

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA NO. 1948 OF 2024
IN
(IB)-907(ND)/2020

IN THE MATTER OF:

MELANGE SYSTEM PVT. LTD.

...OPERATIONAL CREDITOR

VERSUS

SMARTERING INFRATECH PVT. LTD.
(FORMERLY KNOWN AS M/S PALMOHAN ELECTRONICS PRIVATE LIMITED)

...CORPORATE DEBTOR

AND IN THE MATTER OF:

MR. SANJAY MEHRA
RESOLUTION PROFESSIONAL
SMARTERING INFRATECH PVT. LTD.

...APPLICANT

Order Delivered on: 16.05.2024

CORAM:

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

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Ms. Aditi Sharma, RP

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The present Interlocutory application i.e., I.A. No. 1948 of 2024 is filed on behalf of Mr. Sanjay Mehra ('applicant'), Resolution Professional of M/s Smartering Infratech Pvt. Ltd. (Formerly known as M/s Palmohan Electronics Private Limited) under Section 60(5) read with Section 12 of the Insolvency and Bankruptcy Code, 2016 ('Code') and read with Rule

11 of the National Company Law Tribunal Rules, 2016 ('Rules') seeking the following prayer(s):-

- a. Allow the present application.
- b. Pass an order granting an exclusion of 165 days from 09.10.2023 to 21.03.2024 from the total CIR period of the corporate debtor for completion of CIR process in the captioned matter based on the grounds elaborated in the present application.
- c. Pass an order granting an extension of 20 days w.e.f 21.03.2024 for completion of CIR process of the corporate debtor for completion of CIR process in the captioned matter based on the grounds elaborated in the present application.
- d. Pass such further and/or other orders or order which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. Briefly stated the facts of the present case as averred by the applicant are that Corporate Insolvency Resolution Process was initiated against M/s Smartering Infratech Pvt. Ltd. (Formerly known as M/s Palmohan Electronics Private Limited ('Corporate Debtor') vide this Hon'ble Adjudicating Authority order dated 29.09.2022 in C.P.(IB) No. 907/ND/2020, an application filed under Section 9 of the Code, 2016 and appointed Mr. Prassan Navin Kumar Sinha as Interim Resolution Professional who was subsequently replaced by the Applicant namely Mr. Sanjay Mehra as the Resolution Professional of the Corporate Debtor and confirmed by this Adjudicating Authority vide order dated 21.12.2022. Further, the applicant submitted that the applicant had discharged his duty most efficient and effectively, the IRP had made the public announcement as contemplated under the provisions of the Code and regulations framed therein and invited claims from all the creditors and had Constituted Committee of Creditors on 02.10.2022.
3. Further, FORM G was published on 22.01.2023 in Asian Age (English) and Amar Ujala (Hindi) for invitation of Expression of Interest from interested PRAs. Following the said publication, EOIs were received and provisional list of PRAs was issued on 16.02.2023 containing names of six eligible PRAs and one ineligible PRA. IM, Request for Resolution Plan and Evaluation Matrix were shared by the Applicant on 22.02.2023 with the eligible PRAs who had submitted the

confidentiality undertaking basis which the last date for submission of Resolution plan was fixed for 24.03.2023. Pursuant to the EOI, only one resolution plan was received by the eligible Resolution Applicant along with deposit of EMD vide email on 24.03.2023.

4. The applicant submits that the sole member of the CoC, Punjab and Sindh Bank, sought a revised resolution plan from the only PRA with a better financial proposal, which was considered in several meetings and finally put to vote in 11th meeting held on 08.08.2023 wherein sole member of CoC apprised the Applicant that the resolution plan has to be put for consideration before the higher authorities and needed extension of 15-20 days for them to vote on the plan. However, in 12th meeting of COC held on 16.08.2023 the CoC member again insisted on further extension to discuss and deliberate upon the resolution plan, and since the period of 330 days was expire on 25.08.2023 the Applicant preferred an application bearing I.A 4769/ND/2023 seeking extension by a period of 30 days, which stood allowed by this Hon'ble Tribunal vide order dated 11.09.2023.
5. Subsequently, the sole CoC member vide email dated 21.09.2023 requested the Applicant to seek an extension for a further period of 30 days beyond 360 days as the voting on plan was could not be completed in time on account of certain administrative issues. In the said light the applicant filed an application seeking extension of 30 days beyond 360 days basis the resolution passed in the 15th meeting of the CoC held on 22.09.2023, however on this occasion the Hon'ble Tribunal vide order dated 27.09.2023 only accommodated extension of 15 days in place of 30 days as sought, for the purpose of completion of CIR process, with further direction that in case of failure to achieve the said resolution within prescribed time, RP shall file an application for liquidation of corporate debtor.
6. Thus, in light of the directions passed by this Adjudicating Authority vide order dated 27.09.2023, the applicant in compliance filed an application u/s 33 of the Code seeking liquidation of the corporate debtor bearing I.A no. 5498 of 2023, since the plan could not be approved by 09.10.2023 being the last date of CIR period.
7. However, during the pendency of the liquidation application, the promoters/ex management of the Corporate Debtor preferred an appeal bearing CA (AT)(Ins) no. 1555 of 2023 before the Hon'ble NCLAT against the said order dated 27.09.2023, and the Hon'ble NCLAT vide order dated 12.12.2023 passed in the said appeal duly

granted a stay on the liquidation proceedings. Further on the hearing held on 29.02.2024 in the said appeal, upon the submissions made by the PRA that the resolution plan has already been filed and only an addendum has to be submitted to be considered by the COC for further improvement in the plan, the Hon'ble NCLAT observed that it would be just and expedient if some more time is granted for the purpose of completion of CIRP by giving last opportunity to the PRA to submit addendum to the plan by 04.03.2024 and COC to take into consideration the resolution plan by 21.03.2024.

8. Thereafter the PRA duly submitted the addendum to the plan vide email dated 04.03.2024 which upon discussion with COC was revised and submitted on 06.03.2024 which was placed before the COC. Accordingly, the resolution plan dated 15.06.2023 along with addendum dated 04.03.2024 was placed before the COC in the 16th meeting for voting, however the voting could not be completed within the stipulated time and the plan along with addendum was again placed before the COC in the 17th meeting held on 19.03.2024 to complete the voting, wherein the said plan finally stood approved by 100% votes by the sole COC member on 20.03.2024 within the timeline prescribed by Hon'ble NCLAT.
9. In the said light the present application is being preferred by the Applicant seeking exclusion of 165 days from 09.10.2023 (which stood as the last date of CIR period of the corporate debtor) till 21.03.2024 (being the time limit granted by Hon'ble NCLAT vide order dated 29.02.2024 for consideration of plan) and further extension of 20 days from 21.03.2024 for enabling the applicant to prefer an application seeking approval of the plan before this Adjudicating Authority in the captioned matter.
10. The Applicant in support of its contention relied upon the decision of the **Hon'ble Supreme Court in the matter of Committee of Creditors of Essar Steel India Limited Versus Satish Kumar Gupta & Ors. (2020) 8 SCC 531** has held that the Ld. Adjudicating Authority in given facts and circumstances of a case can extend the CIR Period beyond 330 days in the interest of the stakeholders and to save the Corporate Debtor from rigours of liquidation, relevant para of the judgment is quoted below:

"127.Both these judgments have been followed in Neeraj Kumar Sainy v. State of Uttar Pradesh (2017) 14 SCC 136 at paragraphs 29 and 32.

Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant's case within the requisite period for no fault of the litigant, a provision which mandatorily requires the CIRP to end by a certain date - without any exception thereto - may well be an excessive interference with a litigant's fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigant's fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, inasmuch as the time taken in legal proceedings is certainly an important factor which causes delay, and which has made previous statutory experiments fail as we have seen from Madras Petrochem (supra). 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 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.”

11. After going through the record and giving consideration to the submissions made, this Adjudicating Authority hereby orders as follows:-
 - a. Exclusion of 165 days from 09.10.2023 to 21.03.2024 from the CIR period of the corporate debtor is hereby granted.
 - b. Extension of 20 days from 21.03.2024 for enabling the applicant to prefer an application seeking approval of the plan before this Adjudicating Authority is hereby granted.
12. We also note that the present application (i.e., I.A.(IBC)/1948/2024) seeking extension and exclusion was filed on 07.04.2024. For an effective conclusion of the resolution process, this Adjudicating Authority further allows the exclusion of the period from the date of filing i.e. 07.04.2024 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.
13. Resultantly, the present **IA/1948/2024** in C.P.(IB) No. 907(ND)/2020 **stands allowed and disposed of.**

Sd/-

**DR. SANJEEV RANJAN
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**