**(2020) 03 NCLT CK 0079**

**In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi**

**Case No :** Interlocutory Appeal No. 1160 (PB) Of 2020 In Company Petition No. (IB)-1527 (PB) Of 2019

# In Re: Sandeep Goel Resolution Professional Of Brys Hotels Private Limited Vs

**Date of Decision :** 03-03-2020

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 19(1)(g)
Insolvency And Bankruptcy Code, 2016 — Section 12(3), 60(5)
National Company Law Tribunal Rules, 2016 — Rule 11

**Citation :** (2020) 03 NCLT CK 0079

**Hon'ble Judges :** Dr. Deepti Mukesh, J;Santanu Kumar Mohapatra, Member (Technical)

**Bench :** Division Bench

**Advocate :** Abhishek Anand, Honey Satpal, Tushar Tyagi, Viren Sharma, Vishal Ganda, Anushka Sarkar, Kapil Kher, Rashmeet Kaur

**Final Decision :** Allowed

## Judgement

Santanu Kumar Mohapatra, Member (T)

1. The present company application has been filed by the resolution professional for grant of extension of 45 days of CIRP period beyond 330 days in terms of inherent powers of Tribunal under Rule 11 of NCLT rules 2016 read with Section 60(5)(C) and 12(3) of Insolvency and Bankruptcy Code, 2016.

2. It is relevant to note here that the Corporate Insolvency Resolution Process against the Corporate Debtor was initiated vide order dated 18.03.2019 passed in IB-1527(PB)/2018. It has been stated that 330 days of CIRP period have expired on 11.02.2020.

3. Ordinarily the Corporate Insolvency Resolution Process period must be completed within the outer time limit of 330 days provided under the Code. However, in exceptional cases in order to achieve a resolution and to avoid drive the corporate debtor into liquidation, Adjudicating Authority (NCLT) can

extend the outer time limit provided under the Code.

4. It is relevant to refer to the decision of the Hon'ble Supreme Court in Civil Appeal No. 8766-67 of 2019 in the matter of Committee of Creditors of Essar Steel India Limited Versus Satish Kumar Gupta 8B Ors. decided on 15th November 2019, where it was inter-alia held that:

"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 Authoritu and/or Appellate Tribunal to extend time beyond 330 days."

(emphasise given)

5. In the present case the Committee of Creditors in its 13th meeting with 85% vote share voted during 6th -7th February, 2020 approved resolution for extension of 45 days of Insolvency Resolution Period mainly on the ground that the resolution plan is under consideration of Committee of Creditors. It is mentioned in the minutes that the resolution plan is on the verge of finalization and may take another one month to arrive at a viable resolution plan in respect of the corporate debtor.

6. In the facts and in order to explore the possibility of achieving successful insolvency resolution and to avoid liquidation of the corporate debtor; the Corporate Insolvency Resolution Process period in the present case is further extended by 45 days from the date of this order. The Resolution Professional and the members of Committee of Creditors are directed to expedite the possibility of achieving resolution of the stressed assets of the corporate debtor within the extended period.

7. CA-1160(PB)/2020 is, accordingly, allowed in the aforesaid terms.

 