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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA(IBC)/216(CHE)/2023 in IBA/316/2019

(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

*In the matter of **Unique Roof Private Limited***

R. Venkatakrishnan

Resolution Professional

IBBI/IPA-001/IP-P00115/2017-18/10250

Rajparis Trimeni Towers, First Floor,

147, GN Chetty Road, Chennai – 600 017

Resolution Professional / Applicant

*Order Pronounced on **26th April 2023***

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant : N.P. Vijayakumar, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

Under consideration is an Application filed by the Resolution Professional of Unique Roof Private Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 of the National Company Law Tribunal Rules, 2016 seeking relief as follows;

- a. Approve the period of exclusion between 04.10.2020 to 07.12.2022 to enable the Applicant to explore opportunities for revival of the Corporate Debtor through Resolution Plan and to carry out all duties as stipulated under the Code, 2016.*

v



b. Pass any other or such orders as this Tribunal may deem fit and proper in the facts and circumstances of the present case

2. The Corporate Insolvency Resolution Process in respect of the Corporate Debtor was initiated by this Tribunal on an application filed by an Operational Creditor viz. M/s. Kanaka Durga Crane under Section 9 of IBC, 2016 vide order dated 04.10.2019 passed in and one Mr. Muthuiah Thevar Rajapandian having Reg.no IBBI/IPA-003/IP-N00090/2017-18/10854 was appointed as IRP.

3. Subsequent to the initiation of CIRP of the Corporate Debtor, a public announcement in terms of Section 15 of IBC, 2016 was made in Form A by the erstwhile IRP on 10.10.2019. It is seen that as against the order of admission passed by this Tribunal, the suspended Directors of the Corporate Debtor had preferred an Appeal before the Hon'ble NCLAT in Company Appeal (AT)(Ins) No. 1086 of 2019. In the said Appeal, on 18.10.2019, Hon'ble NCLAT has passed the following order;

It is submitted that there was a pre-existing dispute on some issue was pending consideration before the Hon'ble High Court of Ernakulam in Writ Petition No. 18495/18 (Page 73-74). It is stated that pursuant to the same, draft admitted amount has been paid by different drafts. (Page 90,91,92).

Let notice be issued on Respondent.



Mr. Aditya Singh, Advocate appears on behalf of 1st Respondent. Learned counsel for Appellant will serve a copy of paper-book on him in course of the day.

Respondent is allowed to file reply-affidavit along with Vakalatnama within two weeks. Rejoinder, if any, may be filed by the Appellant within a week thereafter.

In the meantime, let notice be issued on 2nd Respondent by speed post. Requisite along with process fee be filed by 21st October, 2019. If the appellant provides the e-mail address of the respondent, let notice be also issued through e-mail.

Post the case for 'admission'(after notice) on 6th December, 2019. In the meantime, the Interim Resolution Professional (IRP) will ensure that the company remains going concern and the manufacturing and production of the company do not suffer; payment of wages to the employees/workmen and supplied during Resolution Process shall be made on time. The Insolvency Resolution Professional will take aid of (suspended) Board of Directors, paid Directors, officers and the employees of the Corporate Debtor. The Banks having account of the corporate debtor will also cooperate with the Resolution Professional to ensure compliance of this order.

4. Thereafter when the matter was listed on 06.01.2020, the following order was passed by Hon'ble NCLAT;

The Learned Counsel for the Applicant – Corporate Debtor prays for some time to settle the matter with the Respondent(s). At this juncture, Mr. Muthiah Thevar Rajapandian, IRP is directed to file the Progress Report by 21.01.2020 before the Office of the Registry.

The Registry is directed to list the matter on 22nd January 2020

5. It is submitted that, further upon constitution of Hon'ble NCLAT, Chennai Bench, it was intimated that the above appeal was transferred from Hon'ble NCLAT Delhi to Hon'ble NCLAT Chennai.



Post which, it was submitted that the matter is yet to be slated for hearing before the Hon'ble NCLAT, Chennai Bench.

6. It is alleged in the application that the erstwhile IRP. Mr. Muthuiah Thevar Rajapandian had not continued the CIRP proceedings in the mode, and manner prescribed under the Code. It was submitted that in view of the pendency of the appeal preferred by the suspended director of the Corporate Debtor in the Hon'ble NCLAT and based on the directions passed by the Hon'ble NCLAT vide its order dated 18.10.2019, the erstwhile IRP was acting under the notion that a stay was granted by the Hon'ble NCLAT and has preferred not to proceed with the CIRP proceedings in relation to the Corporate Debtor. However, it was submitted that in view of the applicant, there is no bar in continuation of the CIRP proceedings as per the order passed by Hon'ble NCLAT.

