

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 542 of 2021

IN THE MATTER OF:

Ranjit Kapoor

Promoter and Member of Suspended Board of Directors
White Metals Limited, the Corporate Debtor,
C-52, Malviya Nagar,
New Delhi – 110017.

....Appellant

Vs.

Asset Reconstruction Company (India) Ltd. (ARCIL)

The Ruby, 10th Floor,
Senapati Bapat Marg, Dadar (W),
Mumbai – 400028.

....Respondent No. 1

Resolution Professional, White Metals Ltd.

Hemant Sharma

9009 D.B. Gupta Road, Paharganj,
New Delhi – 110055.

....Respondent No. 2

**For Appellant: Mr. Alishan Naqvee and Ms. Shweta Shikha,
Advocates.**

For Respondents: Mr. Dinkar Singh, Advocate for R-1.

ORDER
(Virtual Mode)

03.08.2021: Heard Counsel for the Appellant. Appellant is Promoter – Member of Suspended Board of Directors of the Corporate Debtor – ‘White Metals Ltd.’. The Appellant has filed this appeal against impugned order dated 1st July, 2021 passed in Company Petition (IB)-160(PB)/2018 by the Adjudicating Authority (National Company Law Tribunal), New Delhi Principal Bench (Annexure A-1 at page 55), which reads as under:

Cont’d...../

“CA-455/2019

Application becomes infructuous in view of the CIRP initiated against the successful resolution applicant. Application stands disposed of. RP is directed to take appropriate steps to invite fresh expression of interest and proceed with the matter according to law.

List all the applications for hearing on 05.08.2021.”

2. The Learned Counsel has referred to chart filed in the synopsis of the appeal to show the time which has been consumed in this matter before the Adjudicating Authority in the Corporate Insolvency Resolution Process (CIRP), which reads as under:

Particulars	Date
Date of Admission of Section 7 Application being (IB) No. 160 (PB)/2018	13.06.2018
<u>180 days of CIRP period expired on</u>	<u>10.12.2018</u>
Date of order extending the CIRP period by 90 days, in C.A. No. 1273/2018	11.12.2018
<u>270 days of CIRP period expired on</u>	<u>10.13.2019</u>
No application for further extension under Section 12(3) ever filed.	N.A.
<u>330 days of CIRP period expired on</u>	<u>09.05.2019</u>
Date of Impugned Order directing invitation of fresh EOI	01.07.2021
Days of CIRP (after 330 days) expired till the date of Impugned Order	761 days i.e., 10.05.2019 -30.06.2021
Total number of CIRP days expired till the Impugned Order	1,091 days

3. The Learned Counsel for the Appellant submits although 1091 days have been consumed. It is stated the Successful Resolution Applicant was found by Committee of Creditors (CoC) and the matter had been placed before the Adjudicating Authority. Then, it was found that the Successful Resolution Applicant itself had gone into CIRP and thus, the present impugned order came to be passed. The Learned Counsel submits that when the matter was pending before the CoC, the Appellant had pointed out that the financial condition of the proposed Resolution Applicant which was being considered by the CoC was not sound but still the Resolution Plan of same Resolution Applicant was accepted. The Learned Counsel submits that the Appellant himself wants to file a Resolution Plan. It is stated that there are other Resolution Applicants also and thus, the impugned order as has been passed reverting the matter to the stage of inviting fresh Expression of Interests should not have been passed.

4. The Learned Counsel for Respondent No.1 is present and submits that the Appellant has been at various times creating obstructions in the CIRP process and it is stated that due to the unfortunate incident of the earlier Successful Resolution Applicant itself going into CIRP, delay has occurred and impugned order was required to be passed. It is stated by Learned Counsel for Respondent No.1 that after the impugned order was passed steps for calling fresh Expression of Interest are being taken by the CoC.

5. The Learned Counsel for the Appellant refers to an email dated 18th December, 2020 sent by the Resolution Professional informing that there is already a liquidation process initiated by NCLT by order dated 19th November, 2020 (in IA 3680 of 2020). The Learned Counsel is referring to the document to show conduct of the Resolution Professional. It is stated that there was no such order, thus, the email is not correct. For present issue we need not delve into this.

6. The Learned Counsel for the Appellant submits that although 1091 days have passed, there is no order with regard to extension of the CIRP period and without there being such order the present impugned order has been passed. Counsel for Respondent No. 1 does not deny this submission made.

7. Considering the fact that the Appellant himself is not asking for liquidation orders due to passing of 1091 days and is rather himself wanting to file Resolution Plan and is interested in resolution of the Corporate Debtor, we think it appropriate to remit back the matter to the Adjudicating Authority to consider if the extension of CIRP period was liable to be ordered and take a decision with regard to Section 12 of IBC. We are not setting aside the impugned order and the steps which are being taken in terms of impugned order may continue to be taken. However, the Adjudicating Authority needs to consider with regard to order relating to extension of CIRP period. Whether the Appellant is eligible or entitle to file a Resolution Plan, we are not going into the issue.

8. With these observations we dispose of the Appeal remitting back the matter to the Adjudicating Authority to consider observations made as above. It is stated that the matter is coming up before the Adjudicating Authority on 5th August, 2021.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[Dr. Alok Srivastava]
Member (Technical)

Archana/gc