

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI II**

I.A. NO. 1467/MB/C-II/2020

In

C.P. (IB) No. 1602/MB/C-II/2017

**Under Section 12 (2) of the
Insolvency and Bankruptcy Code,
2016 for Exclusion of CIRP Period.**

Filed by

**Mr. Vinod Tarachand Agrawal,
Resolution Professional of
Wow Solutions & Systems Private
Limited**

[CIN:U74999MH2009PTC196937]

121, Udyog Bhavan, Sonawala Lane,
Goregaon East, Mumbai-400063

...Applicant

In the matter of

Narottambhai Swomabhai Patel.

...Financial Creditor

versus

**Wow Solutions & Systems Private
Limited**

...Corporate Debtor

Order Pronounced on: 25.02.2021

Coram:

Mr. H. P. Chaturvedi : Hon'ble Member (Judicial)

Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Applicant : Mr. Amit Tungare, Advocate.

ORDER

Per: Mr. H. P. Chaturvedi, Member Judicial

1. The present application is moved by Mr. Vinod Tarachand Agrawal (hereinafter called as “the applicant”) under Section 12 (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”) seeking exclusion of period of lockdown to complete Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) of the of the Corporate Debtor company Wow Solutions & Systems Private Limited (hereinafter called as the “Corporate Debtor”) and for passing an appropriate order/suitable direction in the matter.
2. The Applicant through the present IA submitted that this Adjudicating Authority vide its order dated 19.12.2019 in the matter of Narottambhai Swomabhai Patel (Petitioner) v. Wow Solutions & Systems Private Limited, admitted the IB Petition bearing C.P.1602/MB/C-II/2017 and thus appointed Mr. Vinod Tarachand Agrawal as an Interim Resolution Professional in respect of the Corporate Debtor directing him to take necessary steps in accordance with the provisions of the Code. The IRP had accordingly called for first meeting of CoC on 18.01.2020 wherein CoC members resolved to appoint IRP as RP. Applicant was

continued to perform his duties as Resolution Professional (RP) by the members of the Committee of Creditors (CoC).

3. As it is stated that the CIRP in respect of the present Corporate Debtor has commenced w.e.f. 19.12.2019, therefore, the period of 180 days prescribed for CIRP of the present Corporate Debtor came to be over on 16.06.2020, during the lockdown period. Hence, the present IA before this bench was filed before this bench on 07.08.2020. The Applicant has sought prayer for exclusion of the CIRP period of the Corporate Debtor consumed during the Lock Down (as promulgated by the Central Government) and which still operates as various phase of unlock 1 onward. Hence such period needs to be excluded/exempted for counting purpose of the CIRP of the corporate Debtor.
4. In addition to the above the Applicant/Resolution Professional through the present IA duly informed about the progress of the CIRP from the date of his appointment as 'Interim Resolution Professional' till filing of the present application. The Applicant also furnished list of dates and events and synopsis on the progress in the CIRP since 19.12.2019 (date of admission order of the NCLT) till date of filing the present application for consideration of this bench. The same is annexed with the present Interim Application.
5. That apart the Learned Counsel appearing for the RP during the course of hearing has apprised of this bench about the progress he

made in the CIRP and duly informed that four meetings of the CoC were conducted till date of filing the present application as per the provisions of IB Code in respect of Corporate Debtor and some meetings were also conducted during the Lock down period. Thus, it seems that the Resolution Professional took necessary steps towards the CIRP by exploring the possibility of the potential Resolution/revival of the Corporate Debtor. The RP further invited Expression of Interests (EOI) in prescribed Form-G and prepared appropriate Information Memorandum as well as valuation of assets of the Corporate Debtor for the purpose of prospective Resolution on 03.03.2020. It is also informed that the last date of closing for receiving Resolution Plans was fixed on 06.05.2020. The CIRP period of 180 days got expired on 16.06.2020, but due to Nationwide Lockdown from 23.03.2020 onwards, the members of CoC could not explore the option in terms of Resolution Plan for the Corporate Debtor.

6. The applicant further contended that due to Pandemic Situation of Covid-19 the lockdown was promulgated by the Government. The applicant in the present application also referred to a decision of Hon'ble NCLAT whereby the Appellate Tribunal has pleased to issue such direction for exclusion of period of Lockdown announced by the Central Government, State Government for the purpose of calculation of the period of Corporate Insolvency Resolution Process.

7. For the sake of convenience the relevant portion of the Hon'ble NCLAT decision dated 30.03.2020 is being reproduced herein below:

“...that the period of lockdown ordered by the Central Government and the State Government including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for ‘Resolution Process under Section 12 of the Insolvency & Bankruptcy Code, 2016, in all cases where ‘Corporate Insolvency Resolution Process’ has been initiated and pending before any Bench of the National Company Law Tribunal or Appeal before this Appellate Tribunal”.

8. In addition to the above, the IBBI vide its notification dated 20.04.2020 has also made a suitable amendment in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by inserting a new clause in the regulation, that provides for exclusion of period of lockdown imposed by the Central Govt. in the wake of Covid-19 outbreak from the computation of timelines for CIRP, which could not be completed due to such lockdown situation.
9. The RP further submitted that the Central Govt. vide its notification dated 30.05.2020 has pleased to permit certain activities in phasing out of the lock down area outside the Containment Zone.

