(2020) 01 NCLT CK 0086

In the National Company Law Appellate Tribunal

Case No : Company Application No. 597 Of 2019 In (IB) No. 1281/(ND) Of 2019

Stride Autoparts Ltd (SAPL) APPELLANT

Vs

Devendra Singh RESPONDENT

Date of Decision : 21-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g)
Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 4
Insolvency And Bankruptcy Code (Amendment) Act, 2019 — Section 12
Insolvency And Bankruptcy Code, 2016 — Section 2, 9, 12, 12(3)

Citation : (2020) 01 NCLT CK 0086

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

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Hemant Kumar Sarangi, Member (T)

1. The present Application, being CA No. 597/2019 has been filled by the Resolution Professional Mr. Devendra Singh, with the following prayers;

a. Allow the instant application;

b. Extend the time limit of completion of Insolvency Resolution Process of the Corporate Debtor, i.e., Stride Autoparts Limited, for a period of 60

days, as per the provisions of the amended section 12 of the IBC, amended by virtue of Insolvency and Bankruptcy Code (Amendment) Act, 2019 (26

of 2019), dated 05.08.2019, with effect from 16.08.2019, vide S.O. 2953(E), dated 16.08.2019 and as clarified by the Honâ??ble Supreme Court vide

its Judgement dated 15.11.2019 passed in Civil Appeal No. 8766-67 of 2019 in the matter titled as â??Committee of Creditors of Essar Steel India

Limited through Authorized Signatory Vs. Satish Kumar Gupta and Orsâ??; and

c. Pass such other or further and other relief(s) as this Honâ??ble Tribunal may deem fit and proper in the facts and circumstances of the present

case.

2. That from the record, it is evident that the Application bearing CP No. IB-1281/ ND/2018 was preferred by the Operational Creditor under Section

9 of the Code read with Rule 4 of the IBBI (Application to the Adjudicating Authority) Rules, 2016, against the Corporate Debtor for initiating CIRP

proceedings on account of defaults committed. This Tribunal, vide its order dated 08.01.2019, admitted the application of the Operational Creditor and

appointed the Applicant, i.e., Mr. Devendra Singh as the Interim Resolution Professional (hereinafter referred to as the â??IRPâ?) of the Corporate

Debtor.

3. It is a matter of record that a period of 180 days of the CIRP ended on 07.07.2019, an extension of 90 days was granted by this Tribunal vide its

order dated 05.07.2019 the period of 270 days also ended on 05.10.2019. The present CA was preferred by the applicant only on 03.12.2019, that is

after a long delay of two months.

4. The Applicant states that one of the prospective Resolution Applicant has filed its revised plan for the resolution of the Corporate Debtor on

26.1.2019 and the CoC needs some time for the examination of the Revised Bid, its consideration and for presenting the same before this Tribunal.

The Applicant further submits that even another prospective resolution applicant is interested in submitting its bid for the resolution of the Corporate

Debtor. Hence, CoC is of the view that there is every likelihood of the resolution of the Corporate Debtor which will maximize the value of the

Corporate Debtor for all the stakeholders, if this Tribunal will grant the extension.

5. The Applicant also states that vide CoC meeting dated 28.11.2019, it was decided by the members of the CoC that an extension of time beyond the

stipulated time period, be sought for, in accordance with Section 2 of I &B Code, 2016, the relevant portion from the resolution passed in the said CoC

meeting has been reproduced below;

â??Resolved that consent be and is hereby accorded for extending the time period by 60 days for completion of CIRP of Stride Autoparts

Limited beyond the period of 330 days from the Insolvency Commencement Dateâ??

6. In relation to the petition of the applicant for extension of the time period of the Corporate Insolvency Resolution Process by 60 days, it is pertinent

to mention here that by the relevant amendment in section 12 of the Insolvency & Bankruptcy Code, 2016 in sub-section (3), after the proviso, the

following provisos have been inserted, namely:-

â??Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and

thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process

granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period

referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement

of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.â??

7. In deciding the current C.A. 597 of 2019, this court places reliance of the judgement of the Honâ??ble Supreme Court in the matter of

â??Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta, Civil Appeal No. 8766-67/2019"", whereby the Honâ??ble Apex court

has held as follows;

â??79â?¦ while leaving the provision otherwise intact, the term â??mandatorilyâ? is struck down as being manifestly arbitrary under

Article 14 of the Constitution of India and as being unreasonable restriction on the litigantâ??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 CIRP must be completed within the

outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. If the delay or

a large part thereof is attributable to the tardy process of the AA and/ or the NCLAT itself, it may be open in such cases for the AA and/or

NCLAT to extend time beyond 330 daysâ??

â??â?¦.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 excluded, 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 corporate debtor is to be driven into liquidationâ??

Also, similar view has been taken by the Honâ??ble Apex Court in the matte of â??Jaiprakash Associates Ltd. & Anr. Vs. IDBI Bank Ltd. & Anr.

Civil Appeal No. 6486 of 2019â?, wherein the Honâ??ble Apex Court has granted an extension of 90 days period from the date of its order, instead

of the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.

Respectfully following the ruling by the Honâ??ble Supreme Court, and in view of the unique facts & circumstances of this case, this bench is of the

view that in the interest of justice and effective resolution of the Corporate Debtor at maximum value an extension of 60 days may be granted to the

RP in this case, from the date of this order, to complete CIRP and find a successful Resolution Applicant and finalise a suitable Resolution Plan, failing

which the Corporate Debtor shall be sent into liquidation and no prayer for any further extension will be granted.

8. In the interest of justice an extension of 60 days is granted to the RP in this case, from the date of this order, to complete CIRP and find a

successful Resolution Applicant and finalise a suitable Resolution Plan.

9. Both the CAâ??s stand disposed of with the above order.

10. Copy of order be supplied to parties.

