

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.1425 of 2019

IN THE MATTER OF:

Ritu Rastogi
Resolution Professional Benlon India

...Appellant

Versus

Riyal Packers

...Respondent

For Appellant:

**Shri Krishnendu Datta, Shri Ankur Mittal, Ms. Meera Murali and Ms. Mehak Khurana, Advocates
Ms. Ritu Rastogi, Resolution Professional
CA Pavan Kumar Goyal (for Resolution Professional)**

For Respondent:

None

ORDER

17.01.2020 Advocate – Shri Krishnendu Datta is present for the Appellant – Resolution Professional. This Appeal has been filed against the Impugned Order dated 27th November, 2019 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench - V) in IB 1612 (ND)/2019 whereby the Tribunal declined to extend the period of CIRP process beyond 330 days, although the RP was requesting just 15 - 20 days to complete the voting as two Resolution Plans had been received.

2. It is stated by the learned counsel for the Appellant that Corporate Insolvency Resolution Process (CIRP – in short) has been started against Benlon India Ltd. on 19th December, 2018. It is stated that the Resolution Professional made public announcement on 23rd December, 2018 and Committee of Creditors (COC - in short) was constituted on 12th January,

2019. The Counsel states that in spite of efforts made by the Interim Resolution Professional (IRP)/Resolution Professional (RP), the details of the assets and liabilities of the Corporate Debtor as on the date of initiation of CIRP i.e. 19.12.2018 were made available to the RP only on 12th July, 2019. It is stated that there were problems with Valuers also which was not in control of parties. The learned Counsel refers to the various efforts taken by the RP as can be seen from the Appeal and it is submitted that because the basic information was not received within time, there were difficulties in completing the process.

3. Referring to the particulars stated in the Appeal with regard to the various steps taken and efforts made to complete the CIRP, it is argued by learned Counsel for Appellant that there was delay due to various difficulties encountered during the process as mentioned in the Appeal and the Appellant has made all efforts to see that the Corporate Debtor is kept a going concern so that resolution becomes possible. It is stated that the Corporate Debtor is in the manufacture of synthetic vial and even now is a going concern.

4. Advocate – Shri Pavan Kumar is present who states that he is appearing for Resolution Applicant – Mr. Surender Kumar Chawla who has already given resolution plan and it was placed before COC but COC is yet to take a final decision.

5. The learned Counsel for the Appellant refers to Order of this Tribunal dated 10th December, 2019 vide which the Notice was issued and this

Tribunal had further directed as under:-

“In the meantime, it will be open to the ‘Committee of Creditors’ to go through the ‘Resolution Plans’ and to consider the same in accordance with law. It may approve one or the other Plan but keep it in a sealed cover and not place it before the Adjudicating Authority.”

6. It is stated that Notice has been served on the Respondent who was the Operational Creditor who initiated the CIRP but is absent. Learned Counsel states that when the Impugned Order was passed, there were two Resolution Applicants but now only Resolution Plan submitted by Mr. Surender Kumar Chawla is remaining to be considered. Learned Counsel submitted that the Appellant has attended the COC deliberations and it appears to the Appellant that there is bright hope that the Resolution Plan as has been submitted by Mr. Surender Kumar Chawla, may sail through. The learned Counsel for the Appellant submitted that when the matter had come up before the Adjudicating Authority, the Appellant had relied on the Judgement of Hon’ble Supreme Court of India in the matter of “**Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.**” Civil Appeal No.8766-67 of 2019 and sought time to complete the process but the Adjudicating Authority did not properly appreciate the law as laid down by the Hon’ble Supreme Court and failed to apply the same properly to the facts of the present matter. It is stated that a going concern like the Corporate Debtor would be pushed into liquidation if the time is not granted of just 15 – 20 days as was sought before the Adjudicating Authority. The learned Counsel refers to the Para – 13 of the Impugned Order of the Adjudicating Authority which

