

7

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 16.11.2020

THROUGH VIDEO CONFERENCING

CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Ashok Kumar Borah, NCLT KOCHI
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)No. 64/BB/2019	For hearing IA 444/2020 – CIRP	Sec 10 of I&B code 2016	M/s Vintage Foods & Industries Ltd	-	M/s KSIIDC Limited and other	Pankaj Srivatsava RP, Ayushi Agarwal for RP

ADVOCATE FOR PETITIONER/s:

ADVOCATE FOR RESPONDENT/s:

Ayushi Agarwal

ORDER

Heard Ms. Ayushi Agarwal, learned Counsel for the RP through Video Conference.

I.A No.444 of 2020 in C.P(IB)No.64/BB/2019 is allowed by separate order.

Post the case for the report of RP on **21.12.2020**.

Amar
MEMBER (T)

Ashok Kumar Borah
MEMBER (J)

Verified

Amar

Amar

Court Officer

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.444 of 2020 in
C.P.(IB)No.64/BB/2019
U/s 60(5), R/w Regulation 47A of the IBBI
(Liquidation Process) Regulations, 2016
R/w Rule 11 of the NCLT Rules, 2016

Mr. Pankaj Srivastava

Liquidator of

M/s. Vintage Foods & Industries Ltd.

5, 5th Cross, Navya Nagar,

Jakkur B,

Bangalore – 560 064.

- Applicant/Liquidator

Date of Order: 16th November, 2020

Coram:

1. Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant/Liquidator

: Ms. Ayushi Agarwal

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. I.A.No.444 of 2020 in C.P.(IB)No.64/BB/2019 is filed by Mr. Pankaj Srivastava, Liquidator of M/s.Vintage Foods & Industries Ltd. (hereinafter referred to as 'Applicant/Liquidator') U/s 60(5), R/w Regulation 47A of the IBBI (Liquidation Process) Regulations, 2016, R/w Rule 11 of the NCLT Rules, 2016, by inter alia seeking to allow the exclusion of the period from 15.06.2020 till 12.09.2020, i.e. a period 90 days, from the liquidation process period of the Corporate Debtor due to the lockdown and the restrictions imposed by the Government of India in light of Covid-19 pandemic, resulting in non-cooperation from various Stakeholders of the Corporate Debtor, in terms of Regulation 47A of the IBBI (Liquidation Process) Regulations, 2016 to facilitate to complete the liquidation process expeditiously and also to meet the ends of justice and equity etc.



2. Brief facts of the Application, which are relevant to the question, are as follows:

- (1) Initially, C.P.(IB)No.64/BB/2019 filed by M/s.Vintage Foods & Industries Ltd. U/s 10 of the Code, 2016, R/w Rule 7 of the I&B(AAA) Rules, 2016 was admitted by the Adjudicating Authority vide order dated 23.07.2019 by initiating CIRP in respect of M/s.Vintage Foods & Industries Ltd., appointed Mr. Pankaj Khaitan as the IRP, imposing moratorium etc. Subsequently, the Adjudicating Authority, vide its order dated 24th October, 2020 passed in IA Nos.546 & 558 of 2020, approved the change of the existing IRP thus appointed Mr. Balady Shekar Shetty as the RP in place of Mr. Pankaj Khaitan and directed the RP to take necessary actions as per the Code. Further, the Adjudicating Authority passed the liquidation order on 15.06.2020 and Mr. Pankaj Srivastava appointed as Liquidator.
- (2) In terms of Section 33 of the IBC, 2016 and Regulation 12 of IBBI (Liquidation Process) Regulations, 2016 ('Regulations'), the Applicant made a public announcement in FORM-B on 20.06.2020 in Prajavani & Deccan Herald, Bengaluru edition and stipulated the last date of submission of claims as 20.07.2020. In pursuance to the powers of the Liquidator U/s 35 of the Code and the Rules and Regulations made thereunder, the Applicant investigated the financial affairs of the Corporate Debtor. The Applicant, through the professional assistance obtained by him, discovered that various suits are pending before the Hon'ble High Court of Karnataka, Debt Recovery Tribunal and City Civil Court, Bengaluru by or against the Corporate Debtor.
- (3) The list of the cases currently pending before various Courts/Tribunals are provided herein:

