

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA**

**IA(IB) 496/KB/2021
in
CP (IB) No. 1724/KB/2018**

In the matter of

Indian Overseas Bank

...

Financial Creditor

Versus

R.D.Rubber Reclaim Limited

[CIN: L51109WB1948PLC017239] ...

Corporate Debtor

And

In the matter of

An application under section 60 (5) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of the National Company Law Tribunal Rules, 2016

And

In the matter of

Glix Securities Private Limited

...

Applicant

Versus

1. R.D. Rubber Reclaim Limited

Represented by Ms Mamta Binani

(Resolution Professional of R. D. Rubber Reclaim Limited)

2. Indian Overseas Bank

...

Respondents

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Harish Chander Suri

: Member (Technical)

Appearances (via videoconferencing):

For Applicant

: 1. Mr Ratnanko Banerjee, Sr Adv
2. Ms. Urmila Chakraborty, Adv
3. Mr. Kanishk Kejriwal, Adv
4. Ms. Shivangi Thard, Adv

For Respondent No.1/erstwhile RP

: 1. Ms. Mamta Binani in person

For Indian Overseas Bank

: 1. Mr. Ramesh C. Prusti, Adv
2. Mr. Balaram Pandit, Adv
3. Mr. Sukriti Dutta, Adv

Order reserved on: 17.05.2021

Order pronounced on: 14.06.2021

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This Court convened through video conference today.
2. **IA(IB) 496/KB/2020** is an application filed by Glix Securities Private Limited, the Successful Resolution Applicant of R.D.Rubber Reclaim Limited (*the Corporate Debtor*), *inter alia* praying for extension of timelines for implementation of the Resolution Plan.
3. Mr. Ratnanko Banerjee, learned Senior Counsel appearing on behalf of the Applicant, submits that:
 - a. The Corporate Debtor was sent into Corporate Insolvency Resolution Process (CIRP) *vide* order dated 25.01.2019 of this Adjudicating Authority. Ms. Mamta Binani was appointed as the Interim Resolution Professional and later confirmed as Resolution Professional (RP).
 - b. The Applicant submitted its final Resolution Plan on 04.11.2020, which was approved, in the fourteenth meeting of the Committee of Creditors (CoC) held on 06.11.2020.
 - c. The RP had then filed an application bearing IA (IB) No.1332/KB/2020 for approval of the aforesaid Resolution Plan which was reserved for orders on 23.03.2021.
 - d. On 17.04.2021, from a news article in *Prabhat Khabar*, a Hindi daily, the Applicant came to know that there had been a theft in factory premises of the Corporate Debtor situated at Plot No. 4, Medium Industrial Area, Phase 4, AIADA, Saraikella Kharsawan, Jharkhand-832 108. The Applicant wrote to the RP to confirm the veracity of the said newspaper article through email on 30.04.2021. The RP has not responded to the said mail. The Applicant later found out that the RP has filed the First Information Report (FIR) with the police authorities, however, the Applicant is unaware of the loss caused.

- e. The Applicant submits that any substantial loss to the parts and equipment lying at the Corporate Debtor's Jamshedpur factory premises will materially affect the Resolution Plan. The Applicant had submitted its bid and expressed its interest in running the Corporate Debtor as a going concern only upon ascertaining the assets and properties of the Corporate Debtor. The Applicant apprehends that the theft may affect the implementation of the Resolution Plan to an extent that the Corporate debtor cannot be restarted and the new management cannot commence at the factory premises without ascertaining the loss.
- f. The Applicant further submits that after the hearing dated 23.03.2021, there has been an outbreak of the second wave of the Covid-19 pandemic. The pandemic has completely crippled the business activities all over India including that of the Applicant.
- g. As per the Resolution Plan, the Applicant is required to make payment of ₹1,99,94,835/- (Rupees one crore ninety-nine lakh ninety-four thousand eight hundred and thirty-five only) within ten days and ₹1,80,74,195/- (Rupees one crore eighty lakh seventy-four thousand one hundred and ninety-five only) within 100 days of approval of the Resolution Plan.
- h. The Applicant submits that the Resolution plan was submitted on 04.11.2020. Since then, the circumstances have changed drastically due to the severity of the second wave of the Covid-19 pandemic. The wrath of the pandemic has changed the expectations and projections in respect of future economic activities.
- i. In these circumstances, the Applicant prays for an extension of sixty days for making the first two tranches as proposed in the Resolution Plan at page 53, Part IV, item Nos.7, 15 & 16 and the same be treated as amended as follows:

