

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH
CHENNAI

COMPANY APPEAL (AT)((CH)(INS) NO. 450/2023

(Appeal under Section 61 of the Insolvency & Bankruptcy Code, 2016 against the order dated 27.07.2023 passed by the NCLT Chennai in CP(IB)/9(CHE)/2022)

In the matter of:

Kiran Martin Gulla
RP of Varadharaja Foods Pvt Ltd
Raheja Tipco Heights, Rani Sati Marg,
Malad -E, Mumbai 400097.

Appellant

For Appellant: Mr. Adarsh Ramanujan, Advocate

JUDGEMENT

JUSTICE M. VENUGOPAL, MEMBER (JUDICIAL)

The Appellant/Resolution Professional of 'Corporate Debtor/Vardharaja Foods Pvt Ltd has preferred the instant Company Appeal (AT)(CH)(Ins) No.450/2023 before this 'Appellate Tribunal' as an 'Aggrieved Person' in respect of the impugned order dated 27.07.2023 in IA (IBC)/1235(CHE)/2023 in CP (IB)/9(CHE)/2022 passed by the 'Adjudicating Authority/'National Company Law Tribunal', Special Bench, Court I, Chennai.

2. Earlier, the Adjudicating Authority/NCLT, Special Bench, Court I, Chennai while passing the impugned order dated

27.07.2023 in IA (IBC)/1235(CHE)/2023 in CP (IB)/9(CHE)/2022 had observed the following:-

“Applicant is represented by Ld. Counsel Ms Gayathri Mohite, RP Ms Kiran Martin Golla is also present through video conferencing mode.

This Application has been filed seeking extension of timeline for completing the CIRP of the Corporate Debtor by a further period of 90 days in accordance with Section 12(2) of the IBC, 2016 r/w Regulation 40 of the IBBI, Regulations, 2016.

It is stated that on 21.04.2023, the sole CoC member passed the resolution to extend further period of 90 days from the last date of CIRP dated 10.05.2023. The resolution is placed at page 73. Voting is placed at page 78 and 79 of the Application. In view of the above Application is allowed and CIRP is extended for further period of 90 days with effect from 10.05.2023.”

and disposed of the IA(IBC)/1235(CHE)/2023 accordingly.

3. Assailing the correctness, validity, propriety and legality of the impugned order dated 27.07.2023 in IA (IBC)/1235(CHE)/2023 in CP (IB)/9(CHE)/2022 passed by the Adjudicating Authority/NCLT, Spl Bench (Court I), Chennai, the Learned counsel for the Appellant/Petitioner submits that the Appellant is a Resolution Professional appointed in ‘Corporate Insolvency Resolution Process’ of Vardharaja Foods Pvt Ltd

(‘Corporate Debtor’) whose ‘CIRP’ was admitted by an order, dated 19.11.2022 in CP (IB)/9/(CHE)/2022

4. According to the Learned counsel for the Appellant, the Appellant in the instant Appeal only challenges the impugned directions in the order dated 27.07.2023 passed by the Adjudicating Authority/Tribunal in IA (IBC)/1235(CHE)/2023 in CP (IB)/9(CHE)/2022 by which the CIRP extension of 90 days was calculated Retrospectively from 10.05.2023 rendering the very extension practically an infructuous one.

5. The Learned counsel for the Appellant points out that the Adjudicating Authority/Tribunal was not correct in granting an extension of CIRP for a period of 90 days from 10.05.2023 i.e. Last date of CIRP. Also that the exclusion of the period from 09.05.2023 viz. the date of filing the Application to 27.07.2023 is an incorrect, erroneous and unjustified one in the ‘Eye of Law’.

