

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

Item No. 106

(IB)-2130(ND)2019

IA/3930/2020 IA/107/2021 IA/3356/2020 IA/3629/2020
IA/4184/2020 IA/4059/2020 IA/4230/2020 IA/4190/2020
IA/4202/2020 IA/3951/2020 IA/5100/2020 IA/4914/2020
IA/4876/2020 IA/5235/2020 IA/372/2021 IA/347/2021 IA/446/2021
IA/471/2021

IN THE MATTER OF:

M/s. Dynacon Projects Pvt. Ltd. ... Applicant/Petitioner

Versus

M/s. Today Homes & Infrastructure Pvt. ... Respondent
Ltd.

Under Section: 9 of IBC Code, 2016

Order delivered on 05.02.2021

CORAM:

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

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

PRESENT:

Adv. Sumesh Dhawan, Adv. Vatsala Kak, for Suspended Board of Directors, Ms. Nalini, Adv and Mr. Rahul Singh, Adv for Applicants in IA No. 4059 & 4914, Mr. Maneesh Gumber Advocate in IA No. 471/2021, Mr. Ajay Goyal, Adv. For Applicants in IA NO 4184, 4230, 4190 and 4202 OF 2020, Ms. Divya, Advocate for the Applicant in IA No. - 471/2021, Mr. P. Nagesh and Milan Singh Negi, Advocates for Resolution Professional, Mr. Maneesh Gumber Advocate for Applicant in IA No. 471/2021, Mr. Vaibhav Kush Advocate for Respondent 1 to 3 in IA/4876/2020, Mr. Gautam Singhal, Adv for Applicant (IDBI Bank Ltd) in IA No. 471/2021

ORDER

IA/3930/2020: By filing this application, the Applicant/RP has prayed for extension of 170 days from 25.12.2019 to 23.01.2020 on the ground of time lost in appointment of RP and further from 18.03.2020 till 31.07.2020 due to the lockdown imposed by the Government and further extension of 90 days under Section 12 (3) of the IBC, 2016.

Heard the Ld. Counsel appearing for the Applicant and perused the averments made in the application.



Ld. Counsel appearing for the Applicant submitted that since there was a delay of 29 days in handing over the charge from the IRP to the RP from 25.12.2019 to 23.01.2020, so this period may be excluded while calculating the period of the CIRP. He further submitted that due to lockdown imposed by the Central Government, no work was conducted by the IRP/RP from 15.03.2020 to 31.07.2020, which may be excluded. He further submitted that the CoC in the 4th meeting dated 17.08.2020 passed the following resolutions:

“Resolved that approval of the Committee of Creditors of M/s. Today Homes & Infrastructure Pvt. Ltd. be and is hereby accorded to the Resolution Professional to file necessary applications before the Hon'ble NCLT, New Delhi Bench for seeking extension of 90 days in the Insolvency Resolution Process as Committee is of collective view that the ongoing Insolvency Process of M/s. Today Homes & Infrastructure Pvt. Ltd. cannot be reasonably completed within 180 days period.

“Further Resolved that the Resolution Professional advised to approach the Hon'ble NCLT, New Delhi Bench for exclusion of time of 29 days that has been evidently lost from 24.12.2019 till 22.01.2020 in appointment of Resolution Professional and of 131 days from 23.03.2020 to 31.07.2020 due to Janta Curfew and the lockdown imposed by the Government of India and the State Government of Delhi owing to Covid-19 pandemic and associated public health emergency measures totaling of 160 days.

In the light of the submission raised on behalf of the Applicant/RP, we are of the view that so far as the exclusion of 29 days is concerned, in view of the section 12(3) second proviso, the Corporate Insolvency Resolution Process shall mandatorily be completed within a period of 330 days from the Insolvency commencement date, including any extension of the period of Corporate Insolvency Process granted under this section and the time taken in legal proceedings in relation to such Resolution Process of the Corporate Debtor. Of course, 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 held that in the exceptional circumstances it can be extended but on the basis of the averment made in the application, we notice no such exceptional circumstances, therefore, in view of the aforesaid provision, we are of the considered view that the exclusion of the period from 24.12.2019 to 22.01.2020 due to time lost in appointment of Resolution Professional is not permissible under the law and hence, we are not inclined to exclude that period. Hence, the prayer for exclusion of 29 days on this ground is hereby rejected.

So far as the prayer for exclusion of 131 days from 23.03.2020 to 31.07.2020 due to the lockdown is concerned, in similar matters, on this ground, we have excluded the period of 97 days only from 25.03.2020 to 30.06.2020. So,



applying the same principle, we hereby exclude the period of 97 days from 25.03.2020 to 30.06.2020, while calculating the period of CIRP.

So far as the extension of 90 days is concerned, we notice that in the 4th meeting, the COC by 100 percent voting share resolved and authorized the RP to file an appropriate application for extension for a period of 90 days beyond the period of 180 days. Accordingly, we hereby allow this prayer of the RP and extend the period of CIRP by 90 days beyond the period of 180 days (after excluding the period of 97 days commencing from 25.03.2020 to 30.06.2020 due to lockdown), while calculating the total period of CIRP.

With this, **the present IA stands disposed of.**

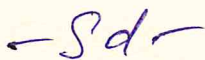
IA/107/2021: In the course of hearing, we notice that the prayer for exclusion of time period is made on the ground that the RP was tested Covid-19 positive. The Applicant has not enclosed any document to corroborate this fact.

Therefore, the Applicant is well advised to bring those documents by filing the supplementary affidavit.

List the matter on 22.02.2021.

IA/3356/2020, IA/3629/2020, IA/4184/2020, IA/4059/2020 IA/4230/2020, IA/4190/2020, IA/4202/2020, IA/3951/2020, IA/5100/2020 IA/4914/2020, IA/4876/2020, IA/5235/2020, IA/372/2021, IA/347/2020, IA/446/2021 and IA/471/2021 :

List the IAs on 22.02.2021.



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



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