

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA No.264/2024 IN CP (IB) No.92/ALD/2022

(An application under Section(s) 60(5) and 12 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

IN THE MATTER OF:

1. MOHD. AZAM KHAN

R/o 11, Khanjni Road, Arp White House,
Chhapia, Gorakhour,
Uttar Pradesh-273016

..... APPLICANT No.1

2. MR. OBAIDULLAH

Ghosipur, Badeqazipur, Gorakhpur,
Uttar Pradesh-273016

..... APPLICANT No.2

Versus

MR. RAJEEV RANJAN SINGH

RESOLUTION PROFESSIONAL OF
AZAM RUBBER PRODUCTS PVT. LTD.

...RESPONDENT

AND IN THE MATTER OF

OM PRAKASH

...OPERATIONAL CREDITOR

Versus

AZAM RUBBER PRODUCTS PVT. LTD.

.... CORPORATE DEBTOR

Order pronounced: 4th July,2024

Coram:

Mr. Praveen Gupta : Member (Judicial)
Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Gaurav Raj Grover, Adv : For the Applicant/PRA
Sh. Srijan Mehrotra, Adv. : For the Res/RP

ORDER

1. This application has been filed on 08.03.2024 under section 60(5) & 12 of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 by the Prospective Resolution Applicants Mohd. Azam Khan (hereinafter Applicant No.1) and Mr. Obaidullah (hereinafter Applicant No.2) seeking the following prayers:

- a. *Allow the present application & extending the period of CIRP and exclude the time taken to adjudicate the present application from the period of CIRP; and*
- b. *Allow the present application and exclude the period of duration taken by the COC to vote for the Resolution Plan, and the period taken in the process of filing previous time extension application from the period of CIRP; and*
- c. *Direct the Respondent i.e. Resolution Professional to conduct a meeting of the Committee of Creditors ('COC') at the earliest for voting on the revised Resolution Plan shared by the Applicants on 07.03.2024, or*

d. Pass any other or further orders as this Hon'ble Adjudicating Authority may deem fit in the interest of justice.

2. It is submitted by the Applicant that this Tribunal vide order dated 13.04.2023 admitted the Company Petition No.92/ALD/2022 filed by one Mr. Om Prakash Prop. of Khandelwal Packing Corporation against the Corporate Debtor M/s Azam Rubber Products Pvt. Ltd, and accordingly commenced the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor pursuant to which the Respondent was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor and as such the management of the Corporate Debtor was handed over to the Respondent. Pursuant to the CIRP, the Respondent got the FORM A published in the newspapers on 16.04.2023 and the last date of filing of the claim was set to be 27.04.2023. Thereafter, the Respondent received claims and accordingly Committee of creditor was constituted on 04.05.2023 with Punjab National Bank as its sole member.
3. The Respondent was confirmed as 'Resolution Professional' ('RP') in the first CoC meeting held on 15.05.2023 and thereafter, the Respondent published Form-G on 12.06.2023

calling for Expression of Interest ('EOI') on or before 27.06.2023. Accordingly, the Applicants individually submitted their EOI to the Respondent, and in furtherance of the same, the Respondent shared Information Memorandum and Request for Resolution Plan ('RFRP') with the Applicants on 12.07.2023, and stipulated the last date for submission of the Resolution Plan to be 11.08.2023. The Applicant No. 1 submitted a Resolution Plan on 11.08.2023 along with the EMD amount. However, despite submission of the Resolution plan along with EMD, instead of keeping it before the COC for its approval, a fresh FORM G was published on 18.08.2023 with 02.09.2023 being the last date of receiving EOI.

4. In the 6th COC meeting conducted on 03.10.2023, the CoC members considered the extension of 90 days in CIRP period beyond 180 days and accordingly 100 % of the members of the CoC voted in favour of the resolution pursuant to which the Respondent RP filed and application bearing IA No. 481/2023 under Section 12(2) Read with Section 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016 before this Tribunal seeking extension of CIRP by 90 Days after expiry of

180 days' period. In furtherance of the said application, this Tribunal vide its order dated 11.10.2023 granted extension of 90 days starting from 11.10.2023. Consequently, the Corporate Insolvency Resolution Process period was extended till 08.01.2024. Thereafter, the last date for submission of the Resolution Plan was extended by the COC from 9.10.2023 to 19.10.2023.

