(2020) 01 NCLT CK 0092

In the National Company Law Appellate Tribunal

Case No : Company Application No. 652/ND Of 2018 In IB No. 893/ND Of 2019

M/s. Vinayak Wire Products Pvt. Ltd. APPELLANT

Vs

M/s. ABIR Infrastructure Pvt. Ltd. RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 12, 60(1), 60(5), 60(6)
Constitution Of India, 1950 — Article 14

Citation : (2020) 01 NCLT CK 0092

Hon'ble Judges : Dr. Deepti Mukesh, J;Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : S.S. Ray, Ramesh Babu, B. Nagabhushan, Vaibhav Gulia

Final Decision : Disposed Of

Judgement

Dr. Deepti Mukesh, J

1. Present application is filed by RP of Abir Infrastructure Pvt. Ltd. U/S..12 read with Section 60(1)(5 & (6) of the I &B Code seeking following

reliefs:

a) Allow the present application and exclude 238 days i.e. the period from 30.01.2019 to 25.09.2019 from the CIRP period for the purpose of counting

the total period of the CIRP.

b) To pass any other order as this Hon'ble deems fit and necessary in the interest of the present applicant.

2. An order initiating CIRP of Abir Infrastructure Private Limited was passed on 30.01.2019. The RP has stated that due to various reasons and

circumstances beyond his control, the CIRP could not be proceeded with. It is further stated that before the order of CIRP was passed, Hon'ble Delhi

High Court vide an order dated 10.01.2018 admitting winding up petition appointed provisional liquidator, who had taken possession of assets of CD

including all the office premises of CD. It is further stated that the IRP/RP time and again has communicated with the provisional liquidator to hand

over offices and the records of the Corporate Debtor but the same was not coming through. Hence, COC through IRP and SBI appealed to the

Hon'ble Delhi High Court for transfer of matter to the NCLT and on 19th August, 2019 the Hon'ble Delhi High Court passed an order transferring the

matter to NCLT. Thereafter the provisional liquidator handed over the custody of the Delhi and Hyderabad Offices of the Corporate Debtor on

17.09.2019 and 25.09.2019 respectively to RP. It is further stated that substantial number of days were lost in procuring the assets, office premises

and records of the corporate debtor from liquidator and as a consequence the factual CIRP process could not be conducted by IRP/RP and the

timeline prescribed under the Code could not be complied. The IRP states that it is only after September, 2019 i.e. almost after 8 months from the

order of CIRP the IRP had come in control of the Corporate Debtor to take proper steps for resolution. The IRP has further stated that as per

amended section 12 with added provisos, 330 days expired on 26th December, 2019 and to conduct the resolution process in its true spirit and form,

further time is required. It is further submitted that the company is a vibrant entity and is running as a going concern and if further time is granted

proper resolution is feasible, by inviting expression of interest to enable the prospective resolution applicants to consider resolution plans. The applicant

has relied on the judgment of the Hon'ble Supreme Court in Committee of Creditors of Essar Steel India Ltd. wherein it was laid down that it may be

open to Adjudicating Authority and/or Appellate Tribunal to extend the time of CIRP beyond 330 days and further, while leaving the provision intact,

struck down the word ""mandatorily"" as being manifestly arbitrary under Article 14 of the Constitution of India.

3. It is further stated that in 7th COC meeting held on 13th December, 2019 at agenda item No. 10, the COO members have deliberated the issue for

seeking exclusion of time lost during the legal process and resolution was passed authorizing RP to take steps to make good the time lost of CIRP.

The said resolution was passed with 99.99% voting share of the COC members. The minutes of the said meeting alongwith the voting sheet and attendance sheet are annexed with the application.

4. Considering the documents placed on record and perusing the facts of the case we are of the opinion that certain more time should be given to take

the CIRP forward in its true sense and to enable RP to make all endeavour to achieve resolution of a going concern. Considering the facts of present

case and the guidelines laid down by the Hon'ble Apex Court, we grant a period of 90 days extension from expiry of 330 days i.e. from 25.12.2019 to

enable RP to expeditiously take all the steps to complete CIRP within the extended timeline and achieve resolution and save CD from liquidation.

5. Application is allowed and disposed of in terms of above order.