

IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

An Application Under section 60(5) of the Insolvency & Bankruptcy Code, 2016 Read with Rule 11 of NCLT Rules, 2016

In the matter of: State Bank of India	Financial Creditor
	Versus
Reform Ferro Cast Limited.	
In the matter of: Arun Kumar Gupta, Resolution Professional of Reform Fer	Corporate Debtor And ro Cast Limited
	Applicant
	Order pronounced on: 03.09.2024
Coram:	
Mrs. Bidisha Banerjee, Shri Balraj Joshi,	: Member (Judicial): Member (Technical)
Appearances (through hybrid mode):	
For RP	: Mr.Joy Saha, Sr. Adv. Ms.Urmila Chakraborty, Adv.

ORDER

Mr. Arun Gupta, CA

Per: Balraj Joshi, Member (Technical)

1. This Adjudicating Authority convened through hybrid mode.



IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

- 2. IA(IBC)/1274(KB)2024 is an application filed under section Under section 60(5) of the Insolvency & Bankruptcy Code, 2016 Read with Rule 11 of NCLT Rules, 2016 by the Resolution Professional ("RP") of Reform Ferro Cast Limited, the Corporate Debtor, praying for for the following reliefs:-
 - 1. Allow the present application;
 - 2. To grant leave to withdraw the liquidation application IA 1803/KB/2023 filed by the RP before the Adjudicating Authority;
 - 3. To grant exclusion of time from the CIRP timeline, from 12/10/2023 (date of expiry of CIRP process) to date of disposal of this exclusion application and then another 90 days required to complete the CIRP process,
 - 4. Issue such other necessary orders as may be deemed fit in the matter.

3. Submissions of the Applicant:

- 3.1 The Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor commenced by an order of this Adjudicating Authority on 21/11/2022¹ and the applicant was appointed as Interim Resolution Professional (IRP) of the Corporate Debtor. The IRP was subsequently appointed as the Resolution Professional (RP) by the order of this Adjudicating Authority on 21/01/2023.
- 3.2 The applicant has convened nine (09) meetings of the Committee of Creditors (CoC) till date. The RP had also appointed 2 sets of IBBI registered valuers to determine the liquidation value and fair value of the Corporate Debtor within the specified timeline to determine the fair value and liquidation value under Regulation 35.
- 3.3 In terms of Regulation 36A(1) of the Insolvency and Bankruptcy Board of India (
 Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP

-

¹ Annexure 2



IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

Regulations"), a public announcement in Form G, was issued on 16th January, 2023 in widely circulated newspapers in Financial Express (English) and Aajkal (Bengali) in West Bengal. The announcements were published within 60 days of commencement of CIRP as per the Regulations.

- 3.4 Pursuant to such publication of Form G, the applicant had received requests from interested parties and twenty (20) interested parties had finally submitted EOI documents within the stipulated time. The applicant then issued the final list of prospective resolution applicants on 25/02/2023 which included all the same 20 prospective resolution applicants. As per RFRP issued on 15/02/2023, the last date to submit resolution plan was 16/03/2023.
- 3.5 In the meantime, the Applicant had proposed on 13/03/2023 to the CoC to get a demarcation exercise conducted of the factory land in order to get clarity on the matter of ownership of the said land which was partly owned by the corporate debtor and partly by personal guarantor Mr. Basant Saha. The CoC agreed to the same.
- 3.6 Due to the issue of no demarcation of the land of the CD and the guarantor within the boundary wall of the factory, the applicant requested the CoC for approving conduct a survey of the land at the factory premises of Corporate Debtor. The CoC granted approval of the same. Pursuant to this, the applicant appointed Mr. Balkrishna Lal More to conduct a survey of the land of the CD at its factory premises at Naupara, Bagnan-II, Howrah, West Bengal. The final land survey report with drawing was submitted to the RP on 04/04/2023.
- 3.7 Considering the time required to be taken for this demarcation exercise, the applicant requested to CoC by an email on 13/03/2023 to approve an extension of 4 weeks to submit the resolution plan under Regulation 36B(6) of CIRP Regulations. The new date for submission of resolution plan was decided to be 14/04/2023. The CoC granted extension of time for submission of resolution plan from 16/03/2023 to 14/04/2023. The same was also conveyed to the prospective resolution applicants.
- 3.8 Out of the 20 prospective resolution applicants in the final list, the applicant had



IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

received resolution plans from only 4 resolution applicants before the stipulated deadline of 14/04/2023.

- 3.9 Since the CIRP period of 180 days was expiring on 20/05/2023 and given that, the Successful Resolution Applicant was yet to be determined, the Applicant with the consent of the CoC, sought for an extension of the CIRP period under Section 12 of the Code. This Adjudicating Authority granted an extension by 90 days to the CIRP period by an order² dated 17/05/2023 in IA(IBC)/KB/2023.
- 3.10 In the 6th CoC meeting held on 15/05/2023, the Consortium of M/s Clearwater Commodities P.Ltd. and M/s MFPL Commercial Pvt. Ltd. ("consortium") were declared as the H1 bidder. The signed copy of the final updated version was received on 10/08/2023 and sent to CoC for their consideration.
- 3.11 It is submitted that the CIRP period was expiring on 18/08/2023, and the resolution plan was yet to be voted upon, the Applicant, with the consent of the CoC, filed an exclusion application before this Adjudicating Authority praying for an exclusion of 8 weeks from the CIRP timeline. This Adjudicating Authority granted exclusion from 18/08/2023 to 12/10/2023 by an order³ dated 17/08/2023 in IA 1430/2023.
- 3.12 Since, the CIRP period of 270 days was expiring on 12/10/2023, the RP convened the 8th CoC meeting⁴ for voting on the resolution plan on 09/10/2023 wherein the RP presented salient features of the resolution plan from the H1 Bidders. However, SBI being the only secured financial creditor with a voting share of 99.935%, decided not to approve the resolution plan. The reason given by the SBI was that the financial proposal given by the RA is not agreeable to them and as a result, the CoC decided to liquidate the CD by the requisite majority.
- 3.13 As a result, RP filed an application being IA No. 1803/KB/2023 under section 33 of the Code. The said I.A. was earlier heard and reserved for orders on 07/11/2023.

³ Annexure 4

² Annexure 3

⁴ Annexure 5



IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

However, the Adjudicating Authority, by an order⁵ dated 24.04.2024, had put back on board the same.

- 3.14 In the meanwhile, a proposal was received by the RP by an email dated 12/06/2024 from M/s SSM Ispat Ltd. (being a prospective resolution applicant who had not submitted a resolution plan earlier) offering to submit a resolution plan now. The PRA had not submitted a plan earlier as there was no clarity on how the land of the CD and the guarantor overlapping and situated within the boundary wall of the factory will be dealt with. After having clarity and further discussion with SBI, they are now willing to submit a resolution plan in the matter. (Annexure-7).
- 3.15 In the 9th CoC meeting⁶, SBI discussed in detail the proposal submitted by M/s SSM Ispat Ltd. and were willing to consider their offer. The existing RA being Consortium of M/s Clearwater Commodities Ltd. and M/s MFPL Commercial P Ltd. had also showed their willingness and requested the CoC to consider their resolution plan submitted earlier.
- 3.16 After discussion, in the 9th CoC meeting held on 18/06/2024, the CoC advised the RP to immediately take steps to seek leave from the Adjudicating Authority to withdraw the liquidation application being IA 1803/KB/2023, seek exclusion of time exhausted due to pendency of the liquidation application and thereafter to plan for publishing a Form G inviting EOI from prospective applicants. The RP was instructed to execute the whole process starting from publishing a Form G to approval of a resolution plan by the CoC in the shortest possible time, while complying with the Code and CIRP Regulations.
- 3.17 That upon decision taken to issue another Form- G inviting EOI and as approved by the CoC in the 9th CoC meeting with 99.935% majority voting share, the RP has filed the instant application for seeking exclusion of time from the CIRP period.
- 3.18 The CIRP period of the CD had ended on 12/10/2003 (after extension of 90 days and

