IN THE NATIONAL COMPANY LAW TRIBUNANL
KOLKATA BENCH (Court-II)
KOLKATA

I.A No. 877/KB/2022
In
C.P (I.B) No. 204/KB/2021

An Application under Section 12 and 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

In the matter of:

Suasth Health Care Foundation

….Corporate Debtor

And

Mr. Ravi Sethia, Resolution Profession of Suasth Health Care Foundation

…. Applicant

Order Pronounced on : 03/03/2023

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing / Physical)

For RP	Mr. Ramji Srinivasan, Sr. Adv. Mr. Deep Roy, Adv. Mr. Rahul Auddy, Adv. Mr. Dhaval Sabla, Adv. Mr. Aditya Gooptu, Adv.
For CoC(Yes Bank) :	Mr. Abhrajit Mitra, Sr. Adv. Mr. Saptarshi Saha, Adv. Mr. Arindam Mrinal Pal, Adv.
For Hari Vithal Mission	Mr. Joy Saha, Sr. Adv. Mr. Shaunak Mitra, Adv. Ms. Madhuja Barman, Adv.

For applicant in IA/260/2022: Mr. Anirban Bhattacharya, Adv.
Mr. S. Sarkar, Adv.
Mr. I. Basu, Adv.

O R D E R

Per: Balraj Joshi, Member (Technical)

1. This is an application filed by the Resolution Professional of Suasth Healthcare Foundation seeking enlargement of time by excluding period of 78 days from 28.12.2021 to 15.03.2022 from the CIRP period of the Corporate Debtor. It has been further prayed to designate 3.11.2022 as a last day for completion of the CIRP of the Corporate.
2. The brief chronology that necessitates this enlargement have been outlined at page no. 6 of the application from where it is seen that Corporate Debtor was put under CIRP on 31st August, 2021. The 180 days of CIRP got completed on 26th of February, 2022 where after on 28th February, 2022 a further extension of 90 days was prayed for, which was granted by this Tribunal on 19th April, 2022. Further, on 22nd June, 2022 application for exclusion of a period of 80 days was allowed by this Tribunal.
3. This application seeks an exclusion of time from 28-12-2021 to 15-03-2022 have the time taken for applications regarding related party pending before this Adjudicating Authority.
4. As of now, Resolution Plan approved by the CoC has been already filed with this Adjudicating Authority and the same is under consideration.
5. It is noted that with the present exclusion the total time exceeds the stipulated limit of 330 days. We rely on the judgement of Hon'ble Supreme Court in the matter of **CoC of Essar Steel vs. Satish Gupta** wherein inter-alia following has been held in para 79 of the said judgment:

"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."

6. In the instant case, since the resolution plan has been received and is under consideration of this Adjudicating Authority and the prospect of liquidation is avoided, we see no hindrance in exercising the said discretion (supra) and thus agreeing to the relief sought by the applicant, which is essentially for the regularisation of the period of CIRP.
7. IA/877(KB)/2022 is accordingly allowed in light of the above and disposed of.
8. Urgent certified copy of this Order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

Balraj Joshi
Member(Technical)

Rohit Kapoor
Member(Judicial)

Order signed on 03/03/2023

Zia