6. The Learned counsel for the Appellant points out that the Adjudicating Authority/Tribunal should have excluded the period from 09.05.2023 to 27.07.2023 namely the period spent in Hearing and disposal of the IA (IBC)/1235/CHE/2023 and the details of exclusion is mentioned in the following Tabular Form which runs as under:-

<i>Period</i>	<i>Reason</i>	<i>Exclusion from CIRP</i>
09.05.2023 To 10.05.2023	Date of filing the IA (IBC)/ 1235(CHE)/2023	1 day
10.05.2023 to 27.07.2023	Pendency of IA(IBC)/ 1235(CHE)2023	79 days
28.07.2023 to 27.08.2023	Time taken for the impugned order to be made available to the parties/Appellant	31
	<i>Total</i>	<i>111 days</i>

7. The Learned counsel for the Appellant/Petitioner points out that in IA (IBC)/1235(CHE)/2023 in CP (IB)/9(CHE)/2022 the following reliefs were sought for:-

- i) To extend the timeline for completing the CIRP of the Corporate Debtor by a further period of 90 days in accordance with Section 12(2) of the I&B Code, 2016 read with Regulation 40 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- ii) That the extension of the Corporate Insolvency Resolution Process be granted from the date of the disposal of this application.

iii) That the period during which the present application is pending be excluded from the calculation of extension of the Corporate Insolvency Resolution Process.

8. The Learned counsel for the Appellant/Petitioner contends that in the instant case on hand, the Resolution Professional had no actual or constructive knowledge of the impugned order and in fact on the date of order 27.07.2023 the Adjudicating Authority/Tribunal merely pronounced that 'CIRP' extension Application was being allowed, without more and this is corroborated by the reporting Email received by the Resolution Professional/appellant on 27.07.2023 which merely mentions that 'the application was allowed.'

9. The Learned counsel for the Appellant takes an emphatic plea that the Extension of CIRP application, filed by the Petitioner/Appellant had specifically sought a relief of extension from the date of disposal and to exclude the period of pendency and in reality, where the Resolution Professional was informed that the IA (IBC)/1235(CHE)/2023 in CP (IB)/9(CHE)/2022 was allowed. Further, the Resolution Professional, 'Bona fide' and reasonably was under the notion/belief that all the reliefs were allowed in accordance with the Hon'ble Supreme Court Decision.

10. It is the stand of the Appellant that the Resolution Professional had no actual or constructive knowledge of the 'Retrospective Calculation', on 27.07.2023, until the order was uploaded on 11.08.2023.

11. The Learned counsel for the Appellant refers to the judgement of the Hon'ble Supreme Court in 'Committee of Creditors' of Essar Steel V Satish Kumar Gupta reported in (2020) 8 SCC at Page 531 at Spl Page 626 and 627 and 628 wherein at para 124, and 127 it is observed as under:-

"124. Given the fact that timely resolution of stressed assets is a key factor in the successful working of the Code, the only real argument against the amendment is that the time taken in legal proceedings cannot ever be put against the parties before the NCLT and NCLAT based upon a Latin maxim which subserves the cause of justice namely, actus curiae neminem gravabit.

127. Both these judgments have been followed in [Neeraj Kumar Sainy v. State of Uttar Pradesh](#) (2017) 14 SCC 136 at paragraphs 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)(g) 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). 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. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation.”

and points out that the ‘period of pendency’ of the IA (IBC)1235(CHE/2023 in CP(IB)/9/(CHE)/2022 for CIRP extension ought to be excluded.

12. Likewise, it is submitted on behalf of the appellant that the period of ‘pendency’ of the instant Appeal ought to be excluded as

well and thus, the 'CIRP extension' is to granted by this Tribunal from the date of disposal of the instant Appeal.

13. The Learned counsel for the Appellant, prays for setting aside the direction issued in the impugned order dated 27.07.2023 in IA (IBC)/1235/(CHE)/ by the Adjudicating Authority/NCLT, Spl Bench, Court I, Chennai that the CIRP extension period to run retrospectively from 10.05.2023 and to quash the same.

14. Also, on behalf of the Appellant, it is contended before this Tribunal that an extension of CIRP period of 90 days as per Section 12(2) of the I&B Code, 2016 may be granted to and in favour of the 'Appellant' from the date of disposal of the present Appeal.

15. The Learned counsel for the Appellant prays for setting aside the impugned order of the Adjudicating Authority/Tribunal dated 27.07.2023 maid in IA (IBC)/1235/CHE and to allow the instant Appeal, to avoid any 'miscarriage of justice'.

