

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-II**

I.A. No. 3675 OF 2021

In

Company Petition (IB)No.55/ND/2018

In the matter of:

The Insolvency and Bankruptcy Code, 2016

AND

In the matter of:

APPLICATION UNDER SECTION 12 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH REGULATION 40 OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FROM CORPORATE PERSONS) REGULATIONS, 2016 AND RULE 11 OF THE NATIONAL COMPANY LAW TRIBUNAL RULES, 2016.

AND

In the matter of :

HARI KRISHNA SHARMA

...OPERATIONAL CREDITOR

VERSUS

AKME PROJECTS LIMITED

...CORPORATE DEBTOR

And in the matter of:

MR. JALESH KUMAR GROVER
RESOLUTION PROFESSIONAL
M/S AKME PROJECTS LIMITED
H. NO. 202, GH-40, SECTOR-20
PANCHKULA, HARYANA

...APPLICANT

ORDER DELIVERED ON: 02/11/2021

CORAM :

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Sh. L. N. Gupta, Hon'ble Member (Technical)

Present:

**For RP: - Mr. Abhishek Anand, Adv. with Mr. Tanveer Oberoi, Adv.,
Rajat Katyal Adv. for Bajaj Finance Ltd.**

ORDER**AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

By filing the present application, the Applicant/Resolution Professional has prayed for extension of the further period of Corporate Insolvency Process (hereinafter referred as CIRP) by 90 days for the time period shown in paragraph 71 of the application, which has been lost in the litigation.

2. The facts mentioned in the application in short are that this Adjudicating Authority vide order dated 18.04.2018 has admitted the Company Petition No. (IB)-55(ND) of 2018 against the Corporate Debtor for initiating the Corporate Insolvency Resolution Process (CIRP) under Section 9 of Insolvency and Bankruptcy Code, 2016 (the Code) and appointed Mr. Anurag Sharma as the Interim Resolution Professional.

3. Further, the Applicant was appointed as Resolution Professional of the Corporate Debtor and vide order dated 12.09.2019 in CA 1136 of 2019, this Adjudicating Authority confirmed the Applicant as Resolution Professional.

4. Further, vide order dated 16.10.2019, this Adjudicating Authority excluded the time spent in judicial process of 270 days and accordingly, the Applicant is conducting the CIRP initiating from 12.09.2019.

5. The Applicant convened the 6th meeting of the CoC on 02.01.2020, The Applicant further apprised the members of the CoC that the Form G was published on 14.11.2019 but only one E01 has been received from the Prospective Resolution Applicant on or before the due date. Upon discussions and deliberations, the members of the CoC decided that for the maximization of values to all the stakeholders, Form G was required to be re-issued. The Resolution Professional informed the COC that the CIRP Period is expiring on 15.01.2020 being 180th day of the fresh CIRP after exclusion granted of 270 days from the litigation period (06.07.2018-19.07.2019). The members of CoC decided that the Applicant shall apply for the extension of CIRP period beyond 180 days in the matter of Akme Projects Limited. The CoC members authorized the RP to move an application before the NCLT for extension of CIRP period beyond 180 days. Vide order dt. 27.01.2020 this Adjudicating Authority grant extension of 90 days beyond the period of 180 days and the CIRP of the Corporate Debtor was extended till 14.04.2020.

6. Further, the Applicant convened the 10th meeting of the CoC on 17.06.2020, and apprised the members of the CoC that a period of 270 days of Corporate Insolvency Resolution Process of the Corporate Debtor is about to end on 23.06.2020 after excluding the lockdown period till 31.05.2020 and the CoC decided that the Applicant shall file an application for seeking exclusion of time period (90 days) lost in the various litigations including related to part of the project named "Akme Raaga" situated at Manesar, Gurgaon and also litigations in respect of the other matters of the Corporate Debtor.

7. Further, the Resolution Plan was submitted by only one eligible PRA i.e. Dr. Fresh Assets Limited before the due date.

8. Further, Pursuant to the above, the Applicant filed an application bearing no. I.A. No. 2574 of 2020 on 04.07.2020 before this Adjudicating Authority, seeking exclusion of time period (90 days) lost in the various litigations as approved by Committee of Creditors in the tenth COC meeting, wherein this Adjudicating Authority vide order dated 10.07.2020 granted extension of 60 days for the CIRP of the Corporate Debtor w.e.f. the passing of the order with a direction to the RP to expedite the Resolution Process and in case needed, the RP would be at liberty to file another application for seeking exclusion of the litigation period.

