan there would not be any difficulty to consider this application, but subsequent developments hurdle to proceed further hence this Adjudicating Authority needs to consider the subsequent events before proceed with the request of the applicant.

3. The Corporate Debtor is MSME, the Resolution Applicant is suspended director of the Corporate Debtor and submitted the plan, it was approved on 01.11.2021. The applicant is also suspended director of another company M/s Maa Durga Rice Products Pvt. Ltd. The said company was admitted into CIRP in T.P. No.36/CB/2019 on 04.09.2019. In the said CIRP, the Resolution professional filed I.A. No. 276/CB/2020 against this

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applicant and her husband and son as erstwhile directors of the corporate debtor under Section 66 of IBC, 2016 for fraudulent transactions. The said application was ordered by this Adjudicating Authority on 26.04.2022 directing this applicant and two others to pay jointly and severally a sum of Rs. 20,22,67,835/- Thus the applicant suffered disqualification under section 29A (g) of IBC, 2016. In consequence of the order passed in I.A. No. 276/CB/2020, another application I.A. No.337/CTB/2020 filed by the resolution professional for approval of resolution plan in TP No. 36/CB/2019 submitted by this applicant was dismissed and Corporate Debtor M/s Maa Durga Rice Products Pvt. Ltd., was ordered to be liquidated. This applicant preferred an appeal against the order of this Adjudicating Authority before NCLAT-Delhi, in Company Appeal No.869 of 2022 against the order passed in I.A.No.276 of 2020 and Company Appeal No.850 of 2022 against the order passed in I.A. No.337 of 2020. The Hon'ble NCLAT-Delhi by common order dated 30.09.2022 dismissed both the appeals. This applicant preferred a Civil Appeal before the Supreme Court of India in Civil Appeal Diary No. (s) 36679/2022. Later the Civil appeal was dismissed as withdrawn on 10.04.2023. The applicant subsequently filed I.A.No.262/CB/2023 before this Adjudicating Authority to declare the order passed in I.A. No. 276/CB/2020 as a nullity in law. This application was dismissed on 23.01.2024.

4. The resolution plan of the applicant was approved by this Adjudicating Authority in I.A. No. 24/CB/2021 in T.P. No. 38/CTB/2019 by order dated 01.11.2021. This applicant suffered disqualification under Section 29A (g) of IBC, 2016, because of order passed in I.A. No. 276/CB/2020 dated 26.04.2022.
5. The other factor noticed by this Adjudicating Authority is during the implementation of that Resolution professional of corporate debtor/1st

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respondent in this application filed I.A. No. 26/CB/2020 against the two suspended Board of Directors on 13.01.2020 under Section 66 of IBC, 2016 for fraudulent transactions. The arrayed respondents are husband and son of this applicant. When this application is pending the Resolution Professional/1st respondent filed I.A. No. 24/CB/2021 on 15.12.2020 for approval of resolution of plan submitted by the applicant who is one of the suspended board of directors of corporate debtor. In this regard on the applicant side submitted that since this applicant is not arrayed as party in I.A. No. 26/CB/2020 under Section 66 IBC, 2016, there was no impediment to the 1st respondent to file I.A. No.24/CB/2021 for approval of plan of the applicant.

6. This submission of applicant is not acceptable. In the averments of the application I.A. No. 26/CB/2020, it is alleged that the directors of the CD have not acted diligently. The CD after being declared NPA, has paid amount to other concern, CD has written off the debts, CD has carried on business with intent to defraud creditors of CD and for fraudulent purpose. Thus, the allegations are made against the corporate debtor but it is not known then why this applicant one of the directors of the corporate debtor is not arrayed as respondent. In this regard specific query was raised by this Adjudicating Authority in daily order dated 18.12.2023 but so far, no satisfactory explanation forth come from the 1st respondent. Further, Section 29A of IBC, 2016 not only disentitle the person committed any acts referred therein but also disqualify any person who acted jointly or in concert with such person. This applicant as one of the directors of the corporate debtor acted jointly with the two other respondents arrayed as party in I.A. No.26/CB/2020. The resolution professional/1st respondent filed I.A. No. 26/CTB/2020 under Section 66 IBC, 2016 alleging that corporate debtor carried on the business to defraud its creditors, then

subsequently filed I.A.No.24/CBT/2021 for approval of resolution plan submitted by one of the suspended Boards of Director of the corporate debtor/applicant. The disturbing aspect is the resolution professional proceeded with both the applications ignoring that there exist inconsistent of interests.

