

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No.218 of 2019 in
C.P.(IB) No.51/BB/2018
U/s 60(5) of IBC, 2016

In the matter of:

Shri Alok Kailash Saksena
Interim Resolution Professional of
M/s. Associate Décor Limited.
Plot No.1, Phase 4, KIADB Industrial Estate,
Malur – 563 130. - Applicant/
Interim Resolution Professional

Date of Order: 06th May, 2019

Coram: Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Parties/Counsels Present:

For the Applicant/IRP : Shri Vivek Reddy, Senior Counsel

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. CA No.218 of 2019 in C.P. (IB) No.51/BB/2018 is filed by Shri Alok Kailash Saksena Resolution Professional of M/s.Associate Décor Limited('Applicant/IRP') under Section 60(5) of the IBC, 2016, by inter alia seeking to exclude 154 days from statutory period of 180 days so as to conclude the CIRP on 24.09.2019 instead of 23.04.2019.
2. Brief facts of the case, as mentioned in the instant Application, which are relevant to the issue in question , are as follows:
 - 1) Oriental Bank of Commerce has filed C.P(IB) No.51 of 2018 U/s 7 of I&B Code, 2016, R/w Rule 4 of the I&B(AAA) Rules, 2016, by inter alia seeking to initiate CIRP in the matter of



M/s. Associate Décor Limited, on the ground that the Corporate Debtor failed to commit a default of Rs.128,60,01,812.05. Accordingly, the Tribunal has admitted the case by an order dated 26th October, 2018 by appointing IRP Shri Alok Kailash Saksena, imposing moratorium etc.

- 2) However, the above order was received by Oriental Bank of Commerce only on 26th November, 2018 , due to closing the Tribunal due to Diwali Holidays and, thus it had functioned 8 days between the 26th October, 2018 and 26th November, 2018 which is being tabled below:

SL No.	Date	Day
1.	29.10.2018	Monday
2.	30.10.2018	Tuesday
3.	31.10.2018	Wednesday
4.	01.11.2018	Thursday
5.	02.11.2018	Friday
6.	05.11.2018	Monday
7.	19.11.2018	Monday
8.	20.11.2018	Tuesday

It is also stated that 8 and 9th November, 2018 were restricted holidays and all other remaining days either being Saturday/Sunday or Diwali holidays lead to non-functioning to this Tribunal.

- 3) On receipt of the said order, the IRP took charge of the Company on 27th November, 2018, and published "Public Announcement" on 28.11.2018 in the local daily newspaper having wide circulation, both in regional and English Language, calling for claims from the creditors of the corporate and thereby initiates the CIRP in respect of Corporate Debtor.
- 4) It is stated that on 30.11.2018, the Hon'ble Supreme Court passed an order in Writ Petition No.1391 of 2018, which is



filed by Associate Holdings Private Limited (“the Petitioner” & Majority Shareholder of Corporate Debtor) Vs. RBI, Union of India & others, Corporation Bank, Bank of Baroda, & Oriental Bank of Commerce (“the Respondent”) had directed “Status Quo, as of today, shall be maintained in the meantime”. In the said Writ Petition No.1391 of 2018, the Petitioner Associate Holdings Private Limited had challenged the validity of the RBI Circular No.RBI/2017-18/131, DBR No.BP.101/21.04.048/2017-18 dated 12thFebruary, 2018 and claimed other reliefs. It is pertinent to note that in the said Writ Petition No. 1391 of 2018, the Petitioner Associate Holdings Private Limited had disclosed of passing order in CP(IB) No.51 of 2018 which is passed by this Tribunal. The RP received a letter from the Associate Holdings Pvt. Ltd., (Petitioner in Writ Petition No.1391 of 2018 before the Hon’ble Supreme Court of India) requesting to comply with the order of Hon’ble Supreme Court and not to take any further steps in CIRP of Corporate Debtor till the said matters are not adjudicating upon.

- 5) Resolution Professional was directed by the Members of CoC (Respondent to WP No.1391 of 2018) to conduct the first meeting of CoC and not being of any voting matter for consideration of CoC members so as to comply with order of Hon’ble Supreme Court dated, 30th November, 2018 maintaining status quo. He was also directed by the Members of the CoC to keep the Corporate Debtor as a going concern. Based on such direction of members of CoC, other steps of CIRP namely appointment of RP, approval of CIRP Expenses, issue of EOI etc. involving voting could not be brought before the CoC for their consideration and therefore the CIRP could not progress.



