

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA 784 of 2020 in CP(IB) 397/NCLT/AHM/2018

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.11.2020**

Name of the Company: Kiran Shah RP For KSL Industries Ltd

IA For Extention of CIRP/Period beyond 330 Days

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER
(through video conferencing)

Learned FCA Mr. Kiran Shah is appeared on behalf of the Applicant.

The Order is pronounced in the open court vide separate sheet.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 24th day of November, 2020


MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

IA No.784 of 2020 in
CP (IB) No.397/9/NCLT/AHM/2018

In the matter of:

Kiran Shah
RP for KSL And Industries Ltd.

... Applicant

Order Delivered on 24th November, 2020.

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

And

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

FCA, Mr. Kiran Shah, Resolution Professional.

ORDER

[Per se: Ms. Manorama Kumari, Member (J).]

- 1) The present IA, i.e. IA No.784 of 2020 in CP (IB) No.397 of 2018, is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (I&B Code), read with Rule 11 of NCLT Rules, with a prayer for passing an order for exempting / excluding the period of 233 days from the period of the Corporate Insolvency Resolution Process (CIRP).





- 2) FCA, Mr. Kiran Shah, Resolution Professional (RP) submitted that he was appointed as an independent RP of the aforesaid corporate debtor on 28.07.2020 in IA 691 of 2019 and IA 90 of 2020 in IA 691 of 2019 arising out of CP (IB) 397 of 2018, which was preferred by one of the Secured Financial Creditors, under Section 60(5) of the I&B Code. It is further submitted that and also a matter of record that there was a stalemate between the members of Committee of Creditors (CoC) inter se with regard to their voting shares and in view of that this Adjudicating Authority had appointed the applicant as an independent RP so as to remove the stalemate between the members of CoC themselves with regard to the appointment of the IRP/RP.
- 3) It is further submitted that the CIRP period had commenced on 06.09.2019 and that even after the consideration of the exclusion of the lockdown period of 68 days as imposed by the Central Government, the maximum period of the CIRP, i.e., 330 days had expired on 08.10.2020, which the said fact has been communicated during the course of meeting of the CoC.
- 4) It is matter of record that on expiry of statutory period of 180 days, this Adjudicating Authority has granted further 90 days vide its order dated 04.03.2020 in the matter of IA No.189 of 2020 in CP (IB) 397 of 2018. Now, that maximum period of 330 days, after considering the extension of 90 days as well as exclusion of lockdown period of 68 days has already been expired on 08.10.2020.

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- 5) It is further stated by the applicant/RP that on his appointment, he had taken steps in pursuance of compliance of his duties in terms of Section 25 of the I&B Code, 2016 and Regulation made thereunder including taking over the possession and custody of the assets of the corporate debtor from the erstwhile IRP, viz., Mr. Anil Kumar as well as Suspended Management of the corporate debtor. Due to the huge assets in the form of immovable properties scattered in various places, as such, the taking over of the complete charge from the erstwhile IRP as well as Suspended Management is not yet concluded. Meanwhile, the erstwhile IRP had preferred an Appeal before the Hon'ble NCLAT, being numbered as Co. Appeal (AT) (Insolvency) No.786 of 2020, against the common order of the Hon'ble Adjudicating Authority dated 28.07.2020, passed in IA 691 of 2020 and IA 90 of 2020 in IA 691 of 2019 arising out of CP (IB) No.397 of 2018, which was listed in the first time on 17.09.2020 before the Hon'ble Appellate Authority, wherein the Appellate Authority has passed an order of status quo.
- 6) The applicant submitted that, meanwhile, to continue the CIRP in terms of the provisions of the Code, duly issued notice of the 5th meeting of the CoC, which was scheduled to be held on 26.09.2020 (through Video Conferencing). However, on receipt of the notice from Hon'ble NCLAT, the majority of the Secured Financial Creditors had objected stating that the Hon'ble Appellate Authority had directed to maintain status quo and, as such, the attendance for the said meeting shall amount to be contempt of the





order of the Hon'ble Appellate Authority. The said communication, through e-mail, exchanged between the applicant and the members of the CoC has also been annexed along with the application, because of said objection so raised by the secured financial creditors for conducting the 5th meeting of the CoC, the matter was further delayed.