7. The Corporate Debtor M/s Maa Durga Rice Processing & Exports Pvt. Ltd was admitted into CIRP in T.P. No. 30/CTB/2019 by order of this Authority dated 04.09.2019. The Resolution professional of corporate debtor M/s Maa Durga Rice Processing & Exports Pvt Ltd., filed I.A. No. 42/CB/2022 for approval of resolution plan submitted by the applicant herein, the application was dismissed by this Authority since the applicant failed to prove that the corporate debtor is MSME, and liquidation was ordered on 05.04.2022. The applicant preferred W.P. No.12248 of 2022 before the High Court of Orissa, the High court by order dated 19.05.2022 set aside the order of this Authority dated 05.04.2022 and remanded the matter. Now the Resolution professional filed I.A. No. 244/CB/2023, with the approval of CoC that since the applicant suffered disqualification because of the order passed in I.A. No.276/CB/2020 in T.P. No. 36/CTB/2019, sought permission to withdraw the I.A. No.42/CB/2022 filed for approval of resolution plan of applicant and for order of liquidation of corporate debtor M/s. Maa Durga Rice Processing & Exports Pvt Ltd.
8. The corporate debtor M/s Maa Durga Commotrade Pvt. Ltd., was admitted into CIRP in C.P. (IB) No.30/CB/2022 by order of this Authority dated 25.09.2023. The applicant is one of the suspended directors of corporate debtor of M/s Maa Durga Commotrade Pvt. Ltd. The Resolution professional of M/s Maa Durga Commotrade Pvt. Ltd., has filed I.A. No. 363/CB/2023 against this applicant and others under Section 19(2) of IBC, 2016 for direction against this applicant directing her to return a sum of

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Rs.33,00,000/- withdrawn from the Bank of corporate debtor after the corporate debtor admitted into CIRP, the said application is pending.

In these backgrounds the request of the applicant needs to be considered.

The points for consideration are:

1. Whether the subsequent disqualification suffered by the applicant disentitled her to maintain this application?
2. Whether the period from 01.11.2021 to 07.11.2022 to be excluded from the plan implementation period?

9. **Points 1 & 2**: The prime contention of the applicant is once the resolution plan is approved, the subsequent disqualification suffered by the resolution applicant will not disentitle her to continue with the plan as ordered by the Authority.

10. The counsel for applicant argued that the applicant prayer should not be negatived because she had suffered disqualification subsequent to the approval of resolution plan. According to him the eligibility criteria prescribed under section 29 (A) of the Code should be determined at the time of submission of the Resolution plan. The counsel referred to the opening sentences of Section 29(A) of the Code "**A person shall not be eligible to submit a resolution plan**" and stated that eligibility prescribed by the code is only for the submission of Resolution plan, there after it is immaterial whether applicant continues with eligibility or suffered any ineligibility. This contention is not acceptable because the eligibility criteria prescribed under the code is primarily to avoid the person indulged in fraudulent activities and cause for the down fall of the corporate debtor, to take advantage of his own wrong and enter into the corporate debtor on back door method. In this situation the argument of the counsel for applicant that section 29A of IBC, 2016 is to be seen only at the time of submission of plan and not thereafter is misplaced. Once the provision of

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law provides a bar for a promoter to file a plan in the circumstances stated in Section 29(A)(g), the same will apply for all the times to come and not only at the time of submissions only.

