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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (URGENT HEARINGS THROUGH VIDEO CONFERENCE)
PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 05.10.2020 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 831 & 871/2020 in CP (IB) No. 651/7/HDB/2018
NAME OF THE COMPANY	Sainath Estates Pvt Ltd
NAME OF THE PETITIONER(S)	Bank of India
NAME OF THE RESPONDENT(S)	Sainath Estates 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

IA No.871 of 2020 is not listed today. However, on being mentioned by senior counsel Mr. L. Ravichandran on behalf of Resolution Professional/ applicant, the same is taken up for hearing through videoconference. The IA is filed by the Resolution Professional seeking extension of CIRP period.

Heard submissions. IA No.871 of 2020 is disposed of vide separate order.

IA No.831 of 2020 is taken up through videoconference. At the request of the RP, to enable him to file counter time is enlarged. Put up IA No.831 of 2020 and all other pending IAs on 26.10.2020.


MEMBER (T)

Karim


MEMBER (J)

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

**IA No. 871 of 2020
In CP (IB) No.651/7/HDB/ 2018
Application under Rule 11 of NCLT Rules, 2016**

In the matter of:
Dr.K.V. Srinivas
Resolution Professional of
M/s Sainath Estates Private Limited

Between:
Bank of India

.. Petitioner
Financial Creditor

Vs.

M/s. Sainath Estates Private Limited

.. Respondent

Date of Order: 05.10.2020.

CORAM:

**Hon'ble Shri K. Anantha Padmanabha Swamy, Member (Judicial)
and**

Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties/Counsels Presents:

For RP : Shri L. Ravi Chander, senior counsel.
Dr. K.V. Srinivas, Resolution Professional.



Per: **Shri Veera Brahma Rao Arekapudi, Member (Technical)**

ORDER

1. IA No.871 of 2020 is filed by the applicant/ Resolution Professional in the matter of M/s Sainath Estates Private Limited under Rule 11 of the NCLT Rules, 2016, inter alia seeking the following reliefs:

“(a) In the above circumstances, the applicant humbly prays that this Hon’ble Adjudicating Authority may be pleased to pass an order directing the applicant/ Resolution Professional to extend the voting time till 05.00 PM on 07.10.2020 under Rule 11 of NCLT Rules, 2016.

“(b) Consequently, permit the RP to file approved Resolution Plan or the decision of the CoC in this regard by 30 days in view of the overlapping time lines due to the extension of voting time.”

2. Brief facts of the case are as follows:

2.1 Bank of India, the Financial Creditor has filed application under section 7 of the I&B Code, 2016 seeking initiation of CIRP, before this Tribunal. The Tribunal vide order dated 08.07.2019 admitted the petition being CP (IB) No.651/7/ HDB/ 2018, appointing the applicant herein as IRP.

2.2 In response to the public announcement, the applicant had received claims from Syndicate Bank, Bank of India, Punjab National Bank and Andhra Bank, which have been processed and admitted by the applicant.

2.3 The applicant had received e-mail from the Corporate Debtor enclosing therewith a copy of the order of the Hon’ble NCLAT, stating that the Corporate Debtor intends to settle the matter with the applicant/ FC, viz. Bank of India, as permitted by the Hon’ble NCLAT. The Hon’ble NCLAT posted the matter on 21.08.2019 directing that, “In the meantime, “Interim Resolution Professional” will not constitute “Committee of Creditors” if not yet constituted.”

2.4 The Hon’ble NCLAT vide order dated 21.08.2019 posted the matter on 16.09.2019, and directed that, “In the meantime, the IRP will collate the claims, if not yet collated and will constitute the Committee of Creditors, if settlement is not reached by 11.09.2019

..... ” The IRP constituted the CoC on 18.09.2019 and filed report under Regulation 17 of the CIRP Regulations.


