Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - I
*** *** ***

I.A. No. 973/MB/2020

(An Application under Section 12(2) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 40 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

Brijendra Kumar Mishra,
Resolution Professional of Lakeland Chemicals (India) Limited,
Office - Flat No. 202, Bhoj Bhawan, Plot No. 18D, Shivpuri,
Sion Trombay Road, Chembur (East), Mumbai – 400 071

… ***Applicant***

I.A. No. 1504/MB/2020

(An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

Brijendra Kumar Mishra,
Resolution Professional of Lakeland Chemicals (India) Limited,
Office - Flat No. 202, Bhoj Bhawan, Plot No. 18D, Shivpuri,
Sion Trombay Road, Chembur (East), Mumbai – 400 071

… ***Applicant***

I.A. No. 1306/MB/2020

(Application under Section 60 (2) & (5) of the Insolvency and Bankruptcy Code, 2016)

Vijay N. Athalye,
Managing Director (Suspended), Lakeland Chemicals (India) Ltd,
Registered office - Survey No. 63/6A, 6B, Khopoli,
Rasayani Road, Madap, Khalapur,
Raigad – 410 202

… ***Applicant***

Versus

1. B. K. Mishra,
Resolution Professional of Lakeland Chemicals (India) Ltd.

2. Committee of Creditors of Lakeland Chemicals (India) Ltd.
Represented by Bank of Baroda, having its office
at Modi Chambers, Opp. Royal Opera House,
Pandit Paluskar Chowk, Opera House, Mumbai – 400 004

… ***Respondents***

In the matter of:

C.P. (IB) No. 3141/MB/2018

Mahavir Interchem,
Through its Proprietor, Samir Kumbhani.

… ***Operational Creditor***

Versus

Lakeland Chemicals (India) Limited

… ***Corporate Debtor***

Order Dated: 23.03.2021

Coram:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)

Shri V. Nallasenapathy, Hon'ble Member (Technical)

Appearance:

For the Applicant(s) : Mr Umang Mehta, Advocate i/b Taurus Legal
(IA Nos. 973 of 2020 & IA 1504 of 2020)
Mr P. G. Sabnis, Advocate (IA No. 1306 of 2020)
For the Respondents(s) : Mr Umang Mehta, Advocate i/b Taurus Legal
(IA 1306/2020)

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

All these Applications concerning interwoven facts and related prayers have been taken together. They shall abide by the common order passed hereunder.

2. The factual backdrop that led to the present Applications may briefly be stated. The Company Petition No. 3141 of 2018, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code), was admitted by this Tribunal by order dated 23.09.2019, whereby *inter alia* one Mr. Rajeev Nandkishore Bhatia was appointed as the Interim Resolution Professional (IRP) and the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor commenced.

3. It is submitted that the IRP received the communication for his appointment only on 19.10.2019. In response to the public announcement on 22.10.2019 claims were received from the creditors and the Committee of Creditors (CoC) was formed.

4. The CoC in its meeting held on 13.01.2020 resolved to appoint the present Applicant, Mr. Brijendra Kumar Mishra, as the Resolution Professional (RP). The same was approved by this Tribunal by order dated 24.01.2020 in M.A. No. 267 of 2020. The RP submits that he received the communication for his appointment as RP on 03.02.2020 and accordingly he took the charge of affairs of the Corporate Debtor on 06.02.2020.

5. On 17.02.2020 the RP issued an advertisement in Form-G inviting Expression of Interest (EOI). The last date of submission of EOI was 04.03.2020 and the last date to submit the Resolution Plan was 18.04.2020. An extension for submission of EOI was published on 12.03.2020, fixing the last date as 27.03.2020. Consequently, last date for submission of Resolution Plan was revised as 11.05.2020. The CoC in its 5th meeting held on 16.03.2020 ratified such action.

6. The RP states that the CIRP of the Corporate Debtor having commenced on 23.09.2019 the period of 180 days in terms of Section 12(1) of the Code was supposed to expire on 21.03.2020.

