

**NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

**CA Nos. 773/2019, 825/2019,
826/2019, 827/2019 & 828/2019**

IN

**CP (IB) No. 114/Chd/Pb/2017
(Admitted Matter)**

**Under Section 60(5) of the
Insolvency and Bankruptcy Code,
2016 read with Rule 11 of the NCLT
Rules, 2016**

In the matter of:

State Bank of India	...Petitioner-Financial Creditor
Vs.	
SEL Manufacturing Company Limited	...Respondent-Corporate Debtor

And in the matter of CA No. 773/2019:-

Resolution Professional of
SEL Manufacturing Limited
520, 5th Floor, Caddie Commercial Tower,
Aerocity, New Delhi 110037

Also at

Dhandarikhurd, GT Road, Ludhiana-141014, Punjab	...Applicant
----------------------------------------------------	--------------

Vs.

1. Committee of Creditors of SEL Manufacturing Limited Through State Bank of India Golden Towers, Dholewal Chowk, Ludhiana-14103, PunjabRespondent No. 1
------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------

2. Neeraj Saluja
S/o Sh. Ram Saran Saluja,

CA Nos. 773/2019, 825/2019, 826/2019,
827/2019 & 828/2019

IN

CP (IB) No. 114/Chd/Pb/2017
(Admitted Matter)

274, DhandariKhurd, GT Road,
Ludhiana-141014, Punjab

...Respondent No. 2

3. Swiss Dyes Corporation
126, Industrial Area A
Ludhiana 0141003

...Respondent No. 3

And in the matter of CA No. 825/2019:-

Neeraj Saluja

...Applicant

And in the matter of CA No. 826/2019:-

Swissdyes Corporation
& Raisons Corporation

...Applicant

And in the matter of CA No. 827/2019:-

Swissdyes Corporation
& Raisons Corporation

...Applicant

And in the matter of CA No. 828/2019:-

Swissdyes Corporation
& Raisons Corporation

...Applicant

Order delivered on:10.10.2019

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial).
Hon'ble Mr. Pradeep R. Sethi, Member(Technical).**

For the Resolution Professional: 1). Mr. Akshay Bhan, Senior Advocate
2). Mr. Amandeep Singh, Advocate
3). Ms. Tanvi Talwar, Advocate

For the Committee of Creditors: 1). Ms. Munisha Gandhi, Senior Advocate
2). Ms. Salina Chalana, Advocate
3). Mr. Nitin Kaushal, Advocate

For the Operational Creditor : 1). Mr. Puneet Bali, Senior Advocate
2). Mr. Vibhav Jain, Advocate

3). Mr. Satyam Ahuja, Advocate
 For the Suspended Directors : 1). Mr. Anand Chhibbar, Senior Advocate
 2). Mr. Arvind Gupta, Advocate
 3). Mr. Gaurav Mankotia, Advocate
 4). Mr. Shikhar Sarin, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

CA No. 773/2019

CA No. 773/2019 has been filed by the Resolution Professional of SEL Manufacturing Company Limited [which is undergoing Corporate Insolvency Resolution Process (**CIRP**)] under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**Code**) seeking the following reliefs:-

“(a) Declare that the period from 22 June 2018 to 06 September 2019 shall be excluded for the purposes of calculating the corporate insolvency resolution process period in respect of the Corporate Debtor; and

(b) Declare that the period between 11 April 2018 and 25 April 2018 shall be excluded for the purposes of calculating the corporate insolvency resolution process period in respect of the Corporate Debtor; and

(c) Pass necessary directions with respect to treatment of unpaid liabilities and status of the claims of stakeholders of the Corporate Debtor that may have accrued and / or modified during the period of abeyance of the CIR Process from 22 June 2018 to 6 September 219 on account of the operation of the orders of the Hon’ble Supreme Court and the Hon’ble High Court; and/or

(d) Declare that the Applicant (being the resolution professional) is not in contravention of the provisions of the Code (and the CIR Process Regulations) for not being able to comply with his duties as per the timelines stipulated under

the Code on account of his operations been stayed by the Hon'ble High Court vide order dated 22 June 2018 and the Hon'ble Supreme Court of India vide orders dated 13 July 2018 and 29 November 2018; and/or"

However, the learned Senior Counsel, Mr. Akshay Bhan, appearing for the applicant, at the outset, submitted that he is not pressing the Relief (c) in this C.A., and the applicant may be given liberty to agitate the same, in accordance with law, by filing a separate C.A. and accordingly, the same is accorded.

