

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A. No.24 of 2021 in
C.P. (IB) No.305/BB/2019
U/s. 12 of IBC, 2016
R/w Reg. 40 of IBBI Regulations, 2016

In the matter:

Ms. Sripriya Kumar
Resolution Professional of
Arun Shelters Private Limited,
R/Off: No.299, 6th Cross, 1st Block,
R.T Nagar, Near BDA Complex,
Bengaluru – 560 032.

- Applicant /RP

Date of Order: 03rd February, 2021

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

Parties/Counsels Present (through Video Conference)

For the Applicant/RP : Mr. Vijay Kumar, Adv.

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. I.A. No.24 of 2021 in C.P. (IB) No.305/BB/2019 is filed by Ms. Sripriya Kumar Resolution Professional of M/s. Arun Shelters Private Limited ('the Applicant/Resolution Professional') under Section 12 of the I & B code, 2016, R/w Regulation 40 of IBBI Regulations, 2016 seeking to allow the extension of the Corporate Insolvency Resolution Process period by 90 days in terms of the details given above w.e.f. January 21, 2021, to facilitate successful completion of CIRP of the Corporate Debtor and also to meet the ends of justice and equity.
2. Briefs facts of the case, as mentioned in Application, which are relevant to the issue in question, are as follows:



- (a) Initially, the Company Petition bearing C.P.(IB) No.305/BB/2019 was filed by M/s. Kotak Mahindra Bank, under Section 7 of the IBC, 2016, R/w Rule 4 of I&B (AAA) Rules, 2016 for initiating CIRP process in respect of the Corporate Debtor namely M/s. Arun Shelters Private Limited, and it was admitted by the Adjudicating Authority on 31.01.2020 by appointing Mr. Pankaj Srivastava as the IRP and later the IRP was confirmed as RP. The erstwhile RP issued a public announcement on 04.02.2020 in Prajavani (Kannada Daily) and Deccan Herald (English Daily) newspapers and certain claims were admitted to the tune of Rs.45.20 Crores as per report filed before this Tribunal.
- (b) The RP also filed the list of Creditors and constitution of CoC before this Tribunal on 27.02.2020. At this stage, the TP decided to constitute a project level CoC for one of the projects of the Company namely, Arun Auroville . There are two projects of the Company which are both dormant – Arun Auroville and Arun Parkwoods. 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 Limited and two home buyers. Thereafter CoC meetings were held on 02.03.2020, 17.03.2020 and 30.04.2020.
- (c) In the third 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. Notwithstanding the objections of Kotak Mahindra Bank, the erstwhile Resolution Professional decided to reconstitute the CoC by including other Project creditors and filed a revised list of Creditors by way of Memo before this Tribunal on May 2, 2020.
- (d) When the matter was under discussion, the RP sought to conduct the fourth meeting of the CoC, notices were issued for meeting on 19 May, 2020, 1 June 2020 and 26 June, 2020. The meeting was repeatedly rescheduled and was finally held on 29.06.2020. In the meanwhile, an

Application I.A No.187 and 195 of 2020 was filed by Kotak Mahindra Bank Limited, challenging the unilateral reconstitution of CoC. Further, it 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 re-constitution of CoC. Further no proceedings could be convened between 24.03.2020 and 31.05.2020 on account of nationwide lockdown on account of Covid-19. Though there was relaxation in lockdown from 1st week of May 2020, as the infection rate increasing no field work could be carried out. Further as the issue relating to constitution of CoC was in flux no concrete decision could be taken by the RP.

- (e) On 15.06.2020, the IRP was confirmed as RP. Further this Tribunal vide its Order dated 29.06.2020 allowed I.A No.187 and 195 and the position was reverted to CoC being constituted for real estate project 'Auroville'. Thereafter, the RP revised the constitution of the CoC once again the submitted a Memo to the NCLT on 21 August 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.
- (f) Thereafter, no CoC meeting has been convened except primarily for the replacement of RP. This meeting was held on 10.08.2020. Thereafter an application was filed being I.A No.322 of 2020 for replacement of erstwhile RP by the present RP. This Application was allowed on 11.09.2020 and received by this Applicant RP on 18th Sep. 2020. Therefore, again no effective proceedings could be carried on between August 2020 to September 2020.
- (g) The Applicant after taking over as the RP proceeded to review the Claims and it was identified that the Corporate Debtor has one more Project apart from Project Arun Aurovilla i.e. Project Arun Parkwoods, which has also committed defaults to its creditors and claims have been received from financial creditors, home buyers and the operational creditors of the said project Parkwoods (formerly called as Arun Kausthuba). Hence the applicant based on discussions with Financial creditors constituted project wise CoC, for project Arun Parkwoods. The Present RP has also filed the

report about the need for constituting CoC for Project Parkwoods on 11 October 2020 with this Tribunal vide I.A No.187 and 195 of 2020 in CP(IB)No.305 of 2019.

