

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI

COURT – IV

Item No.101

**IA/3845/ND/2023, IA/3844/ND/2023, IA/4218/ND/2023 IN
IB/204/ND/2021**

IN THE MATTER OF:

Union Bank Of India ... Applicant

Versus

M/s. Supertech Ltd. ... Respondent

Order under Section of IBC, 2016.

Order delivered on 01.09.2023

CORAM:

MR. MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,

HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

I.A./3844/2023 stands **partly allowed**.

I.A./3845/2023 stands **allowed**.

I.A./4218/2023 stands **infructuous**.

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAHSHANMUGA SUNDARAM)
MEMBER (J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

COURT-IV

I.A.(IBC)/3844/2023 & I.A.(IBC)/3845/2023
IN
C.P.(IB)No.204/ND/2021

IN THE MATTER OF:

Mr. Hitesh Goel
Resolution Professional of M/s. Supertech Limited
... Applicant

IN THE MATTER OF:

M/s. Union Bank of India
...Financial Creditor

Versus

M/s. Supertech Limited
...Corporate Debtor

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

Order Delivered on:01.09.2023

COMMON ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER (TECHNICAL)

I.A.(IBC)/3844/2023

The interlocutory application i.e. I.A.(IBC)/3844/2023 is filed on behalf of Mr. Hitesh Goel ('applicant'), Resolution Professional for the Project Eco—Vilage II of M/s. Supertech Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking the following prayer(s):-

a) Allow the present Application;

- b) Grant exclusion of 17(seventeen) days from June 20,2022 till July 7, 2022;
- c) Grant exclusion of 22 (twenty-two) days from January 27, 2023 to February 18, 2023 period utilized from CIRP period for passing of the Hon'ble Supreme Court's order dated May 11, 2023;
- d) Provided exclusion of 39(thirty-nine) days is granted in terms of prayer (b) and (c) hereinabove, grant extension of 60 days from August 13, 2023 till October 12, 2023 for completion of CIRP of Corporate Debtor;
- e) Grant authorization for re-issuance of Form-G as per the criteria of eligibility to be decided by CoC in terms with Section 25(2)(h) of IBC and invite fresh Resolutions Plans for EV-II;
- f) Pass any other orders as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the present case.

I.A.(IBC)/3845/2023

The interlocutory application i.e. I.A.(IBC)/3845/2023 is filed on behalf of Mr. Hitesh Goel ('applicant'), Resolution Professional for the Project Eco—Vilage II of M/s. Supertech Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking the following prayer(s):-

- a) Allow the present Application
- b) Grant exclusion of 137 days from February 19, 2023 till July 5, 2023, on account of time lost in various litigation pending before Hon 'ble Supreme Court;
- c) Pass any other orders as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the present case.

3. Briefly stated facts of the present case as mentioned in the instant application, which are just and necessary for adjudication, are that this Adjudicating Authority vide order dated 25.03.2022 had initiated Corporate Insolvency Resolution Process against M/s. Supertech Limited ('Corporate Debtor') on an application filed by M/s. Union Bank of India. It was submitted that the admission order dated 25.03.2022 was challenged by the

Suspended Director of the Corporate Debtor before the Hon'ble NCLAT in Company Appeal (AT)(Ins.) No. 406 of 2022.

4. The Applicant submitted that the Hon'ble Appellate Authority vide order dated 12.04.2022 had stayed the constitution of the Committee of Creditors ('CoC') of the Corporate Debtor which was subsequently modified vide order dated 10.06.2022 by allowing the applicant to constitute CoC for the project Eco Village II. Further, it is submitted that the for the other projects i.e., Non-Eco Vilage II, the Hon'ble Appellate Authority had directed the Applicant to keep these projects as going concern with the assistance of the ex-management/promoters.
5. The Applicant submitted that in compliance of the Hon'ble Appellate Authority order dated 10.06.2022, the Applicant had constituted the EV-II CoC and had convened the first meeting of the EV-II CoC on 13.07.2022, wherein the Applicant was duly appointed as the Resolution Professional of the Corporate Debtor.
6. It was submitted that while the Hon'ble Appellate Authority was seized of the matter, the Hon'ble Supreme Court by its order dated 27.01.2023 in Indiabulls Assets Reconstruction Company Limited v. Ram Kishor Arora and Ors. [Civil Appeal No.1925 of 2023] had passed the following directions:-

