**(2021) 02 NCLT CK 0128**

**In the National Company Law Tribunal**

**Case No :** Interlocutory Appeal No. 1256/MB/C-II Of 2020 In Company Petition (IB) No. 1111/MB/C-II Of 2019

Aries Agro Limited — APPELLANT

Vs

ETCO Industries Private Limited — RESPONDENT

**Date of Decision :** 25-02-2021

**Acts Referred:**
Insolvency And Bankruptcy Code, 2016 — Section 12, 12(2), 31, 60(5)

**Citation :** (2021) 02 NCLT CK 0128

**Hon'ble Judges :** H.P Chaturvedi, J;Ravikumar Duraisamy, Member (Technical)

**Bench :** Division Bench

**Advocate :** Raina Birla

**Final Decision :** Disposed Of

## Judgement

1. The present application is moved by Mr. Vijay P Lulla (hereinafter called as "the applicant") under Section 12 (2) and 60 (5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code") seeking extension of another 90 days beyond 180 days to complete Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") of the of the Corporate Debtor company ETCO Industries Private Limited (hereinafter called as the "Corporate Debtor") and for passing an appropriate order/suitable direction in the matter.

2. The Applicant through the present IA submits that this bench of NCLT, Mumbai vide its order dated 26.09.2019 in the matter of Aries Agro Limited (Petitioner) v. ETCO Industries Private Limited, admitted the IB Petition bearing C.P.1111/MB/C-II/2019 and appointed Mr. Vijay P Lulla as an Interim Resolution Professional in respect of the Corporate Debtor directing him to take necessary steps in accordance with the provisions of the Code. The IRP had accordingly called for first meeting of CoC on 31.10.2019 wherein members of the CoC in the first CoC meeting resolved to appoint present Applicant as the Resolution Professional. Further this bench vide its order dated 18.11.2019 appointed applicant as Resolution Professional and he was continued to perform his duties as Resolution

Professional (RP) by the members of the Committee of Creditors (CoC).

3. As it is stated the CIRP in respect of the Corporate Debtor has commenced w.e.f. 26.09.2019, therefore, the period of 180 days prescribed for completion of CIRP of the Corporate Debtor came to be over on 25.03.2020 during the lockdown period. Hence, the present IA filed before this bench on 02.07.2020. The Learned Counsel appearing for the RP submit that due to Lockdown imposed from 28.03.2020, He could not file the present application seeking extension of time and this could be filed soon after the lockdown was lifted and phase 1 of unlock began. In view of the above, the Applicant has sought prayer for extension of the CIRP period of the Corporate Debtor.

4. In addition to the above the Applicant/Resolution Professional through the present IA duly informed about the progress of the CIRP from the date of his appointment as 'Interim Resolution Professional' till filing of the present application. The Applicant also furnished list of dates and events and synopsis on the progress in the CIRP since 26.09.2019 (date of judgment of the NCLT) till the date of filing the present application for consideration of this bench. The same is annexed with the present Interlocutory Application. The contents thereof are not being reproduced for the sake of brevity.

5. That apart, the Learned Counsel appearing for the RP during the course of hearing has appraised of this bench about the progress, he made during the CIRP and duly informed that four meetings of the CoC were conducted till date of filing the present application as per the provisions of IB Code in respect of Corporate Debtor. Thus, the Resolution Professional took necessary steps towards the CIRP of the Corporate Debtor for exploring the possibility of the potential Resolution/revival of the Corporate Debtor. The RP further invited EOI (Expression of Interests) in prescribed Form-G and prepared appropriate Information Memorandum as well as valuation of assets of the Corporate Debtor for the purpose of prospective Resolution Applicant on 06.01.2020. It is also informed that 20.02.2020 was the last date for receiving Resolution Plans. It is reported that Resolution Professional received several Resolution Plans till date. The CoC members after going through the Resolution Plans, stated that the offer given by them is very low. Further, asked them to submit their revised Resolution Plan by 14.03.2020 which was agreed by the Resolution Applicants.

6. In the meeting held on 12.03.2020, the RP informed the CoC members of the CIRP period ending on 24.03.2020 and requested them to approve filing of Extension Application with NCLT, Mumbai for a period of ninety (90) days as time will be required to negotiate with the Resolution Applicants who will submit a revised Resolution Plan which will be filed before NCLT for approval. The CoC members agreed for filing the same.

7. The CoC members unanimously with a vote share of 100%, resolved to seek extension of the CIRP period by 90 days and accordingly this application was filed. Having heard the submissions of the Learned Counsel for the RP through

 

Video Conferencing the order was reserved.

8. We have perused the records and material made available and duly considered the reasons shown by the RP in respect of the present application, the main grounds taken for extension of CIRP are described in the present I.A. which being self-explanatory and for the sake of brevity are not reproduced but are duly considered as discussed above.

9. In addition to the above, it is further made clear that the period of CIRP during the promulgation of lockdown needs to be exempted (excluded) pursuant to the notification of Central Govt. read with new amendment which took place in the Regulation of the IBBI and also by following the decision dated 30.03.2020 of the Hon'ble NCLAT passed in suo-moto Company Appeal (AT) (Insolvency) No. 01 of 2020. Hence, such period needs to be exempted.

