

3

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
SPECIAL BENCH (Video Conference)**

PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 04.9.2020 AT 10.30 AM

| | |
|----------------------------------|--|
| TRANSFER PETITION NO. | |
| COMPANY PETITION/APPLICATION NO. | IA NO. 115/2020 (AMR) in CP(IB) NO. 159/10/AMR/2019 |
| NAME OF THE COMPANY | NITHIN PROTEINS PVT LTD |
| NAME OF THE PETITIONER(S) | |
| NAME OF THE RESPONDENT(S) | |
| UNDER SECTION | 10 OF IBC |

Counsel for Petitioner(s):

Ries

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|------------------------|-------------|------------------------|-----------|
| | | | |
| | | | |

Counsel for Respondent(s):

Ries

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|------------------------|-------------|------------------------|-----------|
| | | | |
| | | | |

ORDER

IA allowed. Order pronounced vide separate sheets.

- sd -

MEMBER JUDICIAL

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH

*** **

IA NO. 115 OF 2020

IN

CP (IB) NO.159/10/AMR/2019

UNDER SECTION 12 READ WITH SECTION 60 (1), (5) & (6) OF THE
INSOLVENCY AND BANKRUPTCY CODE, 2016

and

In the Matter of M/S. NITHIN PROTEINS PRIVATE LIMITED

Between:

Mr. B.Naga Bhushan

Resolution Professional (RP) of
M/S. Nithin Proteins Private Limited
(Company Undergoing CIRP)
(IBBI/IPA-001/IP-P00032/2016-17/10085)
1-1-380/38, Ashok Nagar Extension
Hyderabad – 500 020

... Applicant

AND

Bank of India, Tirupati Branch

..... Financial Creditor

AND

M/s. Nithin Proteins Private Limited

..... Corporate Debtor

Date of Order: 04.09.2020

CORAM:

Bhaskara Pantula Mohan, Member Judicial.

Appearance:

For the Applicant/RP: Mr. B.Naga Bhushan, PCS.

1. This Application is being filed under Section 12 of the Insolvency and Bankruptcy Code, 2016 ('IBC') read with Regulation 40 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') by the Resolution Professional

- (‘RP’) on behalf of the Committee of Creditors seeking extension of time limit for completion of Insolvency Resolution Process of the Corporate Debtor.
2. That this Adjudicating Authority vide its order dated 15.11.2019 admitted the petition filed by the Corporate debtor Viz., NITHIN PROTEINS PRIVATE LIMITED for initiating Corporate Insolvency Resolution Process (CIRP) for itself due to its default in payment of a financial debt under Sec 10 of the IBC read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 and has appointed Mr. Pavan Kankani as the Interim Resolution Professional (in short, “IRP”). Moratorium was declared from 15.11.2019, date of commencement of CIRP.
 3. It is submitted that pursuant to the above order, the Interim Resolution Professional has issued the Public Announcement on 19.11.2019 in terms of Regulation 6(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate Persons) Regulations, 2016 inviting claims from creditors.
 4. That on receiving the claims from financial creditors and Operational Creditors, the IRP had constituted the Committee of Creditors in compliance to Regulation 13(2)(d) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate Persons) Regulations, 2016 on December 08, 2019. As per the Committee of Creditors constituted, Bank of India was the sole financial creditor of the corporate debtor with an admitted claim of Rs.11,30,28,812.89.
 5. That the applicant had filed a report certifying the Constitution of Committee of Creditors of the Corporate debtor in compliance to Regulation 17(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate Persons) Regulations, 2016 on December 08, 2019.
 6. That the IRP has conducted first four CoC meetings which are held on
 - ✓ 1st CoC Meeting - December 14, 2019 (adjourned to December 15, 2019 for lack of quorum)
 - ✓ 2nd CoC Meeting - January 24, 2020
 - ✓ 3rd CoC Meeting – February 08, 2020 and

