

In the National Company Law Tribunal

Division Bench, (Court-II), Kolkata

IA (IB) No. 628/ (KB) /2024

In IA(IB) No. 1381/(KB) /2022

In CP(IB) No. 204/KB/2021

*Application under Section 60(5) of IBC, Code 2016 read with Rule 11 of
the National Company Law Tribunal Rules, 2016;*

In the Matter of:

Suasth Healthcare Foundation

.....Corporate Debtor

And In the Matter of:

Consortium of Nishkala Healthcare Pvt. Ltd. & Ujin Pharma Chem

...Applicant

Versus

**Implementation and Monitoring Committee of Suasth Healthcare
Foundation**

...Respondent

Date of Pronouncement of order: 18.04.2024

Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri D. Arvind : Member (Technical)

Counsel appeared physically / through video Conferencing

Mr. Rishabh Parikh, Adv.] Applicant in IA(I.B.C)/628(KB)2024
Ms. S Dubey, Adv.
Ms. K. Prasad, Adv.

Ms. Manju Bhuteria, Adv.] CoC in IA(I.B.C)/628(KB)2024
Mr. Pramit Chakraborty, Adv.
Mr. Arindam Mrinal Pal, Adv.
Mr. Adwitya Das, Adv.

Mr. Deep Roy, Adv.] For the Chairman of Monitoring Committee
Mr. Rahul Auddy, Adv.
Mr. DhavalSavla, Adv.

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Mr. Aditya Gooptu, Adv.

Mr. Shaunak Mitra, Adv.] For R-3,4,5,7,10 & 11
Mr. S. Ganguly, Adv.] in IA(I.B.C)/1025(KB)2022

Mr. Rishav Banerjee, Adv.] For the R-1 in IA(I.B.C)/1025(KB)2022
Ms. Shreya Choudhary, Adv.

Mr. Jishnu Chowdhury, Adv.] R-6,8&9 in IA(I.B.C)/1025(KB)2022
Mr. Rajarshi Banerjee, Adv.

O R D E R

Per D. Arvind, Member (Technical):

1. The Court convened through hybrid mode.
2. Ld. Counsel for the parties were heard at length.
3. This application has been preferred by the Consortium of Nishkala Healthcare Pvt. Ltd. & Ujin Pharma Chem (hereinafter referred to as Applicant / SRA) against Implementation and Monitoring Committee of Suasth Healthcare Foundation (Hereinafter referred to as the Respondent) seeking extension by another 30 working days of the Resolution Plan implementation period and direction upon the IMC not to forfeit INR 20 Crores deposited as performance security till the disposal of the present application by this Adjudicating Authority.

4. Brief Facts

- a. Suasth Healthcare Foundation (hereinafter referred to as the Corporate Debtor) was put to Corporate Insolvency Resolution Process (CIRP) by this Tribunal and upon approval of Resolution Plan by majority of CoC, this Tribunal vide 18.12.2023, an order in IA (IB) No. 1381(KB)2022 has approved the Resolution Plan and the following was the implementation schedule:

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“The Applicant, being the Successful Resolution Applicant, is accordingly approaching this Hon’ble Tribunal to pray for a short extension of the implementation period of the Resolution Plan. As per the Resolution Plan, the following was the implementation schedule:

Sr. No.	Event	Timeline
1.	<i>Approval of the Resolution Plan by Adjudicating Authority</i>	<i>T</i>
2.	<i>Formation and appointment of the Implementation and Monitoring Committee</i>	<i>T</i>
3.	<i>Infusion of funds by the SRA and making payments to the stakeholders and payment of CIRP Cost.</i>	<i>T+45 working days</i>
4.	<i>Capital Reduction and reconstitution of the board of directors of the Corporate Debtor</i>	<i>T+45 working days</i>

*A true copy of the approved Resolution Plan is annexed herewith and marked as **ANNEXURE A-3**”*

- b. The Resolution Plan value was for an amount of Rs. 180 Crores to be paid within 45 working days from the approval of the Resolution Plan by this Tribunal. Till the date of filing of this application, an amount of Rs. 20 Crores has been paid by SRA.