⁵ Annecure 6

⁶ Annexure 1



IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

exclusion of 8 weeks). Hence, as decided in the 9th CoC meeting, the Applicant has sought for an exclusion of time period from 12/10/2023 (date of expiry of CIRP process) to date of disposal of this exclusion application and then another 90 days required to complete the CIRP process and accordingly, praying for withdrawal of the liquidation application.

4. Analysis and Findings:

- 4.1 Heard the Ld. Counsel on behalf of the Applicant and perused the record.
- 4.2 Upon perusal of the application and the relevant documents, the following timeline emerges:

DATE	EVENT
21.11.2022	CIRP commenced
16.01.2023	Form G published
05.02.2023	Last date for submission of EOI- 20 parties submitted
	EOI by this date
15.02.2023	RFRP issued
13.03.2023	CoC agreed to conduct a land survey for the factory land
	and to the extension of the date for submission of
	resolution plan by 4 weeks
16.03.2023	The initially decided last date to submit Resolution Plan-
	which was later extended
04.04.2023	The land survey report was submitted to the RP
14.04.2023	The revised last date of submission of resolution plan –
	04 plans were received by this date.
15.05.2023	The H1 Bidder was declared
20.05.2023	The date on which the 180 day CIRP period was to end-
	the same was extended by 90 days vide order dated
	17.05.2023
10.08.2023	Updated version of the Resolution plan of the H1 Bidder
	was received by RP
17.08.2023	Exclusion of the period from 18.08.2023 to 12.10.2023
	was granted by the Adjudicating Authority
09.10.2023	The resolution plan of the H1 bidder was rejected and
	the CoC decided to liquidate the Corporate Debtor. The
	RP was directed to file the liquidation application before
	this Adjudicating Authority
12.10.2023	Date of expiry of 270 days of the CIRP
07.11.2023	The Adjudicating Authority reserved the liquidation
	application i.e IA 1803/KB/2023 for orders
24.04.2024	IA 1803/KB/2023 was put back on board due to



IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

	pendency of an IA under section 19(2)
12.06.2024	A proposal from M/S. SSM Ispat Ltd. was received by the RP
18.06.2024	COC decided to withdraw the liquidation application and for publishing fresh EOI

- 4.3 In light of the aforesaid timeline, the following two issues requiring adjudication emerge before us:
 - a. Whether the CoC can withdraw a liquidation application filed before the Adjudicating Authority in order to consider a resolution plan; and
 - b. Whether fresh resolution plan should be allowed to be submitted after the expiry of 270 days period prescribed under the Code.
- 4.4 In order to decide on the first issue, we refer to the decision of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of **Anil Kumar**, **Suspended Director**, **SK Elite Industries India Ltd. Vs. Jayesh Sanghrajaka**, **RP**, **SK Elite Industries India Ltd.**⁷ wherein the Appellate Tribunal, while upholding the decision of the Adjudicating Authority in allowing the withdrawal of the liquidation application filed before it in order to consider and approve a resolution plan, has held as follows:
 - "33. When we come to the facts of the present case, it is relevant to notice that after offer of a resolution plan was received from Respondent No.3, the said factum was brought to the notice of the CoC in its 16th CoC meeting. In the 17th CoC meeting, CoC deliberated on how to proceed further. In the 18th and 19th CoC meetings, the details of the resolution plan were deliberated before sending to the Adjudicating Authority for approval. It has already been noticed that adequate opportunity was accorded to the Appellant and the other PRAs. Thus CoC by its actions did not cause undue gain