✓ 4th CoC Meeting – March 15, 2020

7. That in the 3rd COC Meeting held on 08.02.2020, the COC recommended for appointment of B. Naga Bhushan as the Resolution Professional replacing the IRP, Mr. Pavan Kankani. But this Hon'ble Tribunal was pleased to dismiss the application filed (IA No. 31 of 2020 in CP (IB) 157/10/AMR/2019) by Bank of India, the sole member of CoC earlier, on 20.02.2020 seeking appointment of B. Naga Bhushan as the Resolution Professional, as the COC did not resolve to replace the IRP with the new Insolvency Professional as the RP, in its first meeting itself. Aggrieved by the said order, the Financial Creditor (BOI) Appealed against the (Impugned) Order and the Hon'ble Appellate Tribunal Authority was pleased to allow the appeal (Company Appeal (AT) (Ins) No. 501 of 2020) on 03.06.2020 for engagement of B. Naga Bhushan as the Resolution Professional replacing the IRP.
8. It is also submitted that upon receipt of the Orders, the IRP filed IA 78 of 2020 in CP (IB) No 159/10/AMR/2019 before this Hon'ble Tribunal seeking directions and clarifications against the three Financial Creditors and also seeking interpretation of the Orders of the Hon'ble NCLAT dated 03.06.2020 and this Hon'ble Tribunal was pleased to dismiss the Application as the same was infructuous on June 23, 2020.
9. It is further submitted that subsequent to the 3rd CoC meeting held on February 08, 2020, IRP received two more claims from Mr. P. Sudhir Reddy and Mr. T. Sahith Reddy who filed their respective claims as financial creditors. The IRP admitted the two as Financial Creditors upon his verification, and reconstituted the COC on March 15, 2020 with voting powers of 42.86%, 33.69% and 23.45% of Bank of India, Mr. P. Sudhir Reddy and Mr. T. Sahith Reddy respectively.
10. It is submitted that on the directions of the CoC in the meeting held on March 15, 2020, the Interim Resolution Professional published the Form G in newspapers on March 17, 2020 and invited Expression of Interest (EOI) from Prospective Resolution Applicants (PRAs) for submission of Resolution Plan of the Corporate Debtor. The last date for receipt of EOI was March 31, 2020. In response to the Form G, the IRP had received EOI from one PRA.

11. It is also submitted that the period of 180 days should have expired on May 13, 2020. In the wake of spread of COVID 19 pandemic, Our Hon'ble Prime Minister, in consultation with Ministry of Home Affairs and under the directions of National Disaster Management Authority(NDMA) Ordered Ministries / Departments of Government of India, State Governments and State Authorities to take measures for ensuring social distancing so as to prevent the spread of COVID-19 in the country by imposing national lockdown initially for 21 days i.e., w.e.f March 25, 2020 till April 14, 2020 and extended the same from time to time as detailed in the below mentioned table.

| Lockdown | From | To | No. of days | Applicable to |
|----------------------------|------------|------------|-------------|---------------------------------|
| Lock down 1.0 | 25.03.2020 | 14.04.2020 | 21 days | Entire Nation |
| Lockdown 2.0 | 15.04.2020 | 03.05.2020 | 19 days | Entire Nation |
| Lockdown 3.0 | 04.05.2020 | 17.05.2020 | 14 days | Entire Nation |
| Lockdown 4.0 | 18.05.2020 | 31.05.2020 | 14 days | Entire Nation |
| Lockdown 5.0 | 01.06.2020 | 30.06.2020 | 30 days | Containment Zones |
| Lockdown only in Tirupati. | 20.07.2020 | 05.08.2020 | 17 days | Tirupati and also Chittoor dist |

In the meanwhile, the Ministry of Corporate Affairs has amended IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by way of notification dated 20th April, 2020 (w.e.f March 29, 2020) relating to CIRP time-lines. The same is reproduced below -

Reg 40C of the above said Regulations - 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.

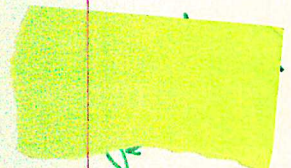
More so, the National Company Law Appellate Tribunal, New Delhi, Suo-Moto, Ordered on March 30, 2020 as follows:

“That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the Registered Office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for Resolution Process under Sec 12 of IBC, 2016, in all cases where CIRP has been initiated and pending before any Bench of the NCLT or in Appeal before this Appellate Tribunal.”

In Tirupati lockdown was re imposed by the Government due to spiraling cases of Covid from July 20, 2020 till August 5, 2020. Hence this period of 17 days can also be reckoned for exclusion. The Registered Office of the Corporate Debtor is situated at Tirupati and the factory is in Chittoor dist.

On considering the period between March 25, 2020 and June 30,2020 and also the period from July 20, 2020 till August 5, 2020 as excluded i.e, a total of 115 days, the last date for CIRP falls on Sept 4, 2020.

12. It is submitted that the applicant has taken charge as RP effective from June 24, 2020 after this Hon'ble Tribunal dismissed the application filed by IRP seeking directions and clarifications with respect to the order of NCLAT, where the undersigned is appointed as the RP on June 03, 2020.
13. It is further submitted that as per the Orders of the Hon'ble NCLAT DATED June 3, 2020, the claims received subsequent to the original constitution of Committee of Creditors on 08.12.2019 and subsequently reconstituted on 15.03.2020 were revisited by the Resolution Professional. The RP has reconstituted the Committee of Creditors on 24.07.2020 and has filed the Report constituting the Committee of Creditors on 24.07.2020 before the Hon'ble NCLT, Amaravathi.



14. It is submitted that the applicant has also filed a progress report before this Hon'ble NCLT on July 29, 2020 detailing the progress of the CIRP process after taken charge from the IRP.
15. It is also submitted that the Resolution Professional has conducted the 5th CoC on August 5, 2020 wherein a thorough discussion had taken place as regards the CIRP. The CoC was informed that some of the provisions of CIRP Regulations 2016 as regards Form G and also issuing of Request for Resolution Plan (RFRP) were not properly complied with by the earlier IRP. For this reason and also to enable any other person to participate in the process who would have missed the advertisement due to lockdowns, it was decided by the CoC with 100% voting power to once again issue Expression of Interest (Form G). The same was released on 17.08.2020 and the last date for receipt of application now stands at 01.09.2020. It was also agreed to in the meeting that the EOI received in response to the earlier Form G would also be considered now.
16. It is submitted that the CoC was informed that the process of evaluation of the Resolution plans takes some time which would take the time frame to a date beyond the present last date of CIRP period which is falling on 4th September 2020.
17. It is also submitted that after thorough deliberations, the CoC passed a resolution with 100% voting in favour of the resolution in its 5th meeting held on August 05, 2020, authorizing the Resolution Professional to seek the approval of the Hon'ble Adjudicating Authority for extension of the period of CIRP by a further period of 90 days which would enable the RP to successfully complete the resolution process. The following resolution was passed by the CoC.

“Resolved that in accordance with Sec 12 of Insolvency and Bankruptcy Code, 2016 read with Reg.40 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other applicable rules and regulations including National Company Law Tribunal Rules, 2016, Mr. B. Naga Bhushan, Resolution Professional be and is hereby authorized to make an application along with all the required documents to the Adjudicating Authority – Hon'ble NCLT,

Amaravati to extend the corporate insolvency resolution process period, which is ending on September 4, 2020, by a further period of 90 days that conclude on December 3, 2020.”

“Further Resolved that Mr. B. Naga Bhushan, Resolution Professional be and is hereby authorised to do all such acts, deeds, matters, and things as may be necessary to give effect to the resolution.”

“Further Resolved that Mr. B. Naga Bhushan, Resolution Professional be and is hereby authorised to provide certified copy of this resolution to parties concerned.”

18. It is submitted that since there is a possibility of getting a resolution plan and since the CoC members have approved extension of 90 days beyond 180 days with 100% voting majority as required under Sec 12 (3) of IBC read with Regulation 40 of CIRP Regulations, 2016, it is humbly submitted that an extension of 90 days be permitted along with exclusion of 115 days on account of lockdown.
19. It is submitted that in view of the aforementioned facts and circumstances, the Hon’ble Adjudicating Authority may be pleased to extend the period of the Corporate Insolvency Resolution Process of the Corporate under Section 12(2) of the IBC 2016 by a further period of 90 days from the date of completion of 180th day i.e. from 4th September 2020 to 3rd December 2020.

ORDER

In view of the above, the extension of CIRP by 90 days is granted and the period of 98 days from March 25, 2020 to June 30, 2020 is also considered for being excluded while calculating the number of available days for CIRP calculation.

Sd/-

**BHASKARA PANTULA MOHAN
MEMBER JUDICIAL**

SK