

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 16.09.2020

THROUGH VIDEO CONFERENCING

CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
TP No. 01/19 CP No. 125/14	For report of RP – CIRP IA 372/2020	Sec 433 of CA 1956	M/s Bank of Nova & Scotia	AZB Partners	M/s Opto Infrastructur e Ltd	Vedagiri Venkata Krishnamurthy, RP Ashwin R A advocate for RP

ADVOCATE FOR PETITIONER/s:

MR. ASHWIN R.A – Advocate for R.P
MR. AMOGH C.A – Advocate for Petitioner

ADVOCATE FOR RESPONDENT/s:

ORDER

Heard Mr. Ashwin R.A, learned Counsel for the RP and Mr. Amogh C.A, learned Counsel for the Petitioner in C.P, **through Video Conference**.

IA No. 372/2020 is disposed of by separate order.

Post the case on **30.09.2020**.

MEMBER (T)

MEMBER (J)

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

I.A. No.372 of 2020 in
C.P. () No. 125/2014 (TP No. 01 of 2019)
U/s 12 of the I&B Code, 2016
R/w Rule 11 & 15 of the NCLT Rules, 2016.

In the matter of:

Mr. Vedagiri Venkata Krishnamurthy,
Resolution Professional of
M/s. Opto Infrastructure Limited

197, Sai Krupa, 6th A Main Road,
16th Cross, JP Nagar IV Phase,
Bengaluru – 560 078

... Applicant/RP

Date of Order: 16th September, 2020

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

Parties/Counsels Present (Through Video Conference):


For the Applicant : Mr. Ashwin R.A

For the Petitioner : Mr. Amogh .C.A

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No. 372 of 2020 in C.P. () No.125/2014 (TP No.01/2019) is filed by Mr. Vedagiri Venkata Krishnamurthy, Resolution Professional of M/s. Opto Infrastructure Limited U/s 12 of the I&B Code, 2016 R/w. Rule 11 & 15 of the NCLT Rules, 2016, by inter-alia seeking to exclude 140 days from 25.07.2019 to 04.08.2019 & 25.03.2020 to 31.07.2020 and grant time from 21.04.2020 till


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07.09.2020 for the purpose of counting 270 days of Resolution Process in order to complete the CIRP of the Corporate Debtor.

2. Brief facts of the case, which are relevant to the issue in question, as follows:

(1) C.P. () No.125/2014 filed by M/s. Bank of Nova Scotia, was admitted by the Adjudicating Authority vide order dated 25.07.2019 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor, appointing IRP, imposing moratorium etc. And later the IRP was appointed as RP and the same was confirmed by the Adjudicating Authority by order dated 11.11.2019.

(2) The Applicant is discharging his duties diligently as per law. Later. The Applicant made Public Announcement in Form-G calling for Expression of Interest on 18.02.2020 and has received 3 EOI. He informed the COC that as per the revised timelines issued to the Prospective Resolution Applicants as resolved during the 8th COC meeting held on 27.06.2020, the last date for submission of resolution plans was 19.07.2020, however there were no resolution plans that were submitted till date. The RP informed the COC that out of the three prospective resolution Applicants, one M/s. NS Software has been sending emails stating the difficulty caused due to restrictions imposed on account of COVID-19 in carrying on a site visit and carrying out discussions. They also stated that here is an increased exposure of the pandemic and in such a situation they will not be submitting a resolution plan in the perforced life endangering circumstances. He mentioned that the revised timelines may be issued to the prospective resolution applicants immediately. The Petitioner mentioned that the

prospective resolution Applicants should be informed that this would be the final extension of timelines and no further extension may be granted and accordingly, the COC members unanimously resolved for issuing revised timelines which is subject to approval for exclusion of period by this Hon'ble NCLT.

- (3) The IBBI has sent an email to the Applicant on 24.07.2020, requiring the RP to submit a form detailing the reasons for CIRP continuing even after 330 days. He has submitted the details on 25.07.2020 explaining the current status of CIRP process. In order to be sure of the period considered for exclusion from CIRP timelines and to avoid any non-compliance in CIRP process owing to wrongful consumption of this exclusion period and due to the present COVID-19 situation and also by way of abundant caution, the instant Application is filed
3. Heard Mr. Ashwin R.A, learned Counsel for the Applicant through **Video Conference**. We have carefully perused the pleadings of the Party and also extant provisions of the Code and Rules made there under and the decisions cited by the Applicant as mentioned supra.
4. The Point for consideration is whether lockdown period involved in the CIRP in question should be excluded or not. In this regard, it is now settled position of law, that lockdown period can be excluded from regular period of time available as per normal Rules/Law.
5. The Judgment of Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No(s).3/2020 in Re: cognizance for extension of Limitation vide order dated 23.03.2020*, the aforesaid judgment reads as under:

"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the Country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the Country in filing their Petitions/Applications/Suits/ Appeals/all other proceedings



within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the Country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special Laws whether condonable or not shall extended w.e.f 15th March, 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities. This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction. Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

The Hon'ble National Company Law Appellate Tribunal in *Suo Moto Company Appeal (AT) (Insolvency) No.01 of 2020*, vide order dated 30.03.2020 and also the Insolvency and Bankruptcy Board of India, inserted Regulation 47A to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, vide notification dated 20.04.2020 and the same is as under:

“Exclusion of period of lockdown”

47A. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process.”

6. The Lockdown period involved in the Country covers the period from March 25, 2020 to May 31, 2020 i.e. 68 days, which can be granted in the case too. The Applicant can file separate Application seeking

exclusions of time subject to justification and it cannot be mechanically sought for. Therefore, we are inclined to grant exclusion of said 68 days from the statutory period available in the instant case.

7. In the result, we hereby allowed **I.A.No.372/2020** in C.P. No.125/2014 (TP No. 01 of 2019) with the following directions:

- (1) We hereby granted exclusion of time for a period of 68 days i.e. from 25.03.2020 to 31.05.2020, from the statutory period of CIRP.
- (2) The Resolution Professional is directed to take expeditious steps to finalize the CIRP in question, within stipulated time, without raising frivolous issued leading to drag on the case.


ASHUTOSH CHANDRA
MEMBER, TECHNICAL


RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

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