

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH [SPECIAL], COURT NO. II,
KOLKATA**

I.A. (IB) No. 1392/KB/2023
In
Company Petition (IB) No. 372/KB/2019

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

IN THE MATTER OF:

Avani Towers Private Limited

... Corporate Debtor.

And

IN THE MATTER OF:

JITENDRA LOHIA,

Resolution Professional of the Corporate Debtor

... Applicant.

Date of Hearing: August 09, 2023

Date of Pronouncement: October 18, 2023

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI BALRAJ JOSHI, MEMBER (TECHNICAL)

Appearance:

For Resolution Professional: Shaunak Mitra, Adv.; Orijit Chatterjee, Adv.; Mr. Shubham Raj, Adv. and Ms. Swati Dalmia, Adv.

O R D E R

PER Bidisha Banerjee, Member (Judicial):

1. This court is congregated through hybrid mode.
2. Heard the Ld. Counsel.
3. This instant Application is filed by the RP of the Avani Towers Private Limited, Corporate Debtor herein under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, (for brevity "I&B Code") read with Rule 11 of the NCLT Rules, 2016, seeking the relief as: *to grant exclusion of CIRP period from 14th March, 2021 to 09th June, 2023 of Avani Towers Private Limited being effective from the date when order of the same is passed and/or any other order, may deem fit and proper.*
4. Ld. Counsel for the Applicant contends that vide an order dated 15.10.2019 the Corporate Insolvency Resolution Process was initiated in relation to Avani Towers Private Limited. The Committee of Creditors in its meeting held on

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14.11.2019 appointed Jitendra Lohia as the Resolution Professional which was subsequently approved by this Adjudicating Authority by an order dated 15.11.2019.

5. The Ld. Counsel further contends that the Expression of Interest was originally issued on 28th December, 2019 and re-issued on 13.03.2020. However, due to pandemic the prospective resolution applicants could not submit their EOI within the prescribed timelines. For the same revised EOI has been issued with extended timelines.
6. It is submitted that the Resolution Professional while discharging his duty to take control and custody of the assets of the Corporate Debtor filed an application before this Hon'ble Tribunal, for taking control and custody of a land admeasuring around 10.19 acres at Ramrajtalla. Although, this Tribunal had allowed the said application by an order dated 12.02.2020, however, the same was subsequently assailed before the Hon'ble NCLAT, and then before Hon'ble Supreme Court of India. Vide an order dated 14th March, 2023 the Hon'ble Apex Court upheld the order dated 12th February, 2020 passed by this Tribunal.
7. It is claimed that firstly, on account of the outbreak of the Covid-19 pandemic and hereafter the status quo order(s) passed by the Appellate Tribunal / Hon'ble Apex Court during the pendency of the aforesaid appeals, no substantial progress could be made in relation to the CIRP of the Corporate Debtor.
8. The Ld. Counsel further submits that during the pendency of the appeal before Hon'ble Supreme Court, the Hon'ble Court by an order dated 13.5.21 had directed the parties to maintain status quo. Additionally, the Hon'ble Court also directed that if any plans are received by the Resolution Professional, the same shall be kept in sealed cover with the NCLT, Kolkata.
9. It is stated that the Resolution Professional had subsequently received two resolution plans, however, in compliance with the aforesaid order the same had been submitted with the Registry, NCLT, Kolkata Bench. Vide an order dated

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14.03.2023 the Hon'ble Supreme Court dismissed the two appeals. Immediately, thereafter the Resolution Professional took steps to take the two resolution plans submitted with the Registry, NCLT, Kolkata Bench and proceed with the CIRP of the Corporate Debtor. After all efforts, and repeated follow-ups with the Registry, NCLT, Kolkata Bench, the Resolution Professional received the two resolution plans on 09.06.2023.

- 10.** We have perused the documents furnished by the Ld. Counsel and the Orders passed by the Hon'ble NCLAT and the Apex Court. Upon perusal, we **allow** the exclusion of the period of 88 days, i.e., the period commencing from the date when the Hon'ble Supreme Court had dismissed the appeals filed against the Applicant, i.e., on **March 14, 2023** and till the time the Applicant received the two resolution plans as submitted with the Registry, NCLT, Kolkata Bench, i.e., on **June 09, 2023**. We would rely upon the judgment passed by the Hon'ble Apex Court in *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta* reported in (2020) 8 SCC 531: MANU/SC/1577/2019 that:

“74. [...] This provision is to get over what is stated in the judgment in ArcelorMittal India (supra) at paragraph 86, that the time taken in legal proceedings in relation to the corporate resolution process must be excluded from the timeline mentioned in Section 12. [...]”
(Emphasis Added)

- 11.** I.A. (IB) No. 1392/KB/2023 is **allowed** and **disposed of** accordingly.
- 12.** Urgent Certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 18th Day of October, 2023.

Bose, R. K. [LRA]