

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
INTERLOCUTORY APPLICATION NO. 4372 OF 2023

IN

COMPANY PETITION (IB) NO. 4304 (MB) OF 2019

*Application u/s 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the
N.C.L.T. Rules, 2016.*

In the matter of:

PRANAV J. DAMANIA

...Applicant

In the matter between

SALIL SHASHANK KULKARNI

...Operational Creditor

v/s.

RUBIQUE TECHNOLOGIES INDIA

PRIVATE LIMITED

...Corporate Debtor

Order pronounced on 24.01.2024.

Coram:

Shri. Kuldip Kumar Kareer : Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearances (Hearing in physical mode)

For the Applicant: Counsel Mr. Aman Kacheria a/w Harshad R. Vyas.

ORDER

Per: Coram

1. This is an application filed by the Applicant, who is a Resolution Professional ('RP') of the Corporate Debtor, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IB Code') *inter-alia* seeking extension of the Corporate Insolvency Resolution Process ('CIRP') period and withdrawal of liquidation application for the purpose of considering a resolution plan proposed by an individual named Mr. Pravin Kumar Jain.
2. The averments made by the Applicant in his application and as argued by the Learned Counsel for the Applicant are briefly stated as under:
 - i. The Corporate Debtor was admitted into CIRP by this Hon'ble Tribunal vide Order dated October 07, 2020 u/s 9 of the IB Code and Mr. Ajay Gupta was appointed as Interim Resolution Professional ('IRP') of the Corporate Debtor.
 - ii. A Committee of Creditors ('CoC') of the Corporate Debtor was duly constituted comprising of Blacksoil Capital Private Limited ('BCPL'), the sole Financial Creditor of the Corporate Debtor. In the subsequently held CoC Meetings, the erstwhile IRP and CoC held discussions on the matter of inviting expressions of interest ('EoI') in Form G of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 from prospective resolution applications.

- iii. However, in the 06th CoC meeting held on April 5, 2021 (being the day on which the CIRP period ended), it was decided by the CoC to commence liquidation proceedings against the Corporate Debtor. In light of the aforesaid, the Applicant filed I.A. No. 1059/2021 on May 14, 2021 before this Tribunal u/s 33 & 34 of the IB Code praying for liquidation of the Corporate Debtor.
- iv. During the pendency of Liquidation Application before this Hon'ble Tribunal, the erstwhile IRP received a letter dated June 02, 2022 from an individual resolution applicant named Mr. Pravin Kumar Jain, who had expressed his interest in acquiring the Corporate Debtor as a going concern. Pursuant to the receipt of aforesaid letter, the erstwhile IRP informed BCPL of the resolution applicant's expression of interest. In turn, BCPL advised the Applicant herein to invite a proposed resolution plan from the resolution applicant.
- v. Therefore, a meeting was held between the erstwhile IRP and Resolution Applicant, wherein the Resolution Applicant was provided with information/documents to enable it to prepare a proposed resolution plan with respect to the Corporate Debtor. Vide Letter dated 08th June, 2022 addressed by the Resolution Applicant to the erstwhile IRP, the former submitted its proposed resolution plan. BCPL informed the erstwhile IRP that it was willing to consider, negotiate and deliberate upon the proposed resolution plan.
- vi. However, despite addressing several emails, the erstwhile IRP neither convened the meeting nor responded to the email. In the foregoing circumstances, BCPL filed an Interim Application No. 2470/2023 on June 09, 2023, *inter-alia*, praying for extension of CIRP period and appointment of the Applicant herein as the IRP of the Corporate Debtor.

Vide Order dated 31.07.2023, the Hon'ble Tribunal was pleased to partially allow the said application by appointment of the Applicant as IRP and dismissed all other prayers as not pressed.

- vii. Thereafter, upon the appointment of the Applicant as IRP, the Applicant received an email dated August 11, 2023 from the BCPL, the only CoC member, requesting to convene a meeting in furtherance of BCPL's request for withdrawing the liquidation application and extending CIRP period with a view to consider the proposed resolution plan by an individual resolution applicant. The Applicant submits that there is a possibility of revival of the Corporate Debtor in view of the proposed resolution plan and the willingness of CoC to deliberate upon it. However, the 180-day period from the insolvency commencement date ended on April 05, 2021 subsequent to which a liquidation application was filed. Despite BCPL's repeated requests as the sole member of CoC, the erstwhile IRP did not file an application for withdrawal of liquidation application and for extension of CIRP period.
- viii. In view of the aforesaid developments, the Applicant herein has filed this application before the Hon'ble Tribunal seeking appropriate directions for (a) dismissal of the Liquidation Application; (ii) revival/extension of the CIRP period by 90 days u/s 12 of the IB Code; and (iii) exclusion of the period commencing from April 05, 2021 to the date on which the Hon'ble Tribunal passes an order for revival of CIRP period. Hence this Application.

