

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A.No.514/2020 in
C.P.(IB)No.305/BB/2019
U/s.60 (5) of the IBC, 2016
R/w Rule 11 of the NCLT Rules, 2016

In the matter of:

Ms. Sripriya Kumar
Resolution Professional of
M/s. Arun Shelters Private Limited

224A (New 346/1) next to National
Public School, Avvao Shanmugam
Salai, Gopalapuram,
Chennai- 600 086 - Applicant/RP

Date of Order:18thDecember,2020

Coram:1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant : Mr. Vijaya Kumar

ORDER

Per:Rajeswara Rao Vittanala, Member (J)

1. I.A.No.514/2020 in C.P.(IB)No.305/BB/2019 is filed by Ms. Sripriya Kumar, Resolution Professional of M/s. Arun Shelters Private Limited('Applicant'),U/s.60(5) of the IBC, 2016 R/w Rule 11 of the NCLT Rules, 2016, by inter-alia seeking for exclusion of the period of 126 days with effect from Sep



18, 2020 till Jan 21, 2021 from the CRIP period of the Corporate Debtor.

2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, as follows:

- (1) C.P.(IB)No.305/BB/ 2019 filed by M/s. Kotak Mahindra Bank, was admitted by the Adjudicating Authority vide order dated 31.01.2020 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor, appointing Mr. Pankaj Srivastava, as IRP, imposing moratorium etc. The IRP was later confirmed as Resolution Professional on 15.06.2020. Accordingly, the RP filed the list of creditors and constitution of COC before the Tribunal on 27.02.2020. At this stage, the RP decided to constitute a project level COC for one of the projects of the Company namely, Arun Auroville. The RP based on legal advice constituted COC following orders of Hon'ble NCLAT in *Flat buyers Association, Winter Wills Vs Umang Reality* and COC was constituted only in respect of real estate project 'Auroville'. As a result, COC comprised of Kotak Mahindra Bank and Limited and 2 home buyers. Thereafter COC meetings were held on 02.03.2020, 17.03.2020 & 30.04.2020.
- (2) In the 3rd Meeting of the COC the RP wanted to change the mode of operation from a project wise CIRP that is only for Arun Auroville to a Company Level CIRP and proposed the inclusion additional creditors pertaining to Project koustubha. This was objected by M/s Kotak Mahindra Bank. On the objections of Kotak Mahindra Bank, the erstwhile RP decided to reconstitute the COC by including other Projects creditors and filed the same before this Hon'ble Tribunal on



02.05.2020. In the meanwhile, an Application I.A No. 187 & 195 of 2020 was filed by Kotak Mahindra Bank Limited, Challenging the unilateral reconstitution of COC, which was allowed by this Tribunal on 29.06.2020. Therefore, from 31.01.2020 till 29.06.2020 nothing concrete could be carried out with reference to CIRP on account of the Constitution of COC and unilateral reconstitution of COC. Further no proceedings could be convened between 24.03.2020 and 31.05.2020 on account of national wide lockdown on account of COVID-19. Though there was relaxation in lockdown from 1st week of May 2020, as the infection rate was increasing no filed work could be carried out. Further as the issue relating to constitution of COC was in flux no concrete decision could be taken by RP.

- (3) Further, the RP revised the constitution of the COC once again and filed a memo before the Adjudicating Authority on 21.08.2020 as under to revert to the position as at the first COC meeting namely, a project wise COC only in respect of Arun Auroville. Thereafter, the meeting for replacement of RP was held on 10.08.2020 and the Application I.A No. 322 of 2020 was filed for replacement of RP by present RP and the same was allowed by this Adjudicating Authority on 11.09.2020, which was received by this Applicant/RP on 18.09.2020. Further, no effective proceedings could be carried on between August 2020 to September 2020. The Period of 180 days expired on 02.08.2020.
- (4) The Applicant has also relied on the Insolvency and Bankruptcy Board of India, inserted Regulation 40C to the Insolvency and Bankruptcy Board of India (Liquidation



Process) Regulations, 2016, vide notification dated 20.04.2020 and the same is as under:

Exclusion of period of lockdown”

40C. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any Corporate Insolvency Resolution Process.”

- (5) Due to the pandemic situation compounded further by the dispute between the RP and the key financial Creditor, it was not possible to carry out an effective CIRP only from 04.02.2020 upto 24.03.2020 that is 54 days. Hence it is sought to exclude a total period of 126 days from the CIRP process. Further, no application of exclusion has been filed by the RP till date of this Application. Hence, such exclusion of time of 126 days may be provided from the date of receipt of order of appointment of the Applicant that is 18.09.2020. With effect from the appointment order of RP, the Applicant recommenced the CIRP process, in full swing. The COC in its 6th meeting held on 22.09.2020 has unanimously decided and directed the RP to file an Application for the exclusion of time of 126 days in conduct of CIRP process. Hence, this present Application.
3. Heard Shri Vijaya Kumar, learned Counsel for Resolution Professional **through Video Conference**. We have carefully perused the pleadings of the Party and also extant provisions of the Code and Rules made there under and the relevant law on the issue.



4. As stated supra, the material facts of the issue are not in dispute, and the Applicant could not conclude the CIRP in question, within stipulate time, due to the lockdown and partial lockdown imposed in the wake of Covid-19 outbreak, pendency of legal proceedings etc. process of the Corporate Debtor is at the stage of completion. However, the delay caused in the process was due to imposition of nationwide and state-wise lockdown. It is settled position of Law that Adjudicating Authority is empowered to exclude certain period of time, due to various circumstances which cause delay to complete CIRP. And the present Pandemic situation , and pendency of legal proceedings are circumstance where, the Adjudicating Authority can grant exclusion/extension of time. And the reasons cited by the Applicant for exclusion of time are reasonable and justifiable, and thus we are inclined to allow the instant Application as prayed for.
5. In the result, we hereby allowed **I.A.No.514/2020** in C.P. (IB)No.305/BB/2019 with the following directions:
- (1) Hereby granted exclusion of 126 (One Hundred and Twenty-Six) days, from the CRIP period in respect of Corporate Debtor;.
 - (2) The Resolution Professional is directed to take expeditious steps to finalize the CIRP, without any further delay.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

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