

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH: NEW DELHI**

Company Appeal (AT) (Ins) No. 331 of 2021

In the matter of:

**Vivek Raheja, Resolution Professional
JD- 2C, Second Floor, Pitampura
New Delhi-110034, India**

...Appellant

Vs.

...Respondent

Present

For Appellant: Mr. K.D Sharma, Advocate.

For Respondent: None

ORDER

04.05.2021: The present Appeal is assailed against the order passed by the Adjudicating Authority vide order dated 17.03.2021 passed in I.A No. 891 of 2021 rejecting some of the prayers as sought by the Appellant herein.

Brief facts:

1. The Learned Counsel for the Appellant submitted that the Appellant filed an Application being I.A No. 891 of 2021 before the Adjudicating Authority (NCLT New Delhi Bench- II) praying to exclude the time consumed on account of time loss due to the lockdown imposed by the Government of India and State Government and time consumed due to pendency of I.A 4208 of 2020.

2. The Learned Counsel submitted that the Hon'ble Adjudicating Authority considered to exclude 97 days period from 25.03.2020 to 30.6.2020 on the ground of lockdown imposed by the Central Government as well as State Government instead of 160 days. Further, the Hon'ble Adjudicating Authority rejected the exclusion of time which was consumed due to pendency of I.A. The Learned Counsel submitted that as per Section 12(3) of the IBC 330 days time is fixed by the Code for the purpose of completion of CIRP

process. However, the Learned Counsel submitted that in view of lockdown total 160 days has been lost and a period of 92 days was lost due to pendency of I.A 4208 of 2020. It is submitted that if the period is not excluded the Resolution Professional cannot completed the Resolution Process in respect of Corporate Debtor, thereby the Corporate Debtor may go into liquidation effortlessly.

3. The Learned Counsel further submitted that the CIRP of the Corporate Debtor had commenced from 26.02.2020 and due to lockdown i.e. from 25.03.2020 only one meeting was convened i.e. on 02.04.2020. Further, during unlock 3.0 ending 31.08.2020 the second and third meetings were convened on 09.06.2020 and 26.08.2020. Even after lapse of almost a year from the date of commencement of CIRP the process is at nascent stage. While so, the Appellant field an I.A 4208 of 2020 before the Adjudicating Authority on 27.09.2020 under Section 22(3)(b) of the Code and the said Application was pending for 123 days till the I.A was disposed of on 27.01.2021.

4. The Learned Counsel submitted that the Hon'ble Adjudicating Authority excluded only 97 days from the CIRP Period. As per the provisions of the Code the CIRP should be completed within a period of 330 days from the date of commencement of CIRP. However, in the present case the 330 days ended on 21.01.2021 and if 97 days are applied 54 days already stand exhausted. The present RP is just left with 43 days only. It is submitted that the 43 days period is too insufficient to steer the CIRP to a successful conclusion.

5. The Learned Counsel relied upon the decision of the Hon'ble Supreme Court and this Tribunal in support of his case.

6. Heard the Learned Counsel for the Appellant. The Learned Adjudicating Authority vide its order dated 17.03.2021 excluded 97 days on account of lockdown taking into consideration the period from 25.03.2020 to

30.06.2020 instead of 25.03.2020 to 31.08.2020 as prayed by the Applicant while calculating the total period of CIRP. However, the Learned Adjudicating Authority rejected the exclusion of time consumed in judicial intervention for the purpose of calculating total CIRP period. From the perusal of paragraph 10 of the impugned order the Learned Adjudicating Authority observed as under:

“Here, we observe that the Applicant has not claimed the extension beyond the 330 days on the ground of exceptional circumstances rather he has claimed the period on the ground of pendency of the Application. We also notice that no stay order at any point of time was passed by this Adjudicating Authority regarding the CIR Process or on functioning of the RP.”

7. Further, the learned Adjudicating Authority was of the view that in terms of the second proviso of Section 12(3) of the Code, the Corporate Insolvency Resolution Process shall mandatorily be completed within a period of 330 days from the Insolvency commencement date, including any extension of the period of CIRP.

8. The Learned Adjudicating Authority by relying upon the provisions of the IBC and was of the view that the time consumed in judicial intervention can be considered as extension of the period, as mandated under the Code, and no exceptional circumstances shown or made, beyond 330 days.

9. The Learned Counsel for the Appellant relied upon the Judgment of the Hon'ble Supreme Court in the case of **“Essar Steel India Ltd. Vs. Satish Kumar & Ors.”** in Civil Appeal No. 8766-67 of 2019.

10. From the observations of the Learned Adjudicating Authority we are of the view that the Adjudicating Authority rejected the prayer with regard to period seeking exclusion of time consumed in judicial intervention on the ground that the Appellant has not shown the exceptional circumstances for

excluding the time. It is un equivocal that the country faced pandemic situation namely Covid -19 and due to the said pandemic the whole nation suffered and regular activities have come to a stand still. The Learned Adjudicating Authority ought to have considered the situation as exceptional circumstances for the reason of prevailing pandemic in the country and the CIRP process was still at nascent stage. It is an admitted fact that only 3 meetings have been convened from the date of commencement of CIRP till August, 2020. However, an Application is filed for replacing the RP. The said Application was pending for consideration before the Learned Adjudicating Authority and the same was disposed of on 27.01.2021. From the facts it is more relevant that the new RP has to commence the CIRP where it was left by his predecessor. The Hon'ble Supreme Court in **“Essar Steel India Ltd.”** Supra clearly 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.”

11. From the Judgment of the Hon'ble Supreme Court that the Adjudicating Authority and /or this Tribunal may extend time beyond 330 days in exceptional cases. The Appellant had shown the exceptional circumstances

one is the imposition of lockdown and pendency of the judicial proceedings before the Adjudicating Authority. Apart from the above, the Hon'ble Supreme Court in a number of cases clearly held that the liquidation is the last resort. In the present case as discussed above the CIRP is at nascent stage and the Resolution Professional has to take forward duly complied with the procedure as prescribed under the Code for the purpose of Resolution of the Corporate Debtor instead of pushing the Corporate Debtor into liquidation. This Tribunal in suo moto Company Appeal (AT) (Insolvency) No. 01 of 2020 dated 31.03.2020 excluded the period of lockdown ordered by the Central Government and 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 the period for Resolution Process under Section 12 of the I & B Code. Further, this Tribunal also in Company Appeal (AT) (Insolvency) No. 120 of 2021 in **"Anil Tayal vs. Committee of Creditors"** dated 23.02.2021 excluded the time spent in judicial intervention. The NCLT, Principal Bench in **"State Bank of India vs. M/s Century Communication Ltd. & Ors."** vide its order dated 09.12.2020 in I.A 5320 of 2020 excluded the lockdown period from 25.03.2020 to 31.08.2020 a total period of 160 days from the liquidation period.

12. In view of the aforesaid reasons and relying upon the decision of the Hon'ble Supreme Court and this Tribunal, having satisfied with the grounds as made in the Appeal, we hereby pass the following order:

- (a)** A total period of 92 days is excluded whereby the time lost due to judicial intervention i.e. I.A 4208 of 2020 from the total time period of 330 days. Accordingly, we hereby set aside paragraph 10 of the impugned order dated 17.03.2021.
- (b)** A total period of 160 days is excluded the time lost on account of imposition of lockdown from 25.03.2020 to 31.08.2020. Accordingly, we modify paragraph 9 of the impugned order dated 17.03.2021.
- (c)** Further the time spent in filing this Appeal i.e. from 12.04.2021 to 04.05.2021 is also excluded.

13. With the aforesaid directions the Appeal is disposed of. No order as to Costs.

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Kanthi Narahari]
Member (Technical)**

sr/bm