2. Shorn off the unnecessary details, the brief facts, necessary for disposal of the instant CA and as stated by the applicant, are as under:-

i). The State Bank of India, a financial creditor of the respondent SEL Manufacturing Company Limited, (the corporate debtor) filed CP (IB) No. 114/Chd/Pb/2017 under Section 7 of the Code before this Adjudicating Authority seeking initiation of CIRP against the said corporate debtor. This Adjudicating Authority vide its order dated 11.04.2018 admitted the said CP (IB) No. 114/Chd/Pb/2017 and declared moratorium.

ii). The corporate debtor SEL Manufacturing Company Limited aggrieved with the said order dated 11.04.2018 filed CWP No. 9131 of 2018 before the Hon'ble High Court of Punjab and Haryana, and after hearing the said CWP, orders were reserved on 25.04.2018. As there was no stay, in the said CWP, the Adjudicating Authority appointed the applicant as the Interim Resolution Professional (**IRP**) vide order dated 25.04.2018.

On 01.05.2018, the Hon'ble High Court of Punjab and Haryana disposed of the CWP No. 9131 of 2018 by directing the corporate debtor to avail the alternate remedy of appeal under Section 61 of the Code and also directed the IRP i.e. the applicant, not to take over the management of the corporate debtor till 15.05.2018. SLP(C) No. 11903 – 11904 of 2018 filed by the corporate debtor before the Hon'ble Supreme Court against the order dated 01.05.2018 of the Hon'ble High Court of Punjab and Haryana, was dismissed, on 11.05.2018, however the Hon'ble Supreme Court extended the direction of not to take over the management of the corporate debtor, issued by the Hon'ble High Court of Punjab and Haryana by another week. On 21.05.2018, the Company Appeal (AT) (Insolvency) No. 226 & 227 of 2018 filed before the Hon'ble NCLAT challenging the order of admission of the CP dated 11.04.2018 and appointment of the IRP dated 25.04.2018 came up for hearing and the stay on the IRP from taking over the operations of the corporate debtor was discontinued.

iii). In CA No. 223 of 2018 filed in CP (IB) No. 114/Chd/Pb/2017 by the IRP the period during which the appointment of IRP was stayed by the Hon'ble High Court and by the Hon'ble Supreme Court, was excluded, by order dated 14.06.2018, of this Tribunal.

iv). At this stage, a co-director of the corporate debtor filed CWP No. 15685 of 2018 before the Hon'ble High Court of Punjab and Haryana titled as Dhiraj Saluja vs. Union of India challenging the constitutionality of

Section 35AB of the Banking Regulation Act and while issuing notices therein an *ex parte* order directing to keep the CIRP initiated in respect of the corporate debtor, in abeyance, was passed vide order dated 22.06.2018. The said CWP was transferred to the Hon'ble Supreme Court of India and finally the said transferred case T.P. (C) 16 of 2019 was dismissed as withdrawn, on 06.09.2019 and consequently the interim order of keeping the CIRP in abeyance has ceased to have any effect w.e.f. the said date. Accordingly, the IRP has taken the management of the corporate debtor again on 09.09.2019.

3. In view of the above referred facts, though the CIRP was initiated on 11.04.2018, when the CP was admitted, and in view of the above referred interim orders, the CIRP is still at the threshold. But in the meanwhile from 11.04.2018 i.e. the date of commencement of the CIRP, the maximum time limit prescribed under Section 12 of the Code has expired.

4. The Resolution Professional (**RP**) filed the instant CA mainly seeking exclusion of the period from 22.06.2018 i.e. on which date the Hon'ble High Court of Punjab and Haryana in CWP No. 15685 of 2018 granted an interim direction to keep the CIRP in abeyance and till 06.09.2019 i.e. the date on which finally the said interim direction ceased to have any effect, in view of the dismissal of the T.P. (C) No. 16 of 2019, by the Hon'ble Supreme Court, as withdrawn.

