

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

ITEM No. 10
(IB)-02(PB)/2017

IN THE MATTER OF:

Nikhil Mehta & sons (HUF) & Ors.
Vs.

.... Applicant/petitioner

M/s. AMR Infrastructures Ltd.

.... Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, CIRP

Order delivered on 08.10.2018

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

Sh. S. K. MOHAPATRA,
Hon'ble Member (Technical)

PRESENTS:-

For the Petitioner/Applicant: Mr. Abhishek Anand & Mr. Tushar Tyagi, Advs. for RP.
For the Respondent(s): -

ORDER

This is an application with a prayer to exclude the period of 113 days from the CIR Process period of 180/270 days. The application depicts a peculiar situation presented by the Real Estate (Commercial and Residential). This class of category of Financial Creditors was added recently hence there has been legal issues raised. In the present case the Committee of Creditors is comprised of 100% Real Estate financial creditors as defined in Section 21(6A)(b) of the Code.

The aforesaid amendment was incorporated in the Code on 06.06.2018. It will be interesting to note the relevant provision namely Section 21(6A)(b) of the Code.

21(6A) (b) Where a financial debt-



(b) "is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors".

A perusal of the aforesaid clause shows that in order to operate the provision dealing with the new class of Financial Creditors the number was to be specified by the competent authority. The IBBI enacted Regulation 16(A) IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 explaining and specifying for various situations. It is only after 03.07.2018 this class of Financial Creditor could have availed any remedy before the Tribunal. However, there were still difficulties as the Regulation 16(A) was made applicable only to the process which were initiated on or after 03.07.2018. Thereafter, a circular was issued by the IBBI on 30.07.2018 whereby it was made applicable practically to all the pending CIR Processes. Para 3 of the circular reads as under:-

"It is, accordingly, clarified that wherever the approval of resolution plan regulation 39 (3) of the Regulations is at least 15 days away, the resolution professional shall expeditiously obtain, by electronic means, the choice of the insolvency professional from creditors in a class to act as the authorised representative of the class and proceed further in the manner as specified in regulation 16A of the Regulations."

It is in the aforesaid circumstances that an application by IRP was filed on 08.08.2018 which was decided on 14.08.2018.



Therefore, the prayer made is for exclusion of the period from 06.06.2018 to 14.08.2018.

Likewise, further request has been made for exclusion of the period from 25.08.2018 to 28.09.2018 when a dead lock was created on the issue interalia, of confirming RP. That agenda could not secure the specified voting share of 66% as per the requirement of Section 21(8) read with 22(2). The aforesaid application was decided on 28.09.2018 and a period of 35 days is sought to be excluded. A further request for exclusion of eight days from 01.10.2018 to 08.10.2018 has also been made.

We have heard Ld. Counsel for the Resolution Professional. At the outset we asked the Ld. Counsel that how the period of litigation could be excluded in the face para 83 of the judgment of Hon'ble Supreme Court rendered in the case of Arcelor Mittal India Private Limited v. Satish Kumar Gupta & Ors. (Civil Appeal Nos. 9402-9405 of 2018 decided on 04.10.2018. Mr. Anand, Ld. Counsel has stated that the difficulty posed in respect of first period of 70 days in this case is not emanating from the initiation of litigation. It infact has arisen on account of inability to initiate the same. According to the Ld. Counsel Section 21(6A)(b) of IBC was incorporated by the amendment dated 06.06.2018 but it could not be operated till the enabling provision was made by the Bankruptcy Board. That could be done only on 03.07.2018. There were still difficulties as Regulation 16A enacted by the Bankruptcy Board could not be availed by the IRP/RP because it was applicable only to those CIR Processes which have been initiated on or after 03.07.2018 where as in the present case the CIR Process was initiated on 10.05.2018. This could be



achieved only when a circular was issued on 30.07.2018 (see para 3 of the circular (supra). It is in the aforesaid circumstances that an application could be filed only on 08.08.2018 which was disposed of on 14.08.2018. A copy of the order has been placed on record (A1).

Having heard the Ld. Counsel we are of the considered view that a case is made out for excluding the period of 70 days from the CIR Process period because this class of financial creditor could not have approached the Tribunal in view of the peculiar situation created by the enactment of amendment on 06.06.2018. The situation could be remedied by enactment of Regulation 16A (2) by the Bankruptcy Board. It was still not possible for the IRP/RP to move appropriate application as the CIR Process in the present case was initiated on 10.05.2018 whereas the Regulation 16A (2) of the IBBI Regulation permitted the availability of the aforesaid provision only in respect of CIR Processes initiated on or after 03.07.2018. Accordingly, the application could be enabled only when circular letter was issued on 30.07.2018. It is in the aforesaid circumstances that we hold that the judgment rendered by Hon'ble Supreme Court in Arcelor Mittal's case would not be applicable to this part of period of the present case and the period of 70 days deserve to be excluded.

The next period of 35 days from 25.08.2018 to 28.09.2018 again deserves to be excluded as the provisions of Section 21(8) read with Section 22(2) of the Code has provided voting share of 66% and by the order dated 28.09.2018 the Principal Bench of the Tribunal has taken the view that it could be by the highest number of respective class of creditors. Therefore, the period of 35 days as well warrants to be excluded. The rest of the period of eight days from the date of

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presenting this application till date would also need to be excluded as per para 83 of the judgment rendered in the case of Arcelor Mittal India Private Limited v. Satish Kumar Gupta & Ors. (Civil Appeal Nos. 9402-9405 of 2018 decided on 04.10.2018)

In view of the above we accept the prayer made in the application. The period from 06.06.2018 to 14.08.2018, 25.08.2018 to 28.09.2018 and 01.10.2018 to 08.10.2018 is excluded, from the CIR Process period of 180 days/270 days.

The application stands disposed of.

Sd/-

(M.M.KUMAR)
PRESIDENT

Sd/-

(S. K. MOHAPATRA)
MEMBER (TECHNICAL)

08.10.2018
Ritu Sharma