

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV
IA NO. 6272 OF 2023
IN
(IB)142(ND)/2022

IN THE MATTER OF:

DIGITAL COMPUSYSTEMS PVT. LTD.

...FINANCIAL CREDITOR

VERSUS

MAHAMAY BUILDING SOLUTION PVT. LTD.

...CORPORATE DEBTOR

AND IN THE MATTER OF:

MR. SANJEET KUMAR SHARMA
INTERIM RESOLUTION PROFESSIONAL
MAHAMAY BUILDING SOLUTION PVT. LTD.

...APPLICANT

Order Delivered on: 12.12.2023

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER
(JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Vaibhav Tyagi, Adv.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The present Interlocutory application is filed on behalf of Mr. Sanjeet Kumar Sharma ('applicant'), Interim Resolution Professional of M/s Mahamay Building Solution Private Limited under Section 12(2) and 12(3) of the Insolvency and Bankruptcy Code, 2016 ('Code') read with

Rule 11 of the National Company Law Tribunal Rules, 2016 ('Rules') seeking the following prayer(s):-

- a. Allow the present application;
 - b. Pass an order excluding period from 15.09.2022 to 26.09.2023 from the Corporate Insolvency Resolution Process period and from the overall CIRP period.
 - c. Pass an order excluding the period elapsed in adjudication of the instant application, i.e., the time period from the date of filing till the date of adjudication of the instant Application; and
 - d. Pass such other order(s) that this Tribunal may deem fit in the facts and circumstances of the case.
2. Briefly stated the facts of the present case as averred by the applicant are that Corporate Insolvency Resolution Process was initiated against M/s Mahamay Building Solution Private Limited ('Corporate Debtor') vide this Hon'ble Adjudicating Authority order dated 23.08.2022 in C.P.(IB) No. 142/2022, an application filed under Section 7 of the Code, 2016. Pursuant to the initiation of CIRP against the Corporate Debtor, certain shareholders of the Corporate Debtor, prior to the constitution of the CoC of the Corporate Debtor had filed an appeal before the Hon'ble NCLAT bearing Company Appeal (AT)(INS) No. 1127 of 2022 against the admission order passed by this Tribunal dated 23.08.2022 in C.P.(IB) No. 142/2022. The applicant submitted that the Hon'ble NCLAT after hearing the appeal vide order dated 15.09.2022 was pleased to stay the constitution of the CoC of the Corporate Debtor till

next date. Subsequently, various hearings took place before the Hon'ble NCLAT on 11.10.2022, 10.11.2022, 01.12.2022, 23.01.2023, 23.02.2023, 05.04.2023, 04.05.2023, 11.07.2023, 25.08.2023 and 11.09.2023 and the interim order dated 15.09.2022 was continued by the Hon'ble NCLAT at each hearing.

3. The applicant submitted that the Hon'ble NCLAT vide order dated 26.09.2023, when no settlement having been arrived at between the parties, vacated the order of stay on the constitution of the CoC. Therefore, vide order dated 17.10.2023 the said appeal was dismissed as withdrawn.
4. Further, the applicant submitted that the CIRP of the Corporate Debtor stood expired during the stay order, i.e., 180 days' time period on 19.02.2023. Therefore, the IRP herein was duty bound to approach this Tribunal to seek the said exclusion and only upon the same could it have constituted the CoC of the Corporate Debtor.
5. Reliance is placed by the Applicant on ***Vivek Raheja, Resolution Professional [Company Appeal No. 331 of 2021 dated 04.05.2021]***, the Hon'ble NCLAT had granted exclusion of time from the CIRP on the grounds of judicial intervention.
6. Further, the Applicant in support of its contention relied upon the decision of the Hon'ble NCLAT in ***Anil Tayal, Resolution Professional for M/s Horizon Buildcon Private Limited Vs Committee of Creditors of M/s Horizon Buildcon Private Limited [Company Appeal No. 120 of 2021 dated 23.02.2021]***, the Hon'ble NCLAT

opined that the period for which the orders were reserved by the Adjudicating Authority on the application is justifiably required to be excluded while counting and computing the period of CIRP.

7. The Hon'ble NCLAT in **Quinn Logistics India Pvt. Ltd v. Mack Soft Tech Pvt. Ltd and Ors., dated 08.05.2018 [CA(AT) (Insolvency) No. 185 of 2018]** has opined that it is always open to the AA to exclude certain period for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion. The relevant portion is reproduced below:

“10. For example, for following good grounds and unforeseen circumstances, the intervening period can be excluded for counting of the total period of 270 days of resolution process: -

- i. If the corporate insolvency resolution process is stayed by ‘a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon’ble Supreme Court.*
- ii. If no ‘Resolution Professional’ is functioning for one or other reason during the corporate insolvency resolution process, such as removal.*
- iii. The period between the date of order of admission/moratorium is passed and the actual date on which the ‘Resolution Professional’ takes charge for completing the corporate insolvency resolution process.*
- iv. On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon’ble Supreme Court and finally pass order enabling the ‘Resolution Professional’ to complete the corporate insolvency resolution process.*
- v. If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon’ble Supreme Court and corporate insolvency resolution process is restored.*
- vi. Any other circumstances which justifies exclusion of certain period. However, after exclusion of the period, if further period is allowed the total number of days cannot exceed 270 days which is the maximum time limit prescribed under the Code.”*

8. After going through the record and giving consideration to the submissions made and the judgments referred above, we hereby pass the following order:

a. A total period of 377 days from 15.09.2022 till 26.09.2023 is excluded whereby the time spent due to judicial intervention in Company Appeal (AT)(INS) No. 1127 of 2022.

b. Further, the time spent in filing this extension application dated 17.11.2023 in the first instance till the date of adjudication of the instant application is also excluded.

9. Resultantly, the present **IA/6272/2023 in C.P.(IB)142/ND/2022 stands allowed** and disposed of.

Sd/-
DR. SANJEEV RANJAN
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)