FINDINGS

3. We have heard the learned Counsel for the Applicant and perused the records.

4. This is an application filed by the Applicant, who is a Resolution Professional ('RP') of the Corporate Debtor, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IB Code') *inter-alia* seeking extension of the Corporate Insolvency Resolution Process ('CIRP') period and withdrawal of liquidation application for the purpose of considering a resolution plan proposed by an individual named Mr. Pravin Kumar Jain.

5. On perusal of records, we find that the statutory CIRP period of 180 days in respect of the Corporate Debtor came to an end on 05.04.2021. Therefore, the CoC in its 06th Meeting held as on that date had resolved to liquidate the Corporate Debtor. Accordingly, the erstwhile IRP Mr. Ajay Gupta filed an Interlocutory Application No. 1059/2021 u/s 33 of the IB Code for liquidation of Corporate Debtor. On 02nd June 2022, during the pendency of liquidation application, an individual resolution applicant named Mr. Pravin Kumar Jain has expressed his interest to the erstwhile IRP in acquiring the Corporate Debtor as a going concern. The CoC comprising of sole financial creditor Blacksoil Capital Private Limited ('BCPL') called upon the erstwhile IRP to convene a meeting for consideration of the proposed resolution plan, but the erstwhile IRP failed to convene a meeting. BCPL finally addressed an email dated May 30, 2023 to the erstwhile IRP, in exercise of its right under Regulation 18(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and requisitioning a CoC meeting within 48 hours to consider replacement of IRP/RP u/s 27 of the IB Code and extension of the CIRP period for the purpose of considering the proposed resolution plan for revival and rehabilitation of the Corporate Debtor.

6. However, the erstwhile IRP neither convened a meeting nor responded to the email dated 30.05.2023. Therefore, BCPL had an I.A. No. 2470/2023 on June 09, 2023, *inter-alia*, for replacement of the erstwhile IRP with the Applicant herein. The I.A came to be partly-allowed by this Tribunal vide Order dated 31.07.2023 with the directions to replace the erstwhile IRP with the Applicant herein and all other prayers were rejected as not pressed. After the appointment of the Applicant as IRP of the Corporate Debtor, the Applicant had received an email dated August 11, 2023 from the Advocates of BCPL requesting to convene a meeting for the purpose of the withdrawing the liquidation application and extension of CIRP period for the sake of considering the proposed resolution plan for revival and rehabilitation of the Corporate Debtor. It is in the backdrop of these facts, that the present application has been filed by the Applicant on 19.09.2023 for extension of CIRP period. Thus, there seems to be no delay on the part of the Applicant in approaching this Tribunal for extension of CIRP.

7. We observe that the object of IBC, 2016 is to maximize the value of assets for the benefit of stakeholders. The Hon'ble Supreme Court in the matter of Swiss Ribbons Pvt Ltd & Anr. v/s Union of India (2019 INSC 95) has observed at Para 11 as follows:

"11. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in

the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme – workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.”

8. The Hon’ble Supreme Court in —Essar Steel India Ltd. through Authorised Signatory v. Satish Kumar Gupta & Ors. (Civil Appeal No. 8766-67/2019) dated 15.11.2019” had observed at Para 79 of the Judgment as under:

*“The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. **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.” (Emphasis Supplied)

9. Keeping in view the law laid down in the above cited cases, it emerges that the primary object of the IB Code, 2016 is value maximization as well as revival/resolution of the financially stressed corporate debtors. Keeping that in mind, we are of the considered view that since one resolution plan has been received by the CoC during the pendency of liquidation application which the CoC intends to consider to save the Corporate Debtor from liquidation, it would be just and proper to give another chance which may help revive/resolve the Corporate Debtor. No doubt considerable time has already elapsed. However, in our considered view, despite that, a last-ditch effort can be afforded to the CoC keeping in view the overall interests of all the stakeholders involved. Even otherwise, as it has been held in *Essar Steel India Ltd v/s Satish Kumar Gupta’s case (supra)*, the time frames are directory and not mandatory in nature. As a result of the following, we allow the present application in following terms:

ORDER

- i. The Liquidation Application vide I.A. No. 1059/2021 is hereby dismissed as withdrawn with liberty to the CoC to consider the resolution plan submitted by Mr. Pravin Kumar Jain;
- ii. The period from April 05, 2021 to the date of this Order shall stand excluded from the CIRP period and the CIRP period of the Corporate Debtor shall stand extended by 60 days from the date of the Order;

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II,
MUMBAI BENCH

I.A. NO. 4372 OF 2023
IN
CP(IB) NO. 4304 (MB)/2019

- iii. Accordingly, the I.A No. 4372 of 2023 stands **allowed** and disposed of in aforesaid terms.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)