

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA NO. 522 OF 2022 IN CP (IB) NO.76/ALD/2019

Under the provision of Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 15 of the NCLT Rules, 2016)

In the matter of:

Sparkspell Homes Private Limited

Through Anuj Kumar Tiwari

The Resolution Professional of the Corporate Debtor

..... Applicant

And in the matter of:

Deepak Gupta (HUF)

.....Financial Creditor

Versus

Sparkspell Homes Private Limited

....Corporate Debtor

Order pronounced on 16th May, 2024

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Yash Tandon, Adv : For the Applicant/RP Sh. Anuj
Kumar Tiwari

ORDER

- 1.** The present Application is filed by Mr. Anuj Kumar Tiwari ('Applicant'), the Resolution Professional (RP) of the Corporate Debtor, Sparkspell Homes Private Limited under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (the 'IBC'/ 'Code') and r/w Rule 15 of NCLT Rules for seeking exclusion of days starting from 5.9.2022 to 6.1.2023, 6.1.2023 to 15.4.2023 and 21.4.2023 till 1.8.2023.
- 2.** This Adjudicating Authority vide order dated 28.8.2019 commenced the Corporate Insolvency Resolution Process ('CIRP') of Sparkspell Homes Private Limited under section 7 of the Insolvency and Bankruptcy Code ('IBC') in Company Petition No. (IB) 76/ALD/2019. Initially, this Tribunal appointed Mr. Mohit Maheshwari, IRP who was replaced by Mr. Sudheer Kumar Shukla ("erstwhile RP"), as the Resolution Professional. Thereafter, the Applicant was appointed as RP in the matter vide order dated 31.8.2020.
- 3.** The decision for appointing Mr. Anuj Kumar Tiwari as RP was taken in the CoC meeting held on 8.8.2020 but the order for the Replacement of RP was received on 31.8.2020. Therefore, 23 days were lost and effectively no RP was working in the

case. As CIRP could not be completed in the stipulated time period of 180 days, expiring on 24.02.2020, further extension of 90 days was provided vide order dated 19.02.2020, extending the CIRP period up to 270 days after RP filed an application U/s 12(2) of IBC read with Regulation 40 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. Subsequently, CIRP could not be completed in the mandatory maximum time period of 330 days, which expired on 23.07.2020 due to dispute on the revaluation of claims of members of CoC, an IA NO. 243/2020 was filed under Section 60(5) of the Code for the exclusion of certain time period of the CIRP period, resulting into the passing of an order dated 16.10.2020 by this Tribunal allowing the exclusion of 90 days period from CIRP period. Thereafter, in order to resolve the dispute on revaluation of claims of members of CoC to determine their voting rights, IA No. 356/ALD/2020 has been filed U/s 60(5) on 07.12.2020. Order on this IA has been passed on 23.5.2022 directing the RP to re-work out the claims of all CoC Members. Due to the pendency of IA No. 356/ALD/2020 for almost one and half years, the process of

CIRP came to a standstill, and, hence, the exclusion of 607 days period was allowed, over and above the 90 days period already allowed vide order dated 16.10.2020.

4. The Applicant has submitted certain periods for exclusion with reasons for the same which are as under:

- i. The Applicant had filed IA 208/2022 seeking exclusion of certain time periods due to extraordinary circumstances in the ongoing CIRP. The matter had been decided by this Tribunal on 6.01.2023 and Application was filed on 5.09.2022. Applicant seeks 123 days' time exclusion from this time period.
- ii. The Applicant seeks exclusion of the time period starting from 1.05.2023 up to 1.08.2023, wherein he was incapacitated to work due to unforeseen circumstances.
- iii. That the Resolution Professional had invited Expression of Interest for successful Resolution of the Corporate Debtor, wherein Resolution Plan has been Approved by the Creditors on 22.6.2023 and is being simultaneously filed in another Application for approval by this Tribunal. However, post Advertisement only two eligible Applicants came forward for Resolution Process who submitted the proposal on 2.12.2022. Due to lack of understanding of IBC there remained only one bidder who could file eligible Resolution Plan and therefore the period from 6.1.2023

till 15.4.2023 was lost in negotiation and renegotiation with CoC members. Hence, this time period be excluded from CIRP timeline as well.

5. We have perused the averments made in the Application and submission of the Ld. Counsel.
6. From the record of the present case, the CIRP of the Corporate Debtor is at nascent stage and the Applicant has to take forward duly complied with the procedure as prescribed under the Code for the purpose of Resolution of the Corporate Debtor.
7. We refer to the order of the **Hon'ble NCLAT in Quinn Logistics India Pvt. Ltd v.Mack Soft Tech Pvt. Ltd and ors., dated 08.05.2018 [CA(AT) (Insolvency) No. 185 of 2018]** wherein it was held as follows:-

“9. From the decisions aforesaid, it is clear that 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.

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."*

- 8.** After reviewing the record and considering the submissions made, and since we are allowing the proposed resolution plan under IA No. 518/2023 in a separate order, we hereby approve the exclusion of the periods from 5.9.2022 till 6.1.2023, from 6.1.2023 till 15.4.2023, and from 21.4.2023 till 1.8.2023. Consequently, IA No. 522/2023 stands allowed.
- 9.** We also note that the present applications (i.e., I.A. No. 522/2022) seeking exclusion in the CIRP Period was filed on 24.7.2023. For an effective conclusion of the resolution process, this Adjudicating Authority further allows the exclusion of the period from the date of filing of the present application till the date of pronouncement of the present order from the Corporate Insolvency Resolution Process period.

Sd/-

(Ashish Verma)
Member (Technical)

Date: 16th May, 2024

Sd/-

(Praveen Gupta)
Member (Judicial)