7. That due to various factors the CIRP could not be completed within the period of 180 days. Therefore, the RP on approval of the CoC in its 5th meeting held on 16.03.2020, filed IA No. 973 of 2020 on 18.03.2020 under Section 12(2) of the Code for extension of the CIRP by a period of 90 days and further extension period of 26 days, towards the time consumed in receiving the communication of IRP's appointment, aggregating 116 days, in order to successfully complete the CIRP of the Corporate Debtor. However, due to the nationwide lockdown attributable to the Covid-19 outbreak the Application could not be proceeded.

8. Thereafter, in view of the exclusion of the lockdown period from the CIRP by virtue of Regulation 40C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 *vide* Notification dated 20th April, 2020 (effective from 29th of March, 2020) coupled with the Order dated March 30, 2020 of the Hon'ble NCLAT (in Suo Moto Company Appeal (AT) (Insolvency) No. 01 of 2020) and consequent upon the lockdown relaxation by the Government of Maharashtra, the RP commenced his duty with regard to CIRP. The RP submits that even in the present day Covid-19 circumstances and despite having limited resources he has been carrying out his duty to the best of his ability to bring about a successful resolution of the Corporate Debtor.

9. The RP submits that around 1st July, 2020, he received emails from six (6) parties to submit their EOI and thereafter received the Resolution Plans from the following Prospective Resolution Applicants (PRAs):

   i. Consortium of West Bengal Chemicals Limited and ESKAG Pharma Limited.
   ii. KLJ Resources Limited.
   iii. Dharam Satpal Limited (DS) Group.

On examination of the Resolution Plans the RP presented the same before the CoC in the 8th meeting on 02.09.2020, wherein it was unanimously decided by the CoC to invite revised Resolution Plans and further revised Resolution Plans with improved financial proposals. The same were presented by the RP to the CoC in the 9th meeting held on 11.09.2020.

10. The RP submits that, the process of evaluation, negotiation, subsequent modification and voting upon the Resolution Plans which could enable the resolution of the Corporate Debtor is under progress and yet to be concluded.

11. That he has lost substantial amount of time due to various factors *inter alia* late appointment of the RP, sheer volume of work for the purpose of keeping the Corporate Debtor as a going concern, publication of extended EOI and most importantly the nationwide lockdown due to Covid-19 outbreak, thus leading to lack of access to necessary resources for the purpose of conducting the CIRP of the Corporate Debtor in an efficacious manner. Therefore, CoC in its 9th meeting permitted the RP to seek exclusion of time. The RP accordingly filed IA No. 1504 of 2020 seeking exclusion of the lockdown period of at least 120 days from the CIRP period to enable the CoC to consider the Resolution Plans presented before them.

12. Meanwhile, the suspended Director and Promoter (said Promoter) of the Corporate Debtor preferred an Application (IA No. 1306 of 2020) under Section 60 of the Code, seeking an order allowing him an extension of time of 45 days to submit a Resolution Plan for the Corporate Debtor pursuant to the changes in the categorization of MSMEs (Micro, Small and Medium Enterprises) *vide* GoI Notification dated 1st June 2020 (said Notification) effective from 1st July, 2020 and also to direct the Respondents (RP & CoC) to extend the timeline for submitting the Resolution Plan.

13. It is submitted by the said Promoter that at the relevant time when an advertisement in Form-G was issued on 17.02.2020 inviting EOI to submit Resolution Plan for the Corporate Debtor, the said Promoter was not eligible to participate in the Resolution Process in view of the bar contained under Section 29A of the Code.

14. The definition of MSMEs underwent a change *vide* notification dated 1st June, 2020. As per the amendment in the definition of MSME under the Micro, Small and Medium Enterprises Development Act, 2006, the Corporate Debtor comes within the purview of the revised definition of "Medium Enterprises". Section 240A of the Code exempts MSMEs from application of clauses (c) and (h) of Section 29A which allows the promoters of MSMEs to bid for their own companies i.e., submit a Resolution Plan.