9. The Applicant convened the 12th meeting of the CoC on 02.09.2020, wherein the Applicant apprised the members of the CoC regarding the revised constitution of Committee of Creditors and determination of their voting rights. and in that meeting, the CoC also decided that the Applicant shall file an application before Hon'ble NCLT, New Delhi bench for seeking exclusion of time period (60 days) lost in the various litigations including related to part of the project named "Akme Raaga" situated at Manesar, Gurgaon and also litigations in respect of the other matters of the Corporate Debtor. wherein this Adjudicating Authority vide order dated 30.09.2020 granted extension of 60 days for the CIRP of the Corporate Debtor w.e.f the passing of the order with a direction to the RP to expedite the decision on Resolution Plan.

10. The revised resolution plan was submitted by Dr. Fresh Assets Limited on 01.09.2020 which was presented before the CoC members in 12th CoC meeting held on 02.09.2020.

11. The Applicant convened the 16th meeting of the CoC on 23.11.2020, and in that meeting the CoC decided that the Applicant shall file an application for seeking exclusion of time period (90 days) lost in the various litigations including related to part of the project named "Akme Raaga" situated at Manesar, Gurgoan and also litigations in respect of the other matters of the Corporate Debtor.

12. Thereafter the Applicant filed an application bearing no. I.A. No. 5608 of 2020 on 03.12.2020, seeking exclusion of time period (90 days) lost in various litigations as approved by Committee of Creditors in the 16th COC meeting. Which was dismissed by this Bench vide Order dated 20.01.2021.

13. Further, Pursuant to the dismissal of exclusion application, the Applicant filed an Appeal before the Hon'ble NCLAT against the order dated 20.01.2021 passed by this Bench. The Hon'ble NCLAT vide its Order dated 16.02.2021 allowed the Appeal and excluded the period of 112 days i.e. from 13.10.2020 till 01.02.2021 with effect from the date of order i.e. 16.02.2021 and accordingly, the last day of CIRP was coming to an end on 07.06.2021.

14. Further, vide Order dated 11.06.2021, the Adjudicating Authority exclude the period of lockdown imposed by the Government of NCT of Delhi from 19.04.2021 till 07.06.2021 from the CIRP period of the Corporate Debtor.

15. Further, the 23rd meeting of the Committee of Creditors was convened on 26.07.2021 through mode of audio/ video conferencing, wherein the Applicant apprised the members of the CoC regarding that a letter that has been received via email dated 26.07.2021 from the Akme Raaga Flat Buyers Association stating that they are willing to submit a Resolution Plan of the Corporate Debtor. The applicant further informed the COC members that due to the time consumed in disposal of the main litigation in respect of the ownership of the project named "Akme Raaga (Appeal No. 72 of 2020) pending before Hon'ble DRAT and other on-going litigation of the Corporate Debtor, a lot of time has been lost which should be excluded for the calculation of CIRP period. Further, upon discussions and deliberations, the members of the CoC decided that the Applicant shall file an application for seeking exclusion of time period (90 days) lost in the various litigations including related to part of the project named "Akme Raaga" situated at Manesar, Gurgoan and also litigations in respect of the other matters of the Corporate Debtor.

16. It is further submitted that present application is filed for seeking exclusion of 90 days i.e. time period lost in the various litigations due to facts, circumstances and reasons as enumerated below:-

- i. That Hon'ble DRAT vide its final order dated 07.06.2021 in Regular Appeal no. 72 of 2020 confirmed the sale of the housing project named "Akme Raaga" made by YES Bank to M/S Grandstar Realty Private Ltd under SARFAESI Act, 2002.
- ii. That pursuant to Form 'G' dated 01.03.2021, 13 eligible Prospective Resolution Applicants submitted their Expression of Interest before the due date but no resolution plan was received by the Applicant on account of final order dated 07.06.2021 passed by Hon'ble DRAT.
- iii. That Hon'ble Supreme Court of India has passed an order dated 13.10.2020 in the matter of Rameshwar & Ors Vs. State of Haryana & Ors [Miscellaneous Application No.50 of 2019 in Civil Appeal No.8788 of 2015] stating therein that no third-party rights shall be created and no fresh development in respect of the entire 268 acres of land shall be undertaken. As land of the housing project "Akme Raaga" is also included in above 268 acres of land, M/S Grandstar raised its concern during the hearing before DRAT and during their interactions with the eligible Prospective Resolution Applicants.
- iv. That as a last resort and to avoid the probable liquidation of the Corporate Debtor, Akme Raaga Flat Buyers Association has decided to submit a Resolution Plan of the Corporate Debtor
- v. That the time is required for Re-publication of Form G, approval of revised eligibility criteria & evaluation matrix, submission of Resolution Plan by the Home-buyer - Association, finalization & examination of the plan to be submitted by the Home-buyer - Association and approval of the same from the Committee of Creditor.

