

- i. That this, Adjudicating Authority vide its order dated 08.11.2019 initiated CIRP against the Corporate Debtor and appointed Mr. Sanjay Gupta as the Interim Resolution Professional (IRP).
- ii. That IRP made a public announcement in FORM- A on 16.11.2019. In terms of Regulation 6 (2) (c), the last date for submission of proof of claim was specified as 22.11.2019.
- iii. That the 1st meeting of the Committee of the Creditors (CoC) was convened on 10.12.2019 wherein the members of the CoC rejected the appointment of the IRP as the Resolution Professional.
- iv. That the 2nd meeting of the CoC was convened on 04.01.2020, wherein Mr. Pawan Kumar Garg was appointed as the Authorized Representative for homebuyers.
- v. That the members of CoC after discussions and deliberations, approved the Expression of Interest for inviting prospective Resolution Applicants for submission of Resolution Plan and eligibility criteria.
- vi. Pursuant to above, the Applicant invited Expression of Interest for submissions of Resolution Plans for the Corporate Debtor and the same was published in the English Newspaper, namely 'Financial Express' and Hindi newspaper, 'Jansatta' on 11.01.2020 with the last date of submission of expression of interest as 26.01.2020.
- vii. That the 3rd meeting of CoC was held on 10.02.2020, wherein the IRP apprised the members of CoC that pursuant to publication of the Form-G, a total of six Prospective Resolution Applicants have sent an EOI, out of which three were held to be ineligible. Thereafter, the Applicant issued the final list of the Prospective Resolution Applicants in terms of Section 36A(12) of CIRP Regulations which consisted of the following:-
 - IRIDIA Home Buyers Association (IHBA)
 - Prudent ARC



- One City Infrastructure Private Limited

- viii. That the 4th meeting of CoC was convened on 20.02.2020, wherein the erstwhile IRP informed the members that the resolution to confirm the IRP as the Resolution Professional had been rejected by the members of the CoC and that the members of the CoC proposed the appointment of one Mr. Praveen Kumar Agrawal as the Resolution Professional. Accordingly, the Agenda for the appointment of Mr. Praveen Kumar Agarwal as the Resolution Professional was passed with a voting share of 100%.
- ix. In view of the above, the CoC filed an Application being IA 1752 of 2020 seeking replacement of IRP and same was allowed vide order dated 15.07.2020, thereby, appointing Mr. Praveen Kumar Agarwal as the Resolution Professional.
- x. That the 5th meeting of the CoC was convened on 21.03.2020, wherein, the Erstwhile IRP apprised that one of the Prospective Resolution Applicant being IRIDIA Homebuyers Association has submitted the Resolution Plan, out of the three Prospective Resolution Applicants. Further, it was decided by the Committee of Creditors that the agenda for publishing fresh FORM- G should be considered after considering the one Resolution Plan received.
- xi. That the 6th meeting of CoC was convened on 27.07.2020, wherein the resolution for the extension of CIR period by 90 days was passed by the CoC with a voting share of 90.24%.
- xii. Pursuant to the above, the erstwhile Resolution Professional filed an application bearing I.A. No. 3468 of 2020 before this Adjudicating Authority seeking extension of 90 days beyond the period of 180 days.
- xiii. That the 7th meeting of CoC was convened on 01.10.2020 wherein, the appointment of the Applicant herein, i.e. Sh. Anil Tayal was approved as the Resolution Professional by 68.77% voting share in favour.



- xiv. In view of the above, the CoC filed an Application being I.A. No. 4391 of 2020 seeking replacement of Resolution Professional and it was allowed vide order of this Tribunal dated 16.10.2020.
- xv. Furthermore, this Adjudicating Authority, while allowing I.A. No. 4391 of 2020, granted liberty to the Applicant herein to file an amended application in I.A. No. 3468 of 2020 for the purpose of seeking extension of 90 days beyond the period of 180 days in CIRP. In view of the same, the Applicant filed an amended application bearing I.A. No. 4611 of 2020 in I.A. 3468 of 2020 seeking exclusion and extension of time in the CIRP of the Corporate Debtor.
- xvi. That vide order dt. 09.11.2020, this Adjudicating Authority extended the CIRP period of Corporate Debtor by 90 days and further excluded the period of 98 days from the CIRP of the Corporate Debtor.
- xvii. That it is pertinent to mention here that the CIRP Extension Application being I.A. No. 3468 of 2020 under Section 12(2) & (3) for extension of 90 days was filed on 19.08.2020 and amended application was filed on 21.10.2020 being I.A. No. 4611 of 2020. And this Adjudicating Authority on 09.11.2020 extended the CIRP period by 90 days. In view thereof, the Applicant is praying that the time spent in pursuing the CIRP extension application from 21.10.2020 to 09.11.2020 being the passing of the order by this Adjudicating Authority be excluded for the purposes of calculation of 270 days.
- xviii. That it is pertinent to state herein that the Applicant has received one Resolution Plan during the CIRP of the Corporate Debtor from one of the Prospective Resolution Applicant i.e. IRIDA Home Buyers Association, which is being under consideration of the CoC.
- xix. That the above fact of last date of CIRP period was coming to an end and the receipt of the Resolution Plan from IRIDA Home Buyers Association was brought to the notice of the CoC in their



