

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, SPECIAL BENCH, COURT No. - II**

*** **

**IA No. 1027 of 2020
in CP (IB) No. 350/MB/2019**

**In the matter of Venus Rolling Mills Private Limited
and
In the matter of an Application under Sections 60 (5)(c) and 10 of the
Insolvency and Bankruptcy Code, 2016**

Turnaround Consultants Private Limited,
a company incorporated under the Companies
Act, 1956, having its registered address at
P-32, Lower Ground, South Extension Part-II,
South Delhi, New Delhi- 110 049.

... **Applicant**

Vs.

Venus Rolling Mills Private Limited,
through its Resolution Professional,
Mr. Devendra Singh having his address at
C-124, Ground Floor, Lajpat Nagar – I
New Delhi- 110 024.

... **Respondent**

IN THE MATTER OF

Venus Rolling Mills Private Limited
a company registered under the provisions
of the Companies Act, 1956 having its
registered office at E-8, MIDC, Butibori,
Nagpur – 441 122.

... **Corporate Applicant**

Date of Order: 07.08.2020

CORAM:

**Hon'ble Janab Mohammed Ajmal, Member Judicial
Hon'ble Ravikumar Duraisamy, Member Technical**

Appearance:

For the Applicant: Mr. Milan Singh Negi, Advocate.

For the Respondents: Mr. Devendra Singh (Resolution Professional)

Per: Janab Mohammed Ajmal (Member Judicial)

ORDER

This is an Application for acceptance of Resolution Plan being submitted by the Applicant and direction to the Committee of Creditors (CoC) for considering the same.

2. The facts leading to the Application are that the Corporate Debtor M/s. Venus Rolling Mills Private Limited in CP No. 350 of 2019 under Section 10 of the Insolvency and Bankruptcy Code, 2016 (the Code for short) sought initiation of Corporate Insolvency Resolution Process (CIRP) of itself. The Adjudicating Authority by an order dated 22nd April, 2019 admitted the Application and appointed Mr Devendra Singh as the Interim Resolution Professional (IRP). The IRP made the public announcement on 2nd May, 2019 inviting claims from the creditors on or before 14th May, 2019. He sought Expression of Interest (EOI) by notice dated 21st November, 2019. The last date of submission of EOI was 6th December, 2019. The Applicant is a Consulting Company with the experience of turning around stressed assets into profitable business ventures. It could not submit an EOI on or before the last date i.e. 6th December, 2019. Meanwhile this Authority by an order dated 30th January, 2020 in MA No. 183 of 2020 excluded the period of 60 days from the CIRP with effect from 18th November, 2019. This in effect extended the CIRP from 16th January, 2020 to 16 March, 2020. The Applicant could not submit an EOI nor a Resolution Plan by that date either. It only on 4th June 2020 sent an email to the Resolution Professional (RP) requesting him to accept the EOI and to place the Resolution Plan before the CoC. The Respondent by his email dated 6th June, 2020 declined to accept the same and intimated that the last date of submission of EOI had expired and in the absence of any viable Resolution Plan the CoC has resolved to liquidate the Corporate Applicant.
3. It is submitted in the Application that in view of the proviso to Sub-Section 3 of Section 12 of the Code the CIRP could be completed within 330 days.

Besides Regulation 40C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 excludes the period of lockdown arising out of Covid-19 Pandemic from the period of CIRP. The Applicant has not been able to submit its EOI and Resolution Plan due to intervening lockdown. The Hon'ble Supreme Court under Suo-motu Writ Petition No. 3 of 2020 have extended the limitation with effect from 15th March, 2020. Therefore, the period of CIRP needs to be extended. The present Application filed on 16th June, 2020 is within the period of CIRP and the Respondent as well as CoC are acting in haste resolving to liquidate the Company rather than give it the chance for Resolution. Besides the Respondent has not yet filed any Application for liquidation under Section 33 of the Code. It will be accordingly appropriate to allow the Application to submit the Resolution Plan which is likely to resolve the insolvency of the Corporate Applicant. The present Applicant accordingly came with the following prayers:

- i) Extend the Corporate Insolvency Resolution Period by such Period as may be necessary for enabling the Committee of Creditors of M/s. Venus Rolling Mills Private Limited to consider the Resolution Plan being submitted by the Applicant.
 - ii) Direct the Respondent Resolution Professional of M/s. Venus Rolling Mills Private Limited to take on record the Resolution Plan being submitted by the Applicant, and to place the same before the Committee of Creditors for their consideration in terms of IBC.
 - iii) Exclude the period of lockdown and the time spent in the process between the date of resolution passed till the date of submission of resolution plan by the Applicant to the RP.
 - iv) Costs of this Interlocutory Application.
4. The Respondent (RP) appeared but did not file any counter to the Application. We have heard the Learned Counsel for the Applicant as well as RP on the Application.

5. The Company Petition No. 350 of 2019 was admitted on 22nd April, 2019. According to Section 12 (1) of the Code the CIRP shall be completed within the period of 180 days from the date of admission. In the instant case 180 days expired on 18th October, 2019. The 180 days could only be extended on an Application filed by the Resolution Professional. The Resolution Professional sought extension of the period of CIRP by 60 days in MA No. 183 of 2020. This Authority by an order dated 30th January, 2020 excluded the period of 60 days with effect from 18th November, 2019. So according to the order the CIRP got extended up to 16th January, 2020. Thereafter, there has been no extension of the period of CIRP in terms of Section 12 of the Code. Meanwhile the RP in his notice in Form G dated 21st November, 2019 sought EOI to be submitted by 6th December, 2019. The last date of submission of Resolution Plan was notified to be 30th December, 2019. Admittedly neither the Applicant nor any other Resolution Applicant submitted any EOI or Resolution Plan, as the case may be, by 6th December, 2019 and 30th December, 2019.
6. It is submitted by the Applicant that it came to know about the notice seeking the EOI late and due to the Covid-19 Pandemic it was not in a position to submit either the EOI or the Resolution Plan. According to the time line indicated above, the CIRP period got over by 16th January, 2020 and not on 16th March 2020 as insinuated by the Applicant. No reason whatsoever is assigned by the Applicant, a Consulting Company, as to why it could not submit any EOI or Resolution Plan, as the case may be, by 6th December, 2019 or 30th December, 2019.
7. The lockdown due to the Covid-19 Pandemic commenced on the midnight of 24th/25th March, 2020. The Hon'ble Apex Court in Suo-motu Writ Petition no. 3 of 2020 extended the limitation due to the Covid-19 Pandemic with effect from 15th March, 2020. In the instant case however, the CIRP period got over on 16th January, 2020. No reason whatsoever is assigned by the Applicant as to why either the EOI or the Resolution Plan

was not submitted by that date. The reason that due to the intervening Pandemic it could not submit any EOI or Resolution Plan is not tenable in view of the fact that the lockdown commenced more than 2 (two) months after the period of CIRP had expired. It is settled law that the timeline provided under Section 12 for completion of the CIRP needs to be adhered to unless extended by the Adjudicating Authority. In this case there has been no such extension beyond 16th January, 2020. In the absence of any reason whatsoever, much less satisfactory, this Authority is not inclined to accord any indulgence to the Applicant for condoning the unexplained delay in submitting the Resolution Plan. It is settled law that a person/party who sleeps over his/its rights does not deserve any equitable relief. Delay, as is settled, defeats equity. In this connection reference to the authoritative observation of the Hon'ble Apex Court in Ex-Capt. Harish Uppal v. Union of India: 1994 SCC Supl. (2) 195 may profitably be referred to.

“It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction.”

8. We are thus not satisfied with the submissions made by the Applicant on that behalf. The Application does not merit any consideration and is liable to be rejected. Hence ordered.

ORDER

The Application (IA No. 1027 of 2020) be and the same is rejected on contest. In the circumstances there would however be no order as to costs.

Sd/-
(MOHAMMED AJMAL)
MEMBER JUDICIAL

Sd/-
(RAVIKUMAR DURAISAMY)
MEMBER TECHNICAL

Ankit