

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

I.A. No.663/2019 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
M/s. Associate Décor Limited*

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

- Applicant/RP

Date of Order: 12th December, 2019

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
With Ms. Jayati Goyal

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.663/2019 in C.P.(IB)No.51/BB/2018 is filed by Mr. Alok Kailash Saksena, Resolution Professional of M/s. Associate Décor Limited ('Applicant') U/s. 60 (5) of the IBC, 2016, by inter-alia seeking to exclusion of 54 days from statutory period of 270 days so as to conclude the Corporate Insolvency Resolution Process (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 the 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.
- (2) It is stated that, on receipt of the aforesaid order, and after taking immediate charge under the provisions of the Code, Applicant was barely able to carry on the functions for four days as on 30th November, 2018, the Hon'ble Supreme Court vide its order in Writ Petition No.1391 of 2018 is filed by Associate Holdings Private Limited ("the Petitioner" & Majority Shareholder of Corporate Debtor) Vs. Reserve Bank of India, Union of India & Ors., Corporation Bank, Bank of Baroda & Oriental Bank of Commerce ("the Respondents") had directed "Status Quo, as of today, shall be maintained in the meantime". Subsequently, as directed by the members of the CoC, kept the Corporate Debtor as a going concern but the entire process under the CIRP was brought to the halt as the CIRP could not progress in view of the Stay granted by the Hon'ble Supreme Court.
- (3) It is stated that on 2nd April, 2019 Hon'ble Supreme Court of India vide its order of even dated pronounced its judgment on the Writ Petition No.1391 of 2018 filed by Associate Holdings Private Limited ("the Petitioner" & Majority Shareholder of Corporate Debtor) along with the main Petition of Dharani Sugars and Chemicals Limited Vs. Union of India & Ors. wherein RBI Circular dated 12th February, 2018 was quashed.



- (4) It is stated that as on the date of receipt of the Hon'ble Supreme Court order on 2nd April, 2019, considerable time was already lost and there was a delay of 154 days in the CIRP. In view of the same, Applicant has filed an Application with this Tribunal to exclude 154 days from the statutory period of 180 days so as to conclude the CIRP on 24.09.2019 instead of 23.04.2019. Accordingly, the Tribunal vide its order dated 06.05.2019 was allowed I.A.No.218 of 2019 by granting exclusion of 154 days from the statutory period of 180 days and directing the Resolution Professional to expedite the CIRP without any further delay.
- (5) It is stated that 8th meeting of the CoC held on 15th June, 2019 mainly to discuss on the Restructuring proposal submitted by the holding Company, Associate Holdings through their Promoters and to comply with the directions of this Tribunal. It is pertinent to note that Associate Holdings Ltd., the Promoter Company of the Corporate Debtor had submitted a Restructuring Proposal to lenders as well as to this Tribunal vide an Interim Application in C.P. (IB)No.51/BB/2018 and the Tribunal vide order dated 10.06.2019, directed the Resolution Professional and lenders to consider the Restructuring Proposal and report the possibility of settlement.
- (6) It is stated that all Promoters, Promoter Directors including one of the Promoter Director Mr. Nooruddin Khan vide separate emails requested the Applicant and the CoC for rescheduling of the 8th CoC meeting to a later date to enable important stakeholders to attend the meeting and to have the plan discussed and deliberated at length in the interest of all concerned. On such insistence by all promoters and



considering the best interest of all stake holders and to give effect to the directions of this Tribunal in letter and spirit, the meeting was rescheduled to be held on 21st June 2019 at the same venue. Accordingly, all the Members of the CoC and Directors were informed and the meeting was held on 21st June, 2019 and all members of Committee of Creditors and members of suspended Board, Mr. Yahya Mohamed Faroukh Darvesh and Mr. Farooq Ali Khan were present at the venue of the meeting and the Applicant was received an email from one of the Promoter-Director, Mr. Nooruddin Khan at 02.13 p.m. intimating the fact of Writ Petition (WP) which was filed before the Hon'ble High Court of Karnataka seeking a declaration of the Insolvency Proceedings in C.P(IB)No.51/BB/2018 as void and non-est and that RP and CoC members are made the Respondents in the said mater. The email further stated that the matter was taken up for hearing on 20th June, 2019 and the Hon'ble High Court of Karnataka has directed the CoC and Resolution Professional of Associate Décor Limited not to take any further steps in relation to the CIRP till the next date of hearing.