5. The Respondent on 04.11.2023 conducted 7th CoC meeting on 04.11.2023, wherein the Applicants were called to discuss the Resolution Plan submitted by both of the Prospective Resolution applicants. Thereafter, a revised resolution plan was invited from Applicant no.1 as the said Resolution Plan was not in accordance with the terms mentioned in the RFRP. In the 8th CoC meeting held on 22.11.2023, the Applicants were invited to discuss and further negotiate on the resolution plan, and despite the Applicant No. 1 giving the Resolution Plan as per RFRP, the Applicant was asked to resubmit the Resolution Plan by 01.12.2023 after which the Applicant No. 2 sent a revised Resolution Plan on 2.12.2023. In the 9th CoC meeting conducted on 12.12.2023, the Resolution Plan submitted by the Applicant No. 1 was not put

for voting. However, the Resolution Plan submitted by the Applicant No. 2 was put for e-voting on the 9th COC meeting held on 12.12.2023 with last date of e-voting to be 24.12.2023, which was further increased to 06.01.2024.

6. The e-voting conducted for agenda items in the 9th CoC meeting starting from 14.12.2023 continued till 15.01.2024 wherein resolution plan received from Applicant no. 2 was rejected by the CoC members.
7. The 10th CoC Meeting was conducted on 30.12.2023, wherein the CoC members considered the Extension of 60 days in CIRP period beyond 270 days. As such, the Respondent filed an application bearing IA No 58/2024 under Section 12(2) Read with Section 60(5) of Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of National Company Law Tribunal Rules, 2016 before this Bench seeking extension of Corporate Insolvency Resolution Period by 60 (Sixty) Days after expiry of 270 days period and vide order dated 19.01.2024, an extension of 60 days was granted starting from 09.01.2024. Consequently, the Corporate Insolvency Resolution Process period was extended till 08.03.2024.

8. The 11th CoC meeting was conducted on 18.01.2024 wherein the COC resolved to provide one more opportunity to all the PRAs to submit the resolution plan. The opportunity was provided on 18.01.2024 and the last date for submission of resolution plan was 25.01.2024. Further on 22.01.2024, the Applicants informed the Respondent about their willingness to submit the Resolution plan jointly. The request to submit joint Resolution Plan was accepted by the Respondent and the Applicants submitted their joint resolution plan on 25.01.2024 i.e. the last date of submission of resolution plans.
9. The 12th CoC meeting was conducted on 29.01.2024, wherein the CoC members were apprised about the resolution plans received and the resolution plan submitted by Mr. Anuj Goyal was opened before the CoC members. Thereafter, the Applicants were invited and the CoC members discussed the observation on the resolution plan. After which, the Applicants were asked to revise their Resolution Plan and file the same on or before 05.02.2024. Copy of the minutes of 12th COC meeting has been attached as Annexure 7. Accordingly, the revised resolution plan was shared by the

Applicants with the Respondent, which was discussed in the 13th CoC meeting conducted on 07.02.2024 and an observation was made by the Sole CoC member i.e. Punjab National Bank to revise the Resolution Plan once again. Thereafter, a revised plan was again shared as per the discussion. The 14th CoC meeting was thereafter conducted on 09.02.2024, where in the Resolution Plan submitted by the Applicants was discussed and put for e-voting.

10. Despite the voting period being till 19.02.2024, the same was extended till 07.03.2023. However, on 02.03.2024 the voting results of the e-voting was circulated through email with the members of Committee of Creditors wherein the resolution plan submitted by the resolution applicants was rejected and the liquidation of the corporate debtor was approved by the CoC members with 100% voting in favor of the Liquidation of the Corporate Debtor.
11. As the CIRP period was about to expire on 08.03.2024, the COC in its 15 COC meeting held on 04.03.2024 resolved to proceed with the liquidation of the CD. However, it is pertinent to note that as soon as the outcome of the voting was shared with the Applicants, the Applicants approached

the COC member and requested to inform them about their specific requirements in the Resolution Plan. After the detailed discussion, the Applicants on 07.03.2024 again share a revised Resolution Plan after discussing with the COC member.

12. A notice in this application was issued to the RP, who received it and sought a short accommodation of two days to address the argument.
13. We have heard the parties and perused the record.
14. This application has been filed by the Directors of the Ex-Management seeking extension of time for completion of the CIRP on the ground that a revised Resolution Plan has been filed and submitted by the Applicant before the CoC.
15. This Tribunal vide its order dated 13.04.2023 admitted the Company Petition IB No. 92/ALD/2022 and commenced the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor. After the constitution of CoC and appointment of the Respondent as the RP, the Respondent published Form-G calling for Expression of Interest ('EOI') on or before 27.06.2023. The last date for submission of the Resolution Plan was set to be 11.08.2023.