5. CA No. 826/2019 is filed by Swissdyes Corporation & Raisons Corporation, operational creditors of SEL Manufacturing Company Limited (Corporate Debtor) seeking impleadment as respondents in CA No. 773/2019 and to permit them to file reply and to contest the same.

6. CA No. 827/2019 is also filed by the Swissdyes Corporation & Raisons Corporation seeking a direction for full payment of dues alongwith the interest for the transactions carried on during the CIRP period after 11.04.2018 till the conclusion of the CIRP.

7. CA No. 828/2019 is also filed by Swissdyes Corporation & Raisons Corporation seeking to implead in CP (IB) No. 114/Chd/Pb/2017 and also for a direction to permit them to be represented in the meetings of the COC.

8. CA No. 825/2019 is filed by Mr. Neeraj Saluja, who is a Promoter/Guarantor/Shareholder/Member of Committee of Creditors (**COC**) seeking impleadment in CA No. 773/2019.

9. In pursuance of the observations made by this Adjudicating Authority on 30.09.2019 in CA No. 773/2019, the applicant-RP impleaded the aforesaid Mr. Neeraj Saluja and Swissdyes Corporation & Raisons Corporation as respondents No. 2 to 4 and accordingly, filed an amended memo of parties vide Diary No. 5235 dated 30.09.2019.

10. Heard Mr. Akshay Bhan, learned Senior Advocate for the applicant-RP, Ms. Munisha Gandhi, learned Senior Advocate for the

respondent No. 1-COC of SEL Manufacturing Company Limited, Mr. Anand Chhibbar, learned Senior Advocate for the respondent No. 2, Mr. Puneet Bali, learned Senior Advocate for respondents No. 3 & 4 i.e. Swissdyes Corporation & Raisons Corporation and carefully perused the pleadings on record.

11. Since the above referred facts are not seriously disputed by the counsels of opposite parties, except to the extent of contending that the CIR Process continued for few days, in the meanwhile, now the issue for consideration in CA No. 773/2019 is that, whether the period from 22.06.2018 to 06.09.2019 i.e. the period during which CIRP could not be proceeded with due to the interim direction/order of abeyance of the Hon'ble High Court as well as of the Hon'ble Supreme Court and the period from 11.04.2018 to 25.04.2018, i.e., the period from the date of admission of C.P. and till the date of appointment of IRP by this Adjudicating Authority, can be excluded from the calculation of CIRP period of 330 days as prescribed under Section 12 of the Code and for that matter any other period can be excluded or extended, resulting the total number of days exceeds 330 days from the date of admission of C.P./commencement of CIRP?

12. Before advertizing to the submissions made by the learned Senior Counsels of the parties, it is necessary to refer to Section 12 of the Code, as it stood as on today, which reads as under:-

“12. Time-limit for completion of insolvency resolution process.-

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of [sixty-six] per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may be order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once:

[Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.]”

13 (i). Mr. Akshay Bhan, learned Senior Counsel appearing for the applicant-RP, while stressing on the words in the second proviso to Section 12 i.e. “legal proceedings in relation to such resolution process of

the corporate debtor” submits that the CWP No. 15685 of 2018 filed by Mr. Dhiraj Saluja before the Hon’ble High Court of Punjab and Haryana was in connection with the challenge to the constitutional validity of Section 35AB of the Banking Regulation Act and R.B.I. Circulars and hence the interim direction to keep the CIRP in abeyance passed on 22.06.2018, has no relation to the resolution process of SEL Manufacturing Company Limited i.e. the corporate debtor in the instant case and hence the period from 22.06.2018 to 06.09.2019 cannot be treated as ‘legal proceedings in relation to the resolution process of the corporate debtor in the instant C.P.’ Accordingly, the learned Senior Counsel submits that the said period can be excluded from the calculation of the maximum time limit provided under Section 12. The learned Senior Counsel further submits that the second proviso to Section 12 with regard to “legal proceedings” is relating to the “extension” of the period, but whereas the instant CA is filed for “exclusion” of the “stay period”.

13 (ii). The learned Senior Counsel while stating that if the subject period is not excluded, the corporate debtor may have to be liquidated, also submits that though the second proviso to Section 12 prescribes the maximum period for completion of the CIRP at 330 days, but in view of the fact that the main object of the Code is resolution by maximization of the value of the assets of the corporate debtor, this Adjudicating Authority

should interpret the relevant proviso to Section 12 of the Code towards resolution only but not towards liquidation.

