

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 3610 OF 2022

I.A. 1049 OF 2023

I.A. 4652 OF 2023

Under Section 60 (5) of Insolvency &
Bankruptcy Code, 2016

Mr. Dharit Kishorbhai Shah
Resolution Professional

...Applicant

In the matter of

C.P.(IB) No. 3568/MB/2019

Punjab National Bank

.... Financial Creditor

Vs.

Jai Laxmi Sugar Products (Nitali Private
Limited)

...Corporate Debtor

Order delivered on: 21/11/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant

:

Mr. Amir Arsiwala a/w Ms.
Geeta Lundwani, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 4562/2023 is filed by Sh. Dharit Kishorbhai Shah, the Resolution Professional (“Applicant”) of M/s Jailaxmi Sugar Products (Nitali) Pvt. Ltd. (“Corporate Debtor”), in the Corporate Insolvency Resolution Process (“CIRP”) under Section 12(2) of the Insolvency & Bankruptcy Code (“Code”) to seek extension in the CIRP period by further 103 days.
2. The CIRP in the matter of the Corporate Debtor commenced on 06.11.2019, an extension of 90 days i.e. upto 07.03.2021 was allowed by this Tribunal vide order dated 07.12.2020 passed in IA 1477/2020, and further period of 191 days on account of lockdown due to COVID-19 was excluded in terms of Order dated 7.12.2020 passed in IA 1804/2020. However, due to the time lost in the litigation between the period 02.03.2021 (NCLAT order) to 30.09.2022 (Receipt of Supreme Court order), the applicant was unable to effectively carry out the CIRP. Accordingly, the CIRP effectively recommenced from 1.10.2022 after taking into account the exclusion of time spent in the litigation before various courts. Accordingly, this Bench further allowed exclusion 578 days from the CIRP Period vide order dated 21.11.2022 passed in IA No. 3434 of 2022.
3. The COC in the 10th Coc meeting dated 19.10.22 unanimously resolved to seek an extension of the CIRP by further period 90 days, and an application bearing no IA 3610/2022 was filed on 25.11.2022 before this Tribunal, and the same is pending adjudication as on date.

4. The applicant further filed another application bearing IA no. 1049/2023 on 15.03.2023 seeking an extension of CIRP by further 90 days, and the same is also pending adjudication as on date.
5. The applicant in the 16th COC meeting held on dated 27.04.2023, put the Resolution Plans received from a few Prospective Resolution Applicants for e-voting. Pursuant to this CoC members requested the applicant to grant some time as the approval/verification of the Resolution Plans was pending from their higher authorities. Hence, on request, the voting lines were finally closed on 01.07.2023. The CoC with 96.86% voting rights approved the revised Resolution Plan submitted by 'Mr Anand Birdichand Balai'. The application for approval of the Resolution Plan in IA 3801/2023 was filed on 18.08.2023 and is pending before this Tribunal.
6. That it is prayed before us by the applicant that it would be in interest of the stakeholders the Corporate debtor be put back on its feet instead of being sent into liquidation, and the present case along with earlier IA 3610/2022 and IA 1049/2023 are fit for this Tribunal to extend the CIRP time beyond 330 days by exercising its powers enriched in Rule 11 and Rule 15 of NCLT Rules.
7. Accordingly, the applicant has filed these applications under Section 60(5) read with Regulation 40 of Insolvency And Bankruptcy Board of India(Insolvency Resolution Process For Corporate Person Regulations), 2016 and Rule 11 and Rule 15 of The NCLT Rules, 2016 to extend the CIRP period by 103 days, as well extension in terms of IA 3610/2022 and IA 1049/2023.

8. We have heard the Counsel and perused the material on record.

8.1. The Applicant has relied upon the decision in the case of *Ritu Rastogi RP of Benlon India Ltd Vs Riyal Packers [2020]* wherein, the Hon'ble NCLAT held 'that this is a fit case for exercising the jurisdiction by this Appellate Tribunal being an exceptional case to depart from the general rule of 330 days being outer limit prescribed under the law for completion of the CIRP inclusive of period of judicial intervention. We are also of the considered opinion that failure to exercise discretion in a matter of this nature would have serious implications imperilling the legitimate interests of all stakeholders and inevitable conclusion would be to push the Corporate Debtor into liquidation which has to be avoided at all costs.'

8.2. The applicant has also relied upon the judgement in the matter of *Mr. Ravi Shankar Deverakonda Vs Committee of Creditors of Meenakshi Energy Limited (2021)* wherein Hon'ble NCLAT held that the exercise of power by the Adjudicating Authority to extend the time period under section 12(3) of the Code in negation of statutory provision of the Code may be desirable in an exceptional/extraordinary Circumstances of a given case by exercising sound Judicial discretion with a view to find a suitable Resolution Plan to prevent an aberration of justice.'

8.3. We further find that the Hon'ble Apex Court in '*Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta &Ors. (Civil Appeal No. 8766- 67/2019)*'. held as follows:

:However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for

completion of the insolvency resolution process beyond 330 days, and that 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 and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation.”

8.4. We find that an Application IA 3801/2023 for approval of the Resolution Plan was filed on 18.08.2023, and the same is pending adjudication before this Tribunal, and hearing in that IA is in advanced stage. Accordingly, this Bench is of considered view that there exists exceptional circumstances to exercise its discretion in view of chance for revival of the

Corporate Debtor in terms of resolution process under the Code, which would bring back the Corporate Debtor to its own feet. Accordingly, we are of considered opinion that IA 3610/2022, IA 1049/2023 and IA 4562/2023 be allowed by further extending the CIRP period by 90 days in terms of IA 3610/2022; another period of 90 days in terms of IA 1049/2023 and another period of 103 days in terms of IA 4562/2023.

9. Accordingly, IA 4562/2023, IA 3610/2022 and IA 1049/2023 are disposed of as allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)