- 7) It is further submitted by the applicant that after passing of the order dated 17.09.2020 by the Hon'ble Appellate Authority (Hon'ble NCLAT), the majority of the Secured Financial Creditors had stopped from co-operating with the applicant in carrying out the duties as RP and, thus, practically the CIRP work cannot be continued since 24.09.2020.
- 8) Finding no alternative, the applicant was constrained to file an application for clarification of the said order from the Hon'ble Appellate Authority owing to such obstruction created by majority of the secured financial creditors against the order of status quo so passed by the Hon'ble NCLAT.
- 9) The Hon'ble NCLAT was pleased to issue the clarification, vide its order dated 03.11.2020, observing, inter alia, that status quo was only with regard to the continuance of the applicant as RP and that the same did not have any bearing in continuation of CIRP proceedings. Hence, the CIRP which was obstructed by the majority of the secured financial creditors could be resumed only from 03.11.2020. The applicant has also annexed a copy of the order so passed by the Hon'ble NCLAT.

- 10) Thus, the applicant in view of the non-cooperation of the majority of the secured financial creditors, on the grave of the status quo order so passed by the Hon'ble NCLAT, has delayed the CIRP proceedings substantially. Hence, requesting for another 233 days, which was consumed in the legal proceedings before this Adjudicating Authority as well as Hon'ble Appellant Authority. The bifurcation of the said period has reflected at page No.15 of the application.
- 11) Heard the applicant at length and also seen the record of the order of the Hon'ble NCLAT dated 17.09.2020 as well as order dated 03.11.2020, annexed as Annexure-D and F respectively.
- 12) It is a matter of record that, there was a statement of the secured creditor and on filing of the IA, being numbered as IA 691 of 2019 and IA 90 of 2020 in IA 691 of 2019, this Adjudicating Authority has passed an order restraining the CoC from holding the meeting till the application is decided. Thereafter, on 28.07.2020, the independent RP was appointed, on his appointment, the IRP and the Suspended Management were not co-operating with the present RP. Thereafter, the IRP (Mr. Anil Kumar) filed an application before the Hon'ble NCLAT against an order dated 28.07.2020, wherein he has obtained the status quo order, said status quo order, being misinterpreted by the secured financial creditor, who did not allow the present RP (Applicant) to proceed with the CIRP. Finding no alternative, the said order has been clarified by the Hon'ble NCLAT by filing an application by the






applicant. Consequent upon which, the period from 09.10.2020 to 03.11.2020 has also been consumed in legal proceedings. Apart from the period which was already consumed while passing the restrain order by this Adjudicating Authority for convening any meeting of the creditors due to stalemate between the members of the CoC. Consequent upon which, the total period of 233 days (which is arrived at after reduction of the additional period which is already utilized or found ineligible) deserves to be exempted / excluded from the outer limit of CIRP of 330 days.

- 13) Under such circumstances, if this period is not exempted, there is every likelihood that the corporate debtor, which is a going concern, may be compelled to go for liquidation, which is not the objective of the I&B Code, which spells that the “**resolution**” is the rule, whereas “**liquidation**” is an exception.
- 14) Further, the I&B Code is a law for insolvency resolution, as evident from the long title to the Code, which reads as under:

“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India.... ”





The Hon'ble NCLAT, in the matter of Binani Industries Limited vs. Bank of Baroda & Anr. clarified the objectives of the Code as under:-

"The first order objective is "resolution". The second order objective is "maximisation of value of assets of the 'Corporate Debtor' and the third order objective is "promoting entrepreneurship, availability of credit and balancing the interest. This order of objective is sacrosanct".

- 15) Moreover, the applicant has relied upon the judgement of the Hon'ble Apex Court in the matter of Committee of Creditors of Essar Steel India Limited through Authorized Signatory vs. Satish Kumar Gupta & Ors. Wherein it is observed as under:

".....Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant's 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 litigant's fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigant's 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....."

".... 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

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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 132 Tribunal to extend time beyond 330 days.....”

“....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.....”

16. Under the above background and the circumstances stated hereinabove, the instant application so filed by the applicant is hereby allowed and the period of 233 days as well as the period consumed in deciding this application is exempted / excluded from the period of CIRP and the CIRP period is extended for further 233 days as prayed for, for the purpose of completing CIRP.
17. Since the facts of the present case involve exceptional circumstances, the order so passed in the present case shall not be treated as a precedent.
18. Accordingly, the instant application is allowed with above observations and disposed of.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)


MANORAMA KUMARI
MEMBER (JUDICIAL)