

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**  
**Company Appeal(AT) (Ins)No. 637 of 2021**

**IN THE MATTER OF:**

**Vinod Tarachand Agrawal**

**...Appellant**

**Vs.**

....

**Present:**

**For Appellant:                    Mr. Monaal Davawala, Advocate.**

**J U D G M E N T**

**DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER**

1. The present appeal has been filed by the ‘Appellant’ under Section 61 of the ‘Insolvency and Bankruptcy Code, 2016’ (in short ‘Code’) against the impugned order dated 12.07.2021 passed by the ‘Adjudicating Authority’ (National Company Law Tribunal), Ahmedabad Bench – Court No. 1 in I.A No. 453(AHM) 2021 in CP(IB) 213 of 2018.
2. The ‘Adjudicating Authority’ in I.A No. 453(AHM) 2021 in CP(IB) 213 of 2018 has not granted exclusion of certain period of ‘Corporate Insolvency Resolution Process’ (CIRP) inspite of the Resolution passed by the 100 % voting share of the Committee of Creditors (CoC) of the Corporate Debtor (CD). The Adjudicating Authority while passing the impugned order has observed the followings :

*“IA No. 453 of 2021 is filed by the Applicant for extension of period. In fact, we have already extended the period vide order*

*dated 30.03.2021 in IA No. 179 of 2021. It appears from record that assets of the Corporate debtor attached by CBI and ED and they are not yet released. In such situation, we feel that CIRP cannot prolonged on such ground for indefinite period. This application stands disposed of. We direct Resolution Professional to take further steps to complete the CIRP process as per provisions of law. In view of this, IA No. 453 of 2021 stands disposed of.”*

3. In the 11<sup>th</sup> meeting of the CoC of the CD held on 09.06.2021, the CoC has approved the Resolution through e-voting as follows:

*“Mr. Vinod Tarachand Agarwal has been appointed as Resolution Professional by NCLT Ahmedabad on 21.10.2020 whereas CIRP period of 270 days (including extension approved by the Hon’ble NCLT) will end on 27.02.2021. Exclusion of 90 days from 31<sup>st</sup> March provided by Hon’ble NCLT. The EOI were received from two Prospective Resolution Applicants and a single Resolution Plan received till date. Due to Covid, there is no progress in de-attachment of property from ED at Tribunal/ Courts and less number of EOI received than expected one. However, as the committee is considering reissue of EOI, the Extension of CIRP period should be considered. In view of the above, RP asked for approval from the member of CoC to make an application to the adjudicating authority for exclusion of the period of CIRP by further 90 days.*

*“Resolved that as per the approval of the Committee, the RP shall proceed to reissue the EOI i.e. Form -G be published in leading newspaper and the cost of publication shall form part of CIRP costs”.*

*“Resolved that the application for exclusion of period to be filed with the Hon’ble NCLT by the RP as approved by the Committee.”*

*“Further resolved that the members of the CoC to authorize the RP Mr. Vinod Agrawal, IP registration No. IBBI/IPA-001/IP-P00641/2017-18/11090 to file necessary application with the adjudicating authority, Hon’ble NCLT, Ahmedabad for excluding the period of CIRP for an extended period of 90 days”. On E-voting, the resolution was passed with 100% assent and the same is considered to be approved.”*

4. The Ld counsel for the appellant has stated that the exclusion of 90 days from the CIRP of the CD would save the company from 'Liquidation'. It was also pointed out by the Id. Counsel that there was a 'Prospective Resolution Applicant' who has submitted his 'Resolution Plan' & there is likelihood for revival of the CD. Due to prevalent pandemic, there was not much progress in deattachment of property from ED at Tribunals/Courts. The CoC has also considered reissue of 'Expression of Interest' (EOI) and hence there is a need for exclusion of such period. The Ld counsel has also pointed out that the Appellant was perusing legal proceedings to get attachment of sole property of the CD lifted before various judicial forum to get the property released as early as possible and also cited the judgment of Hon'ble Apex Court in the case of 'Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta' wherein it has held that the '*Adjudicating Authority or the Appellate Authority has discretion to extend the time of CIRP period even beyond 330 days in certain exceptional cases*'. This is an exceptional case as revealed from the submissions by the Ld counsel for the Appellant. No doubt, CBI and ED has attached the sole property of the CD and the matter is under adjudication.
5. We have heard Ld. Counsel for the Appellant and the pleading submitted by him and observed as follows:
  - a. This pandemic has, no doubt,
  - b. updated the normalcy in various activities of 'Corporate Insolvency Resolution Process.
  - c. The 'Resolution Professional' has received a 'Resolution Plan' from a 'Prospective Resolution Applicant' which is under scrutiny of Resolution Professional/ Committee of Creditors.

d. If granting of 90 days helps the Corporate Debtor to revive, then the basic objective of the I&B Code, 2016 will be met. Liquidation is the last resort. Hence, this ‘Tribunal’ is of the subjective opinion that no prejudice will be caused in allowing the instant appeal to prevent an aberration of justice and to promote substantial cause of justice. Viewed in that perspective, Company Appeal (AT)(Ins) No. 637 of 2021 is allowed. The impugned order of the Adjudicating Authority in I.A No. 453(AHM) 2021 in CP(IB) 213 of 2018 dated 12.07.2021 is set aside. No order as to costs.

**[Justice M.Venugopal]**  
**Member (Judicial)**

**(Dr. Ashok Kumar Mishra)**  
**Member(Technical)**

**16<sup>th</sup> February, 2022**

**New Delhi**

*Raushan.K*