13 (iii). The learned Senior Counsel, further submits that the 2nd and 3rd provisos to Section 12 cannot take away the inherent power of this Adjudicating Authority, in excluding any period from the calculation of 330 days, if there are valid reasons for the same.

13 (iv). The learned Senior Counsel in support of his submissions placed reliance on the following decisions:-

- (i). *Swiss Ribbons v. Union of India*, (2019) 4 SCC 17,
- (ii). *Mohd. Gazi v. State of M.P.*, (2000) 4 SCC 342
- (iii). *Quinn Logistics India Pvt Limited v. Mack Soft Tech Pvt. Ltd. And Ors.* 2018 SCC OnLine NCLAT 243
- (iv). *ArcelorMittal India Private Limited v. Satish Kumar Gupta and Ors.*, 219 2 SCC
- (v). *Indore Development Authority v. Shailendra*, (2018) 3 SCC 412

14 (i). Ms. Munisha Gandhi, learned Senior Counsel appearing for the first respondent-COC while supporting the submissions made on behalf of the RP, further submitted that dues of the corporate debtor are about more than ₹7,000 crores and keeping in view the object of the Code, that the periods mentioned in the CA may be excluded from the CIRP.

14 (ii). The learned Senior Counsel while drawing our attention to the meaning of the word “abeyance” from the Oxford and Merriam-Webster Dictionaries and also by placing reliance on a decision of the **Hon’ble High**

Court of Calcutta in *Bharat Ch. Pati v. The Divisional Govt. Organizer*,

CA Nos. 773/2019, 825/2019, 826/2019,
827/2019 & 828/2019

IN

CP (IB) No. 114/Chd/Pb/2017
(Admitted Matter)

SSB and Ors., MANU/WB/0597/1998 prayed for exclusion of the time as prayed in the CA.

15 (i). On the other hand, Mr. Anand Chhibbar, learned Senior Counsel appearing for the second respondent-Mr. Neeraj Saluja submitted that applicant/R.P. already obtained exclusion of time during which the appointment of IRP was stayed i.e. from 01.05.2018 till 21.05.2018 vide order dated 14.06.2018 in CA No. 223/2018 and hence again seeking second extension for any period is barred as per first proviso to Section 12.

15 (ii). The learned Senior Counsel submitted that the CWP No. 15685 of 2018 titled as Dhiraj Saluja v. Union of India filed before the Hon'ble High Court of Punjab and Haryana, though challenged the constitutionality of Section 35AB of the Banking Regulation Act but the same is directly relating to the CIRP of the corporate debtor SEL Manufacturing Company Limited only and i.e. why the interim order of abeyance was granted on 22.06.2018 and the same was continued till 06.09.2019 and hence the second proviso to Section 12 is attracted as the said period is the period spent in legal proceedings in relation to the resolution process of the corporate debtor.

15 (iii). The learned Senior Counsel, in support of his submissions placed reliance on the following decisions:-

- (i). *State of Uttar Pradesh v. Singhara Singh and Others, AIR 1964 SC 358,*

- (ii) *Shriram Mandir Sansthan v. Vatsalabai and Others*, (1991) 1 SCC 657,
- (iii) *J. Jayalalithaa and Others v. State of Karnataka and Others*, (2014) 2 SCC 401,
- (iv) *K.K. Velusamy v. N. Palanisamy*, (2011) 11 SCC 275
- (v) *Committee of Creditors of Amtek Auto Limited through Corporation Bank v. Dinkar T. Venukatsubramanian & Ors.*, Civil Appeal No. 677/2019 order dated 24.09.2019
- (vi) *N. Padmanabhan & Anr. v. M/s Sri Adinath Enterprises & Anr.*, CA (AT) (Insolvency) No. 577 of 219,
- (vii) *M/s Alpha Corp Development Pvt. Ltd. v. M/s Earth Infrastructure Ltd. through the Resolution Professional Shri Aakash Shinghal*, CA (AT) (Insolvency) No. 902 of 2019, and
- (viii) *Quinn Logistics India Pvt. Ltd v. Mack Soft Tech Pvt. Ltd. and Ors.*

