

S.No.102

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
14-03-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

IA(IBC)/200/2022
CP(IB) No.599/7/HDB/2019
U/s 7 of IBC, 2016

IN THE MATTER OF:

Punjab National Bank **...Financial Creditor**

Vs

Saptarishi Hotels Pvt Ltd **...Corporate Debtor**

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

O R D E R

Learned Counsel Mr. Amir Bavani for Resolution Professional (RP) Mr. TSN Raja is present(vc).

Orders pronounced in IA(IBC)/200/2022 pronounced vide separate sheets. In the result, this IA(IBC)/200/2022 is disposed of as follows.


MEMBER (T)

Srinivas


MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -1**

**IA (IBC) 200/2022 in
CF (IB) No. 599/7/HDB/2019**

*Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read
with Rule 11 and 13 of National Company Law Tribunal Rules, 2016*

Filed by

Mr. TSN Raja

Resolution Professional of M/s. Saptarishi Hotels Private Limited

IN THE MATTER OF

Punjab National Bank

... Financial Creditor

AND

M/s. Saptarishi Hotels Private Limited

... Corporate Debtor

Date of order: 14.03.2022

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Applicant: Shri Amir Bavani, Advocate



PER: BENCH
ORDER

1. This application is filed by the RP seeking extension of CIRP period by 60 days as per the decision taken in the 18th COC meeting as there is no clarity from the NITHM/ Govt of Telangana on terms of renewal of lease.
2. The company petition was admitted on 18.01.2021 and COC was formed by the Applicant. The applicant published Form G (Invitation of Expression of Interest). In the 4th COC meeting, Director of NITHM informed about NITHM's Board Meeting wherein the Board decided to recommend to the Govt. of Telangana to permit renewal of lease beyond 33 years for a further period of 33 years. Meanwhile, the Director of NITHM informed the COC that the terms and conditions of new lease agreement to be entered into with the SRA, will be decided by the Board of NITHM and will inform the COC shortly and based on that RP advised the Prospective Resolution Applicants to submit revised plan within one week from the date of intimation of new lease terms and conditions.
3. The details of exclusion and extension granted by this Adjudicating Authority are tabulated below:

Sl No.	IA No.	Order date	Order passed
1.	327/2021	14.07.2021	Granted 99 days exclusion



2.	629/2021	01.11.2021	Granted 90 days extension
3.	61/2022	18.01.2022	Granted 60 days exclusion

4. After excluding 99 days the CIRP period got extended from 20.07.2021 to 27.10.2021 and 270 days of CIRP came to an end on 25.01.2022. Due to Omicron variant, the Hon'ble Supreme Court directed extension in period of limitation from 15.03.2020 to 28.02.2022. After excluding 60 days from 270 days, the CIRP period of 270 days gets concluded on 26.03.2022.
5. The revised plans were submitted by the Prospective Resolution Applicants. However, due to non-finalization of lease terms the PRA's submitted conditional plans.
6. In 18th COC meeting, the Director of NITHM apprised the CoC about the mail issued to Chief Secretary, Telangana Government, detailing the initiation of CIRP process and the need to renew the lease before 26.03.2022 as CIRP period is coming to an end and that they are awaiting for the reply from Govt. for issue of GO, regarding the lease rentals, lease period, etc. Thus, submitting, prayed the Tribunal for extension of 60 days for repeating the EOI process on "as is where is basis".
7. Therefore, the Point for consideration by this Tribunal is;



Whether the grounds pleaded in the application seeking extension of time for completion of CIRP, are tenable under the IBC and the relevant IBBI Regulation?

8. We have heard the Ld. Advocate Shri. Amir Bavani, for the Resolution Professional, perused the record and the case law.

POINT.

Whether the grounds pleaded in the application seeking extension of time for completion of CIRP, are tenable under the IBC and the relevant IBBI Regulation?

9. Admittedly, this application seeking one more extension of 60 days for completion of CIRP, has been filed in the backdrop of availing of the two exclusions for a total period of 159 days and one extension of 90 days, once again reiterating the same ground, which is nothing but one of the “conditions” put forth by the two out of the four *prospective* resolution applicants, Viz, M/s. Anirudh Agro Farms and M/s. Shreemukh Builders that the lease should be allowed be renewed by another 33 years lest, the first payment will not be made, on the *premise* that the director of NITHM, who is one of the members of CoC has ‘informed’ the CoC that the clause enabling *renewal* of lease by another term is under consideration by the Government of Telangana.
10. Needless to say, that the time lines prescribed under IBC must be strictly adhered to lest one of the important the aims and objectives of



IBC, namely, maximization of asset value will be diluted. It is on record that Tribunal has admitted the company petition on 18.01.2021, thereafter the COC has been formed and Form G Invitation of Expression of Interest, for short, 'IEFI', has been published on 04.04.2021. As per section 12(1) of IBC, Corporate Insolvency Resolution Process, for short, 'CIRP', is expected to be completed within 180 days from the date of admission of the application for initiation of such process. As per the amended proviso, inserted w.e.f.16.8.2019 in Section 12 IBC, the CIRP shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extensions and exclusions granted under this section.

11. Hon'ble Supreme Court of India, in Committee of Creditors of **Essar Steel vs Satish Kumar Gupta & Ors**, while striking down, the word "mandatorily" used in the amended proviso 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, further held that,

"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. (Emphasis is ours).

“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 is ours). (Emphasis is ours).

12. Thus, the essence of the ruling, supra, being that the discretionary power of this Adjudicating Authority to extend time can be exercised only by keeping the certain parameters most of which are stated in the above ruling, we shall now proceed to examine whether the pleas put forth for extension of time will meet the above parameters besides the tenability of the pleas as put forth, under the IBC and the relevant IBBI Regulation?
13. As stated herein above, Form G (Invitation of Expression of Interest) has been published on 04.04.2021. The last date for submitting EOI has been fixed as 27/04/2021. The minutes of the meeting of the members of CoC dated 25/02/2022 states that out of the *four* Prospective Resolution Applicants, two applicants, namely, North East Leonia Tourism P Ltd and M/s. Maha Lakshmi Profiles have expressed their inability to continue, citing the stalemate as the reason and sought for return of the money. The other two resolution plans submitted by the prospective resolution applicants, Viz, Ms/ Anirudh Agro Farms and M/s. Shreemukh Builders, are undoubtedly, conditional as both these



applicants have been insisting that existing lease in favour of the CD, should have a renewal clause for another 33 years lest the first payment will not be made besides that the plan submitted is subject confirmation of clause relating to renewal of lease by another 33 years, which is evident from the minutes of COC meeting dated 13/01/2022.

14. The petitioner has claimed that NITHM, one of the members of COC, has informed (no record is filed before us) that the clause providing for renewal of the lease as conditioned by the above two prospective resolution applicants is under consideration by the Government of Telangana, the Resolution Professional at the behest of the COC has been filing applications for exclusion as well as extension of time from time to time, including the present application in hope of government of Telangana, would accept the request for incorporation of renewal clause in the lease document so that it can comply the above "conditions" of the prospective resolution applicants once the time sought for is granted. Therefore, it is clear that the above ground put forth by the applicant does not fit within any of the parameters stated in the above ruling supra.

15. In so far as the tenability of the ground on which the present application has been founded, it is to be noted that in terms of sub clause 7 of IBBI (Resolution Process for Corporate Persons) Regulation 36A, which is as below....

36A (7): An expression of interest shall be unconditional and be accompanied by-



- (a) an undertaking by the prospective resolution applicant that it meets the criteria specified by the committee under clause (h) of sub-section (2) of section 25;
 - (b) relevant records in evidence of meeting the criteria under clause (a);
 - (c) an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable;
 - (d) relevant information and records to enable an assessment of ineligibility under clause (c);
 - (e) an undertaking by the prospective resolution applicant that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process;
 - (f) an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code; and
 - (g) an undertaking by the prospective resolution applicant to the effect that it shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.
16. A prospective Resolution Applicant is required to submit an unconditional EOI within the time stipulated under the invitation, which shall not be less than fifteen days from the date of the issue of invitation. Form G (IFEI), in this case has been published on 04.04.2021 by the RP clearly discloses that the property which is ⁱⁿ a 4 star hotel is in a **leased land**. Form-G /IFEI admittedly did not contain any assurance of incorporation of renewal clause in the existing lease document.
17. In the case on hand, since the plans submitted by the above Prospective Resolution Applicants being conditional, the Resolution Professional



19. Thus, it as clear as crystal that the CoC, instead of rejecting at the threshold the resolution plans submitted by the prospective resolution applicants Viz, Ms/ Anirudh Agro Farms and M/s. Shreemukh Builders, as the same being conditional ~~and~~ ~~the~~ ~~same~~ ~~being~~ ~~conditional~~, has been rigorously pursuing “the cause” of the prospective resolution applicants by seeking exclusion and also extension of time, so that “the condition ~~by~~ these prospective applicants could be complied with. Therefore, allowing an application of this nature results in extending time to

perpetuate a 'wrongful act' by the CoC and the Resolution Professional, which is neither the intent nor the object of IBC, hence relief prayed for is liable to be rejected out-rightly.

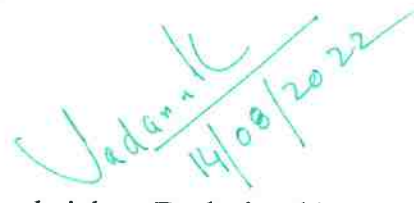
20. That apart, when not only the 'insertion' of the necessary provision for renewal of lease in the existing lease document, but also the fixation of the quantum of the period of the purported renewal, apart from being in the *exclusive territory* of the Government of Telangana, are certainly *uncertain* in as much as, the Government may or may not agree for the said condition. Moreover, as no time line is provided for taking a decision by the Government on the subject issue, we are unable find any rationale behind seeking further extension of time for completion of CIRP.
21. We are fully conscious of the fact that, resolution of corporate insolvency, within the time line prescribed, is the prime aim and objective of IBC and liquidation is the *ultimate* resort. However, we cannot under the guise of insolvency resolution, allow the CoC or the Resolution Professional, herein to pursue the cause of this nature which is, *per se*, contrary to the IBBI Regulation, *supra*, besides meant for the 'comfort' of the prospective resolution applicants.
22. We therefore do not hesitate to say that the members of CoC and the Resolution Professional are responsible for the loss of time prescribed under the Code, which is valuable and limited for completion of CIRP. Hence, we hereby decline the relief prayed for in this petition and direct the CoC to forthwith decide on the conditional resolution plan submitted by Ms/ Anirudh Agro Farms and M/s. Shreemukh Builders,



keeping the provisions of IBC and the relevant IBBI Regulations. In the event of withdrawal of the conditions, *supra*, by the afore said prospective applicants then the resolution professional shall proceed to complete the CIRP within 270 days, which period shall be calculated by taking into consideration all the exclusions and the extensions so far granted. In order to facilitate such resolution, we hereby, *Suo moto*, grant *exclusion* of the time consumed in pursuing this application, i.e., from 1st March 2022 till the date of this Order. In default, the CoC shall resort to the next step as provided under IBC, without consuming any further time on pursuing the existing conditional plans, since any further delay in taking necessary steps will result in further deterioration of the already eroded asset value. Needless to say, that, even in liquidation the company can be sold as a going concern.

23. This petition is therefore disposed of accordingly. No costs.


(Veera Brahma Rao Arekapudi)
Member (Technical)


(Dr. N.V. Ramakrishna Badarinath)
Member (Judicial)

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