15. The said Promoter pursuant to the said Notification, being eligible to bid for the Corporate Debtor, sent an email on 03.08.2020 to the RP expressing his willingness to participate in the Resolution Process by submitting a Resolution Plan for the Corporate Debtor and also requested the RP to extend the submission of EOI by 2 months as the said Promoter did not have sufficient time to gather resources to prepare a Resolution Plan and also to make necessary arrangements for finances from external sources due to the ongoing pandemic situation and lockdown.

16. It is submitted that the RP by his email dated 17.08.2020 permitted the said Promoter to submit the Resolution Plan but insisted that the CIRP had to be completed within 330 days despite the Covid-19 related lockdowns. RP by email dated 19.08.2020 asked the said Promoter to submit the Resolution Plan by 26.08.2020. The Promoter replied by email dated 24.08.2020 and sought two weeks' time to submit basic skeleton of the Resolution Plan and 45 days to submit the detailed Plan, to which RP replied by email of even date reiterating

that the process had be to be completed within 330 days despite the lockdowns and that extension was not within his purview.

17. The said Promoter relies on the order of the Hon'ble NCLAT (supra) and the Notification dated 20th April, 2020 in support of his plea for exclusion of the lockdown period from the CIRP period of 330 days and consequent extension of the timeline in submitting the Resolution Plan.

18. It is submitted that he seeks an opportunity to submit a Resolution Plan. In case his Plan is approved by the CoC, it would be beneficial not only to the Company but also to other stakeholders like employees, customers and suppliers, in view of the fact that the promoters know the Company and its business for many years and that entry of an external party may cause disruption to the business. He apprehends that the Company might not attract any other Resolution Applicants which may lead to the liquidation of the Company.

19. The said Promoter submits that the Hon'ble Supreme Court in the decision of *Committee of Creditors of Essar Steels Limited Vs. Satish Kumar Gupta & Ors.: (MANU/SC/1577/2019 = (2019) SCC OnLine SC 1478)* has held that the Adjudicating Authority may extend the period of 330 days in exceptional circumstances. That there could be no dispute that the present situation is an exceptional circumstance and the fact that the said Promoter became entitled to participate in the Resolution Process only after 1st July, 2020.

20. RP in reply to IA No. 1306 of 2020 submits that the contentions of the said Promoter that he can avail the benefits of Section 240A of the Code are subject to approval of this Tribunal. Section 240A of the Code exempts MSMEs from the application of clauses (c) & (h) of Section 29A of the Code, which allows the suspended directors to bid for its own Company. However, the Corporate

Debtor was not a MSME at the time of commencement of CIRP. The Corporate Debtor fell within the ambit of MSMEs only in pursuance of the notification dated 1st June, 2020 effective from 1st July, 2020.

21. RP submits that the main objective of the amendment in MSME Act, was to revive business enterprises in India, working of which are heavily disrupted due to the persisting nationwide lockdown attributable to the Covid-19 pandemic. However, by virtue of the said amendment, there has been no clarity or any amendment to Section 240A of the Code on the issue *"as to whether the Corporate Debtor falling under the ambit of the MSME post the commencement of CIRP against the Corporate Debtor, would entitle its suspended directors to avail its benefits to submit a Resolution Plan"*. Thus, the aforesaid issue as to whether the suspended directors can put forth the Resolution Plan before the CoC for voting is still unclear, ambiguous and not yet settled by the Adjudicating Authority. Therefore, the Tribunal may clarify the aforesaid issue and in accordance therewith the RP would proceed with the CIRP of the Corporate Debtor.

22. RP further submits that, *vide* his email dated 05.08.2020, he questioned the eligibility of the said Promoter. Also, without admitting the eligibility of the said Promoter under Section 29A of the Code, RP in consonance of the decision of the CoC in 7th meeting held on 11.08.2020, gave an opportunity to the said Promoter to submit the Resolution Plan along with the documents to prove his eligibility, in order to enable the CoC to consider and vote upon all the possible plans on merits. In the said meeting it was very well clarified to the said Promoter, that necessary directions shall have be taken form this Tribunal on such a question of law.

