

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

I.A.No.688/2019 in
C.P.(IB)No.228/BB/2018
U/s. 60 R/w Section 12(3) of the IBC, 2016

In the matter of:

Shri Shivadutt Bannanje
*Resolution Professional of
M/s. Bhuwalka Steel Industries Limited*

No.228, Classic Orchid,
Behind Meenakshi Temple,
Bannerghatta Road,
Bengaluru – 560 076 - Applicant/RP

Date of Order: 31st 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 Shivadutt Bannanje

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.688/2019 in C.P.(IB)No.228/BB/2018 is filed by Shri Shivadutt Bannanje, Resolution Professional of M/s. Bhuwalka Steel Industries Limited ('Applicant') U/s. 60 R/w Section 12(3) of the IBC, 2016, by inter-alia seeking to consider the decision taken by the Committee of Creditors of Bhuwalka Steel Industries Limited in its Meeting held on 23rd December 23 for



exclusion of the litigation period (i.e. from November 6, 2019 to January 02, 2020) totalling for 57 days, as CIRP could not proceed during the statutory period of 270 days on account of interim stay Order passed by the Hon'ble High Court of Karnataka, 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 C.P.(IB)No.228/BB/ 2018 is filed by M/s. Indu Corporation Private Limited, vide order dated 08.04.2019, by initiating Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor, appointing Shri Shivadutt Bannanje, as IRP, imposing moratorium etc. Accordingly, the Interim Resolution Professional published advertisements in Form G – Expression of Interest (EOI) as per Regulation 36A(2) on June 27, 2019 in Financial Express (English Paper) and Vishwavani (Kannada Paper) to invite EOI from Prospective Resolution Applicants and the last date for submission of the EOI was July 15, 2019. Subsequently, to filing of EOI, the Corporate Debtor received 8 (Eight) EOI. The Committee of Creditors, in their Meeting held on 14th August, 2019, decided to invite Resolution Plan from those eight Applicants whose Expression of Interest was received.
- (2) It is further stated that the CIRP period of 180 days was coming to an end, on October 4, 2019, and thus earlier an Application was made for extension of time for a further period of 90 days. The Tribunal passed an Order dated 20.09.2019 extending the time period by a further period of 90 days, with effect from October 4, 2019.



- (3) On the last date of the submission of the Resolution Plan, two Resolution Plans were received. The Resolution Professional had scheduled a meeting of the Committee of Creditors on November 7, 2019, to open the Resolution Plans for the Corporate Debtor, received from the Prospective Resolution Applicants. However, on November 6, 2019, an Order from Hon'ble High Court of Karnataka was received granting stay on the CIRP proceedings of the Corporate Debtor i.e. Bhuwalka Steel Industries Limited including restraining the Resolution Professional from opening, considering evaluation or approving any Resolution Plans. Further. Subsequently, the Hon'ble High Court of Karnataka had passed another Order dated December 12, 2019, posting the matter on January 2, 2020 by extending the said stay up to January 02, 2020.
- (4) In the above circumstances, another meeting of the Committee of Creditors was convened on December 23, 2019, wherein, it was inter-alia decided to authorize the Resolution Professional to make an Application to the Adjudicating Authority for exclusion of the litigation period i.e. from November 6, 2019 to January 2, 2020 as CIRP could not proceed during the aforesaid period on account of interim directions passed by the Hon'ble High Court of Karnataka, Bengaluru. After deliberation the matter was put to e-voting and the following Resolution was unanimously passed by the Committee of Creditors
- (5) It is also stated that as per Sec. 12(3) of IBC, the maximum period allowed for completion of CIRP including the litigation period is 330 days (270 days + 60 days of litigation period).
- (6) It is submitted that the Hon'ble National Company Law Appellate Tribunal, New Delhi in the matter of M/s. Quinn



Logistics India Private Limited Vs. Mack Soft Tech Pvt. Ltd., Mohd. Sabir Parvez and Mr. M.L.Jain held that the intervening period can be excluded for counting of the total period of 270 days of resolution process:

- i. If the CIRP 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 CIRP, 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 CIRP.
- 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 CIRP.
- v. If the CIRP is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and CIRP is resorted.
- vi. Any other circumstances which justifies exclusion of certain period.

It is further submitted that the stay order granted by the Hon'ble High Court of Karnataka in this case falls in the category of 8(i) mentioned above.

3. Heard Shri Shivadutt Bannanje, learned 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.*

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.*

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

- (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 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 circumstances, as stated supra, would justify for exclusion of time as prayed for. Hence, we are convinced with the reasons furnished by the Applicant for 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



Page 6 of 7

allowed I.A.No.688/2019 in C.P.(IB)No.228/BB/ 2018 with the following directions:

- (1) Hereby granted further exclusion of 57 (Fifty Seven) day's. ie from November 6, 2019 to January 02, 2020) 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**

Shruthi