

NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

ITEM NO :1

IA NO.127/2020 IN
CP NO.(IB)353/ALD/2018

ATTENDENCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 04.06.2020 at 11:00 AM THROUGH VIDEO CONFERENCING.

NAME OF THE COMPANY : M/S INDIABULLS HOUSING FINANCE PVT. LTD. V/S M/S V.A.M RESORTS AND HOTELS PVT. LTD.

SECTION OF I & B CODE: 12(2) OF IBC

PRESENT : HON'BLE MR. JUSTICE (RETD.) RAJESH DAYAL KHARE,
MEMBER (J)

COUNSEL FOR APPLICANT/ RP : SH. TANMAY SADH, ADVOCATE

IA NO.127/2020 IN CP NO.(IB)353/ALD/2018

The matter was taken up today through Video Conferencing at 11:00 AM.

Heard Sh. Tanmay Sadh, Ld. Counsel for the RP through Video Conferencing today.

Ld. Counsel for the Financial Creditor (hereinafter referred to as the petitioner) has filed the present application (IA No.127/2020) under Section 12(2) of IBC, 2016 read with regulation 40 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for extension of further period of CIRP of 90 days and exclusion of time period from the date of order declaring moratorium till the same was received by the IRP and also for the exclusion of the period of Lockdown.

Ld. Counsel for the petitioner contends that vide order dated 24.10.2019, the present Company Petition U/s 7 of IBC was admitted, which order was communicated to the applicant/ petitioner on 12.11.2019 (after 19 days). It is further contended that after the admission of the petition and declaration of moratorium U/s 14 of the Code, the RP issued public announcement in accordance with the provisions of Section 13 & 15 of the Code on 12.11.2019 and published advertisement in Hindi and English daily newspaper on 13.11.2019 and also to the management of the Corporate Debtor (hereinafter referred to as the respondent).

It is further contended that the IRP sent various emails to the respondent seeking information in details of the Financial Creditor and the details of the corporate guarantee issued by the respondent and undertaking as to the existing bank accounts as on CIRP

Sd/

commencement date. It is also contended that despite repeated request, the same was not provided to the RP by the respondent.

It is further contended that despite all efforts made by the RP, no assistance whatsoever was provided by the respondent with regard to the information sought by the RP.

It is argued that the first meeting of CoC was held on 12.12.2019, wherein the CoC was informed about the non-cooperating conduct of the respondent in the CIRP proceeding and therefore it was prayed that the application U/s 19(2) of IBC, 2016 be filed before this Court and the appointment of the RP has also confirmed in the said CoC meeting.

It is further contended that the second meeting of CoC was conducted on 03.01.2020, whereby the Registered Valuers for land and building were appointed. In the third meeting of CoC dated 23.01.2020, the RP put forward a proposal before the CoC for publishing the Form G for inviting Expression of Interest (EoI) from respective Resolution Applicants and the resolution was passed by 100% voting shares by the CoC.

It is further argued that in compliance of the aforesaid, the RP published a brief particulars of the invitation of EoI in prescribed Form G on 26.01.2020, whereby the prospective resolution applicants were invited to submit their EoI's by 10.02.2020. It is further argued that no EoI was received till 09.02.2020, but one request was received from one Mr. Abhijit Khonde to extend the date for receiving the EoI.

It is further argued that the fourth CoC meeting held on 27.02.2020, whereby certain issues were taken into consideration, which has been detailed in para (l) page no.7 of the present application and it is contended that in the fourth CoC meeting ^{it was} ~~it is~~ resolved that if the settled amount is not paid by the Suspended Management of the respondent and withdrawal process of the CIRP is not initiated within 15 days from the date of the fourth meeting, then repetition of the EoI process and publication of Form G as required U/s 25(2)(h) of the Code and Regulation thereto shall be initiated.

It is further contended that in the fifth meeting of the CoC was convened on 23.03.2020 through Video Conferencing, whereby it was resolved to consider the repetition of the EoI process and other issues as detailed in para (n) at page no.8 of the present application, which was passed by 100% voting shares by the CoC.

It is further argued that no settlement was arrived between the CoC members and the respondent, therefore the repetition of EoI had to be initiated as per the relevant provision of the Code and as the CIRP period is going to end on 20.04.2020, and

sd

permission was sought from the CoC to move the present application for extension of CIRP period for a further period of 90 days beyond 180 days. Thus, the present application has been moved.

It is also argued that the application U/s 19(2) of the IBC being CA No.24/2020 has also been moved by the applicant seeking direction against the Ex-Directors to duly cooperate with the applicant in the CIRP and to provide the relevant details as required as per law. It is further argued that as the Lockdown was ordered due to Pandemic (COVID-19), which continued till the end of May, 2020, and therefore the said period may also be excluded apart from the period that is from the date of admission till the date the order was communicated to the applicant i.e. period of 19 days. Ld. Counsel for the applicant further relied upon the judgment passed by Hon'ble NCLAT in the matters of *Quinn Logistics India Pvt. Ltd. V/s Mack Soft Tech Pvt. Ltd. And Ors. in Company Appeal No.185/2018 and Ashish Chaturvedi v/s Inox Leisure Ltd. in Company Appeal No.05.2020*, in support of his contention.

It is further argued that the CIRP period in the present case ^{has} ~~is going to~~ expired on 20.04.2020 and therefore it is prayed that the present application of extension of time be allowed.

After hearing the counsel for the petitioner, this Court is of the view that sufficient ground has been made out for granting extension. Accordingly, the application is hereby allowed for extension of CIRP period for a further period of 90 days beyond 180 days along with 19 days that is the period on which the petition was admitted and the order was communicated to the applicant and also the period of Lockdown shall be excluded from the CIRP period.

Accordingly, the present application (IA No.127/2020) stands disposed off.

Dated : 04.06.2020


JUSTICE RAJESH DAYAL KHARE
(MEMBER JUDICIAL)

Typed by :
Kavya Prakash Srivastava
(Stenographer)