

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

**Under Section 60(5) of Insolvency and
Bankruptcy Code, 2016**

I.A. NO. 1237 OF 2020

Filed by

**Mr. Vikash Kumar Gupta,
Resolution Professional,
Man Tubinox Limited**

...Applicant

In the matter of

C.P. (IB) No. 4348 OF 2018

Bank of Baroda.

(Erstwhile Dena Bank)

...Financial Creditor

versus

Man Tubinox Ltd.

...Corporate Debtor

Order Pronounced on: 10.11.2020

Coram:

**SHRI H. V. SUBBA RAO, MEMBER (J)
SHRI SHYAM BABU GAUTAM, MEMBER (T)**

Appearance:

For the Applicant:. Adv. Manoj Tiwari

Per: Shri. Shyam Babu Gautam, Member

ORDER

1. This is an Interlocutory Application filed by the Resolution Professional Mr. Vikash Kumar Gupta (hereinafter called as “the applicant”) of Man Tubinox Ltd. (hereinafter called as “the Corporate Debtor”) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”) seeking an exclusion of the period of the Corporate Insolvency Resolution Process of the Corporate Debtor.

2. The Company Petition bearing No. 4348/I&B/MB/2019 was filed by Bank of Baroda (hereinafter called as “the Financial Creditor”) under Section 7 which was admitted by this Tribunal vide an order dated 12.06.2019 and Mr. Vikash Kumar Gupta (applicant herein) was appointed as an Interim Resolution Professional (IRP).
3. The applicant states that the 180 days of CIRP has got expired on 9.12.2019. Thereafter, this tribunal extended the CIRP by another 90 days vide an order dated 13.02.2020 passed in M.A.3990 of 2019 extending from 09.12.2019 till 08.03.2020.
4. The applicant further submitted that the suspended members of the Corporate Debtor were not cooperative since beginning in providing of all the information. He filed a Misc. Application bearing no. 3412 of 2019 under Section 19(2) of the Insolvency and Bankruptcy Code, 2016 seeking direction from this tribunal to pass an order on suspended members to cooperate in the matter. Because of the pendency of this Application, the suspended members went ahead with Tri-Party agreement dated 25.10.2019 on their own without providing any information to resolution professional.
5. The applicant mentioned that in the meantime, the 90 days extension provided by the CoC got expired on 08.03.2020. On 02.03.2020 a Misc. Application no. 208/2020 came up for hearing in which an application was made by the Resolution Professional for sub leased property illegally handed over by the erstwhile management of the Corporate Debtor to Maan Tubes Ltd. and this Tribunal listed the matter for hearing on 07.04.2020. during this hearing this Tribunal suggested to make application for exclusion of time.
6. The applicant further mentioned that in the process of making this application for exclusion, there emerged a panic situation of National Lockdown due to Covid-19 Pandemic, because of which,

the application for exclusion of time taken for deciding the Misc. Application No.208/2019 could not be made. Hence this application seeks exclusion of this period consumed in the said MA and also exclusion of the period of lockdown due to Covid 19 pandemic.

7. The counsel for the Applicant relies on the judgement of Hon'ble National Company Law Appellate Tribunal (NCLAT) in a matter bearing Company Appeal (AT) (Insolvency) No. 01 of 2020. This matter was taken up *suo moto* by the Hon'ble NCLAT in order to alleviate the concerns of the stakeholders on account of the delays in activities related to the CIRP of entities undergoing insolvency caused due to the lockdown restrictions imposed in wake of the Covid-19 pandemic. The following are the directions passed by the Hon'ble NCLAT vide an order dated 30.03.2020:

“...on account of complete lockdown declared by Government with effect from 25th March, 2020, we take suo moto cognizance of the unprecedented situation arising out of spread of COVID-19 virus declared a pandemic. [...]

That the period of lockdown ordered by the Central Government and the State Government 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 period for 'Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where 'Corporate Insolvency Resolution Process' has been initiated and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal...”

This order therefore, makes it ample clear that the period of lockdown as ordered by the Government of India (GoI) Ministry of Home Affairs (MHA) and the Government of Maharashtra (GoM) is to be excluded for the purpose of counting of the period of the CIRP under Section 12 of the Code.

8. Further Regulation 40C of the CIRP Regulations prescribe relaxations with respect to the CIRP timelines under the IBC and the rules/regulations framed thereunder, in view of the difficulties being faced due to the outbreak of the COVID-19 pandemic. The said regulation is reproduced below:

“40C. Special provision relating to time-line:

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.”

9. But the question arises whether the lockdown is to be considered till the 31st July 2020. Therefore, we need to look at the notification issued by the GoI MHA dated 30.05.2020 wherein it is mentioned as follows:

“...Whereas, in exercise of the powers under Section 6(2)(i) of the Disaster Management Act, 2005, National Disaster Management Authority (NDMA) has directed the undersigned to issue an order to extend the lockdown in Containment Zones upto 30.06.2020, and to reopen prohibited activities in a phased manner in areas outside Containment Zones;

Now therefore, in exercise of the powers, conferred under Section 10(2)(1) of the Disaster Management Act, 2005, the undersigned hereby directs that guidelines as Annexed, will remain in force upto 30.06.2020.”

Therefore, it is clear from above that the lockdown was extended till 30.06.2020 at national level.

10. Further, the order of the Government of Maharashtra (Department of Revenue and Forest, Disaster Management, Relief and Rehabilitation Mantralaya, Mumbai – 400 032) dated 29.06.2020 reads as follows:

“... Whereas the State Government is satisfied that the State of Maharashtra is threatened with the spread of Covid-19 Virus, and therefore to take certain emergency measures to prevent and contain the spread of the virus, the Government in exercise of the powers conferred under Section 2 of the Epidemic Diseases Act, 1897, read with all other enabling provisions of The Disaster Management Act, 2005, it is expedient to extend the lockdown in the entire State of Maharashtra further till midnight of 31.07.2020. ...”

This makes it clear that the lockdown was extended till 31.07.2020 by the State Government.

11. In addition to the above, the IBBI vide its notification dated 20.04.2020 has also made a suitable amendment in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by inserting a new clause in the regulation, that provides for exclusion of period of lockdown imposed by the Central Govt. in the wake of Covid-19 outbreak from the computation of timelines for CIRP, which could not be completed due to such lockdown situation.
12. We would like to rely upon the order of Hon'ble NCLAT dated 08.05.2018 in the case of **Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd. (Company Appeal (AT)(Insolvency) No. 185 of 2018)** wherein it was observed that the Adjudicating Authority is empowered to exclude certain period for the purpose of counting the total period of 270 days if the facts and circumstances justify such exclusion. In this matter a total of 166 days were allowed to be excluded. The relevant para is hereby reproduced:

“... it is clear that if an application is filed by the ‘Resolution Professional’ or the ‘Committee of Creditors’ or ‘any aggrieved person’ for justified reasons, it is always open to the Adjudicating Authority/Appellate Tribunal to ‘exclude certain period’ for the purpose of counting the total period of 270

days, if the facts and circumstances justify exclusion, in unforeseen circumstances.”

13. The applicant has also relied upon the judgment of the Hon'ble Supreme Court of India in the matter of **Neeraj Kumar Sainy v. State of Uttar Pradesh (2017) 14 SCC 136** at paras 29 and 32:

“Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant’s case within the requisite period for no fault of the litigant, a provision which mandatorily requires the CIRP to end by a certain date - without any exception thereto – may well be an excessive interference with a litigant’s fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore, unreasonable restriction on a litigant’s fundamental right to carry on business under Article 19(1)(a) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, inasmuch as the time taken in legal proceedings is certainly an important factor which causes delay, and which has made previous statutory experiments fail as we have seen from Madras Petrochem (supra)...”

Therefore, relying on this judgment, we find that for no fault of the applicant herein, there was delay. He has also explained all the measures taken by him. But as there was non-cooperation on the part of the suspended Board of Directors, he was not able to continue with the CIR Process. Thus, the exclusion of such period can be granted.

14. Also due to the imposition of nationwide lockdown, the RP was not able perform his duties and the period of 270 days got over and therefore, is filing this application for exclusion of time period due to lockdown as well as for the time consumed in the litigation due to non-cooperation by the suspended members. Hence, we find this a fit case

for excluding the period from calculating within the total 330 days of CIRP and for further continuing with the CIR process.

15. This bench directs that the period of CIRP during the promulgation of lockdown will be exempted (excluded) from 23.03.2020 to 31.07.2020 pursuant to the notification of Central Govt. read with new amendment which took place in Regulation of the IBBI and also by following the decision dated 30.03.2020 of the Hon'ble NCLAT passed in *suo-moto* Company Appeal (AT) (Insolvency) No. 01 of 2020.
16. By this order, we are providing the applicant herein with the maximum time permissible to be extended under law i.e. of 330 days. Now we believe that there is sufficient time available for completion of CIRP period and therefore, no further extension will be granted in case the process is not completed within this stipulated time, the CIR process being a time bound process and upon the fact that the Code does not provide for any further extension.
17. With the aforesaid observations, the present IA No. 1237 of 2020 is allowed and exclusion of the time period as sought in the application including the time period consumed in litigation is excluded vide this order and till the date of this order. It is to be noted that no further extension will be granted beyond completion of 330 days.

This Interlocutory Application bearing number 1237 of 2020 stands disposed of as allowed.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

H. V. SUBBA RAO
Member (Judicial)

/rakesh/
/SSB/