8th meeting convened on 12.11.2020. That the Applicant in the said meeting placed the resolution before CoC for seeking extension of 60 days beyond the period of 270 days in the CIRP of the Corporate Debtor from this Adjudicating Authority and it was approved by members of the CoC by 100% voting share.

xx. That the Applicant has relied on the following judgments:-

a) Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta & Ors, 2020 (8) SCC 531 [Para 74 & 78]

b) Arcelor Mittal India Pvt Ltd v. Satish Kumar Gupta, 2019 (2) SCC 1, [Para 83]

c) Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors, 2019 (4) SCC 17 [Para 11]

d) IDBI Bank Ltd. v. Mr. Anuj Jain Interim Resolution Professional, Jaypee Infratech Ltd. & Anr., Company Appeal (AT) (Ins) No. 536 of 2019 with I.A. No. 1857 of 2019 dated. 30.07.2019 [Para 12,13,14]

e) Quinn Logistics India Pvt Ltd v. Mack Soft Tech Pvt Ltd, Comp App. (AT) (INS) No. 185 of 2018 dated 08.05.2018 [Para 9,10]

f) Mr. Vikram Bajaj, RP Anil Special Steels Industries Ltd v. Committee of Creditors Anil Special Steels Industries Ltd, Company Appeal (AT) (Ins) No. 180 of 2019 dated 11.03.2019 [Para 6, 7].

xxi. In view of the above, the Applicant seeks extension of 60 days beyond 270 days of corporate insolvency resolution period in order to take further steps and consider the resolution plan submitted by the prospective resolution applicant.

3. We have heard the Ld. Counsel for the applicant and perused the averments made in the application.

4. Ld. Counsel for the applicant submitted that the CoC in its 8th meeting dated 12.11.2020 by 100% voting share resolved and authorised the RP vide Resolution No. 1 to file an application before

the Adjudicating Authority for seeking extension/exclusion of CIRP period by 60 days beyond the period of 270 days in the CIR period.

5. He further submitted that apart from that the applicant has also prayed for exclusion from 21.10.2020 to 09.11.2020 i.e. 20 days being the time spent in listing of the CIRP extension application and passing of the order by this Adjudicating Authority and in support of its contention, he has placed reliance upon the decisions referred in aforementioned para.
6. He further submitted that the word mandatorily is given in the second proviso of Section 12 Sub Section 3 of the IBC, 2016 has already been struck down by the Hon'ble Supreme Court in the case of **Committee of Creditors Essar Steel India Limited Vs. Satish Kumar Gupta and Ors. in Civil Appeal No. 8766-67 of 2019.**
7. Before considering the submissions, we would like to refer Section 12 of the IBC 2016 and the same is quoted below:-

Section 12: Time-limit for completion of insolvency resolution process.

***12. (1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.**

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 1[sixty-six] per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order

extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

2]Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.]

8. At this juncture, we would also like to refer to the decision of the Hon'ble Supreme Court in the case of Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Ors. in Civil Appeal No. 8766-67 of 2019 upon which the applicant's counsel has placed reliance and submitted that the word 'mandatorily' shown in the second proviso of Section 12 of the IBC has already been struck down by the Hon'ble Supreme Court. We have gone through the decision of the Hon'ble Supreme Court and we find that the Hon'ble Supreme Court in para 78 of the judgment while considering the amendment made in Section 12 of the IBC, which came into force from 16.08.2019, held that "Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigants 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 litigants fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigants fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, inasmuch as the time taken in legal proceedings is certainly an important factor which causes delay, and which has made previous statutory experiments fail as we have seen from Madras Petrochem (supra). Thus, while leaving the provision otherwise intact, we strike down the word mandatorily as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigants right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it



may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation”

9. We further notice that the Hon’ble Supreme Court while considering the validity of amendment made on 16.08.2019 held that “while leaving the provision otherwise intact, we strike down the word mandatorily as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigants right to carry on business under Article 19(1)(g) of the Constitution” and further held that “The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the



Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. So far as Section 4 is concerned, it is clear that the original timelines in which a CIRP must be completed have now been extended to 330 days, which is 60 days more than 180 plus 90 days (which is equal to 270 days). But this 330-day period includes the time taken in legal proceedings in relation to such resolution process of the corporate debtor. This provision is to get over what is stated in the judgment in ArcelorMittal India (supra) at paragraph 86, that the time taken in legal proceedings in relation to the corporate resolution process must be excluded from the timeline mentioned in Section 12. Secondly, the third proviso added to the Section also mandates that where the period of 330 days is over on the date of commencement of the Amending Act of 2019, a further grace period of 90 days from such date is given, within which such process shall either be completed or the corporate debtor be sent into liquidation”.

10. In view of the abovementioned decision, we observe that the general rule is that the 330 days is the outer limit within which the resolution of the assets of the Corporate Debtor must take place beyond which the Corporate Debtor is to be driven into liquidation but in is only in exceptional circumstances the period of CIRP can be extended.
11. Now, in the light of the decisions, we would like to consider the facts of the case in hand. We notice that in this matter, the CIRP was initiated on 08.11.2019 and the period of 180 days (without excluding the lockdown period) expired on 06.05.2020 and after excluding the lockdown period imposed by the Central Government from 25.03.2020 to 30.06.2020 (i.e. 98 days) expired on 13.08.2020 and the same was granted vide order dated 09.11.2020. We further notice



that by the same order dated 09.11.2020, an extension for the period of 90 days beyond the period of 180 days was also granted, which has already expired on 11.11.2020. We further notice that the CoC in its 8th meeting dated 12.11.2020 resolved and authorized the RP to file the present application for extension/exclusion of 60 days beyond the period of 270 days in the CIR period.

12. Considering the submissions and averments made in the application and in view of second proviso of Section 12 (3) of IBC 2016, **we hereby extend the CIR period for further 60 days beyond the period of 270 days** but so far as the exclusion of period from 21.10.2020 to 09.11.2020 i.e. the period of 20 days spent in listing of the CIRP extension application and passing of the order by this Adjudicating Authority is concerned, in view of the second proviso of Section 12(3) of the IBC 2016, we are of the considered view that the exclusion of period on the ground of pendency of the legal proceedings is not permissible under the Law. Hence, we are not inclined to exclude the period of 20 days commencing from 21.10.2020 to 09.11.2020 as prayed by the applicant in view of the second proviso of Section 12(3) of the IBC. Accordingly, this prayer of applicant is hereby rejected.
13. At this juncture, we notice that the period of CIRP has already expired on 11.11.2020 and even after the extension of the period of 60 days i.e. the period of 330 days too has expired on 10.01.2021. We further notice that one Resolution Plan is pending with the COC for approval. Considering these peculiar circumstances, we again refer to the decision of Hon'ble Supreme Court given in the case of **Committee of Creditors Essar Steel India Limited Vs. Satish Kumar Gupta and Ors. in Civil Appeal No. 8766-67 of 2019 in which** in para 79, the Hon'ble Supreme Court held that "**However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the**



insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation”.

14. Considering the exceptional circumstances as narrated above, and the decision of the Hon'ble Supreme Court whereby the period of CIRP may be extended beyond the period of 330 days and the fact that the extended period of 60 days has also expired on 10/01/2021, we think it proper to give the last extension of 40 days to enable the CoC to consider the Resolution Plan pending its consideration. Hence, we hereby extend the period of 40 days beyond the period of 330 days, from the expiry of the period of 330 days.
15. **Accordingly, the COC is directed to consider the Resolution plan pending for consideration within the extended period failing which, Resolution Professional is directed to take appropriate steps in accordance with the provisions of law.**
16. With this order, the present application i.e. IA/5173/2020 stands disposed off.



L.N. GUPTA

Member (T)



ABNI RANJAN KUMAR SINHA

Member (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT - II)

Item No. 2
(IB)-266(ND)2019
IA/5173/2020

IN THE MATTER OF:

Mr. R. Tarkeshwar Narayan

...

Applicant/Petitioner

Versus

M/s. Horizon Buildcon Pvt. Ltd.

...

Respondent

Under Section: 7 of IBC Code, 2016

Order delivered on 03.02.2021

CORAM:

**SHRI. ABNI RANJAN KUMAR SINHA,
HON'BLE MEMBER (J)**

**SHRI. L. N. GUPTA,
HON'BLE MEMBER (T)**

PRESENT:

ORDER

The order is pronounced in the open Court.

-sd-

**(L.N. GUPTA)
MEMBER (T)**

-sd-

**(ABNI RANJAN KUMAR SINHA)
MEMBER (J)**