7.	Transfer of first tranche amounting to ₹1,99,94,840 (1,80,00,000 against equity and ₹19,94,480 against debt) in the designated bank account.	x+70 days
15.	Transfer of second tranche amounting to ₹1,80,75,000 in the designated bank account.	x+160 days
16.	Issue of fresh equity share capital to the extent of 18,07,500 equity shares @ ₹10 each aggregating to	x+160 days

	₹1,80,75,000 to the Resolution Applicant and necessary procedural compliances to be done.	
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- j. The Applicant submits that through an email dated 06.05.2021, the Applicant had requested the RP to take necessary steps with the CoC for obtaining an extension of the timelines provided in the Resolution Plan. However, the RP responded that neither the RP nor the CoC has any power to modify the Resolution Plan once it has been voted upon.
- k. The Applicant submits that direction be issued to the RP and the CoC to consider the present situation and allow the Resolution Applicant to implement the Plan with an extension of sixty days.
- l. The Applicant submits that no prejudice will be caused to any of the parties if the prayers are allowed. It would in fact enable the Applicant to implement the Resolution Plan without any delay.
4. Mr Ratnanko Banerji, learned Senior Counsel appearing for the Applicant, placed the following decisions for consideration, where the timelines given in the Resolution Plan were enlarged by the Adjudicating Authority after approval of the Resolution Plan:
- (a) Order dated 11.05.2020 of NCLT Chandigarh Bench in the matter of *FM Hammerle Textiles Limited*¹ granting exclusion of entire lockdown period from the compliances required to be made in terms of the order dated 13.03.2020 in CA No.893/2019 approving the resolution plan.
- (b) Hon'ble NCLAT's order dated 30.03.2020 in *suo motu* Company Appeal (AT) (Insolvency) No.01/2020 whereby the period of lockdown ordered by the Central Govt and State Govts including the period as may be extended either in whole or in part of the country where the registered office of the Corporate Debtor may be located, was excluded for the purpose of counting for resolution process under section 12 of the IBC,

¹ IA No.184 & 185/2020 in CP (IB) No.30/Chd/Pb/2017 dated 11.05.2020

in all cases where CIRP has been initiated and pending before any Bench of the NCLT or in appeal before the Appellate Tribunal.

(c) Notification No.IBBI/2019-20/GN/REG059 dated 29.03.2020 issued by the Insolvency & Bankruptcy Board of India (IBBI) inserting regulation 40C to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, excluding the period of lockdown imposed by the Central Govt in the wake of Covid-19 outbreak for the purposes of the timeline of for any activity that could not be completed due to such lockdown, in relation to the CIRP.

(d) Hon'ble Supreme Court's order dated 23.03.2020 in *suo motu* Writ Petition (Civil) No.3/2020 extending the period of limitation prescribed under general or special law whether condonable or not, with effect from 15.03.2020 till further orders.

5. We have heard the learned Senior Counsel appearing for the Applicant and perused the records.
6. In *Fincast Founders & Engineers Pvt Ltd (Consortium Resolution Applicant of Shaifali Rolls Ltd) v Rajat Mukherjee, RP of Shaifali Rolls Ltd & others*,² the NCLT Ahmedabad Bench had occasion to consider relaxation of timeframe for payment as well as for completion of the Resolution Plan process. After considering the lockdown imposed due to the Covid-19 first wave and the resultant detriment to business, the NCLT Ahmedabad Bench had, *vide* order dated 22.07.2020, allowed the same.
7. In *Kotak Mahindra Bank Ltd v AP Enterprises Pvt Ltd through Rajiv Khurana, RP & others*,³ the NCLAT considered a challenge to the order dated

² IA No.240/AHM/2020 in IA No.352/AHM/2019 in CP (IB) No.162/AHM/ 2018 dated 22.07.2020

³ Company Appeal (AT) (Insolvency) No.146/2021 dated 03.03.2021, arising out of the order dated 12.01.2021 passed by the Adjudicating Authority, Chandigarh Bench, in IA No.287/2020 and IA No.483/2020 in CP (IB) No.119/ChD/2018.

