

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 130
(IB)-1083(PB)/2018

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Ltd. Applicant/petitioner
v.
Adel Landmarks Ltd. Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016 (CIRP)

Order delivered on 03.12.2019

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR
HON'BLE PRESIDENT

SH. S.K MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the RP	Mr. Sumant Batra & Mr. Akshit Kapur, Advs. With Ms. Kiran Sharma, CS
For EARCL	Mr. Atul Sharma, Mr. Sugam Seth, Mr. Vikram Babbar, Mr. Shashank Kumar Lal & Mr. Aditya Vasisth, Advs.
For Skyville RWA For Applicants (Home Buyers)	Mr. Alok Kr. Aggarwal & Ms. Pavni Poddar, Advs. Mr. Gaurav Mitra, Ms. Megha Choubey, Mr. Wishvesh Ranjan & Mr. Apoorv Agarwal, Advs.
For Countrywide Promoters For the IL & FS	Mr. Vijay Kaundal & Mr. Nitish K. Sharma, Advs. Mr. Krishnendu Datta, Ms. Aayushi Singh & Mr. Shashank Agarwal, Advs.
For the Respondent	Mr. Ramesh Gopinathan, Adv. For R-16 Ms. Rasi Narayan Roni, Adv. For R-10
For CA-2343(PB)/2019	Mr. Sharad Tyagi & Ms. Yukti Makan & Ms. Krati Chauhan, Advs.
For CA-2512(PB)/2019	Mr. Abdul Hamid, Adv.
For CA-2511(PB)/2019	Ms. Mercy Hussain & Ms. Vandana, Advs.
For Capri Global	Mr. Sanjeev Pathak, Adv. along with Ms. Prarthana Sampath, AR
CA-1980(PB)/2019	Mr. Aakarshan Aditya & Mr. Vibhu Tiwari, Advs.

ORDER

CA-1771(PB)/2019 & CA-2575(PB)/2019

These two applications have been filed seeking extension of time for conducting the Corporate Insolvency Resolution Process in



respect of Adel Landmarks Ltd. A peculiar situation is at hand in as much as the Hon'ble Appellate Tribunal in its order dated 20.09.2019 has directed the Adjudicating Authority-NCLT to admit the petitions in respect of Sachet Infrastructure Pvt. Ltd. (C.P. No. (IB)-190(PB)/2019), Magad Realtors Pvt. Ltd. (C.P. No. (IB)-169(PB)/2019), Mehak Realtech Pvt. Ltd. (C.P. No. (IB)-168(PB)/2019), Sameeksha Estates Pvt. Ltd. (C.P. No. (IB)-191(PB)/2019), Jamvant Estates Pvt. Ltd. (C.P. No. (IB)-170(PB)/2019). Accordingly, those petitions were admitted by this Bench on 01.11.2019 and as per the directions issued by the Hon'ble Appellate Tribunal the Corporate Insolvency Resolution Process is to be conducted by the IRP who was appointed in the case of Adel Landmarks Ltd. The whole process was to proceed jointly and 'Information Memorandum' was also required to be prepared in a manner that the 'Residential Plotted Colony' at village Palwal at Sectors 8 & 9 in terms of License No. 46 of 2009 and License No. 53 of 2009, is to be completed in one go by initiating consolidated 'Resolution Plan(s)' for total development. The aforesaid directions do not leave any room for doubt that the CIR Process in the case of Adel Landmarks has to proceed along with the aforementioned other companies. The period of 330 days in the case of Adel Landmarks Ltd., has already expired on 31.10.2019 and in the peculiar facts and circumstances we find that the time has to be extended particularly in the light of the observations made by Hon'ble the Supreme Court in the case of *Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta & Ors.* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) which reads as thus:-



“Thus, while leaving the provision otherwise intact, we strike down the word “mandatorily” as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant’s right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation.”

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2. It is obvious that Hon'ble the Supreme Court has struck down the word "mandatorily" as being manifestly arbitrary under Article 14 of the Constitution of India and being excessive and imposing unreasonable restriction on the right of litigant to carry on business under Article 19(1)(g) of the Constitution. It has also been clarified that the Adjudicating Authority and/or Appellate Tribunal may even extend the time beyond 330 days if the facts and circumstances so warrant and the delay is attributable to the tardy process of the Adjudicating Authority and/or Appellate Tribunal itself. The present case is a classic example of the situation contemplated by Hon'ble the Supreme Court in the aforesaid para. Therefore, we grant 180 days w.e.f. 01.11.2019. We hope and trust that this would be adequate and the Resolution Professional shall utilise the period in a husband like manner so as to complete the whole process efficiently and on time. The Resolution Professional may proceed in the best interest of the projects simultaneously in respect of all these companies.

3. CA-1771(PB)/2019 & CA-2575(PB)-2019 stands disposed of.

CA-2343(PB)/2019

Notice of the application.

Mr. Batra, Ld. Counsel for the RP accepts notice and reply be filed within ten days with a copy in advance to the counsel for the applicant.

List for arguments on 03.01.2020.

CA-2590(PB)/2019

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A hard copy of the application has been handed over to Mr. Batra, Ld. Counsel for the RP. Reply, if any be filed within ten days with a copy in advance to the counsel for the applicant.

List for arguments on 03.01.2019.

CA-2513(PB)/2019

Notice of the application.

Mr. Batra, Ld. Counsel for the RP accepts notice. A copy of the application has been handed over to him in the Court. Reply be filed within ten days with a copy in advance to the counsel opposite.

List for arguments on 03.01.2019.

CA-2511(PB)/2019

Notice of the application.

Mr. Batra, Ld. Counsel for the RP accepts notice. A copy of the application has been handed over to him in the Court. Reply be filed within ten days with a copy in advance to the counsel opposite.

List for arguments on 03.01.2019.


CP. No. (IB)-1083(PB)/2018

In the order dated 20.09.2019 passed by Hon'ble Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 377 of 2019 it has been clarified in para 43 that the matter concerning certain companies like 'Superlative Infrastructure Pvt. Ltd.', 'Bhisham Infrastructure Pvt. Ltd.', 'Neeleshwar Mines & Minerals (India) Pvt. Ltd.' and 'Manogayan Estates Pvt. Ltd.' are remitted back to the Adjudicating Authority-NCLT. Further direction has also been issued to Edelweiss Asset Reconstruction Company-Appellant

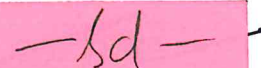


therein and the corporate debtor to produce relevant agreement to show that Adel Landmarks Ltd. (Principal Borrower) against which the Corporate Insolvency Resolution Process has been initiated is a common developer. So far, none of the aforesaid persons- the appellant or the corporate debtor has filed any material before us in compliance with the direction of the Hon'ble Appellate Tribunal. We grant liberty to the appellant and the corporate debtor to produce the relevant agreement to prove that the Adel Landmarks Ltd. is a common developer.

List for further consideration on 03.01.2020.



(M.M. KUMAR)
PRESIDENT



(S.K MOHAPATRA)
MEMBER (TECHNICAL)

03.12.2019
Ritu Sharma