"Taking note of the submissions sought to be made in these matters, we are clearly of the view that as at present, the offers said to have been made by the prospective resolution applicants may be evaluated and may be placed for consideration before the NCLAT but beyond that process, we would request the NCLAT to keep the proceedings in abeyance and await further orders of this Court."
7. It was submitted that the Hon'ble Appellate Authority vide order dated 31.01.2023 had adjourned the Company Appeal (AT)(Ins.) No. 406 of 2022 sine die till further order of the Hon'ble Supreme Court of India. Furthermore, it was submitted that Civil Appeal No.1925 of 2023 was listed and heard by the Hon'ble Supreme Court on various occasions on February 27, 2023, March 3, 2023, March 13, 2023, March 17, 2023,

March 20, 2023, March 21, 2023, March 29,2023, April 25, 2023 and May 04,2023.

8. It was submitted that the Hon'ble Supreme Court while taking into the account the myriads of issues involved in the appeal challenging "project wise insolvency/reverse insolvency resolution process" had vide order dated 11.05.2023 in Civil Appeal No.1925 of 2023 observed as follows:-

10. In the light of the principles aforesaid, in our view, as at present, we should adopt the course which appears to carry lower risk of injustice, even if ultimately in the appeals, this Court may find otherwise or choose any other course. In that regard, the element of balance of convenience shall have its own significance. On one hand is the position that the Appellate Tribunal has adopted a particular course (which it had adopted in another matter too) while observing that the project-wise resolution may be started as a test to find out the success of such resolution. The result of the directions of the impugned order dated 10.06.2022 is that except Eco Village-II project, all other projects of the corporate debtor are to be kept as ongoing projects and the construction of all other projects is to be continued under the supervision of the IRP with the ex-management, its employees and workmen. Infusion of funds by the promoter in different projects is to be treated as interim finance, regarding which total account is to be maintained by IRP. If at the present stage, on the submissions of the appellants, CoC is ordered to be constituted for the corporate debtor as a whole in displacement of the directions of the Appellate Tribunal, it is likely to affect those ongoing projects and thereby cause immense hardship to the home buyers while throwing every project into a state of uncertainty. On the other hand, as indicated before us, the other projects are being continued by the IRP and efforts are being made for infusion of funds with the active assistance of the ex-management but without creating any additional right in the ex-management. In our view, greater inconvenience is likely to be caused by passing any interim order of constitution of CoC in relation to the corporate debtor as a whole; and may cause irreparable injury to the home buyers. In this view of the matter, we are not inclined to alter the directions in the order impugned as regards the projects other than Eco Village-II.

11. In relation to Eco Village-II project, since CoC was ordered to be constituted by the Appellate Tribunal in the impugned order dated 10.06.2022, we are not interfering with those directions too but, in our

view, any process beyond voting on the resolution plan should not be undertaken without specific orders of this Court.

12. *The other propositions, including that of constituting monitoring committee, are kept open, to be examined later, if necessary.*

13. For what has been discussed hereinabove, the impugned order dated 10.06.2022 is allowed to operate subject to the final orders to be passed in these appeals and subject, of course, to the modification in respect of Eco Village-II project that the process beyond voting on resolution plan shall await further orders of this Court.

14. *The interim direction dated 27.01.2023 by this Court in these matters is modified in the manner that the NCLAT may deal with the offers said to have been received and pass an appropriate order thereupon but, the entire process shall remain subject to the orders to be passed in these appeals.*

9. It was submitted that after the Hon'ble Supreme Court order dated 11.05.2023, the Applicant had filed an application i.e., I.A. 2387 of 2023 before the Hon'ble Appellate Authority seeking directions to revive the matter and to enable the Applicant to keep the Corporate Debtor as a going concern. The said application was listed on 30.05.2023 and 05.07.2023 before the Hon'ble Appellate Authority and the Hon'ble Appellate Authority vide order dated 05.07.2023 was please revive the matter.

