

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI
(APPELLATE JURISDICTION)**

Company Appeal (AT) (CH) (Insolvency)No. 15 of 2021

Under section 61 of Insolvency & Bankruptcy Code)

**(Arising out of Order dated 8.1.2021 in IA No.1079 of 2020 in C.P.(IB) No.184/7/HDB/2019
passed by the Hon'ble National Company Law Tribunal, Hyderabad Bench**

In the matter of:

Mr.Ravi Sankar DeverakondaAppellant
D No.8-2-248/1/79 & 10/6
Third Floor 1 B, Uma Chambers
Punjagutta, Hyderabad 500 082

V.

Committee of CreditorsRespondent
of Meenakshi Energy Limited
Represented by State Bank of India
Stressed Assets Management Branch-II
D.No.3-4-1013/A, 1st Floor, CAC, TSRTC Bus Station
Kachiguda, Hyderabad 500 027.

Present:

For Appellant : Mr. Sumant Batra, Advocate

JUDGEMENT

(VIRTUAL MODE)

Venugopal M.J

Preface

The Appellant/Applicant/Resolution Professional' has projected the instant 'Appeal' being dissatisfied with the order dated 8.1.2021 passed by the 'Adjudicating Authority'(National Company Law Tribunal, Hyderabad Bench, Hyderabad) in IA No.1079 of 2020 in CP(IB)No.184/7/HDB/2019.

2. The 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad) while passing the 'Impugned Order' dated 8.1.2021 in IA No.1079 of 2020 in CP(IB)No.184/7/HDB/2019 (filed by the 'Appellant/Applicant/Resolution Professional) under section 12(2) of the 'Insolvency & Bankruptcy Code, 2016, Read with Regulation 40 of Insolvency Resolution Process for Corporate Persons Regulations, 2016) and among other things at Paragraph 7 and Paragraph 8, had observed the following:

"In view of the amendments brought in section 12 of the IBC, 2016 with effect from 16.08.2019, the CIRP shall be mandatorily completed within a period of 330 days from the insolvency commencement date including any extension of the period of the CIRP granted under section 12 of the IBC, 2016, Since, the CIRP period of 180 days has already been extended by another 90 days vide this Adjudicating Authority's order date 25.08.2020 and the period of 270 days came to end on 10.11.2020, we hereby allow to complete the Corporate Insolvency Resolution Process with another 60 days with effect from the date of this order. The Applicant is hereby directed to take all necessary steps to complete the CIRP within the mandatory period of 330 days, failing which the liquidation proceeding will commence.

The permission is granted on having considered the steps already been taken by the RP and the current stage of CIRP in the case of the present Corporate Debtor i.e., M/s. Meenakshi Energy Limited”

and resultantly disposed of the ‘Application’.

Appellant’s Contentions:

3. Assailing the correctness, validity and legality of the ‘Impugned Order’ dated 8.1.2021 in IA No.1079 of 2020 in CP(IB)No.184/7/HDB/2019 passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Hyderabad Bench, Hyderabad), in the present ‘Appeal’, the Learned Counsel for the ‘Appellant’ submits that the ‘Appellant’ was directed by the ‘Respondent/Committee of Creditors’ of M/s Meenakshi Energy Limited through its majority Resolution passed in its 11th Meeting authorised and directed the ‘Appellant’ to file an ‘Application’ before the ‘Adjudicating Authority’/Tribunal for an extension of ‘CIRP’ of the ‘Corporate Debtor’ beyond 270 days to 330 days including the exclusion of the period lost on account of lock down in the State of Telengana.

4. The Learned Counsel for the ‘Appellant’, proceeds to point out that the ‘Appellant’ filed IA No.1079 of 2020 (330 days Extension Application) before the ‘Adjudicating Authority’ seeking extension of time period to complete ‘CIRP’ of the ‘Corporate Debtor’ from 270 to 330 days.

5. The Learned Counsel for the Appellant brings to the notice of this 'Tribunal' that the 'Adjudicating Authority' ((National Company Law Tribunal, Hyderabad Bench, Hyderabad) while passing the order in IA No.1079 of 2020 in CP(IB)No.184/7/HDB/2019 had allowed the 330 days Extension Application and inter alia, granted the 'Appellant' an extension of 60 days from 270 to 330 days to conclude the 'CIRP' of the 'Corporate Debtor'.
6. The grievance of the Learned Counsel for the Appellant is that in the 'Impugned Order' that 'Adjudicating Authority' had erroneously noted that in the event of 'CIRP' of the 'Corporate Debtor' was not completed within the 330 days period, the 'Liquidation Proceedings' against the 'Corporate Debtor' would commence and this observation of the 'Adjudicating Authority' in the 'Impugned Order' deprive the 'Appellant' of his/its right to seek an extension beyond the period of 330 days as per the dictum by the Hon'ble Supreme Court laid down in the decision in Committee of Creditors of Essar Steel India Limited V Satish Kumar Gupta & Ors., (Judgement in Civil Appeal No.8766-67 of 2019).
7. Advancing his arguments, the Learned Counsel for the 'Appellant' contends that the 330 days period mentioned in Section 12(3) of the 'Insolvency & Bankruptcy Code, 2016' is not a mandatory one and further, the word 'mandatorily' appearing in the second proviso to Section 12(2) of the Code was struck down by the Hon'ble Supreme

Court in the decision in Committee of Creditors of Essar Steel India Limited V Satish Kumar Gupta & Ors., reported in (2020)8 SCC at page 531.

8. The Learned Counsel for the 'Appellant, refers to the relevant Paragraph of the Hon'ble Supreme Court judgement in Committee of Creditors of Essar Steel India Limited V Satish Kumar Gupta & Ors., which runs as under :

"Thus, while leaving the provisions 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. 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 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 the factors

owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and / or the 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 the Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to section 12, if any reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act, 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. The Learned Counsel for the 'Appellant' comes out with an argument that 'CIRP' of the 'Corporate Debtor' may be extended beyond a period of 330 days in exceptional circumstances to be demonstrated before the 'Adjudicating Authority'/'Tribunal' at the appropriate stage. To lend support to this contention, the Learned Counsel for the 'Appellant' refers to the judgement of this 'Tribunal' in Ritu Rastogi v. Riyal

Packers, Company Appeal(AT)(Insolvency) No.482 of 2020, whereby and whereunder, it is observed as follows:

"This is a fit case for exercising the jurisdiction by this Appellate Tribunal being an exceptional case to depart from the general rule of 330 days being outer limit prescribed under the law for completion of the 'corporate insolvency resolution process' inclusive of period of judicial intervention. We are also of the considered opinion that failure to exercise discretion in a matter of this nature would have serious implications imperilling the legitimate interests of all stakeholders and inevitable conclusion would be to push the 'Corporate Debtor' into liquidation which has to be avoided at all costs".

10. The Learned Counsel for the 'Appellant' contends that the 'Impugned Order' of the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad) was not correct in issuing a direction for 'Commencement of Liquidation', on the expiry of 330 days, and the same is liable to set aside to secure the ends of justice.

11. At this juncture, the Learned Counsel for the 'Appellant' points out that the IA No.120 of 2021 is filed by the 'Appellant/Applicant' before the 'Adjudicating Authority' seeking extension of 60 days to complete the 'CIRP' and the matter was adjourned to 23.4.2021.

