

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

I.A.No.102 of 2021 in
C.P. (IB)No.229/BB/2019
U/s 12(2), R/w Section 60(5)(c) of the IBC, 2016
R/w Regulation 40 of the IBBI (Insolvency Process
for Corporate Persons) Regulations, 2016
R/ w Rule 11 of the NCLT Rules, 2016

Mr. Balady Shekar Shetty
Resolution Professional of
M/s. Unishire Regency Park LLP
E-98, 7A Cross, Manyata Residency,
Nagavara,
Bengaluru – 560 045.

- Applicant/Resolution Professional

Date of Order: 30th March, 2021

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

Parties/Counsels Present:

Applicant/Resolution Professional : Mr. Balady Shekar Shetty

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. I.A.No.102 of 2021 in C.P.(IB)No.229/BB/2019 is filed by Mr. Balady Shekar Shetty, Resolution Professional of Unishire Regency Park LLP (hereinafter referred to as 'Applicant/Resolution Professional') U/s 12(2), R/w Section 60(5)(c) of the IBC, 2016, R/w Regulation 40 of the IBBI (Insolvency Regulations Process for Corporate Persons) Regulations, 2016, R/w Rule 11 of the NCLT Rules, 2016, by inter alia seeking to extend the period for completion of the CIRP of the Corporate Debtor, from 25.11.2020 to 11.09.2021 by excluding the period of 208 days from 22.07.2020 to 15.02.2021 in the interest of justice.
2. Brief facts of the Application, which are relevant to the question, are as follows:



- (1) Initially, C.P. (IB)No.229/BB/2019 filed by M/s. India Infoline Finance Ltd., U/s 7 of the Code, 2016, R/w Rule 4 of the I&B(AAA) Rules, 2016 was admitted by the Adjudicating Authority vide order dated 29.05.2020 by initiating CIRP in respect of Unishire Regency Park LLP, appointed Mr. VijayKumar Subramaniam Varun as the IRP, imposing moratorium etc. Subsequently, the Adjudicating Authority, vide its order dated 15.02.2021, allowed the Application filed by Mr. VijayKumar Subramaniam Varun/IRP to change the Resolution Professional of the Corporate Debtor and thus appointed Mr. Balady Shekar Shetty in place of Mr. VijayKumar Subramaniam Varun and directed the RP to take necessary actions as per the Code.
- (2) It is stated that the fourth Meeting of the CoC was held on 17.03.2021, wherein it was inter alia resolved with 100% per cent of the voting share that *'approval Committee of Creditors be and is hereby accorded for filing an Interlocutory Application before the Hon. Tribunal seeking extension of CIRP period up to 11th September, 2021 by excluding the time (208 days) elapsed between 22nd July, 2020 and 15th February, 2021 as on progress in the CIRP took place during the said period'*. It was further resolved that *'that the Resolution Professional be and is hereby authorized to take needful action in this regard'*.
- (3) It is also stated that the Resolution Professional of the Corporate Debtor was appointed only on 15.02.2021, long after the expiry of a period of 180 days from the initiation of the CIRP of the Corporate Debtor. Since no Resolution Professional has been appointed prior to 15.02.2021, the CIRP of the Corporate Debtor could not be conducted. In terms of Section 18(d) of the Code, the IRP is required to *'monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors'*. Only once the Resolution Professional is appointed by the Tribunal can the CIRP of the Corporate Debtor be effectively conducted. In terms of the Section 23(1) of the Code, *'Subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of*



the corporate debtor during the corporate insolvency resolution process period'. As such the information memorandum has not yet been prepared and no resolution plans have been invited from prospective Applicants, as only a confirmed Resolution Professional is empowered and authorised under the Code to take such actions. In these circumstances, no progress has been made in the CIRP period of the Corporate Debtor.

(4) The Resolution Professional has relied upon the following judgments:

- *Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd.*¹
- *Velamur Varadan Anand Vs. Union Bank of India & Anr.*²
Company Appeal (AT)(Insolvency) No.161 of 2018

(5) It is stated that the IRP has not been able to collect all information relating to the assets, finances and operations of the Corporate Debtor for determining the financial position of the Corporate Debtor in terms of Section 18(a) of the Code, since the completed books of accounts of the Corporate Debtor have still not yet been made available by the suspended Designated Partners and other personnel of the Corporate Debtor. In these circumstances, it has not been possible to draw up the up-to-date audited financial statements of the Corporate Debtors.