10. It was submitted that during the CIRP from March 25, 2022 onwards, the Applicant has been able to continue the construction activities and give possession for fit outs for 498 units of Project EV-II, as on June 30, 2023. The Applicant submitted that despite several extensions granted to the Prospective Resolution Applicants for submitting the resolution plans for EV-II, the Prospective Resolution Applicants had failed to submit resolution plan to the Applicant. The CIRP period for EV-II stood expired on February 18, 2023. The Applicant had moved an agenda seeking extension of CIRP period by sixty (60 days) beyond 270 days in Tenth (10th) CoC meeting dated June 28, 2023, which came to be passed by 83 .59% voting vide results dated July 7, 2023.

11. It was submitted that the Applicant had filed the instant application in view of the ardour of the IBC to revive the ailing Corporate Debtor herein, assembled along with the interest of the members of the EV-II CoC of the Corporate Debtor and hereby prayed that the time from June 20, 2022, till July 7, 2022. (i.e. 17 days as referred in Order dated January 16, 2023) as well as period from January 27, 2023 to February 18, 2023 (i.e., period from passing of the Hon'ble Supreme Court's order in Supertech SC Case till CIRP expiry date) totalling to a period of 22 days be excluded from the CIRP Period, which would extend the 270 day period to August 13, 2023 and thereafter grant extension of 60 days period from August 13, 2023 to October 12, 2023 in terms of the EV-II CoC decision, for effective resolution of Corporate Debtor.

12. We have heard Ld. Counsel for the Applicant and perused the averments made in the application and the written submissions filed by the parties. The relevant documents annexed with the applications have been examined in detail. Since, the factual grounds and the nature of relief sought in both the Interlocutory Applications are identical, this Adjudicating Authority is dealing with both the application, in the same order.

13. Coming to the factual matrix of the present case, the CIRP against the Corporate Debtor was initiated on 25.03.2020 by this Adjudicating Authority, which was challenged by the Suspended Board of Directors before the Hon'ble Appellate Authority vide Company Appeal (AT)(Ins.) No. 406 of 2022. The Committee of Creditors of Eco-Village II was formed on 13.07.2022 after the Hon'ble Appellate Authority's order dated 10.06.2022. The Civil Appeal No. 1925 of 2023 arising out of the Hon'ble Appellate Authority's final judgment and order dated 10-06-2022 in CA(AT)(Ins) No.406/2022 was filed on 18.10.2022 and pending before the Hon'ble Supreme Court of India.

14. From the record, it is observed that an application i.e., I.A. No. 4822 of 2022 had been filed by the applicant seeking exclusion of 77 days utilised in litigation out of the total period of 180 days for completion of CIRP of the Corporate Debtor.. This Adjudicating Authority vide order dated 11.10.2022 had allowed the exclusion of 60 days i.e., 12.04.2022 to 10.06.2022 from the time when the matter was appealed before the Hon'ble NCLAT and Hon'ble NCLAT had put on hold on CoC constitution till that CoC was directed to be constituted. This Adjudicating Authority further observed that this Adjudicating Authority do not find any rationale in excluding the period from 20.06.2022 to 05.07.2022 when the application for the appointment of Authorized Representative of home buyers was under adjudication.
15. Further, it is observed that an application i.e., I.A. No. 5915 of 2022 had been filed on behalf of the Resolution Professional for the project Eco-Village II of the Corporate Debtor under Section 60(5) of Insolvency & Bankruptcy Code, 2016 seeking extension of 90 days and exclusion of 17 days for completion of CIRP of the Corporate Debtor. This Adjudicating Authority vide order dated 16.01.2023 after noting the submissions had granted the extension of 90 days from 08.12.2022 to till 18.02.2023 for completion of CIRP of the Corporate Debtor. Further, the relief prayed for exclusion of as 17 days from June 20,2022 till July 7, 2022 is not granted by this Adjudicating Authority.
16. The Hon'ble Supreme Court of India vide order dated 27.01.2023 in Civil Appeal No. 1925 of 2023 had directed that, *"the offers said to have been made by the prospective resolution applicants may be evaluated and may be placed for consideration before the NCLAT but beyond that process, we would request the NCLAT to keep the proceedings in abeyance and await further orders of this Court."*

17. The Hon'ble Supreme Court after hearing the Civil Appeal No. 1925 of 2023 on various occasion had vide order dated 11.05.2023 observed that, "the interim direction dated 27.01.2023 by this Court in these matters is modified in matter that the NCLAT may deal with the offers said to have been received and pas an appropriate order thereupon but, the entire process shall remain subject to the orders to be passed in these appeals."

