

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
SPECIAL BENCH (video Conference)**

CORAM: HON'BLE SHRI K. ANANTHA PADMANABHA SWAMY - MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 16.09.2020 AT 11.00 A.M. THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.610/2020 in CP(IB) No.262/7/HDB/2018
NAME OF THE COMPANY	Transstroy Tiruthani Chennai Tollyways Pvt Ltd
NAME OF THE PETITIONER(S)	Allahabad Bank
NAME OF THE RESPONDENTS(S)	Transstroy Tiruthani Chennai Tollyways Pvt Ltd
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-Mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-Mail & Telephone No.	Signature

ORDER

1. Matter listed for pronouncement of Orders in IA No.610/2020 in CP(IB)No.262/7/HDB/2018 through Video Conference in view of Notice of the Headquarters dated 17.04.2020 read with Notice dated 03.05.2020.
2. Mr. Ravicharan along with Ms. Niharika Agarwal, counsels for the Applicant appeared through video conference.
3. Orders pronounced vide separate order. IA No.610/2020 in CP(IB)No.262/7/HDB/2018 is allowed.


MEMBER JUDICIAL

AS

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No. 610 of 2020
In CP (IB) No.262/7/HDB/2018
Under section 60(5) of the IB Code, 2016.

In the matter of:-
M/s. TRANSSTROY TIRUPATI TIRUTHANI CHENNAI
TOLLWAYS PRIVATE LIMITED

Mr. Sanjay Kumar Mishra
(IBBI Regn. No.IBBI/IPA-001/IP-P01047/2017-2018/11730.
Resolution Professional of
Transstroy Tirupati Thiruthani Chennai Tollsways
Private Limited

...Applicant/
Resolution Professional

Date of Order: 16.09.2020

Parties/Counsel Present:

For the Applicant: Mr. P. Ravicharan, Mr. L. Venkateswara Rao and
Ms. Niharika Agarwal, Counsels.

Per: K. Anantha Padmanabha Swamy, Member Judicial.

ORDER

1. Under consideration is an interlocutory Application bearing IA No.610 of 2020 filed by the Applicant/Resolution Professional (in short **RP**) in the matter of M/s. Transstroy Tirupati Thiruthani Chennai Tollsways Private Limited, u/s. 60(5) of the Insolvency and Bankruptcy Code, 2016, inter-alia seeking the following relief(s):
 - a) Allow the instant application and grant extension of period of 45 days for completion of the CIRP proceedings in addition to 330 days scheduled to end on 15.08.2020, for taking effect from 16.08.2020 to 29.09.2020.
2. Brief facts as stated by the Applicant in Application are as under:-
 - a. That this Adjudicating Authority admitted the Application filed under section 7 of the IBC, 2016 vide its order dated 03.06.2019 in CP (IB)

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No.262/7/HDB/2018 and appointed Mr. G. Madhusudhan Rao as Interim Resolution Professional (IRP). Subsequently, he was replaced by Mr. Sanjay Kumar Mishra as Resolution Professional (RP) in the 1st CoC meeting held on 12.07.2019.

- b. That this Adjudicating Authority vide its order dated 25.11.2019, in IA No. 1058 of 2019, extended the period of CIRP for further 90days with effect from 01.12.2019 and further, this Adjudicating Authority vide its order dated 03.03.2020 in IA No.230/2020, allowed for 20 days beyond 270 days of CIRP w.e.f. 29.02.2020 and the same ended on 19.03.2020.
- c. That pursuant to the progress in CIRP, this adjudicating authority vide its order dated 06.07.2020 allowed another 40 days to complete CIRP within 330 days. Subsequently, the Applicant/RP has received a Resolution Plan from IARC on 06.08.2020 and the members of the CoC in its meeting held on 07.08.2020 deliberated on the need to file the extension application with this Adjudicating Authority for the purpose of review by the Resolution Professional, negotiations of the Resolution Plans with the Resolution Applicant, discussions with NHAI and also for obtaining internal approvals for final approval of the Resolution Plan. Accordingly, the CoC unanimously resolve to seek for extension of 45 days and requested the Resolution Professional to file extension of 45 days effective from 16.08.2020.
- d. That the CIRP period could not be utilized, due to the following reasons:
 - i. The period of 11 days which could not be utilized on account of delay in communication of admission order dated 03.06.2019, the Resolution Professional has filed an IA 1058/2019 wherein the Applicant sought exclusion of 11 days in addition to the 90 days. However vide order dated 25.11.2019, this Adjudicating Authority observed that since extension of 90 days were granted, the exclusion of 11 days was not required to be adjudicated at this that point of time.

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- ii. Order pertaining to allowing of replacement of IRP was passed on 02.08.2019, but communication of this order was made on 07.08.2019 and accordingly a period of 5 days could not utilized.
- iii. That in 4th CoC meeting held on 10.10.2019 the salient points of the Request for Resolution Plan along with the Evaluation Matrix were presented to the Members of the CoC. The Members of the CoC accepted the RFRP and Evaluation Matrix as presented by the Resolution Professional. In the same meeting it was further deliberated that the Corporate Debtor is a special purpose vehicle for development of a road projects awarded by National Highways Authority of India (“NHAI”) situated partly in the state of Andhra Pradesh and partly in the state of Tamil Nadu. The CoC members were of the view that the Resolution Applicant should also be eligible as per the eligibility criteria stipulated by NHAI in other similar projects, more so in view of the fact that part of the project stretch was yet to be completed and had to be undertaken by prospective Resolution Applicant for the overall revival of the Corporate Debtor. Accordingly, it was decided to seek the support from NHAI and their inputs on the technical criteria for Resolution Applicants stipulated in the RFRP and Evaluation Matrix. The Resolution Professional informed the COC that based upon proposed discussion with NHAI and their suggestions on RFRP, modifications to the RFRP document would be again presented. CoC Members then unanimously decided to adjourn the meeting and await the NHAI’s comments for finalization of the RFRP document and Evaluation Matrix. The meeting between the officials of NHAI Project Implementation Unit, Chennai and RP’s advisors happened only on 18th October 2019. The issue of RFRP was accordingly deferred from 11th October 2019 to 29th October 2019 (after CoC approval), thus resulting in overall delay/loss of 18 days of CIRP.

- iv. Order pertaining to extension of time of 40 days in IA No.453/2020 was reserved on 30th June 2020 and orders were passed on 6th July 2020. The same were made available on the website on 8th July 2020 with a delay and loss of 2 days.
- e. That the period of 330 days comes to end on 15.08.2020 and the Applicant is seeking extension of 45 (forty-five) days for the purpose of effective CIRP proceedings and maximization of interests of stakeholders in addition to total period of 330 days as approved the following resolution with full majority by the CoC in its 17th meeting held on 07.08.2020.
- “RESOLVED FURTHER THAT the Resolution Professional is hereby requested to file a suitable application under section 12(2) to the Adjudicating Authority for seeking approval for extension of the aforesaid insolvency resolution process period of the Corporate Debtor ending on 15th August, 2020 by a period of Forty-five days.”***
- f. That the 45 days extension is allowed for the purpose of effective and successful CIRP proceeding and saving the Corporate Debtor to go in Liquidation.
- g. That the Applicant/RP relied upon judgements of the Hon’ble Supreme Court in the matter of Swiss Ribbons Private Limited & Another vs Union of India & others in Writ Petition (Civil) No.99 of 2018, wherein it was held that “*what is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is no resolution plan or the resolution plan submitted is not upto the mark.* Applicant also relied upon the judgment of the Hon’ble Supreme Court in CoC of Essar Steel India Limited Vs Sathish Kumar Gupta & Ors wherein the time for completion of CIRP beyond 330 days was granted.
- h. That the list of Claims admitted on the Corporate Debtor are ₹629.64 Crores. Therefore, reiterating the above, the applicant prayed to allow the instant Application for the purpose of effective and successful CIRP proceeding and saving the Corporate Debtor to go in Liquidation.


3. Heard and perused the records.

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4. In the instant case, the CIRP was initiated against the Corporate Debtor on 03.06.2019 and the period of 180 days came to end on 29.11.2019. The CIRP period of 180 days was extended by another 90 days vide this Adjudicating Authority's order dated 25.11.2019. By virtue of insertion of amendment in section 12 of IBC, 2016, a period another 20 days was extended vide order dated 03.03.2020. The period of 270 days + 20 days came to an end on 28.02.2020 and 19.03.2020 respectively. Further, this Adjudicating Authority vide its order dated 06.07.2020 extended a period of 40 days till 15.08.2020 after excluding the period of 103 days (25.03.2020 to 07.07.2020) lost due to global COVID-19 pandemic. Now, that the instant Application is filed for seeking exclusion of period of 45 days from the computation of the CIRP Period for the reasons as stated in the Application.
5. It is pertinent to note that the judgment of the Hon'ble Supreme Court has held in Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors in CA No.8766-67 of 2019 as follows:

"79.....Thus, while leaving the provision otherwise intact, we strike down the work '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."

6. Keeping the guidance of the Hon'ble Supreme Court as above in view and considering the submissions, facts and circumstances of case, interest envisaged by the Prospective Resolution Applicant for resolution of Corporate Debtor and in view of the decision of CoC through email, as well as the economic scenario emerging due to COVID-19 pandemic and it's fall out, this Adjudicating Authority observes that exclusion of time period enabling for completion of CIRP would be in the interest of all stakeholders, to allow the completion of CIRP rather than going for liquidation of the Corporate Debtor which should only be initiated as a last resort. Accordingly, I hereby approve to exclude a period of another 45 days from calculation of CIRP period from the date of this order.
7. This exclusion is granted on having considered the steps already been taken by the RP, approval by the CoC with majority acceptance through email and the current stage of CIRP in the case of the present Corporate Debtor i.e., M/s. Transstroy Tirupati Thiruthani Chennai Tollsways Private Limited.
8. Accordingly, this Application bearing IA No.610 of 2020 hereby stands disposed of.


K. Anantha Padmanabha Swamy
Member Judicial

Rk/Rathi