

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**Under Section 60(5) of Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of
the National Company Law Tribunal Rules,
2016.**

I.A. NO. 1175 OF 2020

Filed by

Mr. Anuj Jain,

Resolution Professional,

B S R R & Co. Building No. 10,

8th Floor, Tower C, DLF Cyber City,

Phase II, Gurgaon, Haryana, India – 122 002

...Applicant

In the matter of

C.P. (IB) No. 2915 OF 2019

**M/S Finquest Financial Solutions Private
Limited**

602, Boston House, near Cinemax, Suren
Road, Andheri (East), Mumbai – 400 093

...Financial Creditor

versus

Ballarpur Industries Limited

P O Ballarpur Mills, Ballarpur Dist.

Chandrapur, Maharashtra – 422 901

...Corporate Debtor

Order Pronounced on: 15.09.2020

Coram:

Smt. Suchitra Kanuparthi, Member (Judicial)

Shri. Shyam Babu Gautam (Member Technical)

Appearance:

For the Applicant: Mr. Somesh Shrivastava, Advocate.

Per: Smt. Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This is an Interlocutory Application filed by the Resolution Professional Mr. Anuj Jain (hereinafter called as “the applicant”) of Ballarpur Industries Limited (hereinafter called as “the Corporate Debtor”) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter called “the Rules”) seeking exclusion of a period of 129 days from the computation of the deadline of 180 days for completing the Corporate Insolvency Resolution Process (CIRP).

The facts of the case are as below:

- i. A Company Petition filed by one Finquest Financial Solution Private Limited (hereinafter called as “the original petition”) bearing number CP 2915/I&B/MB/2019 under Section 7 was admitted by this Tribunal vide an order dated 17.01.2020 and Mr. Divyesh Desai was appointed as the Interim Resolution Professional (IRP).
 - ii. On 20.02.2020, the first meeting of the CoC was conducted wherein the IRP was replaced by Mr. Anuj Jain (the applicant in the present matter) and appointed to perform the functions as the Resolution Professional (RP). For confirmation by the National Company Law Tribunal (NCLT), the matter was listed as an urgent matter before the NCLT Principal Bench, New Delhi, Camp at Chennai and was approved vide an order dated 27.05.2020.
 - iii. The present application has been filed by the Applicant pursuant to the decision taken by the CoC of the Corporate Debtor with a voting of 85.59% in its 7th meeting held on 11.08.2020. The minutes of this meeting are annexed and marked as Annexure A-1 (colly).
2. The applicant herein prays for the exclusion of a period of 129 days from calculating it within 180 days of the CIRP. He seeks for exclusion between the dates 24.03.2020 and 31.07.2020 because of the Nationwide Lockdown which was announced on 23.03.2020, the unlock process of which is still in progress.

3. 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 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.

4. 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.”

5. 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.

6. 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. ...”

7. 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.
8. The counsel for the Applicant placed his reliance 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.”
9. Therefore, with the above observations and in consideration of the facts of this case, due to the nationwide lockdown, even the appointment of RP was delayed and thus, was not able to carry out his duties in timely manner. Hence, we find this a fit case for excluding the period from calculating within the 180 days of CIRP.
10. This bench directs that the period of CIRP during the promulgation of lockdown will be exempted (excluded) 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.

11. The period consumed from the date of its filing the present application till its disposal are also exempted for counting of the period CIRP.
12. With the aforesaid observations, the present IA No. 1175 of 2020 is allowed and stands disposed of accordingly.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

SUCHITRA KANUPARTHI
Member (Judicial)

Date: 15.09.2020

/Sneha/