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- c. Since, SRA is unable to implement the Plan as per approved Resolution Plan, this Application has been filed seeking extension of time for another 30 working days and during the course of hearing extension was sought till 30th June, 2024.

5. Ld. Sr. Counsel for Applicant

- a. Ld. Counsel for the Applicant submits that the SRA had secured duly approved term sheet and principal letters from banks ensuring the availability of funds for Rs. 250 Crores for the Successful and timely implementation of the Resolution Plan.
- b. He submits that since it almost took two years between the submission of the Plan by the Applicant and this the Appeal of the Plan by this Tribunal, this Tribunal vide order dated 19.02.2024 had extended the time for implementation of the Resolution Plan till 31.03.2024 upon payment of Rs. 10 Crores, and the said amount of Rs. 10 Crores has been paid by the Applicant on 28.02.2024.
- c. Ld. Counsel submits that Implementation Monitoring Committee has agreed to give time up to 30.06.2024 for implementation of the Plan on following terms:
“In view of the same, the parties have agreed to the following terms:
- a. The time to implement the Resolution Plan would stand extended till 30.06.2024;*
- b. The Applicant shall pay a further amount of Rs. 20 Crores towards the Resolution Plan value as under:*
- i. Rs. 10 crores by 10th April, 2024*
- ii. Rs. 5 Crores by 30th April, 2024*
- iii. Rs. 5 crores by 16th May, 2024*

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c. The Applicant shall pay interest at the rate of 9% per annum on the pending amount effective from 19th February, 2024 on the full amount of Rs. 180 Cr, till the consideration under the Resolution Plan is paid.

d. In the event the Applicant fails to make any payments as per the timelines stipulated hereinabove, the erstwhile CoC members shall have the right to immediately forfeit the amounts paid by the SRA of INR 50 Crore without any litigation.”

d. Thus he submits that this Tribunal may grant extension and relied upon the judgment of Hon'ble NCLAT in Company Appeal (AT) (Insolvency) Nos. 221 and 222 of 2024 rendered in case of Ashok Dattatray Atre and Ors. Vs. SBI & Ors to state that this Tribunal has got inherent powers to grant such extension.

6. Ld. Counsel for the Respondents

a. Ld. Counsel for the Respondent submits that they have no objection in granting extension as per terms agreed which is mentioned in para 5 as stated above. However, she submits that the erstwhile CoC Members has a right to forfeit the amounts paid by SRA and Rs. 50 Crores in cash, if the Resolution Plan is not implemented within the extended time as may be permitted by this Tribunal.

7. Analysis and Findings:

a. We find that the Resolution Plan was approved by this Tribunal on 18.12.2023 in IA (IB)NO. 1381(KB)2022 and the order passed has been challenged before the Hon'ble NCLAT and the same is pending for disposal.

b. We are of the view that when the matter is pending before the Hon'ble NCLAT challenging the Resolution Plan, it

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would not be appropriate to grant an extension by us at this stage.

- c. The Resolution Plan Approved by this Adjudicating Authority vide order dated 18.12.2023 in IA (IB)NO. 1381(KB)2022 is under challenge before the Hon'ble NCLAT and if the same is reversed by Hon'ble NCLAT, the order for extension, if granted, would become infructuous.
 - d. In fact, the extra amount as agreed upon with the IMC by the Applicant would also be forfeited, in case the Resolution Plan is reversed by Hon'ble NCLAT, and this would make the matter more complicated.
- 8.** In view of the above facts and circumstances, this Adjudicating Authority feels that it is appropriate that extension need not be granted at this stage and therefore, **this application is rejected.**
9. However, in the interest of justice, we direct the Respondents not to forfeit the EMD / payments made till date, till such time the order against the Appeal challenging the Resolution Plan before the Hon'ble NCLAT, is pronounced.
10. 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.
11. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee,
Member (Judicial)

Signed on this the 18th day of April, 2024

M. Jana (P.S.)