23. In view of the developments, the RP and the suspended Promoter of the Corporate Debtor are before us respectively seeking the following reliefs:

IA No. 973/MB/2020:

A) *That this Hon'ble Tribunal be pleased to extend the period of corporate insolvency resolution process of the Corporate Debtor under Section 12 of the Insolvency and Bankruptcy Code, 2016, beyond 180 (One hundred and eighty) days by a period of 90 (ninety) days plus 26 days as reference in Para No. 9 of Application aggregating to 116 days with effect from March 21, 2020;*

B) *That this Hon'ble Tribunal be pleased to pass such other and further orders as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.*

IA No. 1504/MB/2020:

A) *That this Hon'ble Tribunal be pleased to list the Interlocutory Application bearing diary No. 2048 for urgent hearing along with the present Interlocutory Application and allow an extension of a period 116 days from the date of expiry of 180 days of the CIRP period of the CORPORATE Debtor i.e. from March 21, 2020 till July 14, 2020, as sought in said IA;*

B) *On allowance of prayer (a), this Hon'ble Tribunal be pleased to pass an Order to exclude a period of 120 days from th CIRP period of the Corporate Debtor to enable the members of the CoC to consider and vote for the Resolution Plan;*

C) *In the alternate to prayer clause (b), this Hon'ble Tribunal be pleased to exclude a period of 90 days being the minimum number of days required for the RP to complete the CIRP as more specifically explained above;*

D) That this Hon'ble Tribunal be pleased to pass such other and further orders as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.

IA No. 1306/MB/2020:

A) This Hon'ble Tribunal be pleased to pass an order holding that the lockdown period in Mumbai ought to be excluded from computation of CIRP period of Lakeland Chemicals (India) Ltd;

B) This Hon'ble Tribunal be pleased to direct the Respondent to extend by 45 days the timeline for submitting the Resolution Plan by the Applicant;

C) Pending the hearing and final disposal of this Application, this Hon'ble Court be pleased to stay further process of opening of bids from resolution applicants and proceedings pursuant thereto;

D) For any other reliefs and orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

24. The averments made in IA 973 of 2020 and IA 1504 of 2020 would indicate that the outbreak of the pandemic has adversely impacted the progress of the CIRP as it has been on trade and commerce in the world in general and in our country in particular. Taking into consideration the overall situation the Hon'ble Supreme Court and Hon'ble NCLAT have passed the following Orders:

- *The Hon'ble Apex Court on 23.03.2020 in Suo Moto Writ Petition (C) No. 3/2020 passed the following order.*
  "This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by

litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).
To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.
We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.
This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction."

- *The Hon'ble NCLAT on 30.03.2020 in Suo Moto Company Appeal (AT) (Insolvency) No. 01 of 2020 ordered as follows.*
  "(1) That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for 'Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where 'Corporate Insolvency Resolution Process' has been initiated and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal.
  (2) It is further ordered that any interim order/ stay order passed by this Appellate Tribunal in anyone or the other Appeal under Insolvency and Bankruptcy Code, 2016 shall continue till next date of hearing, which may be notified later."

In view of such statutory changes and orders of the Apex Court, it would accordingly be appropriate to extend the period of limitation and exclude the pandemic phase from the period of CIRP. Moreover, in view of the prospective resolution applications there is a fair possibility that the Corporate Debtor may go through a successful resolution. IA 973 of 2020 and IA 1504 of 2020, in our considered opinion can be allowed.

25. The Code underwent an amendment with effect from 06.06.2018 by Section 37 of the Act of 26 of 2018, wherein Section 240A was inserted. Sub-section (1) of Section 240A provided that clauses (c) & (h) of Section 29A of the Code shall not apply to the Resolution Applicant(s) in respect of CIRP of any Micro, Small or Medium enterprises. Clause (c) & (h) may profitably be quoted as under:

> *"**29A. Persons not eligible to be resolution applicant. –***
> *A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person —*
> *...*
> *(c) [at the time of submission of the resolution plan has an account,] or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) [or the guidelines of a financial sector regulator issued under any other law for the time being in force,] and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:*
> *Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to nonperforming asset accounts before submission of resolution plan:*

> *[Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.*
> *…*
> *(h) has executed [a guarantee] in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code 2 [and such guarantee has been invoked by the creditor and remains unpaid in full or part];*
> *…"*

26. As already indicated the CIRP period is being extended. Therefore, there would not be any impediment in giving the Applicant (erstwhile Promoter) an opportunity to take part in the Resolution Process of the Corporate Debtor.