17. Hence, the Applicant is seeking exclusion of the following time period, which has been lost in litigation, and which has material bearing on the resolution process of the Corporate Debtor:

S. No.	PARTICULARS	FILED/LISTED	STATUS
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1.	C.A. NO. 268 & 269 of 2018 filed by Yes Bank for seeking directions to AAA landmark and spade financial services who have made a claim with the IRP and are part of the CoC should not be permitted voting right on the grounds that they are related parties to the Corporate Debtor	Listed on 06.07.2018 notice issued to the respondents	Applications allowed on 19.07.2019 vide order passed by this Hon'ble Adjudicating Authority
2.	C.A. no. 337 & 338 of 2018 filed by phoenix arc private limited for seeking directions to AAA landmark and spade financial services who have made a claim with the IRP and are part of the CoC should not be permitted voting right on the grounds that they are related parties to the Corporate Debtor	Listed on 18.07.2018 notice issued to the	Applications allowed on 19.07.2019 vide order passed by this Hon'ble Adjudicating Authority
3.	Company Appeal (AT) (INS) 829 of 2019 filed by Space Financial Services and AAA Landmark Pvt. Ltd. against the order of the Hon'ble Adjudicating Authority dated 19.07.2019	Notice issued on 20.08.2019	Appeal was dismissed on 27.01.2020 vide order passed by Hon'ble Appellate Authority
4.	Civil appeal no. 3063 of 2020 filed by AAA landmark private ltd and spade financials services ltd. Against the order dated 27.01.2020 of NCLAT declaring them as the related parties of the corporate debtor	The matter was first listed on hearing on 13.10.2020 before supreme court	Appeal was dismissed on 01.02.2021 Vide order passed By Hon'ble Supreme Court Of India
5.	Civil appeal no. 2841 of 2020 filed by phoenix arc private ltd. Against the order dated 27.01.2020 of NCLAT for seeking	The matter was first listed for hearing on 13.10.2020 before	The Hon'ble Supreme Court Of India Vide Its Final Judgement Dated 01.02.2021 held that AAA and



	clarity on the status of AAA landmark private ltd. And spade financials services ltd. A financial creditors of the corporate debtor	supreme court	Spade cannot be labelled as financial creditors under section 5(7); and the decision of the NCLAT, in as much as it referred to appellants as related parties of the corporate debtor under section 5(24), is affirmed.
6.	Corporate Debtor filed securitization application no. 148/2017 under section 17 of SARFAESI Act, 2002 for quashing/setting aside the sale of mortgaged property being land situated in Manesar, Gurgaon Haryana By Yes Bank in favor of Grandstar Reality Pvt. Ltd. Vide sale confirmation advice dated 17.06.2016	The matter was first listed for hearing on 14.09.2017	DRT-II, New Delhi Vide Its Order Dated 07.01.2020 Dismissed The S.A. No. 148/2017 Filed By The Corporate Debtor
7.	Grandstar reality private limited filed an appeal (72/2020) against the order dated 07.01.2020 passed by DRT-ii, New Delhi, upholding the sale made by Yes Bank to the Grandstar of the product named "Akme Raaga" under SARFAESI act	Notice issued on 28.07.2020	Appeal was dismissed on 07.06.2021 vide order passed by Hon'ble DRAT.
8.	Writ petition no. 1217 of 2018 titled as <i>Akme Raaga Flat Buyers Association V. State Of Haryana & Ors.</i> , under article 226/227 was filed before the Hon'ble Punjab And Haryana High Court At Chandigarh by The Akme Raaga flat buyers association seeking	The matter is now listed for hearing on 24.10.2021	The matter is still pending for adjudication Before The Punjab And Haryana High Court

	interalia direction to the respondents to take action under section 8 (2) of the Haryana Development And Regulation Of Urban Area Act, 1975 for completion and handing over of the apartment in the project		
The applicant is seeking exclusion of 90 days out of the total period lost in litigation.			

