IN THE NATIONAL COMPANY LAW TRIBUNAL, SPECIAL BENCH, (DIVISION BENCH - II), CHENNAI

IA/278/IB/2020 in CP/938/IB/2018 filed under Section 12(2) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 40(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

In the matter ofM/s. Ambojini Property Developers Private Limited.

Mr. Anil Kumar Khicha,
Resolution Professional of
M/s. Ambojini Property Developers Private Limited
6, First Floor, Golden Enclave-184
Poonamallee High Road (Opp. Taylors Road Signal)
Kilpauk, Chennai-600010

.....Applicant/Resolution Professional

CORAM:

R.SUCHARITHA, MEMBER (JUDICIAL)
B. ANIL KUMAR, MEMBER (TECHNICAL)

For Applicant : Shri. Anant Merathia, Advocate

ORDER

Per: **R. SUCHARITHA, MEMBER (JUDICIAL)**

Order Pronounced on: 10.12.2020

The above application filed on 14.02.2020, has been preferred by the Resolution Professional under section 12(2) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 40(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016(hereinafter referred to as **"IBC, 2016")** seeking for the following relief;

(a) *Allow the present application;*

(b) *Extend the period of Corporate Insolvency Resolution Process for further period of 90 days from the date of expiry of 180 days from CIRP i.e. 08.03.2020, in accordance with the provisions as laid down in Section 12(2) of the Code and pass appropriate order under Section 12(3) for extension of period; and*

(c) *Issue such other necessary orders as may be deemed fit in the matter.*

2. It is averred in the application that the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor vide order dated 10.09.2019. Thereafter, the IRP on analysis of the claims received has constituted the committee of Creditors on 03.10.2019. In the meeting of the said COC has been recommendedto the applicant to continue as "Resolution Professional" and this Tribunal confirmed the appointment of applicant herein to act as RP by an order dated 22.10.2019.

3. It is further averred that on 18.11.2019, M/s. ASK Investment Managers Limited moved an application before this Tribunal alleging that their status as a member of CoC was not crystallized by the RP till then. The RP has filed his opinion on 25.10.2019. This Tribunal directed the RP that if any meeting of CoC is conducted, there should not be any resolution passed which may have any prejudicial impact to the interest to M/s.ASK Investments Managers Limited. This Bench vide order dated 03.01.2020 held that M/s. ASK Investment Managers Limited was not a related party to the Corporate Debtor and hence shall be included in the CoC, with voting share. Till 10.01.2020, RP had received 162 claims from Home Buyers (FC) – in class, one claim from M/s.ASK Investment Managers Limited (FC), one claim from M/s. ICICI Bank Ltd (FC) and 3 claims from Operational Creditors (Nuvoco Vistas Corporation Limited). In the 3rd meeting of CoC held on 24.01.2020, the RP placed before the members of CoC the draft of Form-G, along with the eligibility criteria of the prospective resolution applicants including the deadline for submission of resolution plans

which was decided to be 10.04.2020 i.e. almost a month after the expiry of the CIRP period, which was approved. The Resolution No.5 passed with a majority voting share at the 3rd meeting of CoC was to consider the publication of Expression of Interest in Form-G and minimum eligibility criteria for the prospective resolution applicant.

4. It is submitted that in the light of the directions of this Tribunal on 03.01.2020, the Resolution Professional was unable to publish Form-G or issue Expression of Interest at an early date.In the 3rd meeting of CoC, the following resolution was passed with majority of the voting share:

> "**RESOLVED THAT** *Corporate Insolvency Resolution Process in the matter of M/s. Ambojini Property Developers Private Limited is hereby approved for extension by 90 days from the last date for completion of 180 days in accordance with the provisions of Section 12(2) of Insolvency and Bankruptcy Code, 2016.*
> **RESOLVED FURTHER THAT** *Resolution Professional Anil Kumar Khicha is to be and hereby authorized to file an application before Hon'ble NCLT, under Section 12(2) of Insolvency and Bankruptcy Code, 2016 for approval of the extension period of Corporate Insolvency Resolution Process by 90 days".*

5. It is seen that in view of Covid-19 Pandemic, lock down has been announced by the Government of India with effect from 25.03.2020. The period of lock down will stand excluded for the purpose of determining the maximum period permissible for the CIRP to be completed.

6. Heard the Counsel for the Applicant and perused the records placed on file. In the facts of the present case, it is to be noted that the IBBI vide its notification dated 29.03.2020 has issued clarification regarding the period of exclusion for Corporate Insolvency Resolution Process. Through the issuance of the above mentioned notification, the IBBI has amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to include the following:

- ***Section 40C**-the period of lock down imposed 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, in relation to a Corporate Insolvency Resolution Process (CIRP) under the Insolvency & Bankruptcy Code, 2016.*

- *The said exclusion has been introduced as Regulation 40C in the Insolvency and Bankruptcy Code by the IBBI in exercise of the powers conferred by Section 196(1)(t) read with Section 240 of the Insolvency and Bankruptcy Code.*
- *The above amendment shall come into force from 29th March 2020*

7. In the facts of the present case, it is evident from the records that CIRP of 180 days expired on 08.03.2020. Thus, it can be inferred from the second proviso to sub-section 3 of Section 12 of the IBC, 2016 that one more extension of 90 days can be granted.

8. In this context, it is also relevant to refer the decision of the Hon'ble Supreme Court in **"Committee of Creditors of Essar Steel India Ltd. –Vs- Satish Kumar Gupta & Ors."** in *Civil Appeal No.8766 – 67 of 2019* has observed in para 79 as follows;

> "79. *The effect of this declaration is that ordinarily the time taken in relation to the Corporate Insolvency 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."

9. Thus, taking into consideration, the decision of the Hon'ble Supreme Court as rendered in **Essar Steels (supra)** and the provision of law, the Application stands allowed and the period of

90 days stands allowed from the CIRP timeline with an exclusion of time period arising of COVID-19 lockdown in consonance with the third amendment made to IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2020 dated 29th March, 2020. The Period from **25.03.2020 to 31.10.2020** is excluded. The State of Tamil Nadu is still under unlock 7.0 till 31st December, 2020 restricted and the Central Government has released a new guidelines of unlock 7.0 which has been implemented across the country from 1st December, 2020 to 31st December, 2020.The period of extension of CIRP from 08.03.2020 for the period of 90 days is allowed.

10. Accordingly, the application **IA/278/IB/2020** stands **allowed.**

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

TJS