

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

IA No.172 of 2019 in
C.P.No.258/2016 (T.P.No.108/2017)
U/s 60 of IBC, 2016.

Shri Ramchandra D Choudhary

*Resolution Professional of
Vikram Hospital Private Limited*

No.9B, Vardan Tower,
Nr.Vimal House,
Lakhudi Circle, Navranpura,
Ahmadabad – 380 014. - Applicant/RP

In the matter of:

M/s. Encarta Pharma Pvt. Ltd.,

No.21, "Shristi",
3rd Floor, 24th Main,
J.P.Nagar, 6th Phase,
Bengaluru – 560 078. - Petitioner/Operational Creditor

Versus

M/s. Vikram Hospital Private Limited

No.46, Vivekananda Road,
Yadavagiri,
Mysore – 570 020. - Respondent/Corporate Debtor

Date of Order: 13th June, 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 Ramchandra D Choudhary, RP with
Shri Anil Kumar.H
For the Respondent : Ms. Princy Ponnann
Shri Shyam V Prasad
For Party-in-person : Dr. S.B.Vikram

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A No.172 of 2019 in C.P.No.258/2016 (T.P.No.108/2017) is filed by Shri Ramchandra D Choudhary ('Applicant/Resolution Professional') U/s 60 of the IBC, 2016, by seeking following reliefs:
 - (1) To order that the time spent from the date of filing of O.A.No.346 of 2017 being 17.04.2017 before the Hon'ble Debts Recovery Tribunal-II at Bangalore for transfer of proceedings of O.A.No.346 of 2017 to this Tribunal shall stand excluded from the period of CIRP in the interest of justice from 24.11.2018 to 16.03.2019, which comes to 114 days.
 - (2) To allow the extension of the CIRP period of the Corporate Debtor considering the fact that an affidavit has been filed by the Promoter of the Corporate Debtor intending to revive the Company. Therefore, an opportunity may be granted to the CoC to consider the proposal.
 - (3) To make any other orders/directions considering the intent and purport of the provisions contained in Sec.60(3) of the IBC, 2016 in relation to the automatic/deemed transfer of the proceedings of O.A.No.346 of 2017 pending before Hon'ble



Debts Recovery Tribunal-II, Bangalore as may be deemed appropriate in the interest of justice.

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

- (1) The Tribunal admitted the CP.No.258/2016 (TP.No.108/2017) vide order dated 19.06.2018 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Vikram Hospital Private Limited appointed Shri Ramchandra D Choudhary as an Interim Resolution Professional (IRP).
- (2) It is stated that earlier an Application Under Section 60 of the code being IA.No.99/2019 in CP.No.258/2016 (TP.No.108/2017) was filed before the Tribunal seeking for exclusion of time lost in Debt Recovery Tribunal in O.A.No.346 of 2017 for transfer of Recovery Proceedings to this Tribunal which is pending before the Debts Recovery Tribunal against the Personal Guarantor of the Corporate Debtor, however, this IA was subsequently withdrawn since the CoC had subsequently resolved to liquidate the Corporate Debtor as there was no feasible and viable Resolution Plan which could be considered for the approval and therefore the IA seeking for exclusion of period consumed in litigation was withdrawn.
- (3) The Applicant submits that the Interim Resolution Professional made public announcement as contemplated under the Provisions of Section 15 of the Code and called for claims from all the creditors. The applicant submits that the said announcement was published in the newspaper on 20.06.2018.

- (4) The Applicant submits that I.A.No.433 of 2018 was filed by the Insolvency Professional on 07.12.2018 for Extension of period of Corporate Insolvency Resolution Process under Section 12 of the IBC, 2016 and this Tribunal by an Order dated 12.12.2018 was pleased to extend the period of Corporate Insolvency Resolution Process for further 90 days as per the Section 12 of the IBC, 2016 which will expire on 16.03.2019.
- (5) It is further submitted that, the said land is leased to Corporate Debtor for the period of 29 years and the period of the lease would expire in the year 2029. The said land is mortgage to Pridhvi Asset Reconstruction and Securitization Company Ltd (herein after referred to as 'PARAS') the first Financial Creditor.
- (6) It is further submitted that a Recovery Application was filed by the United Bank of India, who was the original loaner of the Corporate Debtor and later assigned the debt to PARAS before Debts Recovery Tribunal, Bengaluru in the form of O.A.No.346 of 2017. During the pendency of the said case, the CIRP commenced in pursuance to the order passed by the Tribunal.
- (7) It is submitted that, subsequently a notice dated 13.03.2019 was issued to conduct eighth meeting of Committee of Creditors. In the eighth meeting of CoC dated 14.03.2019, the members have resolved to approve the liquidation of the Corporate Debtor Company as the addendum dated 06.03.2019 along with the revised proposal dated 14.03.2019 to the Resolution Plan dated 27.02.2019 provided by the Resolution Applicant (Nazarbad Medical Services Pvt. Ltd) was

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rejected. It was also resolved to appoint the current Resolution Professional as the Liquidator of the Corporate Debtor Company.

- (8) IA is filed seeking for the liquidation of the Corporate Debtor since no viable resolution plan by CoC and the same is pending. However, since the time granted by the Tribunal which will expire on 16.03.2019, it is necessary to seek exclusion of time to finalize the CIRP in question.
3. Heard Shri Ramchandra D Choudhary, learned Resolution Professional with his Counsel Shri Anil Kumar.H, and Ms. Princy Ponnann, learned Counsel for Respondent and Dr. S.B.Vikram, for the Respondent, party-in-person. We have carefully perused the pleadings of the parties and also extant provisions of the Code.
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

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

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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’ 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*

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the Hon'ble Supreme Court and corporate insolvency resolution process is restored.

(vi) Any other circumstances which justifies exclusion of certain period."

5. In view of the above decisions of Hon'ble NCLAT and in the light of facts and circumstances of the case, as briefly stated supra, 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.172/2019 in CP.No.258/2016 (TP.No.108/2017) with the following directions:
 - (1) Hereby granted further exclusion of 114 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. We make it clear that no further extension of time is permissible under Code.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL