

**NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**Under Section 12(2) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.**

**I.A. NO. 1069 OF 2020**

Filed by

**Mr. Ashutosh Agarwala,  
Resolution Professional,**

M/s Cox & Kings Ltd.

1<sup>st</sup> floor, Turner Morrison Building, 16 Bank Steet, Mumbai 400 023

**...Applicant**

In the matter of

**C.P. (IB) No. 2640 OF 2019**

**Ratan India Finance Pvt. Ltd.**

5<sup>th</sup> Floor, Tower-B, Workmark 1, Aerocity, New Delhi- 110037

**...Financial Creditor**

**versus**

**M/s Cox & Kings Ltd.**

1<sup>st</sup> floor, Turner Morrison Building, 16 Bank Steet, Mumbai 400 023

**...Corporate Debtor**

**Order Pronounced on: 07.10.2020**

**Coram:**

**Smt. Suchitra Kanuparthi, Member (Judicial)**

**Shri. Shyam Babu Gautam (Member Technical)**

**Appearance:**

**For the Applicant:.** Adv. Nirman Sharma for the RP

**Per: Smt. Suchitra Kanuparthi, Member**

**ORDER**

1. This is an Interlocutory Application filed by the Resolution Professional Mr. Ashutosh Agarwala (hereinafter called as “the applicant”) of Cox & Kings Limited (hereinafter called as “the Corporate Debtor”) under Section 12(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “the Code”) seeking

an extension of the period of the Corporate Insolvency Resolution Process of the Corporate Debtor.

Facts of the case are as under:

- i. The Company Petition filed by one Ratan India Finance Private Limited (hereinafter called as “the Financial Creditor”) bearing Company Petition No. 2640/I&B/MB/2019 under Section 7 was admitted by this Tribunal vide an order dated 22.10.2019 and Mr. Alok Kumar Agarwala was appointed as an Interim Resolution Professional (IRP).
- ii. During handing over the assets and effect of the Corporate Debtor by IRP, and his team were given to understand that the ex-management of the Corporate Debtor and the erstwhile Statutory Auditors of the Corporate Debtor were not cooperating in providing information. The IRP was therefore constrained to file Misc. Application No. 3709 of 2019 and Misc. Application 4120 of 2019 against the suspended Board of Directors and the erstwhile Statutory Auditors, *inter alia* seeking appropriate directions against them to cooperate with the IRP in the CIRP of the Corporate Debtor. By orders dated 20.11.2019 and 06.01.2020, this Tribunal directed the suspended Board of Directors and the erstwhile Statutory Auditors to co-cooperate with the IRP in providing the required information.
- iii. Further, owing to continued non-cooperation by the respondents, the IRP filed Misc. Application no. 12 of 2020 before this Tribunal seeking that the respondents therein (erstwhile management) be refrained from leaving the country pending the CIRP, and pending the hearing and disposal of M.A. 12 of 2020, the respondent therein was directed that they shall seek permission of this tribunal before travelling out of the country.
- iv. Thereafter, the Committee of Creditors of Cox and Kings Limited acting through YES Bank Limited filed an

application under Section 22(3)(b) for appointment of a resolution professional, Mr. Ashutosh Agarwala in place of the existing Interim Resolution Professional Mr, Alok Kumar Agarwal. Accordingly, this Tribunal appointed the applicant herein as the Resolution Professional of the Corporate Debtor by an order dated 10.01.2020.

- v. The present application has been filed by the Applicant pursuant to the decision taken by the CoC of the Corporate Debtor with a e-voting of 92.1% in its meeting held on 27.03.2020. The minutes of this meeting are annexed and marked as Annexure A-F (colly).
2. The applicant submits that the period of Corporate Insolvency Resolution Process of the Corporate Debtor of 180 days expired on April 19, 2020. Therefore, the period from March 23, 2020 until April 19, 2020 (a total of 27 days) overlapped with the Nationwide lockdown imposed on account of Covid-19 and therefore, this period should be granted to the Corporate Debtor from 01.08.2020.
3. The applicant further submits that along with the aforesaid period of 27 days, a period of 150 days extension as is agreed by the CoC should also be considered and granted. In view of this, once the lockdown is lifted, the CIRP should be extended for a period of 177 days from 01.08.2020.
4. In view of forgoing circumstances, the present application has been filed by the Applicant under Section 12(2) of the Code, to seek an extension of the period of the Corporate Insolvency Resolution Process of the Corporate Debtor.
5. The applicant herein prays for an extension of a period of 150 days from calculating it within 180 days of the CIRP. He seeks for extension between the dates 28.08.2020 and 24.01.2021 because

of the Nationwide Lockdown which was announced on 23.03.2020, the unlock process of which is still in progress.

6. The counsel for the Applicant 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.

7. 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.”*

8. 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.

9. 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.

10. 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.
11. 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.”*
12. 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.

13. 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.
14. The period extended of 27 days (i.e. from March 23, 2020 to April 19, 2020- being the period of corporate insolvency resolution process which overlapped with the Covid-19 lockdown), from 01.08.2020 to 27.08.2020. And further extend the period of 150 days from 28.08.2020 to 24.01.2021 for the Corporate Insolvency Resolution Process of the Corporate Debtor.
15. By this order, we are providing the applicant herein with the maximum time permissible to be extended under law i.e. of 330 days. Now we believe that there is sufficient time available for completion of CIRP and therefore, no further extension will be granted in case the process is not completed within this stipulated time, the CIR process being a time bound process and upon the fact that the Code does not provide for any further extension.
16. With the aforesaid observations, the present IA No. 1069 of 2020 is allowed and extension is granted and the time period consumed in litigation is also excluded. Hence, this application stands disposed of.

Sd/-

**SHYAM BABU GAUTAM**  
Member (Technical)

/rakesh/

Sd/-

**SUCHITRA KANUPARTHI**  
Member (Judicial)