IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH – II, CHENNAI

IA(IBC)/1611(CHE)/2023

In

CP(IB)/56(CHE)/2022

(filed under Section 12(2), 12(3) read with 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

In the matter of ***CETHAR CONSTRUCTIONS LIMITED***

MR. R. THAMODHARAN
Resolution Professional of
M/s. Cethar Constructions Limited
No. 107, Dhruvatara Apartments,
241, Dr. Rajendraprasad Road, Tatabad,
Coimbatore – 641 012.

... Applicant

Order Pronounced on ***17th November 2023***

CORAM

SHRI SANJIV JAIN, MEMBER (J)
SHRI RAVICHANDRAN RAMASAMY, MEMBER (T)

Appearances:

For Applicant : Mr. B. Dhanaraj, Advocate

ORDER

(Hearing Conducted through VC)

1. Under consideration is an application filed by the Applicant under Section 12 (2), 12(3) read with 60(5) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as ("**the Code**") read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking reliefs as follows:

   a) *To allow the extension of the Corporate Insolvency Resolution Process period of the Corporate Debtor M/s. Cethar*

Constructions Limited by 60 days from 23.08.2023 up to the 330th day falling on 21st October 2023;

b) *Pass such further order orders as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.*

2. The brief facts are that, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) vide order dated 25.11.2022. It is stated that the Corporate Debtor is a 99.96% subsidiary Company of M/s. Cethar Limited, under Liquidation and that the records and documents regarding the Corporate Debtor is shifted to the holding Company M/s. Cethar Limited.

3. It is stated that the Corporate Debtor has availed extension of 90 days of Corporate Insolvency Resolution Process from 24.05.2023 up to 22.08.2023 vide order dated 15.06.2023 in IA(IBC)/935(CHE)/2023.

4. It is stated that the address of the Corporate Debtor is not as mentioned in the master data of MCA portal. It is stated that, the RP visited the premises as mentioned by the former MD and Chairman of the Corporate Debtor, to take possession and custody of the documents, plant and machineries and the records of the Corporate Debtor however, the same was sold by the Liquidator of the holding company. The securities at that places had informed the RP that the place does not belong to the Corporate Debtor.

5. It is stated that the RP attempted all possible ways to obtain the documents, accounts and books regarding the Corporate Debtor to proceed with the Corporate Insolvency Resolution Process. It is stated that the Applicant has preferred an application under Section 19(2) of the code vide IA(IBC)/541(CHE)/2023 seeking direction from this

Adjudicating Authority against the suspended directors of the Corporate Debtor to handover the assets, documents, audited financials and other documents related to the Corporate Debtor. The same is listed for hearing on 16.11.2023.

6. In the meantime, the fact, that the 270 days of the Corporate Insolvency Resolution Process period was expiring on 22.08.2023, was informed to the Committee of Creditors (CoC). The Sole member of the CoC in its 4th CoC meeting held on 17.08.2023 taking into consideration the circumstances and the difficulties existing to trace the assets and records of the Corporate Debtor unanimously resolved as follows,

> *"Resolved to authorise the RP to apply for extension of the Corporate Insolvency Resolution Process Period as per Section 12(2) of IBC, 2016 by 60 days from 23.08.2023 till 21.10.2023, since the assets of the Corporate Debtor could not be taken over and due to non-availability of the required information for preparation of Information Memorandum and other documents for proceeding with the Corporate Insolvency Resolution Process."*

7. Heard the submissions perused the documents on record. From the submission made it is seen that this Adjudicating Authority vide its order in IA(IBC)/935(CHE)/2023 dated 15.06.2023 had only extended the Corporate Insolvency Resolution Process period of the Corporate Debtor for 90 days. Considering the above circumstances, it is relevant to refer Section 12 of the code, the same is as extracted hereunder,

> *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 the application to initiate such process.

(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 by 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.*

8. The Applicant has sought extension for the second time for a period of 60 days and has stated that the RP is unable to collate the documents relating to the Corporate Debtor to issue Information Memorandum and to proceed towards the Corporate Insolvency Resolution Process and there is also an application u/s Section 19 (2) of the code pending before

this Adjudicating Authority for actions. 2nd proviso clearly reads that the CIRP period shall be mandatorily completed within 330 days from the date of commencement. In the instant case, 270 days of the Corporate Debtor expired on 22.08.2023. Thus, we are of the view that there is 60 days available for the Corporate Debtor to proceed further with the Corporate Insolvency Resolution Process. Hence, in view of the resolution passed by the CoC in its 4th CoC and taking into consideration the proviso in Section 12 of the code, we find that extension of 60 days of CIRP period of the corporate debtor is well within the 330 days as mandated by the code.

9. 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***, held as under,

> *"… 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. …"*

10. In view of the above, the Corporate Insolvency Resolution Process period of the Corporate Debtor is extended for a period of 60 days from 23.08.2023 till 21.10.2023. The RP is directed to expedite the Corporate Insolvency Resolution Process of the Corporate Debtor. This Application is *allowed* in terms of the above direction.

11. Accordingly ***IA(IBC)/1161(CHE)/2023*** stands ***disposed of.***

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Mohanpriya