- 6) Resolution Professional had filed an application before the Hon'ble Supreme Court seeking clarification on applicability of the order dated 30th November, 2018 of their Lordship's on CIRP of Associate Décor Limited. The said Application was disposed of along with order in WP No.1391 of 2018 with the main Petition of Dharani Sugars and Chemicals Limited vs. Union of India & Others without any specific order on the application on 02.04.2019.
- 7) It is stated that the Hon'ble Supreme Court has pronounced its judgement on 02.04.2019 in WP No.1391 of 2018, wherein RBI Circular dated 12.02.2018 was quashed. The CoC was legally advised that the order of the Hon'ble Supreme Court dated 02.04.2019 would not end the CIRP of Corporate Debtor as the CIRP of Corporate Debtor was not initiated by the Applicant (Oriental Bank of Commerce) in term of the RBI circular dated 12.02.2019, instead it was initiated under section 7 of the IBC, 2016 due to default. Further, the CoC was also legally advised that the RBI Circular dated 12.02.2019 was applicable only to Companies with outstanding amount of more than Rs.2000 Crores and since outstanding amount of less than Rs.2000 Crores (Rs.600 Crores Approximately). Accordingly, the CIRP of Corporate Debtor would not end.
- 8) It is stated that there has been a delay of 154 days in CIRP of Associate Décor Limited being tabled below:

SL No.	Particulars	No. of days
1.	Arising out of delay in receipt of order of Hon'ble NCLT Date of NCLT order in CP(IB) No.51 of 2018-26 th October, 2018 Date of Receipt of order to IRP 26 th November, 2018	31
2.	Arising out of "Status Quo order of	123



	Hon'ble Supreme Court	
	Date of "Status Quo" by Hon'ble Supreme Court 30 th November, 2018 Date of Pronouncement on 2 nd April, 2019	
Total No. of days		154

- 9) It is stated that considering that there has been delay of 154 days in the Corporate Debtor IRP of Corporate Debtor committee of Creditors in its 6th CoC meeting held on 12.04.2019, passed a resolution with 100% voting and directed the IRP to file an application before the Tribunal to exclude the said period of 154 days from statutory period of CIRP of Corporate Debtor.
- 10) It is stated that the delay of 31 days in receipt of order of this Hon'ble Tribunal is required to be excluded as no effective steps of CIRP took place in the said period, and in terms of the order of NCLAT, in the matter of Velamur Vardan Anand Vs. Union of India & Anr. CA(AT) Insolvency No.161 of 2018 followed in the matter of Bank of Baroda vs. Mandhana Industries Limited MA 563 of 2018 in CP(IB) No.1399/MB/2017 the NCLAT was pleased to exclude such period from the date of order of Hon'ble Adjudicating Authority till date of receipt of order of IP from CIRP. It is further claimed that the Period on 123 days is required to be excluded from the CIRP of Corporate Debtor as no effective steps of CIRP took place in the said due to "Status Quo as of Today, shall be maintained in the meantime" order of Hon'ble Supreme Court, and in terms of the order Quinn Logistics India Pvt. Ltd. vs. Mack Soft Tech Pvt. Ltd. Mohd. Sabir Parvez and Mr.M.L.Jain dated 08th May, 2018 wherein Hon'ble NCLAT while dealing with the similar facts was pleased to exclude the period from Corporate Insolvency Resolution Period.



3. Heard Shri Vivek Reddy, learned Senior Counsel for Applicant/Resolution Professional and carefully perused the pleadings and all the material papers filed in support of the Application, and also extant provisions of Code and the law.
4. In the case of *Quinn Logistics India Private Limited Vs. Mack Soft Tech Private Limited*, CA No.185/2018, vide order dated May 8, 2018, the Hon'ble NCLAT has dealt with the question of exclusion of certain time period for the purpose of counting the total CIRP period. Para 9 and 10 of the aforesaid judgment reads as under:

"9. From the decisions aforesaid, it is clear that if an application is filed by the 'Resolution Professional' or the 'Committee of Creditors' or 'any aggrieved person' for justified reasons, it is always open to the Adjudicating Authority/Appellate Tribunal to 'exclude certain period' for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances.

10. For example, for following good grounds and unforeseen circumstances, the intervening period can be excluded for counting of the total period of 270 days of resolution process:-

(i) 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.

(ii) If no 'Resolution Professional' is functioning for one or other reason during the corporate insolvency resolution process, such as removal.

(iii) The period between the date of order of admission/moratorium is passed and the actual date on which the 'Resolution Professional' takes charge for completing the corporate insolvency resolution process.


(iv) 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 corporate insolvency resolution process.

(v) If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and corporate insolvency resolution process is restored.

(vi) Any other circumstances which justifies exclusion of certain period."

LWD

5. I am convinced with the reasons cited in the instant application covers under the parameters laid down by the Hon'ble NCLAT as stated supra. Therefore, the applicant is entitled for exclusion of time as prayed for.
6. In the result, I.A. No.218 of 2019 in C.P.(IB) No.51/BB/2018 hereby disposed of by granting excluding the time period of 154 days from statutory period of 180 days so as to conclude the CIRP of Corporate Debtor on 24.09.2019 instead of 23.04.2019. The IRP/RP is directed to expedite the process of CIRP without any further delay.


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Raushan