16. The Applicant No.1 submitted his resolution plan along with the EMD amount on 11.08.2023 but on the CoC meeting held on 04.11.2023, the Applicant No.1 was invited to submit a revised resolution plan by stating that the said Resolution Plan is not in accordance with the terms mentioned in the RFRP which was shared on 12.07.2023 with the Applicants. Thereafter, in 8th CoC meeting the Applicants were asked to resubmit the Resolution Plan by 01.12.2023, pursuant to which the Applicant no. 2 sent a revised Resolution Plan to the Committee of Creditors. While the Resolution plan submitted by Applicant no.2 was put for e-voting in the 9th CoC meeting held on 12.12.2023, the plan submitted by Applicant no.1 was not put for voting.
17. In the 11th CoC meeting, the CoC resolved to provide one more opportunity to all the PRAs to submit the Resolution Plan with the last date being 25.01.2024. Further, this Bench vide its order dated 19.01.2024 granted an extension of 60 days starting from 09.01.2024. The Applicants then submitted their joint resolution plan on the last day of submission of resolution, however, in the 12th CoC meeting, the Applicants were asked to revise their Resolution Plan and

file the same on or before 05.02.2024. The Applicants then resubmitted their revised plan however the sole CoC member i.e. Punjab National Bank made the observation to revise the Resolution Plan once again. On 02.03.2024 the resolution plan submitted by the resolution applicants was rejected and the liquidation of the Corporate Debtor was approved by the CoC members with 100% voting in favour of the Liquidation which was further resolved to be proceeded in the 15th CoC meeting. Applicants again shared a revised Resolution Plan. However, as the 330 days for the CIRP period was ending on 08.03.2024, no COC meeting was conducted and neither the Resolution Plan was kept for voting.

18. We are of the view that the Applicants were given ample opportunities to submit and resubmit their plans on multiple occasions and were duly presented for voting as well. This Tribunal also granted the requisite extensions in accordance with the Code and as discussed above the 330 days limit as provided in Section 12 of the Code was reached. It is pertinent to note that the Applicants herein have filed the present application in the capacity of Directors of the Ex-Management who in accordance with Section 12 of the Code

would not qualify to apply for extension of time for completion of the CIRP. Section 12(2) of the Code provides: -

Time-limit for completion of insolvency resolution process- *The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of ¹[sixty-six] per cent of the voting shares.*

The abovementioned provision clearly provides that it is the resolution professional who shall file an application to the Adjudicating Authority to extend the period of the CIRP beyond 180 days.

19. Moreover, the Hon'ble Supreme Court has categorically held that only under exceptional cases, the time can be extended by the Adjudicating Authority by exercising its discretion for a period beyond 330 days that too for 'short period'. Further, the Hon'ble NCLAT in the matter of **Vivek Raheja, Resolution Professional, in CA(AT)(Ins) No. 331 of 2021:**

"... 13. In reality, the act of extending the 'Insolvency Resolution' beyond the time limit under section 12(3) of the Code is against the underlying policy of the Code for ensuring timely resolution of 'Company Insolvency'. Undoubtedly, an extension of time for extension of time for 'CIRP' is a 'critical

arena'. However, the exercise of the power of extending the time limit by the 'Adjudicating Authority' in negation of the statutory provision of the Code may be desirable in an exceptional/extraordinary circumstance of a given case.

14. Be it noted, that 'speed' is the gist for the working of the 'Bankruptcy Code'. It cannot be gainsaid that the 'Corporate Insolvency Resolution' with approval of 'Plan of Resolution' is ultimately the exclusive domain of the 'Committee of Creditors'."

20. In view of our foregoing discussions, it is evident that the present application filed by the PRA for seeking extension in the CIRP is not maintainable, in view of the explicit provisions of Section 12 of the Code, the relevant part of which has already been reproduced above. It is the RP alone, who is entitled to move an application seeking such a prayer for extension in completion of CIRP.
21. Moreover, the Resolution Plan filed by the PRA has been considered by the CoC on a number of occasions and even after advising for revising the Plan, which though had been revised by the PRA, the CoC which comprises of the sole Financial Creditor namely Punjab National Bank did not find it viable.

22. Rather after consideration of the revised Plan submitted by the PRA one after the other, the CoC has recommended for initiation of the liquidation process as no Resolution Plan could be accepted and the requisite CIRP period of 330 days coming to an end. The RP has separately filed an application for initiation of the liquidation proceedings in terms of an IA (Liq.) No.01/2024, which has been separately considered by us, and the same has been allowed.
23. Therefore, considering the matter in its entirety, we are unable to accept the present application filed by the PRA seeking extension of time and completion of CIRP. We resultantly dismiss the present application.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Date: 4th July, 2024

Sarim Husain