

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

4. I.A. 2118/2021

IN

C.P.(IB)-27(MB)/2019

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)

SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **29.09.2021**

NAME OF THE PARTIES: Bank of India

V/s

Housing Development & Infrastructure Ltd.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

1. Counsel for the Resolution Professional, Mr. Shadab S Jan is present through virtual hearing.

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2. Heard the counsel appearing for the Resolution Professional, Mr. Shadab S Jan. The above I.A has been filed by the Resolution Professional under Rule 11 of NCLT Rules to extend the period upto 7th December 2021. The Bench notes that the CIRP of the Corporate Debtor Company was announced on 20.08.2019 by order of this Bench and therefore more than 730 days have passed since the commencement of the CIRP in the Corporate Debtor company. The Bench further notes that even after accounting for all extensions and exclusions, more than 330 days have passed since the Corporate Debtor Company came under the CIRP.
3. Pursuant to issue of EOI, the Corporate Debtor Company could not get any successful Resolution Plan.
4. It is understood that in the 18th committee of Creditors (COC) meeting held on 8th September 2021, all the financial creditors comprising of Banks/other financial institutions wanted to go for liquidation as according to them Resolution of the Corporate Debtor by way of a Resolution plan was not feasible as till date they had not received any successful Resolution Plan. However, it is understood that because of the pressure from the home

buyers the COC agreed to explore the possibility of Resolution Plan of the corporate Debtor Company by dividing the total assets into 8 projects and going for partial/piecemeal Resolution. The Bench notes that more than two years have passed since the commencement of CIRP of the Corporate Debtor of the Corporate Debtor Company.

5. Regarding the extension of time Section 12(3) of IBC, 2016 reads as;

Section 12(3).

On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.]

6. In terms of the above Section of IBC the CIRP of the Corporate Debtor has to be mandatorily completed within maximum of 330 days from the Insolvency commencement date including all extensions and also time taking in legal proceedings in relation to the resolution therefore, the Bench notes that as per the law the Bench cannot extend the CIRP period beyond 330 days. In the extant case also admittedly more than 330 days even after all exclusions and extensions under Code is over.
7. The counsel for the applicant is seeking extension beyond 330 days and mentioned that this is an exceptional case. The counsel for the applicant relied upon the Judgement of Hon'ble Supreme Court in the case of *Essar Steel Vs. Satish Gupta (2020) 8 SCC 531*.
8. The Hon'ble Supreme Court has laid down such exceptional situation as follows:

*“...Therefore, the law as it stands, mandates the conclusion of the CIRP- including time taken in legal proceedings, within 330 days with a short extension to be granted only in exceptional cases. However, the Court has warned that this discretion must be exercised sparingly **and only in the following situations:** “127...Thus, while leaving the provision otherwise intact, we strike down the word “mandatorily” as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant’s right to carry on business under Article 19(1) (g) of the Constitution. **The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, 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 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 Tribunal to extend time beyond 330 days.....”

9. The Bench notes that in this case, the Hon’ble Supreme Court has mentioned that the CIRP must be completed in 330 days, however, if it can be demonstrated to the Tribunal that only a short period is left for completion of the CIRP beyond 330 days then only the Adjudicating Authority may decide to extend time limit for a short period beyond 330 days. The Bench further notes that in the instant case, even after more than 730 days, there is no sight of completion of CIRP and the RP and COC want to merely explore the possibility of Resolution. From this the Bench concludes that no Resolution of the Corporate Debtor Company is insight.
10. In view of the above, the Bench dismisses the above I.A bearing No. 2118/2021 filed by the RP for extension of the CIRP Period beyond more than 730 days for further exploring possibility of resolution of the Corporate Debtor Company.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
H.V. SUBBA RAO
Member (Judicial)