

I.A. No. /2020
In
CP(IB) No. 09/GB/2019
M/s. Stressed Assets vs. National Plywood.

IN THE NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

I.A. No. /2020
In
CP (IB) No. 09/GB/2019

In the matter of:

Interlocutory Application under Section 12(2) of the Insolvency and Bankruptcy Code, 2016 and Regulation 35A & 40 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

And

In the matter of:

M/s. Stressed Assets Stabilization Fund (SASF)

Financial Creditor

Versus

National Plywood Industries Limited (NPIL)

Corporate Debtor

And

In the matter of:

Mr. Sandeep Khaitan, Resolution Professional for National Plywood Industries Limited appointed under Section 22(2) of the Insolvency and Bankruptcy Code, 2016.

... Applicant/Resolution Professional

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

Parties Present

Mr. Sandeep Khaitan]	Resolution Professional
Mr. Nishant Kalika; C.A	}	Authorised representative for RP
Mr.Abhijit Sarkar]	For promoter/shareholder of the suspended board of Corporate Debtor.

Date of hearing: 27.04.2020

Order delivered on: 27.04.2020

ORDER

Per Jinan K.R. Member (Judicial)

1). This unnumbered application came up for consideration on this day at the request of the Interim Resolution Professional (IRP) who was appointed in the case in hand for extending the 180 days period of CIRP, which was expired on 20.02.2020. Corporate Insolvency Resolution Process (CIRP), was initiated in this case as per order dated 26.08.2019 by the National Company Law Tribunal, Guwahati Bench.

The applicant prays for the following relief:

- a) Allow the present application
- b) That necessary extension may be granted considering also the compensatory period of 25 days lost during the period of status quo & an additional period of 90 days under Section 12(2), meaning in aggregate an effective period of 115 days (including compensatory period of 25 days) to be effective from the date the nationwide lock down is fully lifted.

c) That an extension for 45 days may also be granted to be effective from the date the nationwide lock down is fully lifted to comply with the provisions of regulation 35A in respect of determination of the amount for reporting the transactions to the board under Sections 43, 45, 50 or 66, and to apply for appropriate relief to this Hon'ble Tribunal.

d) Ad interim orders in terms of prayers above.

Costs and incidental to this application be paid by the said Corporate Debtor.

2). Urgency for an early hearing of this application being satisfactorily explained, this application was listed for hearing through VC on today. Ld. Resolution Professional Mr. Sandeep Khaitan and his Counsel Mr. Nishant Kalika and Ld. Counsel Mr. Abhijit Sarkar representing promoter/shareholder of the suspended board of corporate debtor were heard.

3). It is submitted by the Ld. Counsel for the RP that one of the shareholders of the Corporate Debtor has preferred an appeal before the Hon'ble NCLAT, New Delhi alleging that the application filed by the financial creditor was not within limitation & hence the admission order passed by this Tribunal initiating the CIRP be quashed and NCLAT has passed an order dated 25th November, 2019 in appeal bearing number 932 of 2019 stating that the application filed with the Adjudicating Authority was within limitation. This order was challenged before the Hon'ble SC. The Hon'ble Apex Court in Civil Appeal No. 9142 of 2019 vide order dated 20th January, 2020 set aside the order passed by this Appellate Tribunal on 25th November, 2019 and directed the Appellate Tribunal to consider the matter afresh after observing that the Appellate Tribunal had noted '21.02.2002' instead of '21.02.2003' while computing the period. All questions qua the effect computing the period and all questions qua the effect of the earlier proceeding initiated in 2001/2002 have been kept open. In view of this order the appeal was to be re-heard in the light of the observations made by the Hon'ble Apex Court by the Hon'ble NCLAT. It is in this circumstances this application came up for consideration.