(7) It is stated that the matter was heard in detail on 7th August, 2019 and was reserved for judgment. The Hon'ble High Court of Karnataka vide its order dated 8th August, 2019 while deliberating the matter in detail, disposed of the W.P with the following observations:

- i. Submission made on behalf of the Petitioners, that the proceedings before the Tribunal under the Code are non est and void ab initio cannot be accepted.
- ii. The applicability of the February 12 circular to this



particular case need not be delved into as the same has been quashed in entirety.

iii. The Company was given sufficient opportunities to resolve the issues on various dates and the contention that the Respondents be directed to consider the restructuring proposal and to keep the proceedings before the Tribunal in abeyance does not deserve acceptance.

- (8) In pursuant to the Regulation 36 A(1) of the CIRP Regulation Applicant had published Form G in leading newspapers inviting expression of interest from prospective Resolution Applicants. The last date for submission of Resolution Plan was extended from 11th November, 2019 to 30th November, 2019 by the members in the 13th CoC meeting held on 7th November 2019 considering the request received from various prospective Resolution Applicants.
- (9) It is stated that final list of Prospective Resolution Applicants had four active Resolution Applicants of which one of the Resolution Applicant is a NRI group and have appointed financial and legal advisors to assist them in the bid. All the four resolution Applicants had requested for few days extension to submit a complete and compliant plan. In view of the same the CoC members in the last meeting held on 28th November, 2019 further extended the last date of submission of Resolution Plan from 30th November, 2019 to 07th December, 2019.
- (10) In the 15th CoC meeting held on 7th December, 2019 two Resolution Plans received by the RP was placed before the CoC and bids were opened in the presence of the CoC members and authorized representatives of the Resolution Applicants. These plans are now under active consideration of CoC members.



There is a very high chance of finding resolution to the debt of the Corporate Debtor and therefore the CoC members are of the opinion that a extension of time is required so as to sufficiently negotiate with the Resolution Applicants and to realize the maximum amount. There are only left 15 days left for the CIRP period to end on 23rd December, 2019 and CoC is of the opinion that if exclusion application of 54 days is allowed it will greatly facilitate the resolution process.

- (11) It is pertinent to note that the Applicant had filed the extension of Application and exclusion Application earlier before this Tribunal and the Tribunal while admitting the extension Application vide order dated 20th September, 2019 dismissed the exclusion Application vide order of the even date. The Tribunal while dismissing the Application, has made an observation that the same was covered under the recent amendment to Section 12 of the IBC, 2016 which provided for maximum of 330 days for complete of CIRP including the time taken in any legal proceedings in relation to the resolution process of the Corporate Debtor and the said Application if need be, would be considered in future.
- (12) The Applicant has also relied upon the recent judgment dated 15th November, 2019 of 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 therefore unreasonable restriction on a litigant’s fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. However, the time taken in legal proceedings is certainly an important factor which causes delay, and which has made statutory experiments fail.”

The Hon’ble Supreme Court of India while leaving the amendment provision to Sec.12 of the Code intact otherwise, struck down the term “mandatorily” as being manifestly arbitrary under Article 14 of the Constitution of India and as being unreasonable restriction on the litigant’s right to carry on business under Article 19(1)(g) of the Constitutions.

- (13) It is further stated that considering there has been delay of 54(fifty four days) in the Corporate Insolvency Resolution Process of the Corporate Debtor due to the stay of the High Court during which there was a complete embargo and the process could not be continued, the Committee of Creditors in its 9th CoC meeting held on 20th August, 2019 passed a resolution 100% voting and directed the Applicant to file an



Application before the Tribunal to exclude the period of 54 from CIRP of the Corporate Debtor.

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.*¹

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.

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

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) 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' 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 Sections 12(2) and 60(5)(6) of the IBC Rules, 2016, we hereby disposed I.A.No.663/2019 in C.P.(IB)No.51/BB/2018 with the following directions:

- (1) Hereby granted further exclusion of 54(fifty four) days period from the statutory period of 180+90 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 submit report to the Tribunal well before completion of the present extended period.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL