

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

I.A.No.481 of 2019 in
C.P. (IB)No.51/BB/2018
U/s 12(2) of the IBC, 2016

Mr. Alok Kailash Saksena

*Resolution Professional of
M/s.Associate Décor Limited*
Plot No.1, Phase 4, KIADB Industrial Estate,
Kolar District,
Malur – 563 130.

- Applicant/
Resolution Professional

In the matter of:

M/s.Oriental Bank of Commerce
Harsh Bhawan, E-Block,
Connaught Place,
New Delhi- 110 001.

- Petitioner/Financial Creditor

Versus

M/s.Associate Décor Limited
Plot No.1, Phase IV, KIADB Industrial Area
Huralagera, Malur Road,
Karnataka - 563 130.

- Respondent/Corporate Debtor

Date of Order: 20th September, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, 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.481 of 2019 in C.P.(IB)No.51/BB/2018 is filed by Mr. Alok Kailash Saksena, Resolution Professional of M/s.Associate Décor Limited (hereinafter referred to as 'Applicant') under Section 12(2) of


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the IBC, 2016, by inter alia seeking to extend further a period of 90 days beyond statutory period of 180 days, which is available as per Law, initially for completing the CIRP.

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

(1) The main Company petition filed by M/s.Oriental Bank of Commerce, a Financial Creditor, under Section 7 of the IBC, 2016 R/w Rule 4 of the I&B (AAA) Rules, 2016 was admitted by this Adjudicating Authority vide order dated October 26th, 2018 ('Admission Order') by initiating CIRP, appointing Shri Alok Kailash. Seksena (IBBI Registration No.IBBI/IPA-001/IP-P00056/2017-2018/10134 as appointed as the IRP, moratorium etc. The Applicant immediately after being appointed as the Interim Resolution Professional, published the "Public Announcement/Notice" on 28.11.2018 in the local daily newspaper having wide circulation, both in regional and English language, calling for claims from the creditors of the Corporate Debtor and thereby initiated the Corporate Insolvency Resolution Process (hereinafter 'CIRP') in respect of Corporate Debtor.

(2) It is stated that the 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 of even date in Writ Petition No. 1391 of 2018 (which got tagged in the main WP filed by ***Dharani Sugars & Chemicals & Others Vs. UOI***) filed by *Associate Holdings Private Limited* ("the petitioner" & Majority Shareholder of Corporate Debtor) Vs. *Reserve Bank of India, Union of India & others, Corporation Bank, Bank of Baroda, & Oriental Bank of Commerce* ("the respondent") has directed "Status Quo, as of today, shall be maintained in the meantime". This stay was subsequently vacated on passing of the decree vide order dated 02nd April, 2019 of the Hon'ble



Supreme Court Wherein RBI Circular dated, 12th February, 2018 was quashed.

- (3) It is stated that the Applicant made an Interlocutory Application, I.A.No.218 of 2019 to this Tribunal seeking exclusion of 154 days from the statutory period of 180 days in the CIRP process in view of the considerable time lost in carrying out the mandate process under IBC, 2016 due to delay in receipt of the admission order of Corporate Debtor under IBC, 2016 and the say order of the Hon'ble Supreme Court. This Tribunal was pleased to dispose the application vide order dated 06th May 2019 by granting exclusion of 154 days so as to conclude the CIRP of the Corporate Debtor on 24th September 2019. The Applicant had issued Form G on 10th June 2019, seeking resolution plan for the Corporate Debtor and the last date for submission of expression of interest was 26th June, 2019. In the meantime, before the last date for submission of Expression of Interest (EOI), one of the Promoter Director approached the Hon'ble High Court of Karnataka on 19th June, 2019 and filed a WP 26084 of 2019 seeking the Stay of Invitation of EOI dated 10th June, 2019 and stay of CIRP process of the Corporate Debtor and the Hon'ble High Court vide its interim order dated 20th June, 2019 directed the Resolution Professional and the member of CoC not to take any further action till the next date of the hearing.
- (4) In view of the aforesaid order of the Hon'ble High Court, the Applicant issued a public notice on 27th June, 2019 deferring the timelines prescribed in earlier Form G dated 10th June, 2019 and also other CIRP actions in compliance of the said order. The Hon'ble High Court of Karnataka vide its order dated 08th August 2019 while deliberating the matter in detail, disposed of the WP 26084 of 2019 dismissing all submissions