11. The Hon'ble NCLAT-Delhi in Company Appeal (AT)(Insolvency) Nos.1070 of 2021 and 1121 of 2023 **Sunil Tangri and ors -vs- Ashu Gupta dated 10.10.2023 MANU/NL/0861/2023** upheld the dismissal order of NCLT dismissing the resolution plan application, in the light of disqualification suffered by resolution applicant in subsequently filed application. In the said cited case the promoter of MSME corporate debtor submitted revised resolution plan and it was approved by the CoC on 18.11.2020, then resolution profession filed an application on 29.12.2020 I.A. No. 5756 of 2020 under Section 30(6) of the Code for approval of resolution plan. The resolution professional also filed an application on 04.12.2021 I.A. No.102 of 2021 under Section 46,49,66,69 and 72 of IBC, 2016. The NCLT allowed the PUFE application I.A. No.102 of 2021 on 12.11.2021, thereafter on 02.08.2023, the Adjudicating Authority in I.A. No.5756 of 2020 dismissed the application for approval of resolution plan in light of the ineligibility of the Resolution applicant as per the provisions of Section 29A of the Code and further ordered the liquidation. In the scenario the contention of the applicant counsel that Section 29A will apply only for submission of plan and not for any more is unsustainable.
12. The applicant prayed to exclude the entire period when the appeal preferred by the applicant was pending before the NCLAT-Delhi. The applicant filed Company Appeal No.104 of 2022 before NCLAT-Delhi on 01.11.2021, and that appeal was dismissed for non-prosecution on 07.11.2022. No stay was obtained during the pendency of appeal. It shows that the applicant not genuinely preferred and pursued the appeal. The applicant filed this application for exclusion and not for extension. The extension and exclusion

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are not synonymous. The exclusion can be granted only for certain events and Acts having legal sanction. The period required to be excluded, only for the reasons covered under Section 12 to 15 of the Limitation Act 1963 or covered under any other Act. The exclusion period cannot be granted merely because it is asked. The extension keeps the acts carried out and give time to continue the act to complete. The exclusion can be granted only for immobilized period. For extension sufficient and satisfactory reason is enough, but for exclusion it must be proved that functioning was forbidden.

13. The reason stated in the application for exclusion is not covered under the Limitation Act, 1963 or under any other Act. The reason stated in the application is not sufficient and satisfactory to extend the time. The manner in which the applicant conducted the appeal shows that the appeal was preferred only to gain time and to evade to comply the payment conditions of the approved plan.

14. On the applicant side given an assurance, in the event of allowing this application, the applicant is ready to pay the amount within a month time. Here we have to notice that the applicant has not paid any amount as ordered to pay a sum of Rs. 20,22,67,835/- in I.A.No.276/CB/2020 in T.P. No.36/CB/2019, even after the dismissal of SLP by the Supreme Court of India and matter reached its finality. Further application I.A.No.363/CB/2023 in C.P. No.30/CB/ 2023 has been filed by the resolution professional of corporate debtor of M/s Maa Durga Commotrade Pvt. Ltd., against this applicant for direction directing her to return a sum of Rs.33 lakhs drawn from the Bank account of the corporate debtor after ordering CIRP. The proceedings referred supra are pending on the file of this Authority, after knowing all these facts, it is hard to accept such an assurance.

