

**NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

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

**I.A. NO. 1053 OF 2020**

Filed by

**Rotomotive Powerdrives India Limited**

Public Company

Registered Office at: R.S. No. 223,

R.A. Borsad, Napa, Talpad,

Anand, Gujarat: 388560

...Applicant

In the matter of

**C.P. (IB) No. 381 OF 2018**

**IDBI Bank Limited**

IDBI Tower, WTC Complex,

Cuffe Parade, Mumbai: 400005

...Financial Creditor

versus

**Cyclo Transmissions Limited**

19-20 Renukanagari, Pune Satara Road,

Pune, Maharashtra: 411043

...Corporate Debtor

**Order Pronounced on: 07.10.2020**

**Coram:**

**Smt. Suchitra Kanuparthi, Member (Judicial)**

**Shri. Shyam Babu Gautam (Member Technical)**

**Appearance:**

**For the Applicant:** Mr. Viraj Parekh, Advocate

**For the Resolution Professional:** Mr. Rohan Agrawal, Advocate

i/b MDP Partner

**Per: Smt. Suchitra Kanuparthi, Member (Judicial)**

**ORDER**

1. This is an Interlocutory Application filed by Rotomotive Powerdrives India Limited (hereinafter called the “Applicant”) who is a Resolution Applicant in the matter of Cyclo Transmissions Limited (hereinafter called as “the Corporate Debtor”). This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”) seeking extensions of time of Corporate Insolvency Resolution Process (CIRP) even after completion of 330 days. The CIRP was started on 18.12.2018 by an order of this Tribunal admitting the Petition filed by IDBI Bank (hereinafter called as “the Financial Creditor”) under Section 7 of the Code. The applications also seeks certain directions to the Resolution Professional (RP) of the Corporate Debtor.
2. The applicant mentions that his proposal for the revival of the Corporate Debtor presents the best possible outcome for all the stakeholders of the Corporate Debtor. He further mentions that the time period prescribed for the completion of CIRP period is not mandatory and is subject to exceptions and the facts of this present case justify the exercise of this Tribunal’s jurisdiction to prevent the death of the Corporate Debtor and save the livelihood of more than 150 employees of the Corporate Debtor.
3. The applicant also mentioned that earlier also somewhere in the month of Sept-Oct, 2019, there was a Resolution Plan submitted by Mr. V. Ghole who eventually failed to furnish the necessary bank guarantee as required by the CoC and therefore, the plan wasn’t sanctioned. Therefore, the RP had filed an application before this Tribunal in November, 2019 for commencement of liquidation process which is still pending before this Tribunal. The CIRP period got over on 15.11.2019 and the applicant thereafter became aware of the CIRP of the Corporate Debtor in the month of January, 2020. Therefore, the applicant immediately submitted Expression of Interest (EOI) on 27.05.2020 i.e. after completion of 330 days of CIRP, for the revival of the Corporate Debtor. The Applicant by way of this application is seeking directions to the RP to accept his Resolution Plan wherein he proposes to pay a sum of Rs. 10.50

Crores to settle all the creditors of the Corporate Debtor. The Applicant has submitted a draft of the plan at Exhibit D.

4. The applicant wrote to the RP on 04.06.2020 requesting him to consider the EOI but the RP has rejected this EOI of the applicant by his letter dated on 24.06.2020 on the ground that the last date to receive the EOI had already expired and a liquidation application is already filed before this Tribunal.
5. The RP has submitted his affidavit in Reply wherein he states that he has no objection for considering the Resolution Plan by the applicant subject to approval by this Tribunal for the same. The RP has in his affidavit in Reply has stated the following:

*21. In view of what is stated above, I say that the CIRP period has expired on 15<sup>th</sup> November 2019 and Liquidation Application is pending before the Hon'ble Adjudicating Authority. I further state that if the Hon'ble Adjudicating Authority finds that the Resolution Plan of the Applicant be considered by the RP and COC, I shall comply with the said directions of the Hon'ble Tribunal.*

*22. In the event if the Hon'ble Adjudicating Authority directs the Resolution Professional to consider the Resolution Plan of the Applicant, I most respectfully state that:*

- i. the Resolution Applicant should comply with conditions of the Request for Resolution Plan and all the provisions of this code, as the Resolution Professional is duty bound under the code to only put a Compliant Resolution Plan before the COC;*
- ii. that the Hon'ble Adjudicating Authority be pleased to give directions to the RP to call for meeting of Committee of Creditors to present and evaluate and consider the Resolution Plan of the Applicant;*
- iii. Allow 45 days' time to the RP to check if the said Resolution Plan is compliant with the provisions of this code, that the Resolution Applicant is eligible under Section 29A of the Code and also for COC's negotiation with the applicant on the Resolution Plan. Further, the Lockdown period of COVID-19 may be excluded from the above 45 days.*

6. The CoC has also expressed its no objection for considering the EOI submitted by the applicant.

### **FINDINGS**

7. We have heard the arguments of both the sides and perused all the documents submitted by them. It becomes clear that both the COC and the Resolution Professional have confirmed that they do not have any objection to the Applicant submitting its Resolution Plan subject to approval by this Tribunal.
8. Both the COC and the RP's advocates have reiterated the above stance in the hearing held before this Hon'ble Tribunal on 3<sup>rd</sup> September 2020. That being so, it is evident that the COC and the RP have expressed no objection to the present Application and are open to the idea of considering the Resolution Plan of the Applicant, if it is permitted to submit the same by this Tribunal. Therefore, there arises no dispute to that effect. We only would like to make clear the legal proposition as to whether time can be granted beyond 330 days or not. For this, we need to rely on the judgment of the Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steel v. Satish Kumar Gupta 2019 SCC OnLine SC 1478, para. 108**. In this case, the Court held that the timelines prescribed by Section 12 are not mandatory. The Hon'ble Supreme Court held as follows:

*“108 ... 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.”*

Further, in *Committee of Creditors of Essar Steel (para. 108)*, the Supreme Court also held that this Tribunal had the power to extend the CIRP period if certain specific conditions were satisfied:

*“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.”*

9. From the above, it becomes clear that the time period can very well be extended beyond 330 days. The applicant herein has sought a limited time of 45 days and therefore, in our discretion, we believe that it will be in the best interest of the company as well as the stake holders if the resolution plan is considered, liquidation being the last resort. We thus, allow this prayer considering the benefit of more than 150 employees of the Corporate Debtor Even if the period of 330 days has been completed, bearing an objective of resolution in mind. As the extended time is granted, the applicant is expected to expedite the process and submit the plan within 7 days of date of this order as is assured and prayed by them.
10. The applicant also has prayed to direct the RP to consider the plan submitted by it. The RP has already agreed to consider the plan if approved by this Bench. Therefore, he is directed to take necessary steps before completion of this extended time period by placing the plan before the CoC and other compliances and report this Tribunal after 45 days by either filing an application for approval of resolution plan, if so approved by the CoC or pressing the already filed liquidation application.
11. We would like to make it clear that it will be the commercial wisdom of the CoC whether to accept the plan if found viable and according to the provisions of the Code or to reject it. But as only a limited time is granted, the liquidation application for the time being is kept in abeyance as both the process of resolution and liquidation cannot be conducted simultaneously. The liquidation application will then be considered, heard and disposed of in the light of forthcoming circumstances if in case this plan fails.
12. IA 1053 of 2020 is hereby allowed and disposed of.

Sd/-

**SHYAM BABU GAUTAM**  
**Member (Technical)**

Sd/-

**SUCHITRA KANUPARTHI**  
**Member (Judicial)**