10. Pursuant to this the State Govt. has further extended the lockdown in the State of Maharashtra with certain direction/s for lifting the restriction in phased manner during such Lockdown.
11. In view of above, the Applicant duly convened CoC meeting on 19.06.2020, wherein it was unanimously resolved by directing the RP to move present application before this Bench seeking exclusion of in the CIRP period by 95 days and accordingly this application was filed.
12. We have gone through contents of present application and perused the material available on record, we duly considered the reasons shown by the RP in respect of the present application in the main grounds seeking exclusion of certain days from counting of CIRP period, which are self-explanatory i.e. because of Nationwide Lockdown RP could not explore option in terms of resolution plan for the Corporate Debtor.
13. By taking into consideration the above stated facts of the case. It seems that RP as well as the CoC have taken needful steps as per the IBC for inviting potential Resolution Plans. However, the CoC and RP could not able to act effectively for some time due to the Nationwide lockdown and even the during phase of unlock. Therefore, we are of the view that this the present I.A. seeking exclusion of time of CIRP deserves to be allowed. Hence, it is hereby allowed.

14. In addition to the above, it is further made clear that the period of CIRP during the promulgation of lockdown needs to be exempted (excluded) pursuant to the notification of Central Govt. read with new amendment which took place in the Regulation of the IBBI and also by following the decision of the Hon'ble NCLAT passed in *suo-moto* Company Appeal (AT) (Insolvency) No. 01 of 2020 dated 30.03.2020. Hence, such period is excluded.
15. It is also a settled legal position that the period consumed in filing of the present application till its disposal can be exempted for counting of the CIRP period. As per the decision of Hon'ble Supreme Court and Hon'ble NCLAT read with relevant provisions of Limitation Act. For the sake of convenience relevant portion of above judgment are being reproduced here below.

Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 169 of 2018 in the matter of Numetal Limited Vs. Satish Kumar Gupta & Ors.

“126. Taking into consideration the fact that a long period has taken due to pendency of the case before the Adjudicating Authority and thereafter, before this Appellate Tribunal, we direct the Adjudicating Authority to exclude the period the appeal was pending before this Appellate Tribunal i.e. from 26th April, 2018 till today (7th September, 2018) for the purpose of counting the total period of 270 days. The impugned order dated 19th April, 2018 passed by the Adjudicating

Authority so far as it relates to eligibility of 'Numetal Ltd.' as on the date of the submission of the 'Resolution Plan' dated 29th March, 2018 is set aside. The impugned judgment/order in respect to 'AM India Ltd.' is affirmed with conditions as mentioned in the preceding paragraphs. All the appeals are disposed of with aforesaid observations and directions. The parties will bear their respective cost."

Further their lordship of Hon'ble Supreme Court in Civil Appeal Nos.9402-9405 OF 2018 in the matter of Arcelormittal India Private Limited Vs. Satish Kumar Gupta & Ors. have pleased to observe and held as such.

"83. Given the fact that both the NCLT and NCLAT are to decide matters arising under the Code as soon as possible, we cannot shut our eyes to the fact that a large volume of litigation has now to be handled by both the aforesaid Tribunals. What happens in a case where the NCLT or the NCLAT decide a matter arising out of Section 31 of the Code beyond the time limit of 180 days or the extended time limit of 270 days? Actus curiae neminem gravabit - the act of the Court shall harm no man - is a maxim firmly rooted in our jurisprudence (see Jang Singh v. Brijlal & Ors. [1964] 2 S.C.R. 146 at page 149, and A.S. Antulay v. R.S. Nayak & Ors. [1988] Supp. 1 S.C.R. 1 at page 71). It is also true that the time taken by a Tribunal should not set at naught the time limits within which the corporate insolvency resolution process must take place. However, we cannot forget that the consequence of the chopper falling is corporate death. The only reasonable construction of the Code is the balance to be maintained between timely completion of

the corporate insolvency resolution process, and the corporate debtor otherwise being put into liquidation. We must not forget that the corporate debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the corporate insolvency resolution process. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible.³ A reasonable and balanced construction of this statute would therefore lead to the result that, where a resolution plan is upheld by the Appellate Authority, either by way of allowing or dismissing an appeal before it, the period of time taken in litigation ought to be excluded. This is not to say that the NCLT and NCLAT will be tardy in decision making. This is only to say that in the event of the NCLT, or the NCLAT, or this Court taking time to decide an application beyond the period of 270 days, the time taken in legal proceedings to decide the matter cannot possibly be excluded, as otherwise a good resolution plan may have to be shelved, resulting in corporate death, and the consequent displacement of employees and workers.”

16. By following the above stated Judicial precedents, the period of pendency of the present application from the date of its filing 02.07.2020 till 25.02.2021 its disposal is hereby exempted for counting of the CIRP.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
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17. With the aforesaid observations, the present **IA No. 1467 of 2020** in CP 1602 of 2017 is allowed and stands disposed of accordingly.

Sd/-

RAVIKUMAR DURAISAMY

Member (Technical)

25.02.2021

SAM

Sd/-

H. P. CHATURVEDI

Member (Judicial)