16 (i). Mr. Puneet Bali, learned Senior Counsel appearing for the respondents No. 3 and 4-operational creditors while drawing our attention to the Statement of Objects and Reasons to the Insolvency and Bankruptcy Code (Amendment) Bill, 2019 under which Section 12 of the Code was amended by inserting the second and third provisos, submits that to do away the effect of the decisions of the Hon'ble Apex Court in ***ArcelorMittal India Private Limited v. Satish Kumar Gupta and Ors.***, 219 2 SCC and ***Quinn Logistics India Pvt Limited v. Mack Soft Tech Pvt. Ltd. And Ors.*** 2018 SCC OnLine NCLAT 243, whereunder different periods were permitted to be excluded for different reasons, which eventually extended the maximum time period prescribed under Section 12, then it stood was, and to give a complete effect to the object of the Code, the maximum time

CA Nos. 773/2019, 825/2019, 826/2019,
827/2019 & 828/2019

IN

CP (IB) No. 114/Chd/Pb/2017
(Admitted Matter)

period of 330 days including extension of any time taken in legal proceedings, was prescribed in the newly inserted 2nd and 3rd provisos. Hence, exclusion or extension of any period beyond the maximum period of 330 days is not permissible.

16 (ii). The learned Senior Counsel submitted that there would not be any effect, to the object of maximization of value of assets of the corporate debtor, even if the subject period is not excluded, as the same process of resolution can be followed under Section 230 of the Companies Act, even though an order of liquidation is passed against the corporate debtor, in view of the expiry of the maximum period prescribed under Section 12.

16 (iii). The learned Senior Counsel also submits that the word “legal proceedings” provided under the second proviso to Section 12 includes any “stay period” also as there cannot be any stay or interim direction without there being a legal proceeding.

16 (iv). The learned counsel in support of his submissions placed reliance on the following decisions:-

- (i) *Copy of Insolvency & Bankruptcy Code (Amendment) Bill dated 06.08.2019 along with Notification dated 16.08.2019,*
- (ii) *Relevant extract of Debates held in Lok Sabha/Rajya Sabha with regard to Amendment dated 6.8.2019 to Insolvency & Bankruptcy Code, 2016,*
- (iii) *Committee of Creditors of Amtek Auto Ltd. v. Dinkar T Venukatsubramanian & Ors., order dated 24.09.2019 of the Hon'ble Supreme Court,*

- (iv) *M/s Alpha Corp Development Pvt. Ltd. v. M/s Earth Infrastructure Ltd. through the Resolution Professional Shri Aakash Shinghal, (Judgment dated 30.09.2019 in Company Appeal (AT) (Ins) No. 902/2019), and*
- (v) *N. Padmanabhan & Anr. v. M/s Sri Adinath Enterprises & Anr., (Judgment dated 02.09.2019 in Company Appeal (AT) (Ins) No. 577 of 219),*

17. The learned Senior Counsels have also filed their respective written submissions, in addition to their oral submissions.

18. There cannot be any quarrel with the various principles enunciated by various Hon'ble Courts from time to time, and keeping in view the facts of the respective cases, on which the learned counsel appearing for the parties have placed reliance in support of their respective submissions.

19. However, in the backdrop of the above referred rival submissions, we are of the view that the issue on hand can be decided in terms of the recent decisions of the Hon'ble Apex Court and of the Hon'ble NCLAT, all passed subsequent to 16.08.2019, i.e. w.e.f. the date, the second and third provisos of Section 12 of the Code, by way of the Amendment Act, were brought into force and after considering the same.

20. In ***N. Padmanabhan & Anr. v. M/s Sri Adinath Enterprises & Anr., (supra)***, when an application was filed seeking exclusion of 162 days from the CIRP on the ground that the RP had not taken any interest and not issued Expression of Interest due to which no resolution plan was submitted, resultantly the maximum period of 270 days have been

completed, the Hon'ble NCLAT by its order dated 02.09.2019, after noticing the latest amendments by way of inserting 2nd and 3rd provisos to Section 12 of the Code, held that "pursuant to the same, even if some period is allowed, we find that the process is to start from the very beginning of collate the claims and issue fresh Information Memorandum, we are not inclined to pass any order for exclusion of any period for successful resolution". After noting its decision in ***Y. Shivram Prasad v. S. Dhanapal & Ors., Company Appeal (AT) (Insolvency) No. 224 of 2018 dated 27.02.2019***, the Hon'ble NCLAT further held that "the appellant/promoter can also approach the Liquidator and may submit a proposal or plan for revival of the corporate debtor", in terms of Section 230 of the Companies Act, 2013.