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15. On the applicant side argued that liquidation of corporate debtor should be a matter of last resort and every attempt should be made to revive the corporate debtor. The revival or resolution of corporate debtor must be within the parameter of the Act, the person who is already adjudged as carried on business to defrauds the creditors of the corporate debtor by competent authority and reached its finality, such a person cannot be allowed to take advantage of her own wrong, if her request is conceded then it amounts to give premium to the person who committed wrong and not complied the order of the court. It is surprise to note that the 1st respondent/Resolution professional support this application in one hand and in other hand he has filed and pursuing I.A. No.26/CB/2020 filed under Section 66 of IBC, 2016 for fraudulent transaction, alleging that the CD carried on business to defraud the creditors of this corporate debtor. The object of IBC is maximization of value of the corporate debtor in time bound manner. The contention of applicant counsel is that liquidation must be as last resort, but in this case all efforts already had taken to revive the CD in the ways and means guided under the Act and Regulations not worked out and CD now reached the stage of last resort.
16. In the circumstances in the absence of any sufficient and satisfactory reason shown by the applicant and because of the order passed against her in I.A. No. 276 of 2020 and for other attending reasons discussed above this application is **DISMISSED.**
17. The CIRP was ordered on 04.09.2019, already more than four years expired hence there is no other option except to order liquidation accordingly corporate debtor **M/s. Maa Durga Flour Mills Pvt. Ltd.** is ordered to be liquidated. This Authority in terms of Section 33(1)(a) of IBC, 2016 is inclined to order for liquidation. In the result, **M/s. Maa Durga Flour Mills Pvt. Ltd.,** corporate debtor is ordered to be liquidated.

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18. In view of the facts and circumstances and documents available on record, we pass the following order:

(i) The corporate debtor M/s Mas Durga Flour Mills Pvt. Ltd. shall be put into liquidation in terms of the provisions of Section 33(3) of the code r. w. Regulation made thereunder which shall be effective from the date of this order.

(ii) The Moratorium declared under Section 14 of the Code shall cease to have effect from the date of the order of liquidation.

(iii) According to Section 34(4)(b) of the Code and the letter dated 18.07.2023 of IBBI, we hereby appoint **Mr. Pradip Kumar Kar** with registration No. IBBI/IPA-001/IP-P-02544/2022-2023/14189, and Email pradipkukar@gmail.com and Mobile No. 9437156130 having office No. At-Gopalgaon, Po-Srikanthapur, PS-Town, Near Sabitri Girls High School, Baleshwar, Orissa ,756001 as liquidator of corporate debtor **M/s. Maa Durga Flour Mills Pvt Ltd.** The liquidator so appointed shall complete the liquidation process as per the provisions of the Code r. w. the Insolvency and Bankruptcy Board of India (Liquidator Process) Regulations, 2016.

(iv) All the powers of the Board of Directors, key managerial persons, and the partner of the corporate debtor, as the case may be, hereafter cease to exist. All these powers henceforth vest with the liquidator.

(v) The personnel of the corporate debtor are directed to extend all cooperation to the liquidator as required by him in managing the liquidation process of the corporate debtor.

(vi) The liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate

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assets as specified by IBBI and same shall be paid to the liquidator from the proceed of the liquidation estate under Section 53 of the Code.

(vii) Once the liquidation process is initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the corporate debtor. The liquidator has the liberty to institute a suit and other legal proceedings on behalf of the corporate debtor with the prior approval of this Adjudicating Authority, as provided in sub-section (5) of Section 33 of the Code.

(viii) This liquidation order shall be deemed to be notice of discharge to the officers , employees, and workmen of the corporate debtor except to the extent of the business of the corporate debtor continued during the liquidation process by the liquidator.

(ix) This Adjudicating Authority directs the liquidator to issue a public announcement stating that the corporate debtor is in liquidation. The liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the corporate debtor so that the authorities concerned are informed of the liquidation order timely. The liquidator will also provide a copy of this order to the trade unions/employees associations of the corporate debtor so that the workman/employees could also be informed of this liquidation order through their association.

(x) The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the corporate debtor, the resolution professional, and the

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liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities.

(xi) The present resolution professional is directed to hand over the relevant documents and control of the corporate debtor to the newly appointed liquidator forthwith.

19. Accordingly, IA 96/CB/2023 in TP 38/CTB/2019, CP (IB) No. 1289/KB/2018 is disposed of.

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Kaushalendra Kumar Singh
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed on this, the 28th day of February, 2024.

Kaushal P.S.