

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA.No. 865 of 2019
in
CP (IB) No. 651/7/HDB/2018

U/s 60(5) of IBC, 2016
R/w Rule 11 of the NCLT Rules, 2016.

In the Matter of:

Dr. K.V.Srinivas
Interim Resolution Professional
Sainath Estates Private Limited
1-8-3-4 to 307, 4th Floor, "Kamala Towers"
Patigadda Road, Begumpet
Hyderabad – 500 003.

**...Applicant/
Interim Resolution Professional**

In the Matter of:

Bank of India

...Applicant/Financial Creditor

Versus

M/s. Sainath Estates Private Limited

...Respondent/ Corporate Debtor

Date of order: 23.10.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Narender Kumar Bhola, Member (Technical)

Parties / Counsels present:

For the Applicant : Dr. K.V.Srinivas, IRP

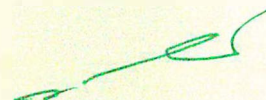
Per: Shri Narender Kumar Bhola, Member (Technical)

Heard on: 15.10.2019, 21.10.2019.

ORDER

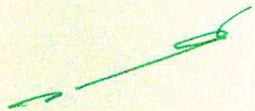
1. The present Application is filed by the Applicant/Interim Resolution Professional in the matter of M/s. Sainath Estates Pvt. Ltd. under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 praying the Tribunal to extend the due date for filing report certifying constitution of CoC to the Adjudicating Authority from 31.07.2019 to 20.09.2019 by excluding the period of 52 days as the Corporate Insolvency Resolution Process (CIRP) was kept in a state of suspended animation on account of the Hon'ble NCLAT Order dated 21.08.2019, directing the IRP not to constitute CoC till 11.09.2019 i.e., the period from 22.07.2019 till 11.09.2019 and permit the Applicant to file report certifying constitution of the CoC before this Hon'ble Adjudicating Authority on or before 20.09.2019 excluding the 52 days period in compliance to Regulation 17 of IBBI (CIRP) Regulations, 2016.

2. Brief averments made in the application are:
 - A. The Financial Creditor, Bank of India had filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process (CIRP). The Petition has been admitted vide CP(IB) 651/7/HDB/2018, order dated 08.07.2019 and appointed Dr. K.V.Srinivas as Interim Resolution Professional (IRP).



- B. The IRP intimated the commencement of CIRP to the Corporate Debtor and the Financial Creditor by email and speed post. He also made Public Announcement of Commencement of CIRP on 11.07.2019 in compliance to Regulation 6 of IIBI (CIRP) Regulations, 2016. In response to that, he had received claims from Syndicate Bank, Bank of India and Punjab National Bank also.
- C. The IRP received an email from Counsel of the Corporate Debtor that the Corporate Debtor intends to settle the matter enclosing an Order copy issued by the Hon'ble NCLAT dated 22.07.2019, allowing the Corporate Debtor to do the settlement before the next hearing date i.e. on 21.08.2019 and ordered as **"In the meantime, Interim Resolution Professional" will not constitute Committee of Creditors if not yet constitute"**.
- D. The IRP stated that the Hon'ble NCLAT ordered on 21.08.2019 allowing the Appellant to settle the matter within three weeks and further directed the IRP to collate the claims and also to constitute Committee of Creditors, in case settlement is not reached by 11th September, 2019 or if information of settlement is not given by the Appellant regarding settlement by 12th September, 2019. The Order is reproduced below:

"In the meantime, the Interim Resolution Professional will collate the claims, if not yet collated and will constitute the Committee of Creditors, if settlement is not reached by the 11th of September, 2019 or the information of settlement is not given to the 'Interim Resolution Professional' by the Appellant by



12th September, 2019, about such settlement / or failure of settlement. Post the case 'for orders' on 16th September, 2019".

- E. The Applicant stated that as per Regulation 17(1) of the CIRP Regulations, 2016, he had to file a report certifying constitution of the Committee to the Adjudicating Authority within two days of the verification of claims received under sub-regulation (1) of regulation 12. In this case, the due date for filing the report certifying Constitution of Committee of Creditors before this Hon'ble Adjudicating Authority was on July 31, 2019. The IRP could not collate the claims due to the difficulty in verifying the same with the books of accounts of the Corporate Debtor which were not handed over and also due to the Orders of the Hon'ble NCLAT dated 22.07.2019 & 21.08.2019, the IRP had lost a total CIRP period of 52 days i.e. from 22.07.2019 to 12.09.2019.
3. Heard the counsel for petitioner herein. It is the case of petitioner that due to pendency of case before the Hon'ble NCLAT dated 21.08.2019 there is a delay in constituting of COC and filing of report certifying the constitution of COC to this Tribunal. Constitution of COC was delayed by 52 days as CIRP was kept in the state of suspended animation on account of NCLAT order dated 21.08.2019 . In the said order Hon'ble NCLAT had directed the IRP not to constitute the Committee of Creditors till 11.09.2019. Therefore a delay of 52 days occurred. The delay of 52 days from 22.07.2019 to 11.09.2019 is occurred.
4. We have gone through the petition filed and also oral submissions made by the applicant. The reasons advanced by the IRP in seeking condonation of delay of 52 days in certifying the constitution of committee of creditors within

two days of verification of claims in pursuance of Sub-Regulation(1) of Regulation 12 of IBBI Regulations which is deserve to be considered.

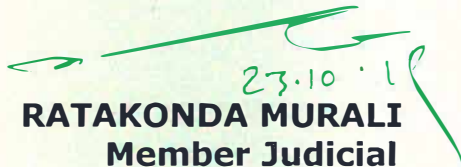
5. In this connection the decision of Hon'ble NCLAT reported in Quinn Logistics India (P) Limited Vs Mack Soft Tech (P) Ltd wherein it was held that Tribunal can exclude certain period from CIRP if facts and circumstances justify exclusion is worth consideration. Hon'ble NCLAT has held that in the following circumstances, time can be excluded from the CIRP :-

- (a) *If the Corporate Insolvency Resolution Process is stayed by a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court.*
- (b) *If no "Resolution Professional" is functioning for one or other reason during the corporate insolvency resolution process, such as removal.*
- (c) *The period between the dates of order of admission/moratorium is passed and the actual date on which the Resolution Professional takes charge for completing the CIRP.*
- (d) *On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the Resolution Professional to complete the CIRP.*
- (e) *If the CIRP is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and CIRP is restored.*
- (f) *Any other circumstances which justifies exclusion of certain period.*



6. In view of the above present case deserves to be allowed. Accordingly the due date for filing certifying the constitution of COC to the Adjudicating Authority from 31.07.2019 to 20.09.2019 by excluding 52 days as CIRP was kept in a suspended animation on account of Hon'ble NCLAT order dated 21.08.2019 is here by extended and the said delay of 52 days in computing the period under Regulation 17 (1) of the IBBI Regulations, 2016 is excluded.

NARENDER KUMAR BHOLA
Member Technical


23.10.19
RATAKONDA MURALI
Member Judicial

Pavani