7. It is seen that in compliance with Section 21(1) of the Code the erstwhile IRP had constituted Committee of Creditors of the Corporate Debtor which consists of the following;

S. No.	Name of the Financial Creditor	Total Amount of Claim (in Rs.)	Total Admitted Claim (in Rs.)	Voting Share
1	Small Industries Development Bank of India	13,54,99,164	13,54,99,164	73.30%
2	Tamilnad Mercantile Bank Ltd.	4,93,55,710	4,93,55,710	26.70%
	TOTAL	18,48,54,874	18,48,54,874	100%





8. Since the erstwhile IRP has made no progress with the CIRP process, the Committee of the Creditors (CoC) of the Corporate Debtor has decided to replace the erstwhile IRP Mr. Muthuiah Thevar Rajapandian under section 22 of the Code and accordingly passed a Resolution to the said effect. This Tribunal vide its order dated 17.10.2022 passed in IA(IBC)/998(CHE)/2022 has allowed the said Application and appointed the Applicant herein as the RP in respect of the Corporate Debtor.

9. Subsequent to the replacement of the IRP, the Applicant had conducted the 4th meeting of CoC of Corporate Debtor on 28.12.2022 and it was submitted that the following activities are pending to be completed in the CIRP process of the Corporate Debtor

- a) Valuation of assets of the Corporate Debtor
- b) Issue of Expression of Interest (EOI)-Form G seeking Potential Resolution Applicant
- c) Preparation of Information Memorandum. Evaluation Matrix and Request for Resolution Plan
- d) Forming of Initial Opinion in respect of Preferential Transactions. Under-Valued. Fraudulent and Extortionate transactions as envisaged under Section 43, to 66 of the Code
- e) Other activities as prescribed under the Code.





10. Further, it was also submitted that the last date for completion of CIRP period of 180 days came to an end on 01.04.2020. Even after taking into consideration Regulation 40C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the order of the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020 vide order dated 10.01.2022, which excluded the period from 15.03.2020 till 28.02.2022, the last date for completion of CIRP period falls on 17.03.2022. Further, it was submitted that no Application has been filed by the erstwhile RP seeking extension / exclusion of CIRP proceedings.

11. It was submitted that despite initiation of CIRP, the Corporate Debtor is currently operating as a going concern and had made a turnover as captured below

Financial Year	Amount in Rs.
2019 - 2020	31,33,62,130
2020 - 2021	3,48,48,196
2021 - 2022	4,53,45,570

12. Thus, it was submitted that the present Application is required to be allowed in order to carry out the CIRP process in respect of the Corporate Debtor.

13. Heard the submissions made by the Learned Counsel for the Applicant. It is seen that the Hon'ble NCLAT vide its order dated





18.10.2019 passed in Company Appeal (AT)(Ins) No. 1086 of 2019 has only stated to keep the Corporate Debtor as a going concern and a cursory glance of the said order would clearly manifest the fact that no stay has been granted by the Hon'ble NCLAT. However, to our utter shock and surprise, the erstwhile IRP has repeatedly represented multiple times before this Tribunal that the Hon'ble NCLAT has granted stay in the matter and as such he could not proceed with the CIRP process in respect of the Corporate Debtor.

14. Further, it is also required to be noted that the erstwhile IRP apart from making a public announcement and constituting the CoC, has not carried out further process as contemplated under the provisions of IBC, 2016. It is appalling to note here that for a period of over 3 years, only 3 CoC meetings have been conducted by the erstwhile IRP. It is also seen from the averments made in the Application that the Corporate Debtor is a going concern and if the erstwhile IRP would have conducted the CIRP in a time-bound process, by this time the Corporate Debtor would have fetched a prospecting Resolution Applicant, however without taking any steps and upon acting on the wrong notion that the Hon'ble NCLAT has granted stay on the CIRP process, the erstwhile IRP was sitting on the assets of the Corporate Debtor for a period of more than 3 years and thereby resulting in the destruction of the value of the assets of the Corporate Debtor.

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15. This act of the erstwhile IRP is viewed very seriously by this Tribunal and is required to be strongly reprimanded. The *Registry* of this Tribunal is directed to forward a copy of this Order to IBBI for their records and further actions to enquire into the conduct and dereliction of duties of the erstwhile IRP.

16. In so far as the present Application is concerned, the period from 04.10.2019 till 07.12.2022 stands excluded (*including Covid – 19 exclusion granted by the Hon'ble Supreme Court*). Thus, the 180 days CIRP period in respect of the Corporate Debtor would come to an end on **05.06.2023**. With the above-said directions, this application stands **disposed of**.

— Sd —

SAMEER KAKAR
MEMBER (TECHNICAL)

— Sd —

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Raymond