18. The CoC in its Tenth Committee of Creditors meeting dated 28.06.2023 with 83.59% voting in favour of the resolution (Item No.4) approved seeking extension of Corporate Insolvency Resolution Process period by sixty (60 days) beyond 270 days. Further, the CoC in the same resolution had authorised the Resolution Professional to seek approval of the Adjudicating Authority for re-issuance of Form –G and invite Fresh Resolution Plans for project Eco-Village II. The relevant portion of the Resolution is extracted herein:-

Item No 4

RESOLVED THAT the Resolution Professional is hereby authorized to file an application before the Adjudicating Authority to seek an extension of corporate insolvency resolution process by Sixty (60) days beyond 270 days.

RESOLVED FURTHER THAT the RP is authorized to seek approval of the Adjudicating Authority for reissuance of Form G as per the criteria of eligibility to be decided by committee of creditors in terms with section 25(2)(h) of the Code and invite fresh resolution plans for Project Eco Village-II.

Note to Agenda: It is to be noted that an extension application will be filed by the RP post approval of the CoC, and the process of re-issuance of Form G would be subject to the approval being granted by the Hon'ble NCLT.

#	Yes	No	Abstain
Total (%)	83.59	16.41	0
Count	3	1	0

19. In the present case as discussed above, the CIRP is at nascent stage and the Applicant ('Resolution Professional') has to take forward and duly comply with the procedure as prescribed under the Code for the purpose of Resolution of the Corporate Debtor .

20. As regard to the Applicant's prayer (b) in I.A.(IBC)/3844/2023, seeking exclusion of 17(seventeen) days from June 20,2022 till July 7, 2022, on account of the time lost in disposal of I.A. No. 2959 of 2022 filled for appointment of Authorized Representative for the real-estate Allottees/homebuyers, this Adjudicating Authority is of the view that there is no cogent reason for the grant of such exclusion. It is further observed that while adjudicating the I.A. No. 5915 of 2022, I.A. No. 4822 of 2022 , the said prayer seeking exclusion of 17 days from June 20,2022 till July 7, 2022 was repeatedly rejected by this Adjudicating Authority. Accordingly, the prayer (b) in I.A.(IBC)/3844/2023 **is rejected.**

21. As regard to the Applicant's prayer (e) in I.A.(IBC)/3844/2023, seeking authorization for re-issuance of Form-G as per the criteria of eligibility to be decided by CoC in terms with Section 25(2)(h) of IBC and invite fresh Resolutions Plans for EV-II, this Adjudicating Authority is of the view that the decision of re-issuance of the Form-G is a commercial decision of CoC not requiring interference of this Adjudicating Authority. The CoC whilst exercising the powers vested in Code,2016 and exercising its collective commercial wisdom shall follow the process of re-issuance of a fresh FORM-G in order to invite more applicants and maximise the value of the assets of the Corporate Debtor. The Learned Counsel for the applicant has also not pressed the prayer (e) at the time of hearing the application. Accordingly, the prayer (e) in I.A.(IBC)/3844/2023 **is held to be infructuous.**

22. The Hon'ble NCLAT in **Quinn Logistics India Pvt. Ltd v.Mack Soft Tech Pvt. Ltd and ors., dated 08.05.2018 [CA(AT) (Insolvency) No. 185 of 2018]** had held as follows:-

“9. From the decisions aforesaid, it is clear that if an application is filed by the ‘Resolution Professional’ or the ‘Committee of Creditors’ or ‘any aggrieved person’ for justified reasons, it is always open to the Adjudicating Authority/Appellate Tribunal to ‘exclude certain period’ for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances

10. For example, for following good grounds and unforeseen circumstances, the intervening period can be excluded for counting of the total period of 270 days of resolution process:-

- i. If the corporate insolvency resolution process is stayed by 'a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court.
- ii. If no 'Resolution Professional' is functioning for one or other reason during the corporate insolvency resolution process, such as removal.
- iii. The period between the date of order of admission/moratorium is passed and the actual date on which the 'Resolution Professional' takes charge for completing the corporate insolvency resolution process.
- iv. On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the 'Resolution Professional' to complete the corporate insolvency resolution process.
- v. If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and corporate insolvency resolution process is restored.
- vi. Any other circumstances which justifies exclusion of certain period. However, after exclusion of the period, if further period is allowed the total number of days cannot exceed 270 days which is the maximum time limit prescribed under the Code."