made of behalf of the petitioners. Subsequent to the aforesaid order of the Hon'ble High Court, the Applicant reissued the Form G on 23rd August 2019 and again on 07th September 2019 as directed in the Tenth CoC meeting held on 06th September 2019 seeking resolution plan for the Corporate Debtor. Such reissue of Form G has been necessitated by the appointment of Process manager on the concurrence of the CoC members for finding prospective resolution applicants, assisting in formulating request for resolution plan, preparing evaluating matrix and other related activity till the stage of closure of transaction under the approved resolution plan.

- (5) It is also stated that the last date for submission of EOI as per the Form G issued on 07.09.2019 is 24.09.2019 and last date for submission of resolution plan is 1st November 2019. As on 06th September 2019, the EOI has been received from 17 Resolution Applicants, and there is a potential of more Resolution Applicants submitting their EOI. The subsequent process post submission of Resolution plans by the final Applicants involving analysing, presenting, completing the compliances under the Code and having these plans submitted to the CoC for their further negotiation and approval before finally submitting it to the Adjudicating Author u/s 30 of the IBC, 2016 would also require considerable time. Considering the aforesaid facts the CoC after deliberation unanimously decided to extend the CIRP period of 180 (one hundred and eighty) days (which is ending on 24.09.2019.) by a further period of 90 (ninety) days so as to end on 23.12.2019. In accordance with Section 12 of the Code subject to approval of Adjudicating Authority, the CoC further authorized the Applicant/RP to make the present Application before this Tribunal for such extension. Pursuant to the Resolution passed in the tenth meeting of the CoC, inter



alia, to authorize Resolution Professional to seek extension of time period of the CIRP under Section 12(2) the Code. Therefore, the Applicant has filed the present Application.

3. Heard Shri Vivek Reddy, learned Senior Counsel for Resolution Professional. We have carefully perused the pleadings of the party and the extant provisions of the Code and the law on the issue.
4. As detailed supra, the Resolution professional Shri Vivek Reddy, learned Senior Counsel for the RP has seriously urged the Adjudicating Authority for extension of time for reasons stated by the RP and he also submitted that the judgement given in this regard by the Hon'ble Supreme Court and Hon'ble High Court of Karnataka. We are convinced with the reasons cited by the learned Senior Counsel for the RP for extension of time for further period of 90 days from 24.09.2019, which shall expire on 23.12.2019. Therefore, we are inclined to allow the instant application in the interest of justice.
5. In the result, I.A.No.481 of 2019 in C.P.(IB)No.51/BB/2018 is hereby allowed by extending further period of 90 days beyond 180 days i.e., from September 24th, 2019 till 23.12.2019. The RP is directed to expedite the process of CIRP without further delay. No order as to costs.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Puja

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

I.A.No.450 of 2019 in
C.P.(IB)No.51/BB/2018
U/s 60(5) of the IBC, 2016

Mr. Alok Kailash Saksena

*Resolution Professional of
M/s.Associate Decor Limited*
Plot No.1, Phase 4, KIADB Industrial Estate,
Kolar District,
Malur - 563 130.

- Applicant/
Resolution Professional

In the matter of:

M/s.Oriental Bank of Commerce

Harsh Bhawan, E-Block,
Connaught Place,
New Delhi- 110 001.

- Petitioner/Financial Creditor

Versus

M/s.Associate Decor Limited

Plot No.1, Phase IV, KIADB Industrial Area
Huralagera, Malur Road,
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- Respondent/Corporate Debtor

Date of Order: 20th September, 2019

Coram:

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, 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.450 of 2019 in C.P.(IB)No.51/BB/2018 is filed by Mr. Alok Kailash Saksena, Resolution Professional of M/s.Associate Décor Limited (hereinafter referred to as 'Applicant') under Section 60(5) of


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the IBC, 2016, by inter alia seeking to further exclude 54 days from the statutory period and exclusion of period already granted.

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

(1) It is stated that the Resolution Professional appointed in terms of the aforesaid Order and confirmed as Resolution Professional in the 6th CoC meeting held on 12 April 2019. The Corporate Debtor is in the business of supply of Wood based products like Laminates, Particleboards and MFC catering to both Indian and International market. The Company Petition was filed by Oriental Bank of Commerce under Section 7 of Insolvency and Bankruptcy Code, 2016 and was admitted by Tribunal by virtue of appointed as the interim Resolution Professional in terms of order dated 26th October, 2018.

(2) It is Pertinent to note here that on receipt of the aforesaid order and after taking immediate charge under the provisions of the Code, to carry on the functions for four days as on 30th November 2018, the Hon'ble Supreme Court vide its order of even date in *Writ Petition No. 1391 of 2018* filed by *Associate Holdings Private Limited* ("the petitioner" & Majority Shareholder of Corporate Debtor) Vs. *Reserve Bank of India, Union of India & others, Corporation Bank, Bank of Baroda, & Oriental Bank of Commerce* ("the respondents") has directed "Status Quo, as of today, shall be maintained in the meantime"

(3) It is also stated that subsequently as directed by the members of the CoC , the Applicant kept the corporate debtor as a going concern but the entire process under the Corporate Insolvency Resolution Process was brought to the halt as the CIRP could not progress in view of the Stay granted by the Hon'ble Supreme Court. 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 process. In view of the same, the



Applicant filed an Interlocutory Application, IA 218 of 2019 with this inter alia seeking 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. This Tribunal vide its order dated 06th May 2019 was pleased to allow IA 218 of 2019 by granting exclusion of 154 days from the statutory period of 180 days and directing the RP to expedite the CIRP without further delay.

- (4) It is further stated that Applicant received an email from one of the Promoter-Director, Mr. Nooruddin Khan at 2.13 p.m. intimating about filing Writ Petition (WP) filed in 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 matter. The email further stated that the matter was taken up for hearing on 20th June, 2019 and that 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 Corporate Insolvency Resolution Proceedings till the next date of hearing which is posted on 22nd July 2019.
- (5) It is stated that the copy of the said WP 26084 of 2019 was never served on the members of the CoC nor on the RP who were made respondents in the said matter and in view of the aforesaid interim order of the Hon'ble High Court of Karnataka dated 20th June 2019 (received on 25 June 2019) the CIRP was again brought to a halt. In terms of the order of Hon'ble National Company Law Appellate Tribunal in the matter *Quinn Logistic India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd., Mohd. Sabir Parvez and Mr. M.L. Jain* dated 8th May, 2018 ¹ wherein Hon'ble National Company Law Appellate Tribunal while dealing with the similar facts was pleased to exclude the period where the Corporate Insolvency Resolution Process (CIRP)

¹ 2018, 94 taxmann.com 406 (NCL-AT)/[2018] 145 CLA 35 (NCLAT)

could not progress from the Corporate Insolvency Resolution Period.

3. Heard Shri Vivek Reddy, learned Senior Counsel for Resolution Professional. We have carefully perused the pleadings of the party and the extant provisions of the Code.
4. Shri Vivek Reddy, learned Senior Counsel for the RP has urged the Adjudicating Authority to exclude the time as sought for the reasons stated in the affidavit, as briefly stated supra.
5. The Adjudicating Authority, vide order dated 6th May, 2019 passed in I.A. No. 218 of 2019 has already granted exclusion of 154 days. We have also granted another 90 days further time from 24th September, 2019 vide separate order dated 20th September, 2019 passed in I.A. No. 481 of 2019. There are time stipulation in Code to conclude CIRP Process. Hence, we are not inclined to allow the Application and it is liable to be rejected.
6. In the result, I.A.No.450 of 2019 in C.P.(IB)No.51/BB/2018 is hereby rejected. No order as to costs.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Puja