18. We have heard the Ld. Counsel appearing for the Applicant and perused the averments made in the application. Ld. Counsel for the Applicant has raised all the facts mentioned in the application and submitted that in view of the facts stated in the paragraph 17 (1) of the application, the extension/exclusion for a period of 90 days, lost in the judicial intervention, may be given. He further submits that this was approved by the 79.27 per cent of the voting share of the Committee of Creditors in its 23rd meeting.

19. Before considering the prayer, we would like to refer to the order dated 20.01.2021 passed by this Adjudicating Authority in IA-5608/2020. The Applicant had enclosed this order at page number 156 of the application as well as the order dated 16.02.2021 passed in the Company Appeal (AT) Insolvency 96/2021 by Hon'ble NCLAT. The relevant portion of the order dated 20.01.2020 is reproduced below:-

"The Applicant is seeking exclusion of period for the following time period which has been lost in litigation, and which has material bearing on the resolution process of the Corporate Debtor and therefore, the said period is being sought to be excluded:

S. No.	PARTICULARS	FILED/LISTED	STATUS
1.	C.A. NO. 268 & 269 of 2018 filed by Yes Bank for seeking directions to	Listed on 06.07.2018 notice issued	Applications allowed on 19.07.2019 vide order passed by this



	AAA landmark and spade financial services who have made a claim with the IRP and are part of the CoC should not be permitted voting right on the grounds that they are related parties to the Corporate Debtor	to the respondents	Hon'ble Adjudicating Authority
2.	C.A. no. 337 & 338 of 2018 filed by phoenix arc private limited for seeking directions to AAA landmark and spade financial services who have made a claim with the IRP and are part of the CoC should not be permitted voting right on the grounds that they are related parties to the Corporate Debtor	Listed on 18.07.2018 notice issued to the	Applications allowed on 19.07.2019 vide order passed by this Hon'ble Adjudicating Authority
3.	Company Appeal (AT) (INS) 829 of 2019 filed by Space Financial Services and AAA Landmark Pvt. Ltd. against the order of the Hon'ble Adjudicating Authority dated 19.07.2019	Notice issued on 20.08.2019	Appeal was dismissed on 27.01.2020 vide order passed by Hon'ble Appellate Authority
4.	Civil appeal no. 3063 of 2020 filed by AAA landmark private ltd and spade financials services ltd. Against the order dated 27.01.2020 of NCLAT declaring them as the related parties of the corporate debtor	The matter was first listed on hearing on 13.10.2020 before supreme court	All the parties have submitted their written submissions and have been directed to exchange the same. The matter is next listed for hearing on 09.12.2020
5.	Civil appeal no. 2841 of	The matter	All the parties have

	2020 filed by phoenix arc private ltd. Against the order dated 27.01.2020 of NCLAT for seeking clarity on the status of AAA landmark private ltd. And spade financials services ltd. A financial creditors of the corporate debtor	was first listed for hearing on 13.10.2020 before supreme court	submitted their written submission and have been directed to exchange the same. The matter is next listed for hearing on 09.12.2020.
6.	Corporate Debtor filed securitization application no. 148/2017 under section 17 of SARFAESI Act, 2002 for quashing/setting aside the sale of mortgaged property being land situated in Manesar, Gurgaon Haryana By Yes Bank in favor of Grandstar Reality Pvt. Ltd. Vide sale confirmation advice dated 17.06.2016	The matter was first listed for hearing on 14.09.2017	DRT-II, New Delhi Vide Its Order Dated 07.01.2020 Dismissed The S.A. No. 148/2017 Filed By The Corporate Debtor
7.	Grandstar reality private limited filed an appeal (72/2020) against the order dated 07.01.2020 passed by DRT-ii, New Delhi, upholding the sale made by Yes Bank to the Grandstar of the product named "Äkme Raaga" under SARFAESI act	Notice issued on 28.07.2020	The matter is still pending for adjudication before Debt Recovery Appellate Tribunal And is Next Listed For Hearing On 18.05.2020.
8.	Writ petition no. 1217 of 2018 titled as Akme Raaga Flat Buyers Associaton V. State Of Haryana & Ors., under article 226/227 was filed before the Hon'ble Punjab	The matter is now listed for hearing on 21.12.2020	The matter is still pending for adjudication Before The Punjab And Haryana High Court

<i>And Haryana High Court At Chandigarh by The Akme Raaga flat buyers association seeking interalia direction to the respondents to take action under section 8 (2) of the Haryana Development And Regulation Of Urban Area Act, 1975 for completion and handing over of the apartment in the project</i>		
<i>The applicant is seeking exclusion of 90 days out of the total period lost in litigation</i>		

20. When we compare the grounds of exclusion/ extension taken by the applicant in the Interlocutory Application being IA-5608 of 2020 and the exclusion sought by the applicant by filing the present application, we observe that the schedule indicating the ground for exclusion/extension given in both the applications are similar/common. It is further seen that this Adjudicating Authority vide order dated 20.01.2021, had rejected the prayer of extension/exclusion of 90 days beyond the period of 330 days and against that order, the Applicant had preferred an appeal before the Hon'ble NCLAT being Company Appeal (AT) Insolvency 96/2021 and the Hon'ble NCLAT vide order dated 16.02.2021, has excluded the period from 13.10.2020 to 09.12.2020, as prayed in the application and also upto 01.02.2021 i.e. the date when the Hon'ble Apex Court pronounced the order in Civil Appeal No. 3063 of 2020. In other words, the Hon'ble NCLAT, after considering the grounds referred in the schedule, has already excluded 112 days period from 13.10.2020 to 01.02.2021. The relevant portion of the order passed by Hon'ble NCLAT is quoted below:

“After going through the record and giving our anxious consideration to the submissions made, we find that this



is a fit case for exercise of our appellate jurisdiction to exclude period from 13th October, 2020 up to 9th December, 2020 as sought in the application as also up to 1st February, 2021 i.e., the date when the Hon'ble Apex Court pronounced the order in Civil Appeal No. 3063 of 2020 so that ends of justice are not defeated. Thus, while computing the period of 330 days, period of 112 days i.e. period from 13th October, 2020 up to 1st February, 2021 shall not be counted and the same shall be counted while computing the CIRP period reckoned from today. The impugned order is accordingly set aside and appeal is allowed in aforesaid terms. We make it clear that this order, passed in the peculiar circumstances of this case, shall not be a precedent for other cases."

21. We have already noted that the grounds taken by the applicant for extension/exclusion in both the applications are similar/ common. We further observed that in the IA 5608/2020, the Applicant has prayed for extension/exclusion of 90 days, but the Hon'ble NCLAT has excluded the period of 112 days commencing from 13.10.2020 to 01.02.2021 from the period of CIRP and while allowing the prayer, it has been clearly mentioned that this order passed in the peculiar circumstances of this case, shall not be a precedent for other cases.

22. Considering that once the prayer for extension/exclusion has already been allowed on particular grounds then, a question arises whether on the same grounds, the Applicant can claim another extension/exclusion under the law?

23. In the course of hearing, the Ld. Counsel for the Applicant has not produced any law before us to show that once a prayer has been allowed on particular grounds, again a fresh application can be filed for



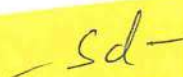
seeking the exclusion /extension on the same grounds. So, considering this fact, in our considered view, the present application is not maintainable, because the grounds taken by the Applicant as referred in paragraph 17 of the application are same/common to the grounds taken by the Applicant in IA-5608/2020 in which the Hon'ble NCLAT has already granted an extension/exclusion of 112 days.

24. **Accordingly, the present application is dismissed as not maintainable.**

25. For the reason discussed above, we observe that the Applicant is in the habit of filing such type of applications on the same/similar ground, only with an intent to delay the CIR proceedings. Under such circumstances, we have no option but to impose a cost upon the Applicant for filing such frivolous applications. Accordingly, **we hereby impose a cost of Rs. 20,000/- upon the RP, which shall be payable from the personal account of the R.P.** The RP is directed to deposit this amount within a week from the date of passing of this order in the Prime Minister's Relief Fund.



L.N. GUPTA
Member (T)



ABNI RANJAN KUMAR SINHA
Member (J)