APPRAISAL

12. At the outset, it is to be pointed out that the provisions of the 'Insolvency & Bankruptcy Code, 2016' are enacted by the Parliament specifically to streamline the 'Resolution of Corporate Insolvency' and the same are to be followed because of the prime reason that the said provisions are conceived in 'public interest' and 'good governance'. As a matter of fact, the time limit for completion of 'CIRP' is prescribed in Section 12 of the 'Insolvency & Bankruptcy Code'.
13. In reality, the act of extending the 'Insolvency Resolution' beyond the time limit under section 12(3) of the Code is against the underlying policy of the Code for ensuring timely resolution of 'Company Insolvency'. Undoubtedly, an extension of time for extension of time for 'CIRP' is a 'critical arena'. However, the exercise of the power of extending the time limit by the 'Adjudicating Authority' in negation of the statutory provision of the Code may be desirable in an exceptional/extraordinary circumstances of a given case.

14. Be it noted, that 'speed' is the gist for the working of the 'Bankruptcy Code'. It cannot be gainsaid that the 'Corporate Insolvency Resolution' with approval of 'Plan of Resolution' is ultimately the exclusive domain of the 'Committee of Creditors'.
15. Bearing in mind the word 'mandatorily' found in Section 12(3) of the 'Insolvency & Bankruptcy Code, 2016' was struck down by the Hon'ble Supreme Court in the matter of Committee of Creditors of Essar Steels India Pvt.Ltd. V Satish Gupta reported in (2020) 8 SCC at Pg.531, this 'Tribunal' comes to a resultant conclusion that ordinarily the time taken pertaining to the Corporate Insolvency Resolution Process of the 'Corporate Debtor' must be completed within a period of 330 days from the date of commencement of Insolvency (including the extension and time consumed in legal proceedings). However, the exercise of power by the 'Adjudicating Authority' to extend the time period in negation of statutory provision of the 'Insolvency & Bankruptcy Code, 2016' may be desirable in an exceptional/extraordinary Circumstances of a given case by exercising sound 'Judicial discretion' with a view to find a suitable 'Resolution Plan' to prevent an aberration of justice.
16. Be that as it may, in the present case, even though the 'Adjudicating Authority) (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in the 'Impugned Order' dated 08.01.2021 in IA No No.1079 of 2020 in C.P.(IB) No.184/7/HDB/2019, at Paragraph 7, had observed that"*Since, the CIRP period of 180 days has*

already been extended by another 90 days vide this Adjudicating Authority's order date 25.08.2020 and the period of 270 days came to end on 10.11.2020, we hereby allow to complete the Corporate Insolvency Resolution Process with another 60 days with effect from the date of this order. The Applicant is hereby directed to take all necessary steps to complete the CIRP within the mandatory period of 330 days, failing which the liquidation proceeding will commence", this 'Tribunal' is of the prima facie view that the instant 'Appeal' is not maintainable, as it is a premature and otiose one. At this stage, the Learned Counsel for the Appellant seeks permission to withdraw the present 'Appeal' and acceding to his request, this 'Appeal' is dismissed as 'withdrawn'. No costs.

17. However, this 'Tribunal directs the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad) to take up the IA No.120 of 2021 (filed by the Appellant/Applicant seeking extension of 60 days for completion of 'CIRP') pending on its file, on the next date of hearing, i.e. on 23.4.2021 and to dispose of the same on merits by passing a 'reasoned order', ofcourse, in a fair, Just and dispassionate manner in accordance with Law and in the manner known to Law, at an early date.

18. IA No.39/2021 filed by the Appellant/Applicant/Resolution Professional, seeking to condone the delay of 15 days is allowed for the reasons mentioned therein. IA No.40/2021 and IA No.41/2021 are closed. The Appellant/Applicant/Resolution Professional is directed to file the 'Certified Copy' of the 'Impugned Order' dated 8.1.2021 in IA No.1079 of 2020 in C.P.(IB) No.184/7/HDB/2019 of the 'Adjudicating Authority' (National Company Law Tribunal, Hyderabad Bench, Hyderabad) within two weeks from Today.

[Justice Venugopal M]
Member (Judicial)

[V.P.Singh]
Member (Technical)

24th March, 2021

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