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Extension of time to complete CIRP will commence from the date on which the Adjudicating Authority passed the order for such extension

On February 21, 2024, the Hon'ble National Company Law Appellate Tribunal, Chennai ("NCLAT") in the case of *Kiran Martin Gulla RP of Vardharaja Foods Pvt. Ltd.*¹ held that when an extension to complete the corporate insolvency resolution process ("CIRP") is granted by the Adjudicating Authority, then such period will be calculated from the date on which the Adjudicating Authority passes such an order.

Brief Facts

Varadharaja Foods Pvt. Ltd. ("**Corporate Debtor**") was admitted into CIRP *vide* an admission order dated November 9, 2022, passed by the Adjudicating Authority i.e. Hon'ble National Company Law Tribunal, Chennai. Accordingly, the period of CIRP commenced and the same was to be completed with a period of 180 (one hundred and eighty) days from the date of admission i.e. November 9, 2022. The Committee of Creditors ("**CoC**") of the Corporate Debtor appointed the Appellant as the resolution professional ("**RP**") of the Corporate Debtor and the Appellant took charge of the Corporate Debtor.

As the CIRP of the Corporate Debtor was ending on May 10, 2023, in terms of Section 12(1) of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), on April 21, 2023 the CoC of the Corporate Debtor passed a resolution to extend the CIRP by a further period of 90 (ninety) days from the last date of CIRP i.e. May 10, 2023.

On May 9, 2023, the Appellant filed an application under Section 12(2) of the IBC read with Regulation 40 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking an extension of 90 (ninety) days to complete the CIRP of the Corporate Debtor. The Appellant in its application before the Adjudicating Authority urged that the extension of 90 (ninety) days is necessary as the expression of interest for submission of resolution plan ("**EoI**") in accordance with Section 25(2)(h) of the IBC was published on April 29, 2023 and the last date for submission of the resolution plan was June 30, 2023. The Appellant further apprised the Adjudicating Authority that the Appellant received few EoIs for the Corporate Debtor. Accordingly, the Appellant specifically sought relief of extension from the date of disposal of the application for extension.

Thereafter, the Tribunal took up the application for hearing and *vide* the order dated July 27, 2023, the Adjudicating Authority granted the extension of 90 (ninety) days to the Appellant ("**Impugned Order**"). The tribunal further held that the same is to be computed from the last date of the CIRP i.e. May 10, 2023. The Impugned Order was made available to the Appellant on August 28, 2023, i.e. 111 (one hundred and eleven) days from the last date of CIRP.

¹ 2024 SCC OnLine NCLAT 234

Being aggrieved by the observation passed by the Hon'ble NCLT in the Impugned Order, the Appellant filed an appeal before the Hon'ble NCLAT seeking quashing of the NCLT Order and praying for extension of 90 (ninety) days from the CIRP of the Corporate Debtor to be computed from the date of disposal of the appeal.

Issues

- 1) Whether the period of 90 (ninety) days extended under Section 12(2) of the IBC to complete CIRP of the Corporate Debtor would commence from the last date of the CIRP of the Corporate Debtor or from the date on which the Adjudicating Authority passed the order of extension.
- 2) Whether the time taken during the pendency of adjudication of the extension application should be excluded while computing the extension of CIRP.

Analysis and Findings of the NCLAT

Whilst allowing the appeal, the Hon'ble NCLAT held as follows:

- 1) The pendency of judicial proceedings before the Adjudicating Authority constitutes an “exceptional circumstance” and the time taken in legal proceedings cannot harm a litigant although the same may warrant a departure from the strict rigors of the IBC. Time is of essence under the IBC however, the litigant cannot be penalized for no fault of its own.
- 2) The meaning of the term ‘extension’ is the act of stretching out or elongating the ambit of something being the additional period of time given to a person, to meet ones end. However, the term exclusion is an example of leaving something or keeping out, eliminate, rule out etc.
- 3) When an extension for 90 (ninety) days to complete CIRP is granted by an Adjudicating Authority then such period will be computed from the date on which the Adjudicating Authority passed the order for such extension.

Conclusion

By way of the judgment, the Hon'ble NCLAT has reiterated that although time is of the essence of the IBC, a litigant or a CIRP cannot suffer for time taken in legal proceedings. Although, the extension of time limit in proceedings under the IBC may unsettle the time limit for completing CIRP of the Corporate Debtor, the same cannot be done at the cost of the litigant or CIRP itself.

The Hon'ble NCLAT reiterated the findings of the Hon'ble Supreme Court of India in '*Committee of Creditors' of Essar Steel vs Satish Kumar Gupta*² and held that although timely resolution of stressed assets is a key factor in the successful working of the IBC, the time taken in legal proceedings cannot possibly harm a litigant if the Adjudicating Authority itself cannot take up the litigant's case within the requisite period.

² (2020) 8 SCC 531

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