

NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-IV

Interlocutory Application No. 3857/ND/2021
in
Insolvency Application No. 256/2019

Dhirendra Nath & Others

....**Applicant**

Vs.

JC World Hospitality Private Limited

....**Respondent**

IN THE MATTER OF:

Shri Dhirendra Nath & Others

...

Applicant

Vs.

M/s Dhir Global Industria Private Limited

...

Respondent

Under Section 7 of IBC, 2016.

Order delivered on 13.09.2021

CORAM:

DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Ex-Direcotrs : Mr. Krishnendu Datta, Sr. Adv.
Mr. Manish Srivastava, Adv.

For the RP : Mr. Abhinav Vasisht, Sr. Adv. Ms. Pooja M. Saigal, Adv.
Mr. Shantanu Chaturvedi, Adv. Mr. Milan Singh Negi, Adv.

For Home Buyers : Mr. Arun Kathpalia, Sr. Adv. Mr. Abhijit Sinha,
Mr. Kshitij Kumar, Adv.

For Class of Creditors : Mr. Sunil Kumar, AR

ORDER

This is an application filed by Resolution Professional seeking following prayers:-

- (i) Allow the present petition
- (ii) Pass an order excluding 105 days from the CIRP period of the Corporate Debtor.
- (iii) Pass a direction to the CoC of the Corporate Debtor to consider the Resolution Plan on PRA in time-bound manner.
- (iv) Pass such order (s) that this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

Mr. Vasisht, Learned Senior Counsel for the Resolution Professional states that exclusion sought in the present application was also applied prior to this application which was rejected. Learned Counsel further states that thereafter the Resolution Professional approached the Hon'ble National Company Law Appellate Tribunal impugning the said order of rejection. The Hon'ble National Company Law Appellate Tribunal vide order dated 20.07.2021 directed this Bench to take overall view of the matter and consider if there are really wider plans and if it finds that the interest of justice requires to grant some time so that the Resolution could be reached if possible and judicial discretion is left to the Adjudicating Authority to be exercised which will not be influenced by our observations. Hence, Resolution Professional has filed this application once again seeking exclusion of CIRP period.

The order of the Hon'ble National Company Law Appellate Tribunal records that submission was made about the erstwhile promoters obtaining a stay order from Adjudicating Authority on the entire proceedings and stay on voting by CoC on Resolution Plan.

Mr. Kathpalia, Learned Counsel for set of Home Buyers submits that the Home Buyers have invested their hard earned money in the units which were purchased from the Corporate Debtor and the delay in process is only causing grievous prejudice to the Home Buyers who are the only people at receiving end. Further requests that in view of the Resolution Plan pending for voting before CoC, this application be allowed, and sometime be granted to explore the possibility of Resolution, else the company will go into liquidation and the Home Buyers, who are the only CoC Members will be adversely affected. On the query raised by the Bench, Mr. Vasisht, Learned Senior Counsel states that chart of the number of days of CIRP and timeline is annexed at Annexure-2.

Admittedly, 330 days including 98 days of Covid-19 pandemic lockdown exclusion expired on 13.02.2021. The exclusion from 1st July to 09th August of 40 days for the reason of Covid-19 pandemic lockdown was rejected by the Adjudicating Authority. Admittedly, the Resolution Plans were received by Resolution Professional after expiry of 330 days and were placed for putting before CoC on which the voting was to be held.

Mr. Datta, Learned Senior Counsel appearing for the erstwhile promoters at this stage raised grievance against the conduct of CoC and Resolution Professional. Learned Senior Counsel Mr. Datta, further stated that he has already filed an application being IA No. 1465/2021 for the said purpose seeking to hold the process of voting on Resolution Plan, wherein the order was passed granting stay on the process of voting and further steps to be taken by Resolution Professional. He further submits that if this application is allowed, IA No. 1465/2021 filed by erstwhile promoters will become infructuous and the present application be heard along with IA No. 1465/2021.

The issue before us in this application is that today Resolution Professional had sought total exclusion of 105 days of CIRP to enable CoC to vote on Resolution Plans, albeit received after expiry of CIRP period. The plans have already been considered by CoC. Out of 105 days, 40 days are the exclusion of Covid-19 pandemic lockdown from 01.07.2020 to 09.08.2020 (which was already rejected by the Bench) and additional 65 days from 29.05.2021 on account of pendency of an application from 16.12.2020 to 18.02.2021 which was the application originally filed by the Resolution Professional for exclusion of CIRP period.

Mr. Datta, Learned Senior Counsel for erstwhile promoters pointed out that Resolution Professional and CoC had acted without any powers after cessation of their position under CIRP and after expiry of 330 days of CIRP. Hence, such act should not be allowed and the same is beyond the purview of their capacity. The prayer in IA No. 1465/2021 is to stay the proceedings of voting on Resolution Plan which is already granted and is still operative.

It is the prime intent of IBC and also held by the Hon'ble Apex Court that resolution and not liquidation should always be considered with all possibilities. Keeping in view this intent the Hon'ble Apex Court, who has also held that technicalities may be considered as discretionary and not mandatory. The grant of time to Resolution Professional and CoC for moving towards achieving Resolution of the Corporate Debtor will be in the interest of all Home Buyers, who are also interested in considering the Plans. The only lacunae in the process of considering of Plan by CoC

beyond prescribed period of CIRP. If the same is considered by this Bench for exclusion or extension there is possibility of Resolution forthcoming. The Hon'ble Supreme Court has also held that the wisdom of CoC be not interfered, unless same is in violation of law.

The Resolution with respect to exclusion/extension was passed by CoC beyond threshold limit of 330 days as laid down in the Code. Hence, the Plans should not have been considered. We put question to ourselves that if exclusion or extension is not considered the only option will be to send the Corporate Debtor in liquidation.

In the interest of the rights and entitlement of the Home Buyers we think that it will be appropriate to consider allowing of further CIRP period not by way of exclusion but by way of extension beyond 330 days, in view of 2 Resolution Plans already received and deliberated by CoC.

The Resolution Professional and CoC are warned about their conduct of receiving and acting on Resolution Plans beyond 330 days against the permission of law. As a last chance, we consider for safeguarding the rights of Home Buyers whose hard earned money is at stake as opined and observed by the Hon'ble National Company Law Appellate Tribunal to take forward the Resolution. Hence, we allow this application by extending the CIRP period for further 50 days from today with the direction to allow the CoC to consider the Resolution Plans already placed before CoC or any other plans, if received within ten days of this order and complete the entire process strictly within the time granted.

Application is allowed and disposed of on above terms.

SD/-

SUMITA PURKAYASTHA
MEMBER (TECHNICAL)

SD/-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)