21. In ***M/s Alpha Corp Development Pvt. Ltd. v. M/s Earth Infrastructure Ltd. through the Resolution Professional Shri Aakash Shinghal, (supra)***, the Hon'ble NCLAT after adding of the second and third provisos to Section 12 by way of the latest amendment which came into force w.e.f. 16.08.2019, by its order dated 30.09.2019 observed as under:-

"In terms of third proviso of sub-section (3) of Section 12, as we find that the 'Corporate Insolvency Resolution Process' of the 'Corporate Debtor' is pending and has not been completed within the period referred to in the second proviso, we hold that the 'Corporate Insolvency Resolution Process' is to be completed within another period of 90 days from the date of commencement of Insolvency & Bankruptcy Code (Amendment Act, 2019) i.e. w.e.f. 16th August, 2019.

In view of the fact that the period has been extended for another 90 days in the present case in view of third proviso to sub-section (3) of Section 12, we set aside the

impugned order and allow the 'Resolution Applicant to move before the 'Committee of Creditors' and 'Resolution Professional and direct completing of the process within 90 days from the date of commencement of Insolvency & Bankruptcy Code (Amendment Act, 2019) i.e. w.e.f. 16th August, 2019"

22. The Hon'ble Supreme Court of India on 24.09.2019 in ***Committee of Creditors of Amtek Auto Limited through Corporation Bank v. Dinkar T. Venukatsubramanian & Ors.***, (*supra*), which was filed against the direction of the NCLAT to the Adjudicating Authority to pass orders for liquidation of Amtek Auto Limited, passed the following order:

"Heard the learned senior counsel appearing for the parties.

It is submitted by the learned Solicitor General appearing on behalf of the Committee of the Creditors of Amitek Auto Limited that a resolution plan was prepared that has failed owing to nonfulfillment of the commitment by Liberty House. That has consumed the time which was available as per the provisions contained in Section 12 of the Insolvency and Bankruptcy Code, 2016. Our attention has also been drawn to the third proviso by virtue of the Amendment Bill, 2019 with effect from 16.08.2019, by which the resolution process may be permitted to be completed within 90 days from the date of the commencement of the Amendment Act. The said period is available upto 15th November, 2019. Reliance has also been placed on a decision of this Court in "Arcelormittal India Pvt. Ltd Vs. Satish Kumar Gupta and Ors.", reported in (2019) 2 SCC 1. Without deciding the aforesaid issue finally, the learned counsel for the parties have agreed that one more effort should be made to resolve the issue. It was also pointed out that expression of interest have already been indicated by eight other parties.

The learned Solicitor General has also submitted that the Resolution Professional may be permitted to invite the fresh offers within a period of 21 days as an earlier offer had been invited and considering the time limit of 15.11.2019, 21 days may be fixed instead of 30 days for submission of the offer. We permit the Resolution Professional to invite fresh offers within a period of 21 days. Let steps be taken by the Resolution Professional by tomorrow i.e. by 25.09.2019 for

invitation of the fresh offers in accordance with the rules. Within 2 weeks thereafter, the Committee of Creditors shall take a final call in the matter and the decision of the Committee of Creditors and the offers received be placed before this Court on the next date of hearing for consideration.

List the matter on 05.11.2019.

Written submissions may be filed on or before 04.11.2019."

23. The statement of objects and reasons to the Amendment Act of 2019 reads as under:-

The Insolvency and Bankruptcy Code, 2016 (the Code) was enacted with a view to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order or priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India.

