

**NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**I.A. 1761/2020**

**IN**

**C.P. (IB) No. 4793 OF 2018**

**Under Section 12(2) of Insolvency and  
Bankruptcy Code, 2016.**

**I.A. NO. 1761 OF 2020**

Filed by

**Shri Milind B. Kasodekar,**

Resolution Professional of M/s Damoh-  
Jabalpur Toll Roads Limited

Having office at 77, Vijaynagar Colony, 2147,  
Sadashiv Peth, Pune,

Maharashtra- 411030.

**...Applicant**

**In the matter of**

M/s Markolines Traffic Controls Private  
Limited...

**...Operational/Creditor**

**Versus**

M/s Damoh- Jabalpur Toll Roads Limited

**...Corporate Debtor**

**Order pronounced on :20.11.2020**

**Coram:**

**SHRI H. V. SUBBA RAO, MEMBER (J)**

**SHRI SHYAM BABU GAUTAM, MEMBER (T)**

**Appearance:**

**For the Applicant:. Adv. Avinash R. Khanlokar**

**PER- SHRI SHYAM BABU GAUTAM, MEMBER**

**ORDER**

1. This is an Interlocutory Application filed by the Resolution Professional, Shri Milind B. Kasodekar, (hereinafter called as “the applicant”) of M/s Damoh-Jabalpur Toll Road Limited.

(hereinafter called as “the Corporate Debtor”) under Section 12(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”) seeking following reliefs in this application:

- a. To exclude lockdown period of 162 days till 31.08.2020 be excluded from the timeline of 180 days of the CIRP.*
  - b. In absence of an order as sought in clause (a) hereinabove, to grant extension of the Corporate Insolvency Resolution Process beyond one hundred and eighty days by further 90 days as per the provisions of the Section 12(2) of the Code w.e.f. 12.10.2020.*
  - c. To exclude the time lapsed for hearing of the present Application, if any.*
  - d. To pass any other in the interest of Equity, Justice and good conscience.*
2. The Company Petition filed by one M/s Markolines Traffic Controls Private Limited (hereinafter called as “the Operational Creditor”) bearing Company Petition No. 4793/I&B/MB/2018 under Section 9 was admitted by this Tribunal vide an order dated 17.12.2019 and Mr. Shri Milind B. Kasodekar (applicant herein) was appointed as an Interim Resolution Professional (IRP).
3. The applicant states that the first CoC meeting was convened on 19.02.2020. There, the item to confirm IRP as RP was deferred. In the second meeting of CoC held on 11.03.2020. Therein, it was expressed by CoC to replace IRP rather confirmation as the RP. The applicant further submits that due to nationwide lockdown, the CoC was unable to file the necessary application in that regard before this Tribunal. Hence, the applicant continue to function as deemed Resolution Professional and held 3<sup>rd</sup> CoC meeting on 08.05.2020, 4<sup>th</sup> CoC meeting on 08.06.2020 and 5<sup>th</sup> CoC meeting on 30.07.2020. However, the meeting dated

30.07.2020 was adjourned and the said meeting held on 13.08.2020.

4. In the 5<sup>th</sup> CoC meeting the applicant was confirmed as Resolution Professional to carry out the CIRP and further course of the CIRP was also discussed.
5. As approved by the CoC in their 5<sup>th</sup> meeting, the public notice inviting the Expression of Interest for submission of Resolution Plan for the corporate Debtor (hereinafter referred as the EoI) was published by the Applicant on 18.06.2020 in two newspapers viz. 'Free Press Journal' (English) and 'Navshakti' (Marathi).
6. Based thereupon the applicant had received 2 EoIs from the prospective Resolution Applicants (PRA). Therefore, the applicant had issued Evaluation Matrix and the Request for the Resolution Plans on 21.08.2020 to these PRAs. The scheduled last date for submission of the Resolution Plan was 20.09.2020.
7. This fact has been placed by the Applicant before the CoC in its 6<sup>th</sup> meeting dated 23.09.2020 whereby the CoC decided to publish fresh EoI which will enable all the present PRAs and also to new PRAs, if any, to submit the Resolution Plan.
8. The applicant further mentioned that the statutory period of 180 days is expiring on 11.10.2020, considering the Nationwide Lockdown amid COVID-19 till 07.06.2020 and further local lockdown in Pune City (wherein the RPs residence and office is located) from 14.07.2020 to 23.07.2020 of 10 days. And since, in this interregnum period of the extended timeline of EOI, the said period is expiring the CoC has thought fit to seek extension of CIRP period by further 90 days.

9. This Tribunal relies on the judgement of Hon'ble National Company Law Appellate Tribunal (NCLAT) in a matter bearing Company Appeal (AT) (Insolvency) No. 01 of 2020. This matter was taken up *suo moto* by the Hon'ble NCLAT in order to alleviate the concerns of the stakeholders on account of the delays in activities related to the CIRP of entities undergoing insolvency caused due to the lockdown restrictions imposed in wake of the Covid-19 pandemic. The following are the directions passed by the Hon'ble NCLAT vide an order dated 30.03.2020:

*“...on account of complete lockdown declared by Government with effect from 25<sup>th</sup> March, 2020, we take suo moto cognizance of the unprecedented situation arising out of spread of COVID-19 virus declared a pandemic. [...]*

*That the period of lockdown ordered by the Central Government and the State Government including the period as may be extended either 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 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 this Appellate Tribunal...”*

This order therefore, makes it ample clear that the period of lockdown as ordered by the Government of India (GoI) Ministry of Home Affairs (MHA) and the Government of Maharashtra (GoM) is to be excluded for the purpose of counting of the period of the CIRP under Section 12 of the Code.

10. Further Regulation 40C of the CIRP Regulations prescribe relaxations with respect to the CIRP timelines under the IBC and the rules/regulations framed thereunder, in view of the difficulties being faced due to the outbreak of the COVID-19 pandemic. The said regulation is reproduced below:

*“40C. Special provision relating to time-line:*

*Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government 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.”*

11. But the question arises whether the lockdown is to be considered till the 31<sup>st</sup> July 2020. Therefore, we need to look at the notification issued by the GoI MHA dated 30.05.2020 wherein it is mentioned as follows:

*“...Whereas, in exercise of the powers under Section 6(2)(i) of the Disaster Management Act, 2005, National Disaster Management Authority (NDMA) has directed the undersigned to issue an order to extend the lockdown in Containment Zones upto 30.06.2020, and to reopen prohibited activities in a phased manner in areas outside Containment Zones;*

*Now therefore, in exercise of the powers, conferred under Section 10(2)(1) of the Disaster Management Act, 2005, the undersigned hereby directs that guidelines as Annexed, will remain in force upto 30.06.2020.”*

Therefore, it is clear from above that the lockdown was extended till 30.06.2020 at national level.

12. Further, the order of the Government of Maharashtra (Department of Revenue and Forest, Disaster Management, Relief and Rehabilitation Mantralaya, Mumbai – 400 032) dated 29.06.2020 reads as follows:

*“... Whereas the State Government is satisfied that the State of Maharashtra is threatened with the spread of Covid-19 Virus, and therefore to take certain emergency measures to prevent and contain the spread of the virus, the Government in exercise of the powers conferred under Section 2 of the Epidemic Diseases Act, 1897, read with all other enabling provisions of*

*The Disaster Management Act, 2005, it is expedient to extend the lockdown in the entire State of Maharashtra further till midnight of 31.07.2020. ...”*

This makes it clear that the lockdown was extended till 31.07.2020 by the State Government.

13. In addition to the above, the IBBI vide its notification dated 20.04.2020 has also made a suitable amendment in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by inserting a new clause in the regulation, that provides for exclusion of period of lockdown imposed by the Central Govt. in the wake of Covid-19 outbreak from the computation of timelines for CIRP, which could not be completed due to such lockdown situation.
  
14. We would like to rely upon the order of Hon'ble NCLAT dated 08.05.2018 in the case of Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd. (Company Appeal (AT)(Insolvency) No. 185 of 2018) wherein it was observed that the Adjudicating Authority is empowered to exclude certain period for the purpose of counting the total period of 270 days if the facts and circumstances justify such exclusion. In this matter a total of 166 days were allowed to be excluded. The relevant para is hereby reproduced:

*“... it is clear that if an application is filed by the ‘Resolution Professional’ or the ‘Committee of Creditors’ or ‘any aggrieved person’ for justified reasons, it is always open to the Adjudicating Authority/Appellate Tribunal to ‘exclude certain period’ for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances.”*
  
15. Therefore, with the above observations and in consideration of the facts of this case, due to the nationwide lockdown, the RP was not able perform his duties and the period of 180 days got eventually over and therefore, is filing this application for extension as well as exclusion of time period. Hence, we find this a fit case for excluding the period from

calculating within the 180 days of CIRP and also for extending period to continue with the CIR process.