12.01.2021 passed by the NCLT Chandigarh Bench, whereby it had allowed exclusion of the period of lockdown, *i.e.*, 25.03.2020 to 31.07.2020 from the schedule of making payments under the approved Resolution Plan. The Appellant therein was the largest secured financial creditor, holding 84.35% voting share on the CoC. In that matter, the Hon'ble NCLAT held that once the resolution applicant takes over the corporate debtor, its supervision and control comes under the purview of the Monitoring Committee. The CoC becomes irrelevant. The Hon'ble NCLAT held that there is no infirmity in the impugned order for excluding the period of lockdown from the schedule of making payments under the approved Resolution Plan. The Appeal was dismissed.

8. The Applicant is the Successful Resolution Applicant in the CIRP of the Corporate Debtor. The Resolution Plan submitted by the Applicant was approved by the CoC on 06.11.2020 and it has passed muster of this Adjudicating Authority on 11.05.2021.
9. There is no specific provision in the Insolvency & Bankruptcy Code, 2016, that specifies what should be done in cases where a successful resolution applicant applies to the court for extension of timelines either on account of *force majeure* circumstances or otherwise. Further, once a resolution plan has been approved by the adjudicating authority, the Committee of Creditors (CoC) ceases to exist. Therefore, there is no way that the Adjudicating Authority can direct the CoC to consider the request. It is upto the Adjudicating Authority to find a way out in such circumstances, by invoking rule 15⁴ of the National Company Law Tribunal Rules, 2016.

⁴ **15. Power to extend time.**— The Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed.

10. After the Applicant submitted its Resolution Plan, the circumstances in the country have changed drastically. There has been a significant increase in Covid-19 cases in a second wave. The second surge of the pandemic has supervened in a major way, affecting lakhs of people. Multiple business and financial entities have suffered tremendously, and the resulting interruptions in cash flow and working capital cannot be gainsaid. Supply chains have been disrupted and the economy has also suffered. We are convinced that there is a *force majeure* circumstance necessitating our intervention in the best interests of the corporate debtor.
11. **We also specifically note the undertaking given by Mr Ratnanko Banerji, learned Senior Counsel appearing for the Applicant, upon specific instructions that the Applicant shall not take any advantage of the alleged theft that is stated to have taken place in the premises of the corporate debtor, and that the present application has been made only due to the second wave of the Covid-19 pandemic. The Applicant shall file the undertaking by way of an affidavit in the Registry within a period of fifteen days from today, and the order passed herein shall have effect only if this part of the order is complied with, failing which the consequences for violation of the approved Resolution Plan shall swiftly follow.**
12. **The Applicant shall be bound by this undertaking, and also by the terms of the approved Resolution Plan, save to the extent that relaxation of timelines as indicated below, and he shall not be permitted to wriggle out of his obligations under the approved Resolution Plan:-**

[where x = date of approval of Resolution Plan = 11.05.2021]

Clause	Payment schedule as per	Original schedule ⁵	Extension now being granted	Extended last date for payment
7.	Transfer of first tranche amounting to ₹1,99,94,840 (1,80,00,000 against	x + 10 days (i.e.,	x+70 days	20.07.2021

⁵ Approved Resolution Plan at page 53, Part IV, item Nos.7, 15 & 16.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

IA(IB) 496/KB/2021
In CP (IB) No. 1724/KB/2018

Clause	Payment schedule as per	Original schedule ⁵	Extension now being granted	Extended last date for payment
	<i>equity and ₹19,94,480 against debt) in the designated bank account.</i>	<i>on or before 21.05.2021)</i>		
15.	Transfer of second tranche amounting to ₹1,80,75,000 in the designated bank account.	x + 100 days (<i>i.e., on or before 19.08.2021)</i>	x+160 days	18.10.2021
16.	Issue of fresh equity share capital to the extent of 18,07,500 equity shares @ ₹10 each aggregating to ₹1,80,75,000 to the Resolution Applicant and necessary procedural compliances to be done.	x + 100 days (<i>i.e., on or before 19.08.2021)</i>	x+160 days	18.10.2021

13. **IA No.496/KB/2021** is, therefore, allowed with the above observations.
14. 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.
15. Urgent certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

14.06.2021

SR (LRA)