

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

I.A. NO. 1765/MB/C-II/2020

In

C.P (IB) No. 1202/MB/C-II/2017

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 47A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation Code 2016 (Liquidation Regulations) r/w Rule 11 of National Company Law Tribunal Rules, 2016.

Filed by

Mr. Vineet K Chaudhary,

Atd-38/Lgf (L/S), South Extension Part-2,

New Delhi, 110049

...Liquidator/Applicant

In the matter of:

**M/s Ravi Infrastructure
& Projects**

...Operational Creditor

V/S

KSS Petron Private Limited

Having its registered office at:

Swastik Chambers, 6th Floor,

Sion Trombay Road, Chembur

Mumbai-400071, Maharashtra

...Corporate Debtor

Order Pronounced on: 18.03.2021

Coram:

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

Appearances:

For the Applicant : Mrs. Mamta Binani, a/w Mr. Soayib
Qureshi Advocates.

ORDER

Per: Ravikumar Duraisamy, Member

1. The present application is moved by **Mr. Vineet K. Chaudhary, Liquidator**, (hereinafter called as “the applicant”) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 47A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016 (Liquidation Regulations) r/w Rule 11 of National Company Law Tribunal Rules, 2016 in respect of KSS Petron Private Limited (“**Corporate Debtor**”) by the Applicant/Liquidator seeking an exclusion of the period from 24.03.2020 till 30.09.2020 due to Nationwide Lockdown for the purposes of computation of the time line for the completion of liquidation process under Regulation 44 of Liquidation Regulations in the light of the hindrances caused on account of outbreak of the COVID-19 pandemic and declaration of lockdown and further restrictions by the Central and State Government in wake of the pandemic.
2. The Corporate Debtor admitted in the IB Petition bearing C.P.1202/MB/C-II/2017 and appointed Mr. Vineet K. Chaudhary

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. Thereafter, this Tribunal vide an order dated 27.12.2019 ordered the liquidation of the Corporate Debtor and appointed the Applicant as the Liquidator of the Corporate Debtor.

3. Consequentially, Public Announcement in Form-B of the IBBI (Liquidation Process) Regulations, 2016 was made by the Liquidator on 31.12.2019. Furthermore, a list of stakeholders of the Corporate Debtor was prepared by the Liquidator for the claims received till 26.01.2020.
4. As it is stated the liquidation in respect of the present Corporate Debtor has commenced w.e.f. 27.12.2019. Hence, the present IA before this bench was filed on 29.09.2020. In view of the above, the Applicant has sought prayer for exclusion of period from 25.03.2020 till 30.09.2020 due to Nationwide Lockdown for the CIRP of the Corporate Debtor.
5. In addition to the above, the applicant Liquidator in the present IA has informed about the progress of the liquidation from the date of his appointment as 'Liquidator' till filing of this application. The same has been annexed with the present Interlocutory Application.
6. Further, the Applicant submits that from the day one of the initiation of the liquidation proceedings, the timelines of the Liquidation Process were being strictly adhered to and the process was being conducted in a timely and a smooth manner. However, due to the

unforeseen outbreak of COVID-19 pandemic, the Central Government imposed a strict nationwide lockdown with immediate effect vide the issuance of a notification dated 24.03.2020 which was extended from time to time.

7. 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 Liquidation Process.
8. 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”.

9. 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.

The relevant portion of the IBBI vide its notification dated 20.04.2020 is being reproduced herein below

“Exclusion of period of lockdown.

47A. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process.”.

10. The Liquidator 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.
11. The Liquidator further submitted that he has taken steps to ensure compliance with the Liquidation Regulations. However, on account of the Lockdown, the Liquidation proceedings could not be taken up to their logical conclusion, as such, the present application was filed. The present application was initially filed seeking exclusion of period from 24.03.2020 till 30.09.2020 (as the application was filed on 29.09.2020), however subsequently, the Applicant filed an Additional Affidavit on 24.12.2020 seeking exclusion of lockdown period from 24.03.2020 till 31.12.2020 owing to the following factors:

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- i. The State Government of Maharashtra further extended the period of lockdown from time to time vide orders dated 30.09.2020, 29.10.2020, 27.11.2020. In fact, the State Government vide Order dated 29.12.2020 has extended the period of lockdown till 31.01.2021. [Orders dated 30.09.2020, 29.10.2020, 27.11.2020 extending lockdown in the State of Maharashtra - EXHIBIT- Q @Page No.5 of Additional Affidavit. Order dated 29.12.2020 @Page No.18/ Convenience Compilation]
 - ii. In fact, few employees of the Corporate Debtor contracted Covid-19 due to which the office of the Corporate Debtor also remained close.
 - iii. The Applicant further faced many other difficulties in completing its Liquidation Process, within the timeline prescribed under the Liquidation Rules, as the Corporate Debtor has its assets and yards at various locations across the country. Therefore, it turned out difficult for the Applicant to carry out the Liquidation Process owing to the restriction imposed by the extension of lockdown.
12. Pursuant to this the State Govt. has further extended the lockdown in Maharashtra with certain direction/s for lifting the restriction in phased manner during such Lockdown.
13. We have perused the records and duly considered the reasons, grounds submitted by the Liquidator in respect of the present application and also by way of Additional Affidavit, the main grounds taken for exclusion of Liquidation Process are described in the present I.A.

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14. By taking into consideration the grounds in the present IA and also by way of Additional Affidavit, it seems that the Liquidator has conducted the Liquidation Process and have taken needful steps prescribed under the IBC. However, the Liquidator could not act effectively for some time because of the Nationwide lockdown and also during phase of unlock. Therefore, we are of the view that the present IA for exclusion of time for Liquidation Process deserves to be allowed. **Consequently, the period from 25.03.2020 to 31.12.2020 for the purpose of computation of time lines of the Liquidation Process of the Corporate Debtor KSS Petron Private Limited is hereby allowed.**
15. Accordingly, exclusion of lockdown period from 25.03.2020 upto 31.12.2020 is granted by this Tribunal. In view of the same the Liquidator is directed to take appropriate steps to complete the Liquidation Process of the Corporate Debtor within the time prescribed in the regulations after excluding the period allowed in this IA.
16. Liquidator is directed to submit his periodical reports as stated in the Rules, Regulations of the Code.
17. With the aforesaid observations, the present **IA No. 1765 of 2020** in C.P. (IB) No. 1202/MB/C-II/2017 is allowed.

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

18.03.2021
aah/SAM

Sd/-

H. P. CHATURVEDI
MEMBER (JUDICIAL)