16. This bench directs that the period of CIRP during the promulgation of lockdown will be exempted (excluded) from 23.03.2020 to 31.07.2020 pursuant to the notification of Central Govt. read with new amendment which took place in Regulation of the IBBI and also by following the decision dated 30.03.2020 of the Hon'ble NCLAT passed in *suo-moto* Company Appeal (AT) (Insolvency) No. 01 of 2020.
17. According to Government notification, exclusion till 31.07.2020 needs to be granted. However, the applicant has sought for exclusion till 31.08.2020 by relying upon the order of Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of Hemant Sharma Resolution Professional of Global Softech Ltd. in Company Appeal (AT) (Insolvency) No. 942 of 2020 dated 02.11.2020 which is as follows:

*“02.11.2020: Prayer for exclusion of time as sought by the Resolution Professional of the Corporate Debtor – ‘Golbal Softech Ltd.’ was partially allowed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad, Court 2 in terms of impugned order dated 15th October, 2020. While the Appellant – Resolution Professional had sought exclusion of period of lockdown w.e.f. 25th March, 2020 to 15th September, 2020, the learned Adjudicating Authority allowed exclusion of only 68 days w.e.f. 23rd March, 2020 to 31st May, 2020 on the ground that the lockdown period in the State was declared only for such period. The Adjudicating Authority also took note of the fact that the first 180 days period inclusive of lockdown period had expired on 24th July, 2020. Thus, the application came to be partially allowed. 2. Shri P. Nagesh, Advocate appearing for the Appellant submits that the lockdown restrictions did not terminate on 31st May, 2020 as noticed by the Adjudicating Authority in the impugned order. It is submitted that the Registered Office of the Corporate Debtor is located in Union Territory of Dadra and Nagar Haveli and its Corporate Office is*

*situated in the State of Maharashtra, where lockdown restrictions continued till 15th September, 2020 and no business/commercial activities could be undertaken. It is further submitted that two Prospective Resolution Applicants had responded to the Expression of Interest and they wanted some time to file Resolution Plans but imposition of lockdown due to COVID-19 pandemic on 23rd March, 2020 resulting in disruption of commercial activities no progress could be achieved in the Corporate Insolvency Resolution Process. It is submitted that the object of the I&B Code would be defeated if the Resolution Process is allowed to be scuttled for the reasons weighing with the Adjudicating Authority, moreso, as the lockdown restrictions specific to the areas where the Registered Office and Corporate Office of the Corporate Debtor are situated continued upto 15th September, 2020. 3. Annexure A-9 forming page 62 of the appeal paper book is copy of the order passed by the Government of Maharashtra which brings it to fore that the lockdown restrictions were extended in the entire state of Maharashtra till 30th September, 2020. Annexure A-8 forming page 61 of the appeal paper book is an order passed by the U.T. Administration of Dadra & Nagar Haveli and Daman & Diu, which shows that the lockdown restrictions were extended upto 31st August, 2020. Having heard learned counsel for the Appellant and after perusing the Company Appeal (AT) (Insolvency) No. 942 of 2020, we are convinced that the ground projected for exclusion of the lockdown restriction period from 25th March, 2020 till 15th September, 2020 has substance and same deserves to be allowed, so as to make the resolution process meaningful and result oriented. We accordingly allow this appeal and set aside the impugned order with direction that the period commencing from 25th March, 2020 till 15th September, 2020 shall be excluded while computing the period of 180 days for the purpose of bringing the Corporate Insolvency Resolution Process to its logical conclusion. To remove any ambiguity, it is*

*clarified that the extended period of 90 days beyond 180 days shall commence only after the prescribed period of 180 days after exclusion of aforesaid period in terms of this judgment is over. Appeal alongwith I.A. Nos. 2563/2020, 2564/2020 and 2565/2020 stands disposed of.*

18. In the light of above Judgement of Hon'ble NCLAT and taking into consideration the various notifications issued by the Centre Government and State Government and other Authorities, this bench feels that this is a fit case to exclude the lockdown period from 23.03.2020 to 31.08.2020 and further extend 90 days period from 12.10.2020 to 09.01.2021 for completing the Resolution Process.
19. With the aforesaid observations, the present IA No. 1761 of 2020 is allowed and disposed of.

Sd/-

**SHYAM BABU GAUTAM**  
Member (Technical)

Sd/-

**H. V. SUBBA RAO**  
Member (Judicial)