- 2.5 The CoC in its meeting held on 26.09.2019 confirmed the appointment of applicant as RP. The Resolution Professional in Second Meeting of CoC held on 31.10.2019 apprised the Members of the current state of affairs of the Corporate Debtor and appointment of valuers in accordance with the provisions of the Code. Third Meeting of CoC was held on 28.11.2019 in which it was resolved to publish EoI and Form-G, inviting expression of interest from the prospective resolution applicants.
- 2.6 On 05.12.2019 the Resolution Professional issued Form-G inviting resolution applicants to submit resolution plans for the Corporate Debtor fixing the last date of submission of EoI as 20.12.2019. The Resolution Professional has held Fourth to 15th Meeting of the CoC, details of which are not relevant for consideration of this application.
- 2.7 The Resolution Professional held 16th Meeting of CoC on 19.09.2020, and the Members were of the opinion that the Resolution Applicant has become eligible to submit the plan subsequent to end of last date for submission of EoI, due to amendment to the MSME criteria and maximum period of 270 days. The Members have unanimously directed the Resolution Professional to put up for voting the 4th Revised Resolution Plan along Addendum thereto dated 11.09.2020 received and accordingly, the same was put to voting in compliance with the provisions of the Code, the Rules and Regulations prescribed thereunder by keeping the voting window open till 05.00 PM on 24.09.2020.
- 2.8 Subsequently the Resolution Professional extended voting time till 05.00 PM on 29.09.2020 pursuant to request from the Members. The same was further extended till 01.00 PM on 01.10.2020.
- 2.9 It is further averred that the Resolution Professional had received e-mail request from Bank of India holding 47.09% voting rights stating that majority of senior management and members of their Committee perusing the Resolution Plan had tested COVID-19 positive, and the

Management is in the process of constituting new Members. The Resolution Professional has been requested to keep voting window open till 07.10.2020.

The applicant has filed Memo of Clarification dated 01.10.2020 giving computation of days lost and extension granted by the NCLT/ NCLAT from time to time. Memo dated 05.10.2020 has also been filed making prayers.

3. During the course of hearing, it is stated by the Counsel for the Applicant that the Application for exclusion of period of Covid-19 was filed by Resolution Professional on 29.07.2020 vide email in the registry. However, the same was listed vide IA No. 686/2020 for hearing only on 04.09.2020 and the same was disposed on 10.09.2020. That the period from filing of the Application until its disposal i.e., period of 43 days was lost and the same could not be utilized for conducting CIRP. Stating so, he further prayed that out said period, a period of 30 days may be excluded and extended for conducting the CIRP. Submissions recorded.
4. Heard. Perused the record.
5. This IA is filed by the Resolution Professional seeking extension of period by 30 days from 01.10.2020 to enable the Resolution Professional to file approved Resolution Plan or decision of CoC. The CIRP period as originally granted and extended from time to time is as under:-

CIRP commenced vide order dated 08.07.2019. 180 days ended on	04.01.2020
Exclusion of 52 days in computing the period under Regulation 17(1) of the IBBI Regulations, 2016, granted by virtue of Hon'ble NCLAT order dated 21.08.2019, vide NCLT, Hyderabad order dated 23.10.2019 in IA No.865 of 2019.	25.02.2020
Extension of 90 days granted vide order dated 21.02.2020 in IA No.95 of 2020, effective from 26.02.2020, could have ended on	25.05.2020



Exclusion of 62 days from 25.03.2020 to 25.05.2020 is granted vide order dated 10.09.2020 in IA No.686 of 2020.	
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6. It is observed that after the initiation of CIRP, a period of 43 days was lost due to reasons as stated in the Application and also submitted orally, however, the Resolution Professional has sought only a period of 30 days for filing approved Resolution Plan or decision of CoC. 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.”

7. Keeping the guidance of the Hon'ble Supreme Court as above in view and considering the submissions, facts and circumstances of case, request made by one of the Financial Creditor vide email dated 29.09.2020, 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 exclude a period of 30 days from calculation of CIRP period and extend the same from the date of this order.

8. This exclusion is granted on having considered the steps already been taken by the Resolution Professional and the current stage of CIRP in the case of the present Corporate Debtor i.e., M/s. Sainath Estate Private Limited. Further, This Adjudicating Authority is not inclined to grant other prayers made in the Application.
9. Accordingly, this Application bearing IA No. 871 of 2020 hereby stands disposed of.


Veera Brahma Rao Arekapudi
Member Technical


K. Anantha Padmanabha Swamy
Member Judicial

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