(2021) 02 NCLT CK 0138

In the National Company Law Tribunal

Case No : Interlocutory Appeal No. 2210/MB/C-II Of 2020 In Company Petition (IB) No. 4260/MB/C-II Of 2019

Union Bank Of India — APPELLANT

Vs

M/s Spark Green Energy (Satara) Limited — RESPONDENT

Date of Decision : 05-02-2021

Acts Referred:

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 — Regulation 40
Insolvency And Bankruptcy Code, 2016 — Section 12, 12(3)

Citation : (2021) 02 NCLT CK 0138

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

Bench : Division Bench

Advocate : Savita Nangare

Final Decision : Allowed

Judgement

1. The present application is moved by Mr. Anil Rajkotia (hereinafter called as "the applicant") under Section 12 (3) r/w Regulation 40 of Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Person) Regulation 2016 (hereinafter called as "the Code") seeking an exclusion of the period from 25.03.2020 till 30.09.2020 (i.e. for 190 days) due to Nationwide Lockdown for the purpose of calculating the 180 days and extension of another 90 days from 02.12.2020 beyond 180 days to complete Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") of the Corporate Debtor Company namely M/s Spark Green Energy (Satara) 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 vides its order dated 28.11.2019 in the matter of Union Bank of India (Petitioner) v. M/s Spark Green Energy (Satara) Limited, Corporate Debtor admitted the IB Petition bearing C.P.4260/MB/C-II/2019 and appointed Mr. Anil Rajkotia 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 26.12.2019. Thereafter, the Applicant was appointed as Resolution Professional in the second meeting of CoC held on 09.01.2020. After appointment of Applicant as IRP, the Applicant on 09.12.2019, intimated the Respondent about initiation of CIRP in respect of Corporate Debtor. The members of CoC unanimously resolved and confirmed the appointment of the Applicant as Resolution Professional with 100% votes in favour of the same.

3. As it is stated that the CIRP in respect of the present Corporate Debtor has commenced w.e.f. 28.11.2019, therefore, the period of 180 days prescribed for CIRP of the present Corporate Debtor came to be over on 28.05.2020 during the lockdown period. Hence, the present IA before this bench was filed on 13.11.2020. In view of the above, the Applicant has sought prayer for exclusion of period from 25.03.2020 till 30.05.2020 due to Nationwide Lockdown and extension of another 90 days from after excluding lockdown period and further exempting the period of pendency of present application filed in this court till its disposal hence he requested to count the extended period of CIRP from the date of receipt of the copy of this order.

4. In addition to the above the applicant Resolution Professional in the present IA has informed about the progress of the CIRP from the date of his appointment as 'Resolution Professional' till filing of this application. The Applicant also furnished list of dates and events and synopsis on the progress of the CIRP since 28.11.2019 till date of filing application for perusal of this bench. The same has been annexed with the present Interlocutory Application.

5. The Applicant submits that the 180 days period of the Corporate Insolvency Resolution Process expired on 28.05.2020, i.e. during the COVID-19 lockdown, due to which the Applicant could not file present Application for extension. In the meantime, 4th meeting of CoC was held on 23.04.2020 through Video Conferencing. Wherein CoC by 100% voting majority passed a resolution for extending CIRP period 180 days by further 90 days.

6. In addition to the above, the Applicant submits that pursuant to Form G publication, the Applicant has received 7 expression of interest for the Corporate Debtor. As on the last date (i.e.30.10.2020) of submission of Resolution Plan, one M/s Hangji Global Ltd., a British Virgin Island based company has submitted Resolution Plan for the Corporate Debtor. The said Resolution Plan is being discussed by CoC members.

7. The applicant further contended that due to Pandemic Situation of Covid-19 the lockdown was promulgated by the Government. The applicant in the present application also referred to a decision of Hon'ble NCLAT whereby the Appellate Tribunal has pleased to issue such direction for exclusion of period of Lockdown announced by the Central Government, State Government for the purpose of

calculation of the period of Corporate Insolvency Resolution Process.

8. 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".

9. 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.

10. The RP further submitted that the Central Govt. vide its notification dated 30.05.2020 has pleased to permit certain activities in phasing out of the lock down area outside the Containment Zone.

11. 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.

12. Further Hon'ble Supreme Court observed that in its order of 23rd March 2020 extending limitation for filing in Courts and Tribunals is still operative. The bench comprising Hon'ble Justice Mr. Vineet Saran and Hon'ble Mr. S. Ravindra Bhat observed thus while setting aside an order passed by National Consumer Dispute Redressal Commission which declined to take a written statement on the ground that it has no power to extend that during period of lockdown the provision of Limitation Act would not be applicable.

13. We have perused the records and duly considered the reasons, grounds submitted by the RP in respect of the present application, the main grounds taken for extension of CIRP are described in the present I.A.

14. By taking into consideration the grounds in the present IA, it seems that RP as well as the CoC have diligently and properly conducted the CIRP for inviting a potential Resolution Plan and have taken needful steps prescribed under the IBC. However, the CoC and RP could not act effectively for some time because of the Nationwide lockdown and also during phase of unlock. Therefore, we are of the view that, the present IA for exclusion and extension of time of CIRP deserves to be allowed. Hence, it is hereby allowed. Consequently, the period of the CIRP of the Corporate Debtor i.e. M/s Spark Green Energy (Satara) Limited, is further

extended for another 90 days beyond 180 days which ended on 01.12.2020.

15. Accordingly, exclusion of 190 days of lockdown period from 25.03.2020 upto 30.09.2020 further the period from the date of filing present application till its disposal and receipt of an authentic copy of order is also hereby exempted for the purpose of counting CIRP. Thus the CIRP period is extended for another 90 days beyond 180 days in respect of Corporate Debtor Company. It shall be applicable from the date of pronouncement of order and receipt of an authentic copy of the same.

16. With the aforesaid observations, the present IA No. 2210 of 2020 In C.P. (IB) No. 4260/MB/C-II/2019 is allowed.