

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

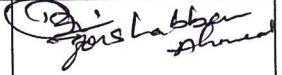
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PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

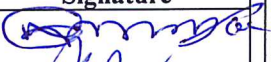



ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.12.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 554/2018 CP(IB) No.219/7/HDB/2017
NAME OF THE COMPANY	Viceroy Hotels Ltd
NAME OF THE PETITIONER(S)	Asset Reconstruction Company (India) Limited
NAME OF THE RESPONDENT(S)	Viceroy Hotels Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Shabbeer Ahmed	Advocate	99666 22805	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
A. CHANDRA SHAHER	LAWYER	9949071066	
CMA K K Rao	RP	98482 69020	
DVA Braj Prasad D Parvathi Kumar	Advocate	9440234074	
T. Sujan Kumar Reddy for GST	Adv.	91600 1435	

ORDER

Orders passed in IA No.554/2018, vide separate order.

Since other IA's are listed on 10.12.2018, this matter is also listed on the same day i.e 10.12.2018.


Member(Judl)

Pavani

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No. 554/2018
IN
CP(IB) 219/7/HDB/2017
U/s 12, 60 (1) (5) (6) of IBC, 2016
R/w Rules 11, 15, 32, 51 & 153 of NCLT Rules 2016 &
Regulation 40 of the IBBI (IRPCP) Regulations, 2016

In the matter of

Asset Reconstruction Company (India) Limited

Vs

Viceroy Hotels Limited

Viceroy Hotels Limited
Plot No.20, Sector 1,
Survey No.64, 4th Floor, Huda Techno Enclave,
Madhapur, Hyderabad- 500 081.
Telangana.

... Applicant /
Corporate Debtor

VERSUS

M/s.Asset Reconstruction Company (India) Limited
The Ruby, 10th Floor 29,
Senapati Bapat Marg, Dadar(W)
Mumbai- 400 028

...Respondent /
Financial Creditor

Date of order: 06.12.2018

Coram

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Counsels / parties present:

For Applicant: Mr. A.Chandrasekar, Advocate.

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)



Heard on: 03.12.2018.

ORDER

1. The Resolution Professional has filed this Application under Section 12, 60 (1) (5) (6) of Insolvency and Bankruptcy Code, 2016 R/w Rules 11, 15, 32, 51 and 153 of NCLT Rules, 2016 and Regulation 40 of the Insolvency & Bankruptcy Board of India, 2016 seeking directions of this Tribunal to exempt 147 days' time lost in the legal process from CIRP period and extend time for completion of CIRP.
2. Averments made in the interlocutory application in brief:
 - (a) This Tribunal admitted the Petition filed under Section 7 by Asset Reconstruction Company (India) Limited / Financial Creditor vide order dated 12.03.2018 and appointed Shri K. Koteswara Rao as Interim Resolution Professional who was subsequently confirmed as Resolution Professional of Viceroy Hotels Limited (Corporate Debtor). The CIRP period was extended by 90 days beyond 180 days by this Tribunal vide order passed in IA 340 of 2018 dated 04.09.2018.
 - (b) It is averred that the Applicant/Resolution Professional has conducted altogether 11 CoC meetings. 270 days of CIRP period is coming to an end on 06.12.2018. Hence, CoC in its 11th Meeting held on 27.11.2018 directed the Resolution Professional to make an application to this Tribunal for seeking exclusion of 147 days from the statutory period of 270 days to



enable the Resolution Professional / CoC to finalise the Resolution Plan.

- (c) It is averred that in the present case, ARCIL filed Application to grant stay of reconstituted CoC dated 11.07.2018 and consequently to direct the Resolution Professional not to take any decisions including entertaining new claims till the final disposal of IA No. 250/2018. This Tribunal passed interim order that any decision taken in CoC on 28.08.2018 with regard to inclusion of new Financial Creditors in the CoC, will be subject to the result of IA 250/2018. In pursuant to the said directions the RP could not take decisions from 11.07.2018 to 04.10.2018, which hampered the finalization of the Resolution Plans within stipulated time. Subsequently, this Tribunal disposed of IA 250/2018 on 04.10.2018 with certain directions to the Resolution Professional. Hence it is prayed that the pending period of the matter from 11.07.2018 to 04.10.2018 need to be excluded from the period of 270 days. It is also averred that IA No.250/2018 was challenged by the ARCIL before Hon'ble NCLAT, which is pending.
- (d) It is also further averred that the Respondent filed different IA's before this Tribunal and the same were pending for adjudication.
- i. IA No. 294/2018, replacement of RP.
 - ii. IA No.295/2018, to keep the last date of submission of Resolution Plans in abeyance.

- iii. IA No.376/2018 and IA No.377/2018 filed against the promoters Prabhakar Reddy and subsidiary company i.e café D Lake Pvt, Ltd., to implead and direction in respect of claim.
- iv. IA No.484/2018 and IA No.485/2018, against IARC to implead and direction in respect of claim.
- v. IA No.469/2018 was filed by M/s. Mahal Hotels Limited on 24.10.2018 and the same came up for hearing on 26.10.2018 and IA No.483/2018 was filed on 22.10.2018 by the RP seeking clarification/direction of this Tribunal regarding the admission of the revised claim submitted by M/s. Mahal Hotels in which the Tribunal was pleased to pass orders on 19.11.2018. During that period the finalizations of the Resolution Plan could not be processed as the voting share ratio of the COC has to be decided.
- vi. It is averred that the CIRP period would come to an end on 06.12.2018. There are five resolution plans received and were sent to BDO for certification of eligibility criterion under Sec 29A of the IBC, 2016. The same were received back by Resolution Professional only on 23.11.2018 and thus the evaluation of the Resolution plans and follow up procedure cannot be completed within a short time of seven days when 270 days of CIRP is ending on 06.12.2018. As such, Resolution Professional prayed for



extension of CIRP period. It is also averred by the Resolution Professional that if 147 days' time is not excluded from the CIRP period, the Resolution Professional would be left with no choice except to file report that the Resolution process could not be completed and the Corporate Debtor would be forced to go into liquidation throwing casual and indirect workmen into uncertainty. The Applicant has relied on the decision of the Hon'ble NCLAT in "Quinn Logistics India (P) Ltd., versus Mack Soft Tech (P) Ltd., Hyderabad reported in (2018) 96 taxman.com 63 (NCL-AT)" which held that it was always open to the Adjudicating Authority to exclude certain period for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion.


vii. The Resolution Professional therefore prayed this Tribunal to consider excluding 147 days period from the CIRP of 270 days and to grant extension of time for completing CIRP Process beyond 270 days which is going to end on 6th December, 2018.

3. I have heard the Counsel for Resolution Professional and also the Counsel for Financial Creditor. This Application is filed seeking exclusion of 147 days from CIRP period on the ground that there were several Applications filed during CIRP and that the Resolution

Plans received could not be processed during CIRP which is going to end on 06.12.2018 i.e today.

4. The Learned Counsel for Resolution Professional would contend that this Tribunal gave an interim direction in IA 250/2018 that any decision taken in CoC meeting on 28.08.2018 shall be subject to the result of IA 250/2018. Therefore, Resolution Professional could not take any further action in view of interim direction. The said IA 250/2018 was disposed on 04.10.2018.
5. The Resolution Professional cited several IAs filed during CIRP in the Application. The Resolution Professional has also filed minutes of the 11th CoC meeting dated 27.11.2018 wherein CoC decided to seek for exclusion of 147 days from CIRP period to enable the CoC to consider the Resolution Plans received and to take a decision.
6. I have gone through the minutes of CoC held on 27.11.2018. The CoC has taken into consideration the time required for processing the Resolution Plans. It is true, Resolution Plans were received which are under process of consideration by the CoC. The CIRP comes to an end on 06.12.2018. It is also true some Applications were filed during CIRP and pendency of these Applications also caused some delay in examining the Resolution Plans by the CoC.
7. The Counsel for Resolution Professional relied on the decision of Hon'ble NCLAT reported in Quinn Logistics India (P) Limited Vs Mack Soft Tech (P) Ltd and contended that Tribunal can exclude certain period from CIRP if facts and circumstances justify exclusion. Hon'ble NCLAT has held that in the following cases, time can be excluded from the CIRP :-



- (a) *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.*
 - (b) *If no "Resolution Professional" is functioning for one or other reason during the corporate insolvency resolution process, such as removal.*
 - (c) *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 CIRP.*
 - (d) *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 CIRP.*
 - (e) *If the CIRP is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and CIRP is restored.*
 - (f) *Any other circumstances which justifies exclusion of certain period.*
8. The Learned Counsel for Financial Creditor reported no objection for exclusion of 147 days from the CIRP period. The question now is how much time to be excluded from the CIRP to enable the CoC to consider the Resolution Plans already received by Resolution Professional. The only thing to be looked into by the CoC, is to assess the Resolution Plans received and to take a decision thereon. So this part remains to be attended to. The CoC has to take a decision on the Resolution Plans. It is an important requirement to be
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complied by the CoC, which is a part of CIRP for assessing the Resolution Plans and for taking a decision on them. Necessarily some period to be excluded from the CIRP, otherwise CoC cannot examine the Resolution Plans. It requires time to assess the Resolution Plans in detail and then finally take a decision either to accept or reject. So it is justifiable ground for excluding some period from the CIRP since CoC has to take a decision on the Resolution Plans after examination. The CoC can examine the plans which are five in number and to take a decision for which it may require a reasonable time of 45 days. Thus, there are grounds to exclude 45 days from CIRP in the interest of justice.

9. In the result, Application is allowed by excluding 45 days for the purpose of counting period of CIRP and thereby allowing Resolution Professional/CoC a further 45 days with immediate effect from today, to complete the CIRP and further direct the Resolution Professional to process the Resolution Plans received and place before the CoC and to take appropriate decision within the period allowed. The Resolution professional to discharge his functions as usual during this period.



**RATAKONDA MURALI
MEMBER (JUDICIAL)**