- (h) The CIRP period of 180 days expired on 02.08.2020 (Commenced on 31st January, 2020). The present RP had filed an Application to exclude period during which no CIRP could be carried on account of Covid-19, and the issues relating to constitution/reconstitution of CoC and the application filed for replacement RP. An exclusion for a period of 126 days from the CIRP process was allowed by the Tribunal.
- (i) After assumption of office, the present RP has been performing actions as mandated by the Code. The present RP has conducted 6 CoC meetings on 22.09.2020, 17.10.2020, 29.10.2020, 28.11.2020, 07.12.2020, 06.01.2021 in relation to Project Arun Aurovilla.
- (j) It is stated that the Applicant has also prepared a comprehensive Information Memorandum, obtained Encumbrance Certificates and other relevant documents necessary for the Resolution Plan. Further one Registered Valuers for the valuation of Land & Buildings and the Plan and Machinery of the Corporate Debtor and is in interactions with the Valuers to enable such process. The last Financial Statement of the Corporate Debtor is only in respect of FY ended March 31, 2018. The Applicant is also in the process of enabling the completion of the Statutory Auditor of the Financials of the Corporate Debtor for the FY 2018-19 and FY 2019-20. An independent firm of Chartered Accountants to conduct was appointed to conduct the Avoidance Transaction Audit of the Corporate Debtor and to conduct a Due Diligence of the two prospective Resolution Applicants under the Code and such appointments have been with the approval of the CoC. Furthermore, the Applicant issued a public announcement for the Expression of Interest in Form G on 04th November, 2020 to invite prospective Resolution Applicants, in Financial Express (English) and Vijayavani (Kannada). Subsequent to the public announcement, two prospective were shortlisted who fulfilled the criteria as laid down by the RP with the approval of CoC in accordance with Section 25(2)(h) of IBC, 2016.



- (k) The applicant also issued a Request for Resolution Plan for Project Arun Aurovilla on 14th Devenber 2020. Along with the Request, the Information Memorandum was also circulated to the two Prospective Resolution Applicants admitted by the CoC. The Applicant is in the process of enabling the Resolution Plan in accordance with the Code. The finalized Resolution Applicants are expected to submit the Resolution Plan on 15th January, 2021. Such applicants have also been requesting for additional time for submission which is also approved by the CoC. The process of evaluation of the plan and formalities related thereto would not be possible to be completed before January, 2020 which is the date upto which exclusion of time has been allowed by this Tribunal.
- (l) The Progress of the CIRP and the other aforesaid matters were placed before the meeting of the CoC held on 06th January, 2021 and the Committee felt that in view of the progress of the Resolution Plan process, an extension may be sought by the RP by this Application under Section 12 to request the Hon'ble Tribunal to extend the period of CIRP by 90 days w.e.f. 21.01.2021.
3. Mr. Vijay Kumar, Resolution Professional appeared and was heard through **Video Conference**. We have carefully perused the pleadings of the Party and the extant provisions of the Code and the Regulations made thereunder.
4. As stated supra, the Resolution Applicants were expected to submit the Resolution Plan on 15th January, 2021. But the process of evaluation of the plan and formalities related thereto would not be possible to be completed before January, 2020. The Progress of the CIRP and the other aforesaid matters were placed before the meeting of the CoC held on 06th January, 2021 and the Committee felt that in view of the progress of the Resolution Plan process, an extension may be sought by the RP for extending the period of CIRP by 90 days w.e.f. 21.01.2021.
5. We find that the instant Application is filed in accordance with extant provisions of Code, and we are convinced that the initial statutory period of 180 days would not be adequate to conclude CIRP in question. Therefore, it would be

just and proper to extend the CIRP by a further period of 90 days as prayed for.

6. In the result, I.A.No.24 of 2021 in C.P. (IB) No.305/BB/2019 is disposed of with the following directions:

- (1) The CIRP period is hereby extended for a further period of 90 days beyond the initial period of 180 days i.e., from 21.01.2021, to complete the Corporate Insolvency Resolution Process.
- (a) The Resolution Professional is directed to take expeditious steps to finalize the CIRP, without any further delay and to submit progress reports to the Adjudicating Authority, and conclude the CIRP well before completion of the present extended period. We make it clear that no further extension of time/exclusion of time is permissible under the Code. No order as to costs.
- (b) Post the case for the report of the RP on **15.03.2021.**

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

Amar

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL