



IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

IA(IBC)/1606(CHE)/2023 in IBA/617/2020

(Filed under Sec. 12(2) & 60(5) of the Insolvency & Bankruptcy Code, 2016)

In the matter of M/s. Easun Products of India Private Limited

Ravindra Chatruvedi

Resolution Professional of

Easun Products of India Private Limited

31-E, BKC Center, Laxmi Industrial Estate,

New Link Road, Andheri (West), Mumbai – 400 053

... Applicant

Present:

For Applicant

: *Ayush J Rajani, PCA*

Order Pronounced on 12th September 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

This Application has been filed by the Resolution Professional in respect of Corporate Debtor viz. **Easun Products of India Private Limited** under Section 12(2) of IBC r/w Rule 11 of NCLT Rules seeking reliefs as follows:

- i. *Allow an extension of time 60 days from 330th day of CIRP i.e. from 15th August 2023 thereby CIRP period would conclude on 14th October 2023, in terms of Section 12 of the Code r/w Rule 11 of the NCLT Rules, 2016*

S. Venkataraman

[Signature]



ii. Exclude the period from 15.08.2023 till the date of disposal of the present application.

iii. Pass necessary order in case if prayer (i) or (ii) could not be allowed by this Hon'ble Adjudicating Authority then in that case the Hon'ble Adjudicating Authority grant permission to Applicant to conduct one more CoC meeting and put resolution for liquidation of Corporate Debtor before CoC for voting and file the liquidation application with Hon'ble Adjudicating Authority.

2. The Corporate Insolvency Resolution Process ('CIRP') in respect of Corporate Debtor was initiated on 19.09.2022 and the public announcement in Form-A was made on 21.09.2022. The Applicant received the claim from 3 Financial Creditors and accordingly the CoC was constituted as follows:

S. NO.	NAME OF THE MEMBER	NATURE OF RELATIONSHIP	CLAIM ADMITTED (RS. IN CRORES)	VOTING SHARE (%)
1	Asset Reconstruction Company (India) Ltd	Secured Financial Creditor	184.12	59.70%
2	AXIS Bank Limited	Secured Financial Creditor	72.59	23.54%
3	DBS Bank India Limited	Secured Financial Creditor	51.70	16.76%
	Total		308.41	100%

S Venkatesh



3. It is stated that the 2nd CoC meeting was held on 10.11.2022, in which the CoC unanimously voted for appointment of the Applicant as the Resolution Professional in respect of the Corporate Debtor.

4. Thereafter it is stated that the RP published Form-G inviting expression of interest on 16.11.2022. It is also stated that the Form-G was again re-published on 14.12.2022 and in response to the same one M/s. Khyati Realtors Ltd submitted expression of interest, however, prior to the publishing of the final list of the Prospective Resolution Applicant (PRA) the said M/s. Khyati Realtors Ltd., withdrew its application for the reasons that huge amounts of statutory dues are outstanding and various litigations are pending and also there is no independent access to the registered office owned by the Corporate Debtor.

5. It is stated that in the meantime, the 180 days CIRP period in respect of Corporate Debtor came to end on 18.03.2023. The RP accordingly, moved IA(IBC)/422(CHE)/2023 and this Tribunal vide its order dated 16.03.2023 extended the CIRP period for 90 days and as such the 270th day of the CIRP in respect of the Corporate Debtor was extended till 16.06.2023.

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6. It is stated that the Applicant, after receipt of the extension order from this Tribunal, once again published Form-G on 27.03.2023. It is stated that in response to the same, Applicant has received multiple enquiries.

7. It is stated that as on the last date of receipt of the Resolution Plan on 04.06.2023, the Applicant has received two Resolution Plans by the PRAs viz. (i) Nakshatra Corporate Advisors Ltd and (ii) Mr. Sathyanaryan Kabra and others.

8. In the meantime, the 270 days of CIRP in respect of Corporate Debtor was about to end on 16.02.2023 and RP accordingly moved IA(IBC)/1080(CHE)/2023 and this Tribunal vide its order dated 06.07.2023 extended the CIRP in respect of the Corporate Debtor for 60 days from 16.06.2023 to 15.08.2023. Accordingly, the 330th day period in respect of Corporate Debtor was required to be completed on or before 15.08.2023.

9. It is stated that after revaluation of the Resolution Plan submitted by the two PRAs, the CoC requested for the revision of the Resolution Plan since value submitted by both of the PRAs were meager.

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10. It is stated that one of the PRA Mr. Sathyanarayan Kabra has submitted the revised proposal for CoC and other PRA M/s. Nakshatra Corporate Advisory Ltd has not submitted any revised proposal. It is stated that the PRA viz. M/s. Nakshatra Corporate Advisory Ltd has informed the RP through email that due to certain developments and inputs received from the Liquidator of M/s. Easun Reyrolle Limited (*in Liquidation*) (*a group company of the Corporate Debtor*) about facing difficulties in selling those properties which is located in the same premises of the present Corporate Debtor, they do not wish to submit a resolution plan.

11. It is stated that the Resolution plan of Mr. Sathyanarayan Kabra was received in a sealed cover on 22.07.2023 and the same was opened in front of the CoC members in the meeting held on 24.07.2023. It is stated that the amount offered in the revised resolution plan is less than 50% of the financial proposals and less than the liquidation value. Thereafter, no decision was taken on the resolution plan.

12. In the meantime, since 330 days CIRP in respect of Corporate Debtor was about to end on 15.08.2023, the RP sent an email to the Financial Creditors to conduct the 6th CoC meeting on 04.08.2023 in order



to ascertain in fate of the resolution plan submitted by the PRA Mr. Sathyanarayan Kabra. However, one of the CoC members namely, DBS Bank sent an email to the RP on 02.08.2023 stating that Resolution Plan submitted by PRA Sathyanarayan Kabra is not acceptable to them.

13. It is stated that in the 6th CoC meeting, the CoC members deliberated about the Resolution Plan submitted by Mr. Sathyanarayn Kabra and it was discussed that the resolution plan value offered by him is considerably lower than the liquidation value and also PRA Sathyanarayan Kabra has not provided a satisfactory reply to the queries raised on the resolution plan.

14. Pursuant thereto, the following Resolution was passed in the 6th CoC meeting held on 04.08.2023;

“Resolved that as per the discussion had at the meeting on the matters as recorded in Agenda No.A-6 above regarding the resolution plan submitted by Mr. Kabra will not be considered and to explore extension beyond 330 days u/s 12(3) r.w. Sec 60(5) to explore publication of Form G and inviting fresh EOI and resolution plan thereto, be and are hereby discussed, noted and unanimously approved by the participants and were thus taken on record”.



15. It is stated that one of the agenda items in 6th CoC meeting was to discuss about the liquidation of the Corporate Debtor however, the CoC members have unanimously decided to **defer** the said agenda as the same being consequential and decided to proceed further with the extension of CIRP period by 60 days beyond 330 days.

16. The Learned Counsel for the RP submitted that CIRP period can be extended beyond 330 days in certain circumstances. In support of the said contention, he relied upon the judgment of the Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steels through Authorized Signatory Vs Sathish Kumar Gupta & Others (2020) 8 SCC 531**. Reliance is also placed upon the Judgment of Hon'ble NCLAT in the matter of **Committee of Creditors of Trading Engineers International Ltd vs Trading Engineers International Ltd through RP in Company Appeal (AT)(Ins) No. 61 of 2021** and also in the matter of **Ramneek Goel vs Mr. Sunil Bajaj and others** in Company Appeal (AT)(Ins) No. 845 of 2023.

17. Heard the submissions made by the Learned Counsel for the RP and perused the records.



18. It is seen that in the present case, the Form – G was issued for three times. Pursuant to the same, the CoC received some Resolution Plans. The CoC evaluated in detail the Resolution Plan and found that the said Resolution Plan value is much less than the Liquidation value. After evaluating the same, the CoC rejected the Resolution Plan. Further, 330 days CIRP in respect of the Corporate Debtor already ended on 15.08.2023.

19. The Judgment of the Hon'ble NCLAT referred by the Applicant in the matter of **Ramneek Goel vs Mr. Sunil Bajaj and others** would not apply to the facts of the present case, since in the said case, after issuance of Expression of Interest, the RP received fresh Resolution Plans offering higher value and hence in order to give a fair chance to everyone, the CoC decided to issue a fresh Form – G. However, in the present case, there was only one Resolution Applicant whose Resolution Plan also was rejected by the CoC on the ground that it is lesser than the liquidation value. Also, there is no PRA at present with the RP or the CoC who wishes to offer higher value, for maximization of value of assets of the Corporate Debtor.

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20. Hon'ble Supreme Court in the case of **Committee of Creditors of Essar Steels through Authorized Signatory Vs Sathish Kumar Gupta & Others** (2020) 8 SCC 531, in para 127 has held as follows;

127. Both these judgments in *Atma Ram Mittal* [*Atma Ram Mittal v. Ishwar Singh Punia*, (1988) 4 SCC 284] and *Sarah Mathew* [*Sarah Mathew v. Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] have been followed in *Neeraj Kumar Sainy v. State of U.P.* [*Neeraj Kumar Sainy v. State of U.P.*, (2017) 14 SCC 136 : 8 SCEC 454] , SCC paras 29 and 32. Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant's case within the requisite period for no fault of the litigant, a provision which mandatorily requires the CIRP to end by a certain date – without any exception thereto – may well be an excessive interference with a litigant's fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigant's fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, inasmuch as the time taken in legal proceedings is certainly an important factor which causes delay, and which has made previous statutory experiments fail as we have seen from *Madras Petrochem* [*Madras Petrochem Ltd. v. BIFR*, (2016) 4 SCC 1 : (2016) 2 SCC (Civ) 478] . Thus, while leaving the provision otherwise intact, we strike down the word “mandatorily” as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that *ordinarily* the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the



Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation.

(emphasis supplied)

21. Hon'ble Supreme Court has categorically held that only under exceptional cases, the time can be extended by the Adjudicating Authority by exercising its discretion for a period beyond 330 days that too for '*short period*'. Further, the Hon'ble NCLAT in the matter of **Vivek Raheja, Resolution Professional**, in CA(AT)(Ins) No. 331 of 2021, in para 13 to 15 has held as follows;

13. In reality, the act of extending the 'Insolvency Resolution' beyond the time limit under section 12(3) of the Code is against the underlying policy of the Code for ensuring timely resolution of 'Company Insolvency'. Undoubtedly, an extension of time for extension of time for 'CIRP' is a 'critical arena'. However, the exercise of the power of extending the time limit by the 'Adjudicating Authority' in negation of the statutory provision of the Code may be desirable in an exceptional/extraordinary circumstances of a given case.

14. Be it noted, that 'speed' is the gist for the working of the 'Bankruptcy Code'. It cannot be gainsaid that the 'Corporate Insolvency Resolution' with approval of 'Plan of Resolution' is ultimately the exclusive domain of the 'Committee of Creditors'.



15. Bearing in mind the word 'mandatorily' found in Section 12(3) of the 'Insolvency & Bankruptcy Code, 2016' was struck down by the Hon'ble Supreme Court in the matter of Committee of Creditors of Essar Steels India Pvt.Ltd. V Satish Gupta reported in (2020) 8 SCC at Pg.531, this 'Tribunal' comes to a resultant conclusion that ordinarily the time taken pertaining to the Corporate Insolvency Resolution Process of the 'Corporate Debtor' must be completed within a period of 330 days from the date of commencement of Insolvency (including the extension and time consumed in legal proceedings). However, the exercise of power by the 'Adjudicating Authority' to extend the time period in negation of statutory provision of the 'Insolvency & Bankruptcy Code, 2016' may be desirable in an exceptional/extraordinary Circumstances of a given case by exercising sound 'Judicial discretion' with a view to find a suitable 'Resolution Plan' to prevent an aberration of justice

(emphasis supplied)

22. The Hon'ble NCLAT has also categorically held that the Corporate Insolvency Resolution Process of the 'Corporate Debtor' must be completed within a period of 330 days from the date of commencement of Insolvency (including the extension and time consumed in legal proceedings). Also, as per the Judgment of the Hon'ble Supreme Court in the matter of **Essar Steel** (*supra*), the 330 days period of CIRP can be extended only under exceptional circumstances, for the reasons like, only a '*short period*' of time is required for approval of a Resolution Plan.

23. In the present case, there is neither any Resolution Plan which is pending nor any Prospective Resolution Applicant who is willing to submit any Resolution Plan.



24. Further, the minutes of the 6th CoC would posit the fact that the CoC wishes to go ahead with a fresh issue of the EoI. The CoC, after rejecting the Resolution Plan, cannot perpetually seek for another round of CIRP from Form – G stage, since such a situation would go against the timelines prescribed under IBC, 2016. At this juncture, it is relevant to refer to the Judgment of the Hon'ble NCLAT in the matter of **Kridhan Infrastructure Pvt. Ltd. (Now Known as Krish Steel And Trading Private Limited) & Anr. -Vs- Venkatesan Sankaranarayan & Anr.** in *Company Appeal (AT) (Insolvency) No. 202 of 2020*, where in para 66 to 70 it was held as under;

“66. Be it noted, that ‘speed’ is the essence of the ‘I&B’ Code. A timely resolution of insolvency can always be preferred and it is improper for a court to stand over a winding up petition presented by a ‘Creditor’ for a very long and indefinite period of time, as per decision ‘Re Boston Timber Fabrication Ltd.’ (1984) BCLC 328(CA). In fact, the Legislature had made specific provisions in ‘public interest’ and to facilitate good ‘Corporate governance’. It cannot be forgotten that the ‘Bankruptcy Law Reforms Committee’ elected certain principles within which ‘I&B’ Code would function and one such principle is that the ‘I&B’ code specifies the time bound process, which will not be extended, to better preserve the ‘Economic Value of the Asset’.

67. Time limit specified in ‘I&B’ Code is the essence of the triggering process and the Insolvency Resolution Process. This is the prime reason behind the enactment of the Code. If an Adjudicating Authority extends the Insolvency Resolution Process beyond the time line mentioned u/s 12(3) of the code, the same will be in negation of the underlying policy behind the court of ensuring



timely resolution of Company Insolvency. Per contra, the exercise of this power, in violation of statutory provision may be desirable in an exceptional / extraordinary circumstance(s). In fact, a 'Resolution Applicant' has no vested right that his 'Resolution Plan' be considered.

68. Ordinarily, the 'Adjudicating Authority' is to follow the discipline of 'I&B' code enacted by the Parliament, especially to streamline the 'Resolution' of 'Corporate Insolvency matters' involving 'Corporate Insolvency' and the same require the experts' decision. Of course, it is not open to an 'Adjudicating Authority' to take upon itself, the onus of supervising the intricacies of 'Resolution Process'. Although, the resolution of 'Corporate Insolvency' to ensure the survival of a company / enterprise as a going concern is one of the key objectives of the 'I&B' code but the rider is this must not come at the cost of efficiency, as opined by this Tribunal. To put it succinctly, a 'Timely Liquidation' is preferred over endless 'Resolution process'.
69. One cannot brush aside an important fact that longer the delay, more likely it is the 'Liquidation' will only be the sensible answer. No doubt, the 'Liquidation value' tends to go down with an efflux of time as many 'Assets' suffer from high economic depreciation value. Looking at from the point of view of creditors a good realisation can generally be secured if a company/firm is sold as a going concern. If one construes in the teeth of the object sought to be achieved by the 'I&B' Code and in the light of consequences provided by Section 33 of the Code, therefore, makes it unerringly clear that the periods mentioned in Section 12 are mandatory and cannot be extended. If time specified by statute is changed, then it will give room for wider complications/implications, in the considered opinion of this Tribunal.
70. Also, even in 'Liquidation', the realisation will be lower when there are delays and in fact, delays cause value destruction/reduction. Moreover, the failure of some business plan is an integral part of the process of 'market economy'."
(emphasis supplied)



25. In order to grant extension beyond 330 days, the RP or the CoC is required to show that there is a high prospect that he may receive a Resolution Plan. However, no such viable prospects were placed before us. Thus, as to the facts of the present case, the Applicant has not substantiated any exceptional circumstances to order for extension of CIRP, as per the decision of the Hon'ble Supreme Court in the matter of **Essar Steel** (*supra*). Further, the entire CIRP process in relation to the Corporate Debtor cannot be started afresh from the stage of issuance of Expression of Interest, as the same would entirely upset the CIRP timelines prescribed under IBC, 2016.

26. The Hon'ble NCLAT in the matter of **Dr. Palani G Periasamy -Vs- CA M. Suresh Kumar Liquidator, Dharani Sugars and Chemicals Limited & Anr.** in *Company Appeal (AT) (CH) (Ins) No. 194/2023*, while dealing with the similar circumstances, has held in para 9 as follows;

9. We have heard Counsel for the Appellant and perused the record with his able assistance. We could not find any substance in the argument of Counsel for the Appellant because the CoC had time and again extended the period which was allowed by the Adjudicating Authority but two resolution plans in respect of the Corporate Debtor were rejected with the majority of the vote of 91.92% by the CoC and at that time the CoC was aware that 330 days' time period in respect of the Corporate Debtor had already



been over. Moreover, it has been categorically observed by the Adjudicating Authority that neither any plan was pending nor any application under Section 12A of the Code was pending for their consideration, therefore, the period of CIRP cannot be extended on the flimsy grounds much beyond the period of 330 days as has been held by the Hon'ble Supreme Court in the case of Essar Steels Through Authorised Signatory (Supra). Therefore, the applications filed for extension of time by the RP has rightly been dismissed and the application filed by the RP for an order of liquidation of the Corporate Debtor has rightly been passed which does not require interference by this Tribunal.

10. In view of the aforesaid discussion, we do not find any merit in the present appeal and the same is hereby dismissed. However, without any order as to costs.

27. In view of the dispositive reasoning as stated *supra*, we are of the view that no 'exceptional circumstance' has been made out to order for an extension beyond 330 days and as such the prayer seeking for extension of CIRP period stands **rejected**.

28. Since the 330-day period in respect of the Corporate Debtor has already come to an end on 15.08.2023 and that the extension application beyond 330 days has been dismissed by this Tribunal, in terms Section 33(1)(a) of IBC, 2016 we are inclined to order for Liquidation of the Corporate Debtor.



29. IBBI vide its power vested under Section 34(4)(b) has recommended that an Insolvency Professional other than the RP / IRP shall be appointed as Liquidator, in all the cases where an order of Liquidation is passed.

30. As a consequence, the Corporate Debtor is ordered for liquidation as per Section 33(1)(a) of IBC, 2016. From the latest list provided by IBBI, we hereby appoint **Mr. G. Mukundan** with **Reg. No. IBBI/IPA-001/IP-P01419/2018-2019/12162** (email id:- g.mukundan1955@gmail.com) as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

S. Venkatesh



- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- e) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- f) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.
- g) The Liquidator is directed to take necessary steps to sell the Corporate Debtor as a Going Concern as per Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016

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31. The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

32. The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

33. Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

34. Accordingly, IA(IBC)/1606(CHE)/2023 stands **ordered**.

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond