

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 61 of 2021**

In the matter of:

**Committee of Creditors of Trading Engineers
International Ltd.**

....Appellant

Vs.

**Trading engineers International Ltd. Through
Resolution Professional**

....Respondent

Present:

**Appellant: Mr. Ramji Srinivasan, Senior Advocate with Ms.
Rajshree Chaudhary, Mr. Shivkrit Rai, Ms. Richa
Sandilya, Advocates.**

**Respondent: Mr. Siddhartha Banthiya, Mr. Vivek Raheja,
Advocates for RP.**

ORDER

(Through Virtual Mode)

02.02.2021: Application of Resolution Professional of Corporate Debtor- 'Trading Engineering (International) Limited' under Section 60(5) read with Section 12A of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) seeking extension of time beyond 330 days came to be rejected in terms of the impugned order dated 23rd December, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Special Bench (Court-II). The impugned order is assailed by the Committee of Creditors (COC) primarily on the ground that though the timelines are to be respected but in terms of the dictum of the Hon'ble Apex Court in "**Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.- Civil Appeal No. 8766-67 of 2019**", the Adjudicating Authority has been vested with the discretion to extend time in exceptional circumstances where it can be shown that only a short period would be required for completing the CIRP beyond 330 days and that grant of such extension would promote the interest of all stakeholders by preventing Corporate Debtor to be pushed into liquidation.

Contd/-.....

2. It is submitted by Mr. Ramji Srinivasan, Senior Advocate representing the Appellant that in the instant case, CIRP was to expire on 30th September, 2020 when COC was very close to finalize the Resolution Plan and all internal approvals had been obtained. It is submitted that a short period would be required by the COC to take a formal decision in regard to approval of the Resolution Plan. It was in this context that the Adjudicating Authority had been requested to extend the timelines so that a final meeting could be conducted by the COC for finalizing the Resolution Plan.

3. Our attention has been invited to the law laid down by the Hon'ble Apex Court in **"Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors."** wherein in para 79, it has clearly spelt out the exceptional circumstances in which the Adjudicating Authority or the Appellate Tribunal would have discretion to extend the period beyond 330 days for completion of the CIRP to protect the interest of the stakeholders as also prevent liquidation of the Corporate Debtor. Para 79 of the Judgment (Supra) is quoted below:

"79.....Both these judgments have been followed in Neeraj Kumar Sainy v. State of Uttar Pradesh (2017) 14 SCC 136 at paragraphs 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 (supra). 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.”

4. Mr. Siddhartha Banthiya, Advocate appearing on behalf of the Respondent- Resolution Professional does not dispute the facts asserted by Mr. Ramji Srinivasan, Senior Advocate for Appellant. He admits that the COC is

seized of the matter and after internal approval have been obtained, a final meeting is required to be conducted for granting approval of the Resolution Plan.

5. After hearing learned counsel for the parties and for reasons stated in the appeal that the discretion should have been exercised by the Adjudicating Authority in acceding to the request of the Resolution Professional in extending the time beyond 330 days, we are of the considered opinion that this being a fit case where indulgence of this Appellate Tribunal is warranted for extending the timelines to prevent the Corporate Debtor from being pushed into liquidation and a viable Resolution Plan being approved by the COC, allowing of appeal will promote the interest of justice. We accordingly allow the appeal and after excluding the period of judicial intervention viz. from 25th September, 2020 till today, grant extension of time by two weeks from today.

Copy of this order be provided to the parties today itself. Copy of this order be also communicated to the Adjudicating Authority for information.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Dr. Ashok Kumar Mishra]
Member (Technical)

[Dr. Alok Srivastava]
Member (Technical)

AR/g