 $^{^7}$ Company Appeal (AT)(Insolvency) No. 513 of 2023 & IA No.1666 of 2023 with Company Appeal (AT)(Insolvency) No. 753 of 2023; Decided on 03-Aug-23



IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

or advantage to any party. There has been no suppression of material facts by the Resolution Professional in informing the CoC or the Adjudicating Authority on the proposal received from Respondent No.3 as PRA. Further, the CoC has approved all his actions including seeking the prior permission of the Adjudicating Authority. We also notice that the CoC while reviewing its earlier liquidation decision, had assigned good reasons for revisiting their earlier decision and this was accepted by the Adjudicating Authority in the first impugned order. Thereafter the CoC had duly considered and accepted the Resolution Plan for placing before the Adjudicating Authority and this was approved by the Adjudicating Authority vide the second impugned order.

- 34. When the CoC has approved a Resolution Plan by 100% voting share after considering its feasibility and viability, such decision of CoC is a commercial decision. There can be no fetters on the commercial wisdom of the CoC. It is settled law that commercial wisdom of CoC in approving the Resolution Plan is not to be interfered in the exercise of jurisdiction of judicial review either by the Adjudicating Authority or by this Tribunal in the exercise of its appellate powers. We are of the view that the Adjudicating Authority did not commit any error and therefore concur in the second impugned order of the Adjudicating Authority approving the resolution plan."
- 4.5 Further, we would like to refer to the decision of the Hon'ble Supreme Court in the matter of *Swiss Ribbons Pvt Ltd & Anr. v/s Union of India*⁸ wherein the Apex Court has observed as follows:
 - "11. As is discernible, the Preamble gives an insight into what is

-

^{8 2019} INSC 95



IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

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."

4.6 It is clear from the aforesaid decision that liquidation is to be opted only in two scenarios i.e no resolution plan or the resolution plans submitted are not up to the mark. In the instant matter, since a viable resolution plan has come into the picture, albeit after expiry of the prescribed period of 270 days, it will be in the interest of all



IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

the stakeholders that the same be considered and the liquidation application now be a hindrance in the revival of the Corporate Debtor.

4.7 With regard to the second issue, we find it pertinent to refer to the decision of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs Satish Kumar Gupta and Ors.*⁹. The relevant portions of the said judgment are reproduced hereinafter:

"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

.

^{9 (2020) 8}SCC 531



IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

into liquidation."

- 4.8 Lastly we also place reliance on the decision of the Hon'ble NCLAT in *West Bengal Financial Corporation vs Bijoy Murmuria and Ors.*¹⁰, wherein the Appellate Tribunal had placed reliance on the Essar judgment of the Hon'ble Supreme Court and held as follows:
 - "22. The Hon'ble Supreme Court in the above case has held that it would be in the interest of all stakeholders that the Corporate Debtor will be back on its foot instead of being sent into liquidation...
 - 24. With the aforesaid now it is settled law that the time limit for completion of Insolvency Resolution Process provided in Section 12 of IBC is not mandatory."
- 4.9 In light of the aforesaid decisions, it is clear that not only can the CoC withdraw a liquidation application in case a viable resolution plan becomes available for consideration, but also that the time limit prescribed under section 12 of the Code will not come in the way of the CoC achieving the object of value maximisation of the Corporate Debtor.
- 4.10 It is noted that while the liquidation Application i.e I.A. 1803/KB/2023 was previously heard and reserved for orders on 07.11.2023, it was later noticed that an application under section 19(2) of the Code *i.e* I.A.(IBC) 72/KB/2023 was yet to be heard and disposed. Noting the possibility of the effect of the outcome of I.A.(IBC) 72/KB/2023 on I.A. 1803/KB/2023, the same was put back on board vide order dated 24.04.2024.
- 4.11 With regard to the aforesaid application under section 19(2) of the Code i.e I.A.(IBC) 72/KB/2023, it is noted that on 29.01.2024, the Adjudicating Authority had ordered that a fresh notice be issued to the Respondent No. 2 therein for appearance before this Adjudicating Authority on 06.03.2024.Despite service of the aforesaid notice to Respondent No. 2, he has repeatedly failed to appear before this Adjudicating Authority in the subsequent hearings on 06.03.2024 and 15.04.2024.

¹⁰ Company Appeal (AT) (Ins) No. 1012 of 2021



IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

As such, I.A.(IBC) 72/KB/2023 is still pending before this Adjudicating Authority.

- 4.12 Further, Clause 10 in the Minutes of the ^{9th} CoC Meeting¹¹ makes it clear that the delay in the submission of the proposal by M/s SSM Ispat Ltd. is attributable to the initial lack of clarity on how the land of the Corporate Debtor and the guarantor will be dealt with. It is also mentioned therein that upon detailed discussions with M/s SSM Ispat Limited regarding their proposal, SBI was willing to consider the offer as it provided a chance for resolution of the Corporate Debtor and value maximisation.
- 4.13 In this regard we would like to refer to *SK Elite Industries India Ltd (supra)* and thus need to be dealt with keeping in view the law laid down by the Appellate Tribunal. The decisions in *Swiss Ribbons* (Supra) and *Essar Steel* (supra) also have emphasised that priority have to be given to value maximisation of the Corporate Debtor as compared to recovery by way of liquidation.
- 4.14 Furthermore, no objectors have come forward to oppose the instant application . As such, we are satisfied that keeping in view the object of the Code and the interests of the stakeholders, the instant application deserves to be allowed.
- 4.15 Lastly, it is seen that the Applicant has sought for an extension of 90 days to complete the CIRP Process. However, as per section 12(3) of the Code, the CIRP has to be mandatorily completed within 330 days.
- 4.16 With regard to the term 'mandatorily' in section 12(3), it is noted that in *Essar Steel* (supra), the Apex Court has held as follows:

"Thus, while leaving the provision otherwise intact, we strike down the word "mandatorily" as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that

¹¹ Page 31 of Application



IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

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." (Para 79)

4.17 Further, the Hon'ble NCLAT in *Mr.Ravi Sankar Deverakonda Vs. Committee of Creditors of Meenakshi Energy Limited*¹² has also held as follows:

"15. Bearing in mind the word 'mandatorily' found in Section 12(3) of

12



IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

the 'Insolvency & Bankruptcy Code, 2016' was struck down by the Hon'ble Supreme Court in the matter of Committee of Creditors of Essar Steels India Pvt. Ltd. V Satish Gupta reported in (2020) 8 SCC at Pg.531, this 'Tribunal' comes to a resultant conclusion that ordinarily the time taken pertaining to the Corporate Insolvency Resolution Process of the 'Corporate Debtor' must be completed within a period of 330 days from the date of commencement of Insolvency (including the extension and time consumed in legal proceedings). However, the exercise of power by the Adjudicating Authority' to extend the time period in negation of statutory provision of the Insolvency & Bankruptcy Code, 2016' 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."

- 4.18 In light of the aforesaid decisions, we are of the considered opinion that the extension of 90 days as sought by the Applicant in the present case deserves to be granted since the same will keep the Corporate Debtor from being forced into liquidation and enable the COC to approve a workable Resolution Plan.
- 5 In view of the foregoing discussion, we hereby pass the following orders:
 - i. The liquidation application IA 1803/KB/2023 is allowed to be withdrawn;
 - ii. The time period from 12.10.2023 to the date of passing of this order shall stand excluded from the CIRP timeline and the CIRP period shall stand enlarged by 90 days, as prayed for.
- 6 I.A. (IBC) 1274/KB/2024 is disposed of in accordance with the above directions.
- 7 **CP(IB)/393(KB)2021** is to come up for filing of Periodical Progress Report on **04.10.2024.**
- 8 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.



IA(IBC)/1274(KB)2024 in CP(IB)/393(KB)2021

9 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 3^{rd} day of September 2024.

PJ/SM(LRA)