Sl. No.	Court/Tribunal before which it is pending	Application/Suit No.
1.	Civil Court, Bengaluru	47/2008
2.	Debt Recovery Tribunal, Bengaluru	IT/113/2019
3.	Debt Recovery Tribunal, Bengaluru	TA/429/2017

4.	Debt Recovery Tribunal, Bengaluru	O.A 326/2002
5.	High Court of Karnataka	W.P.55358- 55360

(4) It is stated that the Applicant had consulted various stakeholders of the Corporate Debtor for extending assistance and cooperation to the Applicant for completing the liquidation process of the Corporate Debtor expeditiously. However, full cooperation was not extended by the Stakeholders due to the lockdown imposed by the Government of India, resulting in delay in obtaining the completed details of the pendency of the suits before various Adjudicating Authorities.

(5) Regulation 47A of the Regulations provide for exclusion of the COVID-19 lockdown period from the computation of the time-line for any task that could not be completed in relation to any liquidation process.

The Regulation is produced herein verbatim:

47A Exclusion of period of lockdown.

Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process.

(6) *In lieu* of the difficulty faced due to the nationwide lockdown and strict curfew in the Bengaluru City from 14.07.2020 till 22.07.2020 declared by the Government of Karnataka, the verification of the claims of the Creditors could not be completed due to the unavailability of information and non-cooperation of various stakeholders of the Corporate Debtor.

3. It is submitted that the Hon'ble Supreme Court of India, in *Suo Motu Writ Petition (Civil) No(s).3/2020 in Re: cognizance for extension of Limitation vide order dated 23.03.2020*, has *inter alia* observed as under:

"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the Country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the Country in filing their

Petitions/Applications/Suits/Appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the Country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special Laws whether condonable or not shall extended w.e.f. 15th March, 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities. This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction. Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

4. Heard Ms. Ayushi Agarwal, learned Counsel for the Liquidator **through Video Conference**. We have carefully perused the pleadings of the party and the extant provisions of the Code and Rules.
5. As stated supra, the material facts of the issue are not in dispute, and the law on the issue is also settled by the judgments cited above. The Hon'ble Apex Court, in its decision in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.*, has conferred the power on the Adjudicating Authority to consider the issue of exclusion of time from the statutory period prescribed under the provisions of the Code, based on sufficient justification. The Hon'ble NCLAT also considered the issue of granting exclusion of time in appropriate cases, *in the matter of Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd.*,¹ especially at para 10 where it mentioned “..... Any other circumstances which justifies exclusion of certain period.” This Adjudicating Authority has also been taking a view that the hardship caused by the COVID-19 pandemic, the lockdown enforced by the Central and State Governments, and the resulting disruption to movement of men and material during the last

¹ *Company Appeal (AT)(Insolvency) No.185 of 2018*

few months constitute exceptional circumstances as contemplated in Section 60(5) of the Code wherein this Adjudicating Authority is empowered to pass orders as it deems fit. In view of the circumstances narrated in the Petition, we are of the considered view that the exclusion of time period prayed for deserves to be acceded to.

6. In the result, I.A.No.444 of 2020 in C.P.(IB)No.64/BB/2019 is hereby disposed of with the following directions:
- a. Exclusion of 90 days i.e. from 15.06.2020 till 12.09.2020, from the liquidation process period is hereby granted.
 - b. The Liquidator is directed to take expeditious steps to finalize the Liquidation process, without any further delay.

**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

**ASHOK KUMAR BORAH
MEMBER, JUDICIAL**

Puja