23. 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 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.”

24. This Adjudicating Authority is of the view that the Corporate Debtor being a Real Estate Project involving legitimate interests of various stakeholders including the homebuyers/ allottees, the issue related to exclusion of period while computing the CIRP period had to be seen from the prism of realism and pragmatic approach should have been adopted by the Adjudicating Authority, considering the fact that the exclusion is sought on the ground that the litigations in respect to the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor was sub-judice before the Hon’ble Apex Court.

25. We also note that the present applications (i.e., I.A.(IBC)/3844/2023 & I.A. 3845/2023) for extension and exclusion were filed on 18.07.2023. For an effective conclusion of the resolution process, this Adjudicating Authority further allows the exclusion of the period from the date of filing of the present application till the date of pronouncement of the present order from the Corporate Insolvency Resolution Process period. The resolution professional is directed to take all steps to complete the resolution process within the further period allowed to him in the present order

26. After going through the record and giving consideration to the submissions made, this Adjudicating Authority orders as follows:-

- a) Exclusion of 22 (twenty-two) days from January 27, 2023 to February 18, 2023 being the period utilized from CIRP period for passing of the Hon’ble Supreme Court’s order dated May 11, 2023; **(prayer (c) of I.A(IBC)/3844/2023)**
- b) Exclusion of 137 days from February 19, 2023 till July 5, 2023, on account of time lost in various litigation pending before Hon'ble Supreme Court; **(prayer (b) of I.A(IBC)/3845/2023)**

c) Extension of 60 days from September 01, 2023 till October 31, 2023 for completion of CIRP of Corporate Debtor is hereby granted.

(prayer (d) of I.A(IBC)/3844/2023)

27. For the sake of clarity, the tabular presentation of the timeline of Corporate Insolvency Resolution Process after considering the exclusion and extension granted by this Adjudicating Authority in the preceding paragraph of this order is represented herein below:-

Particulars	Revised Last Date of CIRP
CIRP End as submitted by the Applicant	18.02.2023
Exclusion of 22 days Period from 27.01.2023 till 18.02.2023 [Pt. 26(a)]	12.03.2023
Exclusion of 137 days Period from 19.02.2023 till 5.07.2023 [Pt. 26(b)]	27.07.2023
Exclusion from the date of filing of the instant applications till the date of pronouncement of the present order. [Pt. 25]	01.09.2023
Extension of 60 days in the CIRP Period [Pt. 26(c)]	31.10.2023

In terms of the above direction, **I.A./3844/2023 stands partly allowed and I.A./3845/2023 stands allowed.**

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAHSHANMUGA SUNDARAM)
MEMBER (J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

COURT-IV

I.A.(IBC)/4218/2023
IN
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IN THE MATTER OF:

Mr. Hitesh Goel
Resolution Professional of M/s. Supertech Limited
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IN THE MATTER OF:

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DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

Order Delivered on:01.09.2023

ORDER

PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

The interlocutory application i.e. I.A.(IBC)/4218/2023 is filed on behalf of Mr. Hitesh Goel ('applicant'), Resolution Professional for the Project Eco—Vilage II of M/s. Supertech Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking the following prayer(s):-

a) Allow the present Application;

- b) Grant exclusion of of 159 days from January 27, 2023 till July 5, 2023, on account of time lost in various litigation pending before Hon'ble Supreme Court and Hon'ble NCLAT;
- c) Pass any other orders as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the present case.

2. This Adjudicating Authority vide order dated 01.09.2023 had pronounced order in the I.A./3844/20223 & I.A./3845/2023 wherein similar prayers sought by the Applicant are adjudicated and relevant exclusions and extension are granted by this Adjudicating Authority.

3. Accordingly, the present Interlocutory Application stands **infructuous**.

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAHSHANMUGA SUNDARAM)
MEMBER (J)**