

Computation of time period of Corporate Insolvency Resolution Process

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The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “Code”) in its Section 12 provides that the corporate insolvency resolution process (hereinafter referred to as “CIRP”) shall be completed within a period of one hundred and eighty (180) days from the date of admission of the application to initiate such process. The resolution professional may move an application before the adjudicating authority seeking extension of the aforesaid period, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent of the voting shares. The adjudicating authority may thereafter by order extend the duration of such process beyond 180 days by such further period as it thinks fit, but not exceeding ninety days. However, this is only a one time extension.

Section 12 thus clearly stipulates that the period of CIRP shall commence from the date of admission of the application and end on the 270th day (including extension of 90 days). However, there may be circumstances which may warrant otherwise. The Code does not specifically provide as to whether the time period on account of any unforeseen circumstances or for justified reasons can be excluded while computing the aforesaid 270 days. This has been a subject matter of a number of cases before the NCLT and the NCLAT.

In *Quantum Limited v. Indus Finance Corporation*¹, the application seeking extension of the CIRP was filed after the expiry of 180 days. The NCLT rejected the application as it was not filed before the expiry of 180 days. An appeal was preferred and while allowing the appeal, the NCLAT held that the provisions of the Code do not require the application to be filed before the expiry of the 180 days period. Further, the NCLAT excluded the time period between 181st day and the passing of the order. It was held as under:

“If within 180 days including the last day i.e. 180th day, a resolution is passed by the committee of creditors by a majority vote of 75% of the voting shares, instructing the resolution professional to file an application for extension of period in such case, in the interest of justice and to ensure that the resolution process is completed following all the procedures time should be allowed by the Adjudicating Authority who is empowered to extend such period up to 90 days beyond 180th day...

...For the aforesaid reasons, we set aside the impugned order dated 18th December, 2017 and extend the period of the resolution process for another 90 days to be counted from today. The period between 181st day and the passing of this order shall not be counted for any purpose and is to be excluded for all purpose...”

In *Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd. and others*² the CIRP remained stayed for about 166 days due to an interim order that was passed by the Adjudicating Authority. The NCLAT held:

“...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.

¹ Company Appeal (AT) (Insolvency) No. 35 of 2018.

² Order dated 8th May 2018 in Company Appeal (AT) (Insolvency) No. 185 of 2018.



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.

However, after exclusion of the period, if further period is allowed the total number of days cannot exceed 270 days which is the maximum time limit prescribed under the Code.”

In *Velamur Varadan Anand v. Union Bank of India & Anr*³ the question before the NCLAT was as to how the period of 180 days is to be counted for CIRP i.e. from the date of admission, as per the provisions of the Code or from the date of knowledge of the Resolution Professional? Further if there is a gap between knowledge of Resolution Professional and the actual date of admission, then how such period is to be treated? Whether such period should be excluded for the purpose of counting the period of 180 days or additional time is to be allowed beyond 180 days for completing the Resolution Process? In this case, the application was admitted on 16th August, 2017 and on receipt of intimation the resolution professional took charge on 14th September, 2017 (i.e. after 30 days of admission). Given the circumstances of the case and relying on its decision in *Quinn Logistics*, NCLAT excluded the aforesaid period of 30 days for the purposes of counting the period of CIRP and thereby allowed the 'Resolution Professional' to complete the CIRP by 15th June 2018.

Similarly in a case where the CIRP could not be completed within the statutory period fixed under Section 12 of the Code for acts beyond the control of the applicants and non-exclusion of time would have caused grave injustice to the applicant. The NCLT, Kolkata Bench in *RBL Bank Limited v. MBL Infrastructures Limited*⁴ excluded the time period of continuation of the stay order and the period taken for disposal of application from the 270 days fixed for conclusion of CIRP.

CONCLUSION

The Code provides for a time bound resolution process. However the fact that the Code is at its infancy stage and that there are a number of issues which are not yet settled or foreseen, makes the target of 270 days difficult to achieve. Thus, there may be situations or cases which may call for an

³ Order dated 16th May, 2018 in Company Appeal (AT) (Insolvency) No. 161 of 2018.

⁴ [2018] 1 IBJ (JP) 303 (NCLT)



extension or exclusion of certain time period from the computation of 270 days. However it is imperative that the object and intent of the Code are not compromised because of repeated extensions and that the extension or exclusion is granted only in genuine and justifiable cases and not to abuse and delay the process.