IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

IA 979/MB/2023 in CP(IB)-1147/MB/2020

Under Section 30 of IBC, 2016

Mr. Jayesh Sanghrajka
Resolution Professional/
…..Applicant

In the matter of:

LICHFL Trustee Company Private Limited
…Financial Creditor

Vs.

Anudan Properties Private Limited
…Corporate Debtor

Order pronounced on : **29.03.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant (RP) : Mr. Amir Arsiwala i/b Ms. Pranali Gada, Advocates.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a *post facto* application filed by the Resolution Professional seeking extension of CIRP period from 24.04.2022 to 26.05.2022 on the ground that the resolution plan is approved by CoC, however, the

CIRP period ended on 24.04.2022, the day when the approval of plan by CoC was received. The application for approval of AA under section 30(2) of the Code was filed on 26.5.2022 after completion of certain other procedural formalities like the issuance of a Letter of Intent, preparation of a compliance certificate in Form H, and obtaining a Performance Bank Guarantee from the Successful Resolution Applicant. Therefore, extension of CIRP for a short period is required as the application for the Resolution Plan can be filed within the active CIRP period only.

2. The Applicant submits that the Resolution Professional explained the requirement of the CIRP extension in the CoC meeting and the CoC has recommended for extension of CIRP period for further period from 24.04.2022 to 26.05.2022. It has been passed with 76.35% voting of the CoC.

3. We noticed that exclusion of 123 days was allowed owing to COVID-19 lockdown alongwith extension of 12 days vide order dated 23.12.2021 passed in IA-2000/2021. The CIRP was commenced on 15.03.2021. Regulation 40C for relaxation of timelines under the CIRP provides that -

> *"**40C. Special provision relating to time-line.** Notwithstanding the time-lines contained in these regulations, but subject to the provisions in 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 the time-line for any activity that*

could not be completed due to such lockdown, in relation to a corporate insolvency resolution process."

4. We feel that the words "*could not be completed due to such lockdown*" are of wider important and have to be given meaning accordingly. It is widely known that the pace of activity during the COVID-19 outbreak was severely impacted on account of restrictions on movement and place of working. This was further compounded by the fear imbibed in the mind of citizens as to its deadly impact on life of human beings. Even the Hon'ble Supreme Court of India in "***Suo-Motu Writ Petition (Civil) No. 3/2020***" has taken Suo Motu congnizance of the situation arising out of the challenging faced by the country of COVID-19 Virus and resultant difficulties that may be faced by litigants across the country and has vide its order dated 10.01.2022 excluded the period from 15.03.2020 till 28.02.2022 for filing of petitions/ applications/ suits/ appeals/ all other proceedings. The relaxation granted by Hon'ble Apex Court in the context of limitation further validates that it was immaterial whether a person could work or has worked on any day falling in aforesaid period of relaxation. We noticed that the Adjudicating Authority has been granting exclusion of period stated in ***Suo-Motu Writ Petition (supra),*** *wherever prayed.*

5. In the present case, the CIRP commenced on 15.03.2021 and this Bench has so far granted total exclusion of 123 days days on previous one occassion. Vide this Application, the Applicant has further prayed for extension of period from 24.04.2022 to 26.05.2022 which comes to 32

days. If we consider to exclude 32 days instead of extension, the total exclusion would come to 155 days and the excluded period would itself fall under the period specified in ***Suo-Motu Writ Petition*** *(supra).* It is further noticed that the CIRP in this case was commenced and completed during COVID period. It is settled law that the resolution of the Corporate Debtor is a rule and liquidation is only an exception. Considering the facts that the resolution plan approved by the CoC is pending consideration before this Bench and approval thereof may resolve the Corporate Debtor, this Bench feels that an exclusion of the period from 24.04.2022 to 26.05.2022 deserved to be allowed in the interest of all Stakeholders.

6. In view of above observation, **IA-979/2023** is **allowed** and disposed of.

Sd/-	Sd/-
PRABHAT KUMAR	**KISHORE VEMULAPALLI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

pvs/29.03.2023