10. For the sake of convenience, the relevant portion of the Hon'ble NCLAT decision dated 30.03.2020 is being reproduced herein below:

"....that the period of lockdown ordered by the Central Government and the 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 Insolvency & Bankruptcy Code, 2016, in all cases where 'Corporate Insolvency Resolution Process' has been initiated and pending before any Bench of the National Company Law Tribunal or Appeal before this Appellate Tribunal".

11. In addition to the above, the IBBI vide its notification dated 20.04.2020 has also made a suitable amendment in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by inserting a new clause in the regulation, that provides for exclusion of period of lockdown imposed by the Central Govt. in the wake of Covid-19 outbreak from the computation of timelines for CIRP, which could not be completed due to such lockdown situation.

12. Pursuant to this the State Govt. has further extended the lockdown in Maharashtra with certain direction/s for lifting the restriction in phased manner during such Lockdown.

13. By taking into consideration the above stated facts of the case. It seems that RP as well as the CoC have taken suitable steps, conducted the CIRP for inviting a potential Resolution Plan as per the IBC. However, to consider the revised plan and for revival of company to secure the ends of justice, the present I.A. for extension of time of CIRP deserves to be allowed. Hence, it is hereby allowed. Consequently, the CIRP of the Corporate Debtor i.e. ETCO Industries Private Limited, is further extended for another 90 days beyond 180 days which ended on 25.03.2020.

14. It is also a settled legal position that the period consumed in filing of the present application till its disposal can be exempted for counting of the CIRP

 

period. As per the decision of Hon'ble Supreme Court and Hon'ble NCLAT read with relevant provisions of Limitation Act. For the sake of convenience relevant portion of above judgment are being reproduced here below.

Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 169 of 2018 in the matter of Numetal Limited Vs. Satish Kumar Gupta & Ors.

"126. Taking into consideration the fact that a long period has taken due to pendency of the case before the Adjudicating Authority and thereafter, before this Appellate Tribunal, we direct the Adjudicating Authority to exclude the period the appeal was pending before this Appellate Tribunal i.e. from 26th April, 2018 till today (7th September, 2018) for the purpose of counting the total period of 270 days. The impugned order dated 19th April, 2018 passed by the Adjudicating Authority so far as it relates to eligibility of 'Numetal Ltd.' as on the date of the submission of the 'Resolution Plan' dated 29th March, 2018 is set aside. The impugned judgment/order in respect to 'AM India Ltd.' is affirmed with conditions as mentioned in the preceding paragraphs. All the appeals are disposed of with aforesaid observations and directions. The parties will bear their respective cost."

Further their lordship of the Hon'ble Supreme Court in Civil Appeal Nos.9402-9405 OF 2018 in the matter of Arcelormittal India Private Limited Vs. Satish Kumar Gupta & Ors have pleaded to observe and held as such.

"83. Given the fact that both the NCLT and NCLAT are to decide matters arising under the Code as soon as possible, we cannot shut our eyes to the fact that a large volume of litigation has now to be handled by both the aforesaid Tribunals. What happens in a case where the NCLT or the NCLAT decide a matter arising out of Section 31 of the Code beyond the time limit of 180 days or the extended time limit of 270 days? Actus curiae neminem gravabit - the act of the Court shall harm no man - is a maxim firmly rooted in our jurisprudence (see Jang Singh v. Brijlal & Ors. [1964] 2 S.C.R. 146 at page 149, and A.S. Antulay v. R.S. Nayak & Ors. [1988] Supp. 1 S.C.R. 1 at page 71). It is also true that the time taken by a Tribunal should not set at naught the time limits within which the corporate insolvency resolution process must take place. However, we cannot forget that the consequence of the chopper falling is corporate death. The only reasonable construction of the Code is the balance to be maintained between timely completion of the corporate insolvency resolution process, and the corporate debtor otherwise being put into liquidation. We must not forget that the corporate debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the corporate insolvency resolution process. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible.3 A reasonable and balanced construction of this statute would therefore lead to the result that, where a resolution plan is upheld by the Appellate Authority, either by way of allowing or dismissing an appeal before it, the period of time taken in litigation ought to be excluded. This is not to say that the NCLT and NCLAT will be tardy in decision making. This is only to say that in the event of the NCLT, or the NCLAT, or this Court taking time to decide an application beyond the period of 270 days, the time taken in legal proceedings to decide the matter cannot possibly be excluded, as otherwise a good resolution plan may have to be shelved, resulting in corporate death, and the consequent displacement of employees and workers."

15. By following the above stated Judicial precedent, the period of pendency of the present application from the date of its filing till disposal is hereby exempted for counting of the CIRP.

16. After exclusion in para 13 and 15 extension of period 90 days, CIRP period of 270 days will over on 25.05.2021.

17. With the aforesaid observations, the present IA No. 1256 of 2020 In CP (IB) No. 1111/MB/C-II/2019 is allowed and stands disposed of accordingly.