27. The Union of India in Ministry of Micro, Small or Medium Enterprises (MSME) by a Notification No. S.O. 2119(E). dated 26.06.2020 notified certain criteria for classifying certain enterprises as Micro, Small or Medium enterprises. The Notification dated 26.06.2020 became effective from 01.07.2020. It *inter alia* provided that an enterprise may be classified as Micro, Small or Medium enterprise on the basis of the criteria as follows:

> *"**1. Classification of enterprises.-** An enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria, namely:--*
> *i. a micro enterprise, where the investment in plant and machinery or equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;*
> *ii. a small enterprise, where the investment in plant and machinery or equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees; and*
> *iii. a medium enterprise, where the investment in plant and machinery or equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees."*

28. It is not in dispute that the Corporate Debtor came within the definition of Medium Enterprise w.e.f 01.07.2020 by virtue of the relevant notification. Thus, the Applicant (in IA No. 1306 of 2020) as the promoter (suspended Director) of the Corporate Debtor becomes a promoter of a Medium Enterprise w.e.f. 01.07.2020. Admittedly, on 01.07.2020 the CIRP had not come to an end. The Notification dated 26.06.2020 became effective within the currency of the CIRP process. The expression *'at the time of submission of the resolution plan'* appearing in 'clause (c)' of section 29A of the Code came to be inserted w.e.f. 06.06.2018. The eligibility of a person for taking part in any process or activity within the Code has to be taken into consideration as per the timeline provided in the Code for such activity or participation. Clause (c) provides that the person may be ineligible or otherwise as on the 'date of submission of the resolution plan'. The CIRP in the instant case ordinarily expired on 21.03.2020. IA No. 973 of 2020 for extension (of 116 days) was filed on 18.03.2020. The Prospective Resolution Applicants submitted their Resolution Plans around 01.07.2020 by when the notification had become effective. The present Applicant thus had become eligible to put in a Resolution Plan on 01.07.2020. The CoC in its meeting on 02.09.2020 resolved to invite further revised resolution plans with improved financial proposals and the same were suggested by the RP to the CoC on 11.09.2020. The process of evaluation and voting upon the Resolution Plans is yet to be completed. The Applicant being promoter of the Corporate Debtor is aware and conscious on its strength and weaknesses. It would not be unreasonable to expect that he would better understand the working and operational environment of the Corporate Debtor. Considering the present stage of the CIRP and change in the law relating to MSMEs it would accordingly be appropriate to allow the Applicant to take part in the Resolution Process. It is our considered opinion that the Applicant was freed from the ineligibility prescribed under Clause (c) of Section 29A w.e.f.

01.07.2020, well within the period of CIRP and within the period when a person/entity could submit Resolution Plan to the CoC of the Corporate Debtor. Therefore, we believe that IA No. 1306 of 2020 deserves to be allowed. Keeping in view the conspectus of the facts and circumstances of the case at hand it would be appropriate to pass the following order. Hence ordered.

ORDER

IA No. 973 of 2020 and IA No. 1504 of 2020 be and the same are allowed. The CIRP period is extended by 90 days from today, this extension includes the extension and exclusion sought.

IA No. 1306 of 2020 be and the same is allowed on contest. The Applicant is permitted to submit a Resolution Plan in accordance with the law to the RP of the Corporate Debtor. He shall submit such Resolution Plan within 30 days from today. Failure to submit the Resolution Plan within this period shall debar him from seeking any extension of the period or from submitting a Resolution Plan at a future date. The CoC of the Corporate Debtor shall consider such Plan, if and when filed, with due despatch in accordance with law. There would however be no order as to costs.

Sd/-
V. Nallasenapathy
Member Technical

Sd/-
Janab Mohammed Ajmal
Member Judicial