2. The Preamble to the Code lays down the objects of the Code to include "the insolvency resolution" in a time bound manner for maximisation of value of assets in order to balance the interests of all the stakeholders. Concerns have been raised that in some cases extensive litigation is causing undue delays, which may hamper the value maximisation. There is a need to ensure that all creditors are treated fairly, without unduly burdening the Adjudicating Authority whose role is to ensure that the resolution plan complies with the provisions of the Code. Various stakeholders have suggested that if the creditors were treated on an equal footing, when they have different pre-insolvency entitlements, it would adversely impact the cost and availability of credit. Further, views have also been obtained so as to bring clarity on the voting pattern of financial creditors represented by the authorised representative.

3. In view of the aforesaid difficulties and in order to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code. The Insolvency and Bankruptcy Code (Amendment) Bill, 2019, inter alia, provides for the following, namely:-

(a) to amend clause (26) of section 5 of the Code so as to insert an Explanation in the definition of "resolution plan" to clarify that a resolution plan proposing the insolvency resolution of corporate debtor as a going concern may include the provisions for corporate restructuring, including by way of merger, amalgamation

and demerger to enable the market to come up with dynamic resolution plans in the interest of value maximisation;

(b) to amend sub-section (4) of section 7 of the Code to provide that if an application has not been admitted or rejected within fourteen days by the Adjudicating Authority, it shall provide the reasons in writing for the same;

(c) to amend sub-section (3) of section 12 of the Code to mandate that the insolvency resolution process of a corporate debtor shall not extend beyond three hundred and thirty days from the insolvency commencement date, which will include the time taken in legal proceedings, in order to prevent undue delays in the completion of the Corporate Insolvency Resolution Process. However, if the process, including time taken in legal proceedings, is not completed within the said period of three hundred and thirty days, an order requiring the corporate debtor to be liquidated under clause (a) of sub-section (1) of section 33 shall be passed. It is clarified that the time taken for the completion of the corporate insolvency resolution process shall include the time taken in legal proceedings;

24. A careful reading of the statement of objects and reasons of the Amendment Act, 2019 and the decisions of the Hon'ble NCLAT and of the Hon'ble Supreme Court in the above referred cases supports the submissions made by the learned Senior Counsel appearing for the respondents 2 to 4. In the statement of objects and reasons, the fact of 'extensive litigation causing undue delay and hampering the value maximization' to the assets of the corporate debtor was specifically considered and thereafter, only, the maximum period of 330 days under the second proviso was prescribed. It cannot be said that the framers of the enactment, lost sight of the possibility of delay in CIRP, beyond 330 days where C.Ps are admitted and CIRP is pending, due to various reasons, including legal proceedings/interim stays/interim directions of different courts/authorities.

CA Nos. 773/2019, 825/2019, 826/2019,
827/2019 & 828/2019

IN

CP (IB) No. 114/Chd/Pb/2017
(Admitted Matter)

25. Therefore, we are of the considered view that in cases where CIRP is pending and has not been completed within the period of 330 days the 3rd proviso to Section 12 is applicable.

CA No. 825/2019 & CA No. 826/2019

26. Since the applicant in CA No. 773 of 2019 has already impleaded Mr. Neeraj Saluja as respondent No. 2, Swissdyes Corporation & Raisons Corporation as respondents No. 3 and 4, no further orders are necessary in CA No. 825/2019 and CA No. 826/2019 filed for seeking impleadment as respondents in CA No. 773 of 2019, and accordingly the CA No. 825/2019 and CA No. 826/2019, are disposed of.

27. In the circumstances and in view of the above discussion and the decisions of the Hon'ble NCLAT and of the Hon'ble Supreme Court, we reject the reliefs claimed in CA No. 773 of 2019. However, in terms of third proviso to Section 12 of the Code, the R.P. can proceed with the CIRP, within a period of 90 days w.e.f. 16.08.2019. Accordingly, CA No. 773/2019 is disposed of.

CA Nos. 827/2019 and 828/2019

28. Issue notice of these applications to the respondents and applicant shall take out the notices from the Registry and send the same by speed post immediately to the respondents at their registered addresses attaching therewith copy of the application and the entire paper book and

the copy of this order. The applicant shall file affidavit of service supported by postal receipt, tracking report before the next date of hearing.

29. List on 24.10.2019. The respondents shall also file their respective replies with a copy in advance to the counsel opposite and the applicant may also file his response, if any, to the same with a copy in advance to the counsel opposite.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

October 10th, 2019
Yashpal

Pronounced in the open court Sd/- 10.10.2019