

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

**IA(IBC)/625(KB)2023
in
CP(IB)/1256(KB)2019**

Under section 12(2) of the Insolvency & Bankruptcy Code, 2016

In the matter of:

Mahavir Industrial Corporation

.... Operational Creditor

Versus

M/s. Hindustan Controls and Equipment Private Limited
(U51109WB2000PTC091319)

.... Corporate Debtor

And

In the matter of:

Mr. Subodh Kumar Agrawal,

Resolution Professional of M/s. Hindustan Controls and Equipment Private Limited

... Applicant

Order reserved on: 26/04/2023

Order pronounced on: 26/06/2023

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through hybrid mode):

For RP

:

Mr. Arijit Basu, Adv.
Mr. Sarathi Dasgupta, Adv.

For R-1 in IA/782/2022

:

Mr. Avijit Ghoshal, Adv.

For R-4 in IA/782/2022 : Ms. Nilanjana Addya, Adv.
Ms. B. Ghosh, Adv.
Ms. R. Seal, Adv.

For R-5 : Mr. K. Chowdhury, Adv.
Mr. B. K. Dey, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. This application has been filed u/s. 12(2) of the Insolvency and Bankruptcy Code, 2016, (in short “**IBC, 2016**”) by the Resolution Professional (in short “**RP**”) of M/s. Hindustan Controls and Equipment Private Limited, Corporate Debtor, praying for further extension of CIRP period by 60 days from the date of passing of the order. This application is supported by an affidavit¹ duly affirmed by the RP
3. This Adjudicating Authority on a petition filed u/s. 9 of IBC, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mahavir Industrial Corporation, Operational Creditor *vide* order² dated 05/07/2022 in CP(IB)/1256(KB)2019 had ordered initiation of CIRP against M/s. Hindustan Controls and Equipment Private Limited appointing Mr. Subodh Kumar Agrawal as the Interim Resolution Professional.
4. It is stated in the application that Public Announcement was made on 07/07/2022 in “*Financial Express*” (English) and “*Aajkal*” (Bengali) inviting claims from creditors of the Corporate Debtor and CoC was duly formed on 22/07/2022 with sole member Punjab National Bank. CoC at its first meeting held on 29/07/2022, which was adjourned to 30/07/2022, had approved the appointment of IRP as RP with 100% voting share.

¹ At pages 22 to 24 of the application

² Annexure A at pages 25 to 43 of the application

5. It is also stated in the application that with the approval of CoC, Form G was published on 15/09/2022 in “*Financial Express*” (English) and “*Aajkal*” (Bengali) inviting Expression of Interest (in short “**EoI**”) from prospective resolution applicants. The last date of submission of EoI was 03/10/2022.
6. It is further stated that the CoC at its 4th meeting held on 30/09/2022 had extended the last date of submission of EoI to 21/10/2022, since several prospective resolution applicants showed interest to submit EoI. Accordingly, revised Form G was published on 02/10/2022 in “*Financial Express*” (English), All India Edition and “*Aajkal*” (Bengali), Kolkata Edition on 07/10/2022 respectively. Since no EoI was received from any prospective resolution applicant within the stipulated time as mentioned in Form G, the CoC at its 5th meeting held on 25/10/2022 had recommended for liquidation of the Corporate Debtor u/s. 33(2) of the IBC 2016.
7. It is stated that in the meantime, one of the participants, Ms. Vineeta Singhania, had filed an application being IA(IBC)/1663(KB)2022 before this Adjudicating Authority praying for condonation of the delay of 60 days in submitting an EoI before the RP. The said application was allowed by the Adjudicating Authority vide order³ dated 22/12/2022 and the following orders were passed:
 - “16.considering the object of the IBC,2016 which is maximization of the value of the corporate debtor as also to revive the corporate debtor, we deem it fit that the matter be put before the CoC for taking the decision in the matter.”
 - “17. Let the EoI be submitted within one week and the matter be considered by the CoC yet again in view of the above.”
 - “18. Accordingly, the said delay of 60 days is hereby condoned and IA is accordingly allowed and disposed of.”
8. Since the 180 days CIRP period was going to expire on 31/12/2022, the CoC at its 6th meeting held on 28/12/2022 had granted approval for seeking extension of 90 days. Accordingly, RP had filed an application u/s. 12(2) of the IBC 2016 being IA(IBC)/74(KB)2023 seeking extension of 90 days beyond 180 days period. Vide

³ Annexure B at pages 44 to 46 of the application

order⁴ dated 03/02/2023 this Adjudicating Authority had granted extension of 90 days beyond 180 days, thereby the 270 days CIRP period has ended on 31/03/2023.

9. It is stated in the application by the RP that one resolution plan was received on 07/02/2023 from one of the Prospective Resolution Applicant (in short “PRA”), which was opened at the 7th CoC meeting held on 11/02/2023 in presence of the PRA and query was sent to the PRA seeking clarification. In response updated Resolution Plan was received from the said PRA on 06/03/2023 and the same was discussed, at the 8th and 9th CoC meetings held on 17/03/2023 and 23/03/2023 respectively, by the CoC with the PRA. At this time, it came to the knowledge of the applicant that two lands, in the name of the Corporate Debtor, was mortgaged with SIDBI (Financial Creditor) and after discussions at the 9th meeting⁵ of the CoC, CoC had decided to do the valuation of the said two lands and only thereafter the CoC will further negotiate the Resolution Plan with the PRA. Hence, the CoC at the said 9th CoC meeting has passed the following resolutions with 100% voting share:

“RESOLVED THAT CoC be and is hereby approve the extension the Corporate Insolvency Resolution Process time period of Hindustan Controls and Equipment Private Limited for further period of 60 days from the date of passing of the order of the Hon’ble NCLT, in CP No.1256/KB/2020 as per the second proviso of Section 12(3) of the IBC, 2016.”

“RESOLVED FURTHER THAT Mr. Subodh Kumar Agrawal, Resolution Professional is be and hereby authorized to file necessary application under Section 121 of the IBC, 2016 and other applicable Regulations with the Hon’ble NCLT Kolkata Bench.”

“Both Punjab National Bank and SIDBI voted in favour of the Resolution by way of Show of Hands and also signing of resolution and sending the same by whatsapp, the Resolution was passed with 100% value of votes.”

10. We have heard the Ld. Counsel for the RP, perused the application and the documents attached therewith.

⁴ Annexure C at pages 47 to 49 of the application

⁵ Annexure D at pages 50 to 57 of the application

11. *Vide* order dated 03/02/2023, this Adjudicating Authority had already granted an extension of 90 days. However, the Resolution Professional has not been able to complete the entire CIRP process within 270 days period.
12. 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.
13. 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.
14. Here, in this case, one prospective resolution applicant has submitted its resolution plan and the CoC at its 9th meeting has consented for taking 60 days' exclusion of time. 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.
15. Therefore, we exclude the time within which this IA(IBC)/625(KB)2023 was under judicial consideration from 01/04/2023 to this date, and further grant an exclusion of 60 days' time as prayed for in prayer (a) of the application, thereby CIRP period would come to an end on **25/08/2023**. We direct the Resolution Professional to **strictly adhere to this time frame and complete the CIRP within the given time as above.**
16. **IA(IBC)/625(KB)2023** shall stand disposed of in accordance with the above

directions.

17. List the Main C.P. on **28/07/2023**.
18. 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.
19. 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 26th day of June, 2023.

hb.