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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (URGENT HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 13.10.2020 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 626 & 797/2020 in CP (IB) No. 407/7/HDB/2019
NAME OF THE COMPANY	MBS Impex Pvt Ltd
NAME OF THE PETITIONER(S)	ICICI Bank Ltd
NAME OF THE RESPONDENT(S)	MBS Impex Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

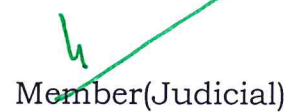
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA NO.626/2020 and 797/2020 is listed today for Orders.

IA NO.626/2020 and 797/2020 are allowed vide separate orders.


Member(Technical)


Member(Judicial)

Pavani

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

**IA No.797/2020 in
CP(IB) No.407/7/HDB/2019
Under Section 60(5) of I &B Code, 2016
r/w Regulation 40(C) of IBBI
(IRP for Corporate Persons) Regulations, 2016**

Mr. Santosh Bhatia
Resolution Professional
M/s. MBS Impex Pvt. Ltd.
5-9-45, Basheerbagh
Hyderabad - 500 063

.... Applicant

In the matter of:

M/s. ICICI Bank Ltd.

... Financial Creditor

Vs.

M/s. MBS Impex Pvt. Ltd.

... Corporate Debtor

Date of Order: 13.10.2020

Coram:

**Hon'ble Shri K. Anantha Padmanabha Swamy, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)**

Parties / Counsels appeared:

For the Applicant : Ms. JVL Bharati, Counsel for RP

Per: K. Anantha Padmanabha Swamy, Member (Judicial)

Heard on: 09.10.2020



ORDER

1. This Interlocutory Application is filed by Mr. Santosh Bhatia, Resolution Professional of M/s. MBX Impex Pvt. Ltd. under Section 60(5) of Insolvency and Bankruptcy Code, 2016 r/w Regulation 40(C) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 praying the Tribunal to exclude the lockdown period from 25.03.2020 to till 30.09.2020 from the CIRP.
2. The averments made in the Interlocutory Application filed by the Resolution Professional are described hereunder:
 - i. The Petition for initiation of Corporate Insolvency Resolution Process (CIRP) filed by M/s. ICICI Bank Ltd. / Financial Creditor under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC) r/w Rule 4 of Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 against M/s. MBX Impex Pvt. Ltd. / Corporate Debtor was admitted by this Tribunal on 13.11.2019 and Mr. Sridhar Venkatraya Sundararaja was appointed as Interim Resolution Professional. Later, Mr. Santosh Bhatia /Applicant herein was appointed as Resolution Professional by e-voting and the appointment was confirmed by the Hon'ble NCLT vide order dated 29.05.2020.
 - ii. It is averred on assuming charge as Resolution Professional, the Applicant directed the Corporate Debtor and its staff to produce the relevant records to carry out the CIRP process smoothly and also to carry out statutory audit as per rules,





for which there is no response from the Corporate Debtor or their staff. It is also averred because of the information is not made available to the Applicant, the Applicant could not form opinion on the avoidance of transactions.

- iii. It is averred Central Government issued Order vide MHA Order No.40-3/2020/DMI(A) dated 24.03.2020 prescribing lockdown in all parts of the country from 25.03.2020 which was further extended till 31.05.2020.
- iv. It is also averred the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was also amended introducing the new Regulation 40C which provides that:

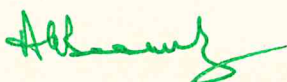
“Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, relation to a Corporate Insolvency Resolution Process”.

- v. It is also averred the Central Government vide Order No.40-3/2020/DM-I(a) dated 30.05.2020 further extended the lockdown in containment zones upto 30.06.2020 which provides that -



“whereas in exercise of the powers under section 6(2)(i) of the Disaster Management Act, 2005, National Disaster Management Authority (NDMA) has directed the undersigned to issue an order to extend the lockdown in Containment Zones upto 30.06.2020, and to reopen prohibited activities in a phased manner in areas outside Containment Zones”.


- vi. It is averred there are many pending matters like issuing RFRP, finalizing accounts, audit and many more related matters which would take some more time for RP to complete all the pending works.
3. We have heard the Counsel for Resolution Professional. This application is filed to exclude the period of lockdown due to Covid-19 (the period from 25.03.2020 to 30.09.2020 i.e. 190 days) from the CIRP period which come to an end on 10.05.2020.
4. Learned counsel for Resolution Professional relied on Regulation 40C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and contended that lockdown period to be excluded from CIRP.
5. Learned Counsel for Resolution Professional would contend that there is lockdown from 25.03.2020 to 30.09.2020. But in Hyderabad, Telangana State, the lockdown is applicable upto 31.08.2020. Therefore, the period lost during lockdown is 47 days for completion of CIRP within the period of 180 days. Accordingly, CIRP to be completed by 17.10.2020 commencing from 01.09.2020 to 17.10.2020.





6. It is true lockdown commenced from 25.03.2020 to till 31.08.2020 and as such it stands excluded from the CIRP process.
7. In the result, application is allowed excluding the lockdown period from 25.03.2020 to till 31.08.2020 and CIRP to be completed by 17.10.2020 and if it is deemed necessary, the Resolution Professional is at liberty to file a fresh application for extension of CIRP.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


K. ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)

Syamala

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No. 626/2020

IN

CP(IB) No. 407/7/HDB/2019

Under Section 19(2) of I&B Code, 2016

Read with Regulation 30 and 40(C) of the IBBI Regulations, 2016

BETWEEN

Santosh Bhatia

Resolution Professional

M/s.MBS Impex Pvt Ltd,

Address: 5-9-45, Basheerbagh,

Hyderabad-500 063.

...Applicant

Versus

1) Mr. Sukesh Gupta, Director

M/s.MBS Impex Pvt Ltd,

Address: 5-9-45, Basheerbagh,

Hyderabad-500 063

2) Mr. Neetu Gupta, Director

M/s.MBS Impex Pvt Ltd,

Address: 5-9-45, Basheerbagh,

Hyderabad-500 063

3) P.S.IYENGAR & Co, Chartered Accounts

Statutory Auditor appointed for FY 2014-15 to 2016-17

302, Krishna Complex, Tilak Road,

Hyderabad-500 001.

... Respondents

In the Matter of

M/s. ICICI Bank Ltd.....Financial Creditor

Vs

M/s. MBS Impex Pvt Ltd.....Corporate Debtor



Order pronounced on 13.10.2020

Coram:

Shri. K. Anantha Padmanabha Swamy, Member Judicial.

Shri Veera Brahma Rao Arekapudi, Member Technical.

Counsels / parties present:

For the Applicant: Ms.JVL Bharthi, Counsel for RP.

RP : Mr.Santosh Bhatia.

For the Respondent: Mr.H.Rajesh Kumar, Counsel.

Per:

Hon'ble Shri Veera Brahma Rao Arekapudi, Member Technical.

Heard on: 09.10.2020.

ORDER

1. This Interlocutory application IA.No. 626/2020 is filed by Resolution Professional under Section 19(2) of I&B Code, 2016 Read with Regulation 30 and 40(C) of Insolvency and Bankruptcy Board of India, Regulations, 2016 praying the Tribunal to direct the Respondents No.1,2& 3 to extend co-operation and hand over the custody of assets, accounting records and management of affairs of the corporate debtor.
2. Brief averments in the application:
 - a. It is averred that the financial creditor i.e ICICI Bank Limited had filed an application under Section 7 of I&B Code, 2016 to initiate CIRP against corporate debtor. In pursuant to that the Tribunal vide order dated



13.11.2019 was pleased to admit the petition and appointed Mr.Sridhar Venkatraya Sundararaja as IRP.

- b. It is averred that the IRP has sent his person to serve notice on the corporate debtor company and to inform about the commencement of CIRP. At that time the Director of the corporate debtor refused to reveal any details of the corporate debtor Company and further he filed an IA No.1134/2019 before the Tribunal requesting time for OTS which was dismissed as infructuous by the Tribunal since CIRP was already started.
- c. It is averred that in the second COC meeting which was held on 09.01.2020, IRP informed to the COC that Books of Accounts of corporate debtor were audited till FY 2012-13, after that there was no audit and statutory returns were not submitted by corporate debtor. It is further submitted that neither Directors nor staff co-operating. As per Sections 17, 181 and 19 of IBC, 2016 corporate debtor and staff are under obligation to provide their support and co-operation.
- d. It is averred that COC members directed Mr.Phani Madhav(Authorized Representative of Corporate Debtor) present in the COC to provide all the information required by the IRP.
- e. It is averred that the Tribunal vide order dated 29.05.2020 allowed the IA No.304/2020, replacing IRP by another RP i.e Mr.Santhosh Kumar Bhatia, Applicant herein.
- f. Further the RP directed the Corporate debtor and its staff to produce the records, so that to continue CIRP as per the rules. But there is no response from the Corporate Debtor or their staff to the applicant. It is also averred that out of six COC meetings only two COC meetings were attended by the representatives of the corporate



debtor though the invitation for attending the COC meeting has duly been served on the corporate debtor by the IRP/RP from time to time.

- g. It is also averred that RP communicated with the auditor of corporate debtor for production of Books and records, but he also not responded favourably.
 - h. It is further averred that due to non-cooperation of the respondents, the RP is unable to perform his duties as required under Section 17 and 18 of the I&B Code, 2016.
3. This application is filed by RP seeking direction to the respondents of the Corporate Debtor Company to extend maximum support and co-operation of the Corporate Debtor Company for continuing CIRP Process.
4. We have heard the Counsel for RP. He contended that Respondents are not co-operating with him to discharge his functions. On the other hand, Counsel appearing for respondents contended that they will provide the information to RP.
5. Application is filed under section 19(2) of I&B Code. The Directors shall extend all help to the IRP as per provisions of Section 19(2) of I&B Code.

" Section 19(2) of Insolvency & Bankruptcy Code, 2016 stipulates that the personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall extend all assistance and co-operation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor.

Where any personnel of the Corporate Debtor, its promoter or any other person required to assist or co-operate with the Interim Resolution Professional does not assist or cooperate, the Interim Resolution Professional may make an



application to the Adjudicating Authority for necessary directions.

The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the Resolution Professional and to cooperate with him in collection of information and management of the Corporate Debtor”.

6. Therefore direction to be given to the directors/Respondents herein not to cause any obstruction to the RP in discharging his functions and managing affairs of the corporate debtor.
7. RP shall be given free access to the books of accounts and permit him to manage the corporate debtor company and provide all the information required in para 7 of this application as far as possible to discharge his functions in accordance with the provisions of the Code.
8. In the result Application is allowed directing Respondents to extend over all support and co-operation to the RP to discharge his functions.
9. IA NO.626/2020 is accordingly allowed.


Veera Brahma Rao Arekapudi
Member Technical


K. Anantha Padmanabha Swamy
Member Judicial

Pavani