APPRAISAL

16. At the outset, this Tribunal points out that the Petitioner/Appellant in IA (IBC)/1235(CHE)/2023 in CP (IB)/9/(CHE/2022 (filed under Section 12(2) of the I&B Code, 2016 r/w Regulation 40 of the Insolvency & Bankruptcy Board of India

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016, had mentioned that he is approaching the Adjudicating Authority/Tribunal praying for an extension of 90 days to complete the CIRP of the Corporate Debtor.

17. More importantly, according to the Appellant/Petitioner, this extension is necessary, pursuant to the approval for Publication of Expression of Interest for submission of Resolution Plan in accordance with Section 25(2)(h) of the I&B Code, 2016, in the Third Committee of Creditors concluded on 17.04.2023.

18. The Learned counsel for the Appellant/Petitioner refers to the timeline, as indicated in the following Tabular Form, which runs as under:-

Particulars	Date
<i>Date of invitation of Expression of Interest</i>	<i>29.04.2023</i>
<i>Last date for receipt of Expression of Interest</i>	<i>14.05.2023</i>
<i>Date of issue of provisional list of prospective resolution applicants</i>	<i>24.05.2023</i>
<i>Last date for submission of objections in provisional list</i>	<i>29.05.2023</i>
<i>Date of issue of final list of prospective resolution applicants</i>	<i>08.06.2023</i>
<i>Date of issue of information memorandum, evaluation matrix and request for resolution plans to prospective resolution applicants</i>	<i>29.05.2023</i>
<i>Last date for submission of resolution plan by the Resolution Applicants</i>	<i>30.06.2023</i>

19. According to the Learned Counsel for the Appellant/Petitioner, in terms of the timeline specified Supra, the

last for submission of Resolution Plan by the Resolution Applicant stood on 30.06.2023. Also an Expression of Interest from a few of the prospective Resolution Applicants was received.

20. According to the Appellant/Petitioner, the initial period of 180 days had lapsed on 10.05.2023 and further that the Members of the Committee of Creditors and Resolution Professional shall be left with no time, to proceed with any of the procedure mentioned in the said 'Form G' including to evaluate the Resolution Plan received from the Resolution Applicant.

21. It is represented on behalf of the Appellant/Petitioner that for a better negotiation, evaluation and discussions on the Resolution Plan, received from the Resolution Applicants and submission of the same to the Appellate Tribunal, the Interim Resolution Professional had proposed to extend the CIRP period, for a further period of 90 days from the Approval of the present Application.

22. In substance the Petitioner/Appellant in IA (IBC)/1235(CHE)/2023 in CP(IB)/9/(CHE)/2022 had mentioned that 'it is vital' for the revival of the Corporate Debtor, that the extension of CIRP period for a further period of 90 days, be granted as the last date for submission of Resolution Plan was 30.06.2023.

Also that the Petitioner/Appellant had averred in IA

(IBC)/1235/(CHE) in CP(IB)/9/(CHE)/2022 if the extension was not approved by the Adjudicating Authority/Tribunal, then the Committee of Creditors will be unable to approve a deserved Resolution Plan, submitted from the prospective Resolution Applicant for maintaining the Corporate Debtor as a going concern.

23. According to the Petitioner/Appellant that it is now well settled that the period of pendency before the Adjudicating Authority/Tribunal shall be excluded when computing the CIRP period, because no act of judicial forum can cause prejudice to the party and added further, the direction issued in the impugned order that the CIRP extension period to retrospectively run from 10.05.2023 be quashed and set aside and to grant extension of CIRP period of 90 days as per Section 12(2) of the I&B Code, 2016 from the date of disposal of the present Appeal, besides the period of pendency of IA (IB)(1235/(CHE)/2023 for extension is to be excluded.

24. It is to be pointed out that the pendency of judicial proceedings before a 'Tribunal' is an exceptional 'circumstance' and the time taken in legal proceedings cannot harm a

‘Stakeholder’/’Litigant’. No doubt, time is the essence of the I&B Code, 2016.

25. As per Section 12(3) of the I&B Code, 2016, on receipt of an application u/s 12(2) of the Code, if the Insolvency Resolution Process remained pending on the date of the commencement of the I&B Code(Amendment) Act, 2019, such Resolution Process must be completed within a period of 90 days from the date of commencement.

26. The meaning of the term ‘extension’ is the act of stretching out or elongating the ambit of something, the additional period of time given to a person, to meet one end. However, the term exclusion is an example of leaving something or keeping out, eliminate, facing out, rule out etc. In fact, the exclusion of particular period by an Adjudicating Authority / Tribunal using its discretionary powers under Rule 11 of NCLT Rules, 2016 and relying upon the Regulation 40C of the Regulations to keep the Company a ‘Going Concern’ was held to be a proper, although it was dissented by 42% of the Committee of Creditors Members as per decision in India Bulls Housing Finance Ltd. V. Sandeep Chandna (reported in 2022) 141 Taxmann.com.552 NCLAT, New Delhi.

27. When an extension for 90 days to complete the CIRP is granted by an Adjudicating Authority then such period will be counted from the date on which the Adjudicating Authority/Tribunal passed the order for such extension.

28. On a careful meticulous consideration of contentions advanced on behalf of the Appellant/Petitioner, this Tribunal taking note of the fact that the sole COC Member has passed a Resolution to extend further period of 90 days from the last date of CIRP dated 10.05.2023, in view of the categorical and candid averment that for a 'better negotiation', 'evaluation' and 'discussion' on the Resolution Plan received from the Resolution Applicant and submission of the same to the Adjudicating Authority/Tribunal the Interim Resolution Professional has proposed to extend the CIRP period for a further period of 90 days from the date of approval of the instant IA (IBC)/1235/(CHE/2023 in CP (IB)/9/CHE/2022, and considering the totality of the entire conspectus of the facts and circumstances surrounding the instant case, this Tribunal comes to an 'inevitable' and 'irresistible' conclusion that the Adjudicating Authority/Tribunal had committed an error in not granting the exclusion for the period

from 09.05.2023 to 27.07.2023 viz. the period spent in pursuing the IA (IB)1235/CHE/2023, the exclusion period would have enabled the Petitioner/Appellant to pursue the Expression of Interest received and made efforts to revive the Corporate Debtor through a Resolution Plan and in furtherance of 'substantial cause of justice' and to prevent an aberration of justice, the observation made by the Adjudicating Authority/Tribunal in the impugned order dated 27.07.2023 in IA (IBC)1235/CHE/2023 in CP (IB)9/CHE/2022 that the 'CIRP' is extended for a further period of 90 days with effect from 10.05.2023 is set aside because of the fact that the period of pendency of proceeding (IA No.(IBC)/1235/CHE/2023 in CP No.(IB)9/CHE/2022 (from 09.05.2023 to 27.07.2023) before the Adjudicating Authority/Tribunal shall be excluded when calculating the CIRP period. Likewise, the period of pendency of instant Comp App (At)(CHE)(Ins) No.450/2023 is ordered to be excluded and the extension of CIRP period of 90 days is granted by this Tribunal from the date of the disposal of the instant Appeal, as per Section 12(2) of the I&B Code, 2016. Consequently, the instant Appeal succeeds.

DISPOSITION

In fine, the impugned order dated 27.07.2023 in IA(IB)/1235(CHE/2023 in CP (IB) No.9/CHE/2022 in regard to the issuance of direction that the CIRP extension period to run Retrospectively from 10.05.2023 is set aside by this Tribunal for the reasons assigned in the instant Appeal. It is hereby ordered that the exclusion for the period from 09.05.2023 to 27.07.2023(the period spent in pursuing the IA(IB)/1235(CHE/2023 in CP (IB) No.9/CHE/2022) is granted by this Tribunal. Also, that, the extension of CIRP period of 90 days, as per Section 12(2) of I&B Code, 2016 is granted by this Tribunal from the date of disposal of the instant Appeal. Accordingly, the Appeal is allowed. No costs.

(Justice M. Venugopal)
Member (Judicial)

(Mr. Arun Baroka)
Member (Technical)

Dated: 21-02-2024

ss/bm