4). It is further would submits that pending appeal before the NCLAT, an interim status quo order has been passed by the Ld. NCLT Guwahati Bench which has been lifted by the Hon'ble Adjudicating Authority and therefore there is no impediment in continuing the CIRP. According to the Ld. Counsel 180 days for completion of CIRP period was expired on 22.02.2020 and that the Resolution Professional could not held any meeting of Committee of Creditors prior to 22.02.2020 as the Corporate Debtor was observing complete inaction during the period of status quo on and after 28.01.2020 and Resolution Professional conducted the CoC meeting to discuss on the matter of seeking extension of 90 days immediately after the Adjudicating Authority clarified its order vide its order dated 20.03.2020. The CoC in the meeting held on 25th March 2020, by 71.05% of vote share of the members of the CoC passed a resolution to apply for extension under section 12(2) of the Code.

5). It is further alleged that the Directors of the suspended Board of the Corporate Debtor is committing Cyber crime and not co operating with RP and that RP is filing an interim application u/s. 19(2) for issuing directions as against the Directors of the suspended Board of the Corporate Debtors and that application is to be heard urgently. Being such an application not come forward, he is not allowed to submit about an application yet to be filed.

6). At this juncture the Ld. Counsel also brought to my notice an order of NCLAT in **Company Appeal No.(AT) (Insolvency) No. 1 of 2020 dated 30.03.2020** which read as *"That the period of lock down ordered by the Central Government and the State Government including the period may be extended either in whole or part of the Country, where 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 and 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 in appeal before the Appellate Tribunal"*, and prays for exclusion of the period of lock down from the 90 days of extension from the date of expiry.

7). In the aforesaid circumstances the Resolution Professional prays for extension of 90 days and compensatory period of 25 days lost due to status quo order to be effective from after the date the nation-wide lock down due to outbreak of COVID-19 is completely lifted paving way for smooth working of CIRP.

8). He would further submits that in view of the lock down he could not have the determination in respect of transactions covered under Sections 43, 45, 50 or 66 of the Code within 115 days stipulated under Regulation 35-A (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and prays for exclusion of the period of lock down for intimating to the IBBI and to file application for appropriate relief before the Tribunal.

9). This application was strongly opposed by the Shareholder/appellant whose appeal is pending for consideration before the Hon'ble NCLAT. According to him an application was filed by the financial creditor for resumption of CIRP as IA NO. 1194 of 2020 before the Hon'ble NCLAT and that application was dismissed by the Appellate Tribunal on 19.03.2020 and therefore, the CIRP cannot be resumed.

10). In answer to this objection the Ld counsel for the RP submits that it was an IA filed against the status quo order passed by the NCLT, and NCLT being lifted the status quo consideration of the said application was not arise and that Hon'ble NCLAT while taking back the case upon remand passed an order read as above and in the mean while the pending IA referred to by the Ld. Counsel for the Shareholder was disposed off. The order of Appellate Tribunal in regard the IA read as **"I.A. No. 1194 of 2020 which does not survive for consideration now"**, A reference to the order it appears to me that disposal of an application for resumption by the Hon'ble NCLAT, is no way prohibit me from consider this application. Because as on today when the application for extension came up for consideration the CIRP was already resumed. So I do not find any merit in the submission on the side of the Shareholder of the CD.

11). In view of the above said, and that the coronavirus pandemic has disrupted the entire working of the country be it the government sector, private sector, businesses, educational institutions including judicial work this application moved through e-mail deserve consideration. In the said circumstances the prayer for extension of 90 days as per section 12 (2) of the Code, by excluding unutilised period of 25 days and the period of lock down is to be allowed. Accordingly this application is allowed upon the following orders:-

i). The application is allowed under section 12(2) of the Code, extending the period of CIRP beyond 180 days with effect from 23.02.2020, by excluding 25 days lost during the period of status quo & and further excluding the period of nationwide lock down up to the date of lifting the lock down.

ii). The period of lock down from the date of inception till the date of lifting is also excluded from the 115 days available to the RP to comply with the provisions of Regulation 35-A (2) of CIRP Regulations,2016 in respect of determination of the amount for reporting the transactions to the board under Sections 43, 45, 50 or 66, and to apply for appropriate relief before to the Hon'ble Tribunal.

iii). No order as to cost.

iv). Registry is directed to serve a copy to the applicant forthwith by e-mail.

(Jinan K.R)

Member (Judicial)

in charge of NCLT Guwahati Bench

Signed on this 27th day of April, 2020.