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**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 14.02.2020

**CAUSE LIST - 2**

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala  
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. 51/BB/2018	For hearing IA 92/2020 CIRP	Sec 7 of I&B code 2016	M/s Oriental Bank of Commerce	Shri V B Ravi Shankar,	M/s Associate Decor Limited	Shri Alok Kailash Saksena, RP

ADVOCATE FOR PETITIONER/s:

ADVOCATE FOR RESPONDENT/s:

  
Adv. For Rep.

Mr. Vivek Reddy 

**ORDER**

Heard Mr. Vivek Reddy, learned Senior Counsel for the Resolution Professional.

I.A.No.92 of 2020 in C.P.(IB)No.51/BB/2018 is allowed by separate order. Post the case on **05.03.2020**.

  
**MEMBER (T)**

  
**MEMBER (J)**

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

I.A.No.92/2020 in  
C.P. (IB)No.51/BB/2018  
U/s. 60 (5) of the IBC, 2016

**In the matter of:**

Mr. Alok Kailash Saksena  
*Resolution Professional of  
Associate Décor Limited*

Plot No.1, Phase 4,  
KIADB Industrial Estate,  
Malur – 563 130  
Kolar District.

- Applicant/RP

**Date of Order: 14<sup>th</sup> February, 2020**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present:**

For the Applicant : Shri Vivek Reddy, Senior Counsel

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. I.A.No.92/2020 in C.P.(IB)No.51/BB/2018 is filed by Mr. Alok Kailash Saksena, Resolution Professional of Associate Décor Limited ('Applicant') U/s. 60 (5) of the IBC, 2016, by inter-alia seeking for exclusion of 30 days from the statutory period of 270 days (which is going to over on 15<sup>th</sup> February, 2020) so as to conclude the CIRP of the Corporate Debtor, in the interest of justice and equity.



2. Brief facts of the case, as mentioned in the Application, are as follows:

- (1) The Adjudicating Authority admitted C.P.(IB)No.51/BB/2018 filed by M/s Oriental Bank of Commerce, vide order dated 26.10.2018, by initiating Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor, appointing Shri Alok Kailash Saksena, as IRP, imposing moratorium etc. Subsequently, the said IRP was confirmed as Resolution Professional in the 6<sup>th</sup> CoC meeting held on 12.04.2019. In pursuant to the Regulation 36A(1) of the CIRP Regulation, the Resolution Professional had published Form G in leading newspapers inviting Expression of Interest from prospective Resolution Applicants and the last date for submission of Resolution Plan was extended from 30<sup>th</sup> November, 2019 to 7<sup>th</sup> December, 2019.
- (2) It is stated that the Adjudicating Authority has extended the period of CIRP by 90 days beyond the 180 days, vide Order dated 20.09.2019 and also granted exclusion of period of 154 days (delay caused by the stay of the Hon'ble Supreme Court) and later 54 days (delay caused by the stay of Hon'ble High Court of Karnataka, vide separate Orders dated 06.05.2019 and 12.12.2019 respectively.
- (3) It is stated that the Resolution Professional has received two(2) Resolution Plan, and both Resolution Applicants have appointed financial and legal Advisors to assist them in their bid. One of the Resolution Applicant is foreign Company based out of Tanzania, and being in a different time zone, there is some delay in communication and negotiations with the Promoter of the said foreign Company. Thus, there is



high chance that one of this Resolution Plan will finally be approved by the CoC members as it is already in the final and critical stage. Though all endeavors are being made to complete the process and present approved plan within the time period before 15.02.2020, there is a high possibility of the process getting extended by another 30 days.

- (4) The Applicant relied on the recent judgment dated 15<sup>th</sup> November, 2019 passed by the Hon'ble Supreme Court of India, in the matter of Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors., wherein the Hon'ble Supreme Court settled several issues and made important ruling including one on the amendment to Sec. 12 of the IBC. The Hon'ble Supreme Court while reiterating the fact that timely resolution of the stressed assets is a key factor in the successful working of the Code also made the following observations in para 79 of page 131 and page 132 of the judgment which is as under:

*“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 on 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 than throw the baby out with the bath water, in as much as the time taken in legal proceedings is certainly 131 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 litigants 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 extension 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 larger 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 itself, it may be open in such cases for Adjudicating Authority and/or Appellate 132 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.”*

- (5) It is submitted that the CoC in its last meeting held on 7<sup>th</sup> February, 2020, has unanimously decided to seek further exclusion of 30 days' time from the Tribunal and thus filed the instant Application.
3. Heard Shri Vivek Reddy, learned Senior Counsel for the Resolution Professional. We have carefully perused the pleadings of the Party and also extant provisions of the Code and Rules made thereunder and the Judgement relied upon, as stated supra.
4. The Hon'ble NCLAT considered the issue of granting exclusion of time in appropriate cases. It is relevant to point out the judgment of National Company Law Appellate Tribunal, New Delhi, Company Appeal (AT) (Insolvency) No. 185 of 2018 (arising out of



Order dated 27.4.2018 by NCLT, Hyderabad Bench, Hyderabad in matter of *Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd.*<sup>1</sup>

The decision of the Hon'ble NCLAT in CA.No.185/2018, *Quinn Logistics India Private Limited Vs. Mack Soft Tech Private Limited*, dated May 8, 2018, wherein, the Hon'ble NCLAT has dealt with the question of exclusion of certain time period for the purpose of counting the total CIRP period. Para 9 and 10 of the aforesaid judgment reads as under:

*"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) (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'*

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1) <sup>1</sup> C.A.No. 93 of 2018 in CP(IB)No.97/7/HDB/2017)



*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."*

5. In addition to the above judgement, the judgement of Apex Court, Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors has conferred power on the Adjudicating Authority to consider issue of exclusion time from statutory period prescribed under the provisions of Code, basing on justification for the same. The facts and circumstance, as stated supra, would justify for exclusion of time as prayed for. Hence, we are inclined to grant exclusion of time as prayed for, in the interest of justice.

6. Hence, by exercising powers conferred on the Adjudicating Authority, under the provisions of Code and Rules made thereunder, We hereby disposed I.A.No.92/2020 in C.P.(IB)No.51/BB/2018 with the following directions:

(1) Hereby granted further exclusion of 30 (Thirty) days period from the statutory period of 180+90 days, in addition to



earlier exclusion 154 & 54 days already granted in the case, to complete the Corporate Insolvency Resolution Process.

- (2) The Resolution Professional is directed to take expeditious steps to finalize the CIRP, without any further delay and to file appropriate Application for concluding CIRP, well before completion of the present extended period.



**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**

Shruthi