

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH – III

C.A. No. 815/C-II/ND/2018
in
C.P. No. IB – 470/ND/2017

In the matter of Section 7 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Amit Kumar Malik

...Financial Creditor

Versus

Kindle Developers Pvt. Ltd.

...Corporate Debtor

In the matter of:

**Kashi Viswanathan Sivaraman,
Partner,
AAA Insolvency Professionals LLP,
E-10A, Kailash Colony,
New Delhi – 10048.**

...Resolution Professional/Applicant

Order Delivered on: 14.01.2019

CORAM:

MS. INA MALHOTRA, MEMBER(JUDICIAL)

DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)

PRESENT – Ms. Shivani Kadian, Advocate for the Applicant



ORDER

Per Dr. V. K. Subburaj (Member Technical)

1. This application has been filed by the resolution professional ("RP"), Mr. Sivaraman, praying for time exclusion of 143 days from 09.03.2018 to 30.07.2018 from the Corporate Insolvency Resolution Process ("CIRP"). The facts which have led to the filing of this application are stated in the application as follows:

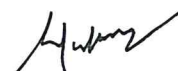
- a. On 09.03.2018 an application under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") was admitted against the Corporate Debtor and Mr. Yogesh Kumar Tyagi was confirmed as the interim resolution professional.
- b. During the course of one of the hearings in this matter on 09.07.2018, the then IRP Mr. Yogesh Kumar Tyagi placed on record certain emails addressed to the Counsel for the Financial Creditor, which evidence the fact that Mr. Yogesh Kumar Tyagi learnt of his appointment as the IRP only on 22.06.2018.
- c. On a subsequent hearing on 30.07.2018, this Tribunal noted that the order admitting the Section 7 application, though pronounced on 09.03.2018 was not uploaded on the NCLT website until 22.06.2018 and subsequent steps could therefore not be taken. Thus, on request of the Financial Creditor this Tribunal appointed Mr. Anurag Nirbhaya as the new IRP in place of Mr. Yogesh Tyagi.



d. Subsequently, an application under Section 19 of the Code was filed by the then IRP Anurag Nirbhaya against the directors of the Corporate Debtor, against which notice was issued and the said notice was accepted by the ex-directors of the Corporate Debtor and the Tribunal was pleased to issueailable warrants against those directors who failed to appear. However, the directors of the Corporate Debtor despite an undertaking given to this Tribunal during the proceedings of 02.11.2018 to cooperate and furnish all relevant documentation to this Tribunal has not been forthcoming and no documents have been provided to the RP till date.

e. On 30.10.2018 an interim application was filed by the committee of creditors ("COC") praying for confirmation of Mr. Kashi Viswanathan Sivaraman as the RP in whose favour maximum votes had been received at the second COC meeting. This Tribunal vide order dated 02.11.2018 appointed Mr Sivaraman as the resolution professional.

2. In light of the above facts the present RP pleads that he will be severely prejudiced by the time lapse of 143 days if the insolvency commencement date is computed from 09.03.2018, when the Section 7 application was admitted by this Tribunal. In such a situation, the insolvency resolution process period of 180 days has ended on 07.09.2018 i.e. almost two months prior to the appointment of the



present RP. The RP pleads that there are two time phases constituting the 143 days which are sought to be excluded which are as follows:

- a. First Phase – 105 days from 09.03.2018 to 22.06.2018 i.e. from the date of admission of the Section 7 application to the date when the then IRP Yogesh Tyagi became aware of his appointment.
 - b. Second Phase – 38 days from 23.06.2018 to 30.07.2018 i.e. from the date when the then IRP Yogesh Tyagi became aware of his appointment to the date when the first IRP Yogesh Tyagi was replaced with second IRP Anurag Nirbhaya.
3. The order of the Hon'ble Appellate Tribunal in *Quinn Logistics India Pvt. Ltd. vs Mack Soft Tech*, [2018] 208 CompCas 432, which is also relied upon by the present RP, becomes relevant in the present matter where the Appellate Tribunal held as follows:

"9. From the decisions aforesaid, 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.

10. For example, for following good grounds and unforeseen circumstances, the intervening period can be excluded for counting of the total period of 270 days of resolution process:

(i) If the corporate insolvency resolution process is stayed by 'a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court.

(ii) If no 'Resolution Professional' is functioning for one or other reason during the corporate insolvency resolution process, such as removal.

(iii) The period between the date of order of admission/moratorium is passed and the actual date on which the 'Resolution Professional' takes charge for completing the corporate insolvency resolution process.

(iv) On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the 'Resolution Professional' to complete the corporate insolvency resolution process.

(v) If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and corporate insolvency resolution process is restored.

(vi) Any other circumstances which justifies exclusion of certain period.”



However, after exclusion of the period, if further period is allowed the total number of days cannot exceed 270 days which is the maximum time limit prescribed under the Code.

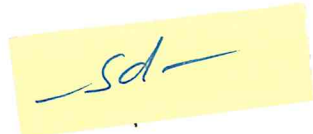
4. It is seen that for the first 105 days i.e. till 22.06.2018 from date of insolvency commencement no resolution professional was functioning in relation to the Corporate Debtor. Further, even after the first IRP Yogesh Tyagi became aware of his appointment no effective steps were carried out and he soon withdrew his appointment citing dissension and a new resolution professional i.e. Mr. Anurag Nirbhaya was appointed vide order dated 30.07.2018. Thus, there was no resolution professional effectively functioning and carrying out the CIRP for a total of 143 days i.e. from 09.03.2018 to 30.07.2018 and this period of 143 days should be excluded from the period of 180 days for completing the CIRP to ensure an effective and genuine resolution process.

5. Further, the RP has also pleaded that he may be allowed to publish a fresh Form G for Expression of Interest as the Form G published on 14.10.2018 was not published according to the procedure specified in Section 25(2)(h) of the Code as the approval of the COC in laying down the eligibility criteria had not been obtained and thus, the entire process of the publishing the Form G stands vitiated.



6. This Tribunal allows the present application with the following directions:

- a. The period of 143 days from 09.03.2018 to 30.07.2018 is excluded from the CIRP and thus, the RP is given further 143 days to complete the CIRP.
- b. The RP may publish a fresh Form G in compliance with the procedure laid down in the Code and attendant rules and regulations.



(DR. V. K. SUBBURAJ)
MEMBER (TECHNICAL)



(INA MALHOTRA)
MEMBER (JUDICIAL)

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