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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI**

IA(IBC)/606/CHE/2022 in CP(IB)/85(CHE)/2021

*(Filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016
read with Regulation 40 of the IBBI (Insolvency Resolution Process for
Corporate Persons) Regulations, 2016, read with, Rule 11 of the NCLT
Rules, 2016)*

In the matter of **VME Properties Pvt. Ltd**

Sapan Mohan Garg

Resolution Professional of
VME Properties Privat Limited
D-54, First Floor,
Defence Colony,
New Delhi – 110 024

... Applicant

Order Pronounced on **8th July 2022**

CORAM:

**Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant : Palash Singhai, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This is an application filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 40 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and seeking relief as follows:

- (i) In view of the foregoing, it is most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to exclude the period of 55 days i.e. the time period spent in the adjudication of the application bearing No.208/2022 from the total time period of CIRP (from 02.03.2022 to 26.04.2022).

(ii) Exclude the time spent on the adjudication of the instant application from the total period of CIRP, if any;

(ii) Pass such other or further order and other reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

2. The CIRP in respect of the Corporate Debtor was initiated by this Tribunal vide its order dated 02.09.2021 and the Applicant herein was appointed as the IRP on 29.09.2021. It was submitted that the 180-day CIRP period in respect of the Corporate Debtor came to an end on 01.03.2022 and accordingly the Applicant moved IA(IBC)/208(CHE)/2022 before this Tribunal and this Tribunal vide order dated 26.04.2022 has disposed of the said application as follows;

The Petitioner is represented by Ld. Counsel Mr. Kaushik Khetan through Video conferencing mode.

This Present Application is filed by the Resolution Professional for extension of the CIRP period for 90 days. The 180th day of the CIRP expires on 01/03/2022.

The Ld. Counsel submitted that in the 5th COC meeting dated 04/02/2022 the COC resolved in favour to seek extension for 90 days and the same is placed in Page 147 of the Application typeset.

Heard the submissions made by the Ld. Counsel. This Tribunal places on record the Resolution passed by the COC in meeting dated 04/02/2022. Thus, CIRP period of the Corporate Debtor is further extended for a time period 90 days from 02/03/2022.

Accordingly, this IA/208(CHE)/2022 stands **allowed**.

3. The present Application is filed by the Applicant seeking exclusion of the time period from 02.03.2022 to 26.04.2022 on

account of time period of 55 days which was spent on adjudication of IA(IBC)/208(CHE)/2022 by this Tribunal. Further, relief (b) has been sought to exclude the spent on adjudication of the instant Application.

4. Hon'ble NCLAT in the matter of **Quinn Logistics India Pvt. Ltd. -Vs- Mack Soft Tech Pvt. Ltd., & 2 Ors** in *Company Appeal (AT) (Insolvency) No. 185 of 2018* has laid down certain circumstances under which exclusion can be granted and they are as follows;

- (i) If the corporate insolvency resolution process is stayed by 'a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court.
- (ii) If no 'Resolution Professional' is functioning for one or other reason during the corporate insolvency resolution process, such as removal.
- (iii) The period between the date of order of admission/moratorium is passed and the actual date on which the 'Resolution Professional' takes charge for completing the corporate insolvency resolution process.
- (iv) On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the 'Resolution Professional' to complete the corporate insolvency resolution process.
- (v) If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the

Appellate Tribunal is reversed by the Hon'ble Supreme Court and corporate insolvency resolution process is restored.

- (vi) Any other circumstances which justifies exclusion of certain period. However, after exclusion of the period, if further period is allowed the total number of days cannot exceed 270 days which is the maximum time limit prescribed under the Code.

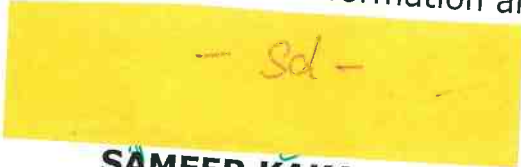
5. Thus, it could be seen that in order to seek exclusion of the CIRP period, the Applicant has to fall under any one of the 6 circumstances enumerated *supra*. Apart from the above, the Regulator viz. IBBI has also inserted Regulation 40C of the IBBI (Insolvency Resolution Process of Corporate Persons), Regulation 2016 wherein the period of lockdown imposed by the Central Government on account of Covid – 19 shall be excluded. In the present case, the Applicant has earlier filed an application viz. IA(IBC)/208(CHE)/2022 for extension of 90-day period of CIRP which came to be allowed by this Tribunal vide its order dated 26.04.2022 and now the Applicant is moving the present Application seeking exclusion of 55-day CIRP period which was the time spent on adjudication of IA(IBC)/208(CHE)/2022. We are unable to comprehend as to how the present Application is maintainable, since the Applicant has nowhere stated in this Application as to what is the impediment which he faced or any statutory bar that is being imposed upon him in conducting the CIRP in respect of the Corporate

Debtor. Mere filing of an application for exclusion of CIRP cannot be a ground for excluding the time spent in the adjudication of the said Application and if such a prayer is allowed it would amount to making mockery of exclusion / extension applications. Further, in the present Application, the Applicant has not averred as to what is the stage of CIRP in respect of the Corporate Debtor. The present Application is totally frivolous and also bereft of merits.

6. Under the said circumstances, the present IA(IBC)/606(CHE)/2022 stands **dismissed**. No costs.

7. We are aware of the fact that the dismissal of the present Application would entail an order of Liquidation to be passed by this Tribunal. However, we are granting liberty to the Applicant to move an application seeking extension / exclusion with setting out attendant facts and circumstances in which extension / exclusion can be granted in the present case.

8. The *Registry* is directed to mark a copy of this Application to IBBI for its information and records.


SAMEER KAKAR
MEMBER (TECHNICAL)

Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Raymond