has two paragraphs both marked 13, both of which read as under:-

“13. Therefore, at this juncture, we would also like to consider the decision given in **State Bank of India v. M/s. Manibhadra Polycot & Ors., [Civil Appeal Nos.4656-4657 of 2019]** in which the Hon’ble Apex Court held that “.....*We are of the view that the first two sets of days, namely, 7 days and 11 days, cannot be excluded for the simple reason that they are not incurred in any litigation process. Even assuming that the last cluster, namely 3 days between 08.08.2018 and 10.08.2018 are to be excluded, and we add these days to 01.05.2019 when the litigation process has come to an end, we still reach 04.05.2019. The Resolution plan in question is submitted only on 08.05.2019, and is therefore clearly beyond the mandatory period laid down in the Insolvency Code, 2016. The impugned order dated 01.05.2019 is set aside and the appeals are accordingly allowed.*” which show that the period can only be excluded / extended if they are incurred in any litigation process. Here, in case in hand, we find the resolution of the COC dated 8th November, 2019 which we have referred in the aforementioned paragraph shows that they have not resolved to authorize the RP to file an application for exclusion / extension of the CIRP on the ground that the period have been incurred in any litigation process, rather they authorize the RP to file the applications because the Members of the COC present in the meeting are not authorized to take decision and they were required to send the proposal to their competent authority and for that they needed 15 to 20 days to complete, before voting.

13. In our opinion, it is not a ground on which this Adjudicating Authority will exercise its power in view of the decision of **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. [Civil Appeal No.8766-67/2019 and other petitions]**, rather on the basis of the decision of the Hon’ble Apex Court in **State Bank of India v. M/s. Manibhadra Polycot & Ors., [Civil Appeal Nos.4656-4657 of 2019]**. We are of the considered view that on this ground, we are not inclined to exclude / extent the period of CIRP

of 45 days as prayed by the RP beyond the period of 330 days.”

7. The learned Counsel for the Appellant states that in the earlier Para – 13 where the Adjudicating Authority referred to Judgement in the matter of **State Bank of India v. M/s. Manibhadra Polycot & Ors.**, that Judgement had different facts as it is apparent from the portion reproduced by the Adjudicating Authority which shows that the Resolution Plan in that matter had been submitted beyond the mandatory period laid down in the Insolvency and Bankruptcy Code, 2016 (IBC – in short). It is stated that the said Judgement did not apply to the present facts as in the present matter, the Resolution Plan was submitted before the period of 60 days which had been granted by the Adjudicating Authority vide Order dated 13th September, 2019 lapsed. It is argued that Judgement in the matter of “State Bank of India” had its own facts and was passed on 09.08.2019; that second and third Proviso to Section 12 of IBC came into force w.e.f. 16.08.2019; and that Judgement in the matter of “Essar Steel” is dated 15.11.2019 and of larger Bank which explains law. Counsel states that Adjudicating Authority erred in lightly not applying the Judgement in the matter of Essar Steel (supra). The learned Counsel states that keeping in view an object of IBC which is resolution rather than liquidation, when in the present matter the facts show that not only resolution is possible if just a few days are given, it was improper on the part of the Adjudicating Authority not to have granted just a few days. The learned Counsel states that just a few days if given, the process can be completed even now. In case this last effort fails, the law will take its own course and the

Adjudicating Authority can pass order of liquidation. It is stated that the Adjudicating Authority has yet not passed any Orders of liquidation.

8. The learned Counsel for the Appellant referred to portion of observations of the Hon'ble Supreme Court in para – 79 of the Judgement in the matter of “Essar Steel” referred above, which reads as under:-

“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.”

9. Keeping in view the observations of the Hon'ble Supreme Court as mentioned above, and considering the facts of the present matter and the reasons for the delay in the present matter as stated in the Appeal, we find

that in the interest of justice and to give one last opportunity to the Resolution Professional to see if resolution becomes possible, it appears to us that grating of short period for completing the Insolvency Resolution Process is necessary. We find substance in the submissions made by learned Counsel for Appellant.

10. The Appeal is allowed. The Impugned Order is quashed and set aside. The matter is remitted back. The Appellant – Resolution Professional will ensure that the Resolution Plan as already filed and placed before COC is urgently looked into and request the COC to urgently take decision one way or the other. For this purpose, time is given till 6th February, 2020. If the Resolution Plan gets approved, the same be urgently placed before the Adjudicating Authority on or before 6th February, 2020. If this effort fails, the Adjudicating Authority would be at liberty to pass suitable further Orders after 6th February, 2020 as per the provisions of IBC. The Resolution Professional and COC must complete the necessary steps to ensure that the Application gets filed before the Adjudicating Authority on or before 6th February, 2020 showing whether or not the Resolution Plan has been approved.

The Appeal is disposed accordingly.

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/rs/md