(6) The CIRP period of 180 days from the date of initiation of the CIRP of the Corporate Debtor expired on 25.11.2020. However, since no Resolution Professional was appointed, the following deadlines under the Code as follows have not been met:

- a. No registered valuers have been appointed to determine the fair value and the liquidation value to the Corporate Debtor within 47 days from the date of initiation of CIRP of the Corporate Debtor, as required under Regulation 35 of the CIRP Regulations.
- b. The Resolution Professional has not formed any opinion as to whether the Corporate Debtor has been subjected to any avoidable or preferential or other transactions covered U/ss.43, 45, 50 or 66 of the Code, within 75 days from the date of initiation of CIRP of

¹ *Company Appeal (AT) (Insolvency)No.185 of 2018*

² *Company Appeal (AT)(Insolvency)No.161 of 2018*

- the Corporate Debtor, as prescribed under Regulations 35A of the CIRP Regulations.
- c. The Resolution Professional has not prepared or submitted the information memorandum within 54 days from the date of initiation of CIRP of the Corporate Debtor, as prescribed under Regulation 36(1) of the CIRP Regulations.
 - d. The Resolution Professional has not prepared and published the brief particulars of the invitation for expression of interest in Form G of the Schedule to the CIRP Regulations of prospective Resolution Applicants, within 75 days from the date of initiation of CIRP of the Corporate Debtor, as prescribed under Regulation 36A of the CIRP Regulations.
3. Mr. Balady Shekar Shetty, learned Resolution Professional/Applicant has filed a Memo dated 01.04.2021 by *inter alia* stating that in the second meeting of the CoC which was held on 22.07.2020 where a Resolution was passed with the requisite majority to appoint Mr. Balady Shekar Shetty as the Resolution Professional of the Corporate Debtor in place of Mr. V.S. Varun. On 24.08.2020, the IRP filed I.A. No.329 of 2020 seeking appointment of Mr. Balady Shekar Shetty as the Resolution Professional. One of the Financial Creditors filed I.A.No.342 of 2020 before the Adjudicating Authority objecting to the appointment of Mr. Balady Shekar Shetty as the RP of the Corporate Debtor and sought independent verification of claims. On 15.02.2021, the Adjudicating Authority passed a Common Order disposing I.A. Nos.329 & 342 of 2020 by *inter alia* appointing Mr. Balady Shekar Shetty as the RP of the Corporate Debtor and directing the RP to re-examine the quantum of the Joint claim of Nippon Life India AIF Management Limited and Nippon Life India Asset Management Ltd.
4. Heard Mr. Balady Shekar Shetty, learned Resolution Professional/Applicant. We have carefully perused the pleadings of the party and the extant provisions of the Code and Rules.



5. As stated supra, the material facts of the issue are not in dispute, and the law on the issue is also settled by the judgments cited above. The Hon'ble Apex Court, in its decision in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.*, has conferred the power on the Adjudicating Authority to consider the issue of exclusion of time from the statutory period prescribed under the provisions of the Code, based on sufficient justification. The Hon'ble NCLAT also considered the issue of granting exclusion of time in appropriate cases, *in the matter of Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd.*,³ especially at para 10 where it mentioned "..... Any other circumstances which justifies exclusion of certain period."
6. The CoC have passed Resolution dated 22.07.2020 by *inter alia* resolving to appoint Mr. Balady Shekar Shetty as Resolution Professional. However, the existing IRP has filed an Application bearing I.A.No.329 of 2020 by *inter alia* seeking to appoint Mr. Balady Shekar Shetty as RP in place of Mr. V.R. Varun only on 24.08.2020 with a delay of 32 days. Subsequently, one of the Financial Creditors has filed an Application bearing I.A.No.342 of 2020 by objecting the appointment of Mr. Balady Shekar Shetty as the Resolution Professional. After hearing the matter, the Adjudicating Authority has passed a Common Order on 15.02.2021 in I.A. Nos.329 & 342 of 2020 by *inter alia* appointing Mr. Balady Shekar Shetty as the Resolution Professional of the Corporate Debtor.
7. From the above chronology of events it is clear that the entire period of delay in conducting the CIRP cannot be attributed to circumstances beyond the control of the RP or on account of the ongoing proceedings challenging the appointment of the RP. When the CoC had resolved to appoint Mr. Balady Shekar Shetty as RP on 22.07.2020, there was no reason for a delay of 32 days in filing the IA before this Tribunal for confirmation of the same on 24.08.2020, and does not constitute an exceptional circumstance as referred to in the above cited cases. However, we are inclined to exclude the period from the date on which the IA was filed on 24.08.2020 seeking his

³ *Company Appeal (AT)(Insolvency) No.185 of 2018*



confirmation till the matter was decided by this Tribunal vide order dated 15.02.2021, as the RP could not have been expected to function during the pendency of his Application and the IA challenging his appointment filed on 03.09.2020. Further, the number of days computed by the Applicant till 11.09.2021 in its application, includes 90 days that can be extended within the limit prescribed u/s 12(2)/12(3) of the Code. As the Application filed by the Applicant/RP mentions the provisions of Section 12(2) of the Code, and the Resolution passed seeking extension also mentions this date, and in the facts and circumstances of the case, to facilitate the successful completion of the CIRP, we are further inclined to allow this permissible period as extension.

8. In the result, I.A.No.102 of 2021 in C.P.(IB)No.229/BB/2019 is hereby disposed of with the following directions:
 - a. A period of 176 days shall stand excluded from the CIRP period;
 - b. A further period of 90 days is allowed as extension of the CIRP, within the meaning of section 12(3) of the Code.
9. The Resolution Professional shall take expeditious steps to finalize the CIRP, without any further